

# NEW JERSEY



# REGISTER

## THE JOURNAL OF STATE AGENCY RULEMAKING

### VOLUME 19 NUMBER 2

January 20, 1987 Indexed 19 N.J.R. 165-260

(Includes rules filed through December 23, 1986)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 17, 1986.**

**See the Register Index for Subsequent Rulemaking Activity.**

**NEXT UPDATE WILL BE DATED DECEMBER 15, 1986.**

### RULEMAKING IN THIS ISSUE

#### RULE PROPOSALS

Interested persons comment deadline .....	166
ENVIRONMENTAL PROTECTION	
Redelineation of Raritan River and Peters Brook: withdrawn .....	167(a)
Redelineation of Raritan River and Peters Brook: reproposed .....	167(b)
Flood hazard areas along the Saddle, Ramapo and Mahwah rivers, and Masonicus Brook .....	169(a)
Solid waste facilities: recordkeeping .....	171(a)
HEALTH	
Intermediate Adult and Special Psychiatric Beds: certification of need .....	171(b)
HIGHER EDUCATION	
Student assistance programs: student dependency status defined .....	176(a)
Tuition Aid Grant Program: 1987-88 Award Table .....	177(a)
CORRECTIONS	
Inmate discipline: prohibited acts .....	178(a)
Inmate discipline: schedule of sanctions at Youth Complex .....	178(b)
Reduced custody consideration for inmates with mandatory minimum sentences of 24 months or less .....	178(c)
LAW AND PUBLIC SAFETY	
Sale of gray market merchandise .....	179(a)
TRANSPORTATION	
No parking zones along U.S. 9 in Little Egg Harbor, and Routes 77 and U.S. 40-N.J. 45 in Salem County .....	180(a)
No passing zone along Route 140 in Carney's Point .....	181(a)
Contract administration: construction plans; deferred payments to contractors .....	181(b)
Practice and procedure before Office of Regulatory Affairs .....	182(a)

#### TREASURY-GENERAL

Public Employees' Retirement System: accrual of loan interest .....	194(a)
Teachers' Pension and Annuity Fund: compulsory retirement .....	195(a)

#### TREASURY-TAXATION

Veteran's and senior citizens property tax deductions .....	195(b)
---	--------

#### OTHER AGENCIES

PUBLIC EMPLOYMENT	
RELATIONS COMMISSION	
Appeal Board procedure .....	196(a)

#### RULE ADOPTIONS

#### ENVIRONMENTAL PROTECTION

Interdistrict and intradistrict solid waste flow .....	202(a)
Interdistrict and intradistrict solid waste flow .....	202(b)
Filing of disclosure statements by solid and hazardous waste licensees subject to A-901 .....	203(a)

#### HEALTH

Residential alcoholism treatment facilities: cost accounting and rate evaluation .....	203(b)
Long-Term Care Policy Manual .....	210(a)
Interchangeable drug products .....	215(a)
Interchangeable drug products .....	216(a)
Interchangeable drug products .....	216(b)
Interchangeable drug products .....	216(c)
Interchangeable drug products .....	217(a)

#### CORRECTIONS

Classification of inmates .....	218(a)
---------------------------------	--------

#### INSURANCE

Real estate licensing qualifications .....	232(a)
Advertising by real estate licensees .....	232(b)

(Continued on Next Page)

0330 010 9  
EDUCATION, DEPARTMENT OF  
DIVISION OF LIBRARY, ARCHIVES, & HISTO  
CN 520  
TRENTON NJ 08625  
Interoffice



# INTERESTED PERSONS

**Interested persons** may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **February 19, 1987**. 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.

## RULEMAKING IN THIS ISSUE—Continued

### LAW AND PUBLIC SAFETY

Boxing: weight classes, age limitations, health safeguards ..	232(c)
Bandage specifications for boxer's hands .....	233(a)
Licensure of boxers .....	233(b)
Compensation of wrestling referees .....	233(c)
Compensation of boxing referees, judges and timekeepers ..	234(a)
Motor carrier safety .....	234(b)
Harness racing: purse deductions .....	237(a)

### PUBLIC UTILITIES

CATV: franchise renewals .....	238(a)
--------------------------------	--------

### TRANSPORTATION

No parking zones along U.S. 9, Routes 35, 147, 67, and U.S. 1 Alternate .....	242(a)
No parking zones along Route 31 and U.S. 40-322 .....	240(a)
No parking zones along Route 94, U.S. 206 and U.S. 206-94 in Newton .....	241(a)
No passing zones on Route 72, Ocean County, and Route 45, Gloucester County .....	243(a)
No passing zones on Route 147 in Cape May County .....	243(b)
No passing zones on Route 166 in Ocean County .....	243(c)
One-way traffic on U.S. 206-94 in Newton .....	243(d)
No left turn on Route 38 in Mount Laurel .....	243(d)

### TREASURY-GENERAL

Teachers' Pension and Annuity Fund: optional purchases of eligible service .....	244(a)
--	--------

### EMERGENCY ADOPTIONS

### HUMAN SERVICES

Medicaid Only: eligibility computation amounts .....	245(a)
Supplemental Security Income payment levels .....	246(a)

### MISCELLANEOUS NOTICES

### ENVIRONMENTAL PROTECTION

Northeast water quality management: Bernards Township .....	247(a)
Upper Delaware water quality management: Bloomsbury ..	247(b)
Upper Delaware water quality management: Worthington State Park .....	247(c)

Upper Delaware water quality management: Washington Township .....	247(d)
Upper Raritan water quality management: Voorhees State Park .....	247(e)
Lower Raritan/Middlesex County water quality management: Plainsboro .....	248(a)
Mercer County water quality management: East Windsor ..	248(b)
Tri-County water quality management: Mount Laurel .....	248(c)
Tri-County water quality management: Washington Township .....	248(d)
Sussex County water quality management: Roxbury .....	248(e)
Upper Delaware, Upper Raritan, and Northeast water quality management: Roxbury .....	249(a)
<b>HEALTH</b>	
Hospital reimbursement: RIM methodology implementation .....	249(b)
<b>INSURANCE</b>	
Notice of hearing on Exportable List .....	249(c)
<b>TREASURY-GENERAL</b>	
Architect/Engineer Selection Board Meetings .....	250(a)

### INDEX OF PROPOSED AND ADOPTED RULES

251

### Filing Deadlines

#### February 17 issue:

Proposals .....	January 16
Adoptions .....	January 26

#### March 2 issue:

Proposals .....	February 2
Adoptions .....	February 6

#### March 16 issue:

Proposals .....	February 13
Adoptions .....	February 23

#### April 6 issue:

Proposals .....	March 9
Adoptions .....	March 16

## NEW JERSEY REGISTER

The official publication containing notices of proposed rules and rules adopted by State agencies pursuant to the New Jersey Constitution, Art. V, Sec. IV, Para. 6 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Issued monthly since September 1969, and twice-monthly since November 1981.

Material published in the New Jersey Register is the property of the State of New Jersey. However, it may be copied, reproduced or republished by any person for any purpose whatsoever without permission, providing that no such reproduction or republication shall bear the title "New Jersey Register" or "Official Rules Publication" without the written permission of the Director, Office of Administrative Law.

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

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

*The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 38-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to four volumes depending on the Department coverage desired.*

# RULE PROPOSALS

## ENVIRONMENTAL PROTECTION

### DIVISION OF WATER RESOURCES

#### (a)

#### Flood Hazard Area Delineation

#### Redelineation of Raritan River and Peters Brook

#### Withdrawal of Proposal: N.J.A.C. 7:13-7.1(d).

On April 7, 1986, by authority of Richard T. Dewling, Commissioner, Department of Environmental Protection, proposed amendments to N.J.A.C. 7:13-7.1(d) (DEP Docket #009-86-03; PRN 1986-109) were published at 18 N.J.R. 600(a). The amendment proposed to revise the flood hazard area delineation for the Raritan River from approximately 1500 feet upstream of the Landing Bridge Lane upstream to the confluence of the North and South Branch of the Raritan River and for Peter's Brook from the mouth upstream approximately 1000 feet upstream of North Bridge Street.

Comments received during the public participation period indicated that the public notice was inadequate and misleading. The Department of Environmental Protection, Division of Water Resources, determined that reproposing the Raritan River and Peters Brook redelineations and affording a second opportunity for comment was warranted.

This "Withdrawal of Proposal" serves to give notice that the original proposal at 18 N.J.R. 600(a) is being withdrawn, but the amendments to N.J.A.C. 7:13-7.1(d) are still under consideration. The redelineation of the Raritan River and Peters Brook is being reproposed in this issue of the New Jersey Register.

#### (b)

#### Flood Hazard Area Delineation

#### Redelineation of Raritan River and Peters Brook

#### Proposed Amendment: N.J.A.C. 7:13-7.1(d)

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

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.  
DEP Docket No. 060-86-12.

Proposal Number: PRN 1987-52.

A public hearing concerning this proposal will be held on:

February 5, 1987 at 1:00 p.m.  
Hillsborough Township Municipal Building  
330 Amwell Road  
Neshanic, N.J.

Submit written comments by February 19, 1987 to:

Marlen Dooley  
Office of Regulatory Services  
Department of Environmental Protection  
CN 402  
Trenton, N.J. 08540

The agency proposal follows:

#### Summary

Pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-1 et seq., the New Jersey Department of Environmental Protection (Department) proposes to revise the flood hazard area delineation for the Raritan River from approximately 1500 feet upstream of the Landing Bridge Lane upstream to the confluence of the North and South Branch of the Raritan River and for Peter's Brook from the mouth upstream approximately 1000 feet upstream of North Bridge Street.

Regulations of delineated flood hazard areas are designed to preserve the flood carrying capacity and to minimize the threat to the public safety, health and general welfare.

The proposed redelineations are based on the hydraulic analyses performed and updated gage discharges collected by the U.S. Geologic Survey (U.S.G.S.) for the flood insurance studies of Franklin, South

Bound Brook, Manville and Hillsborough. As a result of having received more detailed data and analyses, the Department is proposing to update the existing delineation to reflect the new information.

The proposed redelineation establishes new flood hazard area design flood elevations along the Raritan River ranging from -.7 to +5.5 feet and Peters Brook ranging from 0 to .3 feet above the present flood hazard area elevations. The higher elevations translate to a commensurate expansion of the size of the flood hazard area within the Department's jurisdiction under the Flood Hazard Area Control Act. This redelineation will require no change in the text of N.J.A.C. 7:13-7.1(d), since only a revision of the flood hazard area delineation map is required. Review of maps and profiles associated with this redelineation is recommended.

The following table summarizes the increased 100-year and New Jersey flood hazard area design flood elevations at selected locations along the Raritan River.

River Station	100-yr. (ft.)	NJFHA (Ft.)	Location
764 + 40	.3	.4	Upstream face of Landing Lane Bridge
800 + 00	.4	.7	
850 + 00	.3	.7	
900 + 00	-.7	-.5	
956 + 00	1.2	1.7	Upstream face of Fieldville Dam
1000 + 00	1.4	2.3	
1033 + 70	1.8	2.5	Junction with Green Brook
1050 + 00	3.5	5.3	850 feet upstream of Queens Bridge
1086 + 00	3.5	5.5	Junction with Middle Brook
1116 + 40	3.7	5.1	Calco Dam
1167 + 10	1.3	3.6	Junction with the Millstone River
1242 + 60	1.7	2.0	Finderne Avenue/North Main Street
1351 + 00	2.0	2.6	Junction with Peters Brook
1368 + 50	2.6	3.0	Route 206 Bridge
1438 + 50	3.0	2.6	Raritan Road Bridge
1488 + 00	3.0	2.5	Bradly Garden Dam
1595 + 30	2.3	1.7	Raritan Water Power Dam
1618 + 00	1.8	2.0	Junction with North & South Branch Raritan River

The proposal of this rule amendment originally appeared in the April 7, 1986 New Jersey Register at 18 N.J.R. 600(a). The Department held a public hearing on the proposed rule amendment on May 21, 1986 at the Hillsborough Township Municipal Building, Neshanic, New Jersey. Sixteen people were in attendance and four people offered comments. Three written comments were received. Comments received during the public participation period indicated that the public notice was inadequate and misleading (See Notice of Withdrawal in this issue of the New Jersey Register). The Department is hereby reproposing the Raritan River and Peters Brook redelineations and affording a second opportunity to comment on them. Comments from the first hearing and the Department's responses are summarized below.



COMMENT: The summary and economic impact statement set forth in the notice of proposal for the rule (18 N.J.R. 600(a)) failed to adequately describe the actual, foreseeable impacts of the proposal.

RESPONSE: In most cases, the impact of a redelineation of a stream is minor. Updated hydraulic and hydrologic information usually results in some limited expansion of the area regulated under the Department's flood hazard area control rules, N.J.A.C. 7:13-1 et seq. However, because of the special circumstances of this commenter, the impact of the redelineation is potentially greater. The notice of proposal for this rule does fail to draw attention to the actual increases in the elevation of the design flood which the redelineation describes. The lack of this information in the preamble of the proposed rule might have interfered with the ability of members of the public to comprehend the potential impact of the proposal upon them. It is the Department's policy to err on the side of public participation in cases where there is some doubt regarding the adequacy of the notice. Therefore, the Department has concluded that it is appropriate to repropose the Raritan River redelineation.

COMMENT: The redelineation will stagnate further individual lot development in some areas and discourage home owners who want to expand or make substantial improvements to existing dwellings.

RESPONSE: The redelineation will restrict development where land falls within the Department's expanded jurisdiction. However, the purpose of redelineation is to identify and control development in areas subject to flooding in order to minimize loss or damage. The risk of flooding is weighed against the right of property owners to develop their property. Some restrictions are necessary to insure the safety and welfare of the community.

COMMENT: Property that has never been subject to flooding is being designated as being in a flood hazard area.

RESPONSE: Redelineations are based upon a theoretical 100-year storm rather than historical records of flooding. The proposal process is not the appropriate forum in which to seek removal of property from a flood hazard area. Federal Emergency Management Agency (FEMA) map amendments are processed through the federal government.

COMMENT: The Flood Hazard Area Control Act requires that stream delineations identify the various subportions of the flood hazard area for reasonable and proper use according to relative risk, including the delineation of floodways necessary to preserve the flood carrying capacity of natural streams (see N.J.S.A. 58:16A-52). The Department does not evaluate the "relative risk", as required by this section of the Act.

RESPONSE: When the Department developed the flood hazard area control rules, N.J.A.C. 7:13-1 et seq., the risk of flooding was weighed against the rights of property owners in the flood plain to develop their properties as they please. Those rules reveal a balance between these competing interests which reasonably meets this requirement in the Flood Hazard Area Control Act. What the commenter appears to be suggesting is that the law requires a risk assessment for each property along each stretch of stream to be delineated. A reasonable interpretation of what the Legislature intended is that the Department balance the risk against the right to develop on a programmatic basis. This is what the Department did when adopting the flood hazard area control rules. The rules only prohibit significant development in the floodway (the main stream channel). Within the flood fringe, most types of uses are allowed, within the reasonable restrictions set by the rules. To set different standards for each property owner or each stream, as this comment suggests, would create a method of operation for the flood control program which could, in our opinion, have resulted in unacceptable piecemeal, and possibly inconsistent, delineations.

COMMENT: The elevations on the flood insurance rate map should not be based on the failure of the dam at Chimney Rock.

RESPONSE: Failure of the dam was not a consideration in the redelineation as proposed.

COMMENT: The definition of "flood hazard area design flood" in the regulations, N.J.A.C. 7:13-1.2, appears to have been based on an old Water Policy and Supply Council resolution dated December 16, 1974. What was the justification for the December 1974 Water Policy and Supply Council resolution calling for a design flood discharge flood hazard area 25 percent greater than the design discharge used for defining floodway limits ("25 percent add-on")?

RESPONSE: The U.S.G.S. within the Department of the Interior through a cooperative program with this Department completed a study to develop a method for computing design discharges which takes into consideration the rapid urbanization that increases flood peaks. By resolution of the Water Policy and Supply Council, the method of computing flood discharges shall be consistent with the methodology in "Magnitude

and Frequency of Floods in New Jersey with Effects of Urbanization" by Doctor Stephen J. Stankowski of the U.S. Department of Interior. It was further resolved that alternative methods may be used to compute the design flood discharges and under the provisions of N.J.S.A. 58:16A-52, the State design flood discharge shall be 25 percent greater than the design discharge used for defining the floodway limits.

COMMENT: Since the proposed revision apparently adopts the U.S.G.S. 500-year flood delineation and seemingly results in a delineation of greater flood hazard elevations than that which would result from application of the Department's 25 percent add-on, upon what factual basis does the Department justify adoption of such a delineation?

RESPONSE: The discharges used in the delineations are based on the discharges used in the federal flood insurance studies of Franklin, Manville and Hillsborough, prepared by the U.S.G.S. Pursuant to N.J.S.A. 58:16A-52(b), the Department shall, wherever practical, make floodway delineations identical to the floodway delineation approved by the federal government for the National Flood Insurance Program. Review of the floodway design flood discharges in the flood insurance studies indicates that the discharges were developed by the U.S.G.S. using gage data from series stream gages and log-Pearson Type III analyses. This methodology is the method preferred by the Department rather than Special Report #38 along gaged streams and is acceptable to the Department according to the "Technical Manual for Stream Encroachment" manual prepared by the Department's Bureau of Flood Plain Management. The discharges and flood profiles used in the flood insurance studies were approved by FEMA, FEMA's technical evaluation consultants (Dewberry & Davis), and the State of New Jersey. The 100-year and 500-year discharges were reviewed for consistency along the Raritan River and the State flood hazard area design discharges were computed to be within 5 percent of the 500-year discharges which were used in the federal flood insurance studies.

Revisions to Peters Brook show a .3 foot increase of the State flood hazard area water surface profile. The increase in the water surface profile along Peters Brook reflects the backwater of the Raritan River.

COMMENT: Has the Department investigated the accuracy of the data and information provided by the federal government upon which it relies in this proposed rule?

RESPONSE: The Department has no reason to believe that the information and data provided by the U.S.G.S. is inaccurate. The public participation process associated with the adoption of the redelineation provides an opportunity for any suggestions of error to be expressed.

COMMENT: Upon what factual basis does the Department contend that the proposed revision is simply "more accurate" and will "result in the more exact location of the floodway and the flood fringe"? What consideration has the Department given to periodic updating of flood area delineation mapping along all delineated streams to keep delineations consistent, accurate, and current in lieu of an arbitrary 25 percent add-on "buffer"?

RESPONSE: There were several factors considered while preparing the revised delineations. Factors include topography, hydrology, hydraulics and acceptance by various agencies.

The update of the Raritan River and Peters Brook is based upon existing data. The planimetric mapping appears to be adequate. It was indicated at the public hearing held on May 21, 1986 that Allied Roofers Supplies in South Bound Brook obtained an approved Department Stream Encroachment Application and was constructed. The new Allied Roofers structures have been incorporated in the mapping. The proposed delineation mapping was sent to each of the affected municipalities and county engineering departments for review and comments.

Maps are updated through a map amendment process pursuant to N.J.S.A. 58:16A-52 to reflect approved major stream encroachment applications, flood control projects, dams, revisions requested by private individuals and updates based on more recent FEMA flood studies. All requests and revisions are required to include revised or updated data that conforms to State standards.

The data generated by U.S.G.S. conforms to State standards. The discharges are based on gage data, which is more accurate than Special Report #38 discharges and obviously more accurate than using multipliers of the mean annual flood, as used in the Raritan River Flood Hazard Report #2.

The floodways in Flood Hazard Report #2 for the Raritan River were hand-set, while the revised floodway, as determined by U.S.G.S. in their flood insurance studies, evaluated and tested the original floodway limits in the Flood Hazard Report #2 to check if the Department exceeded its .2 foot rise criteria in their E-431 hydraulic computer model. The



floodway limits generally have not changed. The floodway limits are very similar, even with increased 100-year water surface profiles.

The State is justified in using the profiles from the federal flood insurance studies. The flood discharges and water surface profiles for the various design floods were approved by FEMA, FEMA's technical evaluation consultants (Dewberry and Davis), local municipalities by their flood damage prevention ordinance and the State of New Jersey as a coordination agency. In addition, N.J.S.A. 58:16A-52(b) states that the Department shall, wherever practicable, make floodway delineations identical to the floodway delineations approved by the federal government for the National Flood Insurance Program. The revised flood profiles are higher than the original profiles and are consistent with high water marks from Hurricane Doria, August 27, 1971, the flood of record.

The hydraulics for the revised profiles and floodway limits were computed by the U.S.G.S. E-431 hydraulic computer model. The E-431 computer model is very similar to the U.S. Army Corps of Engineer's (C.O.E.) HEC-2 hydraulic model. It uses the same data base information as the HEC-2 model for input and generates the same output data. The U.S.G.S. E-431 hydraulic model has been accepted by FEMA for use in the National Flood Insurance Program, as well as by the State of New Jersey.

The delineations of the 100-year flood and the New Jersey flood hazard area design flood limits are more accurately drawn than the original delineations. The flood limits from the federal flood insurance studies along the Raritan River were reviewed and the limits were adjusted within the contour limits of the original State topography to match the federal study limits. The flood limits of the State, federal and local municipalities agree as much as possible.

COMMENT: The methodologies used by the Department to delineate and redelineate streams should be proposed and adopted as a rule.

RESPONSE: The Department will take this suggestion into consideration.

COMMENT: Were the actual boundaries of the proposed redelineation set solely by a computer program or were they actually drawn by a professional after evaluation of the data generated?

RESPONSE: The HEC-2 and E-431 hydraulic models generate flood profiles and floodway limits. The width and location of the floodway is determined at each cross section. In between each cross section engineering department is used to determine the configuration of the floodway between cross sections. The water surface flood profile is plotted using the water surface elevation calculated at each cross section for the various design floods. The elevations from the water surface profiles are then delineated or plotted to a corresponding ground elevation on the topography. If more detailed topography is submitted for review, we can more accurately plot the 100-year flood and the flood hazard area design flood limits.

COMMENT: Is the Department currently making delineations or redelineations along other streams in New Jersey based on computer programs or factors other than those utilized in connection with the proposed redelineation of the Raritan River and Peters Brook? If so, upon what basis is the Department making such other delineations and redelineations and what is the Department's justification for the contemporaneous application of differing delineation processes along different streams in the State?

RESPONSE: The State of New Jersey, Department of Environmental Protection, Bureau of Flood Plain Management has delineated and adopted over 2,000 miles of stream. The majority of streams were delineated using the C.O.E.'s HEC-2 hydraulic computer model; however, the Department has based delineations on the U.S.G.S. E-431 and the Soil Conservation Service's WSP2 water surface profile computer program. The C.O.E. HEC-2, U.S.G.S. E-431 and SCS WSP2 generate elevation-discharge relationships for each design flood, based on similar input data and each program generates essentially the same answers; however, the format of each program is different.

#### Social Impact

By delineating a stream or river, the Department applies its regulatory jurisdiction under the Flood Hazard Area Control Act to the "flood fringe", as defined under the Flood Hazard Area Control Regulations, N.J.A.C. 7:13-1 et seq. For many parts of the State, flood studies are underway which generate additional data regarding the exact location of the stream encroachment lines. As the Department receives the detailed data and analyses, the new information is added to that which describes the existing delineation. The revision to the delineation of the Raritan River and Peters Brook will expand the scope of the regulated area and thereby increase the area to which development controls apply.

The proposed redelineation affects Somerset County, Middlesex County, Bound Brook Borough, Bridgewater Township, Franklin Township, Hillsborough Township, Manville Borough, Middlesex Borough, Piscataway Township, Raritan Borough, Somerville Borough and South Bound Brook Borough.

#### Economic Impact

The proposed redelineation will have only a minor economic impact. Updated hydraulic and hydrologic information usually results in some limited expansion of the area regulated under the Department's flood hazard area control rules, N.J.A.C. 7:13-1 et seq. Reductions in property value could result by restricting future development in the revised floodway and requiring elevated construction in the flood fringe areas.

The economic impact of the restriction applicable to the flood fringe area is offset to a degree by decreased insurance costs and by savings to governmental bodies and private home owners due to lessening of future rehabilitation and rescue expenditures from flood damage.

Owners of land which falls within the expanded area of the Department's jurisdiction will be governed by the rules requiring permits for development of such land. Compliance with the Flood Hazard Area Control Act regulations, N.J.A.C. 7:13, will involve economic impact on such landowners.

#### Environmental Impact

To the extent that this proposal causes any environmental impact, such impact will be a positive one. No adverse environmental impact is anticipated as a result of the proposed redelineation of the aforementioned bodies of water. The delineation program provides a framework within which areas subject to the various Flood Hazard Area Control Act regulations are determined. These regulations systematically restrict the scope of permissible development within the delineated area as a means of preventing and minimizing damage to the area as a result of flooding. To the extent that flood damage causes an adverse effect on the environment, this proposal minimizes its potential impact.

AGENCY NOTE: No change in the text of N.J.A.C. 7:13-7.1 is proposed. Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Quakerbridge Road, Trenton, New Jersey and at the Bureau of Flood Plain Management, 1911 Princeton Ave., Lawrenceville, NJ. In addition, maps of the proposed delineations have been sent to the Clerks of the affected municipalities listed above and to the Planning Boards of the affected Counties.

### (a)

#### **Flood Hazard Area Delineation Delineation of Parts of Saddle River and Various Tributaries, Ramapo River, Mahwah River, and Masonicus Brook, and Redelineation of parts of Saddle River, Coalberg Brook and Tributary, Sprout Brook, Beaver Dam Brook, Jordan Brook, and Ho-Ho-Kus Brook in the Passaic River Basin.**

#### **Proposed Amendment: N.J.A.C. 7:13-7.1(g)**

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

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

DEP Docket No. 059-86-12.

Proposal Number: PRN 1987-51.

A public hearing concerning this proposal will be held on:

February 4, 1987 at 1:00 P.M.  
Fair Lawn Municipal Building  
8-01 Fairlawn Avenue  
Fair Lawn, New Jersey

Submit comments on or before February 19, 1987 to:

Marlen Dooley  
Office of Regulatory Services  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08540

The agency proposal follows:

#### Summary

Pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., the New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by the addition of 10 new delineated flood hazard areas and the revision of seven existing delineated flood hazard areas in the Passaic River Basin. The rules governing development activities within delineated flood hazard areas are designed to preserve the flood carrying capacity of New Jersey's waterways and to minimize the threat to the public health, safety, and general welfare caused by flooding. New delineations establish flood fringe areas in which added flood protection measures may be applied; revisions to existing delineations further clarify the bounds of such flood fringe area.

The Department proposes to amend the regulations by adding new floodway and flood hazard area delineations of the Saddle River from the confluence of Ho-Ho-Kus Brook upstream to approximately 525 feet downstream of Bogert Road; Ho-Ho-Kus Brook from Grove Street, upstream to the upstream corporate boundary of Ridgewood and Waldwick, approximately 300 feet downstream from Wyckoff Road; Sprout Brook from Plaza Way in Paramus upstream to the confluence of Manning Brook; Manning Brook from its mouth upstream to Van Binsberger Boulevard in Paramus; Herring Brook from its mouth to approximately 130 feet upstream of Route 4 in Paramus; Behnke Brook from its mouth upstream to Midland Avenue in Paramus; Goffle Brook for the entire reach in Ridgewood, from Rock Road to 130 feet downstream of Lake Street; the Ramapo and Mahwah Rivers for the entire reaches within Mahwah Borough and Masonicus Brook from its mouth upstream to approximately 60 feet upstream of Constantine Drive.

The proposed delineations are based on existing data from municipalities, the State, the Army Corps of Engineers, and federal flood insurance studies. The delineations were prepared by engineers under a contract with the State of New Jersey. The discharges along the Saddle River were coordinated with the discharges in the federal flood insurance studies of Paramus and Ridgewood. For the remaining study streams, existing discharges were used from existing State delineations and federal flood insurance studies. The flood profiles in Mahwah match existing profiles; however, slightly higher flood profiles are noted along the Saddle River and its tributaries above the Garden State Parkway in Rochelle Park. Differences between the existing and proposed flood profiles are due to a continuous computer model upstream of the Garden State Parkway and the original starting conditions used in the Paramus Flood Insurance study.

The Department also proposes to amend the regulations by redelineating floodways and flood hazard areas of the Saddle River from its mouth upstream to the confluence of Ho-Ho-Kus Brook; Coalberg Brook from its mouth to Route 46; Coalberg Brook Tributary from its mouth upstream to Route 46; Sprout Brook from its mouth to Plaza Way in Rochelle Park; Beaver Dam Brook from its mouth upstream to approximately 250 feet downstream of Van Duren Avenue in Fair Lawn; Jordan Brook from its mouth to Berdan Avenue in Fair Lawn; and Ho-Ho-Kus Brook from its mouth upstream to Grove Street for the entire reach along Glen Rock.

The proposed redelineations reflect findings from improved hydrological study. Existing hydraulic modeling for the Saddle River was rerun due to inconsistent flood profiles. Topographic mapping consists of existing mapping from municipalities, the State, the Army Corps of Engineers, and federal flood insurance studies.

The proposed redelineations establish increased flood hazard area design flood elevations for the Saddle River ranging from 0 to 3 feet; Coalberg Brook ranging from 0 to .2 feet; Sprout Brook ranging from 0 to .2 feet; Beaver Dam Brook ranging from 0 to 2.7 feet; Jordan Brook ranging from 0 to 2.4 feet, and Ho-Ho-Kus Brook ranging from 0 to 2 feet. This translates to a commensurate expansion of the size of the State Flood Hazard Area within the Department's jurisdiction under the Flood Hazard Area Control Act. Review of the maps and profiles associated with this redelineation is recommended.

#### Social Impact

The proposed delineations indicate floodway and flood hazard areas where additional flood protection measures will apply in the Passaic River Basin along the Saddle River and various tributaries, the Ramapo and Mahwah Rivers, and Masonicus Brook. The proposed delineations will affect: Paramus Borough, Ridgewood Village, Ho-Ho-Kus Borough, Waldwick Borough and Mahwah Township in Bergen County.

Previously adopted delineations of these studied streams will be superseded by this flood plain redelineation. The proposed redelineation will affect: Wallington Borough, Wood-Ridge Borough, the City of Garfield, South Hackensack Township, Lodi Borough, Rochelle Park Township, Saddle Brook Township, Fair Lawn Borough, and Glen Rock Borough in Bergen County.

#### Economic Impact

The proposed amendment will have a minor economic impact. Since the proposed delineations will clearly define the flood hazard area, reductions in property values could result by restricting future development in the floodway, and by requiring elevated construction in fringe areas. Owners of land which falls into the expanded area of the Department's jurisdiction will be governed by rules requiring permits for any development of land in the flood hazard area. Compliance with Flood Hazard Area Control Act Regulations, N.J.A.C. 7:13, will have an economic impact upon those landowners; however, minor property diminution would be offset by the saving to governmental bodies and to homeowners due to little or no future rehabilitation and rescue expenditures from flood damage in the delineated areas.

#### Environmental Impact

No adverse environmental impact is anticipated as a result of the proposed delineations and redelineations of the aforementioned bodies of water. To the extent that this proposal causes any environmental impact, such impact will be a positive one. The proposed delineations and redelineations reflect new modeling data and are intended to ensure that development is restricted in flood-prone areas.

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

#### 7:13-7.1 Delineated Floodways

(a)-(f) (No change.)

(g) A list of delineated streams in the Saddle River follows:

1. (No change in text.)

2. **Saddle River, Ho-Ho-Kus Brook, Sprout Brook, Manning Brook, Herring Brook, Behnke Brook, Goffle Brook, Ramapo and Mahwah Rivers, Masonicus Brook**

**Saddle River from the Confluence of Ho-Ho-Kus Brook upstream to approximately 525 feet downstream of Bogert Road; Ho-Ho-Kus Brook from Grove Street, upstream to the upstream corporate boundary of Ridgewood and Waldwick, approximately 300 feet downstream from Wyckoff Road; Sprout Brook from Plaza Way in Paramus upstream to the confluence of Manning Brook from its mouth upstream to Van Binsberger Boulevard in Paramus; Herring Brook from its mouth to approximately 130 feet upstream of Route 4 in Paramus; Behnke Brook from its mouth to Midland Avenue in Paramus; Goffle Brook for the entire reach in Ridgewood, from Rock Road to 130 feet downstream of Lake Street; the Ramapo and Mahwah Rivers for the entire reaches within Mahwah Borough and Masonicus Brook from its mouth upstream to approximately 60 feet upstream of constantine Drive.**

(h)-(i) (No change.)

AGENCY NOTE: The proposed delineations will require additions to the text of N.J.A.C. 7:13-7.1. The proposed redelineations will require no change in the text of N.J.A.C. 7:13-7.1 since only a revision of the flood hazard area delineation map is required.



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

In addition, maps of the proposed delineations and redelineations have been sent to Clerks of the affected municipalities and to the Bergen County Engineering Department. Maps are also available for inspection during normal working hours at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

## (a)

### DIVISION OF SOLID WASTE MANAGEMENT

#### Solid Waste Facilities: Records

#### Proposed Amendment: N.J.A.C. 7:26-2.13

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

Authority: N.J.S.A. 13:1E-1 et seq.

DEP Docket Number: 061-86-12.

Proposal Number: PRN 1987-53.

Submit comments by February 19, 1987 to:

Roger S. Haase  
Office of Regulatory Services  
Department of Environmental Protection  
CN 402  
Trenton, N.J. 08625

The agency proposal follows:

#### Summary

The New Jersey Department of Environmental Protection (the Department) is proposing to amend the record keeping requirements for solid waste facilities, promulgated at N.J.A.C. 7:26-2.13, to accurately reflect the original intent of the rule. The Department's original intent was for the rule to apply to all solid waste facilities except for those which were specifically exempted. However, the rule as presently written does not encompass all those types of solid waste facilities. The proposed amendment will provide the Department with the broad authority that was originally intended by making the rule applicable to all solid waste facilities not exempted by N.J.A.C. 7:26-2.13(d).

#### Social Impact

The social impact of the proposed amendment will be a beneficial one. There will be a positive social impact because the change will afford the Department control over additional solid waste facilities. The records to be maintained by the newly included facilities will enable the Department to more accurately monitor the waste flow requirements set forth at N.J.A.C. 7:26-6. Therefore, any existing facilities which have in the past been able to bypass the requirements of the rule will now be required to comply.

#### Economic Impact

The Department, at the time it proposed the present wording of the rule, determined that the cost associated with the record keeping requirements would have a minor impact on the overall cost of operating a solid waste facility. Therefore, only a slight additional cost will be incurred by those few solid waste facilities which presently do not maintain the records required by the current rule. As such, the proposed amendment will have little effect on the overall cost of solid waste disposal.

#### Environmental Impact

The net environmental impact of the proposed amendment will be positive. With the Department's additional control over the flow of solid waste in the State, planning for disposal will be more effective. Solid waste facilities will be more watchful of the types of wastes received at their facilities and thus will help prevent pollution of the environment.

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

7:26-2.13 [Sanitary landfills, resource recovery facilities and transfer stations; records] **Solid waste facilities; records**

(a) [Sanitary landfills, resource recovery facilities and transfer stations] **Each solid waste facility permittee shall maintain a daily record of wastes received. The records shall include:**

- 1.-7. (No change.)
- (b)-(i) (No change.)

## HEALTH

### (b)

#### THE COMMISSIONER

#### Certificate of Need: Intermediate Adult and Special Psychiatric Bed Standards

#### Proposed New Rules: N.J.A.C. 8:43E-5

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1987-46.

Submit comments by February 19, 1987 to:

Robert Fogg, Assistant Chief  
Health Planning Services  
Department of Health  
Room 604  
CN 360  
Trenton, New Jersey 08625-0360

The agency proposal follows:

#### Summary

The Department of Health is responsible for establishing rules governing the planning and certification of need for hospital and related health care facility services. Currently, no rules exist specifically addressing inpatient Intermediate and special psychiatric programs, although the need for such criteria is discussed in the February 1986 update of the New Jersey State Health Plan. A rule prohibiting acceptance of Certificate of Need applications for such services until adoption of new criteria was adopted in October 1985 (N.J.A.C. 8:33). In developing these proposed rules, the Commissioner obtained the recommendations of the Statewide Health Coordinating Council (SHCC), its Plan Development and Implementation Committee and a special SHCC Psychiatric Bed Task Force.

The purpose of the proposed new rules is to establish criteria for the review of Certificate of Need applications for the establishment of Intermediate Adult and Special psychiatric beds in licensed hospitals in the State of New Jersey. The rules contain a methodology for estimating the need for such beds on a county and statewide basis, and establish standards and guidelines regarding planning concerns such as cost effectiveness, continuity of care, accessibility, quality and the endorsement by county and state mental health authorities.

#### Social Impact

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

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

The proposed rules are intended to promote the provision of an alternative level of care to the already established adult acute psychiatric beds. It is intended for adults who are experiencing an acute episode of a psychiatric disorder and who require a comprehensive and specialized treatment program that cannot be fully provided within a short term acute psychiatric setting. It is the intent of these regulations to improve the continuity and accessibility of care by establishing this appropriate and cost effective level of care as part of a unified system of mental health care at the community level. Referral agreements with providers of acute

psychiatric services, community mental health agencies, as well as with State and County psychiatric hospitals are required, while the involvement of these agencies and local mental health planning authorities in program development is promoted.

#### Economic Impact

In 1985, there were 1,123 acute psychiatric beds in general hospitals and 389 in special psychiatric hospitals. The average length of stay in these beds was 13.6 days, while occupancy was approximately 71 percent. These regulations are intended to address services for adults who require a specialized treatment program that cannot be fully provided within the short term acute bed setting. Admissions to intermediate and special psychiatric beds are intended to have an average length of stay which is less than 45 days. Approximately 18 letters of intent to apply for Certificates of Need for this level of service have been received by the Department of Health, which in total would create 1,200 new beds at an estimated cost of \$150 million statewide. The methodology proposed in these regulations will limit initial development of intermediate adult services to approximately 100 beds statewide and expansion of special psychiatric services to 60 beds statewide. It is expected that the rules would have the impact of allowing the creation of a needed community treatment modality only in areas of demonstrated need, and would promote cost effectiveness through mechanisms such as encouraging conversion of existing hospital bed capacity. It is anticipated that the provision of this service at the community level will allow certain savings at County and State hospitals.

Full text of the proposed new rules follows:

### SUBCHAPTER 5. INTERMEDIATE ADULT AND SPECIAL PSYCHIATRIC BEDS

#### 8:43E-5.1 Scope

The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds as provided in licensed general and special hospitals throughout the State. These rules address the addition or establishment of licensed psychiatric beds which will be classified as Intermediate Adult Psychiatric Beds or Special Psychiatric Beds in any existing or proposed licensed hospital in New Jersey. The rules do not apply to facilities proposing to establish Adult Closed Acute Psychiatric Beds or other psychiatric services for which existing planning regulations are in effect.

#### 8:43E-5.2 Submission of certificate of need applications

Applications for establishment of new Intermediate Adult or Special Psychiatric Beds will be under batching procedures as determined by the Department and under policies and procedures set forth in N.J.A.C. 8:33. The schedule shall be as follows:

Deadline for Actual Submission	Cycle Begins
May 1	June 15
November 1	December 15

#### 8:43E-5.3 Definitions

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

"Adult closed acute psychiatric unit" means a separate and locked unit of inpatient beds in a New Jersey hospital specifically designated for the provision of intensive treatment services for persons experiencing an acute episode of a primary or secondary psychiatric disorder which accepts and treats individuals under an involuntary commitment order and may also admit patients to the unit under voluntary commitment status. Admissions to the unit have an average length of stay of thirty (30) days or less.

"Adult open acute psychiatric beds" means licensed psychiatric beds in a designated and separate unit of a New Jersey hospital, for the provision of intensive evaluation, stabilization, and treatment of persons who are experiencing an acute episode of a psychiatric disorder. Admissions to the unit have a length of stay which is generally 30 days or less. (See N.J.A.C. 8:43E-2.1 et seq.)

"Average length of stay (ALOS)" means total patient days on a service or unit divided by total admissions, exclusive of in-hospital transfers.

"Children's acute psychiatric beds" means any separate unit or facility, or sub-unit of an existing licensed psychiatric unit or facility, established for the provision of intensive treatment and rehabilitation of individuals under the age of 18, who are experiencing an acute episode of a psychiatric disorder. (See N.J.A.C. 8:43E-4.1 et seq.)

"Department" means the New Jersey Department of Health.

"Emergency/Screening mental health services" means a designated or discrete program of psychiatric crisis intervention, evaluation, treatment and referral services available on a 7-day, 24-hour basis to individuals experiencing an acute psychiatric crisis within a defined service area.

"Guidelines" means those general factors to be considered in applying a given standard, or to guide decision-making in areas for which specific standards are not available or would not be appropriate.

"Intermediate adult psychiatric beds" means licensed psychiatric beds in a separate and designated area in a New Jersey Hospital which provides intensive psychiatric evaluation and treatment services as part of a comprehensive psychiatric and psychosocial rehabilitation program, and which are appropriate for individuals aged 18 and above who are experiencing an acute episode of a psychiatric disorder and who require a comprehensive and specialized treatment program that cannot be fully provided within a short-term acute psychiatric setting. Admissions to the Intermediate Psychiatric unit or facility have an average length of stay which is generally greater than the average length of stay for Adult Open Acute Psychiatric Units in New Jersey and less than 45 days.

"Mental health service area" means a designated area of the state approved by the New Jersey Department of Human Services as a primary catchment area for community mental health service delivery.

"Special Psychiatric Beds" means licensed psychiatric beds within any separate unit or section of a licensed New Jersey Hospital which are utilized for the treatment of an identified target population of any age demonstrated to require a specialized program of treatment for acute psychiatric disorders. Examples include units designated to provide services to persons with eating disorders, geriatric services and with dual psychiatric/substance abuse diagnoses. Admissions to the Intermediate Psychiatric unit or facility will have an average length of stay which reflects the level of active medical care for each category of Special Psychiatric Bed but should, as a guideline, be less than 60 days.

"Standards" means the specific requirements that applicants must satisfy in developing applications for certificate of need approval. Standards address measurable characteristics that such applications must meet.

#### 8:43E-5.4 Minimum size of facilities and nursing units

(a) The minimum number of beds that may be established in a single free-standing facility is 60. These may include any inpatient psychiatric service as well as residential alcohol beds, where at least 50 percent of licensed beds are psychiatric. Approval of residential alcoholism services beds shall be governed by N.J.A.C. 8:33K1.1 et seq. and such beds shall be licensed as residential alcoholism services beds by the Department.

(b) The Department may consider exceptions to (a) above when the applicant demonstrates that at a lower capacity, reimbursement rates will be within 110 percent of the average SHARE rates for existing New Jersey intermediate psychiatric beds as determined by the Department;

(c) Minimum size of Intermediate Adult nursing units shall be 20 beds.

(d) Minimum size of Special Psychiatric nursing units shall be 12 beds.

(e) The minimum number of total inpatient psychiatric beds in any general hospital proposing to establish Intermediate Adult or Special Psychiatric beds shall be 32 at the conclusion of the project. An exception may be considered by the Department for those applicants who demonstrate that the applicant has provided a written affiliation agreement with an existing provider of adult open acute psychiatric services in its primary service area which in combined total (proposed and existing) meets the minimum 32 bed requirement. It shall be demonstrated that the current provider of adult open acute psychiatric services does not have the available licensed bed capacity to convert existing underutilized acute care beds (e.g., pediatrics, obstetrics, medical-surgical, etc.) as evidenced by occupancy levels in services below the minimum standards set within the Hospital Policy Manual (N.J.A.C. 8:43-3.1), or that the affiliate hospital does not have an appropriate physical plant necessary for Intermediate Adult or Special Psychiatric Services.

(f) The Affiliation Agreement as required in (e) above shall contain the following elements:

1. Agreement for joint medical staff arrangements for all psychiatric services provided within the two hospitals;

2. Procedures for transfer of patients, including eligibility criteria, transportation arrangements, and financial liabilities;

3. Arrangements for sharing of professional subspecialties, training activities, purchasing, and/or other related resources necessary to provision of psychiatric services in order to maximize economies in the delivery of care between the two institutions.



## 8:43E-5.5 Bed need

(a) Each applicant for Intermediate Adult Psychiatric Beds shall demonstrate the need for additional bed capacity in its area through application of the Intermediate Adult and Special Psychiatric bed need methodology in (b) below.

(b) Intermediate Adult Psychiatric Bed Need by County shall equal:

- | Step | Calculation  |
|------|--|
| 1.   | Projected Admissions per 100,000 population x Projected Population, Target Year x Average Length of Stay = Projected Intermediate Adult Patient Days = (1) |
| 2.   | [Total, step (1) ÷ 365] = Average Daily Census ÷ .80 = Bed Need at 80 percent Occupancy = (2)  |
| 3.   | (2)-(Existing Intermediate Adult Bed Capacity) = New Bed Need  |

(c) For purposes of this section, the following shall apply:

1. Projected admissions shall be derived by averaging the total New Jersey Intermediate Adult Psychiatric Admissions per 100,000 adult population and estimated U.S. Intermediate Adult Psychiatric Admissions per 100,000 adult population based on the latest official data available to the Department.

2. Population Age 18 and above by County shall be defined by New Jersey Department of Labor projections, Economic/Demographic method.

3. Target Year shall be the year five years beyond the date of need calculation, utilizing N.J. Department of Labor projections, Economic/Demographic model.

4. Average Length of Stay shall be defined as mean length of stay, New Jersey Intermediate Adult Psychiatric units, averaged with mean length of stay, U.S. Intermediate Adult Psychiatric units based on the latest data available to the Department.

5. Existing capacity shall equal [Effective Intermediate Adult Psychiatric bed use by county (based on patient origin data)] + [Projected beds by county of origin (C/N approved Intermediate Adult Psychiatric Beds—year two)].

(d) No additional beds may be justified in an application through the projection of admissions of New Jersey residents diverted from out-of-state psychiatric facilities providing Intermediate Adult or Special Psychiatric services.

(e) An exception to the bed need requirement may be considered by the Department when the applicant has demonstrated that when the establishment of beds is for the purpose of serving patients who traditionally have been admitted to a State or County Psychiatric Hospital, where need has been demonstrated for Intermediate Psychiatric Unit Services. This shall be documented by an affiliation agreement with the State or County Psychiatric Hospital, which shall be attached to the application. Need for the proposed number of beds shall be documented through application of the methodology which follows:

## 1. Formula

(Total State and/or County Psychiatric Hospital Admissions) x (Expected Percent of Admissions) = (1) Projected Admissions

(1) x (Statewide ALOS, Intermed. Adult Psychiatric Beds) = (2) Projected Patient Days

(2) ÷ 365 = (3) Average Daily Census

(3) x (2 - .80) = Bed Need, 80 percent Occupancy

2. For purposes of this subsection, the derivation of formula components shall be as follows:

i. Total State or County Psychiatric Hospital Admissions shall be the total of first and readmissions to the State Psychiatric Hospital and/or County Psychiatric Hospital from the proposed service area of the applicant facility. The most recent 12 month period of which data has been published by the N.J. Department of Human Services shall be utilized in application of this methodology.

ii. Expected Percent of Admissions shall be that proportion of total State or County Psychiatric Hospital Admissions which, based upon written admissions criteria and projected referral agreements contained within the Certificate of Need application, may be demonstrated to be potential patients of the proposed new Intermediate Adult Psychiatric beds. This shall be further verified by a written agreement with the State and/or County Psychiatric Hospital, and with the designated Inpatient Screening Program(s) in the proposed service area, each containing an estimate of diverted admissions.

iii. Statewide Average Length of Stay (ALOS), Intermediate Adult Psychiatric Beds, shall be the mean length of stay of all licensed Inter-

mediate Adult psychiatric units, for the last full calendar year available to and published by the Department.

(f) Each applicant proposing the establishment of Special Psychiatric beds shall be an existing provider of, or propose to provide within the Certificate of Need application, Adult Open Acute, Intermediate Adult, or Children's Psychiatric beds. Each applicant shall justify the need for Special Psychiatric beds through applicable methodologies as contained in this section and through provision of the following documentation:

1. An analysis of the availability and utilization of existing resources in New Jersey and in proposed service area presently serving these populations, and a demonstration that the proposed special psychiatric unit will not unnecessarily duplicate these resources. All such existing inpatient units in the proposed service area serving the identified target population must have an occupancy rate exceeding 85 percent during the last 12 month period for which data has been reported to the Department. An exception may be considered where the proposed unit, in comparison to existing resources, will provide services in a manner achieving both significant cost savings to consumers and/or significant accessibility improvements to the medically indigent population.

2. A description of alternative settings and treatment models that are currently utilized for the provision of psychiatric services to the identified target population in New Jersey and nationally, and a justification of the need to utilize an inpatient setting to accomplish treatment goals. No special psychiatric program will be approved where the use of alternative, less costly settings or models of care is determined to be available for the appropriate and effective treatment of the identified target population.

3. Projected average length of stay must be demonstrated to be clinically appropriate through analysis of current length of stay data in facilities treating similar populations in New Jersey, if any, or nationally.

4. Projected numbers of admissions to the proposed special psychiatric beds must be justified through:

i. An analysis of current rates of admission to facilities treating similar populations in New Jersey, if any, or nationally.

ii. Identification of major referral sources and documentation through letters of support of the numbers of patients who would be likely to be referred on an annual basis if the proposed service was established.

(g) In evaluating the applications for Special Psychiatric beds, the Department shall take into consideration the statewide need for such services as delineated in Appendix A.

(h) When the application is for the purpose of increasing existing Intermediate Adult or Special Psychiatric Bed capacity, the applicant must additionally demonstrate the following:

1. Occupancy rates for the previous 24 months shall have exceeded 90 percent. At the proposed new capacity, it must be demonstrated that occupancy will exceed 85 percent within two years of operation.

2. Average length of stay shall not exceed 110 percent of ALOS in existing Intermediate Adult or Special psychiatric beds, based on data reported to the Department for the previous calendar year.

iii. A discharge planning system which has effectively reduced length of stay to the most efficient, clinically appropriate level shall be demonstrated to be in operation. Referral agreements for follow-up care shall be attached to the Certificate of Need application.

(i) Existing psychiatric facilities seeking to expand through establishing special psychiatric services shall meet criteria identified in (f), (g) and (h) above; and additionally shall demonstrate need through the following documentation:

1. Numbers of target population patients admitted during the previous two calendar years, their average length of stay, and patient days.

2. Numbers of target population patients referred but not accepted during the last two calendar years, and an explanation of their disposition; and

3. Justification of the need to utilize a separate unit and program for the treatment of the target population.

(j) County Psychiatric Hospitals with existing licensed Psychiatric beds seeking to designate all or a portion of beds as Intermediate Adult or Special Psychiatric without a change in licensed bed capacity shall contact the Department for a determination of Certificate of Need requirements. Without prior notification of and approval by the Department, no such beds shall be considered for planning purposes as Intermediate Adult or Special Psychiatric beds. Where a Certificate of Need is determined necessary, all criteria in these regulations shall be satisfied.

(k) General Hospitals seeking to establish Intermediate Adult or Special Psychiatric Beds through conversion of existing acute care bed capacity shall meet the following criteria:

1. The hospital shall, directly or indirectly through Affiliation Agreement as required in N.J.A.C. 8:43E-5.4(e) and (f), provide the following services:

- i. Adult Open Acute Psychiatric inpatient services,
- ii. An Emergency/Screening mental health program.
- iii. Community mental health services, including outpatient and partial care services, as defined in the rules and regulations governing community mental health services (N.J.A.C. 10:37) under the Community Mental Health Services Act (N.J.S.A. 30:9A). An exception will be permitted to hospitals not providing these services, where written affiliation agreements exist and the CMHC(s) within the proposed service area provides evidence of support for the project.

2. The proposed facility shall demonstrate availability of appropriate and sufficient floor space necessary to meet Physical Plant Standards for free-standing psychiatric hospitals as defined by the Joint Commission on Accreditation of Hospitals (JCAH). Access to outdoor or indoor facilities for physical exercise shall be available.

(l) No application requesting establishment of a separate designated number of beds for the provision of psychiatric inpatient services to adolescents or children shall be approved under provisions of these rules. All such requests shall be subject to the standards and criteria contained in N.J.A.C. 8:43E-4.1 et seq.

(m) Facilities requesting approval of Special Psychiatric Beds to serve patients with dual Substance Abuse/Psychiatric diagnoses shall demonstrate need based on treatment solely of individuals meeting the Mentally Ill Chemical Abuser (MICA) clinical criteria which follow:

1. MICA client must have a major psychiatric diagnosis as defined in DSMIII (Revised); Diagnosis must be made free of chemical abuse and abstinence syndrome; and,
2. MICA client must have a chemical dependence diagnosis as defined in DSMIII (Revised); and,
3. MICA client must have a chronic or relapsing history of both a major psychiatric disorder and chemical dependency, and have:
  - i. Experienced one or more psychiatric inpatient care episodes;
  - ii. Experienced regular problems of chemical abuse of at least one month's duration such that it brings client into treatment; and,
4. MICA client must show significant functional impairment in the areas of self-care, socialization, and employment. For example, a Global Level of Functioning equal to or less than five; and unable to function without assistance in community.)

(n) For purposes of this Section, the term Mentally Ill Chemical Abuser (MICA) means individuals who have had or are presently demonstrating significant symptoms of severe psychopathology of a chronic or relapsing course. Specifically, this would include psychotic disorders such as schizophrenic disorders, paranoia and some with atypical paranoid disorder, schizoaffective disorders and some with recurrent major affective disorder. Also included would be the more severe personality disorders such as those within the borderline spectrum of borderline narcissistic and histrionic personality disorders plus those within schizophrenic spectrum of schizotypal and schizoid personality disorders. Also included would be certain organic mental disorders with psychotic symptoms such as those related to seizure disorders and chronic residual of drug toxicity. In general, individuals so designated have been severely psychiatrically disabled for at least six months. This disability is to the extent that they have not been able to sustain gainful employment, adequately care for themselves, or maintain meaningful relationships due to symptoms of their psychiatric disorder without assistance.

(o) The MICA term is being used to designate those mentally ill patients as described in (n) above who meet the criteria for chemical dependence (significantly increased tolerance or withdrawal symptoms). There must be documented evidence of repetitive interference with a person's functioning as a result of chemical abuse for at least one month's duration for dependency to be diagnosed.

Unless there is a previous psychiatric history with objective symptoms at a time when there was no significant chemical abuse, there should be a minimum of two weeks of complete abstinence before other psychiatric diagnoses are made in a chemical abuser. Various studies, including neuroendocrine, have shown to take at least two weeks of abstinence for homeostasis to be reestablished.

(p) The MICA definition excludes the mentally ill person who drinks moderately in a non-pathological manner and might rarely become intoxicated. It also excludes chemical abusers who are depressed or anxious as a result of their abstinence or who experience chaotic lives and adjustment disorders related to their chemical abuse.

#### 8:43E-5.6 Admissions criteria

(a) Admissions criteria and/or policies must be developed by the facility and included as part of the Certificate of Need application.

(b) Written admissions criteria should, at a minimum, address the following:

1. Diagnostic and other patient characteristics or factors both acceptable and not acceptable for admission.
2. For those individuals deemed ineligible for admission to the facility, a description of referral procedures to a more appropriate facility.
3. Policy on acceptance of individuals without or with limited ability to pay for treatment.
4. Policy on acceptance of individuals with Medicaid and Medicare insurance coverage.

(c) The applicant shall provide assurance that the facility or parts thereof, will request designation as a "Mental Hospital" under N.J.S.A. 30:9, and will accept involuntarily committed patients.

(d) The admissions policy must assure that priority will be given to:

1. Individuals who have previously received psychiatric inpatient treatment and/or who have severe, incapacitating psychiatric disorders.

2. Individuals whose treatment needs cannot appropriately be satisfied in Adult Open Acute Psychiatric Beds or other alternative treatment settings of a less intensive nature.

3. Individuals who meet the clinical criteria for civil commitment.

4. Individuals with special treatment needs unavailable in community-based inpatient or ambulatory care settings.

#### 8:43E-5.7 Accessibility of care

(a) A minimum of 10 percent of occupied beds shall be utilized for medically indigent patients within all Intermediate and Special Psychiatric units. Within the 10 percent, a minimum of 5 percent must be available for free care to individuals under the criteria contained in categories A and B of the Hill-Burton Act regulations (42 CFR 124.501 et seq.), with the balance available to individuals under partial pay or free care arrangements. For existing facilities seeking to add beds, this requirement must be met on a hospital-wide basis at the completion of the project and prior to licensure of the new beds. The Department may consider exceptions to this requirement for facilities who demonstrate a significant financial hardship based on the case mix of patients by payer source, where such exception is requested within the Certificate of Need application.

(b) Access to services by patients with insurance coverage from all primary payer sources shall be demonstrated in the proposed or existing case-mix of the facility. This shall be documented by data or admissions policies providing that a minimum of 50 percent of the patient case-mix shall be medically indigent or covered by non-investor owned insurance carriers, including Medicaid, Medicare, and Blue Cross/Blue Shield. For existing facilities, this requirement must be met on a hospital-wide basis at the completion of the project and prior to licensure of the new beds.

(c) The applicant shall assure that it has a treatment policy whereby no patient will be discharged prior to the completion of treatment as a result of the inability to pay, except based on choice by the patient or the patient's family. Existing facilities shall document implementation of this through providing average length of stay by payer source.

(d) The applicant shall assure that individuals previously hospitalized in either a State or County psychiatric facility will not be denied admission to the unit solely because of such previous hospitalization.

(e) The applicant shall assure that individuals with a single diagnosis of alcoholism or drug abuse shall not be accepted for treatment in the psychiatric unit. Referral agreements with appropriate facilities designated for substance abuse treatment must be in evidence. Admission of patients with dual diagnoses of substance abuse and psychiatric disorders are acceptable for admission where an applicant demonstrates availability of appropriate clinical services for this population.

(f) The applicant shall assure compliance with all applicable Civil Rights and non-discrimination requirements of federal and New Jersey law.

(g) All applicants approved for Intermediate and Special Psychiatric beds shall submit an annual report documenting compliance with these accessibility requirements. The Department may assess licensure penalties for non-compliance with Certificate of Need conditions, in accordance with N.J.A.C. 8:43B-1.7(f).

#### 8:43E-5.8 Continuity of care

The applicant shall demonstrate evidence that written referral agreements will be established with general hospitals providing psychiatric inpatient units, community mental health agencies, and State or county hospitals in the proposed service area.



NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

8:43E-5.9 Average length of stay—Intermediate Adult Services

Projected average length of stay (ALOS) in facilities proposing new Intermediate Adult Psychiatric Beds shall not exceed 110 percent of ALOS of all existing comparable units in either the state, as reported in the full last calendar year of data available to the Department, or in appropriate national data, whichever is lower.

8:43E-5.10 Clinic services

The applicant shall demonstrate that all patients, regardless of the ability to pay, shall have arrangements provided for follow-up care on an outpatient basis. The applicant shall assure availability of outpatient clinic services necessary to meet the needs of patients who are unable to utilize community mental health centers or private practitioners, except where the hospital is geographically inaccessible for outpatient care to such patients.

8:43E-5.11 Impact on area psychiatric units

(a) Occupancy rates in all existing Intermediate Adult Psychiatric Units impacted by the proposed new units or facility shall exceed 85 percent prior to the approval of additional Intermediate Adult psychiatric beds. In determining "impact", the review process may consider such issues as geographic accessibility, economic and/or financial efficiencies, referral patterns, commitment to serve the indigent, and quality of services offered.

(b) Occupancy rates of all comparable Special Psychiatric Units impacted by the proposed new facility or unit shall exceed 80 percent prior to the approval of additional Special Psychiatric Beds.

(c) The applicant shall demonstrate through its Admissions Policy that the proposed bed addition will not negatively impact utilization of existing Adult Open Acute Psychiatric Units in the proposed service area by inappropriately admitting patients whose condition requires a less intensive level of care. Submission of statements from affected hospitals indicating support or no projected impact shall be considered evidence in demonstrating compliance with this rule.

8:43E-5.12 Treatment programs and staffing patterns

(a) The proposed treatment program and staffing pattern by service must be identified within the Certificate of Need application. All applicants for Intermediate Adult and Special Psychiatric Beds shall demonstrate the ability to comply with state psychiatric licensure standards as well as the current JCAH Standards as applicable to psychiatric facilities and units. Applicants shall demonstrate the availability of a full range of treatment modalities and staffing disciplines with the capacity to offer a multi-disciplinary treatment planning approach.

(b) Treatment programs and staffing patterns for special purpose psychiatric units shall be fully described and clinical appropriateness justified within the Certificate of Need application.

(c) Treatment programs, staffing patterns, and services planned for involuntarily committed patients shall be described.

(d) Applicants proposing Special Psychiatric beds to serve patients with dual psychiatric/substance abuse diagnoses shall have policies and procedures related to detoxification.

8:43E-5.13 Costs

(a) The projected SHARE reimbursement rate and projected per diem charged to private pay patients and commercial insurers shall be provided. Sufficient detail to determine the basis for these projections shall be made available to the Department.

(b) The projected rates must be determined reasonable by the Department in comparison to average per diem rates of existing New Jersey facilities providing Intermediate Adult Psychiatric Services within two years of operation.

(c) The method of physician billing to patients shall be detailed within the Certificate of Need application. Any physician costs included in the per diem rates shall be itemized and the projected charges identified.

(d) All ancillary and clinical support services which may be routinely provided to and charged to patients shall be detailed within the Certificate of Need application. A list of laboratory test required upon admission shall be provided. No project shall be approved unless all mandatory laboratory and diagnostic tests as required by the facility are justified as medically necessary by the applicant.

(e) The policies and procedures for informing patients of the charges for care prior to or upon admission must be detailed within the Certificate of Need application.

(f) The number of single-bedded rooms must be itemized and justified.

8:43E-5.14 Capital financing

Financing of hospital construction, modernization/renovation, or major moveable equipment projects requires a minimum equity contribu-

tion from the hospital of at least 15 percent of total project costs, including all financing and carrying charges.

8:43E-5.15 Physical environment

The design of the facility shall within reasonable construction cost guidelines and consistent with applicable life-safety and BOCA codes, provide the most appropriate and least restrictive clinical environment to meet treatment goals. A floorplan or line drawings of the proposed new facility or unit(s) shall be attached to demonstrate compliance with these rules and consistency with the proposed treatment program.

8:43E-5.16 Local endorsement guidelines

The applicant shall document evidence of local support for the project in the proposed service area by submitting letters of endorsement from recognized mental health service delivery agencies, including State and/or County funded community mental health agencies, and general hospitals providing psychiatric inpatient services.

8:43E-5.17 Standards regarding County Mental Health Board review

The County Mental Health Board(s) of the service area proposed to be served by the applicant shall be provided with a copy of the Certificate of Need application for their formal action at the time of submission to the Department. A letter of endorsement from the Board(s) or its Administrator reflecting Board action shall be considered a significant factor in assessing local need for the project. County Mental Health Board comments shall be forwarded to the Department of Health, Health Systems Agencies, and to the Division of Mental Health and Hospitals in a timely manner consistent with Certificate of Need procedures identified at N.J.A.C. 8:33.

8:43E-5.18 New Jersey Department of Human Services endorsement

The Department of Human Services shall review every application for Intermediate and Special Psychiatric Beds. This review will be based upon the criteria contained within these regulations. A statement of non-endorsement by the Department of Human Services may constitute a reason for denial by the Department of Health.

8:43E-5.19 Data

Each applicant shall assure that such utilization data as required by the Department in order to implement the planning assessments necessary under these regulations will be provided.

8:43E-5.20 Competitive Review

(a) Where the need in a service area for additional Intermediate Adult and/or Special Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applications necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, most clearly demonstrate the fullest level of compliance with the following criteria:

1. Full compliance with all standards and guidelines in these rules.
2. The highest level of access to services by the medically indigent and by persons under cost-based insurances.
3. Implementation in the most cost effective and efficient manner, measured by capital costs, projected per diem charges, and reduction of excess acute care bed capacity in the area.
4. Closest conformity to the need for Intermediate Adult and Special Psychiatric Beds in the area.
5. Provision of the highest level of quality in the proposed clinical programs.
6. The endorsement of the Health Systems agencies, County Mental Health Board(s), and mental health providers in the proposed service area.

APPENDIX A

Guidelines for Special Psychiatric Bed Need

Need for Special Psychiatric Beds must be demonstrated under the criteria identified at N.J.A.C. 8:43E-5.5(f), within an overall statewide cap based on the following methodology:

The total number of Special Psychiatric Beds that may be approved statewide shall not exceed the statewide cap except where all existing beds within a sub-category of special beds have been operating in excess of 90% occupancy for at least 12 months. The statewide cap shall be calculated as follows:

1. Total psychiatric target beds is calculated as 28 beds per 100,000 population, projection year<sup>1</sup>

2. Total psychiatric target beds less total supply  $^2 \times [.38] ^3 \times [.45] ^4$   
= Estimated bed need target, Special Psychiatric beds

Notes:

<sup>1</sup>Projection year shall be five years forward from the year of calculation. Population shall be official NJ Department of Labor estimates, Economic-Demographic Model

<sup>2</sup>Total supply, N.J. shall equal the current number of existing and C/N approved Adult Open Acute, Intermediate Adult and Special Inpatient Screening, and Adult Closed Psychiatric Beds as defined under Department regulation in licensed New Jersey hospitals.

<sup>3</sup>Estimated proportion of Intermediate/Special Psychiatric beds in total psychiatric inpatient bed supply, U.S. Based on most recent National Institute of Mental Health data, utilizing total private psychiatric hospital bed supply as source of indicator. May be updated periodically.

<sup>4</sup>Estimated proportion of Special Psychiatric Beds in total Intermediate/Special Psychiatric bed supply. Based on National Association of Private Psychiatric Hospitals surveys. May be updated periodically based upon availability of more current or other applicable data sources.

## HIGHER EDUCATION

### STUDENT ASSISTANCE BOARD

The following proposals are authorized by the Student Assistance Board, Joseph Streit, Chairman.

Submit comments by February 19, 1987 to:

Grey J. Dimenna, Esq.  
Administrative Practice Officer  
Department of Higher Education  
225 West State Street  
CN 542  
Trenton, NJ 08625

### (a)

#### Student Assistance Program Dependent/Independent Student Defined Proposed Repeal and New Rule: N.J.A.C. 9:7-2.6

Authority: N.J.S.A. 18A:71-26.8 and 18A:71-48.

Proposal Number: PRN 1987-42.

The agency proposal follows:

#### Summary

The proposed new rule clearly defines the criteria to be used in determining whether a student is dependent or independent for purposes of calculating eligibility for State grant and scholarship aid. The new rule also aligns the State regulation for determining a student's dependent or independent status with recent changes in the federal definition of an independent student.

#### Social Impact

The proposed new rule will provide institutions and students with clear and specific information concerning the eligibility requirements necessary in establishing a student's dependent or independent status for purposes of receiving State aid. In addition, the new rule conforms with changes in the federal definition of an independent student, thus allowing institutions and students to focus on a uniform set of criteria in establishing eligibility for both State and federal aid.

#### Economic Impact

It is estimated that most students who would qualify as independent under the previous definition would also maintain this status under the general provisions of the new definition. However, the new rule also allows students to document several categories of unusual circumstances to assure that those who are in fact independent and who do not meet the requirements of the general provisions of the definition will have an opportunity to establish eligibility for State grants and scholarships as an independent student.

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

#### 9:7-2.6 Dependent/independent student defined

[(a) A dependent student is one who:

1. Resides with his or her parents or guardians for more than six weeks last or this year; or

2. Is dependent upon them for more than an amount specified by the Student Assistance Board in support of any kind including food, clothing, or shelter last or this year; or

3. Is claimed, or will be claimed, as dependent for income tax purposes for last or this year.

(b) An independent student is one who:

1. Has not lived, and will not live, with parents or guardians for more than six weeks last and this year, or a recipient of aid to dependent children who resides with parent(s); and

2. Has not received, and will not receive, financial assistance from parents of more than an amount specified by the Student Assistance Board in support of any kind including food, clothing, and shelter last and this year; and

3. Has not been claimed, and will not be claimed, as an exemption on parents or guardians tax return last and this year; and

4. Has resources, which should be at least equal to the level of public assistance in the preceding calendar year. For 1978-79 and subsequent years, unless revised, this level is \$1,400.

(c) If circumstances have prevented the student(s) from having resources of a minimum of \$1,400 for the calendar year prior to the academic year for which aid is requested and the student(s) has qualified for independent status based on the other three criteria, then, as an alternative, in-kind support equal to at least \$1,400 must be documented and placed in the student(s) file before he or she is considered an independent student. Such documentation must be furnished to the Office of Student Assistance, Department of Higher Education, in writing through the established appeals procedure or through the use of a properly prepared change form.]

