

# NEW JERSEY REGISTER



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## REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS\*, PAGE 1144.

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

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# RULE PROPOSALS

**Interested persons** may submit, in writing, information or arguments concerning any of the following proposals until **June 5, 1985**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

## ADMINISTRATIVE LAW

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).  
Proposal Number: PRN 1985-225.

### OFFICE OF ADMINISTRATIVE LAW

The agency proposal follows:

Proposals numbered PRN 1985-225 and 226 are authorized by Ronald I. Parker, Acting Director, Office of Administrative Law.

Submit comments by June 5, 1985 to:

Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Building No. 9  
Quakerbridge Road  
CN 049  
Trenton, New Jersey 08625

#### (a)

**Uniform Administrative Procedure Rules of Practice  
Discovery  
Methods Available; Relief; Enforcement;  
Privilege; Depositions Limited  
Proposed Amendments: N.J.A.C. 1:1-11.2  
and 11.3**

#### Summary

The Office of Administrative Law is proposing two amendments to the Uniform Administrative Procedure Rules. These amendments clarify that the discovery goal of minimizing surprise at hearings must be balanced with considerations of undue hardship, expense, privilege, oppressiveness and trade secret rights. The Uniform rules could be fairly read to encompass such a requirement. However, with the passage of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1, and the possibility of significant numbers of trade secret claims being raised thereunder, the OAL wishes to make certain that the public understands that judges will consider the need to protect bona fide trade secrets in the course of ruling on discovery questions in administrative hearings.

Proposed N.J.A.C. 1:1-11.2(b) permits a person to apply for an order enforcing a discovery notice or for relief from such a request. The proposed amendment states that one of the factors the judge must consider in deciding such a motion is the existence of a trade secret.

N.J.A.C. 1:1-11.3 similarly requires the judge to consider the existence of a trade secret in deciding any motion for depositions.

## NEW JERSEY REGISTER

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*The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by Administrative Publications of the Office of Administrative Law. Subscription rates for this 31-volume, regularly updated set of all State administrative rules are available on request. The Code is sold either in the full set or in one to three volumes depending on the Department coverage desired.*

**Social Impact**

The proposed amendments require the parties and the judge to balance the needs of the litigant seeking discovery against countervailing factors such as undue hardship and trade secret assertions.

**Economic Impact**

The proposed amendments will require no additional expense to the State nor to litigants. The proposed rule will benefit litigants who demonstrate good cause by protecting them from disclosure of sensitive financial information or trade secrets.

**Full text** of the proposal follows (additions shown in bold-face **thus**).

1:1-11.2 Methods available on notice; relief from discovery; enforcement of discovery notices; privilege

(a) (No change.)

(b) Any party or person affected by a notice for discovery pursuant to (a) above may apply on motion for relief from such request, or for an order enforcing such request. In considering a discovery motion the judge shall weigh the specific need for the information; its relevance and materiality; the extent to which the information is within the control of the party; undue hardship; and matters of expense, privilege, **trade secret** and oppressiveness.

1:1-11.3 Depositions limited; time limits

(a) Depositions upon oral examination or written questions are available only on motion for good cause shown served upon all parties in the manner prescribed by N.J.A.C. 1:1-7.1(a). In deciding any such motion, the judge shall consider the policy governing discovery (N.J.A.C. 1:1-11.1) and shall weigh the specific need for the deposition; the extent to which the information sought cannot be obtained in other ways; the requested location and time for the deposition; undue hardship; and matters of expense, privilege, **trade secret** or oppressiveness.

(b) (No change.)

(a)

## Uniform Administrative Procedure Rules of Practice

### Rules of Special Applicability Trade Secret Claims

#### Proposed New Rule: N.J.A.C. 1:21

Authority: N.J.S.A. 52:14F(e), (f) and (g).  
Proposal Number: PRN 1985-226.

The agency proposal follows:

**Summary**

The proposed new rules of special applicability, N.J.A.C. 1:21-1 et seq., set forth procedures for hearings concerning

the validity of trade secret claims which are filed under the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. These rules were developed with the cooperation of the Department of Health (DOH) and the Department of Environmental Protection (DEP) and should be read in conjunction with the rules of those Departments governing trade secret claims. (See N.J.A.C. 8:59-3; N.J.A.C. 7:1G-6.3.)

The Worker and Community Right to Know Act, N.J.S.A. 34:5A-1, exempts trade secrets from its general disclosure requirements and authorizes the DOH or DEP to make determinations concerning the validity of a trade secret claim. Employers who disagree with the decision of the DOH or DEP to deny a trade secret claim are entitled to an administrative hearing before the Office of Administrative Law. These rules set forth procedures for the hearing which preserve the confidentiality of the trade secret pending a final decision on the claim.

Documents which reveal the trade secret and which have been filed with the DOH or DEP will not be transmitted to the OAL. This information shall remain in the physical custody of either the DEP or DOH throughout the hearing. If directed by the judge, the information shall be brought to the hearing by the responsible department representatives and returned to the transmitting agency daily. The information will not be copied or placed in any OAL case file. Any review of the information by the judge after the close of the evidentiary hearing will take place at the offices of the transmitting agency.

The judge may limit discovery. The judge may use any device which balances the need for discovery with the need to protect trade secret information, including denying the discovery request, allowing the discovery only upon specific conditions, ordering a method of discovery other than that requested, limiting the scope of discovery or the individuals who may be present during discovery, requiring the sealing of depositions and requiring the in-camera submission of documents or information.

Written motions are not filed with the Clerk, but are made directly to the judge.

Trade secret hearings will be sound recorded; court stenographers will not be utilized. All audio tapes, case files and any other case-related materials will be stored in a locked filing cabinet in a locked room. Only judges and their secretaries will have access to the file cabinets. Tapes which contain secret information may not be duplicated. If a transcript of such a tape is authorized by the judge, it may only be prepared by the judge's secretary.

All or part of the hearing may be closed and witnesses or, if necessary, parties may be excluded from portions of the hearing.

The record will be sealed by a judge's order in every trade secret case. Each order shall direct the manner in which all documents and other materials related to the trade secret claim, including the transcript or tape, shall be returned to the agency. The order must also specify whether any portions of the tapes may not be transcribed, the names of individuals who are authorized to request a transcript, which materials in the file must be marked confidential and distributed only to those authorized to receive secret information and whether the decision or any part of it may be made available to the public in an agency's library.

After the decision is issued, requests for transcripts must be directed to the transmitting agency rather than to the OAL. After the issuance of the initial decision, the only materials

concerning the case which will remain at the OAL are the transmittal form, the notices of filing and hearing and the order sealing the record.

Finally, unless the judge otherwise orders in the record sealing order, the parties and the transmitting agency will be notified by telephone when the initial decision is completed and asked to pick up the initial decision at the OAL. The transmitting agency will also be asked to pick up any audio tapes, evidence and related case materials.

#### Social Impact

The proposed new rules create a procedure which allows the issue of whether a matter constitutes a trade secret to be fully and fairly litigated while simultaneously preserving the confidentiality of the trade secret information.

#### Economic Impact

Since certain trade secret information will be safeguarded by the DEP and DOH and transported to the hearing when necessary, the hearing location must be accessible to those offices. Thus, in addition to the usual hearing costs, the litigants and their attorneys may incur additional travelling expenses.

Full text of the proposed new rule follows.

### CHAPTER 21

#### TRADE SECRET CLAIMS

##### SUBCHAPTER 1. APPLICABILITY

###### 1:21-1.1 Applicability

In addition to the Uniform Administrative Procedure Rules (UAPR), the rules of special applicability in this chapter shall apply to any hearing concerning the validity of a trade secret claim under the New Jersey Worker and Community Right To Know Act, N.J.S.A. 34:5A-1 et seq. and N.J.A.C. 7:1G-1 et seq. and N.J.A.C. 8:59-3 et seq. To the extent that these rules of special applicability are inconsistent with the UAPR, these rules shall apply.

##### SUBCHAPTER 2. (RESERVED)

##### SUBCHAPTER 3. CONDUCT OF TRADE SECRET CASE

###### 1:21-3.1 Sound recordings; safeguarding the case file and sound recordings; preparation of transcripts

(a) Court reporters will not be provided for trade secret hearings. A verbatim record will be maintained by sound recording.

(b) When not in use, all audio tapes and case files together with all evidence and other related case materials, including any transcripts, shall be locked in an OAL filing cabinet in a locked room, whether or not particular tapes, case files, evidence or related materials include secret testimony or argument. Access to the file cabinet shall be limited to judges and their secretaries. Access to the locked room shall be restricted to a person or persons designated by the Director in writing. A record of access to the file cabinet shall be maintained by the designated persons.

(c) No duplicates or copies of any portion of an audio tape containing secret information shall be permitted.

(d) Upon the request of a person who is authorized by the judge to receive a transcript, the judge's secretary shall prepare a transcript of that portion of the hearing dealing with the secret information. A transcribing firm may be authorized

to prepare a transcript of that portion of the hearing not dealing with the secret information.

###### 1:21-3.2 Sealing the record

(a) On the last day of the evidentiary hearing, the parties shall be given the opportunity to address the record sealing requirements of the case. The record shall be sealed by order attached to the initial decision in every trade secret case.

(b) In rendering a sealing order, the judge shall consider the extent of restriction necessary to safeguard the trade secret and shall determine in each such order:

1. That the OAL shall not maintain a duplicate case file after the initial decision has been provided to the parties and agency head; and

2. That all documents transmitted to the OAL together with all evidence received at hearing and all audio tapes or transcripts, if any, shall be returned to the transmitting agency with the initial decision; and

3. That all requests for transcripts prior to the initial decision shall be directed to the judge and that all requests for transcripts after the initial decision shall be directed to the transmitting agency; and

4. Whether any portions of the audio tapes of the proceeding may not be transcribed or whether other means of safeguarding the trade secret can be utilized when preparing a transcript; and

5. The names of persons who are authorized to request a transcript; and

6. Whether the entire initial decision, transcript, audio tapes, evidence and other related case materials or any part thereof must be marked "CONFIDENTIAL" and distributed by hand or certified mail in a plain envelope addressed only to a person authorized to receive the secret information; and

7. Whether the initial decision or any part thereof may be made available to the public in any agency's library.

###### 1:21-3.3 Exceptions to the public hearing policy

When necessary to prevent the trade secret from being disclosed without authorization, the judge may make an exception to the public hearing requirements of N.J.A.C. 1:1-3.1 and he or she may close the hearing, or any part thereof, and exclude witnesses, or, if necessary, parties from portions of the hearing.