(a) The term independent, when used with respect to a student, means any individual who:

1. Is 24 years of age or older by December 31 of the award year; or  
2. Meets the requirements of (b) below.

(b) Except as provided in (c) below an individual meets the requirements of this section if such individual:

1. Is an orphan or ward of the court; or

2. Is a veteran of the Armed Forces of the United States; or

3. Is a graduate or professional student who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year; or

4. Is a married individual who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year; or

5. Has legal dependents other than a spouse; or

6. Is a single undergraduate student with no dependents who was not claimed as a dependent by his or her parents (or guardian) for income tax purposes for the two calendar years preceding the award year and demonstrates to the student financial aid administrator total self-sufficiency during the two calendar years preceding the award year in which the initial award will be granted by demonstrating an annual total income of at least \$4,000; or

7. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For purposes of receiving State student assistance as an independent student due to unusual circumstances, at least one of the following criteria must be met:

i. The student has been separated from his or her parents due to an unsafe home environment or has been institutionalized in a correctional facility. Documentation of such status must be received from a court, social service agency, or other similar source acceptable to the director of the applicable student assistance program within the Department of Higher Education.

ii. The student is a recipient of either Aid to Families with Dependent Children (AFDC) or general assistance in his or her own name and complies with the provisions of (b)6. above except for the income requirement set forth therein.

iii. The student is from a foreign country but has established permanent residency in the United States, is a refugee or has received political asylum, and complies with the provisions of (b)6. above except for the income requirement set forth therein. For the purposes of eligibility under this subparagraph, the student's parents must reside outside of the United States.

iv. The student has been separated from his or her parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-1.5 (or as attested to by a social service agency or respected member of the student's community and acceptable to the director of the applicable student assistance program within the Department of Higher Education), is living with a relative who is providing support to the student, and complies with the provisions of (b)6. above except for the income requirement set forth therein.



v. The student was considered as an independent student for the purposes of New Jersey State student assistance programs during the 1986-87 academic year, and complies with the provisions of (b)6. above except for the income requirement set forth therein. This provision will be effective for the 1987-88 academic year only.

vi. The student's economic and personal circumstances are of such a unique or unusual nature that denial of independent student status would create an unjust hardship upon the student. Eligibility under this subparagraph is subject to the approval of the director of the applicable student assistance program within the Department of Higher Education.

(c) An individual may not be treated as an independent student described in (b)3., 4., and 6. above if the financial aid administrator determines that such individual was treated as an independent student during the preceding award year, but was claimed as a dependent by any other individual (other than a spouse) for income tax purposes for the first calendar year of such award year.

(d) The financial aid administrator may certify an individual described in (b)3., 4., and 6. above on the basis of a demonstration made by the individual but no disbursement of an award may be made without documentation.

(e) A dependent student shall be any student who does not meet any of the eligibility criteria listed in (a) or (b) above for independent student status.

### (a)

#### Tuition Aid Grant Program

#### 1987-88 Award Table

#### Proposed Amendment: N.J.A.C. 9:7-3.1

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.

Proposal Number: PRN 1987-43.

The agency proposal follows:

#### Summary

The proposed Tuition Aid Grant (TAG) Award Table would become effective for the 1987-88 academic year and for the first time provides percentages of tuition instead of actual award amounts which will allow the Student Assistance Board and the Board of Higher Education to align appropriate award amounts for all New Jersey college sectors to those percentages when tuition levels and the program appropriation have been determined.

#### Social Impact

The proposed TAG Award Table provides for awards equal to full tuition for the neediest students at New Jersey public colleges and universities. The maximum award for students attending independent institutions of higher education is up to 50 percent of the average tuition normally charged students attending those institutions pursuant to N.J.S.A. 18A:71-47. The percentage ranges generally encompass the actual award amounts that students have been receiving in the various New Jersey Eligibility Index (NJEI) cells in the past, and are projected to receive in the future. The proposed TAG Award Table will also allow the Student Assistance Board and the Board of Higher Education to assign award amounts immediately after the program appropriation and tuition levels for the various college sectors are known. This process will eliminate the necessity for emergency adoption of a revised TAG Award Table during the summer months in order to promptly notify students of the change in values at a time when tuition payments are due.

#### Economic Impact

The proposed percentage TAG Award Table continues to allow for the assignment of grant amounts in the various eligibility cells in accordance with tuition levels and available funds contained in the annual approved Appropriations Act.

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

#### 9:7-3.1 Tuition Aid Grant Award Table

(a) The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs. The award tables below show approximate award levels depending upon tuition and ability to pay:

AGENCY NOTE: Replace Table 1 (1985-86) in the New Jersey Administrative Code with the following 1986-87 award table, which was promulgated as Table 2 in the October 20, 1986 issue of the New Jersey Register. See: 18 N.J.R. 2124(a). The proposed 1987-88 award table is now designated as Table 2.

#### [2.]1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1986-87 APPROXIMATE TUITION AID GRANT VALUES NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ <sup>1</sup>	NJ Inst. of Tech.
A	B	C	D	E	F
Under 950	\$890	\$1280	\$2650	\$1852	\$2132
950-1349	890	1280	2650	1852	2132
1350-1749	840	1230	2500	1800	2040
1750-2149	740	1130	2350	1700	1920
2150-2549	640	1030	2200	1600	1800
2550-2949	540	930	2050	1500	1680
2950-3349	290	680	1750	1250	1410
3350-3749	200	580	1600	1150	1290
3750-4149	0	480	1450	1050	1170
4150-4549	0	380	1300	950	1050
4550-4949	0	280	1150	850	930
4950-5349	0	200	1000	750	830
5350-5749	0	0	850	650	730
5750-6149	0	0	700	550	630
6150-6549	0	0	550	200	530
6550-6949	0	0	400	0	200
6950-7349	0	0	250	0	0
7350-7749	0	0	200	0	0
Over 7749	0	0	0	0	0

<sup>1</sup>Rutgers Engineering, Pharmacy, and Cook College students will have their awards increased to offset the higher tuition charged for these programs of study. Students enrolled in eligible programs at UMDNJ. Contact the financial aid office for details.

#### 2. TUITION AID GRANT (TAG) AWARD TABLE FOR 1987-88 APPROXIMATE TUITION AID GRANT VALUES<sup>1</sup> NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ <sup>1</sup>	NJ Inst. of Tech.
	100% of tuition	100% of tuition		100% of tuition	100% of tuition
Under 950			40-50% <sup>3</sup>		
950-1349	80-99%	90-99%	91-99% <sup>4</sup>	91-99%	91-99%
1350-1749	70-79%	80-89%	86-90%	86-90%	86-90%
1750-2149	60-69%	75-79%	81-85%	81-85%	81-85%
2150-2549	50-59%	68-74%	76-80%	76-80%	76-80%
2550-2949	40-49%	62-67%	71-75%	71-75%	71-75%
2950-3349	30-39%	55-61%	66-70%	66-70%	66-70%
3350-3749	Minimum	48-54%	61-65%	61-65%	61-65%
3750-4149	0	41-47%	56-60%	56-60%	56-60%
4150-4549	0	34-40%	51-55%	51-55%	51-55%
4550-4949	0	28-33%	46-50%	46-50%	46-50%
4950-5349	0	21-27%	41-45%	41-45%	41-45%
5350-5749	0	Minimum	36-40%	36-40%	36-40%
5750-6149	0	0	31-35%	31-35%	31-35%
6150-6549	0	0	26-30%	26-30%	26-30%
6550-6949	0	0	21-25%	21-25%	21-25%
6950-7349	0	0	16-20%	Minimum	Minimum
7350-7749	0	0	11-15%	0	0
7750-8149	0	0	5-10%	0	0
8150-8549	0	0	Minimum	0	0
Over 8549	0	0	0	0	0

<sup>1</sup>In accordance with State guidelines, the value of your grant may decrease dependent upon appropriated funds, your college budget, your available resources, and your estimated family contribution. You will be notified of any increase in your grant if additional funds become available. Additional eligibility (NJEI) cells may be added below the minimum award level dependent upon the current tuition charges and estimated family contribution. For purposes of N.J.A.C. 9:7-3.1, *Tuition Aid Grant Award Table*, the minimum award for all institutional sectors shall be \$200.00.

<sup>2</sup>Students enrolled in eligible programs at UMDNJ. Contact your financial aid office for details.

<sup>3</sup>Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY88 Budget Request contains a recommended \$3,000 maximum award level in the independent sector for students with an NJEI under 950.

<sup>4</sup>Percentages listed for NJEI categories 950 and above represent percentages of the first cell award.

## CORRECTIONS

The following proposals are authorized by William H. Fauver, Commissioner, Department of Corrections.

Submit comments by February 19, 1987 to:

Elaine W. Ballai, Esq.  
Special Assistant for Legal Affairs  
Department of Corrections  
P.O. Box 7387  
Trenton, New Jersey 08625

(a)

### Inmate Discipline Inmate Prohibited Acts

#### Proposed Amendment: N.J.A.C. 10A:4-4.1

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1987-48.

The agency proposal follows:

##### Summary

Many New Jersey correctional facilities have animals within their confines, but these facilities cannot apply the proper prohibited act sanction when an inmate receives a disciplinary charge for abuse or cruelty to animals. The proposed amendment identifies the prohibited act of abuse or cruelty to animals as \*.008.

##### Social Impact

The proposed amendment will have no new or additional social impact on the public or correctional facility since prohibited act \*.008 simply clarifies which prohibited act to apply when an inmate receives a disciplinary charge of being abusive or cruel to animals.

##### Economic Impact

The proposed amendment will have no new or additional economic impact on the public or correctional facilities since various disciplinary charges are currently being given to inmates who are abusive or are cruel to animals. The amendment delineates which specific prohibited act to use when charging the inmate with this prohibited act. Additional costs are not necessary to implement or maintain this amendment.

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

#### 10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited Acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts.)

\*.001-\*.007 (No change.)

**\*.008 abuse/cruelty to animals**

.051-\*.803 (No change.)

(b) (No change.)

(b)

### Inmate Discipline Schedule of Sanctions

#### Proposed Amendment: N.J.A.C. 10A:4-5.2

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1987-47.

##### Summary

Many inmates serving prison terms are housed in the Youth Correctional Institution Complex. For clarification purposes, the sanction of up to 60 days loss of commutation time for nonasterisked offenses found at N.J.A.C. 10A:4-5.1(b)3 has been restated at N.J.A.C. 10A:4-5.2(b)3.

##### Social Impact

The proposed amendment will have no new or additional social impact on the public or correctional facilities since the rule simply restates a Department of Corrections policy that has been in effect since before 1980.

##### Economic Impact

The proposed amendment will have no new or additional economic impact on the public or correctional facilities because this rule is currently adhered to and no additional costs are necessary to implement or maintain the rule.

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

#### 10A:4-5.2 Schedule of sanctions for prohibited acts committed at the Youth Complex

(a) (No change.)

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1.-2. (No change.)

**3. Up to 60 days loss of commutation time, subject to confirmation by the Superintendent (inmates serving prison terms);**

[3.]4. Administrative Segregation for a specified time not to exceed 90 days subject to confirmation by the Institutional Classification Committee (does not include transfer to [prison complex] **the Prison Complex**);

[4.]5. Up to two weeks confinement to room or housing area;

[5.]6. Up to two weeks **extra** duty;

[6.]7. Confiscation;

[7.]8. Any sanction prescribed for On-the-Spot Correction (see N.J.A.C. 10A:4-7); and/or,

[8.]9. Suspension of one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

(c) (No change.)

(c)

### Classification Process

#### Proposed Amendment: N.J.A.C. 10A:9-4.6

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1987-49.

The agency proposal follows:

##### Summary

The proposed amendment modifies N.J.A.C. 10A:9-4.6 relating to inmates sentenced to serve mandatory minimum sentences. The proposed amendment will make inmates with mandatory minimum sentences of 24 months or less eligible for reduced custody consideration immediately upon admission to a correctional facility. This proposal amends a recently adopted new rule which appears in this issue of the Register.

##### Social Impact

The proposed amendment will have a favorable social impact upon the inmates since it allows inmates with mandatory minimum sentences of 24 months or less to be eligible for reduced custody consideration immediately upon admission to a correctional facility.

##### Economic Impact

The proposed amendment will not impose an economic impact because no additional costs are necessary to implement or maintain this rule.



NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

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

10A:9-4.6 Criteria for consideration for gang minimum custody status, in-and-out custody status, and full minimum custody status

(a) Except as provided in N.J.A.C. 10A:9-4.7 and 10A:9-4.8, inmates who meet the criteria set forth in this section are eligible to be considered for full minimum custody status preceded by the successful completion of a period of time in gang minimum custody or in-and-out custody status. Pursuant to N.J.A.C. 10A:9-4.3(d), the amount of time in gang minimum custody shall be at the discretion of the Institutional Classification Committee (I.C.C.).

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

(d) **Inmates sentenced to serve mandatory minimum terms of 24 months or less are eligible to be considered for gang minimum custody status, in-and-out custody status and full minimum custody status immediately following admission to a correctional facility.**

[(d)](e) Inmates sentenced to serve mandatory minimum terms of **more than 24 months** are eligible to be considered for gang minimum custody status, in-and-out custody status, and full minimum custody status when the following service of time has been met. Any New Jersey County Jail credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

1.-2. (No change.)

3. However, in any instance where the application of [(d)2] (e)2 above would result in an inmate being eligible for consideration in less time than if he or she had no mandatory minimum, then the formula set forth in (c) above shall be applied such that the greater amount of time shall be spent in maximum custody. (EXAMPLE: If the inmate has a 20 year term and a mandatory minimum of 3 years, he or she shall serve the 2 years required in 10A:9-4.6(c) instead of the 1 year which would be required under 10A:9-4.6 [(d)2.] (e)2.)

[(e)](f) When considering inmates with indeterminate sentences for reduced custody status, the I.C.C. shall take into account all New Jersey County Jail credits awarded prior to commitment on the instant offense.

[(f)](g) Inmates with indeterminate sentences must have served the following number of months of their sentences to be eligible to be considered for gang minimum custody status, in-and-out custody status and full minimum custody status:

Length of Sentence:	Months in Maximum
30 years to life	42
25 to 29 years	30
20 to 24 years	18
15 to 19 years	6
Up to 15 years	none

[(g)](h) Inmates presently serving sentences for controlled dangerous substance (C.D.S.) offenses shall be eligible to be considered for gang minimum custody status, in-and-out custody status, and full minimum custody status. When considering these offenders the I.C.C. shall take into account the following:

1.-6. (No change.)

[(h)](i) Inmates with detainers from other jurisdictions outside New Jersey shall be eligible as follows:

1.-2. (No change.)

3. Inmates with detainers for open charges more than five years old shall be eligible to be considered for gang minimum custody status and full minimum custody status provided the charges are not included on the list of serious offenses in [(i)] (j) below, and the I.C.C. believes the inmate is not an escape risk.

[(i)](j) Inmates who have New Jersey detainers, New Jersey open charges less than five years old or who are on bail, are eligible to be considered for gang minimum custody status or in-and-out custody status, and full minimum custody status unless the detainer, the open charge or the bail is for one of the following:

1.-13. (No change.)

[(j)](k) Inmates who have escaped or attempted escape and who are not excluded from reduced custody pursuant to N.J.A.C. 10A:9-4.8(e) shall be eligible for reduced custody as follows:

1.-3. (No change.)

## LAW AND PUBLIC SAFETY

(a)

### DIVISION OF CONSUMER AFFAIRS

#### Requirements for the Sale of Gray Market Merchandise

#### Proposed New Rules: N.J.A.C. 13:45A-24

Authorized By: W. Cary Edwards, Attorney General of New Jersey.

Authority: N.J.S.A. 56:8-4.

Proposal Number: PRN 1987-54.

Submit comments by February 19, 1987 to:

James J. Barry, Jr., Director  
Division of Consumer Affairs, Room 504  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

The Division of Consumer Affairs published proposed regulations regarding "Requirements for Sale of Gray Market Merchandise" in the December 2, 1985 issue of the New Jersey Register at 17 N.J.R. 2866. The Division is reproposing the regulations with several modifications.

In recent years, there has been an increase of imported consumer merchandise being sold, leased, or offered for sale or lease in New Jersey. In many instances, such merchandise was not intended by the manufacturer to be sold or distributed in the United States. As a result, the merchandise may be accompanied by a warranty that is either not valid in the United States, or that offers less protection than the warranty offered by the manufacturer through its United States distributor. Additionally, such merchandise may have other substantive variations such as instructions which are not written in English, conditions or limitations relating to rebates and incompatible electrical current or broadcast frequency. Such merchandise is commonly referred to as "gray market merchandise."

Sellers or lessors of gray market merchandise are required, for in-store offerings, to disclose variations in warranty coverage and other significant features by point of sale signs, signs attached to the merchandise itself or on signs clearly visible to the buyer from the register. In electronic, telephonic and mail-order merchandise offerings, there must be clear verbal or conspicuous written explanation to inform the consumer of any restrictions, limitations or conditions.

Violation of these rules is a violation of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and is subject to the penalties thereunder. The rules also establish, as an affirmative defense, that the consumer is provided with a written warranty which offers equal or greater protection than the manufacturer's warranty.

#### Social Impact

Accurate disclosure requirements will benefit the consumer who wishes to comparatively shop for consumer merchandise. The disclosure requirements will enable the consumer to compare warranty provisions and other significant features in merchandise intended for sale in the United States with that which is provided in merchandise intended for sale outside of the United States.

Likewise, the manufacturers, distributors and sellers of such merchandise will benefit by virtue of more accurate and fair disclosure requirements in the offering of consumer merchandise sold in the marketplace.

#### Economic Impact

Consumers will be in a better position to reasonably assess the economic advantages and disadvantages of purchasing gray market merchandise. Retailers and others involved in the acquisition, distribution and sale of consumer merchandise will also benefit by virtue of clear-out guidelines which will minimize the potential for unfair competitive advantage in the marketplace.

Full text of the proposed new rule follows.

## SUBCHAPTER 24. REQUIREMENTS FOR THE SALE OF GRAY MARKET MERCHANDISE

### 13:45A-24.1 Definitions

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

"Gray market merchandise" means any brand-name consumer product normally accompanied by a warranty valid in the United States of America which is imported into the United States through channels other than the manufacturer's authorized United States distributor, for sale or lease to the public in this State, and which, by reason of this manner of distribution, may not be accompanied by a manufacturer's express written warranty valid in the United States. Gray market merchandise shall be limited to products offered for sale or lease to consumers in this State, primarily for personal, family or household purposes.

### 13:45A-24.2 Disclosure requirements

(a) Any seller who advertises, sells, leases or offers to sell or lease any gray market merchandise shall disclose the following restrictions, limitations or conditions if applicable thereto:

1. The seller shall disclose that such gray market merchandise is not accompanied by a manufacturer's warranty valid in the United States or that such gray market merchandise is accompanied by a manufacturer's warranty which has restrictions or less protection than a warranty which is offered with similar merchandise manufactured for sale in the United States;

2. The seller shall disclose that the gray market merchandise is not accompanied by instructions written in English;

3. The seller shall disclose that the gray market merchandise is not eligible for rebates, discounts or other considerations of value which may be provided by the manufacturer or the seller for similar merchandise manufactured for sale in the United States;

4. The seller shall disclose that the gray market merchandise requires an electrical current or broadcast frequency which is incompatible with the electrical current or broadcast frequency utilized in the United States.

### 13:45A-24.3 Notice requirements

(a) Any seller who advertises, sells, leases or offers to sell or lease any gray market merchandise which is subject to any of the restrictions, limitations or conditions set forth in N.J.A.C. 13:45A-24.2 shall conspicuously post the information required by N.J.A.C. 13:45A-24.2 in the following manner:

1. For in-store offerings, disclosure shall be:

- i. On a sign attached to the item itself; or
- ii. On a sign affixed to each cash register or point of sale at which such goods are offered for sale; or
- iii. On a sign so situated as to be clearly visible to the buyer from the register.

2. In electronic, telephonic and mail-order merchandise offerings, clear verbal or conspicuous written explanation shall be provided to inform the consumer of any restrictions, limitations or conditions.

### 13:45A-24.4 Penalty for violations

A violation of any of the provisions of these regulations shall be deemed to be a violation of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and be subject to the penalties thereunder.

### 13:45A-24.5 Affirmative defense

It shall be an affirmative defense to any action brought pursuant to this subchapter that the consumer is provided with a written warranty which offers equal or greater protection than the manufacturer's warranty through a warrantor demonstrated to be a financially responsible retailer, distributor, importer or other person capable of fulfilling warranty obligations.

## TRANSPORTATION

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

Submit comments by February 19, 1987 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

## TRANSPORTATION OPERATIONS

### (a)

### Restricted Parking and Stopping Route U.S. 9 in Ocean County, Routes 77 and U.S. 40-N.J. 45 in Salem County

### Proposed Amendments: N.J.A.C. 16:28A-1.7 and 1.41

### Proposed New Rule: N.J.A.C. 16:28A-1.108

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139.

Proposal Number: PRN 1987-57.

The agency proposal follows:

#### Summary

The proposed amendments and new rule will establish "no parking" zones along Routes U.S. 9 in Little Egg Harbor Township, Ocean County; 77 in Upper Pittsgrove Township, Salem County and U.S. 40-N.J. 45 in Woodstown Borough, Salem County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking" zones along Routes U.S. 9 in Ocean County, 77 in Salem County and U.S. 40-N.J. 45 in Salem County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.7 and 1.41 and add new rule N.J.A.C. 16:28A-1.108, based upon the requests from local officials and the traffic investigations.

#### Social Impact

The proposed amendments and new rules will establish "no parking" zones along Routes U.S. 9 in Little Egg Harbor Township, Ocean County; 77 in Upper Pittsgrove Township, Salem County and U.S. 40-N.J. 45 in Woodstown Borough, Salem County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

#### Economic Impact

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

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

#### 16:28A-1.7 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this section shall be designated 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.-18. (No change.)

**19. No stopping or standing in Little Egg Harbor Township, Ocean County, along the west side, between a point 200 feet north of Railroad Avenue to a point 200 feet south of Railroad Avenue.**

(b) (No change.)

#### 16:28A-1.41 Route 77

(a) The certain parts of State highway Route 77 described in [(a) of] this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-4. (No change.)

**5. No stopping or standing in Upper Pittsgrove Township, Salem County, along both sides, between a point 300 feet north of and 300 feet south of**



NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

the intersection of County Road 666 (Monroeville-Swedesboro Road), and between a point 400 feet north of and 200 feet south of the intersection of County Road 611 (Elmer-Shirley Road).

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

#### 16:28A-1.108 Route U.S. 40-N.J. 45

(a) The certain parts of Route U.S. 40-N.J. 45 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in Woodstown Borough, Salem County on both sides from Green Street westerly to the Borough line.

### (a)

#### No Passing Zone

#### Route 140 in Salem County

#### Proposed New Rule: N.J.A.C. 16:29-1.66

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

Proposal Number: PRN 1987-40.

The agency proposal follows:

##### Summary

The proposed new rule will establish a "no passing" zone along Route 140 in Carney's Point Township, Salem County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a "no passing" zone along Route 140 was warranted.

The Department therefore proposes new rule N.J.A.C. 16:29-1.66, based upon the request from local officials and the traffic investigation.

##### Social Impact

The proposed new rule will establish a "no passing" zone along Route 140 in Carney's Point Township, Salem County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

##### Economic Impact

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

Full text of the proposed new rule follows:

#### 16:29-1.66 Route 140

That part of State highway Route 140 within Carney's Point Township, Salem County, and described in drawing number HNPZ-108 dated October 29, 1986 shall be designated and established as a "No Passing" zone.

### (b)

#### CONTRACT ADMINISTRATION

#### Distribution and Sale of Construction Plans and Supplementary Specifications Deferred Payments to Contractors for Materials Supplied and Work Performed in the Construction of State Highways and Related Projects.

#### Proposed Amendments: N.J.A.C. 16:44-3.2, 3.4, 7.5, 7.6, 7.7, 7.8, 7.9

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1-1 et seq., and 14:15-2

Proposal Number: PRN 1987-56.

The agency proposal follows:

##### Summary

The proposed amendments will establish new procedural guidelines within the Bureau of Contract Administration, to conform with the 1983 "Standard Specifications for Road and Bridge Construction."

Subchapter 3 is being amended to reflect the requirements concerning the sale and distribution of plans and supplementary specifications in compliance with the 1983 Standard Specifications.

Subchapter 7 is being amended to reflect current procedures in escrow agreements which have been implemented to increase the flexibility of the contractor to deal with bonds that have matured and obtain same at a much faster pace than under past practices. Banks where bonds are kept will be able to conduct business in a more efficient manner without having the added administrative costs incurred previously. Additionally, this system will assist firms to replace mature bonds and obtain benefits on a more timely basis.

The agreement will enable the contractor or consultant, upon executing the Department's Escrow Agreement, to deposit acceptable bonds with the bank that is participating in the agreement and enable the Department to receive certification from the bank that the bonds held by the bank for the contractor or consultant meet the requirements for acceptability. This will eliminate a previous step in which the Department was formally notified of the bonds to be acquired by the contractor and upon review of the description and rating of the bonds the Department notified the bank of the acceptability of the bonds.

The agreement has been changed to enable the contractor to receive from the bank the proceeds from called or matured bonds held by the bank, upon replacing the called or matured bonds with acceptable ones having a value equal to or greater than the amount of the proceeds of the called or matured bonds.

##### Social Impact

The proposed amendments will improve systems and simplify procedures and enhance work methods in the handling of mature bonds.

##### Economic Impact

The firms presently doing business with the Department will not be affected by the proposed amendments. However, the Department will incur the administrative costs involved in changing existing agreements.

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

#### 16:44-3.2 Requirements

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

(d) A charge shall be made for each set of black line plans **and supplemental specifications** [distributed] pursuant to requests from outside the NJDOT in accordance with the following [schedule], except as otherwise authorized herein:

1. [Sets of plans as follows (plus handling fees which are to be paid by the requester, and are subject to change):

	Standard Size (22 x 36)	Reduced Size (11 x 18)
50 sheets or less	\$12.00	\$ 7.50
51 to 100	23.00	13.00
101 to 150	34.00	18.50
151 to 200	45.00	24.00
201 to 250	56.00	29.50
251 to 300	67.00	35.00
For each additional multiple of 50 sheets, or part thereof, and additional charge of	13.00	5.00]

Plans and supplemental specifications will be furnished upon request at a charge in accordance with reasonable copying expenses.

2.-5. (No change.)

(e) (No change.)

#### 16:44-3.4 Nondepartmental distribution and sale

(a) The Bureau of Contract Administration shall issue plans and supplementary specifications in the quantities indicated without cost to the following:

1. [One (1) copy of the plans and six (6) copies of supplementary specifications to the successful bidder upon award of the contract.] **The successful low bidder will receive copies of plans specified below and five additional free copies of supplementary specifications, without charge, upon award of the contract, if requested.**

TABLE OF PLANS FURNISHED WITHOUT CHARGE

From More Than	To And Including	Sets Of Plans Furnished
0	500,000	1
500,000	1,000,000	2
1,000,000	5,000,000	3
5,000,000	10,000,000	4
10,000,000	-	5

Additional copies of plans and supplementary specifications will be furnished upon request at a charge in accordance with reasonable copying expenses.

2.-5. (No change.)

6. The [b]Bureau, [d]Division, or [u]Unit in which the plans originate shall [furnish the Bureau of Contract Administration with a list of names and addresses of] **make distribution** to those who are to receive complimentary plans and supplementary specifications as indicated in paragraphs 2, 3, 4- and 5 above.

16:44-7.5 Pledge of approved bonds by contractor in lieu of retained percentages

(a) (No change.)

(b) The bonds deposited by the contractor must be issued by the State of New Jersey or any of its political subdivisions, [must be approved by the Commissioner of Transportation,] **having a rating of at least "B a" by Moody's Investor Service and/or "B B B" by Standard and Poors Corporation**, and must have a value at least equal to the amount of money to be [paid any such] **released to the contractor. As used in this subsection and hereafter, the value of a bond is the lesser of current market value or par value of such bonds.**

16:44-7.6 Responsibilities of bank designated and appointed as escrow agent

(a) Upon delivery of said negotiable bonds, the bank shall **determine and certify to the Department of Transportation that the bonds meet the terms of acceptability defined herein** and furnish a receipt to the contractor and send a copy to the Department of Transportation. The receipt shall contain:

1. Description of [the bonds deposited;] **negotiable bonds on deposit by official name;**

2. **The [R]rating of [the] each issue of bonds;**

3. **Maturity date;**

4. **Coupon rate;**

[3.]5. **Par value and [C]current market value of each issue.**

(b) (No change.)

(c) The bank shall provide a monthly report to the [New Jersey] Department of Transportation [with] **and a copy to the contractor which shall contain:**

1. [A] [d]Description of [all bonds held;] **negotiable bonds on deposit by official name;**

2. (No change.)

3. **Maturity date;**

4. **Coupon rate;**

[3.]5. **Par value and [C]current market value of each issue;**

[4.]6. **Total market value of all bonds deposited by the contractor.**

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

16:44-7.7 Deposit of additional bonds

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

(c) **The contractor shall be required to replace any of the bonds held in the escrow account whose value was used in the computation of the amount of retainage released to the contractor at any time those bonds decline in rating below the rating required for bonds to be acceptable. The contractor is required to replace the unacceptable bonds with acceptable bonds. The Department of Transportation shall withhold from future payments cash equal to the amount of retainage previously released to the contractor which was based upon the value of the now unacceptable bonds should the contractor fail to replace the unacceptable bonds with acceptable bonds.**

16:44-7.8 Called or matured bonds

(a) (No change.)

(b) [Upon receipt of the notification, the Department shall deduct from current payments, amounts sufficient so that the total bond value on deposit plus retainage withheld will equal the total retainage requirement on all contracts.] **Proceeds of called or matured bonds whose value was used in the computation of the amount of retainage released to the contractor**

**may be released by the bank upon delivery by the contractor of acceptable bonds with current value equal to or greater than the amount of the proceeds of the called or matured bonds.**

(c) The contractor may elect, at his discretion, to substitute [sufficient approved new bonds.] **acceptable new bonds for those bonds in the escrow account that were called or matured.**

[(d) The Department of Transportation shall authorize the bank to release the proceeds of the called or matured bonds.]

16:44-7.9 Default

In the event a default shall occur under the contract between the [d] Department and the contractor, the Commissioner of Transportation shall promptly notify the bank in writing of such default[.], [together with instructions to sell certain negotiable bonds and to pay the proceeds to the Department of Transportation.] **Following written notification of default the bank shall not dispose of, release or compromise any bond or the proceeds of called or matured bonds, without written instructions from the Commissioner. If directed by the Commissioner, the bank shall sell any bonds in the escrow account and pay proceeds of such sale and/or the proceeds held in the account from called or matured bonds to the Department or to any payee designated by the Commissioner. A copy of the [said default notice and] instructions to sell shall be sent to the contractor by certified mail.**

## (a)

### PUBLIC TRANSPORTATION

#### Practices and Procedures Before the Office of Regulatory Affairs

#### Proposed New Rule: N.J.A.C. 16:51

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 52:14B-3.

Proposal Number: PRN 1987-55.

The agency proposal follows:

#### Summary

The proposed new rules will govern practices and procedures before the New Jersey Department of Transportation Office of Regulatory Affairs concerning Certificates of Public Convenience and Necessity for Autobus operations, other than contested case matters. The proposed rules also prescribe the operational and administrative responsibilities of autobus and railway companies under the Department's jurisdiction.

Subchapter 1 notes General Provisions, including the office hours and the location of the Office of Regulatory Affairs and defines terms pertinent to proceedings before the Office.

Subchapter 2 outlines the procedure to be followed in pleadings.

Subchapter 3 outlines the requirements concerning petitions for certificates of public convenience and necessity to conduct autobus operations.

Subchapter 4 contains the rules on proper content and filing of motions regarding proceedings at the Office of Regulatory Affairs.

Subchapter 5 contains the rules for having matters reheard, reargued or reconsidered.

Subchapter 6 explains the use of informational conferences in autobus regulatory proceedings.

Subchapters 7 through 13 pertain to the respective duties of licensed autobus companies: accident reporting; provision of service; autobus company office requirements; autobus company records; tariff filings; notices regarding fare or schedule changes; and compliance with Department decisions and recommendations.

#### Social Impact

The proposed new rules clarify the role of the Department in the regulation of autobus and street railway matters. The rules call for added disclosure by applicants in their written requests for autobus licensure or amendment thereto.

The rules also insure receipt of adequate notice of licensure proceedings by potentially interested or affected parties, such as municipal and county officials, the general public and other passenger carriers.

#### Economic Impact

The proposed new rules are expected to add predictability to the autobus regulatory application and, hence, result in time and cost savings for petitioners and other parties to proceedings before the Office of Regulatory Affairs.



Full text of the proposed new rule follows.

CHAPTER 51  
PRACTICES AND PROCEDURES BEFORE THE  
OFFICE OF REGULATORY AFFAIRS

SUBCHAPTER 1. GENERAL PROVISIONS

16:51-1.1 Scope

(a) These rules shall govern the filing of all pleadings and the practice and procedure of matters other than contested case hearings before the Office of Regulatory Affairs, Department of Transportation of the State of New Jersey, unless otherwise ordered by the Office or the Department in any proceeding. These rules also set forth operational and administrative duties of licensed autobus companies and street railways.

(b) Upon determination that a matter constitutes a contested case, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. shall apply.

16:51-1.2 Construction and amendment

(a) These rules shall be liberally construed to permit the Office to effectively carry out its statutory functions and to secure just and expeditious determinations of issues properly presented to the Office.

(b) In special cases and for good cause shown, the Office may relax or permit deviations from these rules.

16:51-1.3 Definitions

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

"Answer" means the pleadings filed by a Petitioner in response to either a motion or a complaint petition.

"Autobus" means any motor vehicle or motorbus operated over public highways or public places in this State for the transportation of passengers for hire in intrastate business, including vans having passenger capacities of greater than nine (9) persons, excluding the driver, small buses and sedans that are used in regular route for hire transportation, notwithstanding that such motor vehicle or motorbus may be used in interstate commerce.

"Autobus Company" means any person that possessed a valid Certificate of Public Convenience and Necessity to conduct autobus operations. Such a Certificate shall have been issued by the New Jersey Department of Transportation or, if issued prior to January 1, 1979, by the State's Board of Public Utilities.

"Certificate" means a Certificate of Public Convenience and Necessity.

"Certificate of Public Convenience and Necessity" means a final administrative order of the New Jersey Department of Transportation granting authority to a person to operate a specific type (or types) of autobus service(s) within the State of New Jersey.

"Charter" means "charter bus operation," as defined in N.J.S.A. 48:4-1.

"Commissioner" means the Commissioner of the Department of Transportation or, in his or her absence, the Assistant Commissioner of Transportation Services.

"Complaint Petition" means a petition or a letter, by which a party seeks to have the Department invoke its jurisdiction for the purpose of enforcing one or more provisions of the New Jersey Revised Statutes or the New Jersey Administrative Code against an autobus company.

"Department" means the Department of Transportation of the State of New Jersey.

"Director" means the Director of the Office of Regulatory Affairs, or any other person duly authorized by the Commissioner to act in such a capacity.

"Exception Letter" means the Department's first correspondence with the petitioner after the Department's initial review of a filed petition which indicates whether the petition is incomplete.

"Intervenor" means a movant whose motion to intervene has been granted by the Department, and who thereby has standing to, among other things: present testimony to the Office of Administrative Law in contested cases; cross-examine witnesses in such cases; and to file exceptions, and replies thereto, to initial decisions of the Office of Administrative Law.

"Motion to Intervene" means the formal pleading filed by a party requesting that said party be granted leave to intervene in a proceeding before the Office.

"Movant" means a person that has filed a motion with the Department.

"Objector" means a person that has filed with the Department a written objection to a petition pending before the Office, but who is not an Intervenor.

"Office" means the Office of Regulatory Affairs, Department of Transportation, State of New Jersey.

"Person" or "Party" means an individual, corporation, partnership, association, group of persons or organizations, or any body politic, political subdivision or governmental instrumentality.

"Petition" means the pleading filed to initiate a proceeding invoking the jurisdiction of the Department.

"Petitioner" means a person that has filed a petition with the Office of Regulatory Affairs, New Jersey Department of Transportation or except in transfer petition cases, the person who is the proposed certificate holder.

"Proposed Service Area" means, in the case of a petition primarily concerning regular route service, the proposed or the prescribed route plus that area within one and one-quarter miles of any pickup or drop off point on the petitioner's proposed or prescribed route; and, in the case of a petition primarily concerning charter or special service, any county in which the petitioner seeks authority from the Department to make pickups.

"Regular Route" means "autobus" service, as described in N.J.S.A. 48:4-1.

"Reply" means the pleading filed by the intervenor in response to an answer.

"Respondent" means any party against whom a complaint petition is directed.

"Service Area" means, in the case of a petition for discontinuance of service, that area which constitutes a one and one-quarter mile radius from any pickup or drop off point on the regular route that the petitioner is currently authorized by the Department to serve, and in which he seeks to discontinue service; or in the case of a charter or special service, the county or counties in which the petitioner is authorized to serve but seeks to discontinue service.

"Special" means "special bus operation," as described in N.J.S.A. 48:4-1.

16:51-1.4 Offices

The Office of Regulatory Affairs is located at McCarter Highway and Market Street, Newark, New Jersey 07101 or such other location as publicly noticed.

16:51-1.5 Hours

(a) The Office is open on weekdays from 8:30 A.M. to 4:30 P.M. unless otherwise authorized by the Office.

(b) The Office is closed on legal holidays, Saturday and Sunday.

16:51-1.6 Communications

(a) All pleadings, correspondence and other papers shall be addressed to the Director, Office of Regulatory Affairs, New Jersey Department of Transportation, McCarter Highway and Market Street, P.O. Box 10009, Newark, New Jersey 07101.

(b) Copies of such correspondence shall be directed to the parties of record in formal matters and to movants whose filed motions relating to such matters have not been denied by the Department.

(c) Except as otherwise stated in this Chapter, all such pleadings and correspondence shall be deemed to be officially received when delivered to the Office of Regulatory Affairs.

16:51-1.7 Official records

(a) The Office shall retain custody of all its official records.

(b) Copies of rules and regulations and orders may be obtained from the Director upon payment of all statutorily prescribed fees, or, if not so prescribed, upon payment of fees covering reasonable copying costs.

16:51-1.8 Appearance

(a) No person or party as defined in N.J.A.C. 16:51-1.3, except an individual appearing on his own behalf, shall be permitted to participate in any proceeding before the Office unless such person or party is represented by an attorney of this State in good standing who is domiciled in this State. Any attorney or counselor from any other jurisdiction, of good standing there, may, at the discretion of the Director, be admitted pro hac vice to participate in a proceeding in the same manner as an attorney of this State; provided, however, that all pleadings, briefs and other papers filed with the Office shall be signed by an attorney of record authorized to practice in this State who shall be held responsible for them.

(b) Any attorney wishing to withdraw from a proceeding before the Office shall, in writing, immediately notify the Director, the party whom he represents, and all other parties of record.

(c) Any person appearing before or transacting business with the Office in a representative capacity may be required by the Office to file evidence of his authority to act in such capacity.

16:51-1.9 Ethical conduct and ex parte communications

(a) All attorneys appearing in proceedings before the Office in a representative capacity shall conform to the standards of the ethical conduct required of attorneys before the courts of the State of New Jersey.

(b) If any such attorney does not conform to the standards specified in subsection (a) of this section, the Director may decline to permit such attorney to appear in a representative capacity in any proceeding before the Office.

(c) After the filing of a complaint or petition in a contested formal proceeding and prior to the issuance of a final order thereon, no parties to the proceeding, or their counsel, shall discuss the merits of such matter or proceeding with the Commissioner, the Director or with any member or employee of the Office, unless reasonable notice is given to all parties who have appeared therein to enable such parties to be present at the conference. After the filing of a complaint or petition and prior to the issuance of a final order thereon, no parties to the proceedings, or their counsel, shall discuss the merits of such matter or proceeding, with the Commissioner, or with the Director unless reasonable notice is given to all parties who have appeared therein, to enable such parties to be present at the conference. When, after the filing of a complaint or petition and prior to the issuance of a final order thereon, letters are directed to the Office, or any member of its staff, regarding a formal proceeding, copies of such letters shall be mailed to all parties of record and proof of such service furnished upon request.

(d) In matters pending before the Office of Administrative Law, the provisions of N.J.A.C. 1:1-3.8 shall apply to the extent applicable.

16:51-1.10 Former employees

Except with the written permission of the Commissioner, no former member or employee of the Office or member of the Attorney General's staff assigned to the Office may appear in a representative capacity or as an expert witness on behalf of other parties at any time within six months after severing his association with the Office nor may he appear after said six month period in any proceeding wherein he previously took an active part when associated with the Office.

SUBCHAPTER 2. PLEADINGS

16:51-2.1 Pleadings generally

Pleadings before the Department shall be in the form of petitions, motions, answers and replies.

16:51-2.2 Formal requirements for pleadings

(a) The form and size for pleadings shall be as follows:

1. Except where otherwise specifically provided, all pleadings and other papers filed under these rules shall be typewritten or printed, cut or folded to 8 1/2" x 11" in size, with the left-hand margin 1 1/2" and shall be bound or fastened on the upper left-hand corner.

2. They shall be double spaced except that quotations may be single spaced and indented.

3. Where larger sheets are required for exhibits, they shall be folded substantially to the size herein prescribed.

4. Any process may be used for the reproduction of typewriting provided all copies are clear and permanently legible.

(b) Signature shall be as follows:

1. All pleadings must be signed in ink by the attorney of record, if any.

2. When a firm acts as attorney of record, the signature shall be in the name of the firm, followed by the signature of the partner or associate acting on behalf of the firm.

3. When a party acts in his own behalf under these rules, signature shall be by the party, except that in the case of a corporation, signature shall be by the corporate officer or attorney duly authorized by the corporation to sign in its behalf.

4. Beneath the signature of every attorney of record, party or other person appearing on a paper to be filed, there shall be typed, stamped or printed his name and address.

(c) Caption and docket number shall be included as follows:

1. There shall be included at the head of the pleading or on a title page a caption setting forth the name of the Department, the title of the action, the docket number, if known, and a designation as petition or the like.

2. Case titles shall be brief and concise.

(d) Description of parties shall be as follows:

1. The title of the action shall include the legal names of all parties.  
2. The first pleading of any party shall state the party's address; and, if the party is a corporation, partnership or other group, there shall also

be set forth the state in which, and the law under which, the party was incorporated or organized.

(e) Designation of persons to whom communications should be sent is as follows:

1. Petitions or other pleadings filed with the Department by or on behalf of any person shall state the name, title and address of the agent to whom correspondence or communications concerning the matter are to be sent.

2. If the agent designated to receive correspondence and communications is not the individual owner, a partner in or a corporate director or officer of the person on whose behalf pleadings have been filed, the Department shall serve all notices, decisions, orders and other papers it issues on both the agent and the individual owner, partners or corporate officer or directors, as the case may be.

(f) Attestation and verification shall be as follows:

1. All pleadings initiating a proceeding or otherwise seeking affirmative relief shall be verified, except for those matters brought upon either the Department's own motion or the motion of the Attorney General of the State of New Jersey.

2. If a party is represented by an attorney, the original of each paper filed shall be signed in ink by the attorney, whose address shall be stated. The signature of the attorney constitutes a certification that the representative:

- i. Has read the pleading, document or paper;
- ii. Is authorized to file it;
- iii. Believes that there is good ground for the document; and
- iv. Has not interposed the document for delay.

3. A pleading, document or paper signed as in (f)2. above need not be verified or accompanied by affidavit unless required elsewhere in these rules.

4. The original of each document not signed by an attorney must be:

- i. Signed in ink;
- ii. Accompanied by the signer's address; and
- iii. Verified, if it contains allegations of fact, under oath by the person in whose behalf it is filed, or by a duly authorized officer of the corporation in whose behalf it is filed. If the pleading is a complaint petition, at least one complainant must sign and verify the pleading.

16:51-2.3 Time for filing

(a) Unless otherwise provided in these rules or ordered by the Department, a petition for approval, modification or transfer of a Certificate of Public Convenience and Necessity or approval of a proposed merger or consolidation involving an autobus company must be filed in its entirety and in accordance with these rules within sixty (60) days of the date of the Department's exception letter to petitioner.

(b) With respect to petitions, motions, answers and replies, the date of filing shall mean the date upon which the petition, motion, answer or reply, as the case may be is stamped received by the Office of Regulatory Affairs, New Jersey Department of Transportation.

16:51-2.4 Number of copies

(a) Unless otherwise required by the Department, there shall be filed with the Department for its own use an original and three conformed copies of each pleading or other paper and amendment thereof.

(b) Where a pleading initiating a proceeding is filed by a party other than an autobus company subject to the jurisdiction of the Department, one additional conformed copy shall be filed for each respondent named therein, for service by the Director in accordance with the provisions of N.J.A.C. 16:51-2.7 (Service and notice of proceedings) of this subchapter.

16:51-2.5 Defective pleadings

Pleadings will be liberally construed in the interest of justice. The Department may disregard errors or defects in pleadings which do not affect the substantial rights of the parties. If the defect in a pleading prejudices a substantial right of any party, the Department may, on notice, strike the pleading or take such other action as it deems appropriate.

16:51-2.6 Amendments

(a) The Department may in its discretion before or after the conclusion of any proceedings it conducts allow any pleadings to be amended or corrected or any omission therein to be supplied upon such terms as may be lawful and just, provided such amendment, correction or addition does not prejudice a substantial right of any party.

(b) Whenever, subsequent to the date of the pleading, there is any significant change with respect to a matter contained in such a pleading, the party who filed the pleading shall promptly file an amendment showing or explaining the changed facts or circumstances.



(c) The filing of such amendment shall be considered a new filing as of the date of its filing unless otherwise ordered or permitted by the Department.

16:51-2.7 Service and notice of proceedings

(a) Unless otherwise provided for by statute or by these rules, or unless otherwise ordered or permitted by the Department, the following provisions shall govern:

1. A petition filed on behalf of an autobus company shall be served by such carrier or its agent or attorney upon each respondent named in such petition.

2. A petition initiating a proceeding filed by a party other than an autobus company shall be served by the Director upon each respondent named in such petition. Every other pleading, including all motions, answers, replies, briefs and other papers, shall be served by the party filing same on all other parties of record concurrently with or prior to the filing of such pleading, motion, etc., regardless of whether the filing party is an autobus company.

3. Except when service is made by the Director, proof of service shall be by affidavit, by certificate of counsel or by acknowledgement of service; and in every such case such proof shall indicate the parties served and the method and date of service. Such proof of service shall be filed at the time of filing the pleading, or immediately thereafter.

4. Whenever public notice is required, it shall be at the expense of the party directed to give such notice; and proof of public notice shall be made and filed in accordance with Paragraph 3 of this Subsection.

16:51-2.8 Valid service

(a) Unless otherwise directed by the Department, service of pleadings, notices, decisions, orders and other papers shall be deemed valid if made by delivering one copy to each party (or his attorney of record) in person or by depositing it in the United States mail first class, postage prepaid, directed to the party (or his attorney of record) at his post office address.

(b) Unless otherwise provided, when any party has appeared by attorney, service upon such attorney shall be deemed valid service upon the party for all future pleadings, until notice of withdrawal or dismissal of such attorney is received in writing by the Director and served on all parties of record to the proceeding.

(c) Whenever a party has the right or is required to respond within a prescribed period after the serving of a notice or other paper upon him, and notice or paper is served upon him by mail, three days from the date of mailing shall be added to the service period prescribed for the response.

16:51-2.9 Withdrawal of petition or dismissal of proceeding

(a) A petition may be withdrawn without order of the Department by filing a notice of withdrawal at any stage of the proceeding prior to either the issuance of the Department's decision on the petition or other final disposition of the proceeding. A proceeding may also be terminated by filing a stipulation signed by all parties who have appeared in the proceeding prior to the entry of the Department's decision or order disposing of the proceeding. However, if the Department finds that the public interest so requires, the Department by order may continue such proceeding.

(b) The Department may on its own motion, or upon motion of any party to the proceeding, dismiss the proceeding for good cause shown.

(c) Unless otherwise specified or ordered, a withdrawal or dismissal under this rule shall be without prejudice.

16:51-2.10 Applications to other regulatory bodies

(a) Where the relief sought in a petition also requires the approval or authorization of any other State or Federal regulatory body, the petition to the Department shall so state and include the following:

1. The current status of such application;

2. If the application to the other regulatory body or bodies has already been filed, a copy of each such application shall be attached to the petition to the Department, together with a copy of any order or certificate issued relating thereto;

3. If such an application or amendment thereof is filed with another State or Federal regulatory body subsequent to date of filing with this Department but prior to its determination, three copies of such application or amendment thereof, together with three copies of any order or certificate issued relating thereto, shall be filed with the Department and served upon other parties of record.

SUBCHAPTER 3. PETITIONS

16:51-3.1 Petitions for the granting of a certificate of public convenience and necessity to conduct autobus operations; complaint petitions

(a) Petitions for the granting of a Certificate shall conform to N.J.A.C. 16:51-2 (Pleadings) and shall clearly and concisely state the facts and relief sought; shall cite by appropriate reference the statutory provision or other authority under which the Department's action is sought; shall contain such information or statements as are required by statute, these rules, or orders adopted by the Department or as may be required by the Department in a particular proceeding; and shall also provide such other information required by this Section.

(b) Complaint petitions directed against any particular respondent shall conclude with a direction that the respondent satisfy the prayer of the petition or file and serve an answer within twenty days of the date of service of the petition upon the respondent in accordance with these rules. Such petitions shall also include the current address(es) of the respondent(s).

(c) The following information shall also be included in all petitions requesting the granting of a certificate to conduct autobus operations:

1. Proof of publication of public notice, twice, one week apart, in a newspaper of general and regular circulation in the proposed service area which:

i. Briefly describes the purpose of the petition and the type(s) of equipment to be used in the proposed service area;

ii. States that a petition for approval to operate the proposed service has been filed with the Department;

iii. States that objections and other comments should be addressed to the Office of Regulatory Affairs, New Jersey Department of Transportation;

iv. Furnishes the address of said Office;

v. Includes the appropriate Department docket number; and

vi. Lists each municipality (in the case of a petition for regular route authority) or county (in the case of a petition for charter and/or special authority) in which the petitioner seeks to provide pickup (and, in the case of regular route petitions, drop off) service.

2. A schedule of equipment, including but not limited to type and passenger capacity of the vehicle(s) to be used in the subject service (or in the case of sale or lease of property, a schedule of the equipment to be sold or leased).

3. A statement as to petitioner's qualifications to operate and maintain the proposed service.

4. A copy of petitioner's pro forma balance sheet and income statement for the first two (2) years of petitioner's proposed service.

5. A copy of petitioner's (or in the case of sale or lease of property, the transferer's current balance sheet and income statement.

6. In the case of a petitioner who does not already hold a Certificate, a copy of petitioner's certificate of incorporation filed with, and stamped by, the Office of the Secretary of State, State of New Jersey (if applicable); or if a foreign corporation, the petitioner's service of process agent.

7. The total number of shares of the petitioner's capital stock issued and outstanding (if applicable).

8. The names and addresses of officers, directors and shareholders, that have 5 percent or more rating control, partners or owners, as the case may be, of the petitioner and the extent of their respective interests in the petitioner.

9. Petition filing fee as prescribed by statute.

10. Tariff filing fee as determined by the Department.

11. Restrictions to be accepted by the petitioner.

12. Proposed tariff.

13. Three copies of the petition and, if applicable, any amendments thereto.

(d) The Department may impose restrictions as public convenience and necessity require.

(e) The following information shall be included in all petitions for either the granting of a certificate to conduct regular route operations or the approval of extensions to existing regular route operations.

1. The names of:

i. All regular route autobus passenger carriers operating in the proposed service area; and

ii. Other petitioners seeking to conduct regular route autobus operations in the proposed service area.

2. Proof of service of the petition upon those persons noted in (e)1 above.

3. Proof of service of the petition upon the clerk(s) of all municipalities in which the petitioner proposes to establish pickup and/or drop off locations.

4. A clear and concise statement as to how the proposed service will serve public convenience and necessity in each municipality in which the petitioner proposes to make a pickup.

5. An accurate and complete street-by-street description of the route for which authority is sought.

6. A list of all proposed passenger pickup and/or drop off locations together with certification that said locations are state and/or municipally approved pickup and/or drop off points as per N.J.S.A. 27:1A-44 and 39:4-197.

7. A copy of the proposed schedule of operations.

8. The schedule of the fares proposed to be charged.

9. A map of the proposed route, as well as the routes operated by any other carrier partially or wholly within the proposed service area.

(f) When a change in an existing route is required by any municipality for the purpose of designating one-way streets or requiring other minor reroutings to eliminate traffic congestion or traffic hazards, if neither fares nor the operations of other passenger carriers operating in the area are affected, then such petitions are not required to conform to N.J.A.C. 16:51-3.1(c)1. through 8. and 10. through 12. and N.J.A.C. 16:51-3.1(b)1. (h).

(g) All petitions for the granting of a certificate to conduct charter and/or special autobus operations shall include proof of service of the petition upon the clerk of each county in which pickup service is proposed.

(h) Upon written request of any of the following parties, a petitioner for charter and/or special operations shall serve said party or parties with a copy of the petition:

1. Autobus passenger carriers currently operating in the proposed service area;

2. Other persons that have petitions pending before the Department for authority to provide charter and/or special service in the proposed service area; and

3. Any county or municipality located in the proposed service area.

(i) The petitioner shall not be required to honor any request for a copy of the petition made later than twenty days after the last date of publication of public notice required under N.J.A.C. 16:51-3.1(c)1.

16:51-3.2 Petition for the approval of modification of a certificate of public convenience and necessity

(a) Petitions for the approval of the modification or removal of operating restrictions contained in a certificate, and petitions whose purpose is to extend or enlarge upon operating authority granted by the Department, shall conform to the provisions of N.J.A.C. 16:51-2 (Pleadings) to the extent applicable, and shall in the body thereof, or attached thereto, also provide the information required by this Section.

(b) The following information shall be included in such petitions:

1. A specific reference to petitioner's pertinent existing authority;

2. A statement showing existing restrictions;

3. A street-by-street description and map of the current route and of the proposed modified route (if regular route);

4. In the case of a petition pertaining to regular route authority, a list of:

i. All regular autobus companies currently operating authorized regular route service in the petitioner's proposed service area; and

ii. All other persons having petitions pending before the Department for approval of regular route service in the proposed service area.

5. Proof of service of the petition upon the carriers and persons referred to in 4. above (if applicable);

6. Proof of publication of public notice, twice, one week apart, in a newspaper of general and regular circulation in the proposed service area which:

i. Briefly describes the purpose of the petition and the type(s) of equipment to be used in the proposed service area;

ii. States that a petition to modify an existing certificate has been filed with the Department;

iii. States that objections and other comments should be addressed to the Office of Regulatory Affairs, New Jersey Department of Transportation, giving the address of said Office;

iv. Includes the appropriate New Jersey Department of Transportation docket number (and route file number, if applicable); and

v. Lists each municipality (in the case of a petition for modification of regular route authority) or county (in the case of a petition for modification of charter and/or special authority) in which the petitioner seeks to extend or enlarge upon operating authority granted by the Department.

7. Proof of service of the petition upon the clerk(s) of all municipalities in which the petitioner proposes to establish additional pickup and/or drop off locations that are different from such locations for which the petitioner has authority;

8. A statement that describes the proposed restriction removal or other change in existing operating authority, and gives the reason(s) for any of the changes proposed; and

9. In the case of proposed modification of regular route authority, a copy of the currently effective schedule of operations and the schedule of operations to be put into effect if the modification is approved.

(c) The Department may impose restrictions as public convenience and necessity requires.

(d) A petition filed pursuant to this Section shall not be approved if the relief thereby requested is for an addition to or reduction of the number of counties in which pickups are authorized under a certificate for charter and/or special service.

16:51-3.3 Petitions for approval of the transfer of a certificate of public convenience and necessity for autobuses

(a) Petitions for approval of the transfer of a certificate shall conform to the requirements of N.J.A.C. 16:51-2 (Pleadings) to the extent applicable, and shall in the body thereof or in the attached exhibits also provide the information required by this Section.

(b) The petition shall contain the following:

1. A copy of the certificate proposed to be transferred (including its appropriate Schedule "A" and/or Schedule "B").

2. In the case of a proposed transfer of a regular route authority, an accurate and complete street-by-street description of the route to be transferred;

3. Proof of publication of public notice twice, one week apart, in a newspaper of general and regular circulation in the proposed service area which:

i. States that a petition for the proposed transfer has been filed with the Department;

ii. Briefly describes the purpose of the petition;

iii. States that objections and other comments should be addressed to the Office of Regulatory Affairs, New Jersey Department of Transportation and includes the address of said Office;

iv. Includes the appropriate Department docket number and, if applicable, route file number; and

v. Lists each municipality (in the case of a petition for transfer of regular route authority) or county (in the case of a petition for transfer of charter and/or special authority) in which the proposed transferee seeks to operate under the subject authority.

4. In the case of a proposed transfer of regular route authority, a list of all autobus passenger carriers currently operating authorized regular route service in the transferee's proposed service area;

5. Proof of service of the petition upon all the carriers referred to in 4. above (if applicable);

6. In the case of a proposed transfer of regular route authority, proof of service of the petition upon the clerk of each municipality and county in which the subject authority is operative;

7. In the case of a proposed transfer of charter and/or special authority, proof of service of the petition upon the clerk of each county in which the subject authority permits pickups;

8. A copy of the signed assignment(s), contract(s), lease(s), or other written agreement(s) by which the proposed transfer is to be made;

9. An affidavit by the transferor detailing all judgements, tax claims or liens against the transferor or against property or equipment involved in or associated with the proposed transfer;

10. A balance sheet, income statement and pro forma financial statement of the transferee;

11. A statement so as to the proposed transferee's qualifications to operate and maintain safe, adequate and proper service;

12. A schedule of equipment to be used by the proposed transferee under the subject authority;

13. The names and addresses of officers, directors and shareholders or partners or owner, as the case may be, of the proposed transferee and the extent of their respective interests in the proposed transferee;

14. A statement as to operating restrictions in effect at the time the petition is filed. The Department may impose restrictions as public convenience and necessity requires;

15. A copy of the certificate of incorporation of the transferee as filed with, and stamped by, the Office of the Secretary of State, State of New Jersey (if applicable);

16. Petition filing fee as prescribed by statute;



17. The current schedule of fares for the subject autobus operation; and

18. In the case of a proposed transfer of regular route authority, a copy of:

- i. The currently effective schedule of operations; and
- ii. The proposed schedule of operations of the proposed transferee.

16:51-3.4 Ex parte or emergency relief; and minor modification of regular route

(a) If a petitioner seeks ex parte action granting emergency relief, pending either the Department's petition review process or a full hearing, it shall particularize the necessity for emergent action. The petition must be supported by affidavits sufficient to make a prima facie case that the public interest will be subject to irreparable harm if the requested emergency relief is not granted.

(b) The petitioner shall present a draft of the proposed order which shall state the terms upon which the order may be dissolved. Where the method of giving notice is not already provided for in these rules, notice in advance of filing shall be given if practical or otherwise required by these regulations for any party affected. The petitioner must certify by affidavit at the time of the application that other interested parties were served copies of the petition and draft order by certified mail. For purposes of this subsection, interested parties shall include all passenger-carrying trolleys, subways and autobus lines operating in the proposed (or actual) service area.

(c) Notwithstanding subsections (a) and (b) above, the Department may grant a request for a minor modification of a regular route if the request is made through a petition for ex parte relief. The notice requirements contained in subsections (a) and (b) shall apply to minor modification petitions, however. A minor modification of a regular route shall mean a change in pickup or drop off location; provided:

1. The proposed new pickup and/or drop off location is within 1,000 feet of the route stop for which modification is requested;

2. The carrier requesting such change submits with its request proof of municipal, county or state approval, as the case may be, of the proposed stop; or in lieu of such approval, proof that the proposed stop is located on private property together with the property owner's written approval of the proposed stop;

3. The proposed pickup and/or drop off point is not closer to any authorized pickup and/or drop off location (respectively) of any other autobus company than:

- i. 500 feet, if the proposed stop is located in a municipality of the First Class (as defined in N.J.S.A. 40A:6-4);
- ii. 750 feet, if the proposed stop is located in a municipality of the Second Class (as defined in N.J.S.A. 40A:6-4);
- iii. 1,250 feet, if the proposed stop is located in a municipality of the Third Class (as defined in N.J.S.A. 40A:6-4);
- iv. Five hundred feet, if the proposed stop is located in a municipality of the Fourth Class (as defined in N.J.S.A. 40A:6-4); and

4. That, in the opinion of the Department, the need for the minor modification is due to circumstances beyond the practicable control of the carrier requesting the change.

(d) Relief granted under (c) above shall be provisional. Final disposition of matters relating to minor modifications under (c) above shall be made upon petition for a final order of the Department approving such a modification or upon other nullification of the provisional relief by the Department.

16:51-3.5 Petitions for the approval of the sale or lease of property

(a) Petitions for the approval of the sale, conveyance or lease of real or personal property, or the granting of an easement, or like interest therein as required by law shall conform to provisions of N.J.A.C. 16:51-1; 16:51-3.1(a), (b), (e), (i); N.J.S.A. 16:51-3.4, 3.8, 3.9 and N.J.A.C. 16:51-2.10, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Five copies on a separate sheet or sheets designated Schedule "A" containing a description of the property (For real property, show the location by municipality and county, a metes and bounds or other adequate description of the property, together with a description of the property and rights, if any, reserved by the utility; and for personal property, include sufficient information to identify the property adequately);

2. Name of transferee or lessee, the consideration or rental and method of payment thereof, and rights reserved by the transferee or lessor;

3. A copy of the written agreement if any (but if there is no written agreement, it shall be so stated);

4. A certified copy of the resolution of the board of directors or other authority authorizing the transfer or lease;

5. The purpose for which the property was originally acquired, the date of acquisition, the use made of the property for utility purposes, the date when the circumstances under which it ceased to be useful for such purposes, the present use, the possible prospective use and the identity of the official or officials who determined that the property is not now or prospectively required or useful for utility purposes;

6. The basis of the price or rental: assessed valuation, appraisal, comparable sales, or other basis; whether it is the best price or rental attainable (attach appraisal, if any, as exhibit);

7. Whether the proposed consideration or rental represent the fair market value of the property to be conveyed or leased;

8. What steps were taken to put this property on the market and accomplish its sale or lease. (If bids were solicited, give names of bidders and the consideration or rental offered.);

9. Whether there is any relationship between the parties other than that of transferor and transferee, or lessor and lessee;

10. The actual cost at date of acquisition, and the cost and nature of any improvements;

11. The amount at which the property is now carried on the utility's books;

12. Copies of proposed journal entries to record the transaction when the consideration is more than \$50,000.00;

13. If property is income producing, give details, such as carrying charges, taxes, and assessed valuation;

14. If the property is encumbered by any mortgage, describe the mortgage, state the amount thereof, and the time required to obtain a release;

15. Where the property to be sold or leased involves the transfer of certificates of public convenience and necessity, petitioner shall also comply with N.J.A.C. 16:51-3.3 (Petitions for approval of the transfer of certificates of public convenience and necessity) of this Chapter to the extent applicable;

16. When the property to be sold or leased has a net book cost or fair market value of more than \$100,000, the petitioner must attach to the petition copies of the advertisement required by (b) below, and proof of publication;

17. Railroads shall also show the distance to the nearest railroad track or structure.

(b) Where the Department's approval of sale or lease is required by law and the property has a net book cost or fair market value of more than \$100,000, the property shall be advertised for sale or lease at least twice, one week apart, in a daily newspaper published or circulated in the county in which the property is located, within 90 days immediately prior to the filing of the petition for the approval of the sale or lease, except the advertising shall not be required for sales or leases of property for public utility purposes to another public utility or other person subject to any jurisdiction of the Department. The advertisement shall contain the following:

1. A description of the property to be sold or leased and improvements thereon. In the case of land, this shall include the street address, if any, and a description sufficient to identify the location of the property and its approximate size, which may be a description by metes and bounds or lot and block numbers;

2. The place where the property is located or may be inspected, together with the street address, if any;

3. Conditions of the sale or lease, if any, together with a provision that the utility may reject any or all bids;

4. A statement that the sale or lease is subject to the approval of the Department of Transportation;

5. A statement of the place and final date for submitting sealed bids which shall not be less than ten days after publication of the second advertisement together with a statement of the time and place of the opening of said bids, which shall not be more than five days following the final date for submitting bids, at a place in New Jersey;

6. A sealed bid, in accordance with the requirements of (b)5 above, must be submitted by a prospective purchaser or lessee. However, an offer or agreement to purchase or lease in writing received by the utility or executed before the first date of advertising and still in effect at such date, shall be considered as if it were a sealed bid, provided such offer or agreement is in writing and meets all other conditions of sale or lease, if any, included within the advertising.

(c) In addition to any other transactions not requiring approval or which on their merits may be deemed to be in the ordinary course of business, any lease, grant or permission by a utility to occupy or use its real property or any interest therein which is terminable at the option of the utility upon notice not to exceed 90 days, and any release, by lease,

easement, or other permission to occupy or use real property for a period of not more than one year shall be deemed to be in the ordinary course of its business. Neither notice to the Department nor petition for its approval shall be required with respect thereto.

(d) In addition to any other transactions which on their merits may be deemed to be in the ordinary course of business, the sale, lease, encumbrance or other disposition by any utility of such of its property or an interest therein as is set forth in this subsection, may be consummated without petition to the Department for approval, provided, however, that the utility shall have given written notice thereof to the Department, to be received not less than 15 days prior to the effective date of the proposed sale, lease, encumbrance or other disposition of such property. The transactions which may be completed without petition to the Department are as follows:

1. The sale of personal property, other than autobuses, having a net book cost and sale price not in excess of \$75,000 and which is no longer used by or useful to the utility;

2. Except as provided in this Section, the lease or permission to use or occupy real property or any interest therein having a net book cost not in excess of \$125,000 and a net rental not in excess of \$15,000 per annum;

3. The sale or release of real property, or any interest therein, not used by or useful to the utility and having a net book cost and sale price not in excess of \$125,000.

(e) On expiration of the notice period and on payment of the statutory fee, the Director will certify on a true copy of the notice to be furnished to the Department that such sale, lease or release is deemed by the Department to be in the ordinary course of business and within the statutory provision. Such notice shall contain, to the extent applicable, the following:

1. Name of transferee or lessee, the consideration or rental and method of payment thereof, and rights, if any, reserved by the transferor or lessor;

2. A copy of the agreement or lease and a map of the real property;

3. A statement that the proposed consideration or rental represents the fair market value of the property to be conveyed, or the fair rental value of the property to be leased, giving the basis for the conclusion reached;

4. A statement of any relationship between the parties other than that of transferor and transferee, or lessor and lessee, or a statement that there is no such other relationship, as the case may be;

5. The amount at which the property is carried on the utility's books;

6. A statement as to whether or not the property is income producing and, if so, details as to whether the petitioner pays all carrying charges, including taxes. In addition, such statement shall include the assessed valuation of the property;

7. A statement, in the case of a proposed sale, that the property is not used by or useful to the utility, and in the case of a proposed lease, grant or permission, that the transaction will not compromise the ability of the utility to render service;

8. A verification by a properly authorized officer, partner or proprietor of the statements contained in the notice;

9. A blank space of three inches shall be provided at the bottom of the first page of the notice for the Department certification.

(f) The Department may, within the aforesaid 15-day notice period, or at any time prior to the actual consummation of the transaction, suspend the provisions of this rule and require the filing of a petition for the approval of the sale, lease, encumbrance or other disposition.

(g) Any buses of an age of ten years or over from the end of the year of manufacture, or where the sales price is \$50,000 or less, which is owned by autobus utilities under the jurisdiction of this Department may be sold without formal petition to the Department for approval of the sale thereof, provided that the autobus utility shall first notify the Department in writing 20 days prior to the date of the proposed sale. (See N.J.S.A. 48:3-7(b), as amended.)

1. The Department may, following receipt of the notice, suspend the provisions of this subsection and require the filing of a formal petition for approval of the sale. However, if no such action is taken by the Department within 20 days of filing, a notice filed under this paragraph shall be considered approved.

2. The notice shall contain the following information:

i. A complete description including make, model, year of manufacture, serial number and year when acquired, of the bus or buses proposed to be sold;

ii. The name and address of the vendee and the amount of the selling price of the bus or buses;

iii. Whether the selling price is attainable;

iv. What steps were taken to place the bus or buses on the market to accomplish the sale;

v. What other offers were received, if any, and how it was determined that the proposed offer is the best price obtainable;

vi. The relationship between the autobus utility and the vendee;

vii. Whether the bus is encumbered and, if so, state the amount and the date when the release will be granted;

viii. A statement that the equipment is not used or considered economically useful in the vendor's public utility operations;

ix. A statement that the utility has sufficient available autobus equipment to meet its service requirements (indicate the number of buses owned before and after the proposed sale and what arrangements were or will be made to replace the equipment proposed to be sold); and

x. A statement that the sale will not adversely affect the ability of the vendor to render safe, adequate and proper service on its regular New Jersey intrastate bus routes.