##### SUBCHAPTER 4. (RESERVED)

##### SUBCHAPTER 5. TRANSMISSION OF CASES TO THE OFFICE OF ADMINISTRATIVE LAW

###### 1:21-5.1 Transmission of cases; the trade secret documentation or information

Whether the case is transmitted to the Office of Administrative Law, under N.J.A.C. 1:1-5.2, by the Department of Environmental Protection or the Department of Health, any information or documentation which reveals the trade secret shall not be transmitted with the case file.

###### 1:21-5.2 Custody of the trade secret information or documentation; no copying

(a) Any information or documentation which reveals the trade secret shall remain throughout the hearing in the physical custody of DEP or DOH representatives.

(b) When needed, upon the judge's direction, the trade secret information or documentation shall be brought to the hearing by the responsible department representatives.

(c) The trade secret information or documentation shall not be placed in the Office of Administrative Law case file and may not be xeroxed by any OAL personnel.

(d) The trade secret information shall not be communicated over telecommunication networks, including but not limited to, telephones, computers connected by modems, or electronic mail systems.

(e) The judge may, when necessary for the performance of his or her functions, disclose the trade secret information to his or her secretary.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. MOTIONS

1:21-9.1 Written motions

Written motions shall be made directly to the judge without the necessity of filing with the Clerk.

SUBCHAPTER 10. (RESERVED)

SUBCHAPTER 11. DISCOVERY

1:21-11.1 Discovery in trade secret cases

(a) When necessary to prevent the trade secret from being disclosed without authorization, the judge may order:

- 1. That the requested discovery not be had;
- 2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- 3. That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- 4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- 5. That discovery be conducted with no one present except persons designated by the judge;
- 6. That a deposition after being sealed be opened only by order of the judge;
- 7. That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judge; or
- 8. Any other device which reasonably balances the discovery goal of minimizing surprise at hearings with the need to protect the trade secret from an unauthorized disclosure.

SUBCHAPTER 12. (RESERVED)

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. (RESERVED)

SUBCHAPTER 15. (RESERVED)

SUBCHAPTER 16. INITIAL DECISIONS AND RETURNING THE CASE TO THE TRANSMITTING AGENCY

1:21-16.1 Delivery of initial decisions, transcripts, audio tapes, evidence and other related case materials.

(a) Unless the judge otherwise directs in the record sealing order (see N.J.S.A. 1:21-3.2), the parties to the case and the transmitting agency or their designated representatives will be telephoned and asked to pick up the initial decision at the judge's chambers at the OAL. The indicated date of receipt by the agency head, as required by N.J.S.A. 52:14B-10(c), shall be the second workday after the OAL telephones the transmitting agency.

(b) Unless the judge otherwise directs in the record sealing order, the transmitting agency will be telephoned and asked to pick up at the OAL the transcript, if any, audio tapes, evi-

dence and other related case materials on the same date it is requested to pick up the initial decision.

(c) After returning the case to the transmitting agency, the OAL may maintain in the Clerk's file only the transmittal form, the notices of filing and hearing and the order sealing the record.

# AGRICULTURE

## DIVISION OF DAIRY INDUSTRY

Proposals numbered PRN 1985-232 and 233 are authorized by Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Submit comments by June 5, 1985 to:  
Woodson W. Moffett, Jr., Director  
Division of Dairy Industry  
New Jersey Department of Agriculture  
CN 332  
Trenton, N.J. 08625

### (a)

#### Processors, Dealers and Subdealers

#### Proposed Readoption: N.J.A.C. 2:52-2, -3, -4 and 2:53-4

#### Proposed Repeal: N.J.A.C. 2:52-7

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-20.

Proposal Number: PRN 1985-232.

The agency proposal follows:

#### Summary

Executive Order No. 66(1978) mandates the "sunsetting" of administrative rules unless they are reviewed and readopted prior to their expiration. The Executive Order also provides for the purging of rules which are no longer required.

Pursuant to Executive Order 66(1978) the Division of Dairy Industry, proposes to readopt N.J.A.C. 2:52-2, 2:52-3, 2:52-4.1 and 2:53-4 which all expire June 26, 1985.

The rules proposed for readoption are all required for the effective administration and enforcement of the Milk Control Act, N.J.S.A. 4:12A-1 et seq., and continue to be adequate, reasonable and necessary for their intended purpose.

N.J.A.C. 2:52-2 concerns dealer notice of intent to serve unlicensed stores. The rules permit a dealer licensee to sell milk to an unlicensed store upon approval by the Director of the Division of Dairy Industry as long as certain notice requirements are satisfied. Approval may be denied if the Director determines that the offer violates the Milk Control Act or any administrative rules.

N.J.A.C. 2:52-3 concerns dealer notice of intent to change source of supply. The rules permit a dealer to change or add a source of milk supply upon approval by the Director as long as certain notice requirements are satisfied. Approval may be denied if the Director determines that the offer violates the Milk Control Act or any administrative rule adopted thereto.

N.J.A.C. 2:52-4.1 concerns notice to wholesale customers of discontinuance of service. The rule requires that before a processor, dealer or subdealer licensee discontinues selling milk or milk products to a dealer, subdealer, licensed store or unlicensed store, the licensee shall notify the customer and Director.

N.J.A.C. 2:53-4.1 concerns the furnishing of a notice of intent by a licensed store to its suppliers before changing a source of supply. The rules permit a licensed store to change or add a source of milk supply upon approval by the Director as long as certain notice requirements are satisfied. Approval may be denied if the Director determines that the offer violates the Milk Control Act or any administrative rule adopted thereto.

N.J.A.C. 2:52-7 proposed for repeal is no longer required. The regulations provide certain exemptions from the minimum price regulations of the Division for milk sold to consumers by producer/dealers. The Division no longer fixes minimum prices and the regulations are no longer appropriate and should be repealed.

**Social Impact**

The proposed readoption affects all licensees of the Division of Dairy Industry such as processors and dealers of milk and milk products. The rules provide a simplified and uniform notice procedure for licensees when notifying the Division of notices of intent to change milk suppliers or notice to discontinue serving an account.

The readoption continues the current rules and will thereby continue to provide for the orderly transfer of business between dealers and assures small storekeepers that they will not suddenly be left without a milk supply.

**Economic Impact**

The readoption of these rules will continue the simplified administration of the Milk Control Act by providing a standard procedure to be followed by all licensees filing notices concerning intended changes of milk suppliers or the serving of unlicensed stores.

The readoption of the rules will continue the economic benefit of stable milk markets for dealers, stores and consumers.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:52-2, -3, -4 and 2:53-4.

**(a)**

**Processors, Dealers and Subdealers  
Notices of Intent**

**Proposed Amendments: N.J.A.C. 2:52-2.1  
and 3.1; 2:53-4.1**

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-20.

Proposal Number: PRN 1985-233.

The agency proposal follows:

**Summary**

The proposed amendments add an additional exception to the requirement for notice to change milk suppliers. The

amendment exempts dealers and stores buying and selling only yogurt from the notice requirement of the Division.

**Social Impact**

The proposed amendments will benefit all licensees of the Division by providing an additional exception in the filing of notices to change milk suppliers.

**Economic Impact**

Yogurt is a specialized product, distributed by many small distributors (dealers), and often changes hands more than one time between the manufacturing process and the sale to stores. The volume of product is relatively small and does not require the imposition of restrictions on changes in suppliers to promote orderly marketing.

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

**2:52-2.1 Notice of intent**

(a) A dealer licensee may begin selling milk and milk products to an unlicensed store (other than a government agency) upon approval by the Director as follows:

1.-5. (No change.)

**6. Without notice if yogurt is the only product involved.**

(b) (No change.)

**2:52-3.1 Change in source of supply**

(a) A dealer may change his source of supply or engage an additional source of supply of milk and milk products upon approval by the Director as follows:

1.-5. (No change.)

**6. Without notice if yogurt is the only product involved.**

(b) (No change.)

**2:53-4.1 Notice of intent**

(a) A licensed store may change source of supply or engage an additional supply of milk and milk products upon approval by the Director as follows:

1.-5. (No change.)

**6. Without notice if yogurt is the only product involved.**

(b) (No change.)

**CIVIL SERVICE**

**CIVIL SERVICE COMMISSION**

Proposals numbered PRN 1985-234, 235, 236 and 248 are authorized by Peter J. Calderone, Assistant Commissioner, Department of Civil Service.

Submit comments by June 5, 1985 to:

Peter J. Calderone  
Assistant Commissioner  
Department of Civil Service  
CN 312  
Trenton, New Jersey 08625

**(b)**

**Nondiscriminatory Titles  
Position Classification and Reclassification**

**Proposed New Rule: N.J.A.C. 4:1-6.8**

**Proposed Repeal: N.J.A.C. 4:2-6.1, 4.2-6.2,  
4:3-6.2 and 4:3-6.3**

Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:17-1.  
 Proposal Number: PRN 1985-248.

The agency proposal follows:

**Summary**

Proposed new rule N.J.A.C. 4:1-6.8 states that Civil Service job titles shall be identified by language which does not specify or imply a fixed gender. The proposed repeals are redundant. The substance of these rules has been consolidated and incorporated into the proposed new rule. This action, which reflects no substantive change, is in accordance with this Department's policy of updating and rewriting departmental rules in clear and concise English.

**Social Impact**

No social impact is anticipated since the proposal does not make any substantive changes and reflects current rule and practice. The proposal affirms the Civil Service Commission's commitment to remove gender based discrimination from Civil Service titles.

**Economic Impact**

No economic impact is anticipated since the proposal reflects current rule and practice.

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

**SUBCHAPTER 6. POSITION CLASSIFICATION AND RECLASSIFICATION**

**4:1-6.8 Nondiscriminatory titles**

**Titles shall be identified by language which does not specify or imply a fixed gender.**

**4:2-6.1 [Neuter position classifications] (Reserved)**

[(a) This section deals with use of neuter class titles, where the current title is identified as having a fixed gender.

(b) It is the policy of the Civil Service Commission to remove all forms of discrimination on the basis of sex. Accordingly, Civil Service class titles, wherever possible, will be identified by language that does not specify or imply a fixed gender. In those instances where an occupation has been traditionally described in terms denoting a fixed gender and a plausible neuter title cannot be found, the title will be followed by the designation M/W (example: Foreman (Trades) M/W). The M/W designation indicates that the job title is applicable to both men and women.]

**4:2-6.2 [Non-discriminatory position classifications and titles] (Reserved)**

[(a) This section deals with the use and revision of class titles that are identified as having either a written or implied fixed gender or reflect discriminatory job practices.

(b) It is the policy of the Civil Service Commission to remove all forms of discrimination. Specific attention is to be given to eliminating discrimination on the basis of race, creed, color, national origin, ancestry, age, marital status, physical handicap, or sex. Accordingly, Civil Service class titles will be identified by language that does not specify or imply a fixed gender.

(c) Civil Service class titles will be identified by language that does not specify or imply any partiality. No language will be used which specifies or implies a fixed gender.]

**4:3-6.2 [Non-discriminatory position classifications and titles] (Reserved)**

[(a) This section deals with the use and revision of class titles that are identified as having either a written or implied fixed gender or reflect discriminatory job practices.

(b) It is the policy of the Civil Service Commission to remove all forms of discrimination. Specific attention is to be given to eliminating discrimination on the basis of race, creed, color, national origin, ancestry, age, marital status, physical handicap, or sex. Accordingly, Civil Service class titles will be identified by language that does not specify or imply a fixed gender.

(c) Civil Service class titles will be identified by language that does not specify or imply any partiality. No language will be used which specifies or implies a fixed gender.]

**4:3-6.3 [Determination and application of non-discriminatory titles by the Department of Civil Service] (Reserved)**

[(a) This section prescribes that class titles shall be established and/or revised so as to reflect non-discriminatory job practices.

**(b) Definitions:**

1. "Non-discriminatory" means a class title which does not express, overtly or covertly, any limitation, specification, preference or discrimination based on race, creed, color, national origin, ancestry, age, marital status, physical handicap, or sex, or has the intent of making such a limitation unless such is a bona fide occupational qualification which shall be considered non-discriminatory.

2. "Bona fide occupational qualification" means qualifications which are reasonably necessary to the successful performance of the function.

(c) Any class title which contains words, phrases, or expressions which tend to influence, persuade or dissuade, encourage or discourage, attract or repel, any person or persons because of race, creed, color, national origin, ancestry, age, marital status, physical handicap, or sex, and such are not bona fide occupational qualifications, shall be changed to utilize a non-discriminatory title wherever practicable.

**(d) Limitations:**

1. Where not practicable to change the title, the designation "M/W" meaning man or woman, is to be used as part of the title.

Example: Foreman, M/W

2. If the use "M/W" or a neutral class title is not feasible, the use of the non-neutral title and the title which is the sex counterpart may be used subject to the approval of the Department of Civil Service.

Example: Salesman/Saleswoman]

**(a)**

**Enforcement, Prohibitions, Penalties  
 Prohibition Against Political Activity**

**Proposed Amendment: N.J.A.C. 4:1-21.3**

Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:17-2.  
 Proposal Number: PRN 1985-235.

The agency proposal follows:

**Summary**

This proposed amendment has been requested by representatives of the State Personnel Council to inform State and

local government employees of the Federal Hatch Act, Chapter 15, Title 5, United States Code. The Hatch Act generally provides that employees whose principal employment in a state or local executive agency is in connection with a program financed in whole or in part by Federal loans and grants must limit their participation in certain political activities. The rule lists the permitted and prohibited acts and the employees who are not covered by its provisions. The Hatch Act also provides that the U.S. Merit Systems Protection Board is responsible for investigation and prosecution of Hatch Act matters for state and local government employees covered by the Act.

#### Social Impact

The proposed amendment will inform State and local government employees of the Hatch Act, current Federal legislation that may limit their participation in political activities because of their employment.

#### Economic Impact

The overall economic impact is negligible since the rule is provided to inform employees of the Hatch Act and is to be enforced by the U.S. Merit Systems Protection Board, a Federal agency.

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

#### 4:1-21.3 Prohibition against political activity

(a) An employee shall not directly or indirectly use or seek to use his or her authority or influence of his or her position to control or modify the political action of another person.

(b) An employee during the hours of duty shall not engage in political activity; nor shall he or she at any other time participate in political activities so as to impair his or her usefulness in the position in which he or she is employed.

(c) **Federal legislation known as the Hatch Act (Act) limits the participation in political activities of certain employees whose principal employment in a state or local government executive agency is in connection with a program financed in whole or in part by Federal loans or grants. Principal employment, whether full-time or part-time, is generally that job which accounts for the most work time and the most earned income. The Act continues in force while an employee is on leave with or without pay.**

##### 1. An employee covered by the Act may:

i. **Be a candidate for public office in a nonpartisan election;**

ii. **Campaign for and hold elective office in political clubs and organizations;**

iii. **Actively campaign and manage campaigns for candidates for public office in partisan and nonpartisan elections;**

iv. **Serve at the polls;**

v. **Contribute money, solicit and collect voluntary contributions to political organizations, attend political fundraising functions; and**

vi. **Participate in any activity not specifically prohibited by law or regulation.**

##### 2. An employee covered by the Act may not:

i. **Be a candidate for public office in a partisan election except this provision does not apply to the governor, the mayor of a city, the elected head of an executive department or an individual holding elective office when the elected office is the position that would otherwise subject the employee to the restrictions of the Act;**

ii. **Use official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for office; and**

iii. **Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.**

**3. Employees who exercise no functions in connection with Federally financed activities or are employed by educational or research institutions or agencies that are supported by state or political subdivisions or certain religious, philanthropic or cultural organizations, are not covered by the Act's provisions.**

**4. The U.S. Merit Systems Protection Board (MSPB) is responsible for the investigation and prosecution of Hatch Act matters. If the MSPB determines that an offense by an employee warrants dismissal, the employer must dismiss the employee or lose funding.**

## (a)

### Compensation Ninth Step Salary Maximum

#### Proposed New Rule: N.J.A.C. 4:2-7.13

Authority: N.J.S.A. 11:5-1; 11:8-1; 11:8-2; 11:8-3; and 11:8-4.

Proposal Number: PRN 1985-234.

The agency proposal follows:

#### Summary

Current labor agreements with several State unions provide for the addition of a ninth salary step to the State Compensation Plan effective June 22, 1985. Heretofore, employees were eligible for advancement to the next higher step in a salary range upon the completion of twelve months (26 pay periods) of satisfactory performance. The agreements, however, establish an eighteen month (39 pay period) situation for attainment of the new ninth step. The proposed new rule insures that necessary changes are made to the rules governing the State Compensation Plan to permit the timely and equitable implementation of the negotiated ninth step salary program.

#### Social Impact

The proposed new rule will affect all those State employees who are currently at the eighth step in their salary range and are awaiting a ninth step increment.

The new rule will ensure that the ninth step salary program negotiated for State employees will be implemented in an equitable and timely manner.

#### Economic Impact

The proposed new rule will have no additional economic impact since it merely provides the regulatory framework that will allow the implementation of the ninth step in the salary program contained in State labor agreements.

Full text of the proposed new rule follows.

#### 4:2-7.13 Ninth step salary maximum

In those situations where a ninth step is added to the State Compensation Plan, employees who have been in pay status, as set forth in N.J.A.C. 4:2-7.5, at the eighth step of the same range for 39 pay periods or longer shall be eligible for movement to the ninth step providing their performance warrants this salary adjustment. Further, the time requirements set forth in N.J.A.C. 4:2-7.3 and 4:2-7.4 for obtaining an additional increment in a new salary range by virtue of having

attained the ninth step maximum in a lower salary range will be adjusted to 39 pay periods in such cases. Performance appraisal review and anniversary date schedules shall be appropriately adjusted.

(a)

**Provisional and Temporary Appointments  
Seasonal Positions**

**Proposed Repeal: N.J.A.C. 4:3-14.1**

Authority: N.J.S.A. 11:22-14, 11:22-15.  
Proposal Number: PRN 1985-236.

The agency proposal follows:

**Summary**

N.J.A.C. 4:3-14.1 is repealed as a result of this Department's ongoing recodification project. It has been determined that there is no statutory basis for this regulation regarding summer employees in the local service. Accordingly, all seasonal employees will be designated as temporary appointments.

**Social Impact**

The proposed repeal will not detrimentally affect those employees who are hired during the summer and have been considered seasonal employees because their employee designation status simply becomes a temporary appointment.

**Economic Impact**

The proposed repeal will assure that employees now designated as seasonal will become temporary appointments.

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

4:3-14.1 [Designation of positions as seasonal] **(Reserved)**

(a) This section deals with seasonal positions in the classified service which require or are likely to require the services of the incumbent during the summer season.

(b) Standards:

1. Any positions in the classified service which require or are likely to require the service of incumbents during the summer season shall be designated as seasonal positions.

2. When necessary, these positions may extend beyond the four month time limit placed upon temporary positions to a maximum of six months if it is found that within the additional two months it would not be administratively possible to announce, examine and appoint to these positions.

(c) Appointing authorities may submit a single blanket CS-6 with an attached list of all jobs determined to be clearly seasonal positions so that they may be recorded by the Department of Civil Service.]

**COMMUNITY AFFAIRS**

**DIVISION OF HOUSING AND  
DEVELOPMENT**

Proposals numbered PRN 1985-242, 243, 244 and 264 are authorized by John P. Renna, Commissioner, Department of Community Affairs.

Submit comments by June 5, 1985 to:

Michael L. Ticktin, Esq.  
Administrative Practice Officer  
Division of Housing and Development  
CN 804  
Trenton, New Jersey 08625

(b)

**Uniform Fire Code; Fire Code Enforcement;  
High Level Alarms**

**Proposed Amendments: N.J.A.C. 5:18-1.1,  
1.3, 1.4, 1.5, 2.4, 2.5, 2.7, 2.8, 2.12, 3.1,  
and 3.2; 5:18A-2.1, 2.2, 2.3, 2.4, 2.6, 3.2,  
3.3, 4.1, 4.3 and 4.4; 5:18B-3.2**

Authority: N.J.S.A. 52:27D-198 and 52:27D-219.  
Proposal Number: PRN 1985-264.