16:51-3.6 Petitions for authority to transfer capital stock

(a) Petitions for authority to transfer upon the books and records of any autobus company, under N.J.S.A. 48:3-10, any share or shares of its capital stock, shall conform to the provisions of N.J.A.C. 16:51-2.7, 3.1 through 3.6 to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The respective name and address of the proposed transferor and transferee;

2. A description of the capital stock proposed to be transferred, including the classification of shares; the number of shares of stock authorized for issuance; the par or stated value of the stock; and the total number of shares outstanding;

3. The percent and interest of the outstanding capital stock of the autobus company that, either by itself or in connection with other previous sales or transfers, will vest in the proposed transferee;

4. Proof of publication of public notice thrice, one week apart, in a newspaper of general and regular circulation in the proposed service area which:

i. States that a petition for the transfer of capital stock has been filed with the Department;

ii. Briefly describes the purpose of the petition;

iii. States that objections and other comments should be addressed to the Office of Regulatory Affairs, New Jersey Department of Transportation and provides the address of said office; and

iv. Lists each municipality served by the transferor under its regular route authority, if any, and each county in which the proposed transferor is authorized to make pickups under its charter and/or special authority, if any.

5. Proof of service of a copy of the petition upon:

i. The clerk of each county in which the transferor is authorized to make charter and/or special pickups; and

ii. The clerk of each county in which regular route service is provided by the transferor.

6. A detailed explanation of any reasonably expected changes to be made, if the petition is approved, in the subject autobus company's:

i. Board of directors;

ii. Officers and active managers; or

iii. Policies with respect to its operations, financing, accounting, capitalization, rates, depreciation, maintenance, service or any matters affecting the public interest.

7. A statement as to the transferee's ability to provide the regular route service that it would be responsible for if the transfer were approved (if applicable);

8. A description of the proposed transferee, including information as to whether the proposed transferee is a public utility, a holding company either separately or by affiliation in a utility holding company system, or other domestic or foreign corporation or a natural person;

9. If applicable, the names and addresses of the officers, directors, and shareholders or partners or owners, as the case may be, of the proposed transferee and the extent of their respective interest in the proposed transferee. If the proposed transferee is a public corporation, the list of shareholders shall include only those persons that own five percent or more of the transferee's voting class of stock. If the transferee is a privately held corporation, the shareholders list shall include all persons owning the transferee's voting class stock.

10. A copy of the certificate of incorporation of the proposed transferee as filed with, and stamped by, the Office of the Secretary of State, State of New Jersey (if applicable); and

11. Petition filing fee as prescribed by statute.

(b) The Department may impose restrictions as public convenience and necessity reasonably require.

16:51-3.7 Petitions for discontinuance of service

(a) A petition for discontinuance of service, under N.J.S.A. 48:2-24, shall conform to the provisions of N.J.A.C. 16:51-2.7, and N.J.A.C. 16:51-3.1 through 3.6, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Whether the service to be discontinued is the only one of its type in the subject service area;
2. Whether reasonable alternative transportation service to that service area is available; and
3. The reason(s) for the proposed discontinuance.

16:51-3.8 Joinder of requests for relief

(a) A petitioner may join in a single petition more than one independent or alternative request for relief subject, however, to the payment of the statutory filing fees applicable to each of the approvals sought.

(b) The Department may in its discretion sever matters so joined for hearing and determination or take such other action as may be in the public interest.

16:51-3.9 Procedure of department on filing of petition

(a) If, in the opinion of the Department, a petition complies substantially with these rules and appears on its face to state a matter within the Department's jurisdiction, and necessary copies have been received and fees paid, the Director shall file same.

(b) Unless otherwise directed by the Department, petitions and subsequent pleadings shall be served by the parties as provided for in N.J.A.C. 16:51-2.7 and N.J.A.C. 16:51-2.8.

(c) If, within the time allowed for answer, the respondent makes an offer of satisfaction which is accepted by the petitioner, such offer and acceptance signed by the parties or their attorneys shall be filed with the Office and if not disapproved by the Department within thirty days of the Office's receipt of such offer and acceptance, the petition shall be deemed satisfied and the proceedings closed without further action.

(d) When the respondent has not satisfied the petition, the Department may for the purpose of administratively resolving the matter, schedule and conduct a conference between representatives of the Department, the respondent, and the petitioner, and/or any other person deemed by the Department to be an interested party. Thereafter the Department may issue such decision or order as the facts and circumstances appear to require; or the Department may transmit the matter to the Office of Administrative Law as a contested case.

16:51-3.10 Tariff filings which do not propose increases in charges to customers

(a) Tariff filings for the purpose of making effective initial tariffs or revisions, changes or alterations of existing tariffs and which are not filed because of the need for additional revenue from products or services covered by existing tariffs and which do not propose increases in charges to customers, shall conform to the provisions of N.J.A.C. 16:51-2 (Pleadings Generally) and N.J.A.C. 16:51-3.1 through 3.5, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Four copies of the proposed tariff or revision, change or alteration thereof, together with an explanation of the manner in which the tariff or change differs from the existing or a prior tariff, and the effect, if any, upon revenues;
2. A statement of the reasons why the tariff or change is proposed to be filed;
3. A statement of notices given, if any, together with a copy of the text of each of said notices;
4. A statement as to the date on which it is proposed to make the tariff or change effective, which date shall not be earlier than 30 days after the filing unless otherwise permitted by the Department.
5. In the case of initial tariffs pro forma income statements for each of the first two years of operations and actual or estimated balance sheets as at the beginning and end of each year of said two-year period.

16:51-3.11 Tariff filings or petitions which propose increases in charges to customers

(a) Filings or petitions for the purpose of making tariff effective or for making revisions, changes or alterations of existing tariffs which propose to increase any rate, fare, toll, rental or charge or to alter any classification, practice, rule or regulation so to result in such an increase (other than filings to effectuate the operation of an existing fuel adjustment clause) shall conform to the provisions of N.J.A.C. 16:51-2 and N.J.A.C. 16:51-3.1 through 3.5, to the extent applicable, and shall in the

body thereof or in attached exhibits contain all applicable information and data set forth in N.J.A.C. 16:51-3.10 (Tariff filings which do not propose increases in charges to customers), and in addition shall contain the following: (financial statements shall be prepared in accordance with the Uniform System of Accounts):

1. A comparative balance sheet for the most recent three-year period (calendar year or fiscal year);
2. Comparative income statement for the most recent three-year period (calendar year or fiscal year);
3. A balance sheet at the most recent date available;
4. A statement of the amount of revenue derived in the calendar year last preceding the institution of the proceedings from the intrastate sales of the product supplied, or intrastate service rendered, the rates, tolls, fares or charges which are the subject matter of the filing;
5. A pro forma income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as calculation showing the indicated rate of return on the average net investment (for the same period as that covered by the pro forma income statement), that is, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities. If the request for rate relief is based upon N.J.S.A. 48:2-21.2, there shall be included, in lieu of the requirements of the foregoing paragraph, a statement showing that the facts of the particular situation meet the statutory requirements.

i. In any such proceeding on a tariff filing or petition pursuant to N.J.A.C. 16:51-3.11, the parties shall be given an opportunity to be heard on issues relating to the design of the proposed tariffs after the determination by the Department of the amount of any rate relief, but prior to the acceptance of the new tariffs. No new evidence shall be submitted except by permission of the Department and the parties shall address themselves only to matters in the existing record. The opportunity to be heard shall be on written comment filed within five days of the company's filing of its proposed rate design. The Department may in its discretion set oral argument on short notice concerning rate design issues;

ii. In providing the information required by the immediately preceding subsection, a company may also file, in addition to the new rates proposed to become effective, alternative rate changes designed to produce the full revenue request, which alternatives are illustrative of the application of other possible rate designs to the filing.

6. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five percent (5%) of the utility's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges;

7. A copy of the form of notice to customers.

(b) Financial statements shall be prepared in accordance with the Uniform System of Accounts.

(c) Each utility that makes a filing under subsection (a) (Tariff filings or petitions which propose increases in charges to customers) of this Section shall, unless otherwise ordered or permitted by the Department, give notice thereof as follows:

1. Serve a notice of the filing and a copy of the proposed tariff or a copy of the petition or a statement of the effect of the proposed filing upon the municipal clerk in each of the municipalities in which there is rendered a regular route service, the charge for which is proposed to be increased;
2. Serve a notice of the filing and two copies of the petition or tariff on the Director, Division of Rate Counsel, Department of the Public Advocate;
3. Notice of the filing and the effect upon patrons of various classes shall be given by posting of notices in the stations, cars and buses on the affected route of such utility, and by publication in newspapers published and circulated in the utility's service area.

(d) Each utility that makes a filing under (a) above shall, after being advised by the Department or the Office of Administrative Law of the time and place fixed for hearing, if any, and unless otherwise ordered or permitted by the Department or the Office of Administrative Law serve notice of the hearing at least 20 days prior to such time on those persons specified in (c) above and shall give such notice to those persons designated in (c)3 above no more than 30 days and no less than 20 days prior to the date set for hearing, in newspapers published and circulated in the utility's service area and by posting in the stations, cars and buses on the affected route of such utility, at least 20 days prior to the date set for hearing. Such notices shall remain posted in said vehicles through the hearing date.



(e) Where notice is prescribed under this rule it shall be at the cost and expense of the party obligated to give or serve the notice.

(f) Proof of service and/or notice required by this rule shall be filed with the Department at least five days before the date set for hearing. (Also see N.J.A.C. 16:51-11.1 et seq.)

16:51-3.12 Petitions for permission to keep books and records outside the State of New Jersey

(a) Petitions for authority to keep books, records, accounts, documents and other writings outside the State of New Jersey, filed with the Department as required under N.J.S.A. 48:3-7.8, shall conform to the provisions of N.J.A.C. 14:1-5 and N.J.A.C. 14:1-6.1 through 6.5 to the extent applicable, and shall in the body thereof or in attached exhibits also provide the following information:

1. Complete description of the specific books, records, accounts, documents and other writings proposed to be kept outside the State of New Jersey;

2. The exact location where the books and records will be kept;

3. If all books and records will not be kept outside the State, what remaining records will be kept at the New Jersey location;

4. The reason for proposing to keep its books and records at a location outside the State;

5. The availability of adequate required space, facilities and experienced personnel at the new location;

6. The cost to the petitioner of maintaining the books and records at the new location as compared with that of maintaining the records at the New Jersey location;

7. The extent of the financial advantage to the customers and other benefits to the public utility which will result from keeping the books and records outside the State;

8. Whether the books and records which will be kept at the location outside the State will be, on notice in writing of the Department, produced at such time and place within this State as the Department may designate;

9. Whether the petitioner will pay to the Department any reasonable expenses or charges incurred by the Department for any investigation or examination, if the Department grants said permission;

10. The location where the petitioner will continue to maintain an office within the State of New Jersey for the convenience of its customers to pay bills, file complaints and conduct other business with the utility;

11. The name and address of the petitioner's statutory agent.

#### SUBCHAPTER 4. MOTIONS: INTERVENTION

16:51-4.1 Motions; generally

(a) Where a party other than a petitioner seeks an order of the Department, the party shall apply by motion.

1. A movant shall make each motion in writing, unless it is made orally during an informal department hearing.

2. No technical forms of motion are required. In a motion, a party shall state the grounds upon which the motion is made and the relief or order being sought.

(b) A party shall submit a proposed form of order with each motion, unless this requirement is waived by the Director.

(c) A party shall file each motion with the Director, except for motions made during an informal Department hearing and emergency motions.

1. If the party provides an extra copy of the motion and a self-addressed stamped envelope, the Director shall mark the copy filed and mail it to the movant.

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

16:51-4.2 Motions in writing with no oral argument, generally; time limits

(a) With the exception of emergency relief applications made under N.J.A.C. 16:51-3.4, when a motion is in writing no action shall be taken thereon until at least 20 days have expired from the date of service upon the opposing party unless an expedited schedule is ordered for good cause shown.

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

(c) The opposing parties shall file and serve responsive papers, that is, an answer, no later than 10 days after receiving the moving papers.

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

(e) All motions in writing shall be submitted for disposition on the papers unless a settlement conference or an informal Department hearing is arranged for by the Director.

(f) All motions shall be deemed denied if not decided within 60 days from the filing thereof, except as otherwise specified in these rules.

(g) A motion to intervene against a petition for approval, modification or transfer of a Certificate must be filed with the Department no later than 30 days after the date of service of the petition upon the movant, in those cases where the movant has been served a copy of the petition; and, in all other such cases, 30 days after the last date of publication required under N.J.A.C. 16:51-3.1(c)1. In any event, such motions must be filed either prior to the transmittal of the case to the Office of Administrative Law as a contested case or prior to the issuance of the Department's final decision on the matter, whichever is earlier.

(h) The time requirements of this rule may be modified in the discretion of the Commissioner for good cause shown.

16:51-4.3 Affidavits; briefs and supporting statements

(a) Motions and answering papers, i.e., answers and replies, shall be accompanied by all necessary supporting affidavits and briefs or supporting statements. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be annexed thereto.

(b) In the discretion of the Commissioner, a party or parties may be required to submit briefs or supporting statements pursuant to the schedule established in N.J.A.C. 16:51-4.2 or as ordered by the Commissioner.

16:51-4.4 Disposition of motions to intervene; generally

(a) If a movant demonstrates that it has a substantial and specific interest in the subject matter which will be affected by the proceeding and if such interest with respect to the proceeding would not otherwise be adequately represented, the Commissioner or the Director may grant the motion to intervene by written order or decision on such terms as the Commissioner or the Director, as the case may be, may prescribe.

(b) Whenever it appears during the course of a proceeding that an intervenor has no substantial and specific interest which would be affected by the proceeding, the Commissioner or the Director may dismiss the intervenor from the proceeding.

(c) Timely filed motions to intervene shall be considered prior to any disposition of the petition to which they are directed.

16:51-4.5 Disposition of motions to intervene in regular route petitions

(a) With respect to petitions for regular route service (original authority or modification requests), in order for a movant to demonstrate that it has an interest in the subject matter that will be substantially and specifically affected by the proceeding, its motion must clearly indicate that:

1. It operates an authorized regular route service in the proposed service area; and that the granting of the relief sought may jeopardize the profitability of said regular route service;

2. There is insufficient public need for the proposed regular route service;

3. The petitioner has failed to make a request for which the Department can grant relief;

4. The petition lacks veracity; or

5. That the petitioner is unfit to conduct the proposed regular route service.

(b) For purposes of (a)5 above, items relating to fitness shall include, but are not limited to:

1. The availability of the requisite equipment or personnel to provide the proposed service;

2. Whether petitioner has a history of illegal operations such that to grant the relief requested by petitioner might disserve the public interest;

3. Whether petitioner has been convicted of an offense listed in N.J.S.A. 5:12-86(c);

4. Whether petitioner has otherwise acted in such a way that it would be inimical to the public interest to grant petitioner's relief request.

16:51-4.6 Disposition of motions to intervene in proceedings involving charter and/or special operations

(a) With respect to petitions for charter and/or special autobus service, in order for a movant to demonstrate that it has an interest in the subject matter that will be substantially and specifically affected by the proceeding, its motion must clearly indicate:

1. That the petitioner has failed to make a request for which the Department can grant relief;

2. The petition lacks veracity; or
3. That the petitioner is unfit to conduct the proposed service.
- (b) For purposes of (a)3 above, items relating to fitness shall include, but are not limited to:
  1. The availability of the requisite equipment or personnel to provide the proposed service;
  2. Whether petitioner has a history of illegal operations such that to grant the relief requested by petitioner might disserve the public interest;
  3. Whether petitioner has been convicted of an offense listed in N.J.S.A. 5:12-86(c); or
  4. Whether petitioner has otherwise acted in such a way that it would be inimical to the public interest to grant petitioner's relief request.

#### SUBCHAPTER 5. REHEARING, REARGUMENT OR RECONSIDERATION

##### 16:51-5.1 Method of instituting

(a) A motion for rehearing, reargument or reconsideration of a proceeding may be filed by any party within 10 days after the issuance of any final decision or order by the Department.

1. Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing, or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Department, or other relief.

2. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence.

(b) The Department at any time may order a rehearing, reargument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it.

##### 16:51-5.2 Motions and answers on rehearing

(a) A copy of the motion shall be served by the moving party upon all other parties or their attorneys of record, forthwith upon the filing hereunder. the moving party shall also give such notice, as the Department may direct, of the filing of the motion to all other persons to whom notice of the original proceeding had been given.

(b) Any answer to the motion shall be filed within ten days following the service of the motion. Failure to file an answer shall be deemed to be a waiver of any objection to the granting of the motion.

(c) Any motion hereunder which is not granted or otherwise expressly acted upon by the Department within 30 days after the filing thereof, shall be deemed denied.

(d) The filing or granting of any motion under this rule shall not operate as a stay of the Department's decision or order. A stay will be granted only for good cause shown.

#### SUBCHAPTER 6. CONFERENCES

##### 16:51-6.1 Purposes

(a) Informal conferences of parties or their attorneys may be held at any time to provide opportunity for settlement, subject to the approval of the Department of a proceeding or any of the issues therein, and for the submission and consideration of facts, arguments, offers of settlement or proposals of adjustment, as time, nature of proceeding and the public interest may permit.

(b) Unaccepted proposals of settlement and proposed stipulations not agreed to shall not be taken into account in the Department's disposition of a petition or other pleading.

#### SUBCHAPTER 7. REPORTING ACCIDENTS

##### 16:51-7.1 Procedures

(a) Accidents resulting from the operations, use or maintenance of autobuses or street cars under the jurisdiction of the Department of Transportation shall be reported as follows:

1. Report by mail to the Department's Office of Regulatory Affairs, McCarter Highway and Market Street, P.O. Box 10009, Newark, NJ 07101 on the form prepared for this purpose (Form 501) within 48 hours of the occurrence of the accident. (Forms may be obtained from the Office of Regulatory Affairs.)

2. Notify the Office immediately by telephone between 8:30 A.M. and 4:30 P.M., and at all other times notify one of the persons listed in the Department's Autobus Accident Contact Persons List (available from the Office of Regulatory Affairs) immediately by telephone, in the case of:

- i. Grade crossing accidents;
- ii. Overturning of buses;

iii. Runaway buses and other accidents of an unusual nature, whether or not bodily injury results;

iv. Accidents involving serious bodily injury, for example, broken limbs or severe lacerations; or

v. Accidents involving a fatality.

(b) If at the time of the submission of the written report, the autobus company is unable to state the corrective measures taken or make recommendations to avoid a recurrence of the accident, the autobus company shall, within 30 days of the date of the accident, file a report which shall set forth the aforementioned corrective measures and recommendation. This report shall show the same accident report number as the original accident report.

(c) The autobus company shall not take corrective measures prior to the inspection of said utility's vehicle involved in the accident by an employee of the Department trained to perform post accident autobus inspection, in the accident is of a type described in N.J.A.C. 16:51-7.1(a)2.

(d) The Department may summarily invoke the sanctions provided for by law for violation of this subchapter.

#### SUBCHAPTER 8. PROVISION OF SERVICE

##### 16:51-8.1 Commencement of operations

The operation of a route which has been approved by the Department shall be inaugurated within 60 days from the date of said approval. Failure to do so shall terminate the Department's approval and make the same inoperative and void.

##### 16:51-8.2 Change of route

There shall be no deviation from the approved route without the approval of the Department except in emergency, in which case the Department shall be promptly notified of such change. The approved route must be resumed immediately upon approval of the cause for temporary rerouting.

##### 16:51-8.3 Discontinuance of service

(a) No autobus or trolley utility shall discontinue the operation of a route or routes, or a portion thereof, without first filing a petition with the Department, which petition shall give the reasons for such discontinuance. Such proposed discontinuance shall not become effective until approved by the Department.

(b) Should any utility discontinue operation without the permission of the Department, the Department may summarily invoke the sanctions provided for by law.

##### 16:51-8.4 Interruption of service

Where service on a route or routes has been interrupted and such interruption appears likely to continue for a period in excess of four hours, a report shall be made to the Department by the speediest means of communication available, with a full statement of the cause and probable duration. The public along the route or routes shall be promptly notified of service interruptions by such means as are feasible and practicable including announcements and notices at terminals and ticket offices, if any, and notification to news disseminating agencies and municipalities affected. Telephone reports shall be promptly confirmed by a telegraphic or other written report.

##### 16:51-8.5 Emergency equipment

All autobus and trolley utilities shall maintain sufficient reserve equipment to insure the reasonable maintenance of the established routes and fixed time schedules.

##### 16:51-8.6 Stops before grade crossings

All autobus and trolley utilities shall have their vehicles come to a full stop before crossing the tracks of any railroad at grade: such stop to be made not less than 15 feet nor more than 50 feet from the nearest rail, the stopping point to be determined by the physical conditions at the crossing permitting a view of approaching trains from the near rail of the tracks before proceeding from stop position.

##### 16:51-8.7 Doors to be closed

All autobus and trolley utilities shall keep the doors of the vehicles closed when the vehicles are in motion.

##### 16:51-8.8 Drivers conversing

Autobus and trolley utilities shall not allow the drivers of any autobus or trolley to engage in any unnecessary conversation with the passengers.

##### 16:51-8.9 Filling fuel tanks

(a) Fuel tanks on autobuses shall be filled from outside the autobus and shall not be filled or replenished with fuel while passengers are in said autobus.

(b) Fuel tanks shall not be filled or replenished while the motor is running.

## SUBCHAPTER 9. OFFICES

### 16:51-9.1 Location

(a) Each utility shall maintain in, or within reasonable proximity of, its service area an office, the current location of which shall be furnished to the Department, where applications for service, complaints, service inquiries, bill payments, and so forth, will be received.

(b) Each utility shall furnish the Department with the current location of the offices where maps and records covering the various service areas are available to supply, upon reasonable request, information to customers, governmental bodies, and other utilities and contractors.

### 16:51-9.2 Personnel to be contacted

(a) Each utility shall furnish to the Department and keep current a list of names, addresses and telephone numbers of responsible officials to be contacted in connection with routine matters during normal working hours.

(b) Each utility shall also furnish to the Department and keep current a list of names, addresses, and telephone numbers of responsible officials who may be contacted in event of emergency during other than normal working hours.

### 16:51-9.3 Emergency telephone numbers

(a) Each public utility shall maintain a listed emergency number in appropriate telephone directories, and file same with police departments, fire departments, municipal clerks and other appropriate governmental agencies.

## SUBCHAPTER 10. RECORDS

### 16:51-10.1 Location and examination

Each utility shall notify the Department, upon request, of the office or offices at which various records are kept. These records shall be open for examination by the Department's inspectors.

### 16:51-10.2 Periodic reports

Every utility shall file with the Department on or before March 31 of each year a summary of its finances and operations for the preceding calendar year on forms prescribed and furnished by the Department. In special instances, utilities may be required to submit reports quarterly and monthly as directed by the Department. Other periodic reports shall be filed on or before the due date noted on the report form.

### 16:51-10.3 Accidents

Each utility shall keep a record of and report to the Department all accidents, as set forth in N.J.A.C. 16:51-7.

### 16:51-10.4 Public records

(a) All records, except those records set forth in (d) below, which specifically are required by statute to be made, maintained or kept by and for the Department shall be public records within the meaning of N.J.S.A. 47:1A-1 et seq.

(b) All other records of the Department shall not be subject to the provisions of N.J.S.A. 47:1A-1 et seq., and shall be available for inspection and examination only to the extent and for such purposes as may be expressly authorized by the Commissioner of the Department.

(c) The fee for copies of records, instruments and documents of the Department shall be the fee established by law.

(d) All records which are required to be made, maintained or kept by and for the Department which relate to accidents and investigation of accidents concerning public utilities and to safety inspections and surveys of property and equipment of public utilities shall not be deemed public records, copies of which may be purchased or reproduced under the provisions of N.J.S.A. 47:1A-1 et seq.

## SUBCHAPTER 11. TARIFFS

### 16:51-11.1 Filing with department access to public

Every autobus company and trolley company shall file with the Department and keep open to public inspection in each office where applications for service may be made, tariffs applicable to such territory, the business of which is commonly transacted at such office, showing all rates and charges made, established, or enforced, or to be charged or enforced, all rules and regulations relating to rates and charges or services used or to be used, and all general privileges and facilities granted or allowed. The same shall be readily accessible to the public at all times during office hours, and on demand by any person shall be produced for examination immediately. All tariffs legally filed with the Department and now in effect shall continue in force until legally changed. The Department may direct the reissue or modification of any tariff or any part thereof at any time.

### 16:51-11.2 Letter of transmittal

(a) Four copies of tariffs, parts of tariffs or supplements thereto shall be filed with the Department except that two copies shall be filed by railroads. All such tariffs, parts of tariffs, or supplements shall be accompanied by a letter of transmittal addressed to the Office of Regulatory Affairs. If acknowledgement is desired, such letter shall be in duplicate and shall be accompanied by a self-addressed stamped envelope.

(b) The letter of transmittal shall take the following form:

#### LETTER OF TRANSMITTAL

(Name of Common Carrier)

Transmittal Advice No. \_\_\_\_\_

Place and Date \_\_\_\_\_

To: Office of Regulatory Affairs  
State of New Jersey  
Newark, New Jersey

The enclosed tariff, issued \_\_\_\_\_ is transmitted for filing in compliance with the requirements of the Department of Transportation, State of New Jersey

(If a complete tariff)

N.J.D.O.T. (P.U.C.N.J. or I.C.C.) No. \_\_\_\_\_ Effective \_\_\_\_\_

(Or if a revised page)

\_\_\_\_\_ Revised Page No. \_\_\_\_\_

Effective \_\_\_\_\_

(Or if a supplement)

Supplement No. \_\_\_\_\_ to N.J.D.O.T. (P.U.C.N.J. or I.C.C.) No. \_\_\_\_\_

Effective \_\_\_\_\_

\_\_\_\_\_  
(Name of Utility)

\_\_\_\_\_  
(Signature of Officer Transmitting)

### 16:51-11.3 Statement of proposed changes

Except in the case of tariffs published under an order of the Department, each letter of transmittal shall be accompanied by a statement showing the changes which are proposed to be made and the reason for each change.

### 16:51-11.4 Timelines of filing

Except as provided by N.J.A.C. 16:51-6.16, every tariff, part of tariff, or supplement thereto shall be filed with the Department, as hereinbefore provided, not less than 30 days prior to the date on which it is proposed to be made effective, unless the Department, for good cause shown, shall permit or require the proposed tariff, part of tariff, or supplement to become effective on less than 30 days notice.

### 16:51-11.5 Separate series issuance; number; prefix

(a) Tariffs shall be issued in separate series and the tariffs in each series shall be numbered in consecutive order. Each number shall show as a prefix N.J.D.O.T. (or P.U.C.N.J.) as the case may be) and shall further show the number of the tariff or tariffs to be superseded, if any, except that the Department will receive for filing any tariffs which apply to the intrastate transportation of passengers or freight by railroad within New Jersey which are identified by either an N.J.D.O.T. or a P.U.C.N.J. number or an I.C.C. number. Both numbers need not appear on any one tariff but a tariff bearing only an I.C.C. number will not be accepted unless it contains a reference note indicating that it applies in intrastate transportation within New Jersey.

(b) Rate tariffs shall be prepared and arranged as follows:

1. Title Page;
2. Table of Contents;
3. General Information;
4. Classification and Rates.

### 16:51-11.6 Complete document; references

Each classification and rate shall be complete in itself, except that reference may be made to rules and regulations appearing in the schedule under General Information or in a separate schedule under General Information or in a separate schedule referred to therein. General rules and regulations appearing or referred to in a schedule under General Information shall apply to service to be furnished under each Classification or rate unless otherwise expressly provided. Any exception to the application of a general rule or regulation must be clearly stated.



16:51-11.7 Preparation; paper

Tariffs and supplements shall be prepared on hard finished, durable paper. Sheets shall not exceed 8 x 11 inches in size. Typewriting, photocopying, or any printing process may be used.

16:51-11.8 Consecutively numbered pages

When a complete tariff is filed, each page, except the title page, which in all cases shall be considered as Page No. 1, shall be issued consecutively numbered. (Example: "Page No. 2," "Page No. 3," and so forth.)

16:51-11.9 Supplement or reissue

A supplement to or reissue of a filed tariff shall indicate the number of prior tariff or supplement in connection with the N.J.D.O.T. or (P.U.C.N.J. number) or I.C.C. number.

16:51-11.10 Suspension; supplement form

When a tariff or portion thereof is suspended by order of the Department a consecutively numbered supplement shall be issued bearing notice in substantially the following form:

"By order of the Department of Transportation, State of New Jersey made \_\_\_\_\_ (Here list suspended tariffs) has (have) been suspended to and including \_\_\_\_\_. Pending restoration, reissue or cancellation, the rates, rules and regulations in (Here list tariffs which it was proposed to supersede) shall apply."

16:51-11.11 Less than 30 days' notice request; application

(a) Any common carrier desiring permission to change existing rates on less than 30 days' notice shall file with the Department a tariff, part of tariff, or supplement, if necessary, containing the proposed change and the application in the form prescribed herein requesting authority to put such tariff into effect in less than 30 days after filing, and indicating the date it is desired that such rates become effective. Where special conditions arise necessitating a change in the proposed effective date, extension may be requested. Such application shall be contained in the statement of tariff changes.

APPLICATION FOR AUTHORITY TO MAKE CHANGES  
EFFECTIVE ON LESS THAN THIRTY DAYS NOTICE

To: Office of Regulatory Affairs  
State of New Jersey  
Newark, New Jersey

(Name of Common Carrier) by (Name of Officer)

its (Title of Officer) \_\_\_\_\_ hereby applies for

authority to make effective the following rates, N.J.D.O.T. (or P.U.C.N.J. or I.C.C.) No. \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_ by filing with the Department on \_\_\_\_\_ days notice. This application is based upon the following special circumstances and conditions:

\_\_\_\_\_ (Name of Utility)

\_\_\_\_\_ (Name and title of  
authorized representative)

(b) If the application is granted, the permission will specify the number of days on which such tariff may become effective after date of filing with the Department.

16:51-11.12 Notation form

(a) On tariffs authorized to be made effective on less than 30 days' notice, a notation in the following form shall be shown:

"Effective on (date) \_\_\_\_\_ on \_\_\_\_\_ days notice, under authority of the Department of Transportation, State of New Jersey. Special Permission (Order No.) \_\_\_\_\_, made \_\_\_\_\_."

(b) In the case of an entire tariff, the notation need appear on the title page only, immediately following the effective date. In the case of separately issued supplements, it shall appear on each supplement immediately above the lower marginal line.

16:51-11.13 Late filing, rejection

Tariffs or supplements received for filing too late to give the Department the notice prescribed by permission of the Department, or which fail to plainly state the changes proposed to be made in the tariff then in force and the time when the changes proposed will go into effect, are subject to rejection and return. If a tariff is rejected, the number which such tariff bears shall not be used again. Such tariff shall not thereafter be referred to as cancelled, amended, or otherwise, but the tariff issued

in lieu of such rejected tariff shall bear, under the statement specifying the tariff superseded thereby, a notation in substantially the following form:

"Issued in lieu of \_\_\_\_\_, rejected by the Department."

EXAMPLE

Supplement No. 2 Issued in lieu of Supplement No. 1 rejected by the Department of Transportation, State of New Jersey.

16:51-11.14 Rules or classifications prescribed by department

When rates or classifications are prescribed by decision or by order of the Department, or when tariffs are to be revised in conformity with such decision or order, the changes made pursuant thereto shall be established by supplements or reissues of the tariff or tariffs affected, filed and posted as provided in this Subchapter. Each title page containing rates or provisions established pursuant to the order of the Department shall bear the following notation:

Issued in compliance with decision (or order) of the State of New Jersey, dated \_\_\_\_\_.

16:51-11.15 Passenger fares for named or limited period

(a) Passenger fares covering a named and limited period, issued for special parties, conventions, excursions, and other extraordinary reasons, may properly be established on short notice. To avoid the necessity for special application in cases of this kind, the Department has made a general order fixing the named time of notice of round-trip excursion fares. Railroads may be governed accordingly.

(b) Fares for an excursion limited to a designated period of not more than ten days may be established upon posting a tariff one day in advance of the effective date in two public and conspicuous places in the waiting room of each station where tickets for such excursions are sold and mailing two copies of tariff to the Department.

(c) Fares for an excursion limited to a designated period of more than ten days and not more than 30 days may be established upon posting a tariff three days in advance of the effective date in two public and conspicuous places in the waiting room of each stations where tickets for such excursions are sold and mailing two copies of tariff to the Department.

(d) The term "limited to a designated period" used in this section means the period beginning with the first day on which the transportation can be used and ending with, and including, the day upon which the return trip must be completed.

(e) A series of temporary round-trip excursion fares limited for designated period as set forth in (b) and (c) above, the effectiveness of which extends over a period exceeding 30 days but not more than one year, may be published in the same tariff and established as provided in (c) above as to certain of the fares and accompanying provisions, and on statutory notice as to the remainder. For example, tariff is filed with the Department March 2 to be effective March 7, 14, 21, 28, April 4, 11, 18 and 25, with final return limit of eight days in addition to date of sale. From March 7 to final return limit of ticket sold, April 25, is 58 days. In connection with the sales dates of March 7, 14, 21 and 28, the tariff must indicate by appropriate symbol that insofar as it is effective on those dates it is issued under authority of the Department of Transportation, State of New Jersey. The tariff insofar as it is effective on that date of April 4, 11, 18, 25, is filed on statutory notice, and no notation to that effect is necessary.

(f) Supplement permitted; changes in tariff.

1. No supplement may be issued to a tariff filed under authority of (b) above, except for the purpose of cancelling the tariff, and the title page of tariff must so state.

2. A tariff issued under authority of (c) and (e) above may have only one supplement in effect at one time.

3. Changes in tariffs of two or more pages issued under authority of (c) and (e) above may be made for the following purposes:

i. To change or add dates of sale; but the effectiveness of a tariff, as amended, issued under authority of (e) above shall not extend over a period exceeding one year;

ii. To extend return limit;

iii. To add selling stations or destinations, routes, or privileges;

iv. To reduce fares.

4. Changes specified in (f)3 above in a tariff issued under authority of (c) above established by supplement to the tariff in the same manner as authorized in said subsection (c) for the tariff.

5. Changes specified in (f)3 above in tariffs issued under authority of (e) above may be made by supplement, or reissue of the tariff, by filing

and posting such changes not later than three days before they are to become effective.

(g) Each tariff or supplement issued hereunder must bear a notation on the title page "Issued under authority of the Department of Transportation, State of New Jersey, (N.J.A.C. 16:51-11.15)."

#### 16:51-11.16 Agent authorization

If tariffs and supplements thereto, classifications, and so forth, are filed with the Department by a designated and authorized agent of the carrier, notice of such authorization must be filed with the Department, by and in the name of the carrier. In cases of change of agency similar authorization shall be filed by and in the name of the carrier. The type or form of such authorization is not hereby specified and one or more agents may be shown thereon.

### SUBCHAPTER 12. NOTICE REGARDING CHANGES IN FARES OR OPERATING SCHEDULES

#### 16:51-12.1 Notices regarding fares

(a) In order that adequate and proper notice may be given to the public of any hearing, change in schedule or fares, or any matter in which the Department may require that public notice be posted, every public utility owning, operating, managing or controlling any bus or rail service operation for public use within the State of New Jersey, by the approval of the Department shall post such notices in the vehicles and places required by the Department so as to be plainly visible to the public.

(b) The heading of the notice which shall contain information as to the title of the notice, such as "Notice of Public Hearing," "Notice of Change in Fare," "Notice of Change in Schedule," and so forth, shall be printed and set forth in letters not less than 3/4 inch in size.

(c) The body of this notice which shall contain full information as to the matter or matters upon which notice to the public is required shall be printed and set forth in letters not less than 3/8 inch in size.

(d) Such notice or notices shall remain posted until after such hearing is had or such effective date or the occasion for such notice has passed.

#### 16:51-12.2 Notices regarding operating schedules

(a) In order that adequate and proper service may be continuously assured, every public utility owning, operating, managing or controlling any autobus or service operation for public use within the State of New Jersey, with approval of the Department shall, not less than 20 days before putting into effect any change or alteration in any existing operating schedule which would result in a substantial reduction of the service or materially change or alter headways and the arriving or leaving time of the vehicle, comply with the following:

1. File with the Department of Transportation, by mailing to Office or by delivery thereto, two copies of a notice setting forth therein the proposed change or alteration;

2. File with the clerk of each municipality served and affected by the proposed changes or alteration, two copies of the aforesaid notice;

3. Immediately following the filing of the aforesaid notice, such public utility shall post notice of its intent to change or alter its schedule for a period of 15 days in the vehicles operated by it. Such notice shall contain the following information:

i. From whom and where information of the extent of such change or alteration may be obtained;

ii. That notice has been filed by the company with the Department of Transportation.

iii. That notice has been filed with the clerk of each municipality served and affected by the proposed changes or alterations.

(b) Such public utility may, 10 days after the expiration of the aforesaid 15-day notice period, place the change or alteration in effect unless the Department shall have otherwise provided. When under the provisions of this section it is permissible to place into effect such a change in schedules, the utility shall immediately notify the Department in writing whether or not the proposed schedule change is being effectuated.

### SUBCHAPTER 13. COMPLIANCE WITH ORDERS, DECISIONS AND RECOMMENDATIONS

#### 16:51-13.1 Orders and decisions

Upon issuance of an order or decision of the Department, the party to whom the same is directed must notify the Department in writing on or before the date specified in said order or decision whether or not compliance has been made in conformity therewith.

#### 16:51-13.2 Recommendations

Upon the making of any recommendation by the Department, the party to whom the same is directed must within 15 days after the making of the recommendation, unless otherwise specifically required, notify the

Department in writing of the acceptance or rejection thereof. Failure to comply with this rule will be deemed an acceptance of the recommendation.

#### 16:51-13.3 Extension of time limits

In instances where the Department's decision or order contains a specific time or date of compliance, and the petitioner desires extension of such time limit, petition to the Department shall be made in writing at least five days before the expiration of the time limit.

#### 16:51-13.4 Answers to communications

Unless otherwise specified, any letter or telegram from the Department directing investigation of any matter under its jurisdiction must be complied with by the autobus company and a report received by the Department within 15 days from the date of the letter or telegram. If circumstances prevent compliance with this rule, the autobus company must advise the Department in writing, within the above prescribed period, of its inability to comply and the reasons therefor.

### SAMPLE ACCIDENT REPORT FORM— ALL OTHER UTILITIES REPORT OF ACCIDENTS

Report No. \_\_\_\_\_

Name of Reporting Utility: \_\_\_\_\_

Date of Accident: \_\_\_\_\_ Time of Day \_\_\_\_\_

Place of Accident: \_\_\_\_\_

Details of Casualties to Persons: \_\_\_\_\_

Details of Effect on Service: \_\_\_\_\_

Details of Accident (Nature and Cause): \_\_\_\_\_

Corrective Measures: \_\_\_\_\_

Recommendations to Avoid Recurrence: \_\_\_\_\_

SIGNED: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

## TREASURY-GENERAL

### DIVISION OF PENSIONS

Submit comments by February 19, 1987 to:

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

(a)

### Public Employees' Retirement System Loan Tolerances

#### Proposed Repeal and New Rule: N.J.A.C. 17:2-4.4

Authorized By: Public Employees' Retirement System,

Janice Nelson, Secretary.

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

Proposal Number: PRN 1987-44.

The agency proposal follows:

#### Summary

The proposed new rule provides that interest will be charged upon a member's unpaid loan balance when the member goes off the payroll. Under the current rule, there is in effect a grace period of eight months when no interest is charged if a member is off the payroll. The proposed new rule will impose interest upon the outstanding loan balance without the eight months grace period. If at the end of the scheduled loan period, there is a balance due of less than \$10.00, it will be written off; if the balance due is \$10.00 or more, the member will be assessed that amount.

#### **Social Impact**

The proposed new rule will affect the members of the Public Employees' Retirement System who go off the payroll with an outstanding loan balance. The affected members will now be assessed interest on an outstanding loan balance.

#### **Economic Impact**

The proposed new rule will have an economic impact upon members of the Public Employees' Retirement System who go off the payroll with an outstanding loan balance. Under the new rule, interest will accrue upon the outstanding loan balance immediately rather than having an eight month grace period as is the case under the current rule.

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

#### **17:2-4.4 Loan [revaluation] tolerance**

[(a) If a member is off the payroll and not contributing for a period of eight months or less, any outstanding obligation such as a loan or arrearage, will have the ending date of the obligation extended to cover the period off the payroll.

(b) In the event the member is off longer than eight months, the obligation will be revalued and an additional interest charge made.]

**Interest will be calculated on a periodic basis on the unpaid loan balance. If scheduled payments are not paid timely, interest will be accrued and added to the remaining outstanding loan balance. If, at the end of the loan schedule, there is a balance of less than \$10.00, it will be written off. If the balance is equal to or greater than \$10.00, the member will be assessed.**

### **(a)**

#### **Teachers' Pension and Annuity Fund Compulsory Retirement**

#### **Proposed Repeal: N.J.A.C. 17:3-6.15**

Authorized By: Anthony Ferrazza, Secretary, Teachers' Pension and Annuity Fund.

Authority: N.J.S.A. 18A:66-56.

Proposal Number: PRN 1987-45.

The agency proposal follows:

#### **Summary**

This proposal will delete the current rule on compulsory retirement. As a result of recent federal and State legislation and recent court cases, compulsory retirement ages are no longer enforceable within the Teachers' Pension and Annuity Fund. As a result, the current rule which is being proposed for repeal is no longer enforceable.

#### **Social Impact**

The proposed repeal will affect current and future members of the Teachers' Pension and Annuity Fund who will no longer be required to retire on the basis of a mandatory retirement age.

#### **Economic Impact**

The proposed repeal will not have any significant, adverse effect upon the members of the Teachers' Pension and Annuity Fund nor the public at large.

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

#### **17:3-6.15 [Compulsory retirement] (Reserved)**

[(a) All members shall be required to terminate their active membership effective as of the first of the month in which they attain age 71. The actual payment of retirement benefits will be subject to the regular filing requirements set forth in N.J.A.C. 17:3-6.1.

(b) The Fund shall send written notice to the member and his employer between 120 and 180 days in advance of the date on which the member shall be required to retire.

(c) Should a member fail to file "Application for Retirement Allowance" before his compulsory retirement date, he shall be granted the maximum allowance payable on his account; however, no retirement checks will be disbursed until he files the required application.

1. If an application is not filed with the Fund before a period of 30 days has elapsed after the Board has acted on his retirement, he shall not be eligible to exercise any of the available retirement survivorship options and his retirement on maximum allowance shall stand as approved.

2. When such a member files his application with the Fund, he shall be eligible to receive retirement benefits for the months that have elapsed since his compulsory retirement date, provided satisfactory evidence is received to show that he terminated employment as of his compulsory retirement date.

3. No retirement benefits shall be paid for any period the member continued in service beyond his compulsory retirement date, nor shall he receive any credit for retirement purposes for salary received or for service rendered beyond his compulsory retirement date.

(d) If a member's death occurs after the 30-day waiting period has been satisfied, but before he has filed the required application for retirement, the member shall be considered to be retired on maximum allowance for death benefit purposes. His estate shall be entitled to the retroactive retirement allowance due, in addition to any retired insurance benefits payable.]

## **TREASURY-TAXATION**

### **(b)**

#### **DIVISION OF TAXATION**

#### **Local Property Tax**

#### **Both Senior Citizen's and Veteran's Deductions**

#### **Repeal and New Rule: N.J.A.C. 18:14-2.11**

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:4-8.47.

Proposal Number: PRN 1987-50.

Submit comments by February 19, 1987 to:

John C. Raney

Superintendent

Local Property Tax Branch

Division of Taxation

CN 52

Trenton, NJ 08646

The agency proposal follows:

#### **Summary**

This proposal is authorized by N.J.S.A. 54:4-8.47. N.J.S.A. 54:4-8.40 et seq (P.L. 1963, c.172, as amended) provides for a deduction for a senior citizen from local property tax on a dwelling house in which he or she resides. The senior citizen's deduction is \$250.00. This \$250.00 deduction also applies to a person who may be less than 65 years old but is permanently and totally disabled. The Division of Taxation proposes to revise N.J.A.C. 18:14-2.11 governing the \$250.00 senior citizen's and disabled person's and their qualified surviving spouse's property tax deduction in order to conform the rule with a recent change in the New Jersey Constitution which grants claimants for the \$250.00 deduction the right to receive the \$50.00 veteran's property tax deduction, in addition, where entitlement to both deductions exists.

#### **Social Impact**

This proposal is desirable in view of the constitutional and legislative mandate that uniform assessment practices prevail throughout the State. Previous law prevented allowance of both benefits to claimants who now have that right to a veteran's deduction as well as a senior citizen's deduction.

#### **Economic Impact**

A definite economic benefit results to persons eligible who are of the age of 65 years or over, or disabled persons, and who are also eligible veterans. Prior to the legislative change which prompts this proposal, claimants for the \$250.00 deduction were required to waive entitlement to the \$50.00 veteran's deduction. With the enactment of P.L. 1985, c.200, the statute to which this proposal conforms, those claimants may now receive deductions in excess of the \$250.00 limit previously permitted.

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

18:14-2.11 [No deduction allowable to claimant receiving another deduction or exemption from taxes]

[The deduction is not allowable to any claimant receiving any other deduction or exemption from taxes provided for by any other law unless the claimant waives or renounces such other deduction or exemption from



(CITE 19 N.J.R. 196)  
OTHER AGENCIES

Interested Persons see Inside Front Cover

PROPOSALS

taxes provided for by any other law unless the claimant waives or renounces such other deduction or exemption, except said citizen and resident may receive in addition any homestead rebate or credit provided by law.]

18:14-2.11 Deduction in addition to veteran's deduction

(a) A claimant receiving a veteran's deduction provided under P.L. 1963, c.171, as amended, (N.J.S.A. 54:4-8.10 et seq.) may also be entitled to the deduction provided herein and, in addition, may receive any homestead rebate or credit provided by law.

1. Example: Mary Roe, who is a veteran and the surviving spouse of a veteran, upon reaching the age of 65 years, may be entitled to a deduction in the amount of \$350.00 (\$50.00 as a veteran's surviving spouse; \$50.00 as a veteran; and \$250.00 as a qualified senior citizen).

## OTHER AGENCIES

(a)

### PUBLIC EMPLOYMENT RELATIONS COMMISSION Appeal Board

**Proposed Amendment: N.J.A.C. 19:17-2.1**

**Reproposed New Rules: N.J.A.C. 19:17-3.1 through  
N.J.A.C. 19:17-4.5**

Authorized By: James W. Mastriani, Chairman, Public  
Employment Relations Commission.

Authority: N.J.S.A. 34:13A-5.9.

Proposal Number: PRN 1987-41.

A public hearing will be held at 10:00 A.M. on February 17, 1987 at:  
Public Employment Relations Commission  
495 West State Street  
Trenton, New Jersey 08625

Submit comments by February 19, 1987 to:  
James W. Mastriani, Chairman  
Public Employment Relations Commission  
495 W. State Street  
CN 429  
Trenton, NJ 08625; and  
General L. Dorf, Acting Chairman  
Public Employment Relations Commission Appeal Board  
495 W. State Street  
CN 429  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

In the August 4, 1986 issue of the New Jersey Register, at 18 N.J.R. 1521(a), the Public Employment Relations Commission proposed new rules, N.J.A.C. 19:17-3.1 through N.J.A.C. 19:17-4.5 and an amendment to N.J.A.C. 19:17-2.1. The proposal (PRN 1986-295) was prompted by the decisions of the United States Supreme Court in *Chicago Teachers Union v. Hudson*, \_\_\_ U.S. \_\_\_, 54 U.S.L.W. 4231, 89 L.Ed. 2d. 232, 121 LRRM 2793 (3/4/86), and the New Jersey Supreme Court in *Boonton Bd. of Ed. of the Town of Boonton v. Judith M. Kramer*, 99 N.J. 523 (1985), cert. den. \_\_\_ U.S. \_\_\_, 89 L. Ed. 2d. 613 (3/10/86). During the period for public comment and at a public hearing held by the Public Employment Relations Commission Appeal Board September 11, 1986 at the Commission's and the Appeal Board's Trenton office, written and/or oral comments were made by the following persons and organizations:

1. Local 195, International Federation of Professional and Technical Engineers, AFL-CIO (IFPTE)
2. The New Jersey State Motor Vehicle Employees Union, Local No. 518, SEIU, AFL-CIO (SEIU)
3. New Jersey Education Association (NJEA)
4. National Right to Work Legal Defense Foundation, Inc. (Foundation)
5. Rutgers Council of AAUP Chapters (Rutgers AAUP)
6. Communications Workers of America, AFL-CIO (CWA)
7. Joseph Battito
8. John R. Drdak
9. Larry Lang
10. American Association of University Professors (AAUP)

11. Robert Angelo, New Jersey Director, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME)

12. Sidney H. Lehmann, Esq.

As a result of the comments the Commission and the Appeal Board (hereafter referred to as the agencies) have decided to make a new rule proposal which differs in substantial fashion from PRN 1986-295 so as to require republication and a new period for public comment. The Commission and the Appeal Board have also decided to hold another public hearing.

As with the proposal published at 18 N.J.R. 1521(a), the new rule proposal would establish requirements for majority representative organizations which collect, in accordance with N.J.S.A. 34:13A-5.5 through 5.9, representation fees in lieu of dues from public employees who are represented by, but are not members of, the majority representative organization. The rules would implement court mandates that employees who pay a representation fee in lieu of dues be provided, prior to the collection of the fee: (1) with an adequate explanation of the basis of the fee charged by the majority representative showing expenditures for its most recently completed fiscal year; (2) with a statement describing the demand and return system established and maintained by the majority representative by means of which an employee paying a representation fee in lieu of dues can obtain review of the amounts assessed; and (3) a period of at least 30 days in which to review the statement received from the majority representative and its affiliates and decide whether to request review of the amounts assessed in the majority representative's demand and return system.

The rules would make a major change in the way the expenses of the majority representative are reviewed by requiring that representation fees be based upon the expenses of the majority representative for its most recently completed fiscal year. Currently many majority representatives assess fees for their current year's expenditures and accordingly are not able to review and audit their expenses until after the year is complete. Such practice is not compatible with the requirements of *Hudson* that a nonmember be given audited information concerning the expenditures of the union in advance of payment of the fee and receive a reasonably prompt determination if the nonmember wishes to obtain a review of the amounts assessed. Accordingly *Hudson* (121 LRRM at 2799 n.18) and *Boonton* (99 N.J. at 550) together have directed that a majority representative base its fees on its previous year's expenditures. The rules would also establish time limits for the completion of demand and return system proceedings and for the filing of petitions by nonmember employees with the Appeal Board seeking review of the amounts assessed by the majority representative. The rules would also require a written decision in demand and return system proceedings and would provide for the payment of interest on amounts returned to nonmembers.

A summary of public comments follows. Section A contains comments and responses on general issues. Section B contains comments and responses on specific rules of proposal PRN 1986-295 as published at 18 N.J.R. 1521(a).

#### Summary, Public Comments and Agency Responses

##### A. GENERAL COMMENTS AND RESPONSES

###### I. Necessity for rulemaking and purpose of rules.

COMMENTS: The National Right to Work Legal Defense Foundation (Foundation) stated that rulemaking should await the outcome of continued litigation in *Robinson v. N.J.*, 547 F. Supp. 129 (D.N.J. 1982), supplemental opinion 565 F. Supp. 942 (D.N.J. 1983), rev'd and rem'd 741 F.2d 598, 117 LRRM 2001 (3rd Cir. 1984), pet. for rehearing *en banc* den. 9/84 \_\_\_ F.2d \_\_\_ (1984), cert. den. \_\_\_ U.S. \_\_\_, 105 S.Ct. 1228, 84 L.Ed.2d 366 (1985). The Foundation also commented that the rules as proposed should be redrafted by "sole and pinpointed reference" to *Hudson*.

Mr. Larry Lang, a State employee who pays a representation fee in lieu of dues to a majority representative, expressed frustration at having to resort to both the Commission and the Appeal Board to protect his rights. He feels his rights are not being adequately protected. He believes the regulations as proposed did not provide for the safeguards required by *Hudson* and if adopted would expose state officials to potential civil rights act liability.

Robert Angelo of the American Federation of State, County and Municipal Employees (AFSCME) urged that the Appeal Board and the Commission be sensitive to the practical and economic realities faced by unions and design rules which will not be unduly burdensome or wasteful of the resources of majority representatives. He urged that the rules be mindful of the fact that many unions operate through several layers of

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

organizations, each with separate budgets and expense statements. He also said his organization agreed with the comments and presentations made by the representatives of CWA, IFPTE and SEIU.

RESPONSE: *Robinson*, which upheld the validity of N.J.S.A. 34:13A-5.5 through 5.9, is pending before the U.S. Court of Appeals for the Third Circuit in an appeal of the U.S. District Court's actions following remand. Since litigation began in 1982, and there is no finite date when it will end, delay in implementing the mandates of the *Hudson* and *Boonton* decisions is not advisable. Where appropriate the new proposal tracks the language used in the *Hudson* and *Boonton* decisions. The rules as originally proposed included the safeguards required by the court cases and alluded to by Mr. Lang and the new proposal also contains the required features. Regarding Mr. Lang's concern about multiple forums, court decisions and administrative rules (*City of Hackensack v. Winner*, 82 N.J. 1 (1980) and N.J.A.C. 1:1-14.1 et seq.) mandate consolidation of multiple administrative filings which arise from the same event.

II. Maximum amount of representation fees in lieu of dues, treatment of objecting and non-objecting nonmembers.

COMMENTS: The New Jersey Education Association (NJEA), the Communications Workers of America (CWA), the American Association of University Professors (AAUP), the Rutgers Council of the AAUP (Rutgers AAUP), Sidney H. Lehmann, a labor relations attorney, and Robert Angelo of the American Federation of State, County and Municipal Employees (AFSCME), who stated he shared the views expressed by CWA, objected to the prohibition in the rules against use of the fees of non-objecting, nonmembers to support political and ideological lobbying only incidentally related to the terms and conditions of employment. These speakers stated that every court and administrative agency decision has adhered to the premise that "dissent is not to be presumed." They believe that the rules should continue to allow majority representatives to support political and ideological activity with funds collected from representation fee payers who do not request refunds of the pro rata share of their fee which is spent on such activities.

These objections were made by one or more of the speakers concerning the following proposed rules N.J.A.C. 19:17-3.3, 3.4, 4.1, 4.2, 4.3, 4.4 and 4.5.

In addition, Mr. Joseph Battito, a State employee who pays a representation fee submitted a letter stating that representation fees should be either 100 percent or nothing and that unions which lack the power to go on strike are ineffective.

RESPONSE: *Boonton* bars majority representatives from using representation fees in lieu of dues for any purpose "that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied to the cost of any other benefits available only to members of the majority representative." N.J.S.A. 34:13A-5.5. Referring to this section of the statute and the 85 percent maximum allowable fee, the Court commented,

This ceiling clearly reflects the legislative intention to minimize the likelihood that nonmember fees will be used for purposes proscribed by the statute. This clear legislative purpose cannot be reconciled with the interpretation of the statute urged by appellant, i.e., that subjecting impermissible lobbying expenses to rebate through the demand-and-return system necessarily reflects a legislative acquiescence in including such expenses in the annual representation fee charged to nonmembers. We reject that interpretation and hold that the provision requiring unions to refund fees used for impermissible political purposes was intended to describe a specific category of expenditures that could not constitutionally be financed by nonmember fees. It was not designed to authorize the intentional collection of such fees from nonmembers on the theory that the money would later be recoverable through the rebate process. 99 N.J. at 549-550.

Although federal courts have allowed unions to finance such activities with the agency shop fees of those nonmembers who do not affirmatively object, the agencies are obligated to abide by the mandates of state court decisions construing the representation fee legislation. Hence, the prohibition reflected in the proposed rules is retained in the new proposal. The agencies recognize that fair arguments can be mustered on both sides of this question. However, the rules still would preclude the use of any portion of representation fees in lieu of dues "in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment." N.J.S.A. 34:13A-5.5(c). In short, that portion of the representation fee in lieu of dues which was formerly characterized as "refundable," would, under the proposal, no longer be chargeable to any nonmember regardless of objection. The rules do not prohibit a union from expending its funds on such activities

through solicitations of members or nonmembers as allowed by law; however, representation fees in lieu of dues may not be used for such purposes.

Regarding Mr. Battito's comments, the 85 percent maximum representation fee in lieu of dues is set by statute and cannot be changed by administrative rule, nor can existing law with respect to public employee strikes.

#### B. COMMENTS ON SPECIFIC SECTIONS OF PRN 1986-295

N.J.A.C. 19:17-2.1 Rules to be read in conjunction with the rules of the Office of Administrative Law

COMMENTS: No comments were received regarding the proposed amendment to this rule. The proposed amendment to this rule remains the same in the new proposal.

19:17-3.1 Designation of fiscal year

COMMENTS: CWA proposed deletion of this section, saying that it would require unions which operate on other than a fiscal year to change their arrangements. NJEA found this rule acceptable as drafted.

RESPONSE: Since the decisions require annual recalculation of the fee, majority representatives must adopt a 12-month accounting system if they do not already have one. The rules does not require that all fiscal years begin on the same date. The rule is unchanged in the new proposal.

19:17-3.2 Designation of dues year

COMMENTS: CWA would eliminate reference to the fiscal year for the reasons expressed in its comments to 3.1.

NJEA found this rule acceptable as drafted.

RESPONSE: Same as in 3.1.

19:17-3.3 Annual notice to nonmembers; Copy to public employer

COMMENTS: IFPTE and SEIU objected to the requirement that the notice mandated by proposed section 3.3(a) would require personal service on each fee payer. They view this requirement as too burdensome and not required by *Hudson*. These unions state that *Hudson* and *Boonton* only require that the information be available in a non-burdensome manner, and believe that having to make a telephone call or traveling to the union office to get the information would not be burdensome to a representation fee payer. Robert Angelo of AFSCME shares these views.

The Foundation urges that it should be clear that the notice must go to all nonmembers, not just objectors.

RESPONSE: *Hudson* does not expressly require personal service but does say that the fee payer is to be "provided" information. Since *Hudson* also says that the fee payer should not have to object to get information, the flow of information must be initiated by the majority representative and the fee payer should not have to affirmatively request the information. *Boonton*, (P.E.R.C. No. 84-3, 9 NJPER 472 (¶14199 1983)) requires that a nonmember be personally notified of the majority representative's demand and return system. It rejected the posting of the information on an employee bulletin board as adequate notice to the nonmember. A majority representative is responsible for providing all representation fee payers with an adequate explanation of the basis of the fee. The rule would not bar alternative means of providing the information, but if personal service is the only way the information can be received by all fee payers, then the majority representative must use that method. The rule has been redrafted to reflect the language of *Hudson*. Other changes in the rules as originally proposed would reduce the amount of information a union must provide nonmembers and would reduce the burden on majority representatives. See 3.3(a)1 through 4. N.J.A.C. 19:17-3.3(a)1.

COMMENTS: The Foundation contends that *Hudson* requires that the statement of expenses which the majority representative provides nonmembers must be verified by an independent auditor. It also states that the focus of the audited statements should be to provide proof that fees were used for collective bargaining and contract administration costs.

CWA agrees with the aim of this subsection but proposes slightly different language.

RESPONSE: The Foundation's citation to *Hudson* regarding independent verification is accurate and the rule has been redrafted accordingly. The detail presently required in PRN 1986-295 is sufficient to convey the information required by *Hudson*, but the new proposal will more closely track the language of the decision. *Hudson* does not require that the majority representative provide a complete financial statement for its affiliates. With respect to funds that a majority representative pays to affiliates, *Hudson* does require "either a showing that none of it was used to subsidize activities for which nonmembers may not be charged, or an explanation of the share that was so used." 121 LRRM at 2799, n.18.

The new proposal more accurately reflects the majority representative's obligation as explained by *Hudson*, to provide information concerning the activities of its affiliates.

N.J.A.C. 19:17-3.3(a)2.

COMMENTS: CWA proposed elimination of this paragraph since *Hudson* allows unions to base their fees on prior's year's expenditures. Hence there would be no need for current expense projections to be provided to nonmembers.

RESPONSE: The agencies agree with CWA's comment. This paragraph has not been included in the rule as repropoed.

N.J.A.C. 19:17-3.3(a)3.

COMMENTS: Those speakers raising the "objector" issue urged that the language be clarified to retain the distinction between nonmembers who file objections and those who do not.

RESPONSE: The "objector" issue is discussed in Section A.II of this summary. Section 4.1 and not this section, governs the amount of the fee. The rule has been redrafted to eliminate unnecessary verbiage. The paragraph is renumbered to reflect the elimination of the original paragraph a(2).

N.J.A.C. 19:17-3.3(a)4.

COMMENTS: NJEA assumed that the interest rate mentioned in the rule would be the rate in effect at the time the notice is provided.

RESPONSE: The agencies concur with the Association's view of this rule. The notice would not have to be reissued every time there is a fluctuation in the interest rate. The rule is modified to clear up any misunderstanding. The reference to affiliates in the rule as originally proposed has been eliminated. A nonmember need only be informed where the majority representative is keeping his or her fee. This paragraph has been renumbered (a)3 in the reproposal.

N.J.A.C. 19:17-3.3(a)5.

COMMENTS: NJEA comments that the amount of the fee in the notice should be reflective of the amount for fee payers who do not file objections, since the fee would be different for those fee payers who seek a pro-rata return as defined in the statute.

CWA proposes amending the language to require either the amount of the fee or the formula for calculating the fee, in order to accommodate organizations which charge percentage dues. Rutgers AAUP and the AAUP also took this position.

The Foundation urges that subsection (a)5. remain as originally proposed requiring the fees to be expressed as a dollar and cents amount.

RESPONSE: The proposal has been changed to allow a majority representative to inform a nonmember of the amount of the fee without necessarily expressing it as a dollar and cents figure. The dollar and cents requirement would be virtually impossible to meet for unions which charge percentage dues, because changes in employee salary, which would also change the fee, may not be known at the beginning of the dues year. When the fee is actually deducted from the paycheck, the nonmember's pay stub will normally reflect the dollar and cents amount that has been deducted. The new proposal is renumbered as (a)4.

N.J.A.C. 19:17-3.3(b)

COMMENTS: NJEA, IFPTE, SEIU and Rutgers AAUP objected to the requirement that the notice provided by N.J.A.C. 19:17-3.3(a) should be given to the public employer. They said the information is of no concern to the employer and it could create the possibility of employer involvement in disputes over the accuracy of the information contained in the notice. It could increase employer exposure to liability for union transgressions and could involve employers in union affairs in violation of N.J.S.A. 34:13A-5.4(a)(2) prohibiting employer domination or assistance to employee organizations.

The Foundation disagrees that the employer should have no obligation to verify the statement, contending that *Hudson* imposes employer liability for violations of nonmembers' constitutional rights.

Mr. John Drdak, a State employee who pays a representation fee in lieu of dues, stated he represented the views of 100 of his co-workers. He urged modification of section 3.3(b) to have the employer made responsible for verifying information contained in the notice, because individual employees or small groups lacked the resources to hire an accountant to do so.

RESPONSE: This rule was originally proposed in response to considerations of possible employer liability for improper majority representative administration of representative fee systems. A federal court has held that an indemnification clause in a collective bargaining agreement can protect employers. See *McGlumphy v. Fraternal Order of Police*, 633 F. Supp. 1074, 1084 (N.D. Ohio 1986). The adequate explanation of the basis of the fee required by *Hudson* is information for the benefit of representation

fee payers and the agencies agree that there is no need to provide it directly to the employer. Since the statement required to be furnished by this section will be verified by an independent auditor, there will be an initial check on the majority representative's expenditures backed up by Act's requirements the majority representative bear the burden of justifying its expenditures in both demand and return proceedings and in cases brought before the Appeal Board. However, administrative agency decisions, including *Boonton*, have found that an employer may check that a majority representative has complied with the prerequisites required by N.J.S.A. 34:13A-5.5 and 5.6 including the establishment of a demand and return system, in order to be eligible to collect representation fees in lieu of dues. Thus the original proposal is redrafted to require only that the demand and return system portion of the notice be provided to the public employer.

19:17-3.4 Amount of representation fee in lieu of dues;  
Annual adjustment

COMMENTS: The organizations and individuals which believe that majority representatives can use the fees of non-objecting fee payers to support political and ideological activity object to the maximum representation fee allowed by this rule for the reasons set forth in Section A.II of this summary. NJEA and CWA also object to what they term a "worst of all worlds" method of annually calculating the fee. They contend that the majority representative will always be placed at a disadvantage under this system and suggest that the rule be rewritten in accordance with the directions in *Hudson* and *Boonton* that the fee can properly be based on a majority representative's expenditures in the previous year.

Rutgers AAUP contended that its fee should be based on projections for current expenses rather than on a prior year's expenditures. It contended that any deviations from the projections can be corrected through escrow provisions and subsequent adjustments.

RESPONSE: As set forth in Section A.II of this summary *Boonton* bars majority representatives from using representation fees in lieu of dues for any purpose "that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied to the cost of any other benefits available only to members of the majority representative." N.J.S.A. 34:13A-5.5. See 99 N.J. at 548 to 550. This prohibition applies regardless of whether a representation fee payer affirmatively makes known dissent from the majority representative's support of such activities. Thus the maximum fee set by this rule would not be adjusted based upon objection or lack thereof.

The agencies agree that the rule should be rewritten to base representation fees on the majority representative's expenditures in the prior fiscal year. This would prevent either a "worst of all worlds" or a "best of all worlds" approach and would provide consistency in succeeding years.

The practice of using a prior year's expenditures was endorsed in the court decisions. *Hudson*, in noting that absolute precision was not required stated, "the Union cannot be faulted for calculating its fee on the basis of its expenses during the preceding year." 121 LRRM at 2799, n.18. *Boonton* commands "[W]e construe the statutorily mandated demand and return system to require that the majority representative compute the annual representation fee charged to nonmembers on the basis of the actual expenditures during the prior year." 99 N.J. at 550. These cases also require a quick final determination of the amounts properly chargeable to nonmembers. Using current expense budgets would require waiting until the end of the year to even begin the adjustment process, a delay which is no longer acceptable.

N.J.A.C. 19:17-3.4(b)

COMMENTS: CWA proposes elimination of this section.

RESPONSE: *Boonton* assumes that a representation fee will be reviewed and readjusted annually. See 99 N.J. at 551. The provision is retained in the new proposal.

19:17-4.1 Period for filing of rebate requests

COMMENTS: NJEA believes that the date the nonmember receives the information contained in Section 3.3(a) should trigger the 30-day period for registering an objection to the fee. NJEA, CWA, IFPTE and SEIU would eliminate 4.1(c), allowing a late notice if collections have not yet commenced because of the administrative problems it would cause. They argue that the 30-day period following the nonmember's receipt of the information would be adequate.

CWA would modify this section by allowing a nonmember 30 days from receipt of the information contained in the Section 3.3(a) notice to register for a refund of political and ideological expenses, and then an additional 30-day period after the refund is determined to challenge the amount of the reduction.



The Foundation felt that a 30-day period was inadequate to give nonmembers the opportunity to register their objections if failure to comply with that deadline would preclude further review by the Appeal Board.

**RESPONSE:** Since the fiscal information contained in the Section 3.3(a) notice will not have to be provided to the public employer, the 30-day period in subsection 4.1(a) will be triggered in the new proposed subsection by the nonmember's receipt of information. The agencies believe that 30 days is adequate time to permit the nonmember to request a review of the amount assessed. The agencies agree that 4.1(c) would present an administrative burden and would probably be unduly confusing both to those who will file and respond to requests for review of representation fees. Subsection (c) has been eliminated.

The right to appeal to the Appeal Board is a statutory requirement of every demand and return system. Current procedural rules N.J.A.C. 1:20-4.1 contemplate exhaustion of demand and return system proceedings, but do not absolutely bar filing with the Appeal Board if the majority representative's demand and return system is bypassed (N.J.A.C. 1:20-4.1(b)). The rules also allow a nonmember to intervene in a pending Appeal Board case involving the same collective negotiations unit notwithstanding failure to exhaust a demand and return system (N.J.A.C. 1:20-4.1(c)). The agencies believe exhaustion is compatible with *Boonton* and *Hudson* so long as the determination is reasonably prompt. Hence the proposed rules would allow a nonmember to move on to the Appeal Board 60 days after the commencement of a majority representative's demand and return system (see N.J.A.C. 19:17-4.3). However, a determination as to whether exhaustion is required under particular circumstances will be made, as it currently is, on a case-by-case basis.

The agencies reject CWA's two-tiered system for two reasons: First, as explained previously, *Boonton* precludes the use of any nonmember funds for political and ideological activity unrelated to the terms and conditions of employment. Second, even if such expenditures were permitted, the amount so expended by the majority representative would be identified in the annual notice, which triggers the period for filing objections. A single objection could serve to both request such a refund and challenge its amount.