The agency proposal follows:

**Summary**

In addition to changes of a purely technical nature, the following substantive changes are proposed to N.J.A.C. 5:18, 5:18A and 5:18B:

**5:18-1.1:** Under the State Uniform Construction Code Act, any changes made in an adopted model code is automatically adopted by reference. This is not the case with the Uniform Fire Safety Act, however, so the provision for automatic adoption of future amendments to the Basic/National is not necessary.

**5:18-1.5:** The "common areas" of a covered mall building are defined as the areas not part of any retail establishment and also the required means of egress from retail establishments.

**5:18-2.4:** The requirement that a theater be equipped with fixed seats to be a life hazard use is deleted.

Intermediate care facilities are specifically included as "institutional or similar facilities".

**5:18-2.5:** Routine inspections of covered mall buildings are limited to the common areas (defined in 5:18-1.5).

**5:18-2.7:** Model rocketry engines regulated under N.J.A.C. 12:194 are excluded from permit requirements and fireworks are added as requiring a permit.

Mobile structures in carnivals and circuses will only need permits if they are enclosed.

A provision that new permits are not required under the Code if requirements for a previous permit were substantially the same is deleted.

**5:18-2.8:** The limitation that locally-set permit fees not exceed the schedule in the regulations is deleted.

**5:18-3.2:** Numerous amendments to the State Fire Prevention Code are made. The more substantive changes include the incorporation of existing regulations, formerly enforced by the Department of Labor, regulating explosives, fireworks, and Liquefied Petroleum gas. Following the recommendations of representatives of that Department, certain technical requirements, developed over many years of enforcement activity, are being adopted to ensure a continuing high level of safety in these areas. Other amendments include requirements for a fire safety plan in certain occupancies and a requirement that portable containers for gasoline and other flammable liquids be red in color—in contrast to the blue required for kerosene—and that the name of the liquid be clearly and prominently displayed on the container.

A procedure has been defined for the establishment of fire lanes on private property devoted to public use to provide the necessary input of the police and those responsible for fire-fighting efforts.

**5:18A-2.2:** County enforcing agencies are given jurisdiction over municipal and municipal authority properties.

**5:18A-2.3:** The requirement that an ordinance creating an enforcing agency specify who collects annual registration fees is deleted. The Bureau has accepted the responsibility of collecting all fees and reimbursing local enforcing agencies.

The date of the commencement of Bureau enforcement in municipalities that have not established a local enforcing agency is changed from July 1, 1985 to August 19, 1985 to allow a full 6 months for municipalities to undertake enforcement of the Code.

**5:18A-2.4:** The requirement that a county enabling resolution or ordinance specify whether fees are to be collected by the county fire marshal or by the Bureau is deleted.

**5:18A-2.6:** Since annual fees are to be collected by the Bureau from all owners of life hazard uses, provisions concerning local or county collection are deleted.

**5:18A-3.3:** The investigatory responsibilities established by N.J.A.C. 5:18-2.1(f) and (g) are restated for clarity.

**5:18A-4.3:** The effective date for the requirement that fire officials and inspectors be certified by the Department is changed from July 1, 1985 to July 1, 1986.

**5:18A-4.4:** The period of service accepted for certification under the "grandfather" clause is changed from May 10, 1983–May 10, 1984 to February 19, 1984–February 19, 1985 and the period in which a BOCA correspondence course certificate may have been obtained which will be accepted as a basis for certification is extended to February 19, 1985.

**5:18B-3.2:** High level alarms are required to have a visual, as well as an audible, signal. Technical requirements for both signals are set forth.

**Social Impact**

The clarifications contained in the proposal should enhance the usability of the regulations and thereby increase uniformity in their application. The provision establishing different required colors for gasoline and kerosene containers should help reduce the incidence of fires and explosions caused by use of gasoline in kerosene heaters. Advancement of dates for certification qualification will enable more people to qualify. Municipalities will have an additional month and a half to begin local enforcement before the Bureau of Fire Safety assumes jurisdiction. Changes to the editions of referenced standards have been made to ensure the availability to the fire official of the latest technology and the highest level of safety in the enforcement of Code provisions.

**Economic Impact**

Local fees may be higher in those municipalities which require fees higher than those set forth in the regulations in order to cover their costs of enforcement. Theaters without fixed seats will be subject to the same permit requirements as other theaters. Persons using or possessing model rocketry engines will avoid permit requirements, as will circuses and carnivals with only unenclosed mobile structures. Owners of tanks requiring high level alarms will have to meet additional requirements.

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

5:18-1.1 Title; division into subchapters

(a) (No change.)

(b) The Code is divided into four parts:

1.–2. (No change.)

3. Subchapter 3 is entitled "Fire Prevention Code", and may be cited throughout the code as N.J.A.C. 5:18-3 and when referred to in subchapter 3 of this chapter, may be referred to as this subchapter. Subchapter 3 consists of the [latest] 1984 edition of the Basic/National Fire Prevention Code, as prepared and recommended by the Building Officials and Code Administrators International (BOCA) which is adopted and incorporated herein by reference [including any future] **with** amendments.

4. (No change.)

5:18-1.3 Intent and purpose

(a)–(b) (No change.)

(c) Whenever in the Fire [Protection] **Prevention** Code adopted in subchapter 3 of this chapter, reference is made to the Appendix, the provisions in the Appendix shall not apply unless specifically adopted herein.

5:18-1.4 Applicability

(a) (No change.)

(b) The provisions contained in this code shall not be construed as applying to the transportation of any article or substance shipped under the jurisdiction of and in compliance with the regulations prescribed by the military forces of the United States or the transportation of flammable or combustible liquids or hazardous materials or chemicals subject to the regulation and control of the United States Department of Transportation or other Federal agency having jurisdiction.

1. (No change.)

2. [Nothing in this section shall be deemed to limit the] **The** right of any local government to adopt ordinances governing the routing of vehicles transporting flammable or combustible liquids or hazardous materials or chemicals **shall not be deemed to be limited by anything contained in this section.**

(c)–(g) (No change.)

5:18-1.5 Definitions

...

...

**"Common areas," when used with reference to a covered mall building, shall include all areas not included within any retail establishment and shall also include the required means of egress from all retail establishments.**

...

...

## 5:18-2.4 Life hazard uses defined

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

(c) The following are type B life hazard uses:

1.-11. (No change.)

12. Industrial and commercial uses which incorporate any of the following materials or processes:

i.-ix. (No change.)

x. The manufacture of **fireworks**, explosives or blasting agents;

xi.-xii. (No change.)

13.-15. (No change.)

(d) The following are type C life hazard uses:

1. Theaters incorporating a raised stage, platform or thrust stage, proscenium curtain, fixed or portable scenery loft, lights, mechanical appliances or other theatrical accessories and equipment [and equipped with fixed seats];

2.-3. (No change.)

4. Institutional and similar facilities, including hospitals [and], long-term care facilities **and intermediate-care facilities**, which house people suffering from physical limitation due to age, health or handicaps.

(e) (No change.)

## 5:18-2.5 Required inspections

(a) (No change.)

(b) Where a life hazard use is operated on a seasonal basis, the number of required annual inspections shall not be reduced. Inspections of type C and type D life hazard uses which are in operation for only a portion of the year shall be conducted immediately prior to opening and closing and twice during operation of the use.

**1. Inspections of covered mall buildings shall be limited to the common areas unless there appears to be good reason to inspect individual retail establishments.**

(c) (No change.)

## 5:18-2.7 Permits required

(a) (No change.)

(b) Permits shall be obtained from the fire official for any of the following listed activities or uses. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1. (No change.)

2. Type 1 permit:

i.-vi. (No change.)

vii. The possession or use of **fireworks**, explosives or blasting agents, **other than model rocketry engines regulated under N.J.A.C. 12:194**;

viii.-ix. (No change.)

3. Type 2 permit:

i.-iii. (No change.)

iv. Carnivals and circuses employing mobile **enclosed** structures used for human occupancy;

v. (No change.)

4.-6. (No change.)

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

(e) A permit shall constitute permission to maintain, store or handle materials, or to install equipment used in connection with such activities in accordance with the provisions of this Code. Such permissions shall not be construed as authority to violate, cancel or set aside any of the provisions of this Code. [Said permit shall remain in effect until revoked, or one year unless otherwise specified. Permits are not transferable and any change in use, operation or tenancy shall require a new permit.]

(f)-(g) (No change.)

**(h) A permit shall remain in effect until revoked, or for one year unless otherwise specified. Permits are not transferable and any change in use, operation or tenancy shall require a new permit.****1. Exception: A type 1 permit for welding or cutting shall be for various locations within the jurisdiction of a local enforcing agency and shall be issued on an annual basis.**

Renumber (h) and (i) as (i) and (j).

**(j)] (k) A permit issued under a pre-existing local fire prevention code shall remain valid for no more than one year from the date it was issued. [A new permit issued under this Code shall not be required if the requirements for the previous permit were substantially the same as those established by this Code.]**

## 5:18-2.8 Fees, registration and permit

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

(d) A municipality having a local enforcing agency may establish by ordinance a different permit fee schedule [not in excess of fees in Schedule (b) above] based on the actual cost anticipated or incurred for the enforcement of this Code.

## 5:18-2.12 Penalties

(a) (No change.)

(b) A person who violates or causes to be violated a provision of (a) above shall be liable to a penalty of not more than \$5,000 for each violation. If a violation of (a) above is of a continuing nature, each day during which the violation remains unabated after the date fixed in the order or notice for the correction or termination of the continuing violation shall constitute an additional and separate violation, except while an appeal from the order is pending.

**1. A violation shall be deemed to be of a continuing nature if notice of the violation is served within two years of the date of service of a previous notice and where violation, premises and person cited in both notices are substantially identical.**

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

## 5:18-3.1 Code adopted

(a) Pursuant to authority of the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq.), the Commissioner hereby adopts the model code of the Building Officials and Code Administrators, Inc., known as "the BOCA Basic/National Fire Prevention Code/1984 [.] ." [including all subsequent revisions and amendments thereto.] This code is hereby adopted by reference as the State Fire Prevention Code, subject to the modifications set forth in N.J.A.C. 5:18-3.2.