19:17-4.2 Fees of nonmembers requesting rebates; Escrow of amounts reasonably in dispute

**COMMENTS:** The Foundation objected to escrow accounts which are solely in the control of the union and referred to the practice in Massachusetts where the union and the fee payers jointly open and administer such accounts. Mr. Larry Lang also urged that the escrow accounts be neutrally administered.

The NJEA finds this rule acceptable as drafted.

CWA suggests language changes to more closely track the language in *Hudson* concerning the escrow of amounts reasonably in dispute.

**RESPONSE:** The rules, as proposed, would not preclude jointly administered accounts, although the Commission does not read the law or court decisions as presently requiring such arrangements. In Massachusetts fees are paid directly by the nonmembers, rather than collected through payroll deductions. The Commission finds the escrowing of amounts reasonably in dispute, together with the consequences of underestimating such amounts, to provide sufficient incentive to majority representatives to insure for the proper escrow of representation fees. Subsection (b) has been changed to eliminate unnecessary verbiage.

19:17-4.3 Time from completion of demand and return system

**COMMENTS:** NJEA finds this rule acceptable as drafted.

CWA proposes major changes in this section which would require that a neutrally appointed arbitrator preside over a majority representative's demand and return system; that a decision be rendered within 90 days of the close of the objections period; that objectors may completely bypass the demand and return system and proceed directly before the Appeal Board; and where a party proceeds directly to the Appeal Board, the board within 60 days refer the matter to the Office of Administrative Law for determination; and that the Administrative Law Judge render his decision within 30 days after hearing.

IFPTE and SEIU comment that the 90-day time limit for completion of demand and return proceedings is too short and would inhibit the potential for amicable resolution of fee disputes at the lowest possible level. Rutgers AAUP notes that it represents employees which work both regular calendar years and academic years and urges that more time should be granted by rule to allow a later completion of demand and return system proceedings for the latter class of employees. IFPTE and SEIU also content that subsections (b) and (c) would also inhibit settlement possibilities and provide for duplicative hearings.

**RESPONSE:** The rules would neither preclude a union from allowing objectors to bypass the internal system nor would it bar a union from having a neutrally appointed arbitrator preside in its demand and return system. The Appeal Board is a disinterested body to review representation fee objections. Current procedural rules N.J.A.C. 1:20-4.1 contemplate exhaustion of demand and return system proceedings, but do not absolutely bar filing with the Appeal Board if the majority representative's demand and return system is bypassed (N.J.A.C. 1:20-4.1(b)). The agencies believe exhaustion is compatible with *Boonton* and *Hudson* so long as the determination is reasonably prompt. Hence the new proposal would allow a nonmember to move on to the Appeal Board 60 days after the commencement of a majority representative's demand and return system or sooner if demand and return system proceedings are complete. Time limits for the issuance of decisions by administrative law judges and agency heads are set by statute and cannot be modified by administrative rule. Such existing time limits are consonant with *Hudson's* reasonably prompt determination requirement.

A union can expand the period it has to complete demand and return proceedings by providing early notice and delaying its collection of fees, since the time for completion of the demand and return proceedings starts from the date of collection. A majority representative like Rutgers AAUP can make adjustments in its dues year if it has employees who begin work on July 1 and September 1, by starting the dues year on the latter date.

Allowing exhaustion after 60 days would not necessarily inhibit voluntary resolutions of fee disputes. The Appeal Board's experience has been that the majority of its cases is settled prior to the commencement of administrative hearings. The rule allows a fee payer to continue in the majority representative's demand and return system even while pursuing an appeal if such proceedings will be productive. The completion of a majority representative's demand and return system, even while appeals are pending at the Board, could also provide the basis for a settlement of such appeals. However, a prompt determination is required by *Hudson*.

19:17-4.4 Results of demand and return system, payment of interest on amounts returned

**COMMENTS:** NJEA finds this rule acceptable as drafted.

CWA agrees with this section but has proposed alternative language which it believes would better achieve the same object.

IFPTE and SEIU viewed subsection (c) as permitting a nonmember to receive interest on the total amount escrowed, not solely on the portion attributable to the nonmember.

Mr. John R. Drdak urged that the rules contain penalties for a union which does not comply with its provisions or delays in the transmission of refund checks to fee payers.

**RESPONSE:** Subsection 4.4(c) is not intended to give a nonmember anything other than the interest on the amount to be returned to him. The agencies disagree that the rule would provide a windfall. The prior proposal has been modified to incorporate some of the suggestions made for tightening the language.

This rule require that refund checks accompany the majority representative's determination and penalizes unions which fail to escrow sufficient funds by assessing judgment rate interest.

19:17-4.5 Time for filing petitions with Appeal Board, extension and tolling of time limits

**COMMENTS:** CWA and NJEA proposed modifications which would reduce the time period for filing with the Appeal Board to 30 days from receipt of the demand and return system decision.

**RESPONSE:** The Board and the Commission believe it advisable to maintain the same six-month statute of limitations for Appeal Board filings as is provided for unfair practice proceedings. The operative event to start the six-month period is the date payroll deductions for the dues year commenced. Subsection (b), as originally proposed, has language which is unnecessary since a determination of whether a petition is timely can be made case-by-case. It is not included in the new proposal.

#### Social Impact

The adoption of the proposed subchapters will implement the mandates of the New Jersey and United States Supreme Courts that labor organizations which are the majority representatives of collective negotiations units of public employees in New Jersey adopt procedures which will safeguard the constitutional rights of public employees who pay representation fees in lieu of dues to such majority representative organizations. The courts have held that the right of nonmembers not to contribute toward activities of the labor organizations which are not of an ideological or political nature unrelated to collective negotiations requires that majority representatives provide such employees, prior to receiving their representation fees, with information concerning the expenditures of the

majority representative and its affiliate sufficient to gauge the propriety of the majority representative's fee. The decisions also suggest that majority representative establish escrow arrangements to avoid the temporary use of representation fees to finance such activities. The procedures adopted by the majority representatives to allow nonmembers to challenge the propriety of the representation fee in lieu of dues must also provide for a reasonably prompt determination before an impartial tribunal. The Public Employment Relations Commission Appeal Board is such a tribunal and is required by law to be the last step in every demand and return system. These rules require majority representatives to adopt procedures to implement these mandates and will promote statewide uniformity in procedures adopted to implement agreements which allow majority representatives to collect representation fees in lieu of dues.

#### Economic Impact

The proposed rules require that majority representatives which receive requests for review of representation fees in lieu of dues place any amounts reasonably in dispute into interest-bearing escrow accounts pending a determination of the amounts to be refunded. The period of time such funds will remain in such accounts will vary with the amounts reasonably in dispute, the length of time needed for a determination by the majority representative, and whether there are appeals of that determination to the Appeal Board and then to the courts. Interest on such accounts will be payable to the majority representative and the nonmember employees who have requested review in the same percentage as the principal amounts to be refunded by the majority representative.

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

#### SUBCHAPTER 2. PROCEDURES

##### 19:17-2.1 Rules to be read on conjunction with the rules of the Office of Administrative Law

These rules are to be read in conjunction with the Uniform Administrative Procedure Rules of Practice (UAPRP), N.J.A.C. 1:1, and [any] the rules of special applicability for hearings initiated in contested cases before the Public Employment Relations Commission Appeal Board, [hereafter adopted by the Office of Administrative Law] N.J.A.C. 1:20.

#### SUBCHAPTER 3. AMOUNT OF REPRESENTATION FEE IN LIEU OF DUES

##### 19:17-3.1 Designation of fiscal year

(a) Every majority representative which collects a representation fee in lieu of dues shall establish a fiscal year system of accounting for the expenditures of such organization.

(b) The fiscal year may be the calendar year or any other 12 month period.

##### 19:17-3.2 Designation of dues year

(a) Every majority representative which collects a representation fee in lieu of dues shall establish a dues year.

(b) The dues year may be the calendar year or any other 12 month period, except that the dues year may not commence prior to the start of the fiscal year.

##### 19:17-3.3 Annual notice to nonmembers; copy of demand and return system to public employer

(a) Prior to the commencement of payroll deductions of the representation fee in lieu of dues for any dues year, the majority representative shall provide all persons subject to the fee with an adequate explanation of the basis of the fee, which shall include:

1. A statement, verified by an independent auditor, of the expenditures of the majority representative for its most recently completed fiscal year. The statement shall set forth the major categories of expenditures and shall also identify expenditures of the majority representative and its affiliates which are in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of benefits only available to nonmembers of the majority representative.

2. A description of the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6, including instructions to persons paying the representation fee in lieu of dues as to how to request review of the amount assessed as a representation fee in lieu of dues.

3. The name and address of the financial institution where the majority representative maintains an account in which to escrow portions of representation fees in lieu of dues which are reasonably in dispute. The interest rate of the account in effect on the date the notice required by (a) above is issued shall also be disclosed.

4. The amount of the annual representation fee in lieu of dues, or an explanation of the formula by which the representation fee is set, and the schedule by which the fee will be deducted from pay.

(b) The majority representative shall provide a copy of the demand and return system referred to in (a)2. above to the public employer.

##### 19:17-3.4 Amount of representation fee in lieu of dues; annual adjustment

(a) The maximum representation fee in lieu of dues assessed nonmembers in any dues year shall be the lower of:

1. Eighty-five percent of the regular membership dues, fees and assessments charged by the majority representative to its own members.

2. Regular membership dues, fees and assessments, charged by the majority representative to its own members, reduced by the percentage amount spent during the most recently completed fiscal year by the majority representative and any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative on benefits available to or benefitting only its members and in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment. The amount shall be based upon the figures contained in the statement provided nonmembers prior to the start of the dues year in accordance with N.J.A.C. 19:17-3.3(a)1.

(b) Every majority representative shall annually recalculate its representation fee in lieu of dues in accordance with (a) above.

#### SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE IN LIEU OF DUES

##### 19:17-4.1 Period for filing of requests for review

(a) Each nonmember shall be afforded a period of at least 30 days after the majority representative has provided the information described in N.J.A.C. 19:17-3.3(a) within which to file a request for review of the amounts assessed by the majority representative as the nonmember's representation fee in lieu of dues.

(b) Any request for review of a representation fee in lieu of dues, filed within the time period set by the majority representative in accordance with (a) above, will be deemed effective to entitle the employee to a return of any portion of the employee's representation fee in lieu of dues which is determined to be non-chargeable to the employee.

##### 19:27-4.2 Fees of nonmembers requesting rebates; escrow of amounts reasonably in dispute

(a) Prior to receiving representation fees in lieu of dues in any dues year, the majority representative shall open an interest-bearing account in any financial institution in which to place in escrow all or part of representation fees in lieu of dues to be collected from nonmembers who have filed timely requests for review pursuant to N.J.A.C. 19:17-4.1.

(b) The majority representative shall place in escrow any amount which is reasonably in dispute.

##### 19:17-4.3 Time for completion of demand and return system

(a) Proceedings in the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6 shall be completed within 60 days after the commencement of payroll deductions of representation fees in lieu of dues for the current dues year.

(b) After expiration of the period set forth in (a) above, or the completion of demand and return system proceedings, whichever date is earlier, any nonmember who has a pending request for review shall be deemed to have exhausted demand and return system proceedings pursuant to N.J.A.C. 1:20-4.1 and N.J.A.C. 19:17-4.5 and may file a petition of appeal with the Appeal Board in accordance with N.J.A.C. 1:20-6.1.

(c) Any majority representative which has commenced, but has not completed, demand and return system proceedings within the time set forth in (a) above shall continue such proceedings to completion, notwithstanding the filing of petitions with the Appeal Board by nonmembers who have requests for review pending with the majority representative, unless all pending requests have been withdrawn or presented to the Appeal Board.

(d) This section shall also apply to demand and return system proceedings conducted by any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative.

##### 19:17-4.4 Results of demand and return system, payment of interest on amounts returned

(a) On completion of demand and return system proceedings, a written decision shall be served on each nonmember whose request for review of the fee is involved in such proceeding.

(b) If the demand and return system proceedings results in a determination that the amount charged to the nonmember was in excess of the amount

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

allowed by statute, such excess amount shall accompany the written decision.

(c) If the amount returned is equal to or less than the portion of the nonmember's representation fee held in the majority representative's escrow account, then the actual interest earned on the amount returned shall be paid to the nonmember.

(d) If the amount returned is greater than the portion of the nonmember's representation fee held in the majority representative's escrow account, then

the nonmember will receive interest payable at the judgment rate for the entire amount of the rebate. (See N.J. Court Rules, *R. 4:42-11.*)

19:17-4.5 Time for filing petitions with Appeal Board

A petition of appeal seeking review by the Appeal Board of a representation fee in lieu of dues charged by a majority representative pursuant to N.J.S.A. 34:13A-5.5 shall be filed within six months after payroll deductions to collect the petitioner's fee have commenced.

---



# RULE ADOPTIONS

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF SOLID WASTE MANAGEMENT

#### Board of Public Utilities

#### Interdistrict and Intradistrict Solid Waste Flow

#### Joint Adopted Amendment: N.J.A.C. 7:26-6.5

Proposed: November 3, 1986 at 18 N.J.R. 2171(a).

Adopted: December 5, 1986 by Richard T. Dewling,  
Commissioner, Department of Environmental Protection, and  
December 18, 1986 by Barbara A. Curran, President, Board  
of Public Utilities.

Filed: December 23, 1986 as R.1987 d.71, **without change.**

Authority: N.J.S.A. 13:1E-6, 13:1E-23 and 48:13A-1 et seq.

Effective Date: January 20, 1987.

Expiration Date: November 4, 1990.

DEP Docket No. 043-86-10.

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

Notice of the proposed rule amendment was published in the New Jersey Register at 18 N.J.R. 2171(a). That notice also advised that a public hearing has been scheduled for November 19, 1986 at 2:00 P.M. at the New Hanover Township Municipal Building, Main Street, Cookstown, Burlington County, New Jersey to afford the public an opportunity to be heard on this amendment. In addition, a Notice of Public Hearing with a copy of the New Jersey Register notice attached was issued by the Department to a Burlington County distribution list of solid waste collector/haulers and public officials. Both notices invited written comments to be submitted on or before December 3, 1986.

**No comments received.**

**Full text** of the adoption follows.

7:26-6.5 District waste flow planning requirements and disposal facility designations

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

(c) Waste flows within, into, and out of the Burlington County District:  
1. (No change.)

2. Except as provided in (c)2i and ii, below, all waste types 10, 13, 23, 25, and 27 generated from within the Burlington County municipalities of Beverly City, Bordentown City, Bordentown Township, Burlington Township, Chesterfield, Delanco, Edgewater Park, Fieldsboro, Florence, Mansfield, New Hanover, North Hanover, Pemberton Township, Pemberton Borough, Springfield, Willingboro, and Wrightstown shall be disposed of at the Parklands Reclamation Project landfill facility number 0304A, located in Bordentown Township, Burlington County, New Jersey.

i. (No change.)

ii. All waste types 10, 23, and 27 generated at the Fort Dix Army Base and the McGuire Air Force Base, located within New Hanover and North Hanover Townships, shall be disposed of at the Fort Dix Heat Recovery Incinerator, facility number 0325A located in New Hanover Township, Burlington County. All non-processible and non-hazardous residual waste shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A, located in Bordentown Township, Burlington County, New Jersey. Upon operation of the county landfill, all non-processible and non-hazardous residual waste shall be redirected to the county landfill.

iii. If the county landfill is not operational and the Fort Dix Heat Recovery Incinerator should become unavailable, waste directed to the Fort Dix Heat Recovery Incinerator pursuant to ii, above shall be disposed of at the Parklands Reclamation Project landfill until such time that the county landfill becomes operational.

3.-10. (No change.)

11. (No change in text.)

(d)-(v) (No change.)

(b)

### Board of Public Utilities

#### Interdistrict and Intradistrict Solid Waste Flow

#### Joint Adopted Amendment: N.J.A.C. 7:26-6.5

Proposed: September 8, 1986 at 18 N.J.R. 1773(a).

Adopted: December 4, 1986 by Richard T. Dewling,

Commissioner, Department of Environmental Protection, and  
December 18, 1986 by Barbara A. Curran, President, Board  
of Public Utilities.

Filed: December 23, 1986 as R.1987 d.72, **without change.**

Authority: N.J.S.A. 13:1E-6, 13:1E-23, and 48:13A-1 et seq.

Effective Date: January 20, 1987.

Expiration Date: November 4, 1990.

DEP Docket No. 033-86-08.

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

Notice of the proposed rule amendment was published on September 8, 1986 in the New Jersey Register at 18 N.J.R. 1773(a). That notice also advised that a public hearing had been scheduled for Tuesday, September 30, 1986 at 7:30 P.M. at the Bellmawr Borough Municipal Building, 21 East Browning Road, Bellmawr, Camden County, New Jersey to afford the public an opportunity to be heard on this amendment. In addition, a Notice of Public Hearing with a copy of the New Jersey Register notice attached was issued by the Department to a Camden County distribution list of solid waste collector/haulers and public officials. Both notices invited written comments to be submitted on or before October 8, 1986.

**No comments received.**

**Full text** of the adoption follows.

7:26-6.5 District waste flow planning requirements and disposal facility designations

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

(d) Waste flows within, into and out of the Camden County District:

1. All waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Brooklawn, Clementon, Collingswood, Gibbsboro, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mt. Ephraim, Oaklyn, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, and Woodlynne may be disposed of at the Forge, Inc. Transfer Station, located in the city of Philadelphia, Pennsylvania effective January 1, 1986.

2. All waste types 10, 13, 23, 25, and 27 generated from within the Camden County municipalities of Chesilhurst, Waterford Township, and Winslow Township shall be disposed of at the Winslow Township Solid Waste Disposal Area, facility number 0436A, located in Winslow Township, Camden County, New Jersey.

i. All waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Berlin Borough and Berlin Township which is collected by the public works departments of these two municipalities shall be disposed of at the Winslow Township Solid Waste Disposal Area, facility number 0436A, located in Winslow Township, Camden County, New Jersey, effective January 1, 1986.

ii. Any waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Berlin Borough and Berlin Township which is not collected by the respective public works departments of these municipalities may be disposed of at the Forge, Inc. Transfer Station, located in the city of Philadelphia, Pennsylvania, effective January 1, 1986.

3. All waste types 10, 13, 23, and 27 generated from within the Camden County municipalities of Audubon Borough, Cherry Hill Township, Haddonfield Borough, Haddon Township, Lindenwold Borough, Merchantville Borough, Pennsauken Township, Tavistock Borough, and Voorhees Township shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey.

i. All waste type 25 generated from within the Camden County municipalities of Audubon, Cherry Hill, Haddonfield, Haddon Township,

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

Lindenwold, Merchantville, Pennsauken, Tavistock and Voorhees may be disposed of at the Forge, Inc. Transfer Station, located in the city of Philadelphia, Pennsylvania, effective January 1, 1986.

4. All waste types 10, 23, 25 and 27 generated from within the Camden County municipality of Camden City may be disposed of at the Forge, Inc., Transfer Station located in the city of Philadelphia, Pennsylvania, effective January 1, 1986.

i. (No change.)

5. (No change.)

6. While the Forge, Inc. Transfer Station has been designated by Camden County as the disposal facility for the affected communities, the designation does not preclude the use of other out-of-State disposal facilities when such disposal does not violate any law or regulation of the receiving state.

(e)-(g) (No change.)

(h) Waste flows within, into and out of the Gloucester County District:

1.-4. (No change.)

5. (No change in text.)

6. (No change in text.)

(i)-(v) (No change in text.)

## (a)

### Division of Hazardous Waste Management Solid and Hazardous Waste Regulations Licensing of Transporters and Facilities: Deadline for Filing Disclosure Statements

#### Adopted Amendments: N.J.A.C. 7:26-16A.1 and 16A.2

Proposed: November 3, 1986 at 18 N.J.R. 2172(a).

Adopted: December 17, 1986 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: December 19, 1986 as R.1987 d.54, **without change.**

Authority: N.J.S.A. 13:1D-9 and N.J.S.A. 13:1E-6, as  
supplemented by N.J.S.A. 13:1E-126 to 135.

Effective Date: January 20, 1987.

Expiration Date: November 4, 1990.

DEP Docket No. 045-86-10

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

Notice of the proposal and the period for acceptance of written comments was made by direct mailing to 39 organizations. These included 8 organizations whose members are active in the solid and hazardous waste industries; 6 law firms whose clientele is known to include members of those industries; 10 environmental organizations, and 15 others who have requested to be placed on DEP mailing lists for notices of rulemaking activity. The comment period closed on December 3, 1986. No comments were received.

The Department, therefore, has adopted the proposal without change.

Full text of the adoption follows.

#### SUBCHAPTER 16A. SPECIAL RULES FOR SUBMISSION OF DISCLOSURE STATEMENTS BY EXISTING LICENSEES AND APPLICANTS WHOSE APPLICATIONS WERE PENDING BEFORE THE DEPARTMENT PRIOR TO JULY 2, 1984

##### 7:26-16A.1 Scope and applicability; conflicts

(a) This subchapter implements section 3.a. of L. 1983, c.392, N.J.S.A. 13:1E-128.a., which states that "Every licensee who is not otherwise required to file a disclosure statement within two years of the effective date of this act shall file a disclosure statement with the department and the Attorney General within that period."

(b) This subchapter is intended to provide for orderly and timely filing of disclosure statements by existing licensees.

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

##### 7:26-16A.2 Schedule for submitting disclosure statements

(a) All persons who had received a license from the Department prior to July 2, 1984 shall submit a disclosure statement to the Department and the Attorney General on or before May 1, 1987. Disclosure statements shall be submitted according to the procedures and requirements set forth in N.J.A.C. 7:26-16.3 and 16.4.

(b) A person shall be deemed to have "received a license" if he had received from the Department final approval to operate a solid or hazardous waste collector-hauler business or treatment, storage or disposal facility, or was actually operating pursuant to any authorization equivalent to an approved registration, such as a temporary operating authorization, judicial order or administrative consent order, or the authorization conferred by "existing facility" status pursuant to N.J.A.C. 7:26-12.3.

(c) The Department may require any applicant or licensee to submit a disclosure statement prior to May 1, 1987 on demand upon 90 days notice in writing.

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

(f) Any licensee who has not received a written demand to file a disclosure statement by February 1, 1987 shall file a disclosure statement on or before May 1, 1987.

7:26-16A.3 Applications pending on July 2, 1984

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

## HEALTH

## (b)

### Residential Alcoholism Treatment Facilities—Cost Accounting and Rate Evaluation Guidelines Adopted New Rule: N.J.A.C. 8:31C-1

Proposed: September 22, 1986 at 18 N.J.R. 1918(a).

Adopted: December 11, 1986, by Molly Joel Coye, M.D.,  
M.P.H., Commissioner, Department of Health (with approval  
of the Health Care Administration Board) **with substantive  
changes** not in violation of N.J.A.C. 1:30-4.3.

Filed: December 23, 1986 as R.1987 d.75.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-18(c).

Effective Date: January 20, 1987.

Expiration Date: January 20, 1992.

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

Written comments were received during the comment period from the following:

Carrier Foundation (Harvey J. Pyser); Health Insurance Association of America (Cynthia Szal); John E. Runnells Hospital (Joseph P. Kortbawi); New Jersey Business Group on Health, Inc. (Allison Alkire); New Jersey Directors Forum (Frank Clisham); New Jersey State Advisory Council on Alcoholism (Arthur S. McLellan, M.D.).

COMMENT: The Health Insurance Association of America and the New Jersey Business Group on Health, Inc. expressed concern that the regulations apply only to Blue Cross and Governmental agencies and recommended that coverage be extended to all payers in order to prevent cost shifting.

RESPONSE: The Department of Health does not have discretion in the application of these regulations to all payers. Coverage has been established in accordance with the provisions of N.J.S.A. 26:2H-1 et seq. (Health Care Facilities Planning Act), which grants authority to the Department of Health to establish rates for health facilities for only Blue Cross and local government payers.

COMMENT: Carrier Foundation questioned the establishment of a reporting period from 7/1 through 6/30, since most facilities are on a calendar year fiscal basis.

RESPONSE: The reporting period is, in fact, on a calendar year fiscal basis as stated in N.J.A.C. 8:31C-1.3.

COMMENT: Carrier Foundation and the John E. Runnells Hospital suggested that combining free-standing facilities, units of larger health care facilities, facilities in old renovated buildings, and newly constructed facilities in establishing medians will create inappropriate comparisons for cost centers. As such, they suggested that depreciation and interest, lease costs, liability insurance, utilities, and major moveable equipment be treated as "pass throughs" rather than being screened on a median basis.

RESPONSE: The intent of the proposed regulations is to establish an alcoholism rate setting that promotes quality, cost-effective services. The Department believes that it is inappropriate and contrary to the intent of the rule to "pass through" such costs as suggested by the commenters. A "pass through" of depreciation, interest, and lease costs, for example,

could create opportunities for excessive property cost reimbursement. A capital facilities allowance has been established to replace such rate components. The Department further believes that the capital facilities allowance is a reasonable cost related approach which prevents opportunities for excessive property cost reimbursement.

COMMENT: With regard to section N.J.A.C. 8:31C-1.10, Carrier Foundation submits that the use of target occupancy rates for the rate components of property taxes, utilities, and capital facilities allowance is inappropriate since such costs are fixed and do not fluctuate with changes in patient census.

RESPONSE: The Department recognized the fixed nature of such costs and that is precisely why the target occupancy concept has been utilized to develop the reasonable per diem amounts for the rate components of property taxes, utilities, and capital facilities allowance. The use of target occupancy levels results in an incentive for facilities to operate in excess of 90 percent occupancy and a disincentive for facilities to operate below 70 percent occupancy.

COMMENT: Carrier Foundation suggested that the special rate provisions of section 8:31C-1.21 serves to defer implementation of the guidelines for a one year period and accomplishes nothing else while the New Jersey Directors Forum suggested that the special rate provisions be extended to two years.

RESPONSE: The Department feels that the "hold harmless" provisions of N.J.A.C. 8:31C-1.21 for the rate period July 1, 1987 through June 30, 1988 are necessary for a rational implementation of the regulatory process. The Department does not agree, however, with extending these provisions beyond June 30, 1988. A one year period should be sufficient for facilities to adjust their staffing and budgetary needs accordingly.

COMMENT: Carrier Foundation expressed concern that the element of service intensity has been overlooked through the use of medians in screening routine patient care expenses since RATFs are not comparable.

RESPONSE: It is the Department's position that the services offered by RATFs are comparable. As such, the element of service intensity will be reflected in the establishment of the reasonableness limits for nursing and counseling services. Facilities that provide detoxification services will report more intensive nursing and counseling services which will, in turn, be reflected in the reasonableness limits.

COMMENT: The New Jersey Directors Forum recommended that a methodology be established for amending the regulation.

RESPONSE: Pursuant to N.J.S.A. 26:2H-1 et seq. the Commissioner of Health, with the approval of the Health Care Administration Board, shall adopt and amend rules and regulations in accordance with the Administrative Procedure Act, P.L. 1968, c.410 (C.52:14B-1 et seq.) to effectuate the provisions and purposes of the act. The Department of Health proposed the "hold harmless" provision to assure that any unanticipated adverse effects of the new system would not cause hardship and would allow the Department of Health to revise the regulations through the normal public process.

COMMENT: The New Jersey Directors Forum suggested the incorporation of a group administrative relief process to study any inequities that may develop.

RESPONSE: It is clearly the intention of the Department, as reflected in N.J.A.C. 8:31C-1.1(e), to review the dispersion of data used to establish the medians and reasonableness limits for the reimbursement rates effective July 1, 1987. The Department will recommend to the Health Care Administration Board any modifications to the rules that may be required to resolve identified problems. Further, RATFs are protected by the "hold harmless" provisions of N.J.A.C. 8:31C-1.21 for rates effective 7/1/87.

COMMENT: The New Jersey Directors Forum recommended that the New Jersey Directors Forum be the spokesman for alcohol facilities as a whole.

RESPONSE: The Department declines to take a position on this issue since the comment does not address the scope and content of N.J.A.C. 8:31C-1. The Department, however, is willing to work with all parties and therefore suggests that the Directors Forum participate in the educational sessions that will be conducted to implement the regulations.

COMMENT: John E. Runnells Hospital suggested that since costs are reported on a calendar year basis it would be appropriate to have reimbursement being on a calendar year basis.

RESPONSE: The Department disagrees with the commenter and feels that it is in the best interest of RATFs to have reimbursement commence six months after the end of the base period. The commenter is suggesting that reimbursement commence twelve months after the end of the base

period. The delay serves no useful purpose since reimbursement should be based upon the most current data.

COMMENT: John E. Runnells Hospital suggested that the deadline for the submission of cost reports be extended from 90 to 120 days from the close of the fiscal year.

RESPONSE: The Department feels that the 90 day filing requirement is sufficient and affords RATFs ample time to complete the requisite cost studies. Further, the Department would not be able to complete the necessary rate computations within a 60 day period as proposed by the commenter.

COMMENT: John E. Runnells Hospital recommended that in instances where cost studies are received beyond the 90 day filing requirement, the interim rate should be subject to a retroactive adjustment to the beginning of the prospective rate period.

RESPONSE: The Department recognizes that N.J.A.C. 8:31C-1.3(b) does not contain a late filing penalty provision which would invoke penalties which would remain in force until such time that a cost report and other required documents have been submitted to the Department. As such, the disincentive to discourage late submissions is the utilization of existing reimbursement rates, during the interim period until the new rates are computed, with no adjustment for inflation. The Department feels that this section is necessary to ensure that RATFs file their cost reports in a timely fashion.

COMMENT: John E. Runnells Hospital recommended that there be a segregation of facilities that provide detoxification from those that do not.

RESPONSE: The Department disagrees with such an approach. Section 9:31C-1.16 of the guidelines has been developed to adequately reflect detoxification services in routine patient care expenses. The service intensity for detoxification services will be reflected in the nursing and counseling cost center.

COMMENT: John E. Runnells Hospital suggested that there be a separate peer grouping for governmental and hospital based facilities.

RESPONSE: The commenter failed to provide any justification that governmental or hospital based facilities are unique or that their costs are higher than free standing or proprietary facilities. Further, the data base will consist of approximately 23 facilities and, as such, separate peer grouping for governmental and hospital based facilities would not be feasible.

COMMENT: John E. Runnells Hospital disagreed with the CFA methodology for fixed property reimbursement and recommended a "pass through" of depreciation and interest costs.

RESPONSE: The Department feels that a "pass through" of depreciation and interest costs is contrary to the intent of the regulations and could create opportunities for excessive property cost reimbursement resulting from transfers of ownerships. The capital facilities allowance is based upon reasonable values of capital assets.

COMMENT: John E. Runnells Hospital felt that N.J.A.C. 8:31C-1.5 was arbitrary since the Department will not increase the CFA rate in future years should the Medicare return or equity rate increase.

RESPONSE: The Department disagrees with the commenter since increasing the CFA rate in future years should the Medicare return or equity rate increase would result in excess fixed property reimbursement.

COMMENT: John E. Runnells Hospital suggested that the Capital Facilities Allowance for land should only apply to new facilities and existing facilities should be "grandfathered" and any land acreage in excess of the limit be treated as a pass through.

RESPONSE: The Department feels that since 1986 values will be utilized for determining the CFA with respect to land, reasonable land areas must also be utilized. The use of two acres for an urban RATF and five acres for a nonurban RATF should not create inequities for existing facilities. However, section 8:31C-1.6(q) clearly states that the Department will review, on a case by case basis, situations where strict application of the provisions of this section would be inappropriate for existing licensed RATFs.

COMMENT: John E. Runnells Hospital suggested that a facility should receive 100 percent reimbursement of the lease cost of major moveable equipment if it can demonstrate that the lease cost is cheaper than a purchase.

RESPONSE: The Department feels that 70 percent of the costs of leased major moveable equipment is appropriate, since equipment leases include a percentage for profit.

COMMENT: John E. Runnells Hospital felt that the median concept utilized in section 8:31C-1.8 for maintenance and replacements places existing facilities in a deficit position since older facilities require more maintenance than newer facilities.



NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

RESPONSE: The Department feels that maintenance costs for existing facilities will be adequately reflected in the reasonableness limit, since most existing facilities are in older physical plants.

COMMENT: John E. Runnells Hospital suggested that property insurance should be based upon current market values and not reasonable appraisal values.

RESPONSE: The Department feels that no allowance should be provided for property values considered unreasonable per section 8:31C-1.5. The Department assumes that the cost of property insurance varies directly in relation to the size of the facility. Insurance ascribable to unreasonable areas should be excluded from the prospective rate base.

COMMENT: John E. Runnells Hospital recommended that property taxes should be a "pass through."

RESPONSE: Property taxes will be considered reasonable as long as they are based upon reasonable plant square feet, costs per square foot, and reasonable land area and value. The Department assumes that assessed values for facilities vary directly in relation to their areas. Property taxes ascribable to unreasonable areas should be excluded from the prospective rate base.

COMMENT: John E. Runnells Hospital recommended that RATFs which contract for their dietary operations should be included in median development for raw food costs.

RESPONSE: The Raw Food Costs Center does not include salaries or supplies since such costs are reported in the Dietary Cost Center. Thus, RATFs which contract for their dietary operations must be excluded from median development since the contract includes salaries, supplies, and a margin for profit. If contract costs were included, the reasonableness limit would be distorted.

COMMENT: John E. Runnells Hospital recommended that the salaries for patient activities and laboratory personnel should be equalized for median development purposes.

RESPONSE: The Department feels that patient activities and laboratory personnel will be contractual employees and not full-time employees and, as such, equalization is not applicable.

COMMENT: John E. Runnells Hospital recommended that a minimum of 90 days be given for the preparation of Level I Appeal documents (N.J.A.C. 8:31C-1.20(a)1).

RESPONSE: The Department recognizes this concern and will propose an amendment to this rule to make language more specific, while still meeting the goal intended to be accomplished.

COMMENT: John E. Runnells Hospital recommended that the proposed regulation not be adopted by the HCAB and that Department representatives return to the drawing board with industry representatives.

RESPONSE: The proposed regulations have been developed by the Department with the direct assistance of the Alcohol Rate Setting Advisory Committee whose membership consisted of representatives from the following agencies:

- (A) The Quality and Utilization Review Committee, a duly appointed subcommittee of the New Jersey Advisory Council on Alcoholism;
- (B) New Jersey Hospital Association;
- (C) New Jersey Blue Cross;
- (D) County Government;
- (E) Department of Insurance;
- (F) Department of Human Services;
- (G) Department of Health;
- (H) Department of the Public Advocate;
- (I) Alcoholism Treatment providers.

The Department feels that industry representatives have, in fact, participated in the development of these guidelines in a technical assistance advisory capacity. We feel that we have developed the regulations with the broad interest of all parties being represented and we have gone through the public comment period. Thus, any further delay as suggested by the commenter would serve no useful purpose and only delay the implementation of the alcoholism rate setting program.

#### Summary of Changes between Proposal and Adoption:

Two sections have been deleted from the proposed regulations, specifically, N.J.A.C. 8:31C-1.20(a)2iv and v, since both sections deal with the contested case process and therefore intrude upon the jurisdiction of the Office of Administrative Law. One section precludes facilities from submitting at the Level II hearing before OAL any documentation which had not previously been submitted at the Level I hearing before the rate analyst, except upon a showing of "just cause." The second provision requires facilities to furnish a list of witnesses to be called at the Level II hearing, along with the points to be covered in the testimony of the witnesses. These provisions intrude into OAL's own authority to de-

termine the procedures governing hearings held before it. In accordance with the Administrative Procedure Act, OAL has exclusive power to determine the procedures to be followed once a matter is transmitted to OAL for hearing.

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

## CHAPTER 31C RESIDENTIAL ALCOHOLISM TREATMENT FACILITIES

### SUBCHAPTER 1. COST ACCOUNTING AND RATE EVALUATION

#### 8:31C-1.1 Scope and purpose

(a) This chapter describes the methodology to be used by the State Department of Health ("the Department") to establish prospective per diem rates for the provision of residential alcoholism treatment services reimbursed by government agencies and hospital service corporations.

(b) It is the Department's position that the strict application of these rules will generally produce equitable rates for the payment of residential alcoholism treatment facilities (RATFs) of the reasonable cost of providing routine patient care services.

(c) The Department will review the particular circumstances with the RATF, if the RATF believes that, owing to an unusual situation, the application of these rules results in an inequity. Appeals on the grounds of inequity shall be limited to the particular circumstances of the affected RATF. Appeals shall not address the broader aspects of the rules themselves.

(d) These rules are not purported to be an exhaustive list of costs. The department reserves the right to question and exclude any unreasonable costs, consistent with the provision of N.J.S.A. 26:2H-1, et seq.

(e) While the rules have been given due consideration and are deemed to be fair and equitable, an historical data base for Residential Alcohol Treatment Facilities was not available for detailed analysis prior to the development of the rules. Therefore, it is the intention of the Department to review the dispersion of the data used to establish the medians and reasonableness limits for the reimbursement rates effective July 1, 1987. The Department will recommend to the Health Care Administration Board any modifications to the rules that may be required to resolve identified problems.

(f) All rates established pursuant to these rules will be subject to on-site audit verification of costs and statistics reported by RATFs.

#### 8:31C-1.2 Definitions

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

"Capital Facilities Allowance (CFA)" means the reimbursement for capital-related costs based upon reasonable values of capital assets as determined in these rules.

"Commissioner" means the Commissioner of Health.

"Department" means the New Jersey Department of Health.

"Government agency" means a department, board, bureau, division office, agency, public benefit or other corporation, or any other unit, however described, of the State or political subdivision thereof.

"Reasonable limit" means the maximum reimbursable costs based upon statewide peer grouping and medians for the various cost centers or components set forth in these rules.

"Residential alcoholism treatment facility (RATF)" means a facility or a designated unit of a facility which is licensed by the New Jersey Department of Health to provide services specified in the Manual of Standards for Licensure of Alcoholism Treatment Facilities, N.J.A.C. 8:42A.

#### 8:31C-1.3 Reporting period: cost data

(a) Commencing with fiscal years ending December 31, 1986, RATFs are to furnish required cost studies to the Department of Health, Health Facilities Rate Setting, within 90 days of the close of each fiscal year. For rate review purposes, the period for which these actual data are reported will constitute the "base period" for establishing prospective per diem reimbursement rates commencing six months after the end of the base period. These rates will not be subject to routine retroactive adjustments except for matters as specified in the rules.

(b) Where cost studies are received beyond the 90 day filing requirement, prospective per diem reimbursement rates will be established three months after receipt of the required cost studies. During this interim period, existing reimbursement rates will remain in effect for cash flow

purposes with no adjustment for inflation. The interim rate will not be subject to a retroactive adjustment to the beginning of the prospective rate period upon determination of the approved rate via the methodology described in this chapter.

(c) The Director, Health Facilities Rate Setting, may mitigate or waive the penalty specified in (b) above, for "good cause" shown:

1. "Good cause" shall include, but shall not be limited to circumstances beyond the control of the residential alcoholism treatment facility, such as fire, blood, or other natural disaster;
2. "Good cause" shall not include acts of omission and/or negligence by residential alcoholism treatment facility, its employees, or its agents;
3. All requests for mitigation and/or waiver of the penalty provision shall be submitted in writing, substantiating the reasons for the request in such detail as the Director may require.

(d) The penalty rates indicated in (b) above will be applied to cost studies commencing with the reporting periods ending December 31, 1987.

#### 8:31C-1.4 Rate components

(a) The prospective rates will be calculated by applying standards and reasonableness criteria "limits" to the following rate components:

1. Capital Facilities Allowance (CFA);
2. Property operating expenses;
3. Administrative costs;
4. Raw food costs;
5. Routine patient care expenses;
6. General service expenses;
7. Special patient care expenses;

(b) The following considerations will be addressed in determining the Capital Facilities Allowance (CFA):

1. Buildings;
2. Land and land improvements;
3. Major moveable equipment;
4. Maintenance and replacements;
5. Property insurance;
6. Target occupancy levels;

(c) A provision for inflation will be added to reasonable base period costs to provide for inflation between the base period and the prospective rate period.

(d) All lease costs incurred as a result of related party transactions, will be excluded for reimbursement purposes. A "related party" is defined as:

1. A corporation, partnership, trust or other business entity:
  - i. Which has an equity interest of 10 percent or more of the facility;
  - ii. Which has an equity interest of 10 percent or more in any business entity which is related by the definition in (d) 1.i. above or which has an equity interest of 10 percent or more in any business entity related by (d)1. ii above; or
  - iii. In which any party, who is a related party, by any other definition (in i. or ii. above or in 2. below) has an equity interest of 10 percent or more and which has a significant business relationship with the facility.
2. An individual:
  - i. Who has a beneficial interest of 10 percent or more in the net worth of the facility; or
  - ii. Who has a beneficial interest of 10 percent or more in an entity related by 1.ii or 1.iii; or
  - iii. Who is a relative of an individual who is covered by the definition in 2.i or 2.ii above;
  - iv. Whose beneficial interest is cumulative, if it relates to spouse, parent or children.

(e) In related lease transactions, the rent paid to the lessor by the provider is not allowable as cost. The provider, however, would include in its costs the property expenses of ownership of the facility. The effect is to treat the facility as though it were owned by the provider.

#### 8:31C-1.5 Capital Facilities Allowance (CFA); buildings

(a) The Capital Facilities Allowance for buildings and fixed equipment will be based upon appraised 1986 replacement costs less wear and tear, subject to reasonableness limits as described in (c) and (d) below.

(b) The appraisals are to be conducted by the New Jersey Department of Transportation.

(c) Reasonableness limits on plant square feet will be set at 110 percent of median plant square feet per available bed of all existing licensed RATFs in the base period.

(d) A reasonableness limit on appraised value per square foot will be established at 110 percent of the median appraised value, at 1986 price levels, of existing RATFs in the base period.

(e) Two rates will be developed for calculating the CFA for RATFs.

1. Interest rate shall equal the Medicare return on equity rate for the 12 month period ending with December of 1986.

2. Amortization rate shall equal the ratio of annual debt service (principal and interest) to original principal required to amortize a loan in 25 equal annual installments, with an interest rate in accordance with 1. above.

(f) For the first 25 years of the life of a RATF, beginning with the year of construction, the amortization rate will be applied to the 1986 reasonable appraised value of the building and fixed equipment.

(g) Beyond the 25th year after construction, the interest rate will be applied to the 1986 reasonable appraised value of buildings and fixed equipment.

(h) For RATFs built in multiple stages, a weighted average year of original construction will be established by weighting licensed beds by the age of the component multiple stages of the building in which the beds are located. Where inequities could result from this calculation, RATFs with suitable records may request that the weighted average year of construction be calculated based upon plant square feet constructed.

(i) With respect to new RATFs and significant additions to existing RATFs, the appraised value will be determined based upon price levels at the time the construction is completed.

(j) For RATFs with other component services, data relative to common areas will be apportioned to residential alcoholism patients based upon base period square footage. After making such apportionments, appraised values will be subject to the reasonableness screens described in (c) and (d) above and, where applicable, to the weighted average year of construction calculations described in (h) above.

(k) For RATFs which were converted from other uses, the year of conversion will be used provided the conversion costs exceeded the acquisition cost of the building and building equipment. Otherwise, the original year of construction will be used.

(l) For existing RATFs, the State will not increase the CFA rate in future years, should the Medicare return on equity rate increase. Should this rate decrease by more than the reasonable cost of refinancing, both the interest rate and the amortization rate will be reduced. Should financing through a governmental authority be obtained by a facility, the CFA rate will be adjusted as necessary based upon the lower of the previously established Medicare return on equity rate or the available financing rate incremented in accordance with the Medicare return on equity factor.

(m) For new RATFs, or for additions to existing RATFs, the amortization rate will be established based upon the lower of the latest Medicare return on equity rate published at the inception of operations, or the governmental financing rate incremented in accordance with the Medicare return of equity factor. The provisions of (1) above will apply in subsequent years.

(n) The Department will review, on a case by case basis situations where the strict application of the provisions of this section would be inappropriate for existing licensed RATFs under particular circumstances, such as:

1. Situations where an existing debt must be refinanced in connection with obtaining funds to expand existing RATFs;
2. The existence of firm arms-length leases whose terms cannot be modified;
3. The inability of RATFs to obtain 25 year financing.

#### 8:31C-1.6 Capital Facilities Allowance (CFA); land

(a) The 1986 value of land and land improvements as appraised by the New Jersey State Department of Transportation will be the basis for determining the Capital Facilities Allowance with respect to land, subject to reasonable land area established as follows:

1. For urban RATFs: two acres;
2. For nonurban RATFs: five acres;
3. For the purposes of this section, a city, town, or township is considered "urban" if its population exceeds 25,000 and its average population density exceeds 7,000 per square mile. All other areas are considered "nonurban".

(b) The interest rate (equal to the Medicare return on equity rate for the 12 month period ending December of 1986) will be applied to the reasonable 1986 appraised value.

(c) For existing RATFs, the department will not increase the CFA rate in future years should the Medicare return on equity rate increase. Should this rate decrease by more than the reasonable cost of refinancing, the interest rate will be reduced. Should financing through a governmental authority be obtained by a facility, the CFA rate will be adjusted as necessary based upon the lower of the previously established Medicare

## NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

return on equity rate or the available financing rate incremented in accordance with the Medicare return on equity factor.

(d) For new RATFs, or for additions to existing RATFs, the interest rate will be established based upon the lower of the latest Medicare return on equity rate published at the inception of operations, or the governmental financing rate incremented in accordance with the Medicare return on equity factor. The provisions of (c) will apply in subsequent years.

(e) With respect to new RATFs and significant additions to existing RATFs, the appraised value will be determined based upon price levels at the time the construction is completed.

(f) For RATFs providing other services, reasonable appraised values for land will be prorated to residential alcoholism patients, based upon square footage allocations.

(g) The Department will review, on a case by case basis, situations where strict application of the provisions of this section would be inappropriate for existing licensed RATFs.

#### 8:31C-1.7 Major moveable equipment

(a) An allowance for major moveable equipment will be developed for each RATF as follows:

1. Base period major moveable equipment depreciation and interest costs per bed will be ranked in descending order on a statewide basis.

2. A reasonableness limit on major moveable equipment will be established at 110 percent of the median depreciation and interest costs per bed.

3. The dollar limit for major moveable equipment for each RATF will then be determined by multiplying the reasonableness limit per bed by the total number of licensed RATF beds.

4. Reimbursement will be based upon the lesser of actual depreciation and interest costs or the dollar limit per 3 above.

i. Seventy percent of the costs of leased major moveable equipment will be recognized as major moveable equipment costs.

5. The major moveable equipment per diem will then be determined by dividing the lesser of actual costs or the dollar limit per 4. above by total patient days in the base period.

6. The department will review on an individual basis any inequities existing RATFs believe are brought about by unusual circumstances.

#### 8:31C-1.8 Maintenance and replacements

(a) An allowance for the maintenance of land, land improvements, buildings, fixed equipment, and for the replacement of fixed equipment will be developed for each RATF as follows:

1. Expenditures for capitalized maintenance and replacements will be reported for each RATF in the base period.

2. Expenditures for capitalized maintenance and replacements, per 1. above, will be prorated to RATF patients based upon the ratio of RATF square feet (including a prorated share of common areas) to total plant square feet.

3. Fringe maintenance salaries and maintenance expenses will be reported for each RATF in the base period.

4. Total eligible expenditures for maintenance and replacements for each RATF will be calculated by adding 2. and 3. above.

(b) The reasonableness limit per plant square foot for the RATFs salary region is determined as follows:

A = Median Maintenance and Replacement Costs

B = Median Labor Cost

C = A-B = Non-Labor Costs

Limited by Region =  $[B \div \text{Equalization Factor}] + C] \times 1.1$

(c) The dollar limit for each RATF will be determined by multiplying the reasonableness limit per (b) above by the reasonable RATF plant square feet.

(d) Reimbursement will be based upon the lower of total eligible expenditures for maintenance and replacements (a)4. or the dollar limit (c) above.

(e) The per diem amount for maintenance and replacements will be determined by dividing (d) above by target occupancy.

#### 8:31C-1.9 Property insurance

(a) An allowance for property insurance will be developed for each RATF as follows:

1. Base period property insurance costs per \$1,000 of appraised value will be calculated for all RATFs.

2. The property insurance costs per \$1,000 of appraised value will be ranked in descending order on a statewide basis.

3. A reasonableness limit on property insurance costs per \$1,000 of appraised value will be established at 110 percent of the median property insurance cost per \$1,000 of appraised value.

4. The dollar limit on property insurance will be established based upon the property insurance reasonableness limit per \$1,000 of reasonable RATF appraised value.

5. The dollar limit for each RATF, calculated per (4) will be compared to actual property insurance costs. Property insurance costs included in the prospective rate base will be based upon the lesser of the property insurance limit or actual property insurance costs.

6. The property insurance per diem will be calculated by dividing allowable property insurance costs, per 5. above, by target occupancy.

#### 8:31C-1.10 Target occupancy levels

(a) A target occupancy level of 70 percent of licensed bed days or actual base period patient days, whichever is greater, will be used to develop reasonable per diem amounts for the following rate components:

1. Property Taxes;

2. Utilities;

3. Capital Facilities Allowance for:

i. Buildings and Fixed Equipment;

ii. Land and Land Improvements;

iii. Maintenance and Replacements;

iv. Property Insurance

(b) If base period patient days exceeds 90 percent of licensed bed days, then the largest occupancy will be entered at 90 percent of licensed bed days.

(c) For new facilities, an occupancy rate of 70 percent of licensed bed days will be used for interim rates during the first year of operation subject to retroactive adjustments to actual occupancy should it exceed 70 percent of maximum bed days (but no higher than 90 percent of maximum bed days will be used).

#### 8:31C-1.11 Property operating expenses

(a) Property operating expenses include property taxes and utilities.

1. Property taxes will be considered reasonable so long as they are based upon reasonable plant square feet, costs per square foot, and reasonable land area and value.

2. Reasonable plant square feet (and related property taxes) will be determined as follows:

i. The ratio of plant square feet to licensed beds will be determined for all RATFs in the base period.

ii. The reasonableness limit on plant square feet will be established at 110 percent of the median plant square feet per available bed of all existing licensed RATFs in the base period.

3. A reasonableness limit on appraised value per square foot will be determined in accordance with the CFA building methodology contained in N.J.A.C. 8:31C-1.5.

4. For RATFs whose appraised value exceed the reasonableness limit, the property taxes related to the excess will be excluded from the rate base. For this purpose, it will be assumed that assessed values for buildings vary directly in relation to their areas. The department will review on an individual basis any inequities which existing RATFs believe are brought about by unusual circumstances.

5. Reasonable land area (and related taxes) is established as follows:

i. For urban RATFs—Two acres

ii. For nonurban RATFs—Five acres

iii. For this purpose, a city, town, or township is considered "urban" if its population exceeds 25,000 and its average population density exceeds 7,000 per square mile. All other areas are considered "nonurban".

6. Property taxes ascribable to unreasonable area will be excluded from the prospective rate base.

7. The department will review on an individual basis any inequities existing RATFs believe are brought about by unusual circumstances.

8. Where a lessor is paying the property taxes, the actual property taxes paid by the lessor are to be reported by the RATF operator as a property tax expense and deducted from the amount reported as rent. The property tax component of such leases will be subject to the above screens.

(b) Utility costs will be screened for reasonableness as follows:

1. Base period utility costs per bed will be deemed apparently unreasonable to the extent that they exceed 150 percent of the statewide median utility cost per bed.

#### 8:31C-1.12 Administrative costs

(a) The administrative screen will be applied to the aggregate reported costs of management, administrator, and other administrative costs for existing licensed RATFs in the base period. Total administrative costs will then be divided by actual patient days for each RATF in the base period. These per diem costs will be ranked in descending order on a statewide basis. The reasonableness limit will be set at 110 percent of the median cost per day.



1. Compensation and special fringe benefits of all owners, officers, and related parties; management contracts; and home office costs related to chain organizations will be excluded from the development of the reasonableness limit per (a) above. RATFs with such administrative costs will be excluded from the development of the reasonableness limit.

2. Non-working officer, owner, or related party compensation and special fringe benefits are non-allowance.

#### 8:31C-1.13 Raw food costs

Raw food costs per patient day for RATFs which provide their own food service will be determined for existing licensed RATFs in the base period. RATFs which contract for their dietary operations will be excluded. These per diem costs will be ranked in descending order on a statewide basis. The reasonableness limit will be set at 120 percent of the median cost per day.

#### 8:31C-1.14 General fringe benefit allocation

(a) In order to equitably develop and apply screens in those cost centers with employee compensation components, the following computation will be made:

1. General fringe benefits will be allocated to function as a percentage of salaries reported to develop total compensation. Dietary adjustments will be calculated to determine the fringe benefit value of free and subsidized employee meals as follows:

i. The average food cost per meal is developed by dividing total meals (patients and employees) into total reported raw food costs.  
ii. A fringe benefit per meal is imputed to the extent that the average price charged employees for a meal is less than raw food costs per meal.  
iii. The fringe benefit per meal is then converted into total dollars by multiplying the benefit per meal by the number of employee meals served.

2. Fringe rates will be calculated for each RATF. For this purpose, fringe benefits are the total of fringe benefits reported by the facility and dietary adjustments per 1. above. This total is then divided by total salaries.

3. Fringe factors are established at 1.00 plus the fringe rate.

4. Fringe compensation is the total cost of labor including fringe benefits. It is calculated by multiplying reported salaries by the fringe factor for each RATF. The net effect of calculating fringe compensation is to allocate fringe benefits to each cost center in proportion to its reported salaries.

#### 8:31C-1.15 Equalized compensation and equalized cost

(a) Salary regions within the state will be developed in order to recognize the existence of geographic compensation differentials in comparing and analyzing reported cost data. Prevailing compensation rates within any one region are comparable. Each RATF will be assigned to a salary region based only on its geographic location as follows:

Area	Abbreviation	Counties Included
1	PASSA	Passaic
2	HACK	Bergen
3	NEWT	Sussex, Warren
4	TRENT	Mercer, Hunterdon
5	NEWARK	Union, Essex, Somerset, Morris
6	JERCIT	Hudson
7	NEBRU	Middlesex
8	LBRAN	Monmouth, Ocean
9	ATCIT	Atlantic, Cape May
10	CAM/BURL	Burlington, Camden, Gloucester, Salem, Cumberland

(b) Equalization factors will be developed for each salary region. The factor for each region is based upon the ratio of the median compensation rate of the entire state to the median rate within that region. Salary data reported for nursing, counseling, dietary, laundry, and housekeeping personnel (plus fringes) are used in developing equalization factors.

(c) Actual compensation costs (including fringes) will be adjusted (equalized) by these factors to neutralize the effect of geographic compensation differentials.

(d) The term "equalized costs" means the net amount of equalized compensation plus other expenses, less expense recoveries and nonallowable costs.

(e) For RATFs which provide services other than residential alcoholism treatment, equalized RATF costs will be determined by apportioning equalized costs in the same ratio as the apportionment of unequalized net expenses.

(f) Equalized costs for each RATF will be compared with reasonableness limits (screens) developed from equalized base period cost data. Unreasonable (excess) equalized costs will be calculated and then con-

verted to fringed RATF costs so that each RATFs rates are based upon its own reported data exclusive of geographic compensation differential adjustment made in equalizing its costs. For example, if on an equalized basis, 10 percent of costs are considered unreasonable, then 10 percent of fringed RATF costs are then considered unreasonable.

#### 8:31C-1.16 Routine patient care expenses

(a) For reporting purposes and for the application of the following guidelines, "routine patient care expenses" are defined as expenses relating to nursing and counseling services.

(b) Reasonableness limits for nursing services will be established as follows:

1. The Nursing Cost Center will consist of the aggregate reported cost of equalized salaries, contract fees, and other expenses.

2. Total nursing costs for each RATF in the base period (per (b)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median nursing cost per day.

(c) Reasonableness limits for counseling services will be established as follows:

1. The Counseling Cost Center will consist of the aggregate reported cost of equalized salaries, contract fees, and other expenses.

2. Total counseling costs for each RATF in the base period (per (c)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median counseling cost per day.

#### 8:31C-1.17 General service expenses

(a) For reporting purposes and for the application of the following guidelines, "general service expenses" are defined as expenses relating to the following cost centers:

Dietary  
Laundry and Linen  
Housekeeping  
Other General Services

(b) The reasonableness limit for dietary services will be established as follows:

1. The Dietary Cost Center will consist of the aggregate reported cost of equalized salaries, supplies, and other expenses minus expense recoveries. RATFs which contract for their dietary operations will be excluded.

2. Total dietary costs for each RATF in the base period (per (b)1. above) will then be divided by base period patient days. The per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median dietary cost per day.

(c) The reasonableness limit for laundry and linen services will be established as follows:

1. The Laundry and Linen Cost Center will consist of the aggregate reported cost of equalized salaries, salaries, supplies, contract fees and other expenses minus expense recoveries.

2. Total laundry and linen costs for each RATF in the base period (per (c)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median laundry and linen cost per day.

(d) The reasonableness limit for housekeeping services will be established as follows:

1. The Housekeeping Cost Center will consist of the aggregate reported cost of equalized salaries, supplies, contract fees and other expenses.

2. Total housekeeping costs for each RATF in the base period (per (d)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median housekeeping cost per day.

(e) The reasonableness limit for other general services will be established as follows:

1. The Other General Services Cost Center will consist of aggregate reported cost of equalized salaries, supplies, contract fees and other expenses.

2. Total other general service costs for each RATF in the base period (per (e)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

3. The reasonableness limit will be established at 110 percent of the median other general service cost per day.

8:31C-1.18 Special patient care

(a) For reporting purposes and for the application of the following guidelines, "special patient care expenses" are defined as expenses relating to the following cost centers:

Medical Director/Physician Services  
Patient Activities  
Laboratory Services  
Pharmacy

(b) The reasonableness limit for medical director/physician services will be established as follows:

1. The Medical Director/Physician Cost Center will consist of the aggregate reported cost of salaries, contract fees, and other expenses.

2. Total medical director/physician costs for each RATF in the base period (per (b)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median medical director/physician cost per day.

(c) The reasonableness limit for patient activities will be established as follows:

1. The Patient Activities Cost Center will consist of the aggregate reported cost of salaries, supplies, contract fees, and other expenses.

2. Total patient activity costs for each RATF in the base period (per (c)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 115 percent of the median patient activity cost per day.

(d) The reasonableness limit for laboratory services will be established as follows:

1. The Laboratory Cost Center will consist of the salaries, supplies, contract fees, and other expenses.

2. Total laboratory costs for each RATF in the base period (per (d)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median laboratory cost per day.

(e) The reasonableness limit for pharmacy will be established as follows:

1. The Pharmacy Cost Center will consist of the aggregate reported cost of a pharmaceutical consultant, medical supplies, legend drugs, and non-legend drugs.

2. Total pharmacy costs for each RATF in the base period (per (e)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 120 percent of the median pharmacy cost per day.

8:31C-1.19 Inflation

(a) A provision will be added to reasonable base period costs to provide for inflation between the base period and the prospective rate period. Changes in two factors will be used to develop this provision.

1. Average hourly earnings of manufacturing employees New Jersey as published by the Bureau of Labor Statistics (weighted 60 percent).

2. The consumer price index as published by the Bureau of Labor Statistics (weighted 40 percent).

(b) If, for reasons beyond the control of a RATF, rates have not been redetermine within three months after receipt of its reports, an interim adjustment for inflation may be made to existing rates for cash flow purposes. The inflation increment would be based upon the number or months from the midpoint of the current rate period to the beginning point of the new rate period. The interim rate will be subject to a retroactive adjustment to the beginning of the prospective rate period upon determination of the approved rate via the methodology described in these guidelines.

(c) No provision for inflation will be made with respect to costs for buildings, land, moveable equipment, and interest.

8:31C-1.20 Appeal process

(a) When a RATF believes that, owing to an unusual situation, the application of these rules results in an inequity, two levels of appeals are available; a Level I Appeal heard by representatives from the Department of Health; and a Level II Appeal heard before an Administrative Law Judge.

1. Level I Appeal: A request for a Level I Appeal must be submitted in writing to the Department of Health, Health Facilities Rate Setting, Room 600, John Fitch Plaza, CN360, Trenton, New Jersey 08625 within 30 days of receipt of the notification of rates.

i. The first level of appeal will be heard by analysts and supervisory level representatives from the Department of Health. A RATF should be prepared to provide such substantiating material as may be required for an informal discussion of the subject matter.

ii. Level I Appeals will endeavor to reach equitable resolutions of matters peculiar to an individual RATF. They will not be expected to resolve items which have policy implications or broad applicability.

iii. The analyst's recommended resolutions will be reviewed and approved by the Director, Health Facilities Rate Setting.

iv. Adjustments resulting from the Level I Appeal will be retroactive to the beginning of the prospective rate year. This includes any adjustments as a result of errors in the calculation of the rate by the Department of Health.

2. Level II Appeals (Administrative Law Appeal): If a RATF is not satisfied with the results of the Level I Appeal, it may request a hearing before an Administrative Law Judge.

i. The request for an Administrative Hearing must be filed with the Department of Health, Health Facilities Rate Setting and the Department of the Public Advocate, Division of Rate Counsel (under N.J.S.A. 52:27E-18) within 30 days following receipt of notification of the Level I Appeal determination.

ii. The Administrative Hearing will be scheduled by the Office of Administrative Law and the facility will be notified accordingly.

iii. Within 30 days subsequent to the request for an Administrative Hearing, the RATF shall furnish to the Department of Health, Health Facilities Rate Setting and the Department of the Public Advocate, Division of Rate Counsel a list of all items to be appealed and the costs associated with those items.

\*[iv. No documentation other than that provided to the analyst in connection with the Level I Appeal can be presented to the hearing officer unless the party can establish just cause for failure to provide the documentation earlier. Should any of the parties desire to present any such evidence, it must be sent to the other parties at least 30 days prior to the appeal.]\*

\*[v. Should the RATF desire to bring witnesses to the appeal to substantiate the written document already provided, the RATF must notify the other parties involved of the name of the witnesses, and the item or items which will be the subject of the witness testimony. This notification must be made at least 30 days prior to the appeal.]\*

\*[vi.]\*iv.\* After the hearing officer has filed his report, the Commissioner of Health will determine and approve the effective payments rates and the RATF and its payors will be notified in the form of an administrative order over the signature of the Commissioner of Health.

8:31C-1.21 Special rate provisions for rates effective July 1, 1987

(a) For the rate period July 1, 1987 through June 30, 1988, reimbursement rates will be established based upon the greater of either the "historical" rate or the screened rate calculated pursuant to the previous sections of this subchapter.

1. The historical rate will be calculated by incrementing the RATF's 1986 Blue Cross rate with the general economic factor.

2. Acceptance of the historical rate shall constitute a waiver of any right of appeal concerning the rate.

(b) For the rate periods July 1, 1988 and thereafter, historical rates will no longer be calculated and, as such, will not be utilized in establishing the effective reimbursement rate.

(c) For the rate periods July 1, 1988 and thereafter, the prospective reimbursement rates will be based upon the methodology described in the previous sections of this subchapter.

(a)

**THE COMMISSIONER**

**Certificate of Need: Review of Long-Term Care  
Facilities and Services Policy Manual**

**Adopted Amendments: N.J.A.C. 8:33H-2.1, 3.2, 3.3,  
3.5, 3.8, and 3.10**

Proposed: October 20, 1986 at 18 N.J.R. 2095(a).

Adopted: December 11, 1986, by Molly Joel Coye, M.D.,  
M.P.H., Commissioner, Department of Health (with approval  
of the Health Care Administration Board).

Filed: December 23, 1986 as R.1987 d.74, with **substantive and  
technical changes** not requiring additional public notice (see  
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-5, 26:2H-8 and 26:2H-9.

Effective Date: January 20, 1987.

Expiration Date: July 19, 1990.

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

Written comments were received during the comment period. Commentors include: American Association of Retired Persons—New Jersey State Legislative Committee; New Jersey Business Group on Health; New Jersey Association of Non-profit Homes for the Aging; New Jersey Association of Health Care Facilities; Southern New Jersey Health Systems Agency; Interstate Health Planning Corporation.

COMMENT: The New Jersey Association of Health Care Facilities and the Interstate Health Planning Corporation recommend the deletion of N.J.A.C. 8:33H-3.10(a)1.ii. They question the validity of equating Community Care Program for the Elderly Disabled slots with long-term care beds, such that the long term care bed need for each county will be reduced by the number of Community Care Program for the Elderly Disabled slots made available to the county by the Department of Human Services.

RESPONSE: This rule was developed in collaboration with the Department of Human Services in an effort to realize certain long-term care policy goals of the State. Specifically, the State Health Plan Element for Long-Term Care Facilities refers to the need to "promote the development of a long-term care system or continuum of care which emphasizes a sense of community and least restrictive environment" (Goal #2, p. 14). N.J.A.C. 8:33H-3.10(a)1.ii is intended in part to address the long-term care system's imbalance which is reflected in the traditional favoring of institutional solutions to chronic illness problems. The fact that there are currently over 46,000 existing or Certificate of Need approved nursing home beds in New Jersey, but only 1,800 CCPED slots bespeaks the extent to which resources have been channeled into institutional rather than home-based care. This is particularly unfortunate in view of the fact that research indicates most people would prefer to receive long-term care at home.

The New Jersey Association of Health Care Facilities makes reference to the fact that community-based care provided by the HCFA-funded national Channeling demonstration "was proven to be more costly than the institutional care available and had no effect [sic] on nursing home use." It is true that the study revealed no statistically significant differences between control and experimental groups with respect to nursing home institutionalization. However, less than 15 percent of participants from *either* the control or the experimental group were placed in nursing homes during the study. While participants had to be designated as nursing home-eligible in order to be included in the study, clearly very few actually were admitted to long-term care institutions. This suggests *not* that community-care was unsuccessful, but rather that the population most at risk of nursing home placement was not targeted. In other demonstrations (for example, South Carolina's Community Long-Term Care Project) where the population most likely to enter nursing homes was successfully targeted, substantially lower nursing home utilization was reported for community-care recipients. Another problem with the Channeling demonstration was its brief duration. Participants were only followed for 18 months; it may be, that over a longer period of time, community-based care would have been more dramatically successful in delaying or preventing institutionalization.

In order for CCPED to remain viable, the U.S. Health Care Financing Administration requires the State Department of Human Services to offer assurances that CCPED results in reduced institutionalization. Limiting the supply of nursing home beds while allocating resources for community care is compelling evidence in this regard. The Department of Health should work with the Department of Human Services to be certain that

appropriate, high-risk patients (that is, patients who would otherwise be admitted to nursing homes) are targeted to receive care. However, there is little cause to conclude that CCPED cannot provide an effective alternative to nursing home placement.

COMMENT: The Southern New Jersey Health Systems Agency states that N.J.A.C. 8:33H-3.3(b)3 should be amended to include Bridgeton in the list of potentially underserved cities. The commentator argues that 16 percent of Bridgeton's over 65 population are below poverty.

RESPONSE: Bridgeton is not of sufficient size to be categorized as a "city" by the U.S. Census Bureau. All of the cities specified at 8:33H-3.3(b)3 have populations of at least 40,000, while Bridgeton's population was only 18,795 according to 1980 census data. The criteria for inclusion as a "potentially underserved city" are clearly specified within the Guideline. These cities have the largest absolute numbers—rather than percentages—of elderly persons with below-poverty incomes.

COMMENT: The Southern New Jersey Health Systems Agency recommends that N.J.A.C. 8:33H-3.3(a)4. be amended so that the applicant for a medical day care program must document need to the satisfaction of both the Department of health *and* the appropriate Health Systems Agency.

RESPONSE: The Department of Health acknowledges this request, noting that N.J.S.A. 26:2H-9 provides authority for this requirement, and has added the recommended language to the Standard.

COMMENT: Both the New Jersey Association of Health Care Facilities and the Interstate Health Planning Corporation question the deletion of 8:33H-3.2(b)2, Cost Efficiency. Removal of this Guideline is said to be "counter-productive." It is contended that inefficient projects may gain priority without inclusion of this provision.

RESPONSE: The cost-efficiency and financial feasibility of projects are addressed in specific terms in several sections of the Policy Manual. The discussion at 8:33H-3.2(b)2 is in some respects redundant of criteria delineated elsewhere. Furthermore, its emphasis on "projected payment rates" is believed to be potentially misleading. In order to project the desired lowest rates, some applicants for Certificates of Need may feel compelled to offer unrealistically low estimates of their facilities' costs and payment rates. The Guideline in question could unfairly result in the favoring of such applications over equally meritorious ones with realistic projected costs and payment rates. The prioritization criteria at 8:33H-3.3(b)5 and the financial feasibility guidelines at 8:33H-3.8(b) should encourage applicants to propose high quality, efficient facilities with the lowest costs and payment rates which are *realistically* possible.

COMMENT: The New Jersey Association of Health Care Facilities recommends the deletion at 8:33H-3.3(b)2 of the following language: "or a hospital requests the *permanent* exchange of acute care beds for long term care beds on a one for one basis."

RESPONSE: The Department acknowledges that this language is inconsistent with the proposed revisions at 8:33H-3.5, which also address hospital conversions. The commentator's recommendation is accepted and the language has been deleted from 8:33H-3.3(b)2.

COMMENT: The New Jersey Association of Health Care Facilities recommends a deletion at 8:33H-3.3(b)5.ii of the following language: "RHCF and SSI beds." The Association proposes the inclusion of "persons to be served through the provision of residential alternatives." It is stated that this revision will encourage "other modalities of residential alternatives in addition to residential health care beds."

RESPONSE: As it is currently worded, this item should not preclude the development and/or proposing of other residential alternatives aside from residential health care beds. The language of 8:33H-3.3(b)5.ii provides Certificate of Need applicants and reviewers with an objective criterion for evaluating the approvability of projects. Applicants demonstrating a commitment to offering a continuum of care and to making that continuum available to indigent persons (that is, SSI recipients) deserves to be given priority in the Certificate of Need review process.

COMMENT: The New Jersey Association of Health Care Facilities recommends the deletion of 8:33H-2.4(a)1.viii. This Section addresses the requirements for conversion of acute care beds when hospitals cannot demonstrate a need for long-term care beds according to the methodology at 8:33H-3.10. The Association maintains that by not applying the bed need methodology in this instance, the orderly development of long-term care services is deterred. The amendment "would cause drastic over-bedded conditions in long-term care identical to the hospital situation it attempts to correct."

The New Jersey Business Group on Health also objects to 8:33H-3.5(a)1.viii. This commentator contends that conversion under this provision "serves no better purpose than to shift unwanted resources and their attendant costs from one industry to another."



NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

**RESPONSE:** The language of 8:33H-3.5 stiffens the requirements for acute care hospitals wishing to convert beds, necessitating that these institutions demonstrate a much greater commitment to long-term care than was heretofore the case. The granting of an exception to the county bed need will be considered only if the request is to convert the entire hospital or a minimum of 120 beds to long-term care.

In spite of the relative laxity of the existing provisions pertaining to conversions of hospital to Long-term care beds, exceedingly few Certificate of Need applications have been received for this purpose. It seems unlikely that large numbers of hospitals will seek to take advantage of 8:33H-3.5(a)1.viii. Although it is true that approval of applications for acute care hospital conversions in the absence of long-term care bed need could conceivably result in an overbedded long term care situation, it is deemed that the health care system as a whole would be less damaged and better served by reducing the excess supply of hospital beds. The Long Term Care Policy Manual (N.J.A.C. 8:33H) should not absolutely preclude the consideration of a reduction of unneeded hospital beds through conversion to Long Term Care.

**COMMENT:** The New Jersey Association of Non-Profit Homes for the Aging contends that the requirement for Statewide Restricted Admission Facilities that at least 50 percent of the admissions come from outside the HSA in which the facility is located is arbitrary. Because the HSAs are variable in size, Restricted Admissions facilities would have to draw admissions from larger or smaller geographic areas, depending on the HSA in which the facility is located. The Association states that "geographical distribution" of members of the sponsoring group is superior to arbitrary HSA boundaries as a method of identifying restricted admission facilities.

**RESPONSE:** The requirement at 8:33H-3.3(b)4.ii that 50 percent of the admissions be from outside the health systems area may at first glance appear to be arbitrary; however, the commentator's inability to propose specific, alternative language points to the complexity of developing objective, fair criteria for evaluating compliance with the intent of this provision. Although certain HSAs are larger than others in terms of square mileage, the larger ones tend to have lower population densities than the smaller HSAs. Travel time over a geographic distance of 50 miles in a relatively sparsely populated health systems area is often comparable to the travel time required to cover a smaller distance in a more congested, urbanized area.

**COMMENT:** The New Jersey Association of Non-Profit Homes for the Aging recommends that the definition of Continuing Care Retirement Communities at 8:33H-2.1 be "brought into line" with Public Law 1986 Chapter 103, which was approved on September 3, 1986. The Statute stipulates that "A fee which is less than the sum of the regular periodic charges for one year of residency is not considered an entrance fee . . ."

**RESPONSE:** The commentator's recommendation is acknowledged, and the definition of a Continuing Care Retirement Community has been amended so that it is consistent with the new statute.

**COMMENT:** The American Association of Retired Persons—New Jersey State Legislative Committee expresses support for numerous aspects of the proposed amendments. These include the new bed need methodology at 8:33H-3.10, the long-term care bed need reduction in exchange for CCPED slots at 8:33H-3.10(a)1.ii, the exception for potentially underserved cities at 8:33H-3.3(b)3, the increased percentage requirement for Medicaid-eligible persons to accommodate General Assistance patients, and the requirement that facilities serve a minimum percentage of discharged psychiatric patients. The Association states that the revisions will assure high quality long-term care and the availability of alternatives to institutional care.

**RESPONSE:** The commentator's support is acknowledged and appreciated.

**COMMENT:** The New Jersey Association of Non-Profit Homes supports the Department's revised bed need methodology cited at 8:33H-3.10(a).

**RESPONSE:** The Association's comments are acknowledged and appreciated.

**COMMENT:** The Southern New Jersey HSA recommends that determination of the minimum percentage of discharged psychiatric patients to be required for admission to Certificate of Need approved facilities include the opportunity for public comment. Provisions at 8:33H-3.3(a)6.vii and 8:33H-3.3(a)5.viii indicate that the percentage will be determined by the Department of Health in consultation with the Department of Human Services.

The New Jersey Association of Health Care Facilities recommends that the percentage of discharged psychiatric patients be limited to seven percent, as is currently required for Certificate of Need approval.

The Interstate Health Planning Corporation states that the annual determination of a percentage of discharged psychiatric patients is "both unworkable and unfair." The Corporation indicates that all facilities should be required to accept Discharged Pending Placement patients, not just those seeking Certificate of Need approval. The variable admission requirement is said to be difficult to monitor.

**RESPONSE:** The number of elderly psychiatric patients in State and county facilities requiring long-term care placement is limited and is not projected to increase in future years, according to the Department of Human Services. Therefore, the percentage requirement is not expected to increase significantly above the current requirement of seven percent. Instead, the percentage should gradually decrease over time.

It is not clear how the public would benefit from the opportunity to comment on the annually determined percentage of psychiatric patients. The Southern New Jersey Health Systems Agency did not offer any rationale for this proposal, nor did the commentator substantiate potential problems that might occur when the percentage is determined by the Department of Health in collaboration with the Department of Human Services. In application the percentage will also have to be approved by the Statewide Health Coordinating Council as it reviews long term care applications and conditions placed upon them.

Similarly, the New Jersey Association of Health Care Facilities did not provide any justification for limiting the annual percentage to seven percent. In view of current projections for the numbers of psychiatric patients requiring placement (as described above), it appears that the Association's recommendation will be honored by default.

The Interstate Health Planning Corporation's suggestion that all existing facilities be required to accept discharged psychiatric patients is commendable, but it would require legislative action. N.J.A.C. 8:33H may only be applied to facilities seeking Certificate of Need approval. The provisions at 8:33H-3.3(a)5.viii and 6.vii represent a viable and immediate response to the access problems otherwise faced by discharged psychiatric patients. There has been little feedback to date that Certificate of Need approved facilities suffer a hardship from the acceptance of a minimal percentage of discharged psychiatric patients. There is also no evidence that monitoring of the variable admission rate requirements would be difficult.

**COMMENTS:** The Interstate Planning Corporation states that the exception for potentially underserved cities at 8:33H-3.3(b)3 is appreciated. However, the definition and criteria for selection of these cities should appear at 8:33H-2.1. The Corporation maintains that local support for projects in urban areas should be in evidence, and the fact that inner city construction will be more expensive than other areas should be acknowledged. It is also stated that facilities approved in potentially underserved cities should demonstrate a commitment to serve and employ local, urban residents.

**RESPONSE:** The commentator's recommendation regarding inclusion of the definition of a "potentially underserved city" is accepted, and 8:33H-2.1 has been amended accordingly.

Projects in potentially underserved cities are not exempt from the provisions of 8:33H requiring documentation of community support (8:33H-3.2(a)3). The prioritization criteria proposed at 8:33H-3.3(b)5.x and xi offer assurance that projects located in and serving urban areas will be given preference. The commentator's suggestions in these regards appear to be adequately addressed by the existing and amended rules.

**COMMENTS:** The Interstate Planning Corporation contends that specific illness groups should not be excluded from consideration for Statewide Restricted Admissions facilities. Patients with certain types of medical problems are said to be in need of special services that cannot be provided in general nursing homes. The commentator states that "dispersion of these patients means that counting their needs (statewide) against locally forecasted rates is unfair to locally emergent conditions."

**RESPONSE:** "Statewide Restricted Admission facility" is defined at 8:33H-2.1, and specific criteria for Certificate of Need approval are outlined at 8:33H-3.3(b)4. These facilities are intended to serve members of specific religious sects or fraternal organizations.

Reduced access to long-term care for patients with complex medical conditions—ventilator dependent patients, for example—is a critical issue requiring analysis and resolution. The Department is currently researching the need for "specialized" long-term care in New Jersey, and pertinent regulations will be proposed in the near future. To lump technologically specialized care units with restricted admission facilities as they are currently defined would certainly lead to confusion.

**COMMENT:** The Interstate Health Planning Corporation questions 8:33H-3.3(a)4—Standard III-04, Alternatives to Long-Term Care Beds. The commentator refers to the requirement that institutional alternatives

to long-term care be included in long-term care Certificate of Need applications. The commentor alleges that State staff are given too much latitude in determining what constitutes an acceptable alternative to inpatient care.

**RESPONSE:** The State Health Plan Elements for Long-Term Care (including Residential Health Care Facilities and Medical Day Care) provide a detailed analysis of the need for a continuum of long-term care services. The State Nursing Home Task Force Report of 1983 provides a clear description of the need for residential health care beds.

The commentor is referred to these documents for an explanation of the State's policy position with respect to long-term care residential alternatives. As stated at 8:33H-3.3(a)4, "The inclusion of institutional (residential health care, congregate housing, for example) and non-institutional alternatives to inpatient long-term care beds" shall be proposed. The language at 8:33H-3.3(a)4 does not indicate that applicants' innovative proposals for alternatives will not be welcomed. Each Certificate of Need application is subjected to the public review process, offering the Health Systems Agencies and Statewide Health Coordinating Council, as well as State staff, the opportunity to evaluate the acceptability and viability of any proposed alternative. Consultation with Department staff, as is recommended at 8:33H-3.3(a)4, should be viewed as a helpful service to long-term care applicants.

**COMMENT:** The New Jersey Association of Non-Profit Homes for the Aging questions the meaningfulness of the reference to "General Assistance recipients." (Presumably, the commentor is referring to the mention of General Assistance patients at 8:33H-2.1). The commentor indicates that such patients should be counted towards a facility's obligation to care for Medicaid recipients under Public Law 1985 Chapter 303.

**RESPONSE:** Requirements that Certificate of Need approved facilities accept specific percentages of Medicaid-eligible patients (including General Assistance recipients) are separate and distinct from the requirements imposed on all long-term care facilities pursuant to P.L. 1985 Chapter 303. The meaning of the commentor's contention is unclear.

**COMMENT:** The Interstate Health Planning Corporation questions the ten percent equity requirement at 8:33H-3.8(a)1.1. The commentor states that the definition of "equity" should be included.

**RESPONSE:** "Equity" is defined in the manual, "Certificate of Need Application and Review Process" (N.J.A.C. 8:33).

**COMMENT:** The Interstate Health Planning Corporation questioned the value of 8:33H-3.5(a)vii which grants additional priority to hospitals converting acute care beds to long-term care when the unit proposed for conversion was originally constructed for long-term care. The commentor recommended elimination of this section.

**RESPONSE:** The Department does not agree. Within any long-term care batch where there is a bed need, 8:33H-3.5 grants priority in meeting that need to hospitals converting acute care to long-term care, so long as certain conditions are met. 8:33H-3.5(a)vii simply gives additional consideration to these hospitals converting beds in units originally built for long-term care. These are units that should require less renovation than conversion of a general acute care unit and should be able to more easily meet long-term care licensure standards.

**COMMENT:** The Interstate Health Planning Corporation recommended that the proposed bed/population ration for the 75-84 age cohort be increased from 5.2 to 6.5. This is based on data obtained from one New Jersey facility and facilities in southeastern Pennsylvania.

**RESPONSE:** The Department does not agree. All changes in the bed need methodology proposed were developed in consultation with the Department of Human Services, the Health Systems Agencies, and the Statewide Health Coordinating Council and are based on actual New Jersey statewide utilization.

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

#### 8:33H-2.1 Definitions

In this chapter certain terms have specific meanings, as follows:

...  
"Continuing Care Retirement Communities" **\*means the provision of lodging and nursing, medical or other health related services at the same or another location to an individual pursuant to an agreement effective for the life of the individual or for a period greater than one year, including mutually terminable contracts, and in consideration of the payment of an entrance fee with or without other periodic charges. An individual who is provided continuing care is not related by consanguinity or affinity to the**

**person who provides the care. A fee which is less than the sum of the regular periodic charges for one year of residency is not considered an entrance fee.\*** **\*[means communities that combine independent living accommodations for the elderly with the provision of social and health care services, including post-acute and chronic nursing care, through an agreement to provide such continuing care for the term of a contract, frequently for the duration of a resident's life, in return for an entrance fee or periodic payments or both, in the event such care is required by residents.]\***

"Department of Health" means the State of New Jersey Department of Health.

"Medicaid-eligible patients" means those patients who have received prior determination of medical and financial eligibility for Medicaid coverage in a long-term care facility and are directly admitted on such reimbursement from a hospital or community-based residence. This definition also includes those individuals who qualify medically and financially for such care but do not apply for Medicaid and are essentially medically indigent. For purposes of this chapter, this definition also includes those patients whose care is reimbursed through General Assistance funds. This does not apply to those patients who are initially admitted to a long-term care facility on private payment, either under a 'private pay contract' prior to acceptance on Medicaid reimbursement or under the requirement to 'spend down' their assets to Medicaid financial eligibility levels; such patients are not considered direct Medicaid admissions for purposes of fulfilling such utilization requirements. The only exception to this definition will be in regard to those patients who are subject to a "spend-down" period of 60 days or less upon admission to a long-term care facility.

"Pediatric long-term care" means the post-acute chronic inpatient care provided principally to children age 16 or younger.

**"Potentially underserved cities" means urban areas designated by the U.S. Census Bureau as cities which contain the largest age 65 and over population below poverty level statewide.\***

"Statewide restricted admission facility" means a non-profit long-term care facility owned and operated by a religious or fraternal organization that serves only the members of that organization and their immediate families. This definition shall not apply to any long-term care facility serving or proposing to serve only patients with specific medical condition or diagnosis (Alzheimer's Disease, for example).

#### 8:33H-3.2 Cost effectiveness

(a) Standards are as follows:

1.-2. (No change.)

3. Standard II-03, cooperative arrangements: Each long-term care, residential health care or medical day care facility must be responsive to the medical, economic, and social necessities of coordinating its programs and services with other providers in its service area to avoid unnecessary duplication of services, equipment, and personnel. Where a facility initiates a new program or service or expands an existing one, it shall support its application for a Certificate of Need by providing written documentation of existing working relationships or of plans to develop working relationships with other providers in the area. In demonstrating present and proposed working relationships within the service area, the facility, as necessary and appropriate, shall consider the following entities:

i. (No change.)

ii. Other inpatient health facilities such as:

(1)-(7) (No change.)

(8) Mental health institutions and facilities.

iii.-xii. (No change.)

(b) Guidelines are as follows:

1. (No change.)

2. Guideline II-02, quality of health services: Special consideration will be given to Certificate of Need applications which promote high quality health services rendered in an efficient and economical manner, available to all residents of the facility's service area or all members of its special constituency.

#### 8:33H-3.3 Expansion and new construction

(a) Standards are as follows:

1. Standard III-01, occupancy rates. The desired occupancy rates (based on licensed beds) for inpatient facilities shall be:

i.-ii. (No change.)

iii. Pediatric long-term care, 90 percent; and

iv. (No change in text.)

2. Standard III-02, need for beds/services:

i. (No change.)



ii. The need for medical day care facilities shall be addressed as a separate service, regardless of whether free-standing facility-based or hospital affiliated. Basic criteria by which to determine need will include such factors as the number and capacity of both licensed operating and Certificate of Need approved medical day care facilities in the appropriate county/service area; the occupancy rate of the licensed operating facilities; the new facility's proposed Medicaid utilization; and whether the facility proposes to serve a [specific] specialized population, such as Alzheimer's disease or cerebral palsy patients. Only those medical day care facilities which are needed in certain unserved or underserved areas or which are needed to serve a specialized population will be approved.

iii. The need for pediatric long-term care beds shall be evaluated with regard to the availability and adequacy of existing resources in the area to be served by the facility. Beds approved for use as pediatric long-term care beds shall not be subject to the long-term care bed need methodology or counted in the inventory of long-term care beds available to the adult population. Where the need is demonstrated, priority in approving pediatric long-term care beds will be given to applicants with a history of providing services for the treatment of chronic long-term disabilities in children. The applicant shall provide evidence of the following, to the satisfaction of the Department of Health:

(1) The areawide need for the service;

(2) That existing pediatric long-term care facilities located within one hour's driving time or within a 50 mile radius from the proposed site had an occupancy rate of at least 90 percent for the preceding calendar year;

(3) How the proposed facility will target its services to the special needs of the most severely impaired children;

(4) Transfer and referral agreements to be established with other health care and child treatment facilities; and

(5) Other requirements, as enumerated in 3. below.

3. Standard III-03, addition of beds: In counties where the Department of Health has determined there is a need for long-term care beds, Certificate of Need applications for new facilities and additions to existing facilities will be evaluated with special consideration to the prioritization criteria outlined in (b)5. below. Applicants for long-term care and residential health care facilities seeking Certificate of Need approval to add beds to an existing facility or to construct a new facility will be required to submit all of the following with the application:

i. (No change.)

ii. Documentation of a prior record of providing a high quality of care. In making determinations of prior track record, the Commissioner shall base her or his determinations on the recommendations submitted by the Department of Health's Division of Health Facilities Evaluation supplemented by reports submitted by the Department of Human Services, Division of Medical Assistance and Health Services. In evaluating the prior history of applicants who have owned or operated Class B or C boarding homes, reports submitted by the Department of Community Affairs will be used. These reports will be supplemented by the review of official State records of the track records of applicants in other states and other information, including but not limited to, reports from statewide patients advocacy groups, ombudsman, and similar organization, when available.

iii.-v. (No change.)

vi. Documentation demonstrating that the request is in compliance with all other applicable Standards and Guidelines at N.J.A.C. 8:33H.

4. Standard III-04, alternative to long-term care beds: Certificate of Need applicants for long-term care beds shall propose the inclusion of institutional (residential health care, congregate housing, for example) alternatives to inpatient long-term care beds. Non-institutional alternatives, such as medical day care, shall be approved only if an applicant has quantitatively documented the need to the satisfaction of the Department of Health **\*and the appropriate Health Systems Agency\***. Applicants are instructed to consult with the Department's health planning staff in regard to alternatives appropriate to their projects, as well as the long-term care sections of the State Health Plan, prior to submission of an application. A written commitment to construct long-term care beds and their appropriate alternatives on a concurrent basis shall be submitted with the application and will be included as a condition of approval.

5. Standard III-05, utilization of new and/or additional beds by Medicare to Medicaid and Medicaid-eligible recipients. Long-term care facilities receiving Certificate of Need approval to add beds to an existing facility or to construct a new facility will be required to comply with the following utilization criteria:

i. New long-term care facility construction.

(1) Minimum of 36 percent of total long-term care bed complement must be occupied by direct admission Medicare to Medicaid and Medicaid-eligible patients no later than one year from license issuance.

(2) Facility must continue to maintain direct Medicare to Medicaid and Medicaid-eligible admissions to a minimum of 36 percent of its total long-term care bed complement thereafter.

(3) (No change.)

ii. Bed addition to an existing long-term care facility over 60 beds after expansion and which currently has Medicare to Medicaid and Medicaid-eligible patients occupying 36 percent or more of its total licensed capacity.

(1) Minimum of 36 percent of new long-term care beds must be occupied by direct admission of Medicare to Medicaid and Medicaid-eligible patients no later than one year from license issuance.

(2) Facility must continue to maintain direct Medicare to Medicaid and Medicaid-eligible admissions to a minimum of 36 percent of its total long-term care bed complement thereafter.

(3) (No change.)

iii. Bed addition to an existing long-term care facility over 60 beds after expansion of which currently has Medicare to Medicaid and Medicaid-eligible patients occupying less than 36 percent of its total licensed capacity.

(1) Minimum of 36 percent of total long-term care bed complement after expansion must be occupied by direct admission Medicare to Medicaid and Medicaid-eligible patients no later than one year from license issuance and must be maintained thereafter.

(2) (No change.)

iv. Bed addition of an existing long-term care facility which remains at 60 beds or less after expansion.

(1) Minimum of 36 percent of new bed must be occupied by direct admission Medicare to Medicaid and Medicaid-eligible patients no later than one year from license issuance.

(2) (No change.)

v. A long-term care facility which received Certificate of Need approval for a change in cost or scope will be required to comply with the utilization percentages for Medicare to Medicaid and Medicaid-eligible recipients, as outlined at (a)5.i. through iv. above.

vi.-vii. (No change.)

viii. The Medicaid utilization requirements outlined at (a)5.i. through vii. above will include a minimum percentage of discharged psychiatric patients from New Jersey State and county hospitals as a condition of approval. This percentage will be determined on an annual basis by the Department of Health in consultation with the Department of Human Services. The Department of Health will announce the required percentage of discharged psychiatric patients each year, 30 days before the beginning of the first cycle in that calendar year. This required minimum percentage will apply to all applications reviewed in any batch during that calendar year.

ix. If a higher projected percentage of Medicaid or discharged psychiatric patient occupancy, inclusive of the previously outlined utilization percentage, is a factor in the approval of Certificate of Need for a new or expanded long-term care facility, that percentage will be included as a condition of approval; the facility will be required to attain that level by the end of one year from license issuance and maintain that average on an annual basis thereafter.

x. (No change in text.)

xi. The requirements that 35 percent of a long-term care facility's beds be utilized by Medicaid-eligible patients in no way diminishes an applicant's responsibility to conform with Public Law 1985, Chapter 303, regarding non-discrimination against Medicaid-eligible patients.

6. Standard III-06, utilization of new and/or additional beds by Supplemental Security Income recipients: Applicants for residential health care facilities receiving Certificate of Need approval to construct new or additional beds will be required to comply with the following utilization criteria:

i.-iii. (No change.)

iv. A residential health care facility which receives Certificate of Need approval for a change in cost or scope will be required to comply with the utilization percentages for Supplemental Security Income residents identified at (i.)-(iii.) above.

v. A residential health care facility acquired through a Certificate of Need approved transfer of ownership, and which was originally subject to the Supplemental Security Income resident utilization percentages



identified at (i.)-(iv.) above will be required to maintain compliance with those utilization percentages.

vi. Any Certificate of Need applicant for new or expanding residential health care facility who can produce evidence of financial hardship which would result from compliance with the Supplemental Security Income resident utilization percentages identified at N.J.A.C. 8:33H-3.7(i) through (iv.), may request a review of the financial feasibility of those percentages. This review will be conducted by the Department of Health and may result in the imposition of a requirement for a lower percentage of utilization by Supplemental Security Income residents. This review process may also be requested by approved applicants who apply for a change in the cost or scope of their residential health care facility project, or by applicants for a transfer of ownership of a residential health care facility. In such instances, the Department of Health will consult with the Statewide Health Coordinating Council in making its determinations.

vii. The Supplemental Security Income resident utilization requirements outlined at (a)6i. through ii. above will include a minimum percentage of discharged psychiatric patients from New Jersey State and county hospitals as a condition of approval. This percentage will be determined on an annual basis by the Department of Health in consultation with the Department of Human Services. The Department of Health will announce the required percentage of discharged psychiatric patients each year, 30 days before the beginning of the first long-term care cycle in that calendar year. This required minimum percentage will apply to all residential health care facility applications reviewed thereafter, during that calendar year.

viii. If the applicant's proposal to accept a higher than required percentage of Supplemental Security Income residents, as specified at N.J.A.C. 8:33H-3.7(a)i. through ii., is a factor in the approval of a Certificate of Need for a new or expanded residential health care facility, that percentage will be included as a condition of approval by the Department of Health. The facility will be required to attain the specified level by the end of the first year after license issuance and to maintain that level on an annual basis thereafter.

ix. Non-compliance with these requirements will result in appropriate licensure action by the Department, such as the imposition of admission restrictions, to achieve the required utilization.

7. Standard III-07, continuing care retirement communities. Such communities are defined as those that combine independent living accommodations for the elderly with the provision of social and health care services, including post-acute and chronic nursing home care, through an agreement to provide such continuing care for the term of a contract, frequently for the duration of a resident's life, in return for an entrance fee or periodic payments or both, in the event such care is required by residents. Those communities seeking Certificate of Need approval to construct an on-site long-term care facility, which meet the above definition as determined by the Department of Health and contain a minimum of 240 residential units, may apply for exemption from the long-term care bed need, utilization criteria, and batching cycle requirements. Such projects will be included in the Certificate of Need full review process; however, the process may be expedited with the concurrence of the local Health Systems Agency. Applicants shall apply for the above exemptions by submitting all of the following required documentation:

i.-xii. (No change.)

(b) Guidelines are as follows:

1. (No change.)

2. Guideline III-02, exception to Standard III-03, addition of beds: If an applicant cannot submit the documentation required in Standard III-03, (a)3.ii. above, for long-term care beds, new or additional beds may still be approved if the request is for no more than 10 beds \*[or a hospital requests the permanent exchange of acute care beds for long-term care beds on a one for one basis]\*. Wherever there is a long-term care bed need for less than a usual full-sized facility of 120 beds, additions to existing facilities will be given preference, provided that all other applicable provisions of this chapter (N.J.A.C. 8:33H) are satisfied, including the prioritization criteria identified in (b)5. below.

3. Guideline III-03, exception for potentially underserved cities: If a long-term care facility applicant cannot submit the documentation required at Standard III-03, (a)3.ii. new or additional beds may still be approved in potentially underserved urban areas, which are herein defined as those cities containing the largest age 65 and over populations below poverty level statewide. For the purposes of this rule, these cities are: Newark, New Jersey, Paterson, Atlantic City, Camden, Elizabeth, Trenton, Irvington, East Orange, and Union City. The Department of Health shall annually apply the bed need methodology identified at N.J.A.C. 8:33H-3.10 to the population of each of the aforementioned cities. Appli-

cants for long-term care facilities in any of these cities where there is a net bed need must document all of the following to the satisfaction of the Department of Health:

i. The applicant agrees, as a condition of approval, to build within the city limits.

ii. A written commitment to accept as a condition of Certificate of Need approval a minimum of 50 percent bed occupancy by direct Medicaid-eligible patients, of which 10 percent shall be discharged psychiatric patients from State and county hospitals. This percentage will be included as a condition of Certificate of Need approval; it is to be achieved no later than one year from license issuance and maintained thereafter.

iii. A written commitment to accept as a condition of Certificate of Need approval a minimum of 30 percent bed occupancy by Supplemental Security Income recipients, of which 10 percent shall be discharged psychiatric patients from State and county hospitals. This percentage will be included as a condition of Certificate of Need approval; it is to be achieved no later than one year from license issuance and maintained thereafter.

4. Guideline III-04, Exception for statewide restriction admission facilities: Certificate of Need applications for new or expanding long-term care facilities meeting the criteria listed below will not be subject to review under the long-term care bed need methodology identified at N.J.A.C. 8:33H-3.10. To be eligible for consideration as a Statewide Restricted Admission Facility, the applicant must provide documentation that the following criteria are met:

i. It must be clearly stated in the facility's bylaws that only members of the specified religious or fraternal organization and their immediate family members will be admitted to 100 percent of the long-term care and residential health care facility beds.

ii. More than 50 percent of the facility's patients will be admitted from outside the health systems area in which the facility is located or will be constructed.

5. Guideline III-05, Prioritization criteria. In counties where there is a bed need according to the methodology identified at N.J.A.C. 8:33H-3.10(a), criteria for the prioritization of Certificate of Need applications requesting new or additional beds shall include:

i. Compliance with all applicable standards and guidelines of this policy manual (N.J.A.C. 8:33H);

ii. Greatest provision of residential alternatives, including highest absolute number of RHCf beds and SSI beds;

iii. Highest existing and/or projected Medicaid utilization, particularly direct Medicaid admissions;

iv. Conversion of excess acute care beds, where economically feasible;

v. Lowest reasonable capital and operating costs;

vi. Record of compliance with licensure standards and other indices of quality service provision in facilities owned, operated, and/or managed by any principals involved with the application.

vii. Highest equity contribution.

viii. Ability to implement quickly.

ix. History of most significant service provision to the Medicaid-eligible population.

x. Location within the official city limits of potentially underserved urban areas, as defined at N.J.A.C. 8:33H-3.3(b)3.

xi. Existing and proposed admissions practices and policies of the facility in assuring access for low-income persons to long-term care alternatives.

#### 8:33H-3.5 Conversion

(a) Standards are as follows:

1. Standard V-01, Certificate of Need requirements for conversion of hospital facilities to long-term care. Applications for Certificates of Need to convert licensed acute care beds in distinct parts of hospital facilities to long-term care shall be reviewed according to the long-term care bed need methodology identified at N.J.A.C. 8:33H-3.10. Within each long-term care batch, hospitals converting such beds shall be given priority consideration by the Department of Health provided that all of the following conditions are met:

i. They entail a permanent conversion of capacity (i.e., the creation of so-called "swing beds" is not proposed).

ii. There is a bed need in the area and the conversion will remove at least 30 excess acute care beds from the system while mitigating the local economic and labor impact of such a reduction in acute care capacity.

iii. The hospital clearly documents, to the satisfaction of the Department, plans for providing a suitable living environment for long-stay patients within an appropriate continuum of care, including residential

health care and/or congregate care, or admission criteria to reserve such long-term care beds for patients whose stays can reasonably be expected to be less than 100 days.

iv. The capital cost of converting the acute care beds is less than that of new long-term care facility construction.

v. The applicant complies with all other standards and guidelines herein, and will comply with licensure standards and reimbursement regulations applicable to all long-term care facilities.

vi. The applicant documents a commitment to serve a high percentage of Medicaid patients, including the minimum utilization criteria for 36 percent direct admission Medicaid-eligible patients identified at N.J.A.C. 8:33H-3.3(a)5.

vii. Additional priority will be given to hospitals converting acute care units which were originally constructed for long-term care use.

viii. If the hospital cannot submit the documentation required in ii. above, the application to convert acute care beds to long-term care may be approved if:

(1) The request is to convert all the acute care beds in the facility to non-acute care use; or

(2) The request is for the conversion of a minimum of 120 acute care beds to long-term care.

2. (No change.)

#### 8:33H-3.8 Financial feasibility

(a) Standards are as follows:

1. Standard VIII-01, demonstration of financial feasibility. Applicants for Certificates of Need must demonstrate.

i. The availability of at least 10 percent of the total project cost, including all financing and carrying costs, in the form of equity, in accordance with N.J.A.C. 8:33-3.2; and

ii. Evidence in financial projections that income generated by operation of the facility will be sufficient to provide service to the percentage of Medicaid or indigent patients specified in the application, or in accordance with N.J.A.C. 8:33H-3.3(a)5 (or N.J.A.C. 8:33H-3.3(b)3 where applicable), whichever is greater.

iii. Possession of sufficient resources to complete the project in a timely manner, according to the description in the application.

2. (No change.)

(b) Guidelines are as follows:

1. Guidelines VIII-01, realistic projection of costs: Where projected construction costs or any element of construction costs are considerably lower or higher than the average for the health systems area, as determined by the Department of Health, the applicant shall be expected to provide an explanation at the request of the Department indicating factors contributing to said projections. This request for an explanation shall not be construed as an opportunity to change cost projections.

2. Guideline VIII-02, During the Department's review of Certificate of Need applications, consideration shall be given to applicants' and/or principals' previous history of project completion. Preference will be given to those who have completed previous projects in a timely manner and have demonstrated an ability to realistically project construction costs.

#### 8:33H-3.10 Long-term care bed need methodology

(a) Guidelines are as follows:

1. Guideline X-01, bed need methodology:

i. The methodology used to estimate long-term care bed need by county, health service area, and the State as a whole shall be: 1.2 beds per 100 persons age 65-74, 5.2 beds per 100 persons age 75-84, and 18.1 beds per 100 persons age 85 and over.

ii. The net bed need developed in accordance with i. above shall be reduced by one bed for each slot approved for either the State's Community Care Program for the Elderly and Disabled (CCPED) or the State's several Model Waivers programs. The bed reduction shall be allocated among the counties in proportion to the distribution of such slots as certified semiannually by the Department of Human Services.

iii. (No change in text.)

iv. The Department of Health shall consult at least once yearly with the SHCC and the HSAs to determine whether any revisions to the methodology described in i. above are necessary.

2. (No change.)

## DRUG UTILIZATION REVIEW COUNCIL

### (a)

#### Interchangeable Drug Products

##### Adopted Amendment: N.J.A.C. 8:71

Proposed: October 20, 1986 at 18 N.J.R. 2100(a).

Adopted: December 15, 1986, by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: December 16, 1986 as R.1987 d.55, **without change**.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: January 20, 1987.

Expiration Date: April 2, 1989.

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

COMMENT: The New Jersey Pharmaceutical Association strongly supported the proposed deletions.

COMMENT: Altana Pharmaceuticals objected to the proposed deletion of erythromycin ophthalmic ointment, stating that sales of that item approximated 40,000 annually in New Jersey.

RESPONSE: It is notable that 90 percent of the sales of this item is in hospitals, where the generic substitution law does not pertain. Altana admitted that 90 percent of their sales were in hospitals. The Council therefore saw no impediment to deleting this product.

COMMENT: West-Ward Pharmaceutical objected to the proposed deletion of aminophylline, stating that it is a frequently-used drug, and further noting that the Council should protect the public from those generics which possess an FDA therapeutic code indicating less than full therapeutic equivalency to Aminophyllin (the brand) by Searle.

RESPONSE: The Council notes that this product is overwhelmingly prescribed generically, thus the generic substitution law does not pertain. Further, the Council does not include in the List of Interchangeable Drug Products many other frequently prescribed products which may be less than fully therapeutically equivalent to their branded counterparts, such as prednisone and quinidine. The Council believes aminophylline to be in the same category as these latter agents and therefore deleted all aminophylline products.

#### The following products were DELETED.

Aminophylline tablets 100 mg	Duramed
Aminophylline tablets 200 mg	Cord, Duramed
Anisotropine MBr tabs 50 mg	Bolar
Chloramphenicol caps 250 mg	P-D, Rachele, Zenith
Chloroquine phosphate tablets 500 mg	Danbury
Clotrimazole cream 1%, vag, crm 1%, soln 1%	Miles, Schering
Clotrimazole vaginal tabs 100 mg	Miles, Schering
Codeine guaifenesin pseudo ephedrine	Bay
Cyclopentolate hydrochloride ophth. solution 1%	Pharmafair
Dexchlorpheniramine maleate syrup	Bay
Diethylpropion HCL tabs 25 mg	Drummer/Phoenix, Lemmon
Ergotamine tartrate with caffeine tablets, 1 mg with 100 mg	Cord, Sandoz
Erythromycin ophthalmic ointment 5 mg/g	Fougera/Byk-Gulden, Pharmaderm/Byk-Gulden, Pharmafair
Folic acid tablets 1 mg	Bolar, Chelsea, Danbury, Generic, Halsey, Lederle, MK, PFI, Premo, Purepac/Kalipharma, Richlyn, T.P., West-Ward, Zenith
Gycopyrrolate tabs 1 mg	Bolar, Robins
Clycopyrrolate tabs 2 mg	Bolar, Chelsea, Robins
Guanethidine mono sulfate tablets 10, 25 mg	Bolar
Hydroflumethiazide tabs 50 mg	Bolar, Chelsea, Par
Methenamine mandelate suspension 500 mg/5 ml	NPC
Multivitamin Forte (VICON FORTE FORMULA) capsules	Par

Naphazoline HCL 0.025%/pheniramine 0.3% ophth. soln	Pharmafair
Nitrofurazone soluble dressing 0.2%	Clay-Park, Thames
Pentaerythritol tetranitrate tabs 10, 20 mg	Bolar, Halsey, West-Ward, Zenith
Phendimetrazine tartrate tabs 35 mg	Barr, Camall, Chelsea, Cord, Generic, Inwood, Zenith
Proparacaine HCL ophth. solution 0.5%	Pharmafair
Sodium polystyrene sulfonate powder	Bay
Tetracaine HCL ophth. solution 1/2-1	Optopics
Tripelennaine HCL tabs 50 mg	Barr, Bolar, Chelsea, CIBA, Danbury, Richlyn, West- Ward
Tropicamide ophth. solution 0.5%, 1.0%	Pharmafair

(a)

**Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: October 20, 1986 at 18 N.J.R. 2101(a).

Adopted: December 15, 1986, by the Drug Utilization Review  
Council, Sanford Luger, Chairman.

Filed: December 16, 1986 as R.1987 d.56, **with the entire proposal  
not adopted.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: January 20, 1987.

Expiration Date: April 2, 1989.

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

COMMENT: Heather Laboratories commented by telephone that their status in regard to the FDA's Current Good Manufacturing Practices (CGMPs) was now acceptable, thus their products should not be deleted from the Formulary.

RESPONSE: The FDA sent written verification that Heather now meets CGMPs, thus removing the only reason for Heather's products to be proposed for deletion from the Formulary. The Drug Utilization Review Council **did not adopt** the proposal to delete all Heather products from the Formulary.

Doxycycline hyclate capsules 50, 100 mg  
Doxycycline hyclate tablets 100 mg  
Furosemide tablets 20, 40 mg  
Hydrochlorothiazide tablets 50 mg  
Meprobamate tablets 400 mg  
Methocarbamol tablets 500, 750 mg  
Propantheline bromide tablets 15 mg  
Sulfamethoxazole/trimethoprim tablets 400/80, 800/160 mg  
Sulfamethoxazole tablets 500 mg  
Sulfisoxazole tablets 500 mg  
Tetracycline HCL capsules 250, 500 mg

(b)

**Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: March 17, 1986 at 18 N.J.R. 537(a).

Adopted: December 15, 1986 by the Drug Utilization Review  
Council, Sanford Luger, Chairman.

Filed: December 16, 1986 as R.1987 d.57, **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: January 20, 1987.

Expiration Date: April 2, 1989.

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

**No comments received.**

The following products and their respective manufacturers were  
**ADOPTED:**

**Flurazepam HCL caps 15, 30 mg**

**Trazodone tabs 50 mg, 100 mg**

**Verapamil tabs 80 mg, 120 mg**

**West-Ward**

**Chelsea**

**Chelsea**

The following products were **not adopted but are still pending:**

Aminophylline oral soln 105 mg/5 ml  
Chlorzoxazone 250 mg/Acetaminophen 300 mg  
Isosorbide dinitrate oral tabs 20 mg  
Lithium carbonate caps and tabs, 300 mg  
Methyldopa tabs 125, 250, 500 mg  
Methyldopa tabs 250, 500 mg  
Methyldopa/HCTZ 250/150, 250/250 mg  
Methyldopa/HCTZ 250/25, 500/30, 500/50 mg  
SMZ/TMP Susp. 200 mg + 40 mg/5 ml  
Sulfasalazine tabs 500 mg  
Trazodone HCL tabs 50, 100 mg

Roxane  
Amer. Ther.  
West-Ward  
Roxane  
Par  
Superpharm  
Par  
Par  
Naska  
Superpharm  
Pharm. Basics

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notices of  
adoption can be found at 18 NJR 1381(a), 1463(b), 1957(a), and 2015(a).

(c)

**Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: June 2, 1986 at 18 N.J.R. 1167(a).

Adopted: December 15, 1986, by the Drug Utilization Review  
Council, Sanford Luger, Chairman.

Filed: December 16, 1986 as R.1987 d.66, **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: January 20, 1987.

Expiration Date: April 2, 1989.

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

**No comments received.**

The following products and their respective manufacturers were  
**ADOPTED:**

**Hydroxyzine HCL tabs 10, 25, 50 mg**

**Lorazepam tabs 0.5, 1.0, 2.0 mg**

**Propranolol HCL tabs 60, 80 mg**

**Verapamil tabs 80, 120 mg**

**Sidmak**

**Par**

**Purepac**

**Purepac**

The following products were **not adopted but are still pending:**

Cholestyramine for susp 4 g/packet  
Clonidine HCL tabs 0.1, 0.2, 0.3 mg  
Clonidine tablets 0.1, 0.2, 0.3 mg  
Dexchlorpheniramine maleate tabs 2 mg  
Estropipate tabs 1.5, 3.0 mg  
Furosemide tabs 80 mg  
Haloperidol tabs 10 mg  
Hydromorphone tabs 2 mg, 4 mg  
Indomethacin caps 25, 50 mg  
Lactulose syrup 10 g/15 ml  
Lithium carbonate caps 300 mg  
Lorazepam tabs 0.5, 1.0, 2.0 mg  
Lorazepam tabs 1 mg, 2 mg  
Lorazepam tabs 2 mg  
Lorazepam tabs 2 mg  
Methyldopa tabs 250, 500 mg  
Metoclopramide tabs 10 mg  
Metoclopramide tabs 10 mg  
Metronidazole tabs 250, 500 mg  
Nitrofurantoin macrocrys. caps 50, 100 mg  
Potassium Cl extend. rel. tabs 8, 10 mEq  
Potassium Cl extended rel. tabs 8 mEq  
Potassium Cl powder 20 mEq/packet  
Potassium bicarb efferves tab 25 mEq  
Potassium bicarb. effervescent tab 25mEq  
Propoxyphene naps/APAP tabs 100/650  
Propranolol HCL tabs 10, 20, 40 mg  
Propranolol tabs 10, 20, 40, 60, 80 mg  
Sucralfate tabs 1.0 g  
Temazepam caps 15, 30 mg

Pharm. Basics  
Purepac  
Purepac  
Bolar  
Sidmak  
Pharm. Basics  
Roxane  
Purepac  
Roxane  
Purepac  
Alra  
Bolar  
Duramed  
Pharm. Basics  
Bolar  
Purepac  
Duramed  
Bolar  
Watson  
Watson  
Bolar  
Alra  
Copley  
Alra  
Alra  
Altergon  
Purepac  
Purepac  
Bolar  
Pharm. Basics  
Bolar



NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

Tolazamide tabs 250, 500 mg  
Tolbutamide tabs 250, 500 mg  
Trifluoperazine tabs 5 mg  
Valproic acid syrup 250 mg/5 ml  
Verapamil tabs 80, 120 mg

Cord  
Bolar  
Bolar  
Alra  
Bolar

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notices of adoption can be found at 18 N.J.R. 1955(b) and 18 N.J.R. 2208(b).

**(a)****Interchangeable Drug Products****Adopted Amendment: N.J.A.C. 8:71**

Proposed: September 8, 1986 at 18 N.J.R. 1775(a).

Adopted: December 15, 1986, by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: December 16, 1986 as R.1987 d.67, 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: January 20, 1987.

Expiration Date: April 2, 1989.

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

**No comments received.**

The following products and their respective manufacturers were **ADOPTED**:

Dexamethasone elixir 0.5 mg/5 ml  
Gentamicin cream 0.1%  
Gentamicin cream 0.1%  
Hydralazine/HCTZ caps 25/25, 50/50  
Ibuprofen tabs 300, 400, 600 mg  
Ibuprofen tabs 300 mg  
Methyclothiazide tabs 5 mg  
Methyldopa tabs 250, 500 mg  
Methyldopa tabs 250, 500 mg  
Methyldopa/HCTZ 250/15 tabs  
Methyldopa/HCTZ 500/30 tabs  
Methyldopa/HCTZ tabs 250/25, 500/50  
Metoclopramide tabs 10 mg  
Perphenazine/amitrip 2/10, 2/25, 4/25, 4/10, 4/50  
Propranolol HCl tabs 60 mg  
Propranolol HCl/HCTZ tabs 40/25, 80/25  
Propranolol tabs 10, 20, 40, 60, 80 mg  
Propranolol tabs 60, 90 mg  
Spironolactone/HCTZ 25/25 tabs  
Sulfamethoxazole/trimethoprim 400/80, 800/160  
Temazepam caps 15, 30 mg  
Thioridazine tabs 150, 200 mg  
Verapamil tabs 80, 120 mg

Naska  
Altana/Foug.  
Altana/PHDRM  
Reid-Rowell  
Cord  
Chelsea  
Pharm. Basics  
Danbury  
Parke-Davis  
Bolar  
Bolar  
Bolar  
Beecham  
Zenith  
Schering  
Chelsea  
Cord  
Duramed  
Danbury  
Cord  
Mylan  
Cord  
Watson

The following products and their manufacturers were **NOT ADOPTED**:

Chlorothiazide tabs 250 mg  
Ibuprofen tabs 200 mg  
Prednisone tabs 5, 10, 20 mg  
Thioridazine HCl tabs 10, 15, 25, 50 mg

West-Ward  
Cord  
Mutual  
Danbury

The following products were **not adopted but are still pending**:

Acetaminophen/codeine elix 120/12  
Allopurinol tabs 300 mg  
Amiloride/HCTZ 5 mg/50 mg tabs  
Aminophylline tabs 100, 200 mg  
Amitriptyline tabs 10, 25, 50, 75, 100 mg  
Amitriptyline/perphenazine 10/2, 25/2 tab  
Amitriptyline/perphenazine 10/4, 25/4 tab  
Amitriptyline/perphenazine 50/4 tabs  
Carbamazepine tabs 200 mg  
Cephadroxil caps 500 mg  
Cephadroxil tabs 1 g  
Cephalexin caps 250, 500 mg  
Cephadrine caps 250, 500 mg

Naska  
Cord  
Chelsea  
West-Ward  
Zenith  
Chelsea  
Chelsea  
Chelsea  
Teva  
Zenith  
Zenith  
Zenith  
Zenith

Chlorpheniramine 12/PPA 75 mg ER caps  
Chlorthalidone tabs 25, 50 mg  
Clofibrate caps 0.5 g  
Clonidine HCl tabs 0.1, 0.2, 0.3 mg  
Clonidine HCl tabs 0.1, 0.2 mg  
Clonidine tabs 0.1, 0.2, 0.3 mg  
Clonidine tabs 0.1, 0.2, 0.3 mg  
Cyproheptadine syrup 2 mg/5 ml  
Disopyramide phosphate caps 100, 150 mg  
Ergoloid mesylates oral tabs 1 mg  
Erythromycin ethylsuccinate susp 400/5 ml  
Erythromycin ethylsuccinate 200 mg/5 ml  
Flurazepam caps 15, 30 mg  
Furosemide tabs 80 mg  
Haloperidol tabs 10 mg  
Haloperidol tabs 0.5, 1, 2, 5, 10 mg  
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg  
Hydrocodone/homatropine 5/1.5 mg/5 ml  
Hydroxyzine HCl syrup 10 mg/5 ml  
Ibuprofen tabs 200, 300, 400, 600 mg  
Indomethacin caps 25, 50 mg  
Indomethacin sustained rel caps 75 mg  
Isosorbide dinitrate tabs 20, 30 mg  
Lidocaine viscous liquid 2%  
Lithium carbonate caps 300 mg  
Lorazepam tabs 0.5, 1.0, 2.0 mg  
Lorazepam tabs 0.5, 1.0, 2.0 mg  
Meclofenamate caps 50, 100 mg  
Methyldopa/HCTZ 250/15, 250/25  
Methyldopa/HCTZ 500/30, 500/50 tabs  
Metoclopramide tabs 10 mg  
Oxazepam caps 10, 15, 30 mg  
Perphenazine tabs, 2, 4, 8, 16 mg  
Potassium Cl mod rel 8 mEq and 10 mEq  
Prednisolone tabs 5 mg  
Prednisone tabs 5, 10, 20, 50 mg  
Procainamide HCl ER tabs 250, 500 750 mg  
Procainamide caps 250, 375, 500 mg  
Prochlorperazine maleate tabs, 5, 10, 25 mg  
Promethazine VC syrup 6.25/5 per 5 ml  
Promethazine VC/cod syrup 6.25/5/10/5 ml  
Promethazine syrups 6.25 mg & 25 mg/5 ml  
Promethazine/DM syrup 6.25/15 per 5 ml  
Promethazine/codeine syrup 6.25/10/5 ml  
Propoxyphene naps/APAP 50/325, 100/650  
Propranolol HCl tabs 20, 40 mg  
Propranolol HCl tabs 60 mg  
Propranolol tabs 10, 20, 40, 80 mg  
Propranolol/HCTZ tabs 40/25  
Propranolol/HCTZ tabs 40/25, 80/25  
Theophylline elixir 80 mg/15 ml  
Thioridazine 10, 15, 25, 50, 100, 150, 200 mg  
Thioridazine conc. 30 mg/ml, 100 mg/ml  
Thiothixene caps 2, 5, 10 mg  
Tolbutamide tabs 500 mg  
Triamterene/HCTZ caps 50/25  
Triamterene/HCTZ tabs 75/50  
Valproic acid caps 250 mg  
Verapamil tabs 80, 120 mg  
Verapamil tabs 80, 120 mg

Chelsea  
Danbury  
Chelsea  
Watson  
Cord  
Chelsea  
Zenith  
Naska  
Chelsea  
Sandoz  
Naska  
Naska  
Zenith  
Zenith  
Searle  
Zenith  
Duramed  
Naska  
Naska  
Zenith  
Cord  
Zenith  
Chelsea  
Naska  
Reid-Rowell  
Watson  
Zenith  
Chelsea  
Zenith  
Zenith  
Chelsea  
Zenith  
Zenith  
Upsher-Smith  
PFI  
Chelsea  
Cord  
Cord  
Duramed  
Naska  
Naska  
Naska  
Naska  
Naska  
Chelsea  
Lemmon  
Chelsea  
Zenith  
Zenith  
Duramed  
Naska  
Sandoz  
Sandoz  
Chelsea  
Danbury  
Zenith  
Zenith  
Chelsea  
BASF  
Zenith

## CORRECTIONS

### (a)

#### THE COMMISSIONER

#### Classification Process

#### Adopted New Rules: N.J.A.C. 10A:9

Proposed: August 18, 1986 at 18 N.J.R. 1649(a).

Adopted: December 18, 1986, by William H. Fauver,

Commissioner, Department of Corrections.

Filed: December 19, 1986, as R.1987 d.48, with technical and substantive changes not requiring additional public notice under N.J.A.C. 1:30-4.3.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: January 20, 1987.

Expiration Date: January 20, 1992.

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

The Department of Corrections conducted a public hearing on the proposed rules on September 9, 1986. Although approximately 20 persons attended, including a representative of the Public Advocate, the colloquy involved questions, comments and responses rather than specific suggestions to change or modify the rules. The commenters who made oral suggestions also submitted their suggestions in detailed written form. This summary, therefore, addresses the written submissions.

A number of written comments were received from inmates. Most of their comments were criticisms or complaints about the manner in which policy is implemented. To the extent that no concrete suggestions were made to modify a particular rule, such comments are not relevant here.

COMMENT: A commenter sought clarification of the definition of detainees provided in N.J.A.C. 10A:9-1.3. The commenter's question involved the Classification Committee's former use of informal reports of criminal history to support decisions regarding reduced custody.

RESPONSE: The rule, as presently drafted, eliminates any reference to criminal history reports and requires formal notification of the pertinent information.

COMMENT: A commenter noted that N.J.A.C. 10A:9-2.1 failed to mention reception activity for male inmates at the Correctional Institution for Women (C.I.W.) at Clinton.

RESPONSE: Special mention is not made of reception activity for male inmates at the Correctional Institution for Women at Clinton because these inmates were admitted to the Reception Unit of the Youth Reception and Correction Center (Y.R.C.C.) at Yardville where the reception activity, as described in N.J.A.C. 10A:9-2.1, took place.

COMMENT: A commenter stated that N.J.A.C. 10A:9-3.1(a)6 requires the Supervisor of State Use Industries to be a member of the Institutional Classification Committee (I.C.C.) and that the Adult Diagnostic and Treatment Center (A.D.T.C.) has no State Use Supervisor.

RESPONSE: This kind of situation is provided for in N.J.A.C. 10A:9-3.1(b) in order to give the individual correctional facilities some flexibility as to membership on the I.C.C. The Superintendent may assign appropriate alternates to serve as members on the I.C.C.

COMMENT: A commenter suggested that review dates after initial classification be extended to 18 months instead of 12 months.

RESPONSE: This suggestion is rejected. It is believed that inmates benefit from a review conducted at least yearly, even when already assigned to minimum custody status.

COMMENT: A commenter asked that a psychological status update be deferred unless needed for a specific purpose. (See N.J.A.C. 10A:9-3.5(d).)

RESPONSE: This suggestion must be rejected. Psychological reports are valuable tools used to evaluate the status and progress of an inmate. Updated reports are essential to this process.

COMMENT: A commenter suggested that N.J.A.C. 10A:9-4.4 be clarified to indicate that when an inmate's custody level is increased on an emergency basis, such increase is made permanent when confirmed by the Institutional Classification Committee (I.C.C.) and that this could be accomplished by removing the word "temporary" from N.J.A.C. 10A:9-4.4(a)1.

RESPONSE: This suggestion is adopted since it was intended that the temporary reduction in status be made permanent by confirmation of the Institutional Classification Committee (I.C.C.).

COMMENT: A commenter suggested that N.J.A.C. 10A:9-4.5 include criteria by which the Institutional Classification Committee (I.C.C.) may decide to increase an inmate's custody status.

RESPONSE: This response was proposed in N.J.A.C. 10A:9-4.5(f) and a few minor changes in language have been made for clarification.

COMMENT: A commenter suggested that N.J.A.C. 10A:9-4.6(d) be modified to increase the number of inmates who qualify for reduced custody while serving mandatory minimum terms.

RESPONSE: The Department agrees and has proposed to add a subsection to N.J.A.C. 10A:9-4.6 which will permit inmates with mandatory minimum terms of two years or less to be eligible for reduced custody consideration immediately following admission to a correctional facility (see Notice of Proposal published elsewhere in this Register).

COMMENT: A commenter suggested that all the rules pertaining to escape be incorporated into one section for clarity.

RESPONSE: This is a practical suggestion which is adopted. N.J.A.C. 10A:9-4.8(e) has been added at N.J.A.C. 10A:9-4.6(j)3.

COMMENT: A commenter urged that forfeiture of commutation time not exceed the amount an inmate may earn during the service of the sentence to the date of sanction. (See N.J.A.C. 10A:9-5.3(c).)

RESPONSE: This suggestion is rejected. The present rule caps forfeiture at 365 days for a single infraction. The language suggested by this commenter could result in greatly increased forfeiture for inmates with lengthy sentences.

COMMENT: A commenter requested an interpretation of N.J.A.C. 10A:9-5.5(a)1.

RESPONSE: An example has been added to clarify the intent of this section.

COMMENT: A commenter stated that N.J.A.C. 10A:9-6.5 should provide due process procedures for inmates who are transferred.

RESPONSE: Neither New Jersey State law nor federal law require due process protections in connection with routine or emergency administrative transfers of inmates.

COMMENT: A commenter requested that N.J.A.C. 10A:9-8.2 be amended to require the Commissioner to make an effort to appoint black and Hispanic members to the Special Classification Review Board (S.C.R.B.).

RESPONSE: It is not necessary to write such a requirement into the rules. The Commissioner is prohibited by law from discriminating against minorities. The main criteria for selecting persons for service on the S.C.R.B. are professional qualifications and employment affiliation.

COMMENT: A commenter asked that N.J.A.C. 10A:9-8.2(d) require the Special Classification Review Board (S.C.R.B.) to meet twice per month instead of once per month.

RESPONSE: The S.C.R.B. is authorized to meet as often as is deemed necessary to accomplish its task. The rule as written is sufficient.

COMMENT: A commenter suggested that an interpreter be provided to assist inmates whose primary language is other than English.

RESPONSE: This suggestion is deemed unnecessary. The Superintendent has the authority to arrange for an interpreter in those cases where communication in English is not effective.

COMMENT: A commenter called attention to a recent Appellate Division decision which held that a sex offender sentenced under N.J.S.A. 2A, who is subsequently transferred to another correctional facility permanently, must be resentenced to a fixed term. The sex offender, therefore, no longer remains under the jurisdiction of the Adult Diagnostic and Treatment Center (A.D.T.C.).

RESPONSE: N.J.A.C. 10A:9-8.5 has been modified to reflect this change in the law.

COMMENT: Several commenters have requested that time periods for scheduling reviews of cases by S.C.R.B. be shortened or made more flexible.

RESPONSE: All time periods specified in this rule were carefully formulated with clear objectives. No sufficient reason has been articulated to justify any changes.

COMMENT: A commenter asked that a process be spelled out for implementing N.J.S.A. 2C:47-4(c).

RESPONSE: This suggestion is not adopted. N.J.S.A. 2C:47-4(c) is self-explanatory. In any case in which the Commissioner desires to take court action, the Attorney General is notified.

COMMENT: Two commenters stated that the S.C.R.B. should limit the scope of its review to the first three items listed in N.J.A.C. 10A:9-8.4(d).

RESPONSE: The present rule allows S.C.R.B. members to consider, in addition, any matter which they deem relevant. Board members must

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

have discretion to rely on facts which, in their professional judgment, will affect their decision making process.

COMMENT: N.J.A.C. 10A:9-8.4(f)2 should permit attorneys to be present at S.C.R.B. meetings.

RESPONSE: This suggestion cannot be adopted as it would create an adversary proceeding where none is intended.

COMMENT: A commenter asked that news media or other persons be permitted to attend S.C.R.B. meetings with the permission of the inmate to be interviewed.

RESPONSE: This suggestion is not adopted. A decision on the attendance of outside persons at S.C.R.B. meetings must be left solely in the hands of the administration and S.C.R.B. members.

COMMENT: A commenter stated that N.J.A.C. 10A:9-8.6(f) should require that reasons for S.C.R.B.'s decision "shall be therapeutic issues that require additional work."

RESPONSE: This change is not adopted. Reasons given by S.C.R.B. may include other than solely therapeutic issues as are deemed important and relevant.

In addition to the specific modifications set forth above, there are a number of minor changes in wording or grammatical corrections which do not affect the procedures being described.

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

## CHAPTER 9 CLASSIFICATION PROCESS

### SUBCHAPTER 1. INTRODUCTION

#### 10A:9-1.1 Purpose

(a) The purpose of this Chapter is to:

1. Establish criteria for eligibility for reduced custody status;
2. Establish procedures regarding the award and forfeiture of commutation time and work credits;
3. Provide an orderly process for deciding the degree of custody and appropriate correctional facility for each inmate;
4. Provide an orderly process for considering transfers of inmates between correctional facilities;
5. Establish a mechanism for deciding whether to recommend parole for persons confined pursuant to N.J.S.A. 2C:47 and 2A:164; and
6. Provide a process for assignment and transfer of juvenile offenders.

#### 10A:9-1.2 Scope

(a) Subchapter 2 through Subchapter 6 shall be applicable to the Division of Adult Institutions.

(b) Subchapter 7 shall be applicable to the Division of Adult Institutions and the Division of Juvenile Services.

(c) Subchapter 8 shall be applicable to inmates sentenced under N.J.S.A. 2C:47 and 2A:164 who are housed at either the Adult Diagnostic and **\*[Training]\* \*Treatment\*** Center (A.D.T.C.) or other facilities.

(d) Subchapters 9 through **\*[12]\* \*11\*** shall be applicable to the Division of Juvenile Services.

#### 10A:9-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise.

"A.D.T.C." means the Adult Diagnostic and **\*[Training]\* \*Treatment\*** Center, the correctional facility designated to house persons who have been convicted pursuant to N.J.S.A. 2C:47 and 2A:164.

"Classification Committee" means a group of correctional staff persons that have been designated to make decisions related to the needs of inmates from admission to discharge.

"Classification material" means documents in the classification folder on which information regarding an inmate is recorded such as psychological or psychiatric evaluations, rap sheets, disciplinary charges, program participation, pre-sentence reports, medical records, etc.

"Commissioner" means the Commissioner of the New Jersey Department of Corrections.

"Detainer" means a warrant or formal authorization to hold an inmate for prosecution or detention by a federal, state or local law enforcement agency or the U.S. Immigration Department. Detainers may include, but are not limited to:

1. Adjudicated criminal charges for which sentence has been imposed;
2. Criminal charges resulting from indictment, for which there is no final disposition (open charges);
3. Warrants for violation of parole or probation; and
4. Immigration detainers.

"Division of Adult Institutions" means an administrative unit of the Department that is responsible for the operation of the adult correctional facilities.

"Division of Juvenile Services" means an administrative unit of the Department that is responsible for the operation of the juvenile correctional facilities.

"Indeterminate sentence" means a sentence of imprisonment which contains no fixed terms. See N.J.S.A. 30:4-148.

"Increased custody" means assignment of an inmate to a custody level that requires more supervision.

"Jones Farm" means a community based satellite unit of the State Prison, Trenton, which houses inmates in full minimum custody status **\*[that]\* \*who\*** meet the criteria for assignment to that facility.

"Prison Complex" means the state correctional facilities designated to house inmates serving prison sentences.

"Prison sentence" means a definite term of imprisonment having fixed minimum and maximum time limits.

"Reduced custody" means assignment of an inmate to a custody level that requires less supervision.

"Superintendent" means the chief executive officer of any State correctional facility in the New Jersey Department of Corrections.

"Vroom Readjustment Unit" (V.R.U.) means the Administrative Segregation and Protective Custody Unit for inmates, located in the Vroom Building on the grounds of Trenton Psychiatric Hospital.

"Youth Complex" means state correctional facilities designated to house inmates between the ages of 15 and 26, who have not previously been sentenced to a state prison in New Jersey or in any other state.

#### 10A:9-1.4 Forms

The following form related to classification shall be reproduced by each correctional facility from the original which is available by contacting the Standards Development Unit, New Jersey Department of Corrections.

1. 852-I Authorization for Emergency Transfer.

### SUBCHAPTER 2. RECEPTION CLASSIFICATION

#### 10A:9-2.1 Reception activity

(a) Adult male offenders are admitted to the Youth Reception and Correction Center (Y.R.C.C.) at Yardville or the Adult Diagnostic and Treatment Center (A.D.T.C.) at Avenel, and female offenders are admitted to the Correctional Institution for Women (C.I.W.) at Clinton where they begin a reception classification process.

(b) Upon admission to the reception unit, assignment to housing shall be made based upon the inmate's:

1. Age;
2. Size;
3. Offense;
4. Sentence;
5. Previous incarcerations;
6. Mental status; or
7. Security needs.

(c) The reception process shall be completed within three weeks, unless unusual circumstances arise.

(d) During the reception classification process the inmate shall be:

1. Photographed;
2. Fingerprinted;
3. Given orientation;
4. Given medical and dental examinations;
5. Given educational, psychological and vocational aptitude tests; and
6. Interviewed by the psychologist, social worker and other staff members.

(e) At the end of the reception process, a male inmate admitted to the Y.R.C.C. shall appear before the Inter-Institutional Classification Committee (I.I.C.C.) or the Youth Reception Classification Committee and the decisions on the degree of custody and the appropriate correctional facility to which the inmate will be assigned shall be made.

(f) At the end of the reception process, a male inmate admitted to the A.D.T.C. shall appear before the Institutional Classification Committee (I.C.C.) and decisions on the inmate's program (for example, housing, therapy, education, etc.) while he is at the A.D.T.C. shall be made at that time.

(g) At the end of the reception process, a female inmate admitted to the C.I.W. shall appear before the Institutional Classification Committee (I.C.C.) and decisions on the inmate's program (for example, housing, degree of custody, education, job, etc.) while she is at C.I.W. shall be made at that time.



### SUBCHAPTER 3. INSTITUTIONAL CLASSIFICATION COMMITTEE (I.C.C.)

#### 10A:9-3.1 Composition of the Institutional Classification Committee (I.C.C.)

(a) The members of the Institutional Classification Committee (I.C.C.) at each of the adult correctional facilities shall be composed of the:

1. Superintendent or Assistant Superintendent;
2. Director of Psychology;
3. Director of Education;
4. Social Work Supervisor;
5. Director of Custody Operations or Correction Captain;
6. Supervisor of State Use Industries; and
7. Classification Officer (non-voting member).

(b) Staff members other than those listed above, may be designated by the Superintendent to serve as members or alternate members of the I.C.C.

(c) The I.C.C. shall meet weekly, and more often as required.

#### 10A:9-3.2 Responsibilities of the Institutional Classification Committee (I.C.C.)

(a) Each institution shall establish an Institutional Classification Committee(s) (I.C.C.) which shall be responsible for:

1. Assigning inmates to work, educational, vocational and treatment programs appropriate to their needs;
2. Monitoring the progress of inmates by scheduling periodic reviews to ensure that rehabilitative efforts are being maximized;
3. Reviewing the applications of inmates for changes in custody status;
4. Reviewing the requests of inmates for transfers to other facilities;
5. Making changes in the housing or program assignments of inmates;
6. Assigning the inmate to community release programs;
7. Approving the application for restoration of commutation time;
8. Reviewing the imposition of Administration Segregation; and
9. Reviewing Restrictive Activities Program assignments at the Adult Diagnostic and Treatment Center (A.D.T.C.).

#### 10A:9-3.3 Institutional Classification Committee (I.C.C.) decision making criteria

(a) Decisions on transfers and assignments to housing, work, educational, vocational, or treatment programs, custody status and community release programs shall be made after consideration of the the following factors:

1. Needs and interests expressed by inmate;
2. Age;
3. Family status;
4. Social contacts with family and friends;
5. Correctional facility adjustment;
6. Educational history and needs;
7. Vocational history and needs;
8. Military history;
9. Nature and circumstance of present offense;
10. Prior offense record;
11. Records from previous confinement;
12. Detainers on file or pending;
13. Drug dependency and/or involvement;
14. Sexual adjustment;
15. History of escape, attempted escape or propensity for escape;
16. Current psychological and/or psychiatric reports;
17. Medical history and recommendations;
18. Arson history; \*[and]\*
19. Needs of the correctional facility; and/or
20. Any other factor pertinent to the inmate's case.

#### 10A:9-3.4 Initial classification

(a) Upon assignment to an adult correctional facility or its satellite, \*[and]\* \*an\* inmate shall undergo a series of tests and interviews to determine his or her aptitudes, abilities, interests and problems.

(b) The inmate's appearance before the Institutional Classification Committee (I.C.C.) shall occur within 21 days after admission to the correctional facility.

(c) At the initial classification, the I.C.C. shall, subject to availability, assign an inmate to a program which may include:

1. A work assignment;
2. A treatment program;
3. An education program; and/or
4. A vocational training program.

(d) An inmate may be referred by the I.C.C. to a subcommittee or department head for consideration for individual components of the program.

(e) A review date shall be set and the decision of the I.C.C. shall be forwarded to the appropriate departments.

#### 10A:9-3.5 Review dates

(a) An inmate shall be scheduled for a review date at his or her initial classification that is no more than 12 months from the date of initial classification.

(b) The frequency of case review shall be dependent on the review date determined by the Institutional Classification Committee (I.C.C.) or a change in the inmate's status. Status changes may include:

1. Parole date changes;
2. Sentence changes;
3. Changes in personal needs;
4. Referrals from the Disciplinary Hearing Officer; or
5. Other situations arising which make a case review appropriate.

(c) The Classification Office shall be responsible for scheduling all reviews set by the I.C.C.

(d) An update of the inmate's psychological status shall occur on a yearly basis, or more often as the need arises.

(e) An inmate shall be notified of his or her review date no later than 48 hours prior to its occurrence. When the inmate appears before the I.C.C., he or she may submit a request for reassignment in the areas of:

1. Housing;
2. Work;
3. Education;
4. Vocational training;
5. Counseling or treatment; and
6. Custody status.

#### 10A:9-3.6 Special reviews

(a) Inmates desiring a special review of their cases because of a change in status may submit a written request which indicates the reason for the review to the staff member(s) designated by the Superintendent.

(b) It shall be the responsibility of the staff member to determine if the requested review is appropriate, and the reports that will be necessary for consideration. If the review is recommended, the staff member will forward all appropriate information to the Institutional Classification Committee (I.C.C.).

#### 10A:9-3.7 Discussions

(a) An inmate's case may be brought to the attention of the Institutional Classification Committee (I.C.C.) prior to his or her review date if it has been referred by a staff member or an institutional committee for the purpose of making a change in:

1. Work assignment;
2. Custody status;
3. Housing assignment; or
4. Program assignment.

#### 10A:9-3.8 Work assignment\*s\*

(a) Decisions on inmate work assignments shall be made by the Institutional Classification Committee (I.C.C.) based upon:

1. Physical condition;
2. Mental and mechanical aptitudes;
3. Past work experience;
4. Occupational interests;
5. Vocational needs of the inmate;
6. Opportunities upon release; and
7. Availability of jobs within the correctional facility.