(b) (No change.)

## 5:18-3.2 Modifications

(a) The following articles or sections of the State Fire Prevention Code are modified as follows:

1. (No change.)

2. [The following amendments are made to article 2 ("Definitions"), section F-201.0—general definitions:] **Article 2 ("Definitions") is amended as follows:****i. Section F-200.3 is amended to delete "building, plumbing or mechanical code listed in Appendix A" and replace with "New Jersey Uniform Construction Code".****ii. Section F-200.0—"General Definitions" is amended as follows:**

Renumber i.-ii. as (1)-(2).

**[iii.] 3. The term "building code" is added and is defined as "the New Jersey [State] Uniform Construction Code, including all of its component subcodes".**

Renumber iv.-v. as 4.-5.

[3.] 6. Article 3 ("General Precautions Against Fire") is amended as follows:

i. The words "any air pollution laws adopted by the jurisdiction" are deleted and the words "subject to the prior approval of the New Jersey Department of Environmental Protection" substituted in lieu thereof:

[i.] ii. Sections F-301.2, F-303.2, F-305.2, F-307.3 and F-307.3.1 are deleted.

iii. The words "listed in appendix A" are deleted from section F-308.1, where this refers to building and mechanical codes, and the words "in effect at time of first occupancy" are substituted in lieu thereof.

iv. The word "misdemeanor" is deleted from section F-308.2.1 and the words "a violation of this Code" are substituted in lieu thereof.

v. Section F-311.0 (Fire Lanes) is deleted and the following is substituted in lieu thereof:

**Section F-311.0 Fire Lanes on Private Property.**

**Section F-311.1 Designation:** The fire official, with the approval of the chief executive officer of the fire department and the Chief of Police of the jurisdiction, may designate fire lanes on private property to which the public is invited or which is devoted to public use, if it is necessary to provide safety for the public or to provide proper access for Fire Department operations in the event of an emergency.

**Section F-311.2 Notification:** Whenever a determination has been made for fire lane designation, pursuant to section F-311.1, the fire official shall notify the owner of the property in writing by registered or certified mail, or by hand delivering such notice, specifically describing the area designated and the reason for making the designation.

**Section F-311.3 Marking of fire lanes:** The marking of fire lanes shall be the responsibility of, and at the expense of, the property owner and shall be accomplished within 30 days of the receipt of the notification.

**Section F-311.4 Obstructions:** It shall be a violation of this Code for any person to park a motor vehicle in or otherwise to obstruct a fire lane.

[ii.] vi. The words "the building code listed in Appendix A" are deleted from section F-314.1 and the words "Subchapter 4 of this Code" substituted in lieu thereof.

[iii.] vii. The following new sections F-315.0, F-315.1, F-315.1.1, F-315.1.2, F-315.1.3, F-315.2, F-315.3 and F-315.4 are added:

**F-315.0 Fire Safety and Evacuation Plan**

F-315.1 General: A fire safety and evacuation plan shall be prepared as set forth in this section where required by Sections F-315.1 through F-315.1.3.

F-315.1.1 Use Group R-1: All Use Group R-1 buildings.

F-315.1.2 Use Group I: All Use Group I buildings.

F-315.1.3 High rise buildings: All high rise buildings as defined in the building code [listed in Appendix A].

F-315.2 Fire safety plan: The fire safety plan shall be approved by the fire official and shall be distributed by the owner to all tenants and employees. **The plan shall contain the following:**

- (1) **The location of the nearest exits and fire alarms;**
- (2) **The procedures to be followed when a smoke or fire alarm sounds; and**
- (3) **The procedures to be followed in the event of fire or smoke.**

F-315.3 Evacuation plan: The evacuation plan shall be conspicuously posted on every floor for the occupants' use.

Exception: In R-1 Use Groups the evacuation plan shall be posted on the inside of each guest room door other than a door opening directly to the outside at grade level.

F-315.4 Maintenance: The fire safety and evacuation plan shall be maintained to reflect changes in the use and physical arrangement of the building.

[iv.] viii. The following new sections F-316.0, F-316.1, F-316.2, F-316.2.1 and F-316.2.2 and F-316.3 are added:

F-316.0 Portable Kerosene Fired and Solid Fuel Fired Heaters

F-316.1 Clearances: Portable kerosene fired and solid fuel fired heaters shall be operated and installed with the minimum clearance to combustibles for which the appliance has been tested.

Exception: Clearances may be reduced in accordance with the mechanical subcode of the New Jersey [uniform construction code] **Uniform Construction Code**.

F-316.2 Portable kerosene fired heaters: Portable kerosene fired heaters shall be tested in accordance with UL 647 and bear the label of an approved testing agency complying with the criteria for labeling specified in the mechanical subcode of the [uniform construction code] **Uniform Construction Code**.

F-316.2.1 Sale: Portable kerosene fired heaters shall not be offered for sale unless a conspicuous sign is posted at the point of sale and display indicating that the use of portable kerosene fired heaters is prohibited in all buildings except one and two family dwellings and is prohibited by ordinance in some municipalities in all dwellings.

F-316.2.2 Containers: Containers for kerosene shall be either of a plastic or metal construction with fill and vent openings. The container shall be blue with white lettering. The word "Kerosene" shall be displayed around the perimeter of the container.

F-316.2.3 Prohibited use: The use of portable kerosene fired heaters is prohibited in all Use Groups except F-3 as defined by the New Jersey [uniform construction code] **Uniform Construction Code**.

F-316.3 Chimneys: Chimneys connected to solid-fuel fired heaters shall be inspected annually and maintained free of significant deposits of creosote and soot.

Exceptions to inspection requirements:

1. Use Group R-3 single family dwellings.

2. Chimneys serving fireplaces which are not equipped with fireplace stoves or inserts.

Renumber v. as ix.

[4.] 7. Article 4 ("Fire Protection Systems") is amended as follows:

i. The words "new and" are deleted from the first sentence of section F-400.1.

[i.] ii. Section F-400.2 is amended to read as follows:

"Installations: Before any fire alarm, detection or fire suppression system is installed, enlarged or extended, a construction permit shall be secured from the construction official".

iii. **Section F-400.3 is deleted.**

Renumber ii. as iv.

[iii.] v. Section F-404.6 is deleted and the following new sections F-404.6, F-404.6.1, F-404.6.2 and F-404.6.3 substituted in lieu thereof:

F-404.6 Fire Alarm Systems: Automatic and manual fire alarm systems and each of their components shall be tested annually in accordance with sections F-404.6.1 through F-404.6.3.

F-404.6.1 Alarm Test: An alarm shall be simulated for each zone of the system and shall cause the alarm to be audibly and/or visually received throughout the entire building and at the control panel **and at any other location at which the alarm signal is required to be received.**

F-404.6.2 Supervision: The supervisory circuits of each zone shall be tested in accordance with the manufacturer's

instructions and cause a trouble signal to be received both audibly and visually at the control panel.

F-404.6.3 Power Failure: A failure of the main power supply to the fire alarm system shall be simulated. The emergency power supply shall then be capable of indicating, both audibly and visually, trouble and alarm signals at the control panel.

Re-number iv. as vi.

[v.] vii. Section F-404.8 is deleted and the following new sections F-404.8.1, F-404.8.1.1, F-404.8.1.2, F-404.8.1.3, F-404.8.1.4, F-404.8.2, F-404.8.2.1, F-404.8.2.2, F-404.8.(2).3.1, and F-404.8.3.2 substituted in lieu thereof.

F-404.8.1 Smoke Control Systems Tests: Smoke control systems shall be tested in accordance with Section F-404.8.1.1 through F-404.8.1.4[.].

F-404.8.1.1 Smoke Detection Systems: Smoke detection systems utilized to activate smoke control systems shall be tested [on] in accordance with Section F-404.6.

F-404.8.1.2 Equipment Controls: Smoke control systems shall be placed into operation by manual and automatic means.

The proper sequence and operation of system components **shall be kept in writing on the premises, shall be available to the fire official and** shall be verified when the system is activated.

F-404.8.1.3 Pressurization Systems: For pressurization systems, pressure readings shall be taken with all doors closed to verify that the system [maintains the pressure differential required by the building code] **continues to meet the standards of its approval under the Uniform Construction Code, including maintaining the exhaust capacity.**

F-404.8.1.4 Smoke Removal Systems: For smoke removal systems, exhaust discharge readings shall be taken to verify that the system maintains the exhaust capacity required by the building code.

F-404.8.2 Emergency Generators: Tests shall be performed on emergency and standby power generation systems in accordance with Sections F-404.8.2.1 through F-404.8.2.2.

F-404.8.2.1 Simulated Power Failure: The main power supply shall be interrupted and cause the generator to start automatically under full load.

F-404.8.2.2 Time Limits: Emergency power shall be supplied by the generator in 10 seconds or less under full load. Standby power shall be supplied by the generator in 60 seconds or less under full load.

F-404.8.3 Emergency Elevator Operation: Elevators shall be tested in accordance with Sections F-404.8.3.1 through F-404.8.3.2.

F-404.8.3.1 Emergency Recall Operation: Upon simulated activation of an elevator lobby detector, the elevator controller shall cause all elevator cars that serve that lobby to return nonstop to the designated lobby, and prevent further operation of the elevators without the use of an emergency service key.

F-404.8.3.2 Emergency Car Operation: The emergency service keys shall be utilized to place the recalled elevators into emergency operation and to verify proper functioning of the elevator for fire service operation.

viii. The words "(Acceptance test)" are deleted from the title of Section F-405.0.

ix. In Section F-405.1, the word "subcode" is added between "fire" and "official".

x. Section F-406.0 is deleted in its entirety.

xi. Section F-407.0 is deleted in its entirety.

[vi.] xii. Section F-408.4.1 is amended to read as follows: Plans and specifications: Plans and specifications for the in-

stallation, extension, modification, alteration or removal from service of any automatic fire suppression system shall be submitted to the construction officials and a permit shall be secured prior to the commencement of any work.

[vii.] xiii. Section F-408.5 is amended to read as follows: Permit: Upon approval of plans and specifications, a construction permit shall be issued by the construction official. Each system installed, extended, modified, altered or removed from service shall require a separate permit.

xiv. Section F-409.2.4 is deleted.

Re-number viii.-ix. as xv.-xvi.