(b) When the I.C.C. has assigned an inmate to a job, he or she is not eligible for a job change until at least two months of work has been completed on the job.

#### 10A:9-3.9 Education assignments

(a) Determining factors in referring an inmate to an educational program shall be:

1. Recommendation of the Supervisor of Educational programs;
2. Test results;
3. Interest and aptitude of the inmate;
4. Sentence length; and/or
5. Community employment plan.

#### 10A:9-3.10 Counseling assignments

(a) Inmates with emotional and/or personal problems shall be referred to the appropriate staff members.

(b) Inmates shall be approved for group counseling and other therapy programs by the Institutional Classification Committee (I.C.C.) and shall be assigned by the staff member in charge of the program.

(c) Inmates may be removed from these programs only by the decision of the I.C.C.

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

10A:9-3.11 Reassignments

(a) Reassignments are cases referred to the Institutional Classification Committee (I.C.C.) for a change in some area of an inmate's program.

(b) Any change in or addition to the inmate's initial program shall be made by the I.C.C. Reassignments may be made upon inmate or staff request, as the need arises.

10A:9-3.12 Community Release Programs

(a) The Institutional Classification Committee (I.C.C.) may assign an inmate to a community release program when the inmate is eligible for:

1. Full minimum custody; and
2. Assignment to the program in which he or she will participate.

10A:9-3.13 Transfers

(a) Except for inmates assigned to the Adult Diagnostic and Treatment Center (A.D.T.C.) and the Correctional Institution for Women (C.I.W.) at Clinton, the I.C.C. shall review an inmate's request for transfer to another correctional facility.

(b) When it has been determined that the inmate meets the criteria for assignment to the correctional facility he or she has requested, the request for transfer shall be referred to the Inter-Institutional Classification Committee (I.I.C.C.), the Yardville Reception Classification Committee (Y.R.C.C.) or the Special Classification Committee (S.C.C.) for consideration.

10A:9-3.14 Written procedures

(a) Each correctional facility shall develop written classification procedures that are in accordance with this Subchapter.

(b) These written procedures shall be reviewed and updated annually and submitted to the Bureau of Correctional Information and Classification Services for review and approval.

SUBCHAPTER 4. ELIGIBILITY CRITERIA FOR REDUCED CUSTODY CONSIDERATION

10A:9-4.1 Eligibility for reduced custody

(a) The criteria set forth in this Subchapter shall be applied by Classification Committees to determine whether an inmate is eligible for reduced custody consideration, as follows:

1. Eligible to be considered for full minimum custody status, preceded by the successful completion of a period of time in gang minimum or in-and-out status;

2. Eligible to be considered for gang minimum **\*custody status\*** or in-and-out **\*custody\*** status only; or

3. Not eligible to be considered for any type of reduced custody status.

10A:9-4.2 No right to reduced custody

A reduction in custody status is a privilege and not a right.

10A:9-4.3 Custody levels

(a) Inmates classified as "maximum custody" shall be assigned to activities within the confines of the correctional facility under continuous supervision.

(b) Inmates classified as "gang minimum custody status" or "in-and-out custody status" shall be assigned to activities or jobs which routinely require them to move outside the security of the correctional facility, but on the grounds of the facility and within eyesight of a correction officer, civilian instructor or other employee authorized to supervise inmates.

(c) Inmates classified as "full minimum custody status" are those assigned to either:

1. Work details, jobs or programs outside the main correctional facility, (on or off the grounds of the facility) with minimal supervision;
2. A satellite unit or minimum security trailer unit; or
3. Both (c)1 and 2 above.

(d) Except as provided by N.J.A.C. 10A:9-4.4, the successful completion of a period of time in gang minimum custody status or in-and-out custody status shall be a prerequisite for full minimum custody status.

1. The amount of time in gang minimum **\*[custody]\* \*custody status\*** or in-and-out **\*custody\*** status shall be at the discretion of the Institutional Classification Committee (I.C.C.).

2. Inasmuch as the Youth Correctional Institution at Annandale is classified as a minimum security facility, inmates at that facility are not required to fulfill the prerequisite time in gang minimum custody status or in-and-out custody status.

(e) Full minimum custody status is a prerequisite for participation in all community release programs.

10A:9-4.4 Authority of Classification Committees

(a) Reductions in inmates' custody levels within a particular correctional facility shall be made by the Institutional Classification Committee (I.C.C.).

1. In an emergency situation, or when additional information is received which negatively affects an inmate's suitability to remain in reduced custody, the inmate's custody level can be increased temporarily by order of the Superintendent, Assistant Superintendent or Director of Custody Operations.

2. Such custody level changes must be reviewed and approved by the I.C.C. at its next regularly scheduled meeting.

(b) The Inter-Institutional Classification Committee (I.I.C.C.) is authorized to change the custody status of any inmate whom it transfers or reassigns to another correctional facility or unit.

(c) The I.I.C.C. is authorized, at initial classification, to assign eligible inmates directly to full minimum custody status at Jones Farm without the prerequisite service of time required for gang minimum custody status or in-and-out custody status.

10A:9-4.5 Discretion of Classification Committees; factors to be considered

(a) Except as otherwise noted, Classification Committees are the only bodies authorized to reduce or increase an inmate's custody status.

(b) In making decisions to reduce an inmate's custody status, Classification Committees shall take into consideration all relevant factors which, in their professional judgment, bear upon the inmate's suitability for reduced custody. These factors shall include, but not be limited to:

1. Field account of the offense;
2. Prior criminal record;
3. Previous incarcerations;
4. Correctional facility adjustment; and
5. Reports from professional and custody staff.

(c) When considering inmates whose present offense or past history involves arson, escape, assault, murder or sexual offenses, or who have been known to have psychological problems, the Classification Committees shall utilize psychiatric or psychological evaluations which are not more than six months old and which confirm suitability for reduced custody status.

(d) Classification Committees shall not be compelled by these criteria to automatically grant a reduction in custody to every inmate who is eligible for consideration.

(e) Classification Committees have no authority to grant reductions in custody to inmates who fall outside the eligibility guidelines unless appropriate requests for variances are filed and approved, pursuant to N.J.A.C. 10A:1. ADMINISTRATION, ORGANIZATION AND MANAGEMENT

(f) An inmate who has been granted reduced custody may **\*[revert to maximum custody]\* \*have his or her custody increased\*** for any of the following reasons, subject to confirmation by the Classification Committee:

1. On recommendation of the Disciplinary Hearing Officer **\*in connection with disciplinary actions\***;
2. Upon receipt of a non-permissive detainer;
3. Upon receipt of credible, reliable information from official authorities or informants, that the inmate may be an escape risk;
4. Failure of the inmate to adjust to the social or programmatic needs of the reduced custody unit;
5. Serious health problems as determined by the **\*[correctional]\* \*correctional\*** facility physician; and/or
6. Any reason which, in the opinion of the Superintendent and Classification Committee, relates to the best interests of the inmate or the safe and orderly operation of the correctional facility.

(g) The inmate shall receive a written notice of the reason(s) for the return to **\*[maximum]\* \*increased\*** custody status within five working days.

10A:9-4.6 Criteria for consideration for gang minimum custody status, in-and-out custody status, and full minimum **\*custody\*** status

(a) Except as provided in N.J.A.C. 10A:9-4.7 and 10A:9-4.8, inmates who meet the criteria set forth in this section are eligible to be considered for full minimum custody status preceded by the successful completion of a period of time in gang minimum custody **\*status\*** or in-and-out **\*custody\*** status. Pursuant to N.J.A.C. 10A:9-4.4(d)1, the amount of time in gang minimum custody **\*status\* or in-and-out custody status\*** shall be at the discretion of the Institutional Classification Committee (I.C.C.).

(b) Classification Committees are not obligated to advance an inmate from gang minimum custody status or in-and-out custody status to full minimum custody status even though the inmate qualifies for consideration under the criteria set forth in this section.

**(CITE 19 N.J.R. 222)  
CORRECTIONS****ADOPTIONS**

(c) When considering inmates for reduced custody status who are serving ordinary or extended prison sentences with no mandatory minimum, the **\*(I.C.C.)\* \*I.C.C.\*** shall take into account all New Jersey County Jail credits awarded prior to commitment on the instant offense. Inmates must have served the following number of years of their sentences in maximum custody to be eligible to be considered for gang minimum custody status, in-and-out custody status and full minimum custody status.

Length of Sentence:	Years in Maximum
Over 30 years to life	5
Over 25 up to and including 30 years	4
Over 20 up to and including 25 years	3
Over 15 up to and including 20 years	2
Over 10 up to and including 15 years	1
10 years and under	none

(d) Inmates sentenced to serve mandatory minimum terms are eligible to be considered for gang minimum custody status, in-and-out custody status, and full minimum custody status when the following service of time has been met. Any New Jersey County Jail credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

1. If the mandatory minimum is one-half or greater than one-half of the term imposed, the inmate shall serve one-half of the mandatory minimum. (EXAMPLE: If the term is 20 years and the mandatory minimum is 10 years, the inmate must serve 5 years.)

2. If the mandatory minimum is less than one-half of the term imposed, the inmate shall serve one-third of the mandatory minimum. (EXAMPLE: If the term is 20 years and the mandatory minimum is 8 years, the inmate must serve 2 years and 8 months.)

3. However, in any instance where the application of (d)2 above would result in an inmate being eligible for consideration in less time than if he or she had no mandatory minimum, then the formula set forth in (c) above shall be applied such that the greater amount of time shall be spent in maximum custody. (EXAMPLE: If the inmate has a 20 year term and a mandatory minimum of 3 years, he or she shall serve the 2 years required in 10A:9-4.6(c) instead of the 1 year which would be required under 10A:9-4.6(d)2.)

(e) When considering inmates with indeterminate sentences for reduced custody status, the I.C.C. shall take into account all New Jersey County Jail credits awarded prior to commitment on the instant offense.

(f) Inmates with indeterminate sentences must have served the following number of months of their sentences to be eligible to be considered for gang minimum custody status, in-and-out custody status and full minimum custody status:

Length of Sentence:	Months in Maximum
30 years to life	42
25 to 29 years	30
20 to 24 years	18
15 to 19 years	6
Up to 15 years	None

(g) Inmates presently serving sentences for controlled dangerous substance (C.D.S.) offenses shall be eligible to be considered for gang minimum custody status, in-and-out custody status, and full minimum custody status. When considering these offenders the I.C.C. shall take into account the following:

1. Nature of the offense;
2. Type of C.D.S.;
3. Amount of C.D.S.;
4. Dollar value of the substance involved;
5. Inmates's drug offense history; and
6. Any statement by the sentencing judge as to the severity or commercial aspect of the offense.

(h) Inmates with detainers from other jurisdictions outside New Jersey shall be eligible as follows:

1. Inmates with detainers for adjudicated offenses shall be eligible to be considered for gang minimum custody status and full minimum custody status provided the detainers are for concurrent sentences which do not exceed the maximum of the term currently being served.

2. Inmates with detainers for open charges (unadjudicated offense, parole violation or immigration) are not eligible unless the detainer is more than five years old.

3. Inmates with detainers for open charges more than five years old shall be eligible to be considered for gang minimum custody status and full minimum custody status provided the charges are not included on the list of serious offenses in (i) below, and the I.C.C. believes the inmate is not an escape risk.

(i) Inmates who have New Jersey detainers, New Jersey open charges less than five years old or who are on bail, are eligible to be considered for gang minimum custody status or in-and-out custody status, and full minimum custody status unless the detainer, the open charge or the bail is for one of the following:

1. Homicide;
2. Arson;
3. Controlled dangerous substance offense;
4. Sex offense;
5. Offense of an assaultive nature as defined by N.J.S.A. 2C:12-b (Aggravated Assault) or N.J.S.A. 2A:90-1 et seq.;
6. Kidnapping as defined by N.J.S.A. 2C:13 or 2A:118-1 et seq.;
7. Burglary as defined in N.J.S.A. 2C:18-2b and 2A:94-1 et seq.;
8. Escape;
9. Bail jumping as defined in N.J.S.A. 2C:29-7 and 2A:15-1 et seq.;
10. Prohibited weapons and devices as defined in N.J.S.A. 2C:39-3, 4, 5, 7, 9, 10 and 2A:151;
11. Criminal or malicious mischief as defined in N.J.S.A. 2C:17-3 and 2A:122-1;
12. Robbery as defined in N.J.S.A. 2\*[c]\*\*C\*:15-1 \*[AND]\* \*\*and\* 2\*[a]\*\*A\*:141.1 et seq.; and/or
13. Terroristic threats as defined in N.J.S.A. 2C:12-3.

(j) Inmates who have escaped or attempted escape and who are not excluded from reduced custody pursuant to N.J.A.C. 10A:9-4.8(e) shall be eligible for reduced custody as follows:

1. If an inmate is presently serving a sentence for escape or attempted escape from inside the security of a main correctional facility or county jail, within or outside New Jersey, he/she shall be eligible to be considered for gang minimum custody status or in-and-out custody status and full minimum **\*custody\*** status only when five years have elapsed since the date of apprehension of the escape or the date of attempted escape and he or she is otherwise eligible according to the criteria set forth in this **\*[Subchapter]\* \*subchapter\***.

2. If an inmate is presently serving a sentence for escape or attempted escape from a minimum security detail or unit, within or outside New Jersey, he or she shall be eligible to be considered for gang minimum custody status or in-and-out custody status and full minimum status when two years have elapsed from the date of apprehension of the escape or two years from the date of the attempted escape and he or she is otherwise eligible according to the criteria set forth in this Subchapter.

**\*3. An inmate who presently is serving a sentence for escape or attempted escape from any type of correctional facility or setting and who has a previous adult conviction for escape or attempted escape from any type of correctional facility or setting, is not eligible to be considered for any type of reduced custody.\***

10A:9-4.7 Criteria for consideration for gang minimum custody status or in-and-out custody status only

(a) Inmates who meet the criteria set forth in this section shall be eligible to be considered for gang minimum custody status or in-and-out custody status, but not for full minimum custody status.

(b) In no case shall offenses adjudicated by a juvenile court be the sole basis for excluding an inmate from consideration.

(c) An inmate who is presently serving a sentence for one count of a sexual offense and has no prior adult convictions for sexual offenses, or an inmate who is presently serving a sentence for a **\*[non-sexual]\* \*nonsexual\*** offense but who has a prior adult conviction for one count of a sexual offense may be considered for gang minimum custody status or in-and-out custody status provided:

1. He or she is otherwise eligible according to the criteria set forth in this subchapter;

2. There is a psychiatric or psychological evaluation, not more than six months old, which focuses specifically on the inmate's criminal sexual behavior and his or her likelihood for success in reduced custody; and

3. There is positive recommendation for parole from the Special Classification Review Board (See N.J.A.C. 10A:9-8) if the inmate has been sentenced pursuant to N.J.S.A. 2A:164-3 et seq. or N.J.S.A. 2C:47-1 et seq.

(d) An inmate who presently is serving a sentence for one conviction of arson or fire setting or malicious destruction involving arson, with no previous such adult convictions; or an inmate presently serving a sentence



## NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

for a nonarson offense but who has a prior adult conviction for arson, fire setting or malicious destruction involving arson, is eligible to be considered **\*for gang minimum custody status or in-and-out custody status\*** provided:

1. He or she is otherwise eligible according to the criteria set forth in this subchapter; and

2. There is a psychiatric or psychological evaluation, no more than six months old, which focuses specifically on the inmate's likelihood for success in gang minimum custody status or in-and-out custody status in light of the present or past conviction for arson.

10A:9-4.8 Not eligible to be considered for reduced custody

(a) Inmates serving sentences for the offenses described below are not eligible to be considered for any type of reduced custody status.

(b) In no case may offenses adjudicated by a juvenile court be the sole basis for excluding an inmate from consideration.

(c) An inmate who presently is serving a sentence for one count of a sexual offense and who has a prior adult conviction for one count of a sexual offense under the laws of this State, any other state or the United States; an inmate who presently is serving a sentence for more than one count of a sexual offense under the laws of this State, any other state or the United States; or, an inmate who presently is serving a sentence for a nonsexual offense and has prior adult convictions for more than one count of a sexual offense under the laws of this State, any other state of the United States, is not eligible for reduced custody.

1. For purposes of this subchapter, a sexual offense shall include a conviction obtained in a court of competent jurisdiction of another state, or of the Federal government, or a conviction obtained under the following New Jersey Statutes:

- 2C:14-2 Sexual assault; aggravated sexual assault;
- 2C:14-3 Aggravated criminal sexual contact; criminal sexual contact;
- 2C:24-4 Endangering welfare of children where the official version of the crime indicates that the inmate engaged in sexual contact pursuant to 2C:24-4(a) or committed an offense under 2C:24-4(b) (3, 4 or 5);
- 2C:5-1 Criminal attempt to commit any offense under 2C:14-2, 14-3, 23-4;
- 2C:5-2 Conspiracy to commit an offense under 2C:14-3, 24-4;
- 2C:47-1 Et seq. any conviction obtained under this Section;
- 2A:86-3 Abduction of female under age 18 for purpose of marriage or carnal abuse;
- 2A:90-2 Assault with intent to commit rape or sodomy, or to carnally abuse a female under the age of 16, with or without her consent;
- 2A:96-3 Debauching or impairing the morals of a child under the age of 16;
- 2A:138-1 Rape or carnal abuse;
- 2A:138-2 Carnal knowledge of female inmates of a home or institution for the feeble minded or mentally ill;
- 2A:143-1 Sodomy;
- 2A:143-2 Sodomy with children under 16;
- 2A:85-5 Attempt to commit any of the foregoing offenses;
- 2A:85-14 Aiding and abetting the commission of any of the foregoing offenses;
- 2A:98-1 Conspiracy to commit any of the foregoing offenses; and/or
- 2A:164-3 Any conviction obtained under this section, except lewdness.

(d) An inmate who presently is serving a sentence for one count of an arson offense and who has a prior adult conviction for an arson offense; an inmate who presently is serving a sentence for more than one count of an arson offense; or an inmate who presently is serving a sentence for a non-arson offense but who has more than one prior adult conviction for an arson offense, may not be considered for reduced custody.

(e) An inmate who presently is serving a sentence for escape or attempted escape from any type of correctional facility or setting and who has a previous adult conviction for escape or attempted escape from any type of correctional facility or setting, is not eligible to be considered for any type of reduced custody.

## SUBCHAPTER 5. COMMUTATION AND WORK TIME

10A:9-5.1 Authority

(a) Commutation time is awarded to inmates pursuant to N.J.S.A. 30:4-140, which provides:

1. For every year or fractional part of a year of sentence imposed upon any person committed to any State correctional facility for a minimum-

maximum term there shall be remitted to him or her from both the maximum and minimum term of his or her sentence, for continuous orderly deportment, the progressive time credits indicated in the schedule herein.

2. When a sentence contains a fractional part of a year in either the minimum or maximum thereof, then time credits in reduction of such fractional part of a year shall be calculated at the rate set out in the schedule for each full month of such fractional part of a year of sentence.

3. No time credits shall be calculated as provided for in \*[the]\* **\*this\*** subchapter on time served by any person in custody between his or her arrest and the imposition of sentence.

4. In case of any flagrant misconduct the board of managers may declare a forfeiture of the time previously remitted, either in whole or in part, as to them shall seem just.

(b) Work time credit is awarded to inmates pursuant to N.J.S.A. 30:4-92, which provides:

1. The inmates of all correctional, charitable, hospital, relief and training institutions within the jurisdiction of the State Board of Institutional Trustees (Commissioner) shall be employed in such productive occupations as are consistent with the inmate's health, strength and mental capacity and shall receive such compensation therefor as the State Board of Institutional Trustees (Commissioner) shall determine.

2. Compensation for inmates of correctional facilities may be in the form of cash or remission of time from sentence or both. Such remission from the time of sentence shall not exceed one day for each five days of productive occupation, but remission granted under this section shall in no way affect deductions for good behavior or provided by law.

3. All inmates classified as minimum security and who are considered sufficiently trustworthy to be employed in honor camps, farms or details shall receive further remission of time from their sentences at the rate of three days per month for the first year of such employment and five days per month for the second and each subsequent year of such employment.

10A:9-5.2 Exceptions; time in custody; failure to work

(a) No commutation or work credits shall be given to any inmate sentenced for sex offenses under the provisions of N.J.S.A. 2A:164. However, those inmates who have been sentenced or resented under N.J.S.A. 2C are eligible to receive compensation and work credits from the effective date of that law, September 1, 1979.

(b) In all cases where the sentence includes a mandatory minimum term of imprisonment, commutation and work credits may not be applied to the mandatory minimum term, but may only reduce the maximum term.

(c) No commutation credits shall be given for any time served in custody between arrest and imposition of sentence. Work credits may be given for work performed in the county jail prior to sentencing if the work time is verified in writing by the County Jail Superintendent.

(d) Work credits may not be applied in cases where an inmate does not work because of choice, unavailability of sufficient job assignments, medical lay-in, court remand, disciplinary lockup or similar incapacity. Inmates who refuse to perform assigned work shall receive disciplinary charges in accordance with N.J.A.C. 10A:4.

10A:9-5.3 Forfeiture of commutation time

(a) Commutation time may be declared to be forfeited as a penalty for misconduct. See N.J.S.A. 30:4-140.

(b) Forfeitures shall be determined by the Disciplinary Hearing Officer or Adjustment Committee pursuant to N.J.A.C. 10A:4. All decisions shall be reviewed by the Superintendent or Acting Superintendent, who may approve or modify the amount of commutation time forfeited.

(c) In no case shall more than 365 days of commutation time be declared forfeited for any single disciplinary offense.

10A:9-5.4 Forfeiture of commutation time by parolees

A parolee under the supervision of the State Parole Board is subject to forfeiture of commutation time in the event the parolee violates a condition of parole.

10A:9-5.5 Restoration of forfeited commutation time

(a) The following procedures for restoring forfeited commutation time apply to all inmates who received charges for acts which occurred on or after May 24, 1979.

1. Up to 75 percent of the forfeited commutation time may be restored to inmates over the three year period following the incident which resulted in the loss of commutation credits. The three years must run consecutively, calculated beginning with the date of the incident. Credits shall be restored at the rate of 25 percent for each year which is free of any disciplinary charges with a guilty finding, as follows:

i. If the inmate completes only one year without a charge which results in a guilty finding, he or she will have 25 percent of the forfeited credits restored at the completion of that year.

ii. If the inmate completes any two years of the three year period without a charge which results in a guilty finding, he or she will have 50 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective two years.

iii. If the inmate\*[s]\* completes all three years without a charge which results in a guilty finding, he or she will have 75 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective three years.

**\*Example: An inmate commits a disciplinary infraction on January 1, 1985, and the sanction imposed includes a forfeiture of commutation credits. On January 25, 1985, the inmate commits another disciplinary infraction and is found "guilty." The inmate receives no disciplinary charge between January 25, 1985, to January 25, 1986. He, therefore, has 25 percent of his commutation time restored. He is again free of guilty findings from January 25, 1986, to January 25, 1987, an additional 25 percent of his commutation time is restored. From January 25, 1987, to January 25, 1988, he is again free of guilty finding but is not eligible for an additional 25 percent restoration of commutation time because more than three years have elapsed since the January 1, 1985, date which resulted in the loss of the commutation credits.\***

2. Credits will be restored to the above regardless of the inmate's housing assignment.

(b) An inmate who receives a parole date at any point in the third one year period and has been charge free during both the first and second one year periods may, at the discretion of the Superintendent, have the commutation credits which he or she could earn in the third year period restored on a \*[pro-rated]\* **\*prorated\*** basis.

1. A grant of credits on a \*[pro-rated]\* **\*prorated\*** basis is applicable only when the parole date falls in the third one year period and only where the inmate has had 50 percent of the forfeited credits already restored.

2. Such action shall be taken only in exceptional cases for good cause shown.

(c) Any inmate who feels that he or she meets the qualifications for restoration must submit an application for restoration of commutation credits to the Institutional Classification Committee (I.C.C.) for consideration at the appropriate time intervals. The I.C.C. will not act unless an inmate submits an application. A recommendation on restoration shall be made in accordance with this Subchapter by the I.C.C. and forwarded to the Superintendent, who shall then order the restoration.

Example: An inmate commits a disciplinary infraction on June 30, 1979. The sanction imposed includes a forfeiture of 160 commutation credits. The inmate receives no findings of guilty through the disciplinary process between June 30, 1979 and June 30, 1980. He, therefore, has 40 credits restored on June 30, 1980. He is again free of guilty findings from June 30, 1980 through June 30, 1981 and receives another 40. He is to be paroled on March 30, 1982. Thus, he will only serve nine months (or 3/4) of the third year. The Superintendent, in his or her discretion, may restore 75 percent of 40 credits or 30 credits as of March 30, 1982.

#### 10A:9-5.6 Work credits for inmates housed in county facilities

(a) State sentenced inmates who are being housed in county facilities shall be credited with one day work credit for every five days worked. All inmates confined in county facilities are charged with the responsibility to keep their cells clean; such assignments shall be considered as five day per week jobs.

(b) Parole violators being held in county facilities on parole warrants but no additional charges will not receive work credits until after revocation of parole. Credits may be given for work performed, beginning on the day the Parole Panel issues the decision of revocation.

(c) Parolees housed in county correctional facilities on additional charges and sentenced on additional charges may receive work credits and wages beginning 15 days after sentencing. If an inmate's parole is revoked prior to sentencing, the effective date on which to begin wages and work credits shall be the date of the parole revocation.

(d) Parolees serving county jail sentences in conjunction with parole violations may receive wages and work credits beginning upon completion of the county jail sentence, providing that parole has been revoked.

(e) Inmates with approved parole dates who are transferred to county correctional facilities prior to parole shall receive work credits as if they were assigned to a five day or seven day per week job in a State correctional facility. Inmates in minimum custody status prior to transfer, shall continue to receive compensation for that status during their stay in the county correctional facility in accordance with N.J.S.A. 30:4-92.

#### 10A:9-5.7 Inmates in Vroom Readjustment Unit (V.R.U.)

Inmates who have been assigned to the Vroom Readjustment Unit (V.R.U.) shall receive commutation time and may also earn work credits provided they perform work assignments.

#### 10A:9-5.8 Reports of earned credits

Regular reports of earned credits should be forwarded to the parent correctional facility when inmates are housed at V.R.U., in county correctional facilities or in half-way house assignments.

### SUBCHAPTER 6. INTER-INSTITUTIONAL CLASSIFICATION COMMITTEE (I.I.C.C.)

#### 10A:9-6.1 Responsibilities of the Inter-Institutional Classification Committee (I.I.C.C.)

(a) The Inter-Institutional Classification Committee (I.I.C.C.) shall be responsible for the initial assignment, to an appropriate facility, of adult male inmates who have been committed to the Youth Correction and Reception Center by the Courts.

(b) Inmates shall be assigned to **\*either\*** the State Prison at Trenton, Rahway, Leesburg, Mid-State, Southern State or Riverfront or to the Youth Correctional Institutions at Yardville, Bordentown or Annandale, when appropriate.

(c) The I.I.C.C. shall also have the following responsibilities:

1. Decide requests for transfer to correctional facilities within the Prison Complex;

2. Assign parole violators, escapees and inter-state compact trans-ferees;

3. Reassign inmates referred back to the I.I.C.C. by an Institutional Classification Committee (I.C.C.) for administrative transfer;

4. Confirm assignment of State sentenced inmates directly to the county jails under contractual agreement to house them;

5. Review assignments to Vroom Administrative Segregation (see N.J.A.C. 10A:5);

6. Recommend appropriate inmates for Protective Custody (see N.J.A.C. 10A:5);

7. Review emergency transfers, including those to the Vroom Readjustment Unit (see N.J.A.C. 10A:5); and

8. Decide whether inmates from the Vroom Readjustment Unit shall be returned to the general population upon recommendation by the Vroom Readjustment Unit Review Team.

(d) Adult female inmates are assigned to the **\*[Clinton]\* Correctional Institution \*for Women at Clinton (C.I.W.)\***. The I.I.C.C. is not responsible for decisions regarding the assignment or transfer of female inmates.

#### 10A:9-6.2 Composition of the Inter-Institutional Classification Committee (I.I.C.C.)

(a) The Deputy Director of the Division of Adult Institutions shall serve as permanent Chairperson of the Inter-Institutional Classification Committee (I.I.C.C.). In addition, the I.I.C.C. shall be composed of the Superintendents of the State Prisons at Trenton, Rahway, Leesburg, Mid-State, Southern State and Riverfront.

1. Each Superintendent may appoint a substitute to act in his or her behalf, provided that the substitute shall be a highly qualified staff member with prior Institutional Classification Committee (I.C.C.) experience. The substitute shall be selected from a level not lower than Assistant Superintendent.

2. The Superintendent of State Prison, Trenton may appoint an Assistant Superintendent or the civilian Supervisor of the Vroom Readjustment Unit to substitute at I.I.C.C. meetings and act in his or her behalf.

(b) Representatives from Youth Coorectional Institutions at Yardville, Bordentown and Annandale may be designated to attend and participate in meetings of the I.I.C.C. when cases involving inmate assignments to their correctional facilities are being considered.

#### 10A:9-6.3 Criteria for assignment of inmates

(a) Decisions regarding the degree of custody required for each inmate and the correctional facility of assignment shall be made by the Inter-Institutional Classification Committee (I.I.C.C.) while the inmate is in the reception process. These decisions shall be based on:

1. Length of sentence;

2. Type of offense;

3. Age of inmate;

4. Previous history; and

5. Review of pertinent pre-sentence report documents.

(b) Inmates assigned to the State Prison, Trenton shall generally be men who, in the opinion of the I.I.C.C., require a higher degree of custody and more constant supervision than inmates in other State prisons. Known instigators and agitators, and extreme assaultive types, shall be

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

assigned to the State Prison, Trenton. Other criteria which shall be considered in an assignment to State Prison, Trenton include:

1. Maximum sentence in excess of 20 years; or
  2. Maximum sentence of less than 20 years but history of poor adjustment in previous incarcerations; and/or
  3. Serious medical conditions that require specialized care or diets.
- (c) Inmates who, in the opinion of the I.I.C.C., are not extreme escape risks, extreme assaultive types, known agitators or instigators may be assigned to State Prison, Rahway. Other criteria which shall be considered in making an assignment to State Prison, Rahway include:

1. Maximum sentence\*[s]\* in excess of 15 years, but less than 20 years; \*or;\*
2. Maximum sentence of less than 15 years but inmate is otherwise ineligible for assignment to Leesburg.

(d) Inmates who have a maximum sentence of 20 years or less may be assigned to State Prison, Leesburg. An inmate shall not be assigned to State Prison, Leesburg if he has:

1. An aggressive homosexuality record;
2. A chronic psychiatric history;
3. A serious escape risk history;
4. A repetitive sex offender history; or
5. A known agitator or instigator history.

(e) Inmates eligible for parole within three years may be assigned to Mid-State. An inmate shall not be assigned to Mid-State if he has:

1. An aggressive homosexuality history;
2. A chronic psychiatric history;
3. A serious escape risk history; or
4. A known agitator or instigator history.

(f) Inmates with a maximum sentence of 15 years may be assigned to State Prison, Southern State. An inmate shall not be assigned to State Prison, Southern State if he has:

1. An aggressive homosexuality history;
2. A chronic psychiatric history;
3. A serious escape risk history; or
4. A known agitator or instigator history.

(g) Inmates with a maximum sentence of 20 years or a minimum sentence of 10 years may be assigned to State Prison, Riverfront. An inmate shall not be assigned to State Prison, Riverfront if he has:

1. A serious escape risk history; or
2. A known agitator or instigator history.

(h) An inmate may be assigned directly to Jones Farm if he meets the following requirements:

1. A maximum sentence of five years or less;
2. No previous history of failure at Jones Farm;
3. A psychological examination administered during the reception period which reflects that he is capable of handling the responsibilities inherent in assignment to Jones Farm; and
4. He is classified as minimum custody pursuant to N.J.A.C. 10A:9-4.

(i) Assignment to Jones Farm shall be permitted for those individuals who have previous convictions for assaultive offenses, if the present offense(s) and sentence(s) fall within the presently established criteria for assignment to Jones Farm.

(j) An inmate shall be assigned to one of the correctional facilities within the Youth Correctional Complex at Yardville, Bordentown or Annandale if, in the opinion of the I.I.C.C., he is younger and less sophisticated than other prison inmates or he can benefit from the educational, vocational, therapeutic and rehabilitative programs available at those facilities.

(k) The I.I.C.C. may assign a male inmate directly from reception to the Correctional Institution for Women, Clinton. The male inmate may be assigned at any time thereafter, if he meets the criteria governing male admittance to that correctional facility.

#### 10A:9-6.4 Transfers

(a) Upon referral from an Institutional Classification Committee (I.C.C.), the Inter-Institutional Classification Committee (I.I.C.C.) shall make decisions on inmate requests for transfer to another correctional facility within the Prison Complex.

(b) The I.I.C.C. shall confirm all transfers of State sentenced inmates from the Prison and/or Youth Complex to county jails under contract to house them.

(c) The I.I.C.C. shall make decisions on referrals from an I.C.C. in cases where an inmate's correctional facility adjustment and/or custody status shall indicate that a transfer to another correctional facility is appropriate.

#### 10A:9-6.5 Emergency transfers

(a) Superintendents may effect the transfer of inmates within the same Complex, prior to review by Inter-Institutional Classification Committee (I.I.C.C.) only for reasons of emergency. (See N.J.A.C. 10A:4-9.20.)

(b) If, in the opinion of the Superintendent of the correctional facility in which the inmate is housed, an immediate transfer is necessary, the Superintendent shall notify the Assistant Commissioner or Deputy Director of the proposed transfer. With the verbal approval either of the Assistant Commissioner or the Deputy Director, the transfer shall be made as soon as possible. If both the Assistant Commissioner and Deputy Director are unavailable, the Deputy Commissioner shall be contacted for approval.

(c) Form 852-I AUTHORIZATION FOR EMERGENCY TRANSFER shall be utilized for disciplinary or administrative transfers of an emergency nature. Two copies of Form 852-I shall be forwarded to the individual from whom verbal approval was secured within three working days of the verbal approval.

(d) In determining whether an emergency transfer is necessary the Superintendent shall consider the following factors, but is not limited to these factors:

1. The safety and welfare of the inmate;
2. The safety of other inmates and staff; and
3. The safe, orderly and secure operation of the correctional facility.

(e) All emergency transfers shall be reviewed by the I.I.C.C. at its next regularly scheduled meeting.

### SUBCHAPTER 7. SPECIAL CLASSIFICATION COMMITTEE (S.C.C.)

#### 10A:9-7.1 Responsibilities of the Special Classification Committee (S.C.C.)

(a) The Special Classification Committee (S.C.C.) shall be responsible for considering the following types of transfers:

1. Youth Correctional inmates serving indeterminate sentences to the Prison Complex;
2. Training School residents to an adult unit within the Youth Correctional Complex;
3. Prison or Youth Correctional inmates to or from the Adult Diagnostic and Treatment Center (A.D.T.C.);
4. Youth Correctional Complex inmates to the Training School; and
5. Prison and Youth Complex inmates to Division of Juvenile Services facilities.

#### 10A:9-7.2 Composition of the Special Classification Committee (S.C.C.)

(a) The Deputy Director of the Division of Adult Institutions shall serve as permanent Chairperson of the Special Classification Committee (S.C.C.). In addition, the S.C.C. shall be made up of a staff member from the Commissioner's Office and a Superintendent or Assistant Superintendent from the Prison and Youth Complexes.

(b) The Superintendent or the Assistant Superintendent of the Adult Diagnostic and Treatment Center (A.D.T.C.) and the Deputy Director of the Division of Juvenile Services shall participate as members when transfer cases involving their correctional facilities are considered by the S.C.C.

(c) The Superintendents or Assistant Superintendents who represent the Prison and Youth Correctional Complexes on the S.C.C. shall alternate annually with other Superintendents or Assistant Superintendents of their respective Complexes so that their terms of service shall be no longer than one year at a time.

(d) A Superintendent may designate a substitute member from a level not lower than Assistant Superintendent to represent his or her correctional facility at a S.C.C. meeting in the event he or she is unable to attend.

(e) The S.C.C. shall meet at least once a month on a date that is designated by the Chairperson at alternate sites so that no individual member is unduly inconvenienced.

#### 10A:9-7.3 Procedure for initiating transfer requests

(a) Requests for transfer to another Complex within the Department of Corrections may be initiated by the inmate or by the Superintendent of the correctional facility in which the inmate is confined.

(b) Requests for transfer also may be initiated by the Commissioner, Deputy Commissioner, Assistant Commissioner of the Division of Adult Institutions or Assistant Commissioner of the Division of Juvenile Services.

(c) All requests for transfer and the reason(s) therefor shall be submitted, in writing, to the appropriate Institutional Classification Commit-



**(CITE 19 N.J.R. 226)  
CORRECTIONS**

**ADOPTIONS**

tee (I.C.C.). No request shall be considered without an accompanying statement of reasons.

(d) Requests for transfer received from attorneys or other third parties on behalf of an inmate shall not be considered. All third party individuals making such requests shall be advised that the inmate must initiate the request. However, third parties shall be advised that they may submit written comments to the appropriate I.C.C. in conjunction with an inmate request, all of which shall be considered by the I.C.C. and the Special Classification Committee (S.C.C.) when they review the inmate's request.

**10A:9-7.4 Procedure for reviewing \*[non-emergency]\* *\*nonemergency\** transfer requests**

(a) All requests for *\*nonemergency\** transfers are submitted first to the Institutional Classification Committee (I.C.C.) at the correctional facility where the inmate is housed.

(b) When the request is initiated by the Superintendent or any person other than the inmate authorized by N.J.A.C. 10A:9-7.3, the I.C.C. shall send a written notice to the inmate advising him or her that a transfer request has been made and advising him or her that the request will be considered at its next regularly scheduled meeting. The I.C.C. shall also advise the inmate that he or she may submit written comments to the I.C.C. regarding the proposed transfer.

(c) The I.C.C. may direct that the inmate appear at its meeting if the Committee determines that an appearance is necessary.

(d) After considering all information which the I.C.C. shall deem relevant, the Committee shall render a decision to recommend or deny the transfer request. A notice of decision and a statement of reasons therefor shall be sent to the inmate and to the Superintendent.

(e) If the I.C.C. recommends approval of the transfer request, the Superintendent shall submit the recommendation to the Special Classification Committee (S.C.C.) together with a full set of classification materials and any other information upon which the recommendation was made. The Superintendent shall also submit a letter to the Chairperson of the S.C.C. which shall state whether the Superintendent supports the I.C.C. recommendation and the reasons therefor.

(f) The S.C.C. shall consider all information submitted at its next regularly scheduled meeting and shall determine whether the requested transfer shall be approved.

1. The inmate shall not appear at this meeting.
2. The S.C.C. shall determine the appropriate correctional facility to which the inmate shall be assigned if the transfer is approved.

(g) The S.C.C. shall send a written notification of its decision and the reasons therefor to:

1. The Superintendent;
2. The authorized person who made the request; and
3. The I.C.C.

(h) The I.C.C. shall give written notice of the final decision to the inmate.

**10A:9-7.5 Procedure for reviewing emergency transfer requests**

(a) Whenever, in the opinion of the Superintendent of the correctional facility in which the inmate is housed, an immediate transfer is necessary, the Superintendent shall notify the Assistant Commissioner or Deputy Director having responsibility for the correctional facility to which the transfer is proposed.

(b) With the verbal approval either of the Assistant Commissioner or the Deputy Director, the transfer shall be made as soon as possible. If both the Assistant Commissioner and Deputy Director are unavailable, the Deputy Commissioner shall be contacted for approval.

(c) Form 852-I AUTHORIZATION FOR EMERGENCY TRANSFER shall be utilized for disciplinary or administrative transfers of an emergency nature. Two copies of Form 852-I shall be forwarded to the individual from whom verbal approval was secured within three working days of the verbal approval.

(d) In determining whether an emergency transfer is necessary, the Superintendent shall consider the following factors but is not limited to these factors.

1. The safety and welfare of the inmate;
2. The safety of other inmates and staff; and
3. The safe, orderly and secure operation of the correctional facility.

(e) The Superintendent shall refer the emergency transfer of the inmate to the Institutional Classification Committee (I.C.C.) for consideration at its next regularly scheduled meeting. The I.C.C. shall make its review and recommendation and shall then refer the transfer to the Special Classification Committee (S.C.C.).

(f) When the S.C.C. confirms or fails to confirm the transfer, it shall notify in writing the following:

1. The inmate;
2. The Superintendent; and
3. The I.C.C.

(g) A copy of the written notice shall be placed in the inmate's file.

(h) If the S.C.C. fails to confirm the transfer, the correctional facility to which the inmate was transferred shall make arrangements to return the inmate to his or her previous correctional facility as soon as possible.

**10A:9-7.6 Criteria for reviewing transfer requests**

(a) In reviewing requests for transfer or reassignment to correctional facilities in other Complexes, the Institutional Classification Committee (I.C.C.) and the Special Classification Committee (S.C.C.) shall consider all relevant factors including, but not limited to:

1. Disciplinary reports;
2. Correctional facility adjustment;
3. Progress in programs;
4. Nature and circumstances of present offense(s);
5. Records from previous confinement(s);
6. Current psychological and psychiatric reports;
7. History of escape, attempted escape or propensity for escape;
8. Educational needs and history;
9. Prior offense record;
10. Drug dependency or involvement;
11. Age; and
12. Medical condition.

**10A:9-7.7 Procedures for transfers**

Upon approval of a requested transfer by the Special Classification Committee (S.C.C.), the sending correctional facility shall arrange for processing the inmate through the proper identification and change of number procedures, if appropriate, and then coordinate with the receiving correctional facility the date and time of the transfer of the inmate along with his or her records and property.

**SUBCHAPTER 8. SPECIAL CLASSIFICATION REVIEW BOARD**

**10A:9-8.1 Responsibilities**

(a) The Special Classification Review Board (S.C.R.B.) shall decide whether inmates sentenced under N.J.S.A. 2C:47 and 2A:164 shall be recommended for parole, as required by N.J.S.A. 2C:47-5 and 2A:164-8.

(b) Any person committed to confinement under the terms of this chapter shall be released under parole supervision when it shall appear to the satisfaction of the State Parole Board, after recommendation by *\*[a]\* **\*the\**** Special Classification Review Board appointed by the Commissioner that such person is capable *\*[to]\* **\*of\**** making an acceptable social adjustment in the community.

**10A:9-8.2 Composition of the Special Classification Review Board (S.C.R.B.)**

(a) The Commissioner shall appoint five persons to serve on the Special Classification Review Board (S.C.R.B.). The S.C.R.B. membership shall be composed of the following:

1. A representative from the Bureau of Parole;
2. A representative from another administrative unit within the Department; and
3. Three persons from the community at large who are professionals in fields associated with mental health and criminal justice.

(b) Terms of membership shall be three years and shall be staggered so that no more than two members are replaced or reappointed in any one year.

(c) Members shall elect a Chairperson and Vice Chairperson annually at the S.C.R.B.'s July meeting. These offices shall be rotated among members, when practicable.

(d) The S.C.R.B. shall meet at the Adult Diagnostic and Treatment Center (A.D.T.C.) once per month or more often as deemed necessary, on a day and at a time agreed on by S.C.R.B. members. Special meetings may be held when called by the Chairperson or Vice Chairperson. A majority of S.C.R.B. members must be present to conduct official business.

**10A:9-8.3 Coordinator for the Special Classification Review Board (S.C.R.B.)**

(a) A staff member of the Adult Diagnostic and Treatment Center (A.D.T.C.) shall be designated by the Superintendent to serve as Coordinator for the Special Classification Review Board (S.C.R.B.).

(b) The Coordinator shall be responsible for the following duties:

1. Maintaining S.C.R.B. statistics and records;

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

2. Maintaining minutes of S.C.R.B. meetings;
3. Informing S.C.R.B. members and maintaining a file of all court decisions regarding the New Jersey Sex Offender Program;
4. Providing notice to each inmate scheduled for in-person review by the S.C.R.B., at least three working days in advance of the scheduled hearing date;
5. Providing each S.C.R.B. member with copies of written materials for review prior to each scheduled hearing date;
6. Notifying the Commissioner at least six months prior to the termination of a S.C.R.B. member's term to provide adequate time to review prospective applicants for possible appointment; and
7. Providing other services as requested by the Superintendent or S.C.R.B. members.

10A:9-8.4 Reviews of inmates housed at the Adult Diagnostic Treatment Center (A.D.T.C.).

(a) The Superintendent of the Adult Diagnostic and Treatment Center (A.D.T.C.) shall report in writing (Form SCRIB 2A) at least twice per year to the Special Classification Review Board (S.C.R.B.) concerning the physical and psychological condition of each inmate eligible for parole consideration.

(b) The Superintendent shall include in each report a recommendation as to whether the inmate should continue to be confined or should be considered for release on parole.

(c) The Superintendent shall also recommend whether the inmate shall have an in-person or non in-person review by the S.C.R.B. Generally, only inmates being recommended for consideration for parole will receive an in-person review.

(d) During in-person reviews, the inmate appears before the S.C.R.B. and shall be afforded the opportunity to present any matter which he or she believes is related to his or her possible parole. S.C.R.B. members may question the inmate regarding:

1. Criminal conduct;
2. Record of adjustment to incarceration;
3. Progress in therapy; or
4. Any matter which the S.C.R.B. members think is relevant.

(e) During non in-person reviews, the inmate does not appear before the S.C.R.B. The S.C.R.B. shall review all documents provided pursuant to (g) below.

(f) The following shall apply to all reviews:

1. The Board shall not be bound by judicial rules of evidence;
2. Attorneys shall not be permitted to appear before the S.C.R.B. at meetings;
3. Letters from attorneys, relatives or other interested persons shall be considered and, if relevant, may be made part of the record;
4. News media representatives shall be permitted to attend reviews only as authorized by N.J.A.C. 10A:19.
5. Other observers may be permitted to attend by the Chairperson, with the approval of the Superintendent.

(g) In preparation for all reviews, the Coordinator shall provide each S.C.R.B. member with copies of the following:

1. Report of the primary therapist, which shall include a summary of the inmate's overall adjustment and progress of therapy;
2. Staff recommendations;
3. Chronological semiannual reviews;
4. Outpatient report; and
5. Presentence report.

(h) For in-person reviews, the Coordinator shall provide each S.C.R.B. member with copies of the Parole Plan formulated by the Bureau of Parole along with any progress notes.

10A:9-8.5 Review of inmates housed at other correctional facilities

**\*[(a)]\*\*1.\* All inmates sentenced under N.J.S.A. 2A:164 who are transferred from the Adult Diagnostic and Treatment Center (A.D.T.C.) to other correctional facilities for disciplinary or other reasons requiring temporary relocation outside of the A.D.T.C. shall be subject to review by the Special Classification Review Board (S.C.R.B.).\***

**\*[(a)]\*\*1.\*** The Superintendent of a correctional facility other than the Adult Diagnostic Treatment Center (A.D.T.C.) where an inmate sentenced under N.J.S.A. 2A:164 is housed shall forward in writing (Form SCRIB 2A) the required semiannual reports (see N.J.A.C. 10A:9-8.4) to the Superintendent of the A.D.T.C. The report shall contain a recommendation as to the inmate's continued confinement or consideration for release on parole.

**\*[(b)]\*\*2.\*** If the inmate is recommended for consideration for parole, the inmate shall be transported to the A.D.T.C. for the day to appear before the A.D.T.C.'s treatment staff. If the A.D.T.C. treatment staff

concurs with the recommendation, the inmate shall remain at **\*the\* A.D.T.C.** for an in-person review before the Special Classification Review Board (S.C.R.B.).

**\*[(c)]\*\*3.\*** If the inmate is not recommended for parole, the S.C.R.B. shall conduct a non in-person review.

**\*(b) Inmates sentenced under N.J.S.A. 2A:164 who are transferred permanently from the A.D.T.C. are subject to resentencing under N.J.S.A. 2C:47. These inmates are no longer subject to S.C.R.B. review.\***

10A:9-8.6 Decisions of the Special Classification Review Board (S.C.R.B.); in-person review

(a) After each in-person review, a vote shall be taken to determine whether the Special Classification Review Board (S.C.R.B.) will recommend parole. A tie vote shall be deemed a rejection.

(b) An inmate who has been rejected shall not be rescheduled for an in-person review for at least six months, except as permitted by (c) below.

(c) The S.C.R.B. may defer its decision in appropriate cases, or in those cases where additional information is requested. Such cases may be presented for in-person review in three months.

(d) SCRIB Form 2A shall be signed by each S.C.R.B. member in attendance so as to provide documentation as to its decision and the date reviewed.

(e) Within ten working days after each in-person hearing, the S.C.R.B. shall provide the inmate with a copy of its written decision on A.D.T.C. Form 296 (R-1). The form shall be signed by the S.C.R.B. chairperson or his or her designee.

(f) The S.C.R.B. shall summarize in its written decision the reasons for its conclusion. The reasons are within the S.C.R.B.'s sole discretion, and may include therapeutic issues deemed to require additional work.

(g) The Coordinator shall prepare a summary of each inmate's presentation to the S.C.R.B. The summary shall be reviewed and signed by the Chairperson and placed in the inmate's classification and S.C.R.B. folders.

10A:9-8.7 Decisions of the S.C.R.B.; non in-person review

(a) SCRIB Form 2A shall be signed by each S.C.R.B. member in attendance so as to provide documentation as to its decision and the date reviewed.

(b) Within ten working days after each non in-person review, the S.C.R.B. shall provide the inmate with a copy of its written decision on A.D.T.C. Form 296 (R-1). The form shall be signed by the Chairperson or his or her designee.

10A:9-8.8 Referrals to the State Parole Board

(a) The Coordinator shall notify the State Parole Board of those inmates whom the Special Classification Review Board (S.C.R.B.) has recommended for parole, and forward the necessary documents to the State Parole Board for its use in reaching a decision as to parole.

(b) No inmate shall be referred to the State Parole Board for reconsideration within a period of less than three months following his denial of parole by the State Parole Board, except under unusual circumstances.

10A:9-8.9 Parole records

(a) For all parolees who were sentenced under N.J.S.A. 2C:47 and 2A:154, the Coordinator shall receive copies of the following:

1. Parole Certificates;
2. Supervisory reports;
3. Special reports;
4. Arrest reports;
5. Termination Certificates; and
6. Notices of discharge of inmates from parole.

(b) The Coordinator shall advise the Special Classification Review Board (S.C.R.B.) of those cases in which probable cause to revoke parole has been established.

(c) The Coordinator shall also notify the Board when a parolee is returned as a violator or as a new commitment.

10A:9-8.10 Notice of release

A copy of the notice of release at the expiration of maximum sentence shall be forwarded by the housing correctional facility to the Coordinator, who shall so advise the Special Classification Review Board (S.C.R.B.) members.

10A:9-8.11 Confidentiality

(a) The Special Classification Review Board (S.C.R.B.) members shall not discuss or give information to any unauthorized person regarding specific inmates reviewed.

(b) Confidentiality of inmate/parolee records shall be governed by N.J.A.C. 10A:22.

## SUBCHAPTER 9. RECEPTION AND PLACEMENT PROCESS FOR MALE JUVENILES

### 10A:9-9.1 Reception activity

(a) Male juvenile offenders are committed by the courts to the Training School for Boys and Girls at Jamesburg.

(b) Male juveniles, under the age of 16 years, 11 months, that have been committed to Jamesburg, may be placed at the Training School for Boys at Skillman within 24 hours.

(c) Upon admission to Jamesburg or Skillman, male juveniles shall be assigned to housing within the juvenile reception unit.

(d) The reception process shall be completed in as short a period as possible, usually within two weeks.

(e) During the reception process, an orientation program shall be presented which familiarizes the resident with the details of correctional facility life.

(f) A social history shall be prepared and medical and dental examinations shall be given. The resident shall also be given psychological, education and/or vocational tests.

(g) The needs of the resident shall be assessed by reviewing the social history and the results of:

1. Medical and dental examinations;
2. Psychological tests; and
3. Education and/or vocational tests.

(h) An admissions summary shall be developed from a compilation of the information listed in (g) above. The summary shall include a recommended initial program statement and a description of the resident's:

1. Current offense;
2. Previous criminal history;
3. Family situation;
4. Psychiatric or psychological report summaries;
5. Medical condition; and
6. Academic and vocational assessment.

(i) At the end of the reception process, the resident shall appear before the Juvenile Reception Classification Committee (J.R.C.C.) and he will be assigned to the appropriate correctional facility.

### 10A:9-9.2 Composition of the Juvenile Reception Classification Committee (J.R.C.C.)

(a) The Chairperson of the Juvenile Reception Classification Committee (J.R.C.C.) shall be the Assistant Commissioner of the Division of Juvenile Services or his or her designee.

(b) The J.R.C.C. shall also be composed of the:

1. Superintendent of the Training School for Boys and Girls at Jamesburg;
2. Superintendent of the Training School for Boys at Skillman;
3. Superintendent of the Juvenile Medium Security Facility at Bordentown; and
4. Chief, Bureau of Community and Residential Services, Division of Juvenile Services.

(c) Each Superintendent and the Chief of the Bureau of Community and Residential Services may appoint a substitute to act in his or her behalf.

(d) The J.R.C.C. shall meet weekly and the Classification Officer and clerical staff shall be in attendance.

### 10A:9-9.3 Responsibilities of the Juvenile Reception Classification Committee (J.R.C.C.)

(a) The Juvenile Reception Classification Committee (J.R.C.C.) shall be the decision making body for the Division of Juvenile Services regarding classification, placement and transfer of male juveniles.

(b) The J.R.C.C. shall be responsible for:

1. Classifying all male juvenile residents in the reception units of the Training School for Boys and Girls at Jamesburg and the Training School for Boys at Skillman.
2. Deciding on the initial placement of residents within the Division of Juvenile Services;
3. Informing the residents on the decisions regarding placement and assignments; and
4. Reviewing and considering cases for transfer or reassignment to other correctional facilities. Types of transfer shall include, but are not limited to:
  - i. Transfer of Training School or other juvenile facility residents to or from units within the Youth Correctional complex;
  - ii. Transfer of residents to community based facilities from correctional facilities or transfer of residents from community based facilities to correctional facilities;

iii. Transfer of residents to other correctional facilities for disciplinary or administrative reasons;

iv. Transfer of residents to more appropriate programs within other correctional facilities because of exceptionally good facility adjustment;

v. Transfer to other correctional facilities that are requested by the residents; and

vi. Transfer of residents for emergency reasons.

### 10A:9-9.4 Decision making criteria for initial assignment

(a) The decisions on the initial assignment of residents shall be made by the Juvenile Reception Classification Committee (J.R.C.C.) based on:

1. Length of sentence;
2. Type of offense;
3. Diagnostic reports; and
4. Previous history.

### 10A:9-9.5 Noninstitutional programs

(a) Noninstitutional programs are provided by the Division of Juvenile Services at:

1. Residential group centers;
2. Community treatment centers; and
3. Community release status placements.

(b) These noninstitutional programs may be assigned to juveniles by the Juvenile Reception Classification Committee (J.R.C.C.).

(c) Assignment to these programs are generally made to juveniles who are being incarcerated for the first time for relatively minor offenses and are not considered to be chronic escape or serious assault risks.

(d) Juveniles not eligible for noninstitutional program assignments are those who have been committed for:

1. Homicide;
2. Rape;
3. Arson; or
4. Sexual assault.

### 10A:9-9.6 Institutional programs

(a) Institutional programs are provided by the Division of Juvenile Services at the Training School for Boys at Skillman, the **\*[Traning]\*** **\*Training\*** School for Boys and Girls at Jamesburg and the Juvenile Medium Security Facility at Bordentown.

(b) The Training School for Boys at Skillman was established to accept the youngest juvenile offender and is designed to be the least restrictive juvenile facility. Male juveniles over the age of 16 years and 11 months shall not be assigned to this facility.

(c) The Training School for Boys and Girls at Jamesburg is for juveniles who are 13 years of age or older and who, in the opinion of the Juvenile Reception Classification Committee (J.R.C.C.), appear to be able to function in open program units. Juveniles who are in need of assignment to self-contained units within a minimum security correctional facility may also be assigned to this facility.

(d) The Juvenile Medium Security Facility at Bordentown is for juveniles who:

1. Have serious behavioral problems;
2. Have a history of escape or attempted escape;
3. Have been committed for serious offenses; or
4. Are not appropriate for placement at other facilities, within the Division of Juvenile Services.

### 10A:9-9.7 Emergency transfer procedures

(a) A Superintendent who wishes to request an emergency transfer shall contact the Deputy Director of the Division of Juvenile Services, by telephone, and state the reasons for which the request is made.

(b) The Deputy Director, Division of Juvenile Services, shall immediately review the reasons given for the request and approve or reject the transfer. If the Deputy Director approves, he or she shall make the necessary arrangements and contact the Superintendent, by telephone, to notify him or her that the transfer can be made.

(c) All emergency transfers shall be reviewed by the Juvenile Reception Classification Committee (J.R.C.C.) at the next scheduled meeting.

### 10A:9-9.8 Staff requested transfer procedures

(a) The Juvenile Institutional Classification Committee (J.I.C.C.) shall review and consider staff recommended requests for non-emergency transfers of residents to other correctional facilities.

(b) Upon approval of the request by the J.I.C.C., the request shall be referred to the Juvenile Reception Classification Committee (J.R.C.C.) by the Superintendent.

(c) The Superintendent shall submit a set of classification material on the resident along with a cover letter to the Deputy Director of the Division of Juvenile Services which shall state the detailed reasons for recommending that a transfer be made.



NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

(d) The J.R.C.C. shall make a decision on the appropriateness of the request for transfer to another correctional facility at its next regularly scheduled meeting.

10A:9-9.9 Resident requested transfer procedures

(a) A resident may request a transfer to another correctional facility by submitting a written request, which states his reasons, to the Juvenile Institutional Classification Committee (J.I.C.C.).

(b) If the J.I.C.C. determines that the resident can satisfy the criteria for assignment to the facility he has requested and if the J.I.C.C. approves the request, it shall be referred to the Superintendent.

(c) The Superintendent shall refer the request, along with a set of classification material on the resident, to the Juvenile Reception Classification Committee (J.R.C.C.) for consideration.

10A:9-9.10 Criteria for assignment or transfer of residents

(a) Decision making criteria for transfer or reassignment to other facilities shall include, but shall not be limited to:

1. Disciplinary reports;
2. Correctional facility adjustment;
3. Progress in programs;
4. Educational needs and history;
5. Nature and circumstances of present offense;
6. Prior offense record;
7. Records from previous confinement(s);
8. Drug dependency and/or involvement;
9. Current psychological and psychiatric reports;
10. History of escape or attempted escape or propensity for escape;
11. Expressed needs and interests;
12. Age;
13. Social contacts with family and friends;
14. Sexual adjustment; and
15. Medical history.

10A:9-9.11 Written procedures

The Assistant Commissioner of the Division of Juvenile Services or his or her designee shall be responsible for developing written procedures consistent with this Subchapter. These procedures shall be reviewed and updated annually.

SUBCHAPTER 10. JUVENILE INSTITUTIONAL  
CLASSIFICATION COMMITTEE (J.I.C.C.)

10A:9-10.1 Members of the Juvenile Institutional Classification  
Committee (J.I.C.C.)

(a) The Juvenile Institutional Classification Committee (J.I.C.C.) at the Training School for Boys and Girls at Jamesburg shall be composed of the:

1. Superintendent
2. Assistant Superintendent;
3. Director of Professional Services;
4. Director of Education
5. Director of Social Services
6. Supervisors of the cottages;
7. Director of Custody Operations; and
8. Classification Officer

(b) The J.I.C.C. is called the Administrative Case Review Committee at the Training School for Boys at Skillman. This Committee shall be composed of the:

1. Superintendent;
2. Assistant Superintendents;
3. Director of Professional Services;
4. Director of Custody Operations;
5. Supervisor of Education;
6. Social Work Supervisor;
7. Cottage Supervisors; and
8. Classification Officer.

(c) The Juvenile Institutional Classification Committee (J.I.C.C.) at the Juvenile Medium Security Facility shall be composed of the:

1. Superintendent;
2. Assistant Superintendent;
3. Director of Custody Operations;
4. Director of Education;
5. Unit Supervisors; and
6. Classification Officer.

10A:9-10.2 Juvenile Institutional Classification Committee (J.I.C.C.)  
responsibilities

(a) The Juvenile Institutional Classification Committee (J.I.C.C.) shall provide the decision making process whereby male juvenile offenders are assigned after admission and during their correctional experience to:

1. Housing;
2. Education;
3. Treatment;
4. Therapy;
5. Work; and/or
6. Other programs according to need.

(b) In order to ensure that the needs of male juvenile offenders shall be assessed and met from commitment to recall, discharge or parole, the J.I.C.C. shall:

1. Gather, analyze and evaluate the results of diagnostic studies of each resident;
2. Plan programs to meet the needs of each resident; and
3. Assign residents to facilities that are appropriate for their training, treatment and/or security.

(c) After a resident has been assigned, the J.I.C.C. shall monitor the resident's progress regularly by reviewing and evaluating the reports from:

1. Work supervisors;
2. Custody staff;
3. Education staff; and
4. Social work staff.

(d) The resident shall be encouraged to verbalize his goals and frustrations to the J.I.C.C. so that his thinking can be considered when adjustments are made in the resident's program.

(e) The J.I.C.C. shall make changes in a resident's job, housing and custody status upon written recommendations from appropriate staff members.

(f) Resident requests for transfer to other correctional facilities or programs shall be considered by the J.I.C.C. and appropriate requests shall be referred to the Juvenile Reception Classification Committee (J.R.C.C.).

10A:9-10.3 Classification records and services

(a) The records of male juveniles assigned to the Training School for Boys and Girls at Jamesburg and to community based facilities, except for Turrell and Cedar Run, shall be maintained at the Training School for Boys and Girls at Jamesburg. The classification services for these juveniles shall be provided by the Juvenile Institutional Classification Committee (J.I.C.C.) at Jamesburg.

(b) The records of male juveniles assigned to the Training School for Boys at Skillman, Turrell Residential Group Center and Cedar Run Residential Group Center shall be maintained at the Training School for Boys at Skillman. The classification services for these juveniles shall be provided by the Administrative Case Review Committee at Skillman.

(c) The records of male juveniles assigned to the Juvenile Medium Security Facility at Bordentown shall be maintained at that correctional facility. The classification services for these juveniles shall be provided by the Juvenile Institutional Classification Committee (J.I.C.C.) at the Juvenile Medium Security Facility.

10A:9-10.4 Juvenile Institutional Classification Committee (J.I.C.C.)  
decision making factors

(a) Decisions on assignments to housing, work, educational, vocational and treatment programs, custody status, transfers and participation in community release programs shall be made after consideration of the following factors:

1. Resident's expressed needs and interests;
2. Age;
3. Family status;
4. Social contacts with family and friends;
5. Correctional facility adjustments;
6. Educational needs and history;
7. Vocational needs and history;
8. Nature and circumstances of present offense;
9. Prior offense record;
10. Records from previous confinement;
11. Detainers on file or pending;
12. Drug dependency or involvement;
13. Sexual adjustment;
14. Escape history;
15. Current psychological and psychiatric reports; and
16. Medical history and recommendations.

## 10A:9-10.5 Initial classification

(a) Upon assignment to the Training School for Boys and Girls at Jamesburg, the Training School for Boys at Skillman or the Juvenile Medium Security Facility at Bordentown by the Juvenile Reception Classification Committee (J.R.C.C.), a resident shall undergo a series of tests and interviews to determine his or her aptitudes, abilities, interests and problems.

(b) Psychological, educational and social work reports shall be obtained by the Classification Officer. These reports shall be available at the resident's initial appearance before the J.I.C.C. which will occur within 15 days after admission to the correctional facility. At the initial classification, a program will be developed which includes:

1. Work assignments;
2. Treatment;
3. Education program; and
4. Vocational training program.

(c) Upon assignment to the Training School for Boys at Skillman, a resident shall be assigned immediately to the educational program by the education staff. The Administrative Case Review Committee shall evaluate the appropriateness of his assignments and the extent of his program adjustment at the admission summary review.

## 10A:9-10.6 Review dates

(a) A resident's program shall be reviewed after his initial classification to determine the extent of his progress. This program review may occur within a range of time from one to no more than twelve months from the date of initial classification.

(b) The frequency of the program review shall be determined by the Juvenile Institutional Classification Committee (J.I.C.C.) or when there is a change in the resident's status such as:

1. Parole date;
2. Length of commitment;
3. Personal needs; or
4. Situations which make a program review appropriate.

(c) The Classification Office shall be responsible for scheduling all reviews set by the J.I.C.C.

(d) Reports from the social worker, custody staff, work supervisor and all others involved in the resident's assigned program will be submitted during the month preceding the review. An update of the resident's psychological status shall occur on a yearly basis.

(e) A resident shall be notified one week prior to his review date. At that time, he may submit a written request for reassignment in the areas of:

1. Housing;
2. Work;
3. Education;
4. Vocational; and
5. Counselling or treatment.

## 10A:9-10.7 Special reviews

(a) A resident desiring a special review of his case because of a change in status may submit a written request to the social worker or Social Work Supervisor which indicates the reason(s) for the request. It shall be the responsibility of the social worker or Social Work Supervisor to determine:

1. If review is appropriate; and
2. The reports that will be necessary for the review.

(b) If the review is recommended, the social worker or Social Work Supervisor shall forward all appropriate information to the Juvenile Institutional Classification Committee (J.I.C.C.).

## 10A:9-10.8 Discussions

(a) A resident's case may be brought to the attention of the Juvenile Institutional Classification Committee (J.I.C.C.) prior to his review date if it has been referred by a staff member or an institutional committee. Any staff member may request a review of a resident's case for the purpose of making a change in:

1. Job;
2. Custody;
3. Housing; or
4. Program.

## 10A:9-10.9 Work assignments

(a) The Juvenile Institutional Classification Committee (J.I.C.C.), except at the Training School for Boys at Skillman, shall be responsible for the decisions on all resident work assignments. Decisions on work assignments shall be made based upon:

1. Physical condition;
2. Mental and mechanical aptitudes of the resident;

3. Work experience;
4. Occupational interests;
5. Needs and opportunities upon release; and
6. Availability of jobs within the correctional facility.

## 10A:9-10.10 Education assignments

(a) The Juvenile Institutional Classification Committee (J.I.C.C.) shall be responsible for the assignment or approval of residents to participate in vocational, social or academic education programs.

(b) Determining factors in assigning a resident to these programs are:

1. The recommendation of the Supervisor of Education Programs;
2. The results of tests;
3. The interests and aptitude of the resident;
4. The length of sentence; and
5. The plan for community employment.

## 10A:9-10.11 Counselling assignments

(a) Residents with emotional and/or personal problems shall be referred to the appropriate program supervisor.

(b) Residents shall be approved for group counselling and other therapy problems by the Juvenile Institutional Classification Committee (J.I.C.C.).

## 10A:9-10.12 Reassignments or special referrals

(a) Reassignments or special referrals shall be cases referred to the Juvenile Institutional Classification Committee (J.I.C.C.) for a change in some area of a resident's program.

(b) Any change or addition to the resident's initial program shall be made by the J.I.C.C. Reassignments shall be made upon resident or staff request, as the need arises.

## 10A:9-10.13 Community release programs

The Juvenile Institutional Classification Committee (J.I.C.C.) may make the assignment of a resident to a community release program when he can satisfy the criteria of the program.

## 10A:9-10.14 Inmate requested transfers

(a) The Juvenile Institutional Classification Committee (J.I.C.C.) shall review a resident's request for transfer to another facility.

(b) When it has been determined that the resident can satisfy the criteria for assignment to the facility he has requested, the resident's request shall be referred to the Juvenile Reception Classification Committee (J.R.C.C.) for consideration.

## 10A:9-10.15 Written procedures

(a) The Superintendent or his or her designee shall be responsible for developing written procedures consistent with this Subchapter.

(b) These procedures shall be reviewed and updated annually.

## SUBCHAPTER 11. JUVENILE FEMALE CLASSIFICATION COMMITTEE (J.F.C.C.)

## 10A:9-11.1 Responsibilities of the Juvenile Female Classification Committee (J.F.C.C.)

(a) The Juvenile Female Classification Committee (J.F.C.C.) is the initial decision-making body which determines the appropriate correctional facility and/or program to which a female juvenile is assigned.

(b) The J.F.C.C. shall also review and consider female juvenile cases in which requests have been made for transfer or reassignment to other facilities or programs. These requests may include, but shall not be limited to, the following:

1. Transfers of residents to community based facilities from correctional facilities or transfers from community based facilities to correctional facilities.
2. Transfers of residents to another correctional facility for disciplinary or other administrative reasons;
3. Transfers of residents to more appropriate programs within other correctional facilities because of exceptionally good adjustments;
4. Transfers that are requested by a resident; and
5. Transfers that are made immediately for emergency reasons.

(c) The J.F.C.C. shall maintain responsibility for ensuring that the educational, medical, social and vocational needs of residents are met while in placement under the jurisdiction of the Division of Juvenile Services.

(d) The J.F.C.C. shall review progress reports and make recommendations to the State Parole Board.

(e) The J.F.C.C. shall ensure that the placements that are planned for female juveniles when they are released are appropriate to the female juvenile's needs.

## NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

## 10A:9-11.2 Composition of the Juvenile Female Classification Committee (J.F.C.C.) and frequency of meetings

(a) The Supervisor of Juvenile Female Programs shall serve as permanent Chairperson of the Juvenile Female Classification (J.F.C.C.). He or she may appoint a designee to act in his or her absence or in the absence of other Juvenile Female Classification Committee (J.F.C.C.) members.

(b) The J.F.C.C. shall also be composed of the:

1. Superintendent of the Female Unit at Skillman;
2. Superintendent of Turrell; and
3. Superintendent of Alpha House.

(c) The staff psychologist and/or other persons may attend the J.F.C.C. meetings at the request of or upon the approval of the Chairperson.

(d) The J.F.C.C. shall meet every two weeks.

## 10A:9-11.3 Initial assignment

(a) Female juveniles are committed by the courts to the Training School for Boys and Girls at Jamesburg.

(b) Upon arrival at Jamesburg, female juveniles shall be medically screened.

(c) Immediately following the receipt of numbers and the medical screening, female juveniles are transported to the Division of Juvenile Services facility to which they have been assigned by the Juvenile Female Classification Committee (J.F.C.C.)

## 10A:9-11.4 Decision making criteria for facility or program assignment

(a) The Juvenile Female Classification Committee (J.F.C.C.) may assign female residents to community and non-correctional facility programs or to correctional facility programs. Decisions to assign residents to a particular program shall be based on:

1. Type of offense;
2. Length of sentence;
3. History;
4. Diagnostic reports; and
5. Correctional facility or program criteria.

(b) Criteria for assignment to a correctional facility or program **\*[is]\*** **\*are\*** as follows:

1. Alpha House Community Treatment Center is a community program to which female juveniles between 13 and 18 years of age are assigned directly by the courts as a condition of probation. The J.F.C.C. may assign a committed female juvenile to this program for a short period of time until a recall can be obtained, or until she is released. A female juvenile shall not be assigned to Alpha House if she has:

- i. Severe alcohol or drug addiction history;
- ii. A homicide offense;
- iii. An arson offense; or
- iv. An aggravated assault offense.

2. Turrell Residential Group Center provides a residential program to which committed female juveniles between 13 and 18 years of age may be assigned by the J.F.C.C.

3. Skillman Unit located at the Training School for Boys at Skillman provides a structured, closely supervised treatment program for female juvenile offenders between 13 and 18 years of age requiring a controlled environment.

4. Jamesburg Detention Unit located at the Training School for Boys and Girls at Jamesburg provides a disciplinary unit for female juvenile offenders when behavior is of such a nature that they can no longer be contained at the Turrell Residential Group Center or the Skillman Unit.

i. Transfers to the Jamesburg Detention Unit must be approved by the Supervisor of Juvenile Female Programs. In his or her absence, the Deputy Director or the Assistant Commissioner of the Division of Juvenile Services shall be contacted for approval.

ii. Whenever a female juvenile is transferred to the Jamesburg Detention Unit, it shall be considered a disciplinary action, subject to the due process requirement stated in N.J.A.C. 10A:4 INMATE DISCIPLINE.

## 10A:9-11.5 Reception process

(a) The facility or program to which a female juvenile is assigned shall conduct reception procedures and an orientation program.

(b) The needs of the resident shall be assessed by reviewing the:

1. Medical and dental examination results;
2. Psychological tests;
3. Education and/or vocational tests; and
4. Social history.

(c) An admissions summary shall be prepared which shall include a description of:

1. Current offense;
2. Previous criminal history;

3. Family situation;
4. Psychiatric or psychological report summaries;
5. Medical condition;
6. Academic and vocational assessment; and
7. Recommended initial program statement.

(d) The reception process shall be completed within three weeks, whenever possible.

## 10A:9-11.6 Reviews, progress reports

(a) Each female juvenile shall have her case reviewed by the Juvenile Female Classification Committee (J.F.C.C.) at least every three months.

(b) A female juvenile's case may be brought to the attention of the J.F.C.C. prior to her review date by a staff member. A staff member may request a review of a female juvenile's case at any time for adjustments in the female juvenile's program.

(c) Whenever a review is scheduled, the facility or program where the female juvenile is assigned shall be responsible for preparing a progress report for the J.F.C.C. The report shall include, but is not limited to, the following information:

1. Adjustment in the facility or program;
2. Educational/vocational progress;
3. Work responsibility and participation;
4. Group/individual counseling progress;
5. Medical status;
6. Family involvement and relationship; and
7. Ultimate placement planning.

(d) Progress reports shall be maintained in the resident's main file at the Training School for Boys at Skillman and a copy shall be retained in the duplicate file at the resident's assigned facility.

## 10A:9-11.7 Emergency transfer procedures

(a) A Superintendent or a Supervisor of a female unit who wishes to request an emergency transfer shall contact the Supervisor of Juvenile Female Programs, by telephone, and state the reasons for which the request is made.

(b) In the absence of the Supervisor of Juvenile Female Programs, the Superintendent or the Supervisor of a female unit shall contact the Deputy Director or the Assistant Commissioner of the Division of Juvenile Services.

(c) The Supervisor of Juvenile Female Programs or, in his or her absence, the Deputy Director or Assistant Commissioner shall immediately review the reasons given for the request and determine whether to approve the transfer.

(d) If the request is approved, the necessary arrangements shall be made and the Superintendent or the Supervisor of the female unit shall be contacted, by telephone, to give notification that the transfer can be made.

(e) All emergency transfers shall be reviewed by the Juvenile Female Classification Committee (J.F.C.C.) at the next scheduled meeting.

## 10A:9-11.8 Non-emergency transfer procedures

(a) Requests for non-emergency transfers may be submitted in writing by the Superintendent or Supervisor of a female unit to the Supervisor of Juvenile Female Programs. The request shall state the reasons for requesting the transfer.

(b) A female resident may request a transfer to another facility or program by submitting a written request to the Juvenile Female Classification Committee (J.F.C.C.).

(c) The J.F.C.C. shall review any requests for non-emergency transfers at the next scheduled meeting.

## 10A:9-11.9 Criteria for transfers or reassignment

(a) The Juvenile Female Classification Committee (J.F.C.C.) shall consider the following factors when deciding whether to approve a request for transfer or reassignment. The J.F.C.C. is not limited to these criteria in exercising its decision making responsibilities.

1. **\*[Disciplinary]\* \*Disciplinary\*** reports;
2. Correctional facility or program adjustment;
3. Program progress;
4. Educational needs and history;
5. Nature and circumstances of present offense;
6. Prior offense record;
7. Records from previous confinement(s);
8. Drug dependency and/or involvement;
9. Current **\*[psychological]\* \*psychological\*** and psychiatric reports;
10. History of escape or attempted escape or propensity for escape;
11. Expressed needs and interests;
12. Age;
13. Social contacts with family and friends;



14. Medical history; and
15. Previous associations with presently incarcerated residents.

## INSURANCE

### DIVISION OF THE REAL ESTATE COMMISSION

#### (a)

#### Qualifications for Licensing; Broker and Broker-Salesperson

##### Adopted Amendment: N.J.A.C. 11:5-1.3

Proposed: September 8, 1986 at 18 N.J.R. 1782(a).  
Adopted: December 17, 1986 by the New Jersey Real Estate Commission, Daryl G. Bell, Secretary-Director.  
Filed: December 22, 1986, as R.1987 d.68, **without change**.  
Authority: N.J.S.A. 45:15-6.  
Effective Date: January 20, 1987.  
Expiration Date: November 7, 1988.

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

The Real Estate Commission received one comment upon this proposal which clarifies the Commission's interpretation of the statutory apprenticeship requirement for licensure as a real estate broker.

**COMMENT:** The person submitting the comment suggested that since attorneys at law are exempted from the general licensing requirements imposed by the Real Estate Licensing Law, N.J.S.A. 45:15-1 et seq., and exception to the full-time employment in real estate requirement established by the amendment to this regulation should be included in the revised rule.

**RESPONSE:** The exceptions from the general listing scheme created at N.J.S.A. 45:15-4 for attorneys at law, receivers, trustees in bankruptcy and other professionals were not intended to exempt such persons from fulfilling the requirements for licensure if they wish to be licensed as real estate brokers or salespersons. Rather, New Jersey courts have interpreted that section to mean that when such professionals in the general course of their businesses engage in actions which, pursuant to the licensing act, would otherwise require them to be licensed, they may do so without obtaining real estate licenses.

Thus, the initial premise upon which the comment is based is faulty, and the suggestion contained in the comment has therefore not been adopted.

Full text of the adoption follows.

#### 11:5-1.3 Qualifications for licensing; broker and broker-salesperson

(a) The Commission defines the word "apprenticeship", as used in N.J.S.A. 45:15-9 to require a broker-salesperson relationship wherein an adequate knowledge of the methods, techniques and terminology of the business, as well as the pitfalls for the public and licensees alike, has been engendered by intimate, intensive and successful contact with diverse aspects of the real estate business under the guidance and direction of a licensed broker. In order to satisfy the above requirement, an applicant must have been so employed on a full time basis as a salesperson during the two year apprenticeship period. The said full time employment may be satisfied by a showing that the applicant has worked under the supervision of his or her broker during the hours of approximately 9:00 A.M. to 5:00 P.M. during any five of the seven days in each week of the two year apprenticeship, and that the applicant has not been employed on a full time basis in any other occupation during the apprenticeship period. For the purposes of this limitation upon an applicant's non-real estate employment, the term "full time basis" is construed by the Commission to mean 35 or more hours per calendar week. In addition, the applicant and the broker under whom he or she serves his or her apprenticeship shall see to it that the apprenticeship includes practices and experiences in all aspects of the real estate business as set forth in N.J.S.A. 45:15-3.

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

#### (b)

#### Advertising Rules

##### Adopted Amendment: N.J.A.C. 11:5-1.15

Proposed: August 18, 1986 at 18 N.J.R. 1679(a).  
Adopted: December 17, 1986 by the New Jersey Real Estate Commission, Daryl G. Bell, Secretary-Director.  
Filed: December 22, 1986 as R.1987 d.69, **without change**.  
Authority: N.J.S.A. 45:15-6.  
Effective Date: January 20, 1987.  
Expiration Date: November 7, 1988.

#### Summary of Public Comments and Agency Responses: No comments received.

Full text of the adoption follows.

#### 11:5-1.15 Advertising rules

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

(d) No advertising, with the exception of business cards, shall list home telephone numbers of any broker or salesperson, unless the advertising also contains language such as "evenings," "Sundays," or "holidays," limiting the use of the home telephone numbers to non-office hours. Business cards may list home telephone numbers without also containing such additional language.

(e) The business card of any licensed salesperson shall indicate that this licensee is a salesperson by the use of the words salesperson or sales representative, or sales-associate, or, where permitted by law, realtor-associate or realtor associate. The business card of any licensed broker-salesperson shall indicate that this licensee is a broker-salesperson by use of any of the aforementioned words or by the use of the words broker-salesperson.

(f)-(m) (No change.)

## LAW AND PUBLIC SAFETY

### STATE ATHLETIC CONTROL BOARD

#### (c)

#### Weight Classes; Age Limitations on Rounds of Boxing; Rules to Safeguard Health

##### Adopted Amendments: N.J.A.C. 13:46-1A.1, 13:46-1A.2, 13:46-5.19; 13:46-12.4

Proposed: September 8, 1986 at 18 N.J.R. 1789(a).  
Adopted: October 30, 1986 by State Athletic Control Board, Larry Hazzard, Commissioner.  
Filed: December 19, 1986 as R.1987 d.53, **without change**.  
Authority: N.J.S.A. 5:2A-7(c).  
Effective Date: January 20, 1987.  
Expiration Date: June 3, 1990.

#### Summary of Public Comments and Agency Responses: No comments received.

Full text of the adoption follows.

#### 13:46-1A.1 Classes of boxers

(a) Boxers shall be divided into the following classes:

1. Flyweight ..... up to 112 pounds
2. Bantamweight ..... up to 118 pounds
3. Featherweight ..... up to 126 pounds
4. Junior Lightweight ..... up to 130 pounds
5. Lightweight ..... up to 135 pounds
6. Junior Welterweight ..... up to 140 pounds
7. Welterweight ..... up to 147 pounds
8. Junior Middleweight ..... up to 154 pounds
9. Middleweight ..... up to 160 pounds
10. Lightheavyweight ..... up to 175 pounds
11. Cruiserweight ..... up to 195 pounds
12. Heavyweight ..... all over 195 pounds

13:46-1A.2 Weight differences of contestants

(a) No contest shall be scheduled, and no contestants shall engage in a boxing contest where the weight difference shall exceed the allowance as shown in the following schedule, without the written approval of Commissioner:

1. 112 to 118 pounds, not more than three pounds.
2. 118 to 126 pounds, not more than five pounds.
3. 126 to 135 pounds, not more than seven pounds.
4. 135 to 147 pounds, not more than nine pounds.
5. 147 to 160 pounds, not more than 11 pounds.
6. 160 to 175 pounds, not more than 12 pounds.
7. 175 to 195 pounds, not more than 20 pounds.
8. 195 pounds and over, no limit.

13:46-5.19 Age limitations on rounds of boxing

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

(e) The Commissioner shall have the discretion to waive the age limitations set forth in (a) through (c) above where, based upon a thorough review of the boxer's amateur and professional boxing experience, he determines that the boxer has demonstrated the ability to compete in a bout of longer duration. The Commissioner's review should include a consideration of the boxer's bouts of longer duration in other jurisdictions during the previous year and his degree of success against opponents who have competed in bouts of longer duration.

13:46-12.4 Duties of ringside physician

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

(d) The Commissioner shall assign a minimum of two physicians to each boxing program.

(a)

**Specifications for Bandages on Boxer's Hands**

**Adopted Amendment: N.J.A.C. 13:46-3.1**

Proposed: September 22, 1986, at 18 N.J.R. 1924(b).

Adopted: October 30, 1986, by State Athletic Control Board,

Larry Hazzard, Commissioner.

Filed: December 19, 1986, as R.1987 d.52, **without change**.

Authority: N.J.S.A. 5:2A-7(c).

Effective Date: January 20, 1987.

Expiration Date: June 3, 1990.

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

**No comments received.**

**Full text** of the adoption follows.

13:46-3.1 Specifications for bandages on boxer's hands

(a) In all weight classes, the bandages on each hand shall be restricted to soft gauze cloth not more than 13 yards in length and two inches in width, held in place by not more than 10 feet of surgeon's tape, one inch in width, for each hand.

Redesignate existing (c)-(f) as (b)-(e) (No change in text.)

(b)

**Term of Licenses; License Fees**

**Adopted Amendment: N.J.A.C. 13:46-4.25**

**Adopted Repeal and New Rule: N.J.A.C. 13:46-4.7**

Proposed: September 22, 1986, at 18 N.J.R. 1924(c).

Adopted: October 30, 1986, by State Athletic Control Board,

Larry Hazzard, Commissioner.

Filed: December 19, 1986, as R.1987 d.51, **without change**.

Authority: N.J.S.A. 5:2A-7(c).

Effective Date: January 20, 1987.

Expiration Date: June 3, 1990.

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

**No comments received.**

**Full text** of the adoption follows.

13:46-4.7 Term of licenses

(a) All new and renewal licenses issued to boxers by the State Athletic Control Board after the effective date of this regulation shall be valid for a period of one year from the date the license is issued, unless revoked or suspended for cause.

(b) All other licenses issued by the State Athletic Control Board shall be on a fiscal year basis (July 1 through the following June 30) and shall be valid from the date the license is issued until the expiration of the fiscal year, no matter when the license was originally obtained, unless revoked or suspended for cause.

13:46-4.25 License fees

(a) License fees for wrestlers, managers, seconds, referees, timekeepers, announcers, doormen and box-office employees shall be on a fiscal year basis (July 1 through the following June 30) and the fee for each license shall be as follows:

1. Wrestling Booking Agency .....	\$50.00
2. Wrestling Booking Agent .....	15.00
3. Referee .....	15.00
4. Manager .....	15.00
5. Wrestler .....	5.00
6. Second .....	5.00
7. Timekeeper .....	5.00
8. Announcer .....	5.00
9. Doorman .....	5.00
10. Box office employee .....	5.00
11. Matchmaker .....	25.00

(b) The fee for a boxer's license shall be \$5.00.

(c)

**Compensation of Wrestling Referees**

**Adopted Amendment: N.J.A.C. 13:46-21.2**

Proposed: September 8, 1986, at 18 N.J.R. 1790(a).

Adopted: October 30, 1986, by State Athletic Control Board,

Larry Hazzard, Commissioner.

Filed: December 19, 1986, as R.1987 d.49, **without change**.

Authority: N.J.S.A. 5:2A-7(c).

Effective Date: January 20, 1987.

Expiration Date: June 3, 1990.

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

One comment was received in support of the proposal. The proposal has been adopted without change.

**Full text** of the adoption follows.

13:46-21.2 Compensation for wrestling referees

(a) For wrestling shows to which only one referee is assigned, the compensation to the referee shall be paid by the promoter conducting the show and shall be on the following basis:

1. When the gross gate receipts of the show do not exceed \$2,500, the fee for the referee shall be \$125.00.
2. When the gross gate receipts of the show are between \$2,500 and \$5,000, the fee for the referee shall be \$150.00.
3. When the gross gate receipts of the show are between \$5,000 and \$10,000, the fee for the referee shall be \$225.00.
4. When the gross gate receipts of the show are between \$10,000 and \$15,000, the fee for the referee shall be \$300.00.
5. When the gross gate receipts of the show are between \$15,000 and \$25,000, the fee for the referee shall be \$375.00.
6. When the gross gate receipts of the show are in excess of \$25,000, the fee for the referee shall be \$450.00.

(b) For wrestling shows to which more than one referee is assigned, the compensation to each of the referees shall be paid by the promoter and shall be on the following basis:

1. When the gross gate receipts of the show do not exceed \$2,500, the fee for each of the referees shall be \$75.00.
2. When the gross gate receipts of the show are between \$2,500 and \$5,000, the fee for each of the referees shall be \$100.00.
3. When the gross gate receipts of the show are between \$5,000 and \$10,000, the fee for each of the referees shall be \$150.00.

4. When the gross gate receipts of the show are between \$10,000 and \$15,000, the fee for each of the referees shall be \$200.00.

5. When the gross gate receipts of the show are between \$15,000 and \$25,000, the fee for each of the referees shall be \$250.00.

6. When the gross gate receipts of the show are in excess of \$25,000, the fee for each of the referees shall be \$300.00.

(c) In the event one of the referees assigned to a wrestling show becomes incapacitated, or in an emergency situation where only one of the referees assigned to the show is available, the remaining referee shall referee the remaining contests on the program and, at the discretion of the Commissioner, may be compensated in an amount up to twice the amount of the fee established under (b) above. In such a situation, the compensation to be paid to the incapacitated or unavailable referee shall be reduced accordingly.

## (a)

### Compensation of Boxing Referees and Judges and of Boxing Timekeepers

**Adopted New Rule: N.J.A.C. 13:46-11.10**

**Adopted Amendment: N.J.A.C. 13:46-8.25**

Proposed: September 22, 1986, as 18 N.J.R. 1925(a).

Adopted: October 30, 1986, by State Athletic Control Board, Larry Hazzard, Commissioner.

Filed: December 19, 1986, as R.1987 d.50, **without change**.

Authority: N.J.S.A. 5:2A-7(c).

Effective Date: January 20, 1987.

Expiration Date: June 3, 1990.

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

COMMENT: One comment was received in support of the proposal.

RESPONSE: The proposal has been adopted without change.

COMMENT: The "gross gate receipts" of the show, which are utilized to compute compensation, should include television revenue.

RESPONSE: Television revenue was considered during the development of the new compensation schedule. However, the Board believes that the compensation schedule adopted is fair and that no differentiation should be made between bouts which are televised and those which are not.

COMMENT: Timekeepers should not be compensated the same as boxing judges. The Commissioner should also not be empowered to set the compensation for officials in championship bouts. In championship bouts, the sanctioning body should set the rate of compensation.

RESPONSE: The Board believes that timekeepers in boxing bouts perform a critical function. The timekeeper must ensure that all rounds are correctly timed, that all rest periods are correctly timed and that all of the required bells and warning signals are correctly given. The timekeeper should be adequately compensated for this important function and the compensation schedule set forth in the rule accomplishes this goal.

In addition, the Board cannot permit the compensation to be paid its officials to be set by outside parties. Strict regulation by the Board and the Commissioner of the compensation for its officials is necessary.

Full text of the adoption follows.

#### 13:46-8.25 Compensation for boxing referees and judges

(a) The compensation to boxing referees and judges shall be paid by the promoter conducting the show and shall be on the following basis:

1. When the gross gate receipts of the show do not exceed \$25,000, the fee for each of the two referees shall be \$250.00 and the fee for each of the three judges shall be \$200.00.

2. When the gross gate receipts of the show are between \$25,000 and \$50,000, the fee for each of the two referees shall be \$300.00 and the fee for each of the three judges shall be \$250.00.

3. When the gross gate receipts of the show are between \$50,000 and \$100,000, the fee for each of the two referees shall be \$350.00 and the fee for each of the three judges shall be \$300.00.

4. When the gross gate receipts of the show are between \$100,000 and \$200,000, the fee for each of the two referees shall be \$400.00 and the fee for each of the three judges shall be \$350.00.

5. When the gross gate receipts of the show are between \$200,000 and \$300,000, the fee for each of the two referees shall be \$500.00 and the fee for each of the three judges shall be \$400.00.

6. When the gross gate receipts of the show are in excess of \$300,000 the fee for the referees and judges shall be set by the Commissioner.

(b) In the event one of the two referees assigned to a boxing show becomes incapacitated, or in an emergency situation where only one of the two referees is available, the remaining referee shall referee the remaining contests of the program and, at the discretion of the Commissioner, may be compensated in an amount up to twice the amount of the fee established under (a) above. In such a situation, the compensation to be paid to the incapacitated or unavailable referee shall be reduced accordingly.

(c) The compensation schedule set forth in (a) above shall not apply in a sanctioned championship bout. The Commissioner shall set the compensation to be paid to boxing referees and judges officiating at sanctioned championship bouts. In making this determination, the Commissioner may consider any determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. A nationally recognized boxing association shall include, but not be limited to, the World Boxing Association, the World Boxing Council, the North American Boxing Federation and the United States Boxing Association. Nevertheless, the Commissioner shall retain full authority to set the compensation schedule for boxing referees and judges in championship bouts irrespective of a determination or a recommendation by such an association.

#### 13:46-11.10 Compensation for boxing timekeepers

(a) The compensation to boxing timekeepers shall be paid by the promoter conducting the show and shall be on the following basis:

1. When the gross gate receipts of the show do not exceed \$25,000, the fee for the timekeeper shall be \$200.00.

2. When the gross gate receipts of the show are between \$25,000 and \$50,000, the fee for the timekeeper shall be \$250.00.

3. When the gross gate receipts of the show are between \$50,000 and \$100,000, the fee for the timekeeper shall be \$300.00.

4. When the gross gate receipts of the show are between \$100,000 and \$200,000, the fee for the timekeeper shall be \$350.00.

5. When the gross gate receipts of the show are between \$200,000 and \$300,000, the fee for the timekeeper shall be \$400.00.

6. When the gross gate receipts of the show are in excess of \$300,000, the fee for the timekeeper shall be set by the Commissioner.

(b) The compensation schedule set forth in (a) above shall not apply in a sanctioned championship boxing bout. The Commissioner shall set the compensation to be paid to timekeepers officiating at sanctioned championship boxing bouts. In making this determination, the Commissioner may consider any determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. A nationally recognized boxing association shall include, but not be limited to, the World Boxing Association, the World Boxing Council, the North American Boxing Federation and the United States Boxing Association. Nevertheless, the Commissioner shall retain full authority to set the compensation schedule for timekeepers in championship boxing bouts irrespective of a determination or a recommendation by such an association.

## DIVISION OF STATE POLICE

## (b)

### Motor Carrier Safety Regulations

**Adopted New Rules: N.J.A.C. 13:60**

Proposed: November 17, 1986 at 18 N.J.R. 2311(a).

Adopted: December 22, 1986 by Col. Clinton L. Pagano, Superintendent, Division of State Police.

Filed: December 23, 1986 as R.1987 d.73, **without change**.

Authority: N.J.S.A. 39:5B-32.

Effective Date: January 20, 1987.

Expiration Date: January 20, 1992.

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

**No comments received.**



Full text of the adoption follows.

CHAPTER 60  
MOTOR CARRIER SAFETY REGULATIONS

SUBCHAPTER 1. GENERAL REQUIREMENTS

13:60-1.1 Purpose

This chapter establishes rules and regulations concerning the qualifications of motor carrier operators and vehicles, which substantially conform to the requirements established pursuant to sections 401 to 404 of the "Surface Transportation Assistance Act of 1982," Pub. L. 97-424 (49 U.S.C. §2301-2304) by adopting the "Federal Motor Carrier Safety Regulations" as adopted at 49 C.F.R., Parts 390 through 397.

13:60-1.2 Application

(a) This chapter shall apply to:

1. Every motor carrier and every person, including drivers, agents, employees and representatives involved or in any manner related to the intrastate transportation of hazardous materials as defined in the statute (N.J.S.A. 39:5B-25 et seq.), or the transportation of any other cargo or operation of a vehicle in interstate commerce shall comply with and be bound by these rules and regulations and all amendments and supplements thereto, and shall take such measures as are necessary to insure compliance therewith.

2. All officers, agents, representatives, drivers and employees of motor carriers involved or concerned with the management, maintenance, operation or driving of vehicles, subject to these regulations, shall be conversant and knowledgeable with the rules and regulations set forth in this chapter.

13:60-1.3 General requirements

(a) This chapter establishes minimum standards of compliance concerning the qualifications of motor carrier operators and vehicles, operating in this state in interstate commerce or operating in this state transporting hazardous materials in intrastate commerce. Therefore, in the event of a conflict between this chapter and any other State regulation, except as otherwise provided by statute or law, the stricter, more stringent standard shall apply and govern.

(b) Whenever the term "interstate" is used in the Federal regulations adopted herein it shall, for the purpose of those regulations, mean or include both "interstate" transportation in commerce and "intrastate" transportation of hazardous materials in commerce except where stated otherwise.

(c) If any section, subsection, clause or provision of this chapter shall be adjudged unconstitutional or to be ineffective or invalid in whole or in part, to the extent that it is not adjudged unconstitutional or is not ineffective or is not invalid, it shall be valid and effective and no other section, subsection, clause or provision of this chapter shall, on account thereof, be deemed unconstitutional, invalid or ineffective, and the inapplicability or invalidity of any section, subsection, clause or provision of this chapter in any one or more instances or under any one or more circumstances shall not be taken to affect or prejudice in any other instance or under any other circumstance. To this end, the provisions of this regulation are declared to be severable.

(d) This chapter may be amended from time to time by the Superintendent of State Police. The "Federal Motor Carrier Safety Regulations" referenced herein are those adopted by the Secretary of Transportation as of October 1, 1986. The Superintendent of State Police intends to review the Federal regulations and amend these regulations as relevant changes in the Federal regulatory scheme are adopted.

(e) The provisions and requirements of these regulations as well as the Federal regulations adopted herein by reference, and made a part hereof as if set forth in full, are applicable to all transportation in interstate commerce as well as all transportation of hazardous materials in intrastate commerce unless specifically stated otherwise.

13:60-1.4 Penalty for violation

(a) The penalties for violation of these regulations shall be enforced under the provisions of the Laws of 1985, Chapter 415, Section 5, N.J.S.A. 39:5B-29.

(b) Each violation shall be treated separately. When the violation is a continuing one, each day of the violation constitutes a separate offense.

13:60-1.5 Document availability

(a) Copies of the "Federal Motor Carrier Safety Regulations," Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, 1986, and referenced herein, may be purchased from the sources listed below.

Superintendent of Documents  
U.S. Government Printing Office  
Washington, D.C. 20402  
(202) 264-3238  
U.S. Government Printing Office Bookstore  
Room 110, 26 Federal Plaza  
New York, N.Y. 10278-0081  
(212) 264-3825  
U.S. Government Printing Office Bookstore  
Room 1214, Federal Building  
600 Arch Street  
Philadelphia, PA 19106  
(215) 597-0677

(b) Copies of Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, 1986, are also available for review at the following public libraries:

New Jersey State Library  
185 West State Street  
Trenton, N.J. 08625  
(609) 292-6220

Newark Public Library  
5 Washington Street  
Newark, N.J. 07101  
(201) 733-7882

Jersey City Public Library  
472 Jersey Avenue  
Jersey City, N.J. 07304  
(201) 547-4501

New Brunswick Public Library  
60 Livingston Avenue  
New Brunswick, N.J. 08901  
(201) 745-5108

Trenton Public Library  
120 Academy Street  
Trenton, N.J. 08608  
(609) 392-7188

Camden County Public Library  
Laurel Road  
Voorhees, N.J. 08043  
(609) 772-1636

Cherry Hill Public Library  
1100 Kings Highway, North  
Cherry Hill, N.J. 08034  
(609) 667-0300

(c) Copies of Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, 1986, are further available for review at the Division of State Police, Office of Hazardous Materials Transportation Compliance and Enforcement, River Road, P.O. Box 7068, West Trenton, New Jersey 08625. Regular business hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. The telephone number is (609) 882-2000 extension 2581 or 2582.

13:60-1.6 Assistance

For general assistance and procedural questions in matters related to the "Federal Motor Carrier Safety Regulations," as adopted herein, contact:

Bureau of Motor Carrier Safety  
Federal Highway Administration  
U.S. Department of Transportation  
25 Scotch Road, Second Floor  
Trenton, N.J. 08625  
(609) 989-2276

For assistance in matters related to enforcement of the regulations adopted herein, contact:

Office of Hazardous Materials  
Transportation Compliance and Enforcement  
New Jersey Division of State Police  
River Road, P.O. Box 7068  
West Trenton, N.J. 08625  
(609) 882-2000 Extension 2581 or 2582

Note, however, statements or opinions provided by the Division of State Police do not constitute legal advice.

**(CITE 19 N.J.R. 236)  
LAW AND PUBLIC SAFETY**

**ADOPTIONS**

**SUBCHAPTER 2. ADOPTION OF PORTIONS OF TITLE 49,  
CODE OF FEDERAL REGULATIONS, BY  
REFERENCE**

**13:60-2.1 Parts adopted by reference**

The Superintendent of the Division of State Police, pursuant to the Laws of 1985, Chapter 415, N.J.S.A. 39:5B-32, hereby incorporates, by reference, the following portions of the Code of Federal Regulations, Title 49—Transportation, Subchapter B—The Federal Motor Carrier Safety Regulations, Parts 390 through 397, inclusive, revised as of October 1, 1986. 49 C.F.R., Parts 390 through 397, inclusive. The parts adopted by reference are found in Chapter III, referred to as “Federal Highway Administration, Department of Transportation,” Subchapter B—Federal Motor Carrier Safety Regulations. These parts are detailed in the Appendix to the Regulations regarding the Motor Carrier Safety Regulations.

**APPENDIX TO THE REGULATIONS REGARDING  
THE MOTOR CARRIER SAFETY REGULATIONS**

This Appendix to the regulations regarding the Motor Carrier Safety Regulations details the adopted portions of Title 49, C.F.R., by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

**CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION  
DEPARTMENT OF TRANSPORTATION**

**SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY  
REGULATIONS**

**PART 390 FEDERAL MOTOR CARRIER SAFETY  
REGULATIONS: GENERAL**

**Subpart A—Definitions**

- Section 390.1 Motor vehicle.
- Section 390.2 Vehicle.
- Section 390.3 Bus.
- Section 390.4 Truck.
- Section 390.5 Truck Tractor.
- Section 390.6 Semitrailer.
- Section 390.7 Full trailer.
- Section 390.8 Pole trailer.
- Section 390.9 Driveaway-towaway operation.
- Section 390.10 Gross weight.
- Section 390.11 Driver.
- Section 390.12 Business district.
- Section 390.13 Residence district.
- Section 390.15 Motor carrier.
- Section 390.16 Exempt intracity operation.
- Section 390.17 Lightweight vehicle.

**PART 391 QUALIFICATIONS OF DRIVERS**

**Subpart A—General**

- Section 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.
- Section 391.2 General exemptions.
- Section 391.3 Definitions.
- Section 391.5 Familiarity with rules.
- Section 391.7 Aiding or abetting violations.

**Subpart B—Qualifications and Disqualification of Drivers**

- Section 391.11 Qualifications of drivers.
- Section 391.15 Disqualification of drivers.

**Subpart C—Background and Character**

- Section 391.21 Application for employment as specified in this Section 391.21 are not required for persons already employed by the same carrier as of March 4, 1985.
- Section 391.23 Investigation and inquiries. Section 391.23 shall apply to drivers hired after March 4, 1985.
- Section 391.25 Annual review of driving record.
- Section 391.27 Record of violations.

**Subpart D—Examinations and Tests**

- Section 391.31 Road test.
- Section 391.33 Equivalent of road test.
- Section 391.35 Written examination.
- Section 391.37 Equivalent of written examinations.

**Subpart E—Physical Qualifications and Examinations**

- Section 391.41 Physical qualifications for drivers.
- Section 391.43 Medical examination; certificate of physical examinations.

- Section 391.45 Persons who must be medically examined and certified.
- Section 391.47 Resolution of conflicts of medical evaluation.
- Section 391.49 Waiver of certain physical defects.

**Subpart F—Files and Records**

- Section 391.51 Driver qualification files.

**Subpart G—Limited Exemptions**

- Section 391.61 Drivers who were regularly employed before January 1, 1971.
- Section 391.62 Drivers of lightweight vehicles.
- Section 381.63 Intermittent, casual, or occasional drivers.
- Section 391.65 Drivers furnished by other motor carriers.
- Section 391.67 Drivers of articulated (combination) farm vehicles.

**PART 392 DRIVING OF MOTOR VEHICLES**

**Subpart A—General**

- Section 392.1 Scope of the rules in this part.
- Section 392.2 Applicable operating rules.
- Section 392.3 Ill or fatigued operator.
- Section 392.4 Narcotics, amphetamine, and other dangerous substances.
- Section 392.5 Intoxicating beverage.
- Section 392.6 Schedules to conform with speed limits.
- Section 392.7 Equipment, inspection and use.
- Section 392.8 Emergency equipment, inspection and use.
- Section 392.9 Safe loading.
- Section 392.9a Corrective lenses to be worn.
- Section 392.9b Hearing aid to be worn.

**Subpart B—Driving of Vehicles**

- Section 392.10 Railroad grade crossings; stopping required.
- Section 392.11 Railroad grade crossings; slowing down required.
- Section 392.12 Drawbridges; stopping of buses.
- Section 392.13 Drawbridges; slowing down of other vehicles.
- Section 392.14 Hazardous conditions; extreme caution.
- Section 392.15 Required and prohibited use of turn signals.
- Section 392.16 Use of seat belts.
- Section 392.18 Slow moving vehicles; hazard warning signal flashers.

**Subpart C—Stopped Vehicles**

- Section 392.20 Unattended vehicles; precautions.
- Section 392.21 Stopped vehicles not to interfere with other traffic.
- Section 392.22 Emergency signals; stopped vehicles.
- Section 392.24 Emergency signals; flame-producing.
- Section 392.25 Emergency signals; dangerous cargoes.

**Subpart D—Use of Lighted Lamps and Reflectors**

- Section 392.30 Lighted lamps; moving vehicles.
- Section 392.31 Lighted lamps; stopped or parked vehicles.
- Section 392.32 Upper and lower head lamp beams.
- Section 392.33 Obscured lamps or reflectors.

**Subpart E—Accidents and License Revocation; Duties of Driver**

- Section 392.40 All accidents.
- Section 392.41 Striking unattended vehicles.
- Section 392.42 Notification of license revocation.

**Subpart F—Fueling Precautions**

- Section 392.50 Ignition of fuel; prevention.
- Section 392.51 Reserve fuel.
- Section 392.52 Buses; fueling.

**Subpart G—Prohibited Practices**

- Section 392.60 Unauthorized persons not to be transported.
- Section 392.61 Driving by unauthorized person.
- Section 392.62 Bus driver; distraction.
- Section 392.63 Towing or pushing loaded buses.
- Section 392.64 Riding within closed vehicles without proper exits.
- Section 392.65 Sleeper berth; transfer to or from.
- Section 392.66 Carbon monoxide; use of vehicle when detected.
- Section 392.67 Heater, flame-producing; on vehicle in motion.
- Section 392.68 Motive power not to be disengaged.
- Section 392.69 Sleeper berth, occupation.

**PART 393 PARTS AND ACCESSORIES NECESSARY FOR SAFE  
OPERATION**

**Subpart A—General**

- Section 393.1 Scope of the rules in this part.
- Section 393.2 Additional equipment and accessories.

**Subpart B—Lighting Devices, Reflectors, and Electrical Equipment**

- Section 393.9 Lamps operable.

Section 393.11 Lamps and reflectors, small buses and trucks.  
 Section 393.12 Lamps and reflectors, large buses and trucks.  
 Section 393.13 Lamps and reflectors, truck tractors.  
 Section 393.14 Lamps and reflectors, large semitrailers and full trailers.  
 Section 393.15 Lamps and reflectors, small semitrailers and full trailers.  
 Section 393.16 Lamps and reflectors, pole trailers.  
 Section 393.17 Lamps and reflectors, combinations in driveaway-towaway operation.

Section 393.18 Lamps on motor vehicles with projecting loads.  
 Section 393.19 Requirements for turn signaling system.  
 Section 393.20 Clearance lamps to indicate extreme width and height.  
 Section 393.22 Combination of lighting devices and reflectors.  
 Section 393.23 Lighting devices to be electric.  
 Section 393.24 Requirements for head lamps and auxiliary road lighting lamps.

Section 393.25 Requirements for lamps other than head lamps.  
 Section 393.26 Requirements for reflectors.  
 Section 393.27 Wiring specifications.  
 Section 393.28 Wiring to be protected.  
 Section 393.29 Grounds.  
 Section 393.30 Battery installation.  
 Section 393.31 Overload protective devices.  
 Section 393.32 Detachable electrical connections.  
 Section 393.33 Wiring, installation.

#### Subpart C—Brakes

Section 393.40 Required brake systems.  
 Section 393.41 Parking brake system.  
 Section 393.42 Brakes required on all wheels.  
 Section 393.43 Breakaway and emergency braking.  
 Section 393.44 Front brake lines, protection.  
 Section 393.45 Brake tubing and hose adequacy.  
 Section 393.46 Brake tubing and hose connections.  
 Section 393.47 Brake lining.  
 Section 393.48 Brakes to be operative.  
 Section 393.49 Single valve to operate all brakes.  
 Section 393.50 Reservoirs required.  
 Section 393.51 Warning devices and gauges.  
 Section 393.52 Brake performance.

#### Subpart D—Glazing and Window Construction

Section 393.60 Glazing in specified openings.  
 Section 393.61 Window construction.  
 Section 393.62 Window obstruction.  
 Section 393.63 Windows, markings.

#### Subpart E—Fuel Systems

Section 393.65 All fuel systems.  
 Section 393.67 Liquid fuel tanks.  
 Section 393.69 Liquefied petroleum gas systems.

#### Subpart F—Coupling Devices and Towing Methods

Section 393.70 Coupling devices and towing methods, except for driveaway-towaway operations.  
 Section 393.71 Coupling devices and towing methods, driveaway-towaway operations.

#### Subpart G—Miscellaneous Parts and Accessories

Section 393.75 Tires.  
 Section 393.76 Sleeper berths.  
 Section 393.77 Heaters.  
 Section 393.78 Windshield wipers.  
 Section 393.79 Defrosting devices.  
 Section 393.80 Rear-vision mirrors.  
 Section 393.82 Speedometer.  
 Section 393.83 Exhaust system location.  
 Section 393.84 Floors.  
 Section 393.86 Rear end protection.  
 Section 393.87 Flags on projecting loads.  
 Section 393.88 Television receivers.  
 Section 393.89 Buses, driveshaft projection.  
 Section 393.90 Buses, standee line or bar.  
 Section 393.91 Buses, aisle seats prohibited.  
 Section 393.92 Buses, marking emergency doors.  
 Section 393.93 Seats, seat belt assemblies, and seat belt assembly anchorages.  
 Section 393.94 Vehicle interior noise levels.

#### Subpart H—Emergency Equipment

Section 393.95 Emergency equipment on all power units.

#### Subpart I—Protection Against Shifting or Falling Cargo

Section 393.100 General rules for protection against shifting or falling cargo.  
 Section 393.102 Securement systems.  
 Section 393.104 Blocking and bracing.  
 Section 393.106 Front-end structure.

#### PART 394 NOTIFICATION AND REPORTING OF ACCIDENTS

Section 394.1 Scope of the rules in this part.  
 Section 394.3 Definition of "reportable accident."  
 Section 394.5 Definition of "farm-to-market agricultural transportation."  
 Section 394.7 Immediate notification of fatal accidents.  
 Section 394.9 Reporting of accidents.  
 Section 394.11 Notice of death after filing report.  
 Section 394.15 Assistance in investigations and special studies.  
 Section 394.20 Instructions for preparing accident reports.

#### PART 395 HOURS OF SERVICE OF DRIVERS

Section 395.1 Compliance with, and knowledge of, the rules in this part.  
 Section 395.2 Definitions.  
 Section 395.3 Maximum driving and on-duty time.  
 Section 395.7 Travel time.  
 Section 395.8 Driver's record of duty status.  
 Section 395.10 Adverse driving and conditions.  
 Section 395.11 Emergency conditions.  
 Section 395.12 Relief from regulations.  
 Section 395.13 Drivers declared out of service.

#### PART 396 INSPECTION, REPAIR AND MAINTENANCE

Section 396.1 Scope.  
 Section 396.3 Inspection, repair and maintenance.  
 Section 396.5 Lubrication.  
 Section 396.7 Unsafe operations forbidden.  
 Section 396.9 Inspection of motor vehicles in operation.  
 Section 396.11 Driver vehicle inspection report(s).  
 Section 396.13 Driver inspection.  
 Section 396.15 Driveaway-towaway operations, inspections.

#### PART 397 TRANSPORTATION OF HAZARDOUS MATERIALS: DRIVING AND PARKING RULES

Section 397.1 Application of the rules in this part.  
 Section 397.2 Compliance with Federal Motor Carrier Safety Regulations.  
 Section 397.5 Attendance and surveillance of motor vehicles.  
 Section 397.7 Parking.  
 Section 397.11 Fires.  
 Section 397.13 Smoking.  
 Section 397.15 Fueling.  
 Section 397.17 Tires.  
 Section 397.19 Instructions and documents.  
 Section 397.21 Marking of vehicles operated by private carriers.

(a)

#### NEW JERSEY RACING COMMISSION

##### Harness Rule: Deductions

##### Adopted Amendment: N.J.A.C. 13:71-21.8

Proposed: August 4, 1986 at 18 N.J.R. 1516(a).

Adopted: November 21, 1986 by Bruce H. Garland, Executive Director, New Jersey Racing Commission.

Filed: December 16, 1986 as R.1987 d.46, with substantive changes not requiring additional public notice (see N.J.A.C. 1:30-4.3).

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

Effective Date: January 20, 1987.

Expiration Date: February 25, 1990.

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

The Racing Commission was in receipt of written comments concerning the proposed rule N.J.A.C. 13:71-21.8 (deductions), wherein the horses were trained by a training stable and also a trainer of record (copies attached). The Standardbred Breeders and Owners Association and their attorneys had submitted to the Commission for their consideration put-



ting a provision in the rule whereby in the particular instance cited that the five percent be deducted and paid to the training stable rather than the trainer of record. The Racing Commission reviewed these comments with the horsemen's organization which represents the owners, drivers and trainers of horses which race in New Jersey and agreed that the rule should be adopted allowing for the five percent deduction to go to the training stable.

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

#### 13:71-21.8 Deductions

All purses contested for shall be distributed according to the conditions of the race. No deduction, voluntary or involuntary, may be made from any purse or stake or futurity other than for payment to be made to owners, drivers, **\*trainers,\*** nominators or breeders of money winning horses and organization or promotion expenses stipulated for stakes and futurities. Five percent of the owner's payment shall be deducted and paid to the driver, and five percent of the owner's payment shall be deducted and paid to the trainer. **\*In instances where the trainer is employed by a training stable, the payment shall be made to the training stable.\***

## PUBLIC UTILITIES

### (a)

#### OFFICE OF CABLE TELEVISION

##### Procedures for Franchise Renewals

##### Adopted Amendment: N.J.A.C. 14:18-1.2

##### Adopted New Rule: N.J.A.C. 14:18-13

Proposed: June 2, 1986 at 18 N.J.R. 1181(a).

Adopted: December 15, 1986 by Bernard R. Morris, Director,  
Office of Cable Television (with approval of the Board of  
Public Utilities).

Filed: December 23, 1986 as R.1987 d.70, **with substantive changes**  
not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 48:5A-10, 19, 25.

Effective Date: January 20, 1987.

Expiration Date: July 29, 1990.

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

##### PROPOSAL COMMENTS

Oral and/or written comments concerning the proposal were provided by the New Jersey Cable Television Association, J. Mark Mutter, Irene McPhail, Helen Naimark and John Runfola.

J. Mark Mutter, Assistant Township Attorney, Township of Dover, Toms River, submitted the following comments and recommendations:

1. Transcripts of proceedings during the optional preproposal phase should be paid for by the applicant not the municipality.

2. The response to the general public complaints should be made an explicit factor for consideration during the prehearing assessment stage.

Irene McPhail, General Manager of Cablevision of New Jersey, argued that the new regulations seem to limit severely the right to automatic renewal enjoyed under current policy by granting municipalities the right to initiate a lengthy and cumbersome ascertainment and performance review process before issuance of a consent ordinance. Ms. McPhail recommended that, if this is not the intent, the proposed regulations should be amended so that they clearly leave the automatic review process and its protections in place for current franchisees.

Helen Naimark, representing the Cable Users Association of New Jersey suggested the rule should make reference to provisions in the New Jersey Cable Television Act that result in an automatic extension when an application is pending. She asserted if there is any danger in practice that such a standard might be omitted or neglected it should be covered.

John Runfola, Montclair Cable TV Committee Chairman, commented on the provisions relating to the initiation of the renewal process. His concern is that, once the 30 to 36 month ascertainment period passes for the municipality, the cable operator would have no incentive to maintain sufficient performance.

The New Jersey Cable Television Association (NJCTA) provided comprehensive and detailed comments suggesting several technical and clari-

fying changes which would help make the rule clearer and more easily understandable. Some substantive changes were also suggested.

Specifically, the NJCTA suggested the times required for the occurrence of steps in the procedure to be changed so that all action would be in terms of one event, the expiration of the Certificate of Approval. The NJCTA also suggested language to make the rule more consistent with federal and state law. The NJCTA believes federal law does not require the deletion of the rules concerning automatic renewals. Further, the association suggested that certain references to specific sections of the New Jersey Cable Television Act be deleted and replaced with references to applicable sections of the CCPA. The NJCTA would reword certain sections of the proposal to become more consistent with the wording of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The NJCTA also submitted a proposal to add certain provisions which would clarify the rights of cable television operators in instances where municipalities fail to act in a timely fashion and to clarify the rights of cable operators during proceedings. The comments request that all participants at the optional preproposal phase be allowed to present evidence and cross examine witnesses. The NJCTA also suggests that the CCPA does not make public hearings mandatory at the preproposal stage.

It was further requested that a provision be added which would make the renewal provisions applicable in those instances where there is no municipal consent ordinance underlying the Certificate of Approval, and that language be added to the effect that only the certificate holder be allowed to participate as an applicant in the proceedings.

The OCTV also received various comments more relevant to issues concerning renewals in specific municipalities than to the general procedures, which is the specific subject of this rulemaking. These comments were referred to the appropriate OCTV office.

##### AGENCY RESPONSE

The OCTV agrees with Mr. Mutter that the intent of the CCPA could be better served by requiring the applicant to pay for transcripts during the optional preproposal phase; however, nothing in the federal law mandates the applicant pay these expenses and state law does not empower the OCTV to require the applicant to absorb these costs. Also, we find it unnecessary to make an operator's performance in responding to complaints an explicit consideration in the proceedings since this type of response is a fundamental part of reviewing an operator's performance and is continuously under review by the OCTV.

The OCTV finds the comments concerning the automatic renewal provisions persuasive. It does not appear that it is the intent of the CCPA to limit the automatic renewal mechanism of N.J.S.A. 48:5A-19. Therefore, section N.J.A.C. 14:18-11.21(b) will be retained and renumbered as N.J.A.C. 14:18-13.6.

The OCTV also agrees with the NJCTA's suggestions that all time frames in the renewal process be delineated in terms of the expiration of the Certificate of Approval. This will make the procedural requirements of the rule more easily understandable by all parties involved. The Board also adopts the NJCTA comment which would delete specific references to the New Jersey Cable Television Act and refer instead to applicable sections of the CCPA. This change results in the rule more accurately reflecting the standards required by federal law. Also, it is now clear that the CCPA does not mandate public hearings at the preproposal stage. This change also is reflected in the adopted rule.

In order to maintain clarity and consistency the adopted rule specifically sets forth the rights of cable operators in cases where the municipality fails to act and assures that this rule applies to the renewal of all cable television franchises, whether or not there exists an underlying municipal consent ordinance. Also, the OCTV adopts the recommendation that all parties be allowed to present material and relevant evidence in the ascertainment proceeding. This is necessary to develop a complete record on all issues which may be presented.

However, the OCTV rejects the suggestion of the NJCTA that parties be allowed full rights to cross examine witnesses. The form, manner and scope of the participation of parties should be determined by the person or entity presiding over the hearing. The OCTV also rejects the argument that the rule should specifically bar any entity other than the holder of a Certificate of Approval from participating as an applicant. Although the OCTV agrees that the CCPA does not allow the comparative consideration of other applicants in determining whether the incumbent operator may be denied a renewal, the OCTV feels the adding of such a provision to the rule would be overly restrictive.

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

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

14:18-1.2 Definitions

"Franchising authority" means the Board of Public Utilities, Office of Cable Television, State of New Jersey.

"Operator's proposal" means the operator's petition to the Board for a Certificate of Approval following completion of municipal consent proceeding.

"Preliminary assessment of denial" means a decision by the Office of Cable Television to schedule a hearing on a Certificate of Approval application pursuant to N.J.S.A. 48:5A-16(b) and 47 U.S.C.A. §546(c)(1).

"Preproposal phase" means any proceedings conducted under these rules held prior to an operator's filing for a renewal of a Certificate of Approval with the Board of Public Utilities.

"Proposal phase" means any proceedings subsequent to the time under these rules when a petition for renewal of a Certificate of Approval is filed with the Board of Public Utilities.

"Renewal" means formal extension or continuation by the Board of any operator's franchise beyond the duration specified by the existing Certificate of Approval.

"Request for Proposal" means a duly adopted municipal consent ordinance incorporating all terms and conditions for renewal, including but not limited to, any generally imposed obligations under state statute and regulations.

14:18-11.21 (Reserved)

SUBCHAPTER 13. RENEWALS

14:18-13.1 Initiation of renewal process

(a) Renewal procedures shall commence in either of two ways:

1. Either the municipality or the cable operator may commence a municipal fact finding process by filing notice with the Office and the other party (municipality or cable operator) between 30 and 36 months prior to the expiration of the Certificate of Approval; or

2. **\*[If there are less than 30 months prior to the expiration of the Certificate of Approval,]\* \*If no notice is filed pursuant to (a)1 above,\*** the cable operator shall commence the process by filing an application for municipal consent.

(b) Renewal of Certificates of Approval expiring prior to 31 months from January 20, 1987 for which no proceeding has commenced as of January 20, 1987 shall be initiated either by:

1. Filing a notice pursuant to (a)1. above within 30 days of January 20, 1987; or

2. If no such notice is filed within 30 days of the date, by filing a municipal consent application.

14:18-13.2 Optional pre-proposal phase

(a) Upon the filing of a notice pursuant to N.J.A.C. 14:18-13.1, the municipality shall conduct proceedings to assess its future cable-related community needs and interests and to review past performance of the cable operator. **\*Such proceedings shall afford the municipality, the public and the cable operator notice and opportunity for participation.\***

1. Proceedings shall take place before either the governing body of the municipality or before an advisory committee appointed by the governing body. The names of designees and a mailing address for the advisory committee shall be forwarded to the Office of Cable Television\***.\*and the cable operator.\***

2. **\*[At least one hearing]\* \*In the event the municipality deems that a public hearing is necessary\* to assess the municipality's future cable related needs and interests and to review \*the operator's past performance, such hearing\* shall be held upon at least 15 days' written notice to the public and the cable operator. **\*At any such hearing all participants shall have the right to present relevant evidence.\*****

3. Any proceedings pursuant to this section shall include transcripts of any public hearings and opportunity for public comment, written or oral. Transcripts shall be made at the expense of the municipality.

(b) In assessing community cable related needs and reviewing operator performance, consideration **\*[shall]\* \*may\*** include, but shall not necessarily be limited to the following:

1. Any statewide needs and requirements as may be established by regulations of the Office of Cable Television;

2. Any regional community cable-related needs;

3. Any uniquely local cable-related needs;

4. Performance and substantial compliance with material terms and conditions of the existing franchise based on notice and opportunity to cure under applicable federal law as placed on the record.

5. Any correspondence pursuant to Section 27 of the Cable Television Act.

(c) **\*[Within six months of the last hearing date,]\* \*At least 12 months prior to the expiration of the Certificate of Approval\*** the body conducting such hearings shall issue a report to the governing body, the cable operator, and the Office of Cable Television\***.\* \*which shall\***

**\*[1. The report shall]\* be available for public inspection.**

**\*[2. In any event, the report must be issued at least 12 months prior to the expiration of the Certificate.]\*\***

(d) Upon receipt of the municipal report, the cable operator shall have **\*[30]\* \*90\*** days in which to file a municipal consent application.

14:18-13.3 Municipal consent

(a) The operator shall file for a municipal consent in the following manner:

1. If the renewal proceeding of N.J.A.C. 14:18-13.1 has commenced, the operator shall file for municipal consent within **\*[30]\* \*90\*** days of receipt of the municipal report;

2. If consent is being sought under 14:18-13.1(a)2, the cable operator shall file for a municipal consent within **\*[12]\* \*9\*** months prior to the expiration of the Certificate of Approval\***.\* \*or within 90 days of the effective date of this regulation, whichever is later.\***

**\*3. If the municipality fails to issue a report at least 12 months prior to the expiration of the certificate of approval the operator shall file for municipal consent within 9 months of the expiration of the certificate of approval.**

(b) **In the event that the existing certificate of approval was issued to the cable operator without an underlying municipal consent ordinance, the procedures outlined in this subchapter for renewals shall be followed, except for good cause shown.\***

14:18-13.4 Mandatory pre-proposal phase

(a) The municipality may, in the form of a consent ordinance, issue a request for proposal in the following manner:

1. Consent phase hearings shall commence between 60 and 90 days after the consent application is filed.

2. Any hearings concerning the consent application shall be completed within 120 days after the consent application is filed.

3. The municipal governing body shall render a decision no later than 150 days from the filing.

4. **\*[Transcripts shall be made of all hearings at applicant's expense.]\* \*The applicant shall pay to the municipality a fee of \$50.00 per day of hearing or fraction thereof.\***

5. Any amendments to the consent application shall be in writing.

6. The OCTV shall be provided with copies of all correspondence between the municipality or its officials and the cable operator.

**\*[7.]\*\*(b) The municipality shall complete the needs assessment/performance review proceedings either:**

**\*[i.]\*\*1.\* By resolution recommending that the Board issue a preliminary assessment of denial specifying the reasons; or**

**\*[ii.]\*\*2.\* By ordinance granting a municipal consent for renewal, which shall serve as a request for proposal from the operator.**

14:18-13.5 Operator proposal

(a) Upon recommendation by the municipality to deny renewal, **\*or upon the operator's failure to accept the municipal consent ordinance,\*** the cable operator shall have 30 days in which to file with the Board **\*a\* \*an arbitrary refusal]\*** petition in accordance with N.J.S.A. 48:5a-**\*[17(d)]\* \*1 et seq. and 47 U.S.C.A. 546(c)\*** accompanied by a completed application for a renewal certificate of approval.

1. A copy of the petition must be served on the municipality.

2. The papers shall include a copy of the initial needs assessment/performance review report\*, **if issued,\*** and the resolution stating reasons for the recommendation of denial.

**\*(b) The failure of the municipality to issue either a consent ordinance or a resolution recommending that the Board issue a preliminary assessment of denial within the time period specified herein, shall be deemed to be a recommendation that the Board issue a preliminary assessment of denial.\***

**\*[(b)]\*(c) If a renewal consent ordinance is granted, the operator shall have 30 days in which to file a COA petition with completed application\*[\*] \* , with\***

**\*[1.]\* a copy [of the petition and completed application shall be]\* served on the municipality.**

**\*[2. Filing of the COA petition shall be deemed acceptance of the consent ordinance and its terms and conditions.]\*\***

\*[(c)]\*\*[(d)]\* Upon receipt of a petition, the Director shall publish notice that a COA renewal petition has been filed.

\*[(d)]\*\*[(e)]\* Upon receipt of a complete COA renewal petition, the Board of Public Utilities shall have 30 days to either issue a Certificate of approval\* or \*[(transmit)]\* \*refer\* the matter \*to an Administrative Law Judge\* for hearing \*[(to the OAL)]\* upon a preliminary assessment of denial. The hearing shall be pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.

1. The municipality \*and the cable operator\* shall be noticed of either the issuance of a Certificate of Approval or a preliminary assessment of denial.

2. In making a preliminary assessment of denial, the Board shall consider the following:

- i. Any recommendations by the municipality.
- ii. Whether the operator's proposal meets the future community related needs as established by the \*[(consent ordinance, if any,)]\* \*municipality\* and the statewide criteria and standards of rules and regulations, as established by the Office of Cable Television.

#### \*14:18-13.6 Automatic renewals\*

\*(a) The following procedures shall govern the renewal process when the consent ordinance provides for automatic renewal whether or not the ordinance requires a hearing:

1. At least 60 days prior to the expiration of the initial term either the municipality or the CATV company must serve both the other party and the Office of Cable Television with a notice of intention not to accept renewal in order to deny renewal.

2. Prior to giving notice of intention not to accept automatic renewal, a municipality must hold a public hearing with a stenographic record by a certified shorthand reporter upon 30 days' notice to the public and the cable company.

3. A notice of intention not to accept automatic renewal must be based upon substantial evidence in the record leading to a finding that the operator has not met the criteria of N.J.A.C. 14:18-13.7(a)1.-4.

4. If a municipality has arbitrarily issued a notice of intention not to accept renewal, the CATV company may file a petition for direct certification pursuant to N.J.S.A. 48:5A-17(d) prior to the expiration of the initial certificate.

5. The Board shall issue a certificate of automatic renewal unless:

- i. A notice of intention not to accept renewal has been filed; or
- ii. After full hearing, upon notice to the municipality and the CATV company, the Board makes one of the findings listed in N.J.A.C. 14:18-11.21(b)3.

6. Any renegotiation of the terms of a consent subject to automatic renewal must be completed and submitted to the Board for approval as an amended consent ordinance at least 60 days prior to the expiration of the initial certificate.

(b) In cases where renewal is denied:

1. The Board shall act to minimize the disruption of service to subscribers, and

2. No acquisition of an ownership interest in the system, or sale of the system to any other cable television company as defined by N.J.S.A. 48:5A-3(g) may be required at less than fair market value.\*

\*[14:18-13.6 OAL hearing]\* \*14:18-13.7 Hearing before an Administrative Law Judge\*

(a) Upon \*[(the matter being transmitted from)]\* \*transmittal from\* the Office of Cable Television\*[, the OAL will hold a hearing]\* \*to an Administrative Law Judge, a hearing shall be held\* to determine if:

1. The cable operator has substantially complied with the material terms of the existing franchise \*and\* with applicable law;

2. The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided over the system, has been reasonable in light of community needs;

3. The operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

4. The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

\*[14:18-13.7]\* \*14:18-13.8 Compliance \*with federal\* terms and conditions for sale

(a) In the event renewal of a Certificate is denied and the Board must determine the fair market value of the system, the determination shall be done in the following manner:

1. The Board and the cable operator shall each name an independent appraiser.

2. Each appraiser shall have 60 days in which to prepare an appraisal according to Member Appraisal Institute (MAI) standards.

3. Both appraisals shall be submitted simultaneously to the Board.

4. In reviewing the appraisals:

- i. Identical appraisals shall be conclusive as to fair market value;
- ii. If a higher appraisal does not exceed the lower by more than 20 percent, the average of the two shall be the fair market value.
- iii. If the differential is greater than 20 percent, the Board shall compare the two appraisal reports and determine fair market value.

(b) The procedure in (a) above shall also apply in the event a certificate is revoked for cause, and the Board must determine an equitable price for the system.

\*(c) Notwithstanding the provisions of (a) and (b) above, the cable operator shall have a right to a hearing, upon application, to have the Board determine fair market value, or an equitable price, as appropriate.\*

#### SUBCHAPTER 14. MISCELLANEOUS PROVISIONS

(No change in text.)

## TRANSPORTATION

### TRANSPORTATION OPERATIONS

(a)

#### Restricted Parking and Stopping Routes 31 in Mercer County and U.S. 40-322 in Atlantic County

#### Adopted Amendments: N.J.A.C. 16:28A-1.22 and 1.104

Proposed: November 17, 1986 at 18 N.J.R. 2318(a).

Adopted: December 18, 1986 by John F. Dunn, Jr., Assistant  
Chief Engineer, Traffic and Local Road Design.

Filed: December 19, 1986 as R.1987 d.60, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-199.

Effective Date: January 20, 1987.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.22 Route 31

(a) (No change.)

(b) The certain parts of State highway Route 31 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along Pennington Road northbound on the easterly side in Ewing Township, Mercer County:

i. Near side bus stops:

(1) Bull Run Road—Beginning at the southerly curb line of Bull Run Road and extending 105 feet southerly therefrom.

(2) Rockleigh Drive—Beginning at the southerly curb line of Rockleigh Drive and extending 105 feet southerly therefrom.

(3) Brighton Road—Beginning at the southerly curb line of Brighton Road and extending 105 feet southerly therefrom.

(4) Carlton Avenue—Beginning at the southerly curb line of Carlton Avenue and extending 105 feet southerly therefrom.

(5) Lanning Street—Beginning at the prolongation of the southerly curb line of Lanning Street and extending 105 feet southerly therefrom.

(6) Somerset Avenue—Beginning at the southerly curb line of Somerset Avenue and extending 105 feet southerly therefrom.

(7) Sussex Avenue—Beginning at the southerly curb line of Sussex Avenue and extending 105 feet southerly therefrom.

(8) Atlantic Avenue—Beginning at the southerly curb line of Atlantic Avenue and extending 105 feet southerly therefrom.

(9) Bruce Lane—Beginning at the southerly curb line of Bruce Lane and extending 105 feet southerly therefrom.



NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

(10) Parkside Avenue—Beginning at the southerly curb line of Parkside Avenue and extending 105 feet southerly therefrom.

(11) Homecrest Avenue—Beginning at the southerly curb line of Homecrest Avenue and extending 105 feet southerly therefrom.

(12) Clover Street—Beginning at the southerly curb line of Clover Street and extending 105 feet southerly therefrom.

ii. Far side bus stops:

(1) Ewingville Road—Beginning at the northerly curb line of Ewingville Road and extending 100 feet northerly therefrom.

(2) Green Lane—Beginning at the northerly curb line of Green Lane and extending 100 feet northerly therefrom.

(3) Pennroad Avenue—Beginning at the northerly curb line of Pennroad Avenue and extending 100 feet northerly therefrom.

(4) Woodland Avenue—Beginning at the northerly curb line of Woodland Avenue and extending 100 feet northerly therefrom.

iii. Mid-block bus stop:

(1) Between Carlton Avenue and Campus Court—Beginning 650 feet north of the northerly curb line of Campus Court and extending 135 feet northerly therefrom.

2. Along Pennington Road, southbound on the westerly side in Ewing Township, Mercer County:

i. Far side bus stops:

(1) Bull Run Road—Beginning at the southerly curb line of Bull Run Road and extending 100 feet southerly therefrom.

(2) Rockleigh Road—Beginning at the southerly curb line of Rockleigh Road and extending 100 feet southerly therefrom.

(3) Upper Ferry Road—Beginning at the southerly curb line of Upper Ferry Road and extending 100 feet southerly therefrom.

(4) Theresa Street—Beginning at the northerly curb line of Theresa Street and extending 120 feet northerly therefrom.

(5) Pennroad Avenue—Beginning at the prolongation of the southerly curb line of Pennroad Avenue and extending 100 feet southerly therefrom.

ii. Near side bus stops:

(1) Hilltop Road—Beginning at the northerly curb line of Hilltop Road and extending 105 feet northerly therefrom.

(2) Carlton Avenue—Beginning at the northerly curb line of Carlton Avenue and extending 105 feet northerly therefrom.

(3) Lanning Street—Beginning at the northerly curb line of Lanning Street and extending 105 feet northerly therefrom.

(4) Brenwall Avenue—Beginning at the northerly curb line of Brenwall Avenue and extending 105 feet northerly therefrom.

(5) Carolina Avenue—Beginning at the northerly curb line of Carolina Avenue and extending 105 feet northerly therefrom.

(6) Harrop Place—Beginning at the northerly curb line of Harrop Place and extending 105 feet northerly therefrom.

(7) Bradway Avenue—Beginning at the northerly curb line of Bradway Avenue and extending 105 feet northerly therefrom.

(8) Parkside Avenue—Beginning at the northerly curb line of Parkside Avenue and extending 120 feet northerly therefrom.

iii. Mid-block bus stop:

(1) Between Carlton Avenue and Theodore Street—Beginning 405 feet south of the southerly curb line of Carlton Avenue and extending 135 feet southerly therefrom.

16:28A-1.104 Route U.S. 40-322

(a) (No change.)

(b) The certain parts of State highway Route U.S. 40-322 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stop:

1. Along the southerly (eastbound) side of the City of Pleasantville, Atlantic County at the mid-block bus stop between Noahs Road and Doughty Road beginning 150 feet east of the easterly curb line of Noahs Road and extending 135 feet easterly therefrom.

(a)

# **Restricted Parking and Stopping Routes 94, U.S. 206 and U.S. 206-94 in Sussex County**

## **Adopted Amendments: N.J.A.C. 16:28A-1.45, 1.57 and 1.58**

Proposed: November 17, 1986 at 18 N.J.R. 2319(a).

Adopted: December 18, 1986 by John F. Dunn, Jr., Assistant  
Chief Engineer, Traffic and Local Road Design.

Filed: December 19, 1986 as R.1987 d.59, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-85.1, 39:4-197(h).

Effective Date: January 20, 1987.

Expiration Date: November 7, 1988.

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

**No comments received.**

**Full text of the adoption follows.**

16:28A-1.45 Route 94

(a) (No change.)

(b) The certain parts of State highway Route 94 described in this section shall be designated and established as "Time Limit 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 Time Limit Parking zones:

1. One hour time limit parking on High Street in the town of Newton, Sussex County, beginning at the northerly curb line of Church Street and extending 200 feet northerly, on Monday through Saturday from 8:00 A.M. to 6:00 P.M., and Friday from 6:00 P.M. to 9:00 P.M., except Sundays and holidays.

16:28A-1.57 Route U.S. 206

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

(c) The certain parts of State highway Route U.S. 206 described in this section shall be designated and established as "Time Limit 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 Time Limit Parking zones:

1. Ten minutes time limit parking in the Town of Newton, Sussex County on the east side of Main Street beginning 35 feet south of the prolongation of the southerly curb line of Park Place and extending 100 feet southerly therefrom, Monday through Saturday 8:00 A.M. to 6:00 P.M., except Sunday and holidays.

2. One hour time limit parking in the Town of Newton, Sussex County on the east side of Main Street, beginning at the northerly curb line of Halsted Street and extending 516 feet northerly therefrom, Monday through Saturday 8:00 A.M. to 6:00 P.M., Friday 6:00 P.M. to 9:00 P.M., except Sunday and holidays.

16:28A-1.58 Route U.S. 206-94

(a) (No change.)