[5.] 8. Article 5 ("Means of Egress") is amended as follows:

i. (No change.)

ii. Sections F-501.1, F-501.2, F-501.3, and F-501.4 are deleted and the following new sections F-501.1, F-501.2, F-501.3 and F-501.4 substituted in lieu thereof.

F-501.1 Maintenance: All means of egress elements such as egress doors and their hardware, corridors, stairways, fire escapes, and similar egress components shall be maintained in a safe and operable condition at all times, and be available for immediate use. The fire official may require a load test on any exterior stairway or fire escape to determine structural stability.

F-501.2 Obstructions: A person shall not at any time place any encumbrance within or upon any element of a means of egress which reduces its width to less than that required by the building code. Draperies or similar decorative hangings shall not obstruct the view of, nor access through, any element of a means of egress. Mirrors shall not be placed in or adjacent to a means of egress in any manner which may confuse the direction of egress.

F-501.3 Exits: Exits shall not be used for any purpose other than a means of egress. Spaces within a stairway enclosure shall not be utilized for storage or location of any materials or items. Exterior spaces below and within ten feet horizontally of fire escapes and exterior stairs shall not be utilized for the storage of combustible materials or location of refuse containers.

F-501.4 Exit Access Corridors: Enclosed exit access corridors shall be maintained free of accumulations of flammable or combustible materials at all times.

Exceptions:

1. Decorative items affixed directly to walls or ceilings.

2. Furniture located within seating or waiting areas which **is fixed in place and which** does not reduce the required width of the corridor.

iii. In section F-505.1, the words "listed in Appendix A" are deleted.

[6.] 9. [Section F-600.2 is deleted from article 6 (airports, heliports and helistops).]

Article 6 (Airports, Heliports and Helistops) is amended as follows:

i. Section F-600.2 is deleted in its entirety.

ii. In section F-501.3, the words "listed in Appendix A" are deleted.

[7.] 10. [Section F-700.2 is deleted from article 7 (Application of Flammable Finishes).]

Article 7 (Application of Flammable Finishes) is amended as follows:

i. Section F-700.2 is deleted in its entirety.

ii. In section F-701.1, the words "listed in Appendix A" are deleted and the words "in effect at the time of first occupancy" substituted in lieu thereof.

iii. In section F-702.2 the words "listed in Appendix A" are deleted.

[8.] 11. Article 8 (Bowling Establishments) is amended as follows:

i. (No change.)

ii. The words "listed in Appendix A" are deleted from sections F-801.1 and F-802.3 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

[9.] 12. Article 9 (Dry Cleaning Plants) is amended as follows:

i. The words ["a permit from the fire official"] "listed in Appendix A" are deleted from section [F-900.2] F-900.1 and the words ["the permit required by this code"] "in effect at the time of first occupancy" substituted in lieu thereof.

ii. Section F-900.2 is deleted.

Renumber ii.-iii. as iii.-iv.

v. The words "listed in Appendix A" are deleted from sections F-904.4, F-905.4 and F-907.5 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

[10.] 13. [Section F-1000.2 is deleted from article 10 (Dust Explosion Hazards).]

Article 10 (Dust Explosion Hazards) is amended as follows:

i. Section F-1000.2 is deleted.

ii. The words "listed in Appendix A" are deleted from Section F-100.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

[11.] 14. (No change.)

[12.] 15. [Section F-1200.2 is deleted from article] Article 12 (Fumigation and Thermal Insecticidal Fogging) is amended as follows:

i. Section F-1200.2 is deleted.

[13.] 16. Article 13 (Lumber Yards and Woodworking Plants) is amended as follows:

i.-ii. (No change.)

iii. The first sentence of section F-1301.7 is deleted.

iv. The words "listed in Appendix A" are deleted from section F-1301.7 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

[14.] 17. (No change.)

[15.] 18. Article 15 (Places of Assembly and Education) is amended as follows:

i.-iv. (No change.)

v. Section F-1502.1 is amended to delete the words "listed in Appendix A".

vi. The words "listed in Appendix A" are deleted from section F-1505.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

[16.] 19. Article 16 (Service Stations and Garages) is amended as follows:

i.-iii. (No change.)

iv. The words "listed in Appendix A" are deleted from section F-1604.2 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

v. The words "plumbing code listed in Appendix A" are deleted from Section F-1604.3 and the words "building code" substituted in lieu thereof.

vi. Section F-1604.5 is amended to delete the words "listed in Appendix A".

[17.] 20. Article 17 (Tents, Air-supported, and other Temporary Structures) is amended as follows:

i.-iii. (No change.)

iv. The words "listed in Appendix A" are deleted from section F-1701.1 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

v. The word "tents" is deleted from the introductory sentence of section F-1702.1 and the word "membrane" substituted [therefore] in lieu thereof.

vi. The words "listed in Appendix A" are deleted from subsection F-1702.1.4 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

[18.-19.] 21.-22. (No change.)

[20.] 23. Article 20 (Welding or Cutting, Calcium Carbide and Acetylene Generators) is amended as follows:

i.-iii. (No change.)

iv. The words "listed in Appendix A" are deleted from Section F-2005.3.2 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

v. The words "listed in Appendix A" are deleted from Section F-2006.4 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

[21.] 24. (No change.)

[22.] 25. Article 22 (Cellulose Nitrate (Pyroxylin) Plastics) is amended as follows:

i.-ii. (No change.)

iii. The words "listed in Appendix A" are deleted from sections F-2201.1, F-2201.2 and F-2201.3 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

[23.] 26. Article 23 (Combustible Fibers) is amended as follows:

i. (No change.)

ii. The words "listed in Appendix A" are deleted from sections F-2301.1 and F-2301.2.2 and the words "in effect at the time of first occupancy" substituted in lieu thereof.

iii. (No change.)

[24.-25.] 27.-28. (No change.)

[26.] 29. Article 26 (Explosives, Ammunition and Blasting Agents) is amended as follows:

i. Section F-2600.1.1.6 is deleted.

[i.] ii. Section F-2600.2 is deleted.

[ii.] iii. The introductory line of Section F-2600.2.1 is amended to read as follows: "Prohibited explosives: The following explosives shall not be permitted:"

[iv. The words "under section F-2600.2" are deleted from section F-2602.1.]

iv. Section F-2600.3 is deleted and the following sections F-2600.3, F-2600.3.1, F-2600.3.2, and F-2600.3.3 are substituted in lieu thereof: F-2600.3: Insurance: Any self-employed person in possession of a valid permit to use explosives for blasting purposes, issued by the New Jersey Department of Labor pursuant to N.J.A.C. 12:190.3.11, shall have an insurance coverage for blasting damage not less than \$500,000 for property damage including explosion, collapse, and underground utility damage and \$500,000 to \$1,000,000 for personal injury.

F-2600.3.1: Any person in possession of a valid permit to use explosives for blasting purposes, as outlined in section F-2600.3 above, and who is not self-employed, shall not use explosives unless the employer is insured as specified in that section.

F-2600.3.2: Proof of the possession of a valid insurance policy covering blasting damage shall be readily available for inspection at the site.

F-2600.3.3: Nothing shall be construed as preventing greater insurance coverage for damage from blasting when requested by any person for whom blasting is being performed.

[v. The words "listed in appendix A" are deleted from section F-2600.2 and the words "in effect at the time of first occupancy" substituted in lieu thereof.]

v. Section F-2600.4 (Definitions) is amended to delete the definition of "Magazine" and to substitute in lieu thereof the following:

“Magazine”: Any building, structure or other enclosure or container other than an explosives manufacturing building, used for the storage of explosives. Magazines shall be of five types as follows:

A Type 1 magazine means a permanent outdoor magazine used for the storage of high explosives or other classes of explosives;

A Type 2 magazine means an indoor or outdoor magazine that is portable or mobile; such as a skid magazine or a trailer or semi-trailer used for the temporary storage of high explosives or other types of explosives; new sections F-2606.3, F-2603.3.1, F-2603.3.2, F-2603.3.3, and F-2603.4 as follows are substituted in lieu thereof:

Section F-2603.3 (Magazine Clearances): Magazines shall be located in Section F-2603.2 for Type 2 indoor magazines:

Section F-2603.3.1 location of Type 1 magazines and Type 2 outdoor magazines: Type 1 magazines and Type 2 outdoor magazines shall be located outside of buildings. When used for the storage of high explosives they shall be located no closer to inhabited buildings, passenger railways, public high-

ways, or other magazines in which high explosives are stored than the distance specified in table F-2603.

Section F-2603.3.2 Location of Type 3 magazines: The location, either outside or inside buildings, of Type 3 magazines, shall be as far as practicable from neighboring inhabited buildings, railways, highways, and any other magazine, and shall be closely attended when in a use location.

Section F-2603.3.3 Location of Type 4 outdoor magazines:

Type 4 outdoor magazines shall be located outside of buildings and, when used for the storage of low explosives, shall be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which explosives are stored than the distances specified in table F-2603, whether barricaded or unbarricaded.

Section F-2603.3.4 Location of Type 4 indoor magazines:

Type 4 indoor magazines shall be located as provided for Type 2 indoor magazines in Section F-2603.2.

vi. Table F-2603 (Distances for Storage of Explosives) is deleted and the following tables F-2603, F-2603.1, and F-2603.2 substituted in lieu thereof:

TABLE F-2603  
HIGH EXPLOSIVES

DISTANCES IN FEET									
Quantity of Explosives		Inhabited Buildings		Public Highways with Traffic Volume of 3,000 or less Vehicles/Day		Passenger Railways— Public Highways with Traffic Volume of More Than 3,000 Vehicles/Day		Separation of Magazines	
Pounds Over	Pounds Not Over	Barri- caded*	Unbarri- caded	Barri- caded	Unbarri- caded	Barri- caded	Unbarri- caded	Barri- caded	Unbarri- caded
2	5	70	140	30	60	51	102	6	12
5	10	90	180	35	70	64	128	8	16
10	20	110	220	45	90	81	162	10	20
20	30	125	250	50	100	93	186	11	22
30	40	140	280	55	110	103	206	12	24
40	50	150	300	60	120	110	220	14	28
50	75	170	340	70	140	127	254	15	30
75	100	190	380	75	150	139	278	16	32
100	125	200	400	80	160	150	300	18	36
125	150	215	430	85	170	159	318	19	38
150	200	235	470	95	190	175	350	21	42
200	250	255	510	105	210	189	378	23	46
250	300	270	540	110	220	201	402	24	48
300	400	295	590	120	240	221	442	27	54
400	500	320	640	130	260	238	476	29	58
500	600	340	680	135	270	253	506	31	62
600	700	355	710	145	290	266	532	32	64
700	800	375	750	150	300	278	556	33	66
800	900	390	780	155	310	289	578	35	70
900	1,000	400	800	160	320	300	600	36	72
1,000	1,200	425	850	165	330	318	636	39	78
1,200	1,400	450	900	170	340	336	672	41	82
1,400	1,600	470	940	175	350	351	702	43	86
1,600	1,800	490	980	180	360	366	732	44	88
1,800	2,000	505	1,010	185	370	378	756	45	90
2,000	2,500	545	1,090	190	380	408	816	49	98
2,500	3,000	580	1,160	195	390	432	864	52	104
3,000	4,000	635	1,270	210	420	474	948	58	116
4,000	5,000	685	1,370	225	450	513	1,026	61	122
5,000	6,000	730	1,460	235	470	546	1,092	65	130
6,000	7,000	770	1,540	245	490	573	1,146	68	136
7,000	8,000	800	1,600	250	500	600	1,200	72	144
8,000	9,000	835	1,670	255	510	624	1,248	75	150
9,000	10,000	865	1,730	260	520	645	1,290	78	156
10,000	12,000	875	1,750	270	540	687	1,374	82	164

12,000	14,000	885	1,770	275	550	723	1,446	87	174
14,000	16,000	900	1,800	280	560	756	1,512	90	180
16,000	18,000	940	1,880	285	570	786	1,572	94	188
18,000	20,000	975	1,950	290	580	813	1,626	98	196
20,000	25,000	1,055	2,000	315	630	876	1,752	105	210
25,000	30,000	1,130	2,000	340	680	933	1,866	112	224
30,000	35,000	1,205	2,000	360	720	981	1,962	119	238
35,000	40,000	1,275	2,000	380	760	1,026	2,000	124	248
40,000	45,000	1,340	2,000	400	800	1,068	2,000	129	258
45,000	50,000	1,400	2,000	420	840	1,104	2,000	135	270
50,000	55,000	1,460	2,000	440	880	1,140	2,000	140	280
55,000	60,000	1,515	2,000	455	910	1,173	2,000	145	290
60,000	65,000	1,565	2,000	470	940	1,206	2,000	150	300
65,000	70,000	1,610	2,000	485	970	1,236	2,000	155	310
70,000	75,000	1,655	2,000	500	1,000	1,263	2,000	160	320
75,000	80,000	1,695	2,000	510	1,020	1,293	2,000	165	330
80,000	85,000	1,730	2,000	520	1,040	1,317	2,000	170	340
85,000	90,000	1,760	2,000	530	1,060	1,344	2,000	175	350
90,000	95,000	1,790	2,000	540	1,080	1,368	2,000	180	360
95,000	100,000	1,815	2,000	545	1,090	1,392	2,000	185	370
100,000	110,000	1,835	2,000	550	1,100	1,437	2,000	195	390
110,000	120,000	1,855	2,000	555	1,110	1,479	2,000	205	410
120,000	130,000	1,875	2,000	560	1,120	1,521	2,000	215	430
130,000	140,000	1,890	2,000	565	1,130	1,557	2,000	225	450
140,000	150,000	1,900	2,000	570	1,140	1,593	2,000	235	470
150,000	160,000	1,935	2,000	580	1,160	1,629	2,000	245	490
160,000	170,000	1,965	2,000	590	1,180	1,662	2,000	255	510
170,000	180,000	1,990	2,000	600	1,200	1,695	2,000	265	530
180,000	190,000	2,010	2,010	605	1,210	1,725	2,000	275	550
190,000	200,000	2,030	2,030	610	1,220	1,755	2,000	285	570
200,000	210,000	2,055	2,055	620	1,240	1,782	2,000	295	590
210,000	230,000	2,100	2,100	635	1,270	1,836	2,000	315	630
230,000	250,000	2,155	2,155	650	1,300	1,890	2,000	335	670
250,000	275,000	2,215	2,215	670	1,340	1,950	2,000	360	720
275,000	300,000	2,275	2,275	690	1,380	2,000	2,000	385	770

Note to Table

\* "Barricaded" means a natural barricade or an artificial barricade of a minimum thickness of three feet.

TABLE F-2603.1

LOW EXPLOSIVES

Low Explosives		Distance in Feet from		
pounds over	pounds not over	Inhabited Building	Public Railroad and Highway	Above-ground Magazine
0	1,000	75	75	50
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	375	375	250
200,000	300,000	450	450	300

TABLE F-2603.2

LOCATION OF AMMONIUM NITRATE AND BLASTING AGENTS FROM HIGH EXPLOSIVES OR BLASTING AGENTS

Donor* pounds over	Weight pounds not over	Minimum Separation Distance of Acceptor** When Barricaded (feet)		Minimum Thickness of Artificial Barricades (inches)
		Ammonium Nitrate	Blasting Agent	
0	100	3	11	12
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,000	6,000	11	40	15
6,000	8,000	12	43	20

8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
<hr/>				
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30
40,000	45,000	22	79	35
45,000	50,000	23	83	35
<hr/>				
50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40
80,000	90,000	30	108	40
<hr/>				
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
<hr/>				
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

Notes to Table

\* High explosives and blasting agents are donors. Ammonium nitrate, by itself, is not considered to be a donor.

\*\* Ammonium nitrate and blasting agents are acceptors.

vii. Section F-2603.4 (Magazine construction) is deleted and the following sections F-2603.4, F-2603.4.1, F-2603.4.2, F-2603.4.3, F-2603.4.4, F-2603.4.5, F-2603.4.6, F-2603.4.7 and F-2603.4.8 substituted in lieu thereof:

**F-2603.4 Construction of Type 1 magazines:** A Type 1 magazine shall be a permanent structure, a building, an igloo, a tunnel, or a dugout. It shall be resistant to fire, theft, bullets, and the weather, and shall have no openings except for entrances and ventilation. Materials and methods of construction shall be as follows:

(1) Masonry wall construction shall consist of at least 6 inches of brick, concrete, tile, cement block, or cinder block. Hollow masonry units shall have all hollow spaces filled with well-tamped, coarse dry sand or weak concrete (at least a mixture of one part cement and eight parts sand with enough water to dampen the mixture while tamping in place).

(2) Fabricated metal wall construction shall consist of sectional sheets of steel or aluminum not less than No. 14 gauge, securely fastened to a metal framework. Metal wall construction shall be either lined inside with brick, solid cement blocks, or hardwood not less than four inches thick, or shall have at least a six inch sand fill between interior and exterior walls.

(3) In wood frame wall construction, the exterior of outer wood walls shall be covered with iron or aluminum not less than No. 26 gauge. The interior wall shall be constructed so as to provide a space of not less than six inches between the outer and inner walls. The space shall be filled with coarse, dry sand or weak concrete.

(4) Interior walls shall be constructed of or covered with a non-sparking material.

(5) Floor shall be constructed of or covered with any suitable non-sparking material and shall be strong enough to bear the weight of the maximum quantity of explosives to be stored.

(6) Foundations shall be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used in lieu of a continuous foundation, the spaces thus created under the building shall be enclosed with fire-resistant material.

(7) Outer roofs shall be constructed of fabricated metal, tile, non-friable asbestos, concrete, or other fire-resistant material. Where it is possible for a bullet to be fired directly through the roof and into the magazine at such an angle that the bullet would strike the explosives stored within, the magazine shall be protected by one of the following methods:

(A) A sand tray lined with a layer of building paper, plastic or other non-porous material, and filled with not less than four inches of coarse, dry sand located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation, or

(B) A fabricated metal roof constructed of 3/16 inch plate steel lined with four inches of hardwood. For each additional 1/16 inch of plate steel, the hardwood lining may be decreased one inch.

(8) No sparking material shall be exposed to contact with stored explosive materials. All ferrous nails in the floor and side walls which might be so exposed shall be blind-nailed or counter-sunk on the floor and side walls covered with a lattice work or other non-sparking material.

(9) Igloo, tunnel, and dugout magazines shall be constructed of reinforced concrete, masonry, metal or a combination of these materials. They shall have an earth mound covering of not less than 24 inches on top, sides and rear unless the magazine complies with F-2603.4.7 above.

(10) Exterior doors shall be constructed of 1/4 inch plate steel and lined on the interior with two inches of hardwood.

(11) Hinges and hasps shall be attached to the doors by welding, riveting, or bolting with nuts on the inside of the door. The hinges and hasps shall be installed in such a manner that they cannot be removed when the door is closed and locked.

(12) Each door shall be equipped with one or more of the following:

(A) Two mortise locks;

(B) Two padlocks fastened in separate hasps and staples. Padlocks shall have at least five tumblers and a case-hardened shackle of at least 3/8 inch diameter. Outdoor padlocks shall be protected with 1/4 inch steel hoods constructed so as to prevent sawing or lever action on the locks or hasps;

(C) A combination of a mortise lock and a padlock;

(D) A mortise lock that requires two keys to open;

(E) A three-point lock; or

(F) A bolt, lock or bar that cannot be actuated from the outside.

**F-2603.4.1 Construction of Type 2 outdoor magazines:** A Type 2 outdoor magazine shall be a box, trailer, semi-trailer, or other mobile facility. It shall be resistant to fire, theft, bullets and the weather and shall be supported in such a manner as to prevent direct contact with the ground. If less than one cubic yard in size, it shall be securely fastened to a fixed object to prevent theft of the entire magazine. Materials and methods of construction shall be as follows:

(1) The exterior and covers or doors shall be constructed of 1/4 inch steel and shall be lined with two inches of hardwood. Magazines with top openings shall have lids with water-resist-

ant seals or the lids shall overlap the side by at least one inch when in a closed position.

(2) Hinges and hasps, locks, padlocks, padlock protection, and sparking materials shall comply with the applicable provisions of sections F-2603.4 above.