(b) The certain parts of State highway Route U.S. 206-94 described in this section are designated and established as "Time Limit 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 Time Limit Parking zones:

1. One hour time limit parking in the Town of Newton, Sussex County, Monday through Saturday, 8:00 A.M. to 6:00 P.M. and Friday 6:00 P.M. to 9:00 P.M., except Sundays and holidays, on:

i. The east side of Main Street, beginning at the southerly curb line of Spring Street and extending 80 feet southerly therefrom;

ii. The south side of Park Place, beginning at the westerly curb line of Main Street and extending 200 feet southerly therefrom; and

iii. The south side of Spring Street, between Main Street and High Street.

(a)

**Restricted Parking and Stopping  
Routes US 1 Alternate in Mercer County; US 9 in  
Monmouth County; 67 in Bergen County; 147 in  
Cape May County and 35 in Monmouth County  
Adopted Amendments: N.J.A.C. 16:28A-1.7, 1.25,  
1.47, 1.71, 1.97**

Proposed: November 17, 1986 at 18 N.J.R. 2316(a).  
Adopted: December 18, 1986 by John F. Dunn, Jr., Assistant  
Chief Engineer, Traffic and Local Road Design.  
Filed: December 19, 1986 as R.1987 d.63, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139,  
39:4-199.

Effective Date: January 20, 1987.  
Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

16:28A-1.7 Route U.S. 9

- (a) (No change.)
- (b) The certain parts of State highway Route U.S. 9 described in this section are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops.
  - 1.-4. (No change.)
  5. Along the westerly (northbound) side in Marlboro Township, Monmouth County:
    - i. (No change.)
    - ii. Near side bus stops:
      - (1) Beginning at the southerly curb line of County Route 520 and extending 225 feet southerly therefrom.
      - (2) Sandburg Drive—Beginning at the prolongation of the southerly curb line of Sandburg Drive and extending 105 feet southerly therefrom.
      - (3) Station 452 "U-Turn" traffic signal (172 feet).
    - iii. Far side bus stop:
      - (1) Kilmer Drive—Beginning at the prolongation of the northerly curb line of Kilmer Drive and extending 105 feet southerly therefrom.
  6. Along the westerly (southbound) side in Marlboro Township, Monmouth County:
    - i. Far side bus stops:
      - (1) Robertsville Road—Beginning at the southerly curb line of Robertsville Road and extending 100 feet southerly therefrom.
      - (2) Sandburg Drive—Beginning at the southerly curb line of Sandburg Drive and extending 100 feet southerly therefrom.
    - ii. Near side bus stops:
      - (1) Station 452 "U-Turn" traffic signal (168 feet).
      - (2) Beginning at the northerly facia of the Union Hill Road overpass abutment structure and extending 150 feet northerly therefrom.
      - (3) Longfellow Drive—Beginning at the northerly curb line of Longfellow Drive and extending 105 feet northerly therefrom.
      - (4) Kilmer Drive—Beginning at the northerly curb line of Kilmer Drive and extending 105 feet northerly therefrom.
  - 7.-19. (No change.)

Renumber 22.-43 as 20.-41. (No change in text.)

16:28A-1.25 Route 35

- (a) The certain parts of State highway Route 35 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
  - 1.-8. (No change.)
  9. No stopping or standing in Shrewsbury Borough, Monmouth County:
    - i. Along both sides (Broad Street):
      - (1) For its entire length in the Borough of Shrewsbury, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

Renumber 11.-22. as 10.-21. (No change in text.)

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

16:28A-1.47 Route 147

(a) The certain parts of State highway Route 147 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. (No change.) (see proposal at 18 N.J.R. 2118(b).)

2. No stopping or standing in the City of North Wildwood, Cape May County along both sides for the entire length, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provision of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:
  - i. (No change.)
  - ii. Far side bus stops:
    - (1) Along Lemoine Avenue
    - (A)-(B) (No change.)
    - (C) Riverdale Drive—Beginning at the southerly curb line of Riverdale Drive and extending 165 feet southerly therefrom.
    - (D) Forest Road—Beginning at the southerly curb line of Forest Road and extending 150 feet southerly therefrom.
    - (E) Route 5—Beginning at the southerly curb line of State Highway Route 5 and extending 114 feet southerly therefrom.
  - iii.-iv. (No change.)
  - 2.-3. (No change.)
  4. Along Palisade Avenue (Route 67) northbound on the easterly side in Fort Lee Borough, Bergen County:
    - i. Near side bus stops:
      - (1) Route 5—Beginning at the prolongation of the southerly curb line of Route 5 and extending 155 feet southerly therefrom.
      - (2) Palisade Terrace—Beginning at the northerly curb line of Palisade Terrace and extending 155 feet southerly therefrom.
    - ii. Far side bus stop:
      - (1) Horizon Road—Beginning at the northerly curb line of Horizon Road and extending 100 feet northerly therefrom.

16:28A-1.97 Route U.S. 1 Alternate

- (a) (No change.)
- (b) The certain parts of State highway Route U.S. 1 Alternate described in this subsection 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. (No change.)
  2. Along the westerly (southbound) side in Lawrence Township, Mercer County:
    - i. (No change.)
    - ii. Near side bus stops:
      - (1) (No change.)
      - (2) Bunker Hill—Beginning at the northerly curb line of Bunker Hill and extending 105 feet northerly therefrom.
    3. (No change.)
    4. Along Brunswick Avenue (Alternate Route 1) northbound on the easterly side in Lawrence Township, Mercer County at the far side bus stop on President Avenue.
    5. Along Brunswick Avenue (Alternate Route 1) southbound on the easterly side in Lawrence Township, Mercer County at the near side bus stop on Hope Street.

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

**(a)**

**No Passing Zones**

**Routes 72 in Ocean County and 45 in Gloucester County**

**Adopted Amendments: N.J.A.C. 16:29-1.26 and 1.63**

Proposed: October 20, 1986 at 18 N.J.R. 2119(a).  
Adopted: December 11, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.  
Filed: December 19, 1986 as R.1987 d.65, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.  
Effective Date: January 20, 1987.  
Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

16:29-1.26 Route 72

(a) The following certain parts of State highway Route 72 shall be designated and established as "No Passing" zones:

1. That part in Barnegat and Stafford Townships, Ocean County and described in drawing number HNPZ-054A, dated June 16, 1986.
2. (No change.)

16:29-1.63 Route 45

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

1. (See proposal at 18 N.J.R. 1450(a).)
2. That part within the Townships of South Harrison, Harrison, Mantua and West Deptford, the Boroughs of Woodbury Heights and Westville, and the City of Woodbury, Gloucester County and described in drawing number HNPZ-106 dated June 16, 1986.

**(b)**

**No Passing Zones**

**Route 147 in Cape May County**

**Adopted Repeal and New Rule: N.J.A.C. 16:29-1.36**

Proposed: October 20, 1986, at 18 N.J.R. 2119(b).  
Adopted: December 11, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.  
Filed: December 19, 1986 as R.1986 d.64, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.  
Effective Date: January 20, 1987.  
Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

16:29-1.36 Route 147

That part of State highway Route 147 within the city of North Wildwood and Middle Township, Cape May County, described in drawing number HNPZ 068A, revised June 25, 1986, shall be designated and established as "No Passing" zones.

**(c)**

**No Passing Zones**

**Route 166 in Ocean County**

**Adopted New Rule: N.J.A.C. 16:29-1.65**

Proposed: October 20, 1986, at 18 N.J.R. 2119(c).  
Adopted: December 12, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.  
Filed: December 19, 1986 as R.1987 d.62, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.  
Effective Date: January 20, 1987.  
Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

16:29-1.65 Route 166

That part of State highway Route 166 within the Boroughs of Beechwood and South Toms River and Dover Township, Ocean County described in drawing number HNPZ-107 dated July 18, 1986 shall be designated and established as "No Passing" zones.

**(d)**

**One Way Street Regulations**

**Route U.S. 206-94 in Sussex County**

**Adopted New Rule: N.J.A.C. 16:30-1.9**

Proposed: November 17, 1986 at 18 N.J.R. 2319(b).  
Adopted: December 18, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.  
Filed: December 19, 1986 as R.1987 d.58, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-85.1, 39:4-197(h).  
Effective Date: January 20, 1987.  
Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

16:30-1.9 Routes U.S. 206-94

(a) The certain parts of State highway Routes U.S. 206 and Route 94 described in this section shall be designated for one-way traffic in the direction indicated:

1. In the Town of Newton, Sussex County:
  - i. Eastbound on Park Place between High Street and Main Street.
  - ii. Northbound on Main Street between Park Place and Spring Street.
  - iii. Westbound on Spring Street between Main Street and High Street/Water Street.
  - iv. Southbound on High Street/Water Street between Spring Street and Park Place.

**(e)**

**Turns**

**Route 38 in Burlington County**

**Adopted New Rule: N.J.A.C. 16:31-1.23**

Proposed: November 17, 1986, at 18 N.J.R. 2319(c).  
Adopted: December 18, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.  
Filed: December 19, 1986 as R.1987 d.61, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-183.6.  
Effective Date: January 20, 1987.  
Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**



(CITE 19 N.J.R. 244)  
TREASURY-GENERAL

ADOPTIONS

Full text of the adoption follows.

16:31-1.23 Route 38

(a) Turning movements of traffic on the certain parts of Route 38 described in this section are regulated as follows:

1. No left turn eastbound into the Larchmont Shopping Center driveway in Mount Laurel Township, Burlington County.

## TREASURY-GENERAL

(a)

### DIVISION OF PENSIONS

#### Teachers' Pension and Annuity Fund

#### Optional Purchases of Eligible Service

#### Adopted Amendment: N.J.A.C. 17:3-5.5

Proposed: October 20, 1986, at 18 N.J.R. 2120(a).

Adopted: December 12, 1986 by Anthony Ferrazza, Secretary,  
Teachers' Pension and Annuity Fund.

Filed: December 18, 1986 as R.1987 d.47, **without change.**

Authority: N.J.S.A. 18A:66-56.

Effective Date: January 20, 1987.

Expiration Date: June 6, 1988.

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

**No comments received.**

Full text of the adoption follows.

17:3-5.5 Optional purchases of eligible service

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

(c) Rules concerning the purchase and/or conversion of Class A credit include the following:

1. The cost of Class B service credit is based on actuarial factors and such factors provide a retirement benefit which is 1/6 greater than service credited as Class A. If Class A credit is purchased, the cost will be 6/7 of the amount computed for a Class B purchase. The computation is based on the member's present salary multiplied by the actuarial factor for the member's age at the time of purchase with regular interest.

2. (No change.)

# EMERGENCY ADOPTIONS

## HUMAN SERVICES

### (a)

#### DIVISION OF PUBLIC WELFARE

#### Medicaid Only

#### New Eligibility Computation Amounts

#### Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:94-5.4, 5.5, 5.6 and 5.7

Emergency Amendment Adopted: December 29, 1986

by Drew Altman, Ph.D., Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 24, 1986.

Emergency Amendment Filed: December 29, 1986 as R.1987 d.78.

Authority: N.J.S.A. 44:7-87 and Section 1902(a) of the Social Security Act.

Emergency Amendment Effective Date: December 29, 1986.

Emergency Amendment Operative Date: January 1, 1987.

Emergency Amendment Expiration Date: February 27, 1987.

Concurrent Proposal Number: PRN 1987-59.

Submit comments by February 19, 1987 to:

Audrey Harris, Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

#### Summary

The amendments to N.J.A.C. 10:94 increase the Medicaid Only computation amounts at N.J.A.C. 10:94-5.4(a)12, 5.5(g) and 5.7(e) and the income eligibility standards at N.J.A.C. 10:94-5.6(c)5. The amendments align Medicaid Only income eligibility for the aged, blind, and disabled with the Supplemental Security Income (SSI) program. Section 1902(a) of the Social Security Act requires that Medicaid Only eligibility be determined by the same criteria as applies in the SSI program. The revised income eligibility and computation amounts reflect the 1.3 percent Federal cost-of-living increase in SSI payment levels effective January 1, 1987. The Medicaid "Cap" for persons in Title XIX facilities is set at 300 percent of the Federal SSI benefit level for an individual. The amendments must be implemented, effective January 1, 1987, to maintain compliance with Federal law.

#### Social Impact

The increase in standards and income computation amounts used in the eligibility process theoretically expands the population of potentially eligible persons. However, based on past experience, little increase in caseload because of the amendment is anticipated. Specifically, while the increase in the Medicaid "Cap" expands the number of persons potentially eligible, the limited number of Medicaid beds available precludes a significant increase in the number of persons who would actually receive Medical assistance under this standard.

#### Economic Impact

Past experience with similar increases in standards has demonstrated that there will be an insignificant economic impact on the public and State and county welfare agencies administering the program.

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

#### 10:94-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:94-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1.-11. (No change.)

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or at a reduced value. Persons determined to be "living in household of another" in accordance with N.J.A.C. 10:94-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in household of another" who receive in-kind support and maintenance shall be considered to have unearned income in the amount of:

\$[132.00] **133.33** for an individual

\$[188.00] **190.00** for a couple

i. (No change.)

13. (No change.)

(b) (No change.)

#### 10:94-5.5 Deeming of income

(a)-(f) (No change.)

(g) A table for deeming computation amounts follows:

TABLE A

#### Deeming Computation Amounts

1. Living allowance for each ineligible child	\$[168.00] <b>170.00</b>	
2. Remaining income [support] amount	Head of Household \$[168.00] <b>170.00</b>	Receiving Support and Maintenance \$[112.00] <b>113.34</b>
3. Spouse to Spouse Deeming—Eligibility Levels		
a. Residential Health Care Facility	\$[654.05] <b>660.05</b>	
b. Eligible individual living alone with ineligible spouse	\$[697.36] <b>705.36</b>	
c. Living alone or with others	\$[535.25] <b>541.25</b>	
d. Living in household of another	\$[380.31] <b>384.31</b>	
4. Parental Allowance—Deeming to Child(ren)		
Remaining income is:	One Parent	Parent & Spouse of Parent
a. Earned only	\$[672.00] <b>680.00</b>	\$[1,008.00] <b>1,020.00</b>
b. Unearned only	\$[336.00] <b>340.00</b>	\$[504.00] <b>510.00</b>
c. Both earned and unearned	\$[336.00] <b>340.00</b>	\$[504.00] <b>510.00</b>

#### 10:94-5.6 Income eligibility standards

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

(c) Non-institutional living arrangements:

1.-4. (No change.)

5. Table B follows:

TABLE B

Variations in Living Arrangements	Individual	Medicaid Eligibility Income Standards Couple
I. Residential Health Care Facility	\$[486.05] <b>490.05</b>	\$[953.36] <b>961.36</b>
II. Living Alone or With Others	\$[367.25] <b>371.25</b>	\$[529.36] <b>535.36</b>
III. Living Alone with Ineligible Spouse	\$[529.36] <b>535.36</b>	
IV. Living in Household of Another	\$[268.31] <b>270.98</b>	\$[429.09] <b>433.09</b>
V. Title XIX Approved Facility: Includes persons in acute general hospitals, skilled nursing facilities, intermediate care facilities (level A, B, and ICFMR) and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.	\$[1008.00†] <b>1,020.00†</b>	

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap".

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

10:94-5.7 Deeming from sponsor to alien

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

(e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:

1. (No change.)

2. Subtract \$[336.00] **340.00** for the sponsor, \$[504.00] **510.00** for the sponsor if living with his or her spouse, \$[672.00] **680.00** for the sponsor if his or her spouse is a co-sponsor.

3. Subtract \$[168.00] **170.00** for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.

4. (No change.)

(f) (No change.)

## (a)

### DIVISION OF PUBLIC WELFARE

#### Service Programs for Aged, Blind, or Disabled Supplemental Security Income Payment Levels Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:100, Appendix A

Emergency Amendment Adopted: December 29, 1986  
by Drew Altman, Ph.D., Commissioner, Department of  
Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 24,  
1986.

Emergency Amendment Filed: December 29, 1986 as R.1987  
d.79.

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social  
Security Act.

Emergency Amendment Effective Date: December 29, 1986.

Emergency Amendment Operative Date: January 1, 1987.

Emergency Amendment Expiration Date: February 27, 1987.

Concurrent Proposal Number: PRN 1987-60.

Submit comments by February 19, 1987 to:

Audrey Harris, Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

#### Summary

Section 1618(a) of the Social Security Act requires the State to maintain supplemental payments in the Supplemental Security Income (SSI) program at levels no lower than those in effect in December 1976. This effectively requires the State to "pass-through" to SSI recipients the full amount of any Federal cost-of-living adjustment (COLA). The amendment reflects payment levels in the SSI program which include the 1.3 percent Federal cost-of-living increase effective January 1, 1987.

#### Social Impact

The amendment provides for an increase in payment levels to eligible low-income aged, blind, and disabled individuals. The increase will enable such persons to maintain a measure of parity with the increased cost of living.

#### Economic Impact

The increase in State expenditures over existing levels is estimated to be \$76,900 through the end of calendar year 1987. Increased cost to county government is estimated at \$25,600 for the same period. This rule will not impact administratively on the Department or county governments as the Supplemental Security Income program is administered by the Social Security Administration.

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

10:100 Appendix A

The New Jersey Supplemental Security Income Payment Levels

Living Arrangement Categories	Payment Level	
	[1/1/86]	1/1/87
Eligible Couple		
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[\$50/504.00†]	<b>\$50/510.00†</b>
Residential Health Care Facilities and certain residential facilities for children and adults	[\$953.36]	<b>\$961.36</b>
Living Alone or with Others	[\$529.36]	<b>\$535.36</b>
Living in Household of Another, Receiving Support and Maintenance	[\$429.09]	<b>\$433.09</b>
Eligible Individual		
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[\$25/336.00†]	<b>\$25/340.00†</b>
Residential Health Care Facilities and certain residential facilities for children and adults	[\$486.05]	<b>\$490.05</b>
Living Alone or with Others	[\$367.25]	<b>\$371.25</b>
Living with Ineligible Spouse (No other individuals in household)	[\$529.36]	<b>\$535.36</b>
Living in Household of Another, Receiving Support and Maintenance	[\$268.31]	<b>\$270.98</b>

†The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month.



# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER RESOURCES

#### Amendment to the Northeast Water Quality Management Plan

##### Public Notice

**Take notice** that on November 21, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment will allow 1.2 acres of wetlands encroachment for the Pinson Office Park development located in Bernards Township, Somerset County.

(b)

#### Amendment to the Upper Delaware Water Quality Management Plan

##### Public Notice

**Take notice** that on December 4, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment will permit the construction of a community septic system to serve the proposed Quail Hollow at Bloomsbury development. In addition, as part of this amendment, a Wastewater Management Plan will be adopted to provide a plan for addressing the wastewater management needs of the Borough. The Borough of Bloomsbury will be designated as the Wastewater Management Agency.

(c)

#### Amendment to the Upper Delaware Water Quality Management Plan

##### Public Notice

**Take notice** that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow three new wastewater disposal facilities to serve comfort stations at Worthington State Park. Two of the facilities will serve campgrounds while the third will also accept trailer dump wastes.

**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, 401 East State Street, 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 Horzempa, 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 person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa 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 the Upper Delaware Water Quality Management Plan

##### Public Notice

**Take notice** that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow construction of a detention basin in wetlands for the Washington Valley Golf Course development known as Fairway Estates/Fairway Mews in Washington Township, Warren County.

**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, 401 East State Street, 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 Horzempa, 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 person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa 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.

(e)

#### Amendment to the Upper Raritan Water Quality Management Plan

##### Public Notice

**Take notice** that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow one renovated and two new wastewater disposal facilities to serve comfort stations at the picnic areas and campgrounds in Voorhees State Park.

**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, 3rd Floor, 401 East State Street, 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 Horzempa, 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 person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

**(a)****Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan****Public Notice**

**Take notice** that Middlesex County has submitted for consideration an amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan. This amendment would expand the sewer service area of the Linpro Utilities Company in Plainsboro Township, Middlesex County so that it may serve the Plainsboro-West Windsor Middle School on Grovers Mill Road also located in Plainsboro Township. This amendment is being considered at this time due to the compelling public need of the school.

**This notice** is being given to inform the public that a plan amendment has been proposed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, N.J. 08901, and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 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 Horzempa, 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 the NJDEP during its review. The NJDEP thereafter may approve and adopt this amendment without further notice.

**(b)****Amendment to the Mercer County Water Quality Management Plan****Public Notice**

**Take notice** that on October 20, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan was adopted by the Department. This amendment will expand the sewer service area of the East Windsor Township Municipal Utilities Authority within East Windsor Township to enable sewer service to be provided to (a) the portion of East Windsor Township, west of the New Jersey Turnpike to the vicinity of Route 33 and south of Airport Road which would include approximately 280 acres, consisting of approximately 70.3 acres zoned R-3 Multifamily, approximately 47.2 acres zoned R-1, approximately 62.1 acres zoned R-2, and approximately 100 acres zoned I-O (Industrial/Office), and (b) the existing Small Lot District approximately 75 acres in area, located on the north side of Airport Road in the vicinity of the intersection of Route 33 and Airport Road. This area is delineated on maps on file with the Mercer County Planning Division.

**(c)****Amendment to the Tri-County Water Quality Management Plan****Public Notice**

**Take notice** that on September 16, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment will allow Mount Laurel Township Municipal Utilities Authority to accept and treat sewage from the proposed Union Mill Farms development in Mount Laurel Township, Burlington County. Mount Laurel Township has passed an ordinance to amend zoning to allow this development, in response to the Mount Laurel II decision by the Superior Court of New Jersey.

**(d)****Amendment to the Tri-County Water Quality Management Plan****Public Notice**

**Take notice** that on November 13, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment will allow for the filling of 35,300 square feet of wetlands for two road crossings and gravel driveway easements for the proposed Windsor Forest subdivision in Washington Township, Gloucester County. There will be 22 acres of wetlands on the project site, but deed restrictions on lots containing wetlands will prohibit activities in wetlands except those approved by this amendment.

**(e)****Amendment to the Sussex County Water Quality Management Plan****Public Notice**

**Take notice** that an amendment to the Sussex County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would provide for the expansion in the design capacity of the Ajax Terrace Water Pollution Control Plant from 1.0 million gallons per day (mgd) to 1.686 mgd. It would also allow the sewage treatment plant to serve the proposed Stewart Tract development. In addition, as part of this amendment, a Wastewater Management Plan will be adopted to provide a plan for addressing the wastewater management needs of Roxbury Township. The Township of Roxbury is designated as the Wastewater Management Agency for the Ajax Terrace and Skyview Water Pollution Control Plants as well as for the proposed Stewart Tract Sewage Treatment Plant.

**This notice** is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the Sussex County Water Resources Management Program, 57 High Street, Newton, N.J. 07860; and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 a.m. and 4:00 p.m., Monday through Friday.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM plan amendment. The public meeting will be held on Tuesday, January 27, 1987 at 8:45 p.m. in the Freeholders Meeting Room of the Sussex County Administration Complex at Don Bosco College, Swartwood Road, Newton, New Jersey.

**Interested persons** may submit written comments on the amendment to Ms. Lyn Dabagian at the Sussex County Water Quality Management Program address cited above; and George Horzempa, 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 or until 15 days following the public meeting, whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Sussex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

**(a)****Amendment to the Upper Delaware, Upper Raritan,  
and Northeast Water Quality Management Plan  
Public Notice**

**Take notice** that an amendment to the Upper Delaware, Upper Raritan, and Northeast Water Quality Management (WQM) Plans has been submitted for approval. This amendment would provide for the expansion in the design capacity of the Ajax Terrace Water Pollution Control Plant from 1.0 million gallons per day (mgd) to 1.686 mgd. It would also allow the sewage treatment plant to serve the proposed Stewart Tract development. In addition, as part of this amendment, a Wastewater Management Plan will be adopted to provide a plan for addressing the wastewater management needs of Roxbury Township. The Township of Roxbury is designated as the Wastewater Management Agency for the Ajax Terrace and Skyview Water Pollution Control Plants as well as for the proposed Stewart Tract Sewage Treatment Plant.

**This notice** is being given to inform the public that a plan amendment has been developed for the Upper Delaware, Upper Raritan, and Northeast WQM Plans. All information dealing with the aforesaid WQM Plans, and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 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 Horzempa, 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 person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa 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.

**HEALTH****(b)****HOSPITAL REIMBURSEMENT****Procedural and Methodological Regulations****N.J.A.C. 8:31B-3.19, Patient Care Cost Findings:****Direct Costs per Case, Physician and Non-Physician****Footnote for RIM Methodology for Nursing Cost Allocation; Implementation Date Change**

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

**Take notice** that N.J.A.C. 8:31B-3.19, footnotes 1, 2, and 3 are amended to read as follows (deletions shown in brackets [thus]; additions shown in boldface **thus**).

<sup>1</sup>Patient days will be employed as the Measures of Resource Use to allocate MSA, PED, PSA, and OBS nursing costs until [1987, at which] **such time as** Relative Intensity Measures (RIMs) for Case-mix Nursing Performance Study will be used. A RIM is a Measure of Resource Use which is derived from nursing activity, and is used to distribute reported general nursing costs based upon the relationship between nursing activities and costs. While patient days are used, the MSA, PED, PSA, OBS centers will be combined into ACU and ICU, and BCU will be combined into ICU. All other routine centers will remain as above. Effective [1987] **when RIMs are implemented**, patients that are cared for in the ICU, CCU, or NNI will have the special Care Unit Days used as the cost calculation

for Measure of Resource Use for Length of Stay (LOS) in the Special Care Unit and the appropriate Relative Intensity Measure (RIM) equation will be utilized for all additional days.

<sup>2</sup>Effective [1987] **when RIMs are implemented**, Patient Specific attributes, as identified in Appendix X will replace the total LOS statistics. These characteristics captured from Uniform Bills—Patient Summaries include clinical characteristics and Length of Stay which have been demonstrated by research to account for variations in the consumption of nursing activity.

<sup>3</sup>Inpatient clinical visits shall be treated as separate outpatient clinic visits. [The delay in the date of implementation for the Relative Intensity Measures (RIMs) Methodology is in response to the industry's need for additional time to make appropriate changes in the patient billing procedure and charge structure to meet the need of the Department of Health or additional time to generate the "RIM" rate reports for all hospitals. The significant change in the rate setting outlier reimbursement in 1985 impacts the appropriate evaluation for the RIMs Methodology. The need for other modifications must be determined during the 1986 evaluation period for the benefit of the industry.]

**Take further notice** that implementation of the Relative Intensity Measure (RIMs) Methodology will be delayed until such time as an appropriate methodology can be developed for Implementation.

**INSURANCE****(c)****THE COMMISSIONER****Notice of Hearing on Exportable List**

**Take notice** that Kenneth D. Merin, Commissioner of Insurance, announces that the Department will hold a hearing to determine classes of insurance for which no reasonable or adequate market exists among authorized insurers on February 9, 1987 at 1:00 p.m. at:

Department of Personnel  
EGO Room  
201 East State Street  
Trenton, New Jersey 08625

Consideration will be given to the 48 classes of coverage declared eligible to export on February 21, 1986, as set forth in the list below. In addition, interested persons are invited to submit other proposed classes of coverage for listing.

**Interested persons** may submit in writing, data, views or arguments relevant to the Exportable List on or before February 5, 1987. These submissions should be addressed to:

Department on Insurance  
Financial Examinations Division  
Surplus Lines Examining Office  
CN 325  
Trenton, New Jersey 08625

**Classes of Coverage Eligible to Export**

1. Amusement Devices
2. Amusement Parks and Carnivals Liability
3. Animal Mortality, Horses Only
4. Armored Cars
5. Automobile—Race Tracks Liability
6. Auto Races
7. Aviation, Crop Dusters
8. Bowling Alleys
9. Burglary and Robbery for Check Cashing, Money Exchange and Installment Sales Houses Only
10. Business Interruption—Valued Per Diem Form Only
11. Cleaners' and Dyers' Bailee Coverage in Municipalities over 100,000 Population
12. Commercial Excess Liability Insurance
13. Differences in Condition (Parasol)
14. Environmental Impairment Liability Insurance
15. Errors and Omissions for the Following Groups:
  - a. Associations
  - b. Collection Agencies
  - c. Franchisers
  - d. Freight Forwarders
  - e. Insurance Audit and Engineering Firms



- f. Management Consultants
- g. Police Professional
- h. Seedmans
- i. Trustees
- j. Testing Laboratories
- k. Other shown as Class A Rated by an authorized rating bureau and any coverages or classes not specifically rated by an authorized rating bureau
- 16. Excess Auto Physical Damage for Private Passenger and Commercial (value over \$30,000)
- 17. Excess of First Loss Insurance
- 18. Excess Loss and Excess Aggregate for Self-Insurers' Public Liability and Workers' Compensation
- 19. Excess Property Insurance
- 20. False Arrest and Other Personal Injury Liability Classes
- 21. Fine Arts Dealers
- 22. Fire and Allied Lines on Buildings Occupied as Auction Markets, Farmers Markets and Contents of Such Buildings
- 23. Fireworks Display
- 24. First Loss Insurance
- 25. Golf Driving Range
- 26. Hole-In-One
- 27. House Movers and Building Demolition
- 28. International Movers Insurance Plan
- 29. Kidnapping Insurance
- 30. Liquor Law Liability
- 31. Manufacturers and Contractors Liability for Floor Waxers, Building Maintenance People, Window Washers and Exterminators
- 32. Mortgage Impairment
- 33. Personal Articles Floaters Only
- 34. Picnics/Excursions
- 35. Pony Rides/Riding Academies
- 36. Products Liability and Products Recall Coverage
- 37. Professional Liability for the Following:
  - a. Associated Persons (Licensed by the Commodity Futures Trading Commissions)
  - b. Chiropractors
  - c. Clinical Laboratories
  - d. Divorce Mediation
  - e. Hospices
  - f. Massage and Reducing Salons
  - g. Medical Health Care Agencies
  - h. Medical Personnel Pools

- i. Psychologists
- j. Real Estate Appraisers
- k. Salon Sun Tan Beds
- l. Stress Testing Centers
- m. Title Abstractors
- n. Veterinarians
- o. Other coverages shown as Class A Rated by an authorized rating bureau and any coverages or classes not specifically rated by an authorized rating bureau
- 38. Rain Insurance
- 39. Retrospective Penalty Indemnity
- 40. Short-Term (not over 30 days) Drive-Away Auto Insurance with \$15,000/\$30,000 Bodily Injury and \$15,000 Property Damage Limits on Vehicles owned and operated by Military Personnel except for vehicles registered in New Jersey
- 41. Short-Term Entertainment Events, Rock Festivals
- 42. Short-Term Association Meetings and Conventions
- 43. Skating Rinks, Roller and Ice Skate-Board Parks
- 44. Sporting Events (Casual)
- 45. Swim Clubs/Swim Pools
- 46. Truck Physical Damage Coverages for Non-Fleet (one to five) trucks over 7,800 pounds, including Trailers and/or Trailer Interchange
- 47. Vacant Buildings—Fire, Extended Coverage and Vandalism
- 48. Warehouseman's Legal Liability

## TREASURY-GENERAL

### (a)

#### DIVISION OF BUILDING AND CONSTRUCTION

##### Architect/Engineer Selection Board Meetings

In accordance with Chapter 231, Laws of 1975, known as the "Open Public Meeting Act", this office announces the Architect/Engineer Selection Board meetings scheduled for 1987. Each Wednesday at 9:00 a.m., except November 11, 1987, the meetings will convene at the following location:

Conference Room #1 (8th Floor)  
Taxation Building  
State and Barrack Streets  
Trenton, NJ 08625

# 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 December 1, 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.1987 d.1 means the first rule adopted in 1987.

**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: NOVEMBER 17, 1986.**

**NEXT UPDATE WILL BE DATED DECEMBER 15, 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
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
18 N.J.R. 583 and 726	April 7, 1986	18 N.J.R. 2069 and 2148	October 20, 1986
18 N.J.R. 727 and 868	April 21, 1986	18 N.J.R. 2149 and 2234	November 3, 1986
18 N.J.R. 869 and 1018	May 5, 1986	18 N.J.R. 2235 and 2344	November 17, 1986
18 N.J.R. 1019 and 1122	May 19, 1986	18 N.J.R. 2345 and 2408	December 1, 1986
18 N.J.R. 1123 and 1222	June 2, 1986	18 N.J.R. 2409 and 2472	December 15, 1986
18 N.J.R. 1223 and 1326	June 16, 1986	19 N.J.R. 1 and 164	January 5, 1987
18 N.J.R. 1327 and 1432	July 7, 1986	19 N.J.R. 165 and 260	January 20, 1987

## N.J.A.C. CITATION

### ADMINISTRATIVE LAW—TITLE 1

1:1, 1:2—1:21 Administrative hearings  
1:1-15.10 Prior transcribed testimony

## PROPOSAL NOTICE (N.J.R. CITATION)

18 N.J.R. 1728(a)  
18 N.J.R. 1865(a)

## DOCUMENT NUMBER

R.1986 d.468

## ADOPTION NOTICE (N.J.R.CITATION)

18 N.J.R. 2381(a)

(TRANSMITTAL 24, dated October 20, 1986)

### AGRICULTURE—TITLE 2

2:6-1 Sale and use of animal biologics 18 N.J.R. 2151(a)  
2:71-2.2—2.7 Jersey Fresh Quality Grading Program 18 N.J.R. 2347(a)  
2:76-5.3 Cost-share assistance for soil and water conservation 18 N.J.R. 1981(a)  
projects  
2:76-6.15 Acquisition of development easements: deed restrictions 18 N.J.R. 513(a)  
2:90-1.3 Soil erosion and sedimentation control 18 N.J.R. 2081(a)

(TRANSMITTAL 44, dated October 20, 1986)

### BANKING—TITLE 3

3:11-11.13 Leeway investments: confidentiality of approval process 18 N.J.R. 1224(a)  
3:13-4 Bank holding companies: interstate acquisitions 18 N.J.R. 1982(a) R.1986 d.475 18 N.J.R. 2441(a)  
3:21-2.1 Credit union parity 18 N.J.R. 2237(a)  
3:41 Cemeteries: disinterment and reinterment of human 18 N.J.R. 1642(a)  
remains

(TRANSMITTAL 35, dated November 17, 1986)

### PERSONNEL (CIVIL SERVICE)—TITLE 4

4:1-2.1, 5.2, 11.2, 16, Separations, demotions, layoffs; review and appeals 18 N.J.R. 450(a)  
24  
4:1-8.4 Promotional examinations 18 N.J.R. 591(a) R.1986 d.469 18 N.J.R. 2381(b)  
4:1-12.18 Disposition of certification by appointing authority 18 N.J.R. 1642(b)  
4:1-15 Assignments and transfers 18 N.J.R. 592(a)  
4:1-18 Workweek programs 18 N.J.R. 1764(a)  
4:1-26 Supplemental compensation on retirement 18 N.J.R. 2152(a) R.1987 d.31 19 N.J.R. 56(b)  
4:2-15.1 Assignments and transfers 18 N.J.R. 592(a)  
4:2-16 Separations and demotions 18 N.J.R. 450(a)  
4:2-18 Workweek programs 18 N.J.R. 1764(a)  
4:2-26 Supplemental compensation on retirement 18 N.J.R. 2152(a) R.1987 d.31 19 N.J.R. 56(b)  
4:3-16 Separations and demotions 18 N.J.R. 450(a)  
4:4 State employees' awards program 18 N.J.R. 1766(a) R.1987 d.20 19 N.J.R. 58(a)  
4:5 Supplemental compensation on retirement 18 N.J.R. 2152(a) R.1987 d.15 19 N.J.R. 56(a)  
4:5 Supplemental compensation on retirement: readoption 18 N.J.R. 2152(a) R.1987 d.31 19 N.J.R. 56(a)

(TRANSMITTAL 31, dated June 16, 1986)

### COMMUNITY AFFAIRS—TITLE 5

5:18-2.5, 2.7, 2.11, Uniform Fire Code: Fire Safety Code 18 N.J.R. 1225(a)  
2.14, 3.2, 4.1, 4.7,  
4.9-4.13, 4.17, 4.18



NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

(CITE 19 N.J.R. 253)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)		
5:23-2.23, 7.57	Barrier-Free Subcode	18 N.J.R. 2348(a)		
5:23-3.4, 3.20	Uniform Construction Code: mechanical subcode	18 N.J.R. 2083(a)	R. 1987 d.14	19 N.J.R. 63(a)
5:23-3.15	Plumbing subcode	18 N.J.R. 2237(b)		
5:23-7.9, 7.20	Barrier Free Subcode: correction	18 N.J.R. 757(a)	R.1986 d.448	19 N.J.R. 63(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)		
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)		
5:92-1.3, 10.4, 14, 15	Council on Affordable Housing: inclusionary development and affirmative marketing	18 N.J.R. 2083(b)	R.1986 d.479	18 N.J.R. 2442(a)
5:92-6.1, 8.2	Council on Affordable Housing: municipal credits; wetlands identification	19 N.J.R. 3(a)		

(TRANSMITTAL 46, dated November 17, 1986)

## DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

## EDUCATION—TITLE 6

6:8	Thorough and Efficient System of Free Public Schools	18 N.J.R. 1984(a)	R.1987 d.32	19 N.J.R. 63(b)
6:8-7.1	High school graduation requirements	19 N.J.R. 4(a)		
6:8-7.1	High school graduation requirements	19 N.J.R. 4(b)		
6:11-12.11	Speech-language specialist endorsement	18 N.J.R. 1994(a)	R.1987 d.35	19 N.J.R. 75(a)
6:11-12.24	Teacher-coordinator certification in Work Experience Career Exploration Program	18 N.J.R. 1995(a)	R.1987 d.34	19 N.J.R. 75(b)
6:21-10	Pupil transportation in small private vehicles	18 N.J.R. 2155(a)		
6:21-18	Inspection of vehicles used for pupil transportation	19 N.J.R. 5(a)		
6:28-3.4, 3.5	Special education	18 N.J.R. 1771(a)	R.1987 d.36	19 N.J.R. 76(a)
6:29-8.1, 8.2	Audiometric screening	18 N.J.R. 1996(a)	R.1987 d.33	19 N.J.R. 76(b)
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		
6:68-7	Municipal branch library services	19 N.J.R. 6(a)		
6:68-8	Evaluation and development of library collections	19 N.J.R. 7(a)		
6:68-9	Maintenance of library collections	19 N.J.R. 8(a)		

(TRANSMITTAL 46, dated November 17, 1986)

## ENVIRONMENTAL PROTECTION—TITLE 7

7:1-3	Interim Environmental Cleanup Responsibility Act rules	19 N.J.R. 10(a)		
7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:1F-1, 2	Industrial Survey Project rules	19 N.J.R. 11(a)		
7:2-11	Natural Areas System	18 N.J.R. 2349(b)		
7:7-1, 2, 3, 4, 6	Coastal Permit Program	18 N.J.R. 2156(a)		
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)		
7:9-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:9-13	Sewer connection bans	18 N.J.R. 2163(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(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:13-7.1(d)	Redelineation of Wolf Creek in Hackensack Basin	18 N.J.R. 2355(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)		
7:13-7.1(e)	Redelineation of Henderson Brook in Passaic River	18 N.J.R. 2169(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System: comment period extended	18 N.J.R. 2411(a)		
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:22-1, 2, 8	Wastewater treatment facilities: State matching grants	18 N.J.R. 1869(a)	R.1987 d.38	19 N.J.R. 77(a)
7:22-3	Wastewater Treatment Fund procedures	18 N.J.R. 1875(a)	R.1987 d.37	19 N.J.R. 84(a)
7:22-4	Wastewater Treatment Trust procedures	18 N.J.R. 1883(a)	R.1987 d.40	19 N.J.R. 95(a)
7:22-5	Determination of allowable costs: Wastewater Treatment Fund and Trust	18 N.J.R. 1891(a)	R.1987 d.39	19 N.J.R. 105(a)
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)		
7:25-6	1987-88 Fish Code	18 N.J.R. 1644(a)	R.1987 d.41	19 N.J.R. 110(a)

(CITE 19 N.J.R. 254)

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:25-18A.4	Sale of striped bass	18 N.J.R. 2170(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, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 924(a)		
7:26-2.9	Closure and post-closure care of sanitary landfills	18 N.J.R. 2170(b)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	18 N.J.R. 1773(a)	R.1987 d.72	19 N.J.R. 202(b)
7:26-6.5	Interdistrict and intradistrict solid waste flow	18 N.J.R. 2171(a)	R.1987 d.71	19 N.J.R. 202(a)
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)	R.1987 d.18	19 N.J.R. 113(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)		
7:26-8.14, 8.15, 8.16	Hazardous waste criteria, identification and listing	18 N.J.R. 1037(a)	R.1986 d.474	18 N.J.R. 2445(a)
7:26-8.17	Hazardous waste delisting procedure	18 N.J.R. 1335(a)	R.1986 d.473	18 N.J.R. 2446(a)
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management	18 N.J.R. 2356(a)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)		
7:26-15	Recycling Grants and Loans Program	18 N.J.R. 2358(a)		
7:26-16A.1, 16A.2	Filing of disclosure statements by solid and hazardous waste licensees subject to A-901	18 N.J.R. 2172(a)	R.1987 d.54	19 N.J.R. 203(a)
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-19.2, 19.3, 19.4, 19.6, 19.9, 19.10, 19.12	Licensure of orthopedic and urologic x-ray technologists	18 N.J.R. 2361(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)		
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		

(TRANSMITTAL 48, dated November 17, 1986)

**HEALTH—TITLE 8**

8:2-1	Birth certificates	18 N.J.R. 2278(a)		
8:8-1.2, 5.5, 6.2	Screening of human blood	18 N.J.R. 2280(a)		
8:21-2.41	Sale of striped bass	18 N.J.R. 2174(a)		
8:21-4	Control of new drugs and Laetrile use	18 N.J.R. 2363(a)		
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)		
8:26	Public recreational bathing: public hearing rescheduled	19 N.J.R. 12(a)		
8:26-3.9, 5.6, 5.7, 5.9, 7.6, App.	Public recreational bathing	18 N.J.R. 2281(a)		
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-26.3, 26.4	Home health agencies: employee physicals; child abuse and neglect	18 N.J.R. 2283(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)	R.1987 d.24	19 N.J.R. 116(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-3.27, 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)	R.1986 d.477	18 N.J.R. 2447(a)
8:31B-3.41, 4.15, 4.38, 4.39	Hospital reimbursement: uncompensated care	18 N.J.R. 2283(b)		
8:31B-3.72	Hospital reimbursement: periodic adjustments	18 N.J.R. 1917(a)		
8:31B-3.73, App. IX	Hospital reimbursement: cost/volume methodology	18 N.J.R. 2284(a)		
8:31B-3.73, App. IX	Hospital reimbursement: correction to cost/volume methodology	19 N.J.R. 12(b)		
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)	R.1987 d.75	19 N.J.R. 203(b)
8:33H-2.1, 3.2, 3.3, 3.5, 3.8, 3.10	Long-Term Care Policy Manual	18 N.J.R. 2095(a)	R.1987 d.74	19 N.J.R. 210(a)
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:42	Licensure of home health agencies	18 N.J.R. 2287(a)		
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:51-1—6	Standards for local boards of health	18 N.J.R. 1690(a)	R.1986 d.476	18 N.J.R. 2448(a)

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

(CITE 19 N.J.R. 255)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
8:52	Standards for local boards of health	18 N.J.R. 1690(a)	R.1986 d.476	18 N.J.R. 2448(a)
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)	R.1986 d.149	18 N.J.R. 986(a)
8:65-10	Publication notice of Controlled Dangerous Substances list	_____	_____	18 N.J.R. 2463(a)
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a), 1463(b), 1957(a), 2015(a), 19 N.J.R. 118(a))	18 N.J.R. 537(a)	R.1987 d.57	19 N.J.R. 216(b)
8:71	Generic drug list additions (see 18 N.J.R. 1955(b), 2208(b), 19 N.J.R. 116(b))	18 N.J.R. 1167(a)	R.1987 d.66	19 N.J.R. 216(c)
8:71	Generic drug additions (19 N.J.R. 116(c))	18 N.J.R. 1775(a)	R.1987 d.67	19 N.J.R. 217(a)
8:71	Interchangeable drug products	18 N.J.R. 2100(a)	R.1987 d.55	19 N.J.R. 215(a)
8:71	Interchangeable drug products	18 N.J.R. 2101(a)	R.1987 d.56	19 N.J.R. 216(a)
8:71	Interchangeable drug products	19 N.J.R. 13(a)		

(TRANSMITTAL 45, dated November 17, 1986)

**HIGHER EDUCATION—TITLE 9**

9:1-1.4	Submission of financial statements by independent special purpose and theological institutions	18 N.J.R. 2364(a)		
9:1-6.1	Approval of courses-for-credit offered by out-of-state institutions	18 N.J.R. 2365(a)		
9:2-5	Management of computerized information	18 N.J.R. 799(a)	R.1987 d.19	19 N.J.R. 118(b)
9:4	Policies and procedures for community colleges	18 N.J.R. 1439(a)	R.1986 d.466	18 N.J.R. 2382(a)
9:4-1.5	Community college chargeback system	19 N.J.R. 14(a)		
9:7-9	Carl D. Perkins Scholarship Program	18 N.J.R. 2174(b)		
9:11-1.2	Student residency	18 N.J.R. 1777(a)		
9:11-1.5	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 15(a)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

(TRANSMITTAL 34, dated October 20, 1986)

**HUMAN SERVICES—TITLE 10**

10:2	County Human Services Advisory Councils	18 N.J.R. 1777(b)	R.1987 d.17	19 N.J.R. 121(a)
10:12-3	Referral of handicapped students for adult educational services	18 N.J.R. 1997(a)	R.1987 d.13	19 N.J.R. 124(a)
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:49-1.5	Records retention by long-term care facilities	18 N.J.R. 2411(c)		
10:51-1, App. B, C	Pharmaceutical services manual	18 N.J.R. 1780(a)	R.1987 d.7	19 N.J.R. 125(a)
10:51-2.2, 2.3, 2.6	Pharmaceutical Services Manual: pharmacy claims	18 N.J.R. 1674(a)	R.1986 d.465	18 N.J.R. 2387(a)
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:56-3	HCPCS codes for dental services	19 N.J.R. 15(b)		
10:60-2.2, 2.3, 3.1	Personal care assistant services	18 N.J.R. 2365(b)		
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)		
10:63-1.14	Records retention by long-term care facilities	18 N.J.R. 2411(c)		
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)	R.1987 d.6	19 N.J.R. 126(a)
10:65-1.5, 1.8	Medical day care centers: recordkeeping	19 N.J.R. 30(a)		
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:81-3.12	PAM: parent-minor and AFDC	19 N.J.R. 31(a)		
10:81-3.18	PAM: exemption from WIN registration	18 N.J.R. 2301(a)		
10:81-3.34	PAM: temporary absence of child from home	18 N.J.R. 1675(a)		
10:81-7.29	Retroactive funeral payments	18 N.J.R. 2176(a)		
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
10:82-1.3, 4.16	ASH: household defined; court-ordered support	19 N.J.R. 31(b)		
10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, 5.10	ASH: conformity with Federal regulations	18 N.J.R. 260(a)	R.1986 d.471	18 N.J.R. 2388(a)
10:82-2.3, 2.4, 4.3	ASH: AFDC eligibility requirements	18 N.J.R. 928(a)	R.1986 d.470	18 N.J.R. 2388(b)
10:82-4.15	ASH: lump sum income	19 N.J.R. 32(a)		
10:85-3.2	GAM: exemption from work requirement and unemployability	18 N.J.R. 2183(a)		
10:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)		
10:85-3.3, 3.4	GAM: treatment of agent orange payments	19 N.J.R. 32(b)		
10:85-4.9	Retroactive funeral payments	18 N.J.R. 2176(a)		
10:85-5.3	GAM: payment of medical insurance premiums	19 N.J.R. 33(a)		
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		



(CITE 19 N.J.R. 256)

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:87-2.21	Mandatory verification: correction			18 N.J.R. 2391(b)
10:87-12.1, 12.2	Food Stamp Program: income deductions and maximum coupon allotments	18 N.J.R. 2137(a)	R.1987 d.5	19 N.J.R. 129(a)
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)	R.1986 d.481	18 N.J.R. 2457(a)
10:94-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	Emergency	R.1987 d.78	19 N.J.R. 245(a)
10:100-3.10	Retroactive funeral payments	18 N.J.R. 2176(a)		
10:100-App. A	Supplemental Security Income payment levels	Emergency	R.1987 d.79	19 N.J.R. 246(a)
10:121-2	Adoption subsidy	18 N.J.R. 24(a)	R.1987 d.45	19 N.J.R. 129(b)
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)	R.1987 d.16	19 N.J.R. 130(a)

(TRANSMITTAL 46, dated November 17, 1986)

**CORRECTIONS—TITLE 10A**

10A:9	Classification of inmates	18 N.J.R. 1649(a)	R.1987 d.48	19 N.J.R. 218(a)
10A:16	Medical and health services	18 N.J.R. 1662(a)		
10A:17-9	Referral of handicapped children for adult educational services	18 N.J.R. 2102(a)	R.1986 d.480	18 N.J.R. 2457(b)
10A:18	Mail, visits, and use of telephone	19 N.J.R. 33(b)		
10A:34-2	Municipal detention facilities	18 N.J.R. 2412(a)		

(TRANSMITTAL 14, dated October 20, 1986)

**INSURANCE—TITLE 11**

11:1-16	Filing of rate decreases	18 N.J.R. 1998(a)	R.1986 d.478	18 N.J.R. 2458(a)
11:1-20, 22	Cancellation and nonrenewal of commercial policies	18 N.J.R. 2301(b)		
11:1-22.3	Reinstatement of commercial lines policies	18 N.J.R. 2414(a)		
11:1-24	Credit cards and payment of insurance premiums	18 N.J.R. 1999(a)		
11:2-17.11, 17.14	Settlement of automobile damage claims	18 N.J.R. 2415(a)		
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:3-7	Automobile Reparation Reform: additional personal injury protection	19 N.J.R. 44(a)		
11:3-10.3, 10.10	Settlement of automobile damage claims	18 N.J.R. 2415(a)		
11:3-13.1, 13.3, 13.4, 13.5, 13.6	Deductibles for private passenger automobile coverage	19 N.J.R. 46(a)		
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:3-17.4, 17.5	Private passenger automobile rate filings	19 N.J.R. 47(a)		
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-16.8	Medicare information brochure	18 N.J.R. 2103(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)		
11:4-23.8	Medicare information brochure	18 N.J.R. 2107(a)		
11:5-1.3	Real estate licensing qualifications	18 N.J.R. 1782(a)	R.1987 d.68	19 N.J.R. 232(a)
11:5-1.15	Advertising by real estate licensees	18 N.J.R. 1679(a)	R.1987 d.69	19 N.J.R. 232(b)
11:5-1.16	Obligations of real estate licensees	18 N.J.R. 1677(a)		
11:5-1.16, 1.23	Public hearing: Obligations of real estate licensees	18 N.J.R. 2113(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 2112(a)		
11:5-1.25	Sales of interstate properties	18 N.J.R. 2416(a)		
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:5-1.30	Transfer of real estate licenses	18 N.J.R. 2418(a)		
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1783(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

(TRANSMITTAL 42, dated November 17, 1986)

**LABOR—TITLE 12**

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)		
12:100-4.2	Protection of firefighters	19 N.J.R. 48(a)		

(TRANSMITTAL 34, dated November 17, 1986)

**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

12A:10-1	Award of contracts to small, female-owned and minority businesses	18 N.J.R. 2306(a)		
----------	---	-------------------	--	--

(TRANSMITTAL 1, dated September 22, 1986)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>LAW AND PUBLIC SAFETY—TITLE 13</b>				
13:27	Rules of Board of Architects	17 N.J.R. 2851(b)	R.1987 d.12	19 N.J.R. 131(a)
13:27-8.12	Continuing education in landscape architecture	18 N.J.R. 2367(a)		
13:29-1.7	Conditional credit on Uniform CPA examination	19 N.J.R. 48(b)		
13:30-2.16	Continuing education in dental hygiene and dental assisting	18 N.J.R. 2113(b)		
13:30-8.6, 8.15	Practice of dentistry and referral fees	18 N.J.R. 2419(a)		
13:30-8.16	Dental X-rays and use of lead shield	18 N.J.R. 2113(c)		
13:31-1	Board of Examiners of Electrical Contractors	18 N.J.R. 2113(d)	R.1987 d.44	19 N.J.R. 137(a)
13:31-1.12, 1.13, 1.14, 1.15	Licensure of electrical contractors	19 N.J.R. 49(a)		
13:35-1.5	Practice by medical school graduates in hospital residency programs	18 N.J.R. 2184(a)		
13:35-6.10	Ambulatory care facilities: advertising and solicitation practices	18 N.J.R. 1788(d)	R.1986 d.467	18 N.J.R. 2390(a)
13:36-1.9	Itemization of funeral expenses	18 N.J.R. 2186(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-3.3	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)		
13:40-5.1	Preparation of land surveys	18 N.J.R. 2367(b)		
13:45A-2	Motor vehicle advertising practices	18 N.J.R. 2419(b)		
13:45A-6.2	Unlawful automobile sales practices	18 N.J.R. 2115(a)		
13:46-1A.1, 1A.2, 5.19, 12.4	Boxing: weight classes, age limitations, health safeguards	18 N.J.R. 1789(a)	R.1987 d.53	19 N.J.R. 232(c)
13:46-3.1	Bandage specifications for boxer's hands	18 N.J.R. 1924(b)	R.1987 d.52	19 N.J.R. 233(a)
13:46-4.7, 4.25	Licensure of boxers	18 N.J.R. 1924(c)	R.1987 d.51	19 N.J.R. 233(b)
13:46-5.23	Boxing: time between bouts	18 N.J.R. 2423(a)		
13:46-8.14	Boxing: three knockdown rule	18 N.J.R. 2424(a)		
13:46-8.25, 11.10	Compensation for boxing referees, judges and timekeepers	18 N.J.R. 1925(a)	R.1987 d.50	19 N.J.R. 234(a)
13:46-21.2	Compensation of wrestling referees	18 N.J.R. 1790(a)	R.1987 d.49	19 N.J.R. 233(c)
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)		
13:47B-1.22	Approaches for vehicle scales	18 N.J.R. 2116(a)		
13:60	Motor carrier safety	18 N.J.R. 2311(a)	R.1987 d.73	19 N.J.R. 234(b)
13:70-3.42	Thoroughbred racing: workmen's compensation insurance	18 N.J.R. 2116(b)	R.1987 d.42	19 N.J.R. 138(a)
13:70-3.47	Thoroughbred racing: Coggins test	18 N.J.R. 401(a)		
13:70-29.29—29.34	Thoroughbred racing: refunds of advance wagers	18 N.J.R. 2368(a)		
13:71-6.1	Harness racing: workmen's compensation insurance	18 N.J.R. 2117(a)	R.1987 d.43	19 N.J.R. 138(b)
13:71-6.24	Harness racing: Coggins test	18 N.J.R. 402(b)		
13:71-21.8	Harness racing: purse deductions	18 N.J.R. 1516(a)	R.1987 d.46	19 N.J.R. 237(a)

(TRANSMITTAL 48, dated November 17, 1986)

**PUBLIC UTILITIES—TITLE 14**

14:3-7.9	Form of bill for metered service	18 N.J.R. 2425(a)		
14:3-7.12A	Residential electric and gas service during heating season	18 N.J.R. 2315(a)		
14:11	Board of Public Utilities: administrative orders	18 N.J.R. 2425(b)		
14:18-1.2, 11.21, 13	CATV: franchise renewals	18 N.J.R. 1181(a)	R.1987 d.70	19 N.J.R. 238(a)

(TRANSMITTAL 29, dated September 22, 1986)

**ENERGY—TITLE 14A**

14A:3-4.4	Thermal efficiency standards: operative date			18 N.J.R. 2391(a)
14A:3-4.4	Energy subcode: thermal efficiency standards	18 N.J.R. 2349(a)		
14A:11-4.2, 4.3, 4.4, 5.2, 5.3, 5.4	Reporting by retail fuel merchants and motor fuel dealers	19 N.J.R. 50(a)		
14A:13	Energy conservation in State buildings	18 N.J.R. 2187(a)		
14A:21-1.2, 2.2, 2.3, 3.4—3.7, 5.2, 6.1, 6.2, 7.1, 7.2, 7.5—7.7, 8.1—8.3, 9.4, 10.1, 11.2, 11.3	Home Energy Savings Program	18 N.J.R. 2001(a)		

(TRANSMITTAL 21, dated September 22, 1986)

(CITE 19 N.J.R. 258)

NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>STATE—TITLE 15</b>				
15:5	State Museum	18 N.J.R. 2368(b)		
(TRANSMITTAL 18, dated October 20, 1986)				
<b>PUBLIC ADVOCATE—TITLE 15A</b>				
(TRANSMITTAL 1, dated March 20, 1978)				
<b>TRANSPORTATION—TITLE 16</b>				
16:28-1.10	Speed limits on U.S. 46 in Morris County	18 N.J.R. 2117(b)	R.1987 d.1	19 N.J.R. 138(c)
16:28-1.24	Speed rates on Frontage Roads 1 and 2 in Paterson	18 N.J.R. 2190(a)	R.1987 d.25	19 N.J.R. 138(d)
16:28-1.44	Speed limits on Route 27 in Middlesex County	18 N.J.R. 2117(c)	R.1987 d.2	19 N.J.R. 139(a)
16:28-1.98	Speed limits on Route 52 in Cape May and Atlantic Counties	18 N.J.R. 2118(a)	R.1987 d.3	19 N.J.R. 139(b)
16:28A-1.7, 1.25, 1.47, 1.71, 1.97	No parking zones along U.S. 9, Routes 35, 147, 67, and U.S. 1 Alternate	18 N.J.R. 2316(a)	R.1987 d.63	19 N.J.R. 242(a)
16:28A-1.8, 1.18	Parking along Routes 10 in Livingston and 27 in Linden	19 N.J.R. 51(a)		
16:28A-1.22, 1.104	No parking zones along Route 31 and U.S. 40-322	18 N.J.R. 2318(a)	R.1987 d.60	19 N.J.R. 240(a)
16:28A-1.32, 1.107	Bus stops along U.S. 46 in Mountain Lakes and Route 175 in Ewing Township	18 N.J.R. 2190(b)	R.1987 d.26	19 N.J.R. 139(c)
16:28A-1.45, 1.57, 1.58	No parking zones along Route 94, U.S. 206 and U.S. 206-94 in Newton	18 N.J.R. 2319(a)	R.1987 d.59	19 N.J.R. 241(a)
16:28A-1.47	Parking on Route 147 in Cape May County	18 N.J.R. 2118(b)	R.1987 d.4	19 N.J.R. 139(d)
16:29-1.26, 1.63	No passing zones on Route 72, Ocean County, and Route 45, Gloucester County	18 N.J.R. 2119(a)	R.1987 d.65	19 N.J.R. 243(a)
16:29-1.36	No passing zones on Route 147 in Cape May County	18 N.J.R. 2119(b)	R.1987 d.64	19 N.J.R. 243(b)
16:29-1.65	No passing zones on Route 166 in Ocean County	18 N.J.R. 2119(c)	R.1987 d.62	19 N.J.R. 243(c)
16:30-1.9	One-way traffic on U.S. 206-94 in Newton	18 N.J.R. 2319(b)	R.1987 d.58	19 N.J.R. 243(d)
16:30-5.3	DOT parking along Route 52 in Ocean City	18 N.J.R. 2191(a)	R.1987 d.27	19 N.J.R. 140(a)
16:31-1.23	No left turn on Route 38 in Mount Laurel	18 N.J.R. 2319(c)	R.1987 d.61	19 N.J.R. 243(e)
16:32-1.1, 1.2, 1.3, 3	Designated routes for double trailers and wide trucks	18 N.J.R. 2428(a)		
16:49-1.3	Transportation of hazardous materials	18 N.J.R. 933(a)		
16:53D-1.1	Zone of rate freedom	18 N.J.R. 2376(a)		
16:73	NJ TRANSIT: Reduced Fare Program for Elderly and Handicapped	18 N.J.R. 2437(a)		
(TRANSMITTAL 46, dated November 17, 1986)				
<b>TREASURY-GENERAL—TITLE 17</b>				
17:1-1.10	Reconciliation of pension accounts	18 N.J.R. 2377(a)		
17:1-2.37	Alternate Benefit Program: transmittal of employee contributions	18 N.J.R. 1256(a)		
17:1-4.4	Enrollment schedule for State-administered retirement systems	18 N.J.R. 2320(a)		
17:1-7.4	Retirees returning to public employment	19 N.J.R. 51(b)		
17:2-1.4	Public Employees' Retirement System: candidates for member-trustee	19 N.J.R. 52(a)		
17:2-2.4, 3.1, 5.2	Enrollment in PERS	18 N.J.R. 2320(b)		
17:2-3.7	PERS contributory coverage termination: correction			18 N.J.R. 2391(c)
17:3-4.4	Teachers' Pension and Annuity: accrual of loan interest	19 N.J.R. 52(b)		
17:3-5.5	Teachers' Pension and Annuity Fund: optional purchases of eligible service	18 N.J.R. 2120(a)	R.1987 d.47	19 N.J.R. 244(a)
17:3-6.1	Teachers' Pension and Annuity Fund: filing of retirement application	18 N.J.R. 1519(b)	R.1987 d.10	19 N.J.R. 140(b)
17:4-2.6, 5.1, 5.2	Enrollment in Police and Firemen's Retirement System	18 N.J.R. 2321(a)		
17:4-4.4	Police and Firemen's Retirement System: loan interest	18 N.J.R. 2437(b)		
17:4-6.1	Police and Firemen's Retirement System: retirement applications	18 N.J.R. 1795(a)	R.1987 d.11	19 N.J.R. 140(c)
17:7-1.4	Prison Officers' Pension Fund: election of commission members	18 N.J.R. 1352(b)	R.1987 d.28	19 N.J.R. 140(d)
17:7-3.1	Prison Officers' Pension Fund: retirement applications	18 N.J.R. 1796(a)	R.1987 d.29	19 N.J.R. 141(a)
17:8-3.7	Supplemental Annuity Collective Trust: investment of contributions	19 N.J.R. 52(c)		
17:12-6	Award of contracts to small, female-owned and minority businesses	18 N.J.R. 2306(a)		
17:16-32.11	Common Pension Fund A: distribution of realized appreciation	18 N.J.R. 2377(b)		
17:16-36.11	Common Pension Fund B: distribution of realized appreciation	18 N.J.R. 2378(a)		
17:16-38	Common Pension Fund C	18 N.J.R. 2438(a)		
17:20-4.4, 5.1, 6.2, 6.4	Lottery Commission rules	18 N.J.R. 1927(a)		
17:30	Urban Enterprise Zone Authority	18 N.J.R. 2191(b)		

(TRANSMITTAL 43, dated November 17, 1986)



NEW JERSEY REGISTER, TUESDAY, JANUARY 20, 1987

(CITE 19 N.J.R. 259)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>TREASURY-TAXATION—TITLE 18</b>				
18:5-3.6	Purchase of cigarette revenue stamps	18 N.J.R. 2378(b)		
18:7-4.5, 4.6, 5.5	Corporation business tax: indebtedness, interest, and offsets	18 N.J.R. 2004(b)		
18:12-7.12	Homestead rebate: extension of time to file	Emergency	R.1986 d.482	18 N.J.R. 2460(a)
18:24-1.1	Sales and use tax forms	18 N.J.R. 2192(a)		
18:24-1.2	Sales and Use Tax: "periodicals"	18 N.J.R. 1928(a)		
18:26-12.2	Representation of estates	18 N.J.R. 2321(b)		

(TRANSMITTAL 38, dated November 17, 1986)

**TITLE 19—OTHER AGENCIES**

19:4-4.152, 4.154, 4.155, 6.28	Commercial Park Zone	19 N.J.R. 53(a)		
19:4-6.28	Rezoning in Little Ferry	19 N.J.R. 53(b)		
19:4-6.28	Rezoning in Secaucus	19 N.J.R. 54(a)		
19:8-1.8	Bus use of Parkway service areas	18 N.J.R. 2120(b)	R.1987 d.8	19 N.J.R. 141(b)
19:8-2.12	Emergency service rates on Parkway	18 N.J.R. 2120(c)	R.1987 d.9	19 N.J.R. 141(c)
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)	R.1987 d.30	19 N.J.R. 141(d)
19:75-1.1, 2.1, 2.2, 2.3, 3.1, 5.4, 6.1, 6.2, 7.1, 7.2, 7.4, 9.2, 9.4	Atlantic County Transportation Authority: bus management program	18 N.J.R. 1688(a)	R.1986 d.472	19 N.J.R. 142(a)

(TRANSMITTAL 34, dated September 22, 1986)

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:40-1.2	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:41-9.7	Fee for casino hotel alcoholic beverage license	18 N.J.R. 1687(a)		
19:41-9.7	Alcoholic beverage licenses	18 N.J.R. 2379(a)		
19:44-8.3	Minibaccarat training	18 N.J.R. 2322(a)		
19:44-17.11	Advertising by gaming schools	18 N.J.R. 2439(a)		
19:45-1.1, 1.37, 1.40, 1.40A	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:45-1.12	Minibaccarat	19 N.J.R. 54(b)		
19:45-1.32, 1.43	Hard count room procedures	18 N.J.R. 1929(a)		
19:46-1.12	Minibaccarat	19 N.J.R. 54(b)		
19:46-1.16, 1.18, 1.20	Gaming equipment and evidence of cheating or tampering	18 N.J.R. 2121(a)		
19:46-1.26	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:47-7.7	Minibaccarat	19 N.J.R. 54(b)		
19:50-1.3	Alcoholic beverage licensees	18 N.J.R. 2379(a)		
19:50-1.6	Security of alcoholic beverages	18 N.J.R. 2323(a)		
19:50-1.6	Operating conditions of alcoholic beverage licensees	18 N.J.R. 2439(b)		

(TRANSMITTAL 27, dated October 20, 1986)



# OFFICE OF ADMINISTRATIVE LAW PUBLICATIONS

## NEW JERSEY ADMINISTRATIVE CODE

- [ ] **FULL SET (INCLUDES ALL TITLES BELOW) ..... \$1200**  
**INDIVIDUAL TITLES (CIRCLE TITLES DESIRED)\***
- 1. Administrative Law ..... \$ 55
  - 2. Agriculture ..... \$ 55
  - 3. Banking ..... \$ 55
  - 4. Civil Service ..... \$ 55
  - 5. Community Affairs (two volumes) ..... \$110
  - 5A. Defense ..... \$ 55
  - 6. Education (two volumes) ..... \$110
  - 7. Environmental Protection (four volumes) ..... \$220
  - 8. Health (three volumes) ..... \$165
  - 9. Higher Education ..... \$ 55
  - 10. Human Services (three volumes) ..... \$165
  - 10A. Corrections ..... \$ 55
  - 11. Insurance ..... \$ 55
  - 12. Labor (two volumes) ..... \$110
  - 12A. Commerce and Economic Development ..... \$ 55
  - 13. Law and Public Safety (three volumes) ..... \$165
  - Volume C (Alcoholic Beverage Control and  
    Amusement Games Rules) only ..... \$ 55
  - 14/14A. Public Utilities/Energy ..... \$ 55
  - 15. State ..... \$ 55
  - 15A. Public Advocate ..... \$ 55
  - 16. Transportation (two volumes) ..... \$110
  - 17. Treasury-General ..... \$ 55
  - 18. Treasury-Taxation (two volumes) ..... \$110
  - 19. Other Agencies (Expressway Authority,  
    Hackensack Meadowlands Development  
    Commission, Highway Authority, Turnpike  
    Authority, Public Employment Relations  
    Commission, Sports and Exposition Authority,  
    Election Law Enforcement Commission, Economic  
    Development Authority, Public Broadcasting  
    Authority, Executive Commission on Ethical  
    Standards, Atlantic County Transportation Authority) ..... \$ 55
  - 19K. Casino Control Commission ..... \$ 55

(Prices include first year of updated replacement pages.)

### New Jersey Register (one year)

By second class mail, \$75 [ ]

By first class mail, \$150 [ ]

## NEW JERSEY ADMINISTRATIVE REPORTS

- I. Full Set of NJAR. Seven hardbound volumes and quarterly update service for one year. Hardbound volumes include a table of contents for the volume. Quarterly looseleaf update service includes a cumulative listing of statutes cited; cumulative listing of rules cited; cumulative topical index, and cumulative listing of cases reported ..... \$400 ☐
- II. Looseleaf Update Service Only: Quarterly update service and bound volume(s) of decisions issued in quarterly service for one year. Cumulative indices ..... \$195/year ☐
- III. Individual Hardbound Volumes (1-7) can be purchased separately. Each volume has a table of contents ... \$45/volume (specify); \$315 for 1-7 ☐

**Prepayment is required**  
for all subscriptions.

Please return form with your payment to:

OAL Publications  
Quakerbridge Plaza, Bldg. 9  
CN 049  
Trenton, New Jersey 08625

**Name and Delivery Address:**

---

---

---

**Billing Address, if different:**

---

---

---

**Telephone Number** \_\_\_\_\_

**Amount Enclosed** \_\_\_\_\_

\*If you want multiple copies of a Title, please specify on the "Amount Enclosed" line. For example, "\$220 (two copies, Title 6)"