**F-2603.4.2 Construction of Type 2 indoor magazines:** A Type 2 indoor magazine shall be a portable or mobile magazine which is resistant to fire and theft. It need not be bullet- or weather-resistant if the building in which it is stored provides protection from the weather and from bullet penetration. Materials and methods of construction shall be as follows:

(1) Wood magazines shall have sides, bottoms, and covers or doors constructed of two inches of hardwood and shall be well braced at corners. They shall be covered with sheet metal of not less than No. 20 gauge. Nails exposed to the interior of magazines shall be counter-sunk.

(2) Metal magazines shall have sides, bottoms, and covers or doors constructed of No. 12 gauge metal and shall be lined inside with a non-sparking material. Edges of metal covers shall overlap the sides at least one inch.

(3) Magazines for blasting caps (cap boxes) in quantities of 100 or less shall have sides, bottoms, and covers or doors constructed of No. 12 gauge metal and shall be lined with a non-sparking material.

(4) Hinges, hasps, locks, padlocks, padlock protection, and sparking materials shall comply with the applicable provisions of Section F-2603.4 above; except that only one padlock shall be required on a type 2 indoor magazine that is located in a room that is also secured by a lock.

**F-2603.4.3 Construction of Type 3 magazines:** A type 3 magazine shall be a "day-box" or other portable magazine which is resistant to fire, weather and theft. Materials and methods of construction shall be as follows:

(1) A type 3 magazine shall be constructed of not less than No. 12 gauge steel lined with at least 1/2 inch plywood or 1/2 inch Masonite-type hardboard.

(2) No sparking material shall be exposed to contact with stored explosive materials.

(3) Doors or covers shall overlap sides of type 3 magazines by not less than one inch.

(4) Hinges and hasps shall be attached by welding or riveting by bolting with nuts on the inside.

(5) One steel padlock which need not be protected by a steel hood, having at least five tumblers and a case-hardened shackle of not less than 3/8 inch diameter shall be provided for locking purposes.

**F-2603.4.4 Construction of Type 4 outdoor magazines:** A type 4 outdoor magazine shall be a building, igloo, tunnel, dugout, box, trailer, semi-trailer or other mobile magazine which is resistant to fire, weather, and theft. Materials and methods of construction shall be as follows:

(1) A type 4 outdoor magazine shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials.

(2) The walls and floors shall be constructed of, or covered with a non-sparking material, or lattice work.

(3) Foundations shall be constructed of brick, concrete, cement, block, stone or metal or wood posts. If piers or posts are used in lieu of a continuous foundation, the spaces thus created under the building shall be enclosed with fire-resistive material.

(4) The doors or covers shall be metal or solid wood covered with metal.

(5) Hinges and hasps, locks, padlocks, padlock protection and sparking materials shall comply with the applicable provisions of section F-2603.4 above.

**F-2603.4.5 Construction of Type 4 indoor magazines:** A Type 4 indoor magazine shall be fire and theft resistant. It need not be bullet- or weather-resistant if the building in which it is stored provides protection from the weather and from bullet penetration. Materials and methods of construction shall be as follows:

(1) Wood magazines shall have sides, bottoms, and covers or doors constructed of not less than one inch of hardwood and shall be well braced at corners. They shall be covered with sheet metal of not less than No. 26 gauge. Ferrous nails exposed to the interior of magazines shall be counter-sunk.

(2) Metal magazines shall have sides, bottoms, and covers or doors constructed of not less than No. 26 gauge metal and shall be lined inside with a non-sparking material.

(3) Hinges and hasps, locks, padlocks, padlock protection, and sparking materials shall comply with the applicable provisions of Section F-2603.4 above, except that only one padlock shall be required on a type 4 indoor magazine that is located in a room that is also secured by a lock.

**F-2603.4.6 Construction and location of Type UG magazine:** A Type UG magazine shall be used for the storage of not more than 5000 pounds of explosives underground in underground mining operations and shall not be permitted unless the mining has progressed to a point where the magazine is at least 300 feet from any shaft, is at least 15 feet from any haulage way or travel way, has a travel way to the nearest means of egress with at least two sharp turns, could not impede evacuation of all persons in the event of detonation of the explosives in the magazine, and is at least 50 feet from any magazine containing blasting caps.

A type UG magazine shall be constructed in accordance with the following:

(1) In solid rock with the front opening constructed in accordance with the applicable provisions of section F-2603.4 for type 1 magazines, unless otherwise specified in this section.

(2) Doors shall have at least 16 gauge metal outer covering or equivalent fire resistive protection and be lined with at least two inches of hardwood.

(3) Doors shall be provided with one padlock complying with the provisions of Section F-2603.4.12.(b).

(4) Floors shall be wood lined or covered with wooden slats.

(5) Provisions shall be made so that water will drain away.

(6) Adequate ventilation shall be provided.

(7) A conspicuous marking, reading "EXPLOSIVES" shall be provided.

**Section F-2603.4.7 Magazine heat and light:** Magazines shall not be provided with artificial heat and light, except that if artificial lighting is necessary, approved electric safety battery lamps or approved electric lights, wiring and equipment of a type designed for the hazardous location may be used.

**Section F-2603.4.8 Repair of magazines:** Magazines shall be maintained in good repair. Before repairing the interior of magazines, all explosive materials shall be removed and the interior shall be cleaned. Before repairing the exterior of magazines, all explosive materials shall be removed if there exists any possibility that repairs may produce sparks or flame. Any explosive material removed from magazines under repair shall be:

(1) Placed in other magazines appropriate for the storage of those materials in accordance with this article, or

(2) Placed a safe distance from the magazine under repair, where they shall be properly guarded and protected until the repairs have been completed.

viii. Section F-2603.5 is amended to change the 50 feet distance for sources of ignition to 100'.

ix. Section F-2603.5.1 is amended to change the 25 feet distance to 50 feet.

x. Section F-2603.5.5 is deleted and the following substituted in lieu thereof:

Section F-2603.5.5 Explosive unpacking: Except with respect to fiberboard or other nonmetal containers, containers of explosive materials shall not be unpacked or repacked inside a magazine or within 50 feet of a magazine. Containers of explosive materials shall be securely closed while being stored.

xi. Sections F-2603.7 and F-2603.8 are deleted and the following substituted in lieu thereof:

Section F-2603.8 Signs:

(1) On the premises where a Type 1 magazine, a Type 2 outdoor magazine or a Type 4 outdoor magazine is located, the holder of a "permit to store" explosives shall post a conspicuous sign reading "EXPLOSIVES—KEEP OFF" in letters at least three inches in height on a contrasting background, and so located that a bullet passing through the face of the sign will not strike the magazine.

(2) Type 2 and Type 4 indoor magazines shall be labeled "EXPLOSIVES—KEEP FIRE AWAY".

(3) All type 3 magazines shall bear the word "EXPLOSIVES" in letters at least 3 inches in height and legible on a contrasting background.

(4) The provisions of 1. above shall not apply when it is deemed by the fire official that a warning sign would have counter-productive results.

xii. Section F-2604.0 (Transportation of Explosives) is deleted.

xiii. Section F-2606.0 (Transportation of Blasting Agents) is deleted.

xiv. Section F-2607.4 is amended to change the 50 feet distance for sources of ignition to 100 feet.

xv. Section F-2608.2 is amended to delete from the first sentence all words following the word "permit" and to substitute in lieu thereof the following:

"issued by the New Jersey Department of Labor pursuant to N.J.A.C. 12:190 to use explosives or by employees under that person's direct supervision who are at least 18 years old."

xvi. Add a new subsection F-2608.2.4 as follows:

4. A permit to blast does not confer any right or privilege to conduct business or perform any operation including storage or handling of explosives which is contrary to or in conflict with provisions of any law of the State of New Jersey or any Federal law.

xvii. Amend Section F-2608.3 to delete the words "Class II" and to add to the section the following provision:

"When site restrictions are such that the distance specified herein cannot be met, then the magazine shall be moved from the site the required distance when the blasting is actually to be performed."

xviii. Delete the words "in the vicinity of" from Section F-2608.4 and substitute the words "within 50 feet" in lieu thereof.

xix. Delete subsection F-2608.6.3 and substitute in lieu thereof:

Section F-2608.6.3: The blaster shall comply with the Safety Guide for the Prevention of Radio Frequency Radiation Hazards, IME No. 20-1981 (ANSI C-95-4).

[27.] 30. Article 27 (Fireworks) is amended as follows:

i.-ii. (No change.)

iii. Section F-2700.4 (Definition) is deleted and the following substituted in lieu thereof:

"Dangerous fireworks" means and includes the following:

(1) Toy torpedoes containing more than .5 grain of an explosive composition.

(2) Paper caps containing more than .35 grain of explosive composition.

(3) Firecrackers or salutes exceeding 5 inches in length or 3/4 inch in diameter.

(4) Cannons, canes, pistols, or other devices designed for use otherwise than with paper caps.

(5) Any fireworks containing a compound or mixture of yellow or white phosphorous or mercury.

(6) Any fireworks that contain a detonator or blasting cap.

(7) Fireworks compositions that ignite spontaneously or undergo marked decomposition when subjected for 48 consecutive hours to a temperature of 167° Fahrenheit.

(8) Fireworks that can be exploded en masse by a blasting cap placed in one of the units or by impact of a rifle bullet or otherwise.

(9) Fireworks, such as sparklers or fuses, containing a match tip, or head, or similar igniting point or surface, unless each individual tip, head or igniting point or surface is thoroughly covered and securely protected from accidental contact or friction with any other surface.

(10) Fireworks containing an ammonium salt and a chlorate. "Fireworks" include any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation.

"Fireworks factory building" means any building or other structure in which the manufacture of fireworks, other than sparklers, is carried on.

"Fireworks plant" means and includes all lands, with buildings thereon, used in connection with the manufacturing or processing of fireworks, as well as storehouses located thereon for the storage of finished fireworks.

"Highway" means any public street, public alley, public road, or navigable stream.

"Navigable streams" mean streams susceptible of being used, in their ordinary condition, as highways of commerce, over which trade or travel are or may be conducted in the customary modes, but shall not include streams which are not capable of navigation by barges, tugboats and other large vessels.

"Railroad" means any steam, electric or other railroad which carries passengers for hire, but shall not include sidings or spur tracks installed primarily for the use of the fireworks plant.

iv. Sections F-2701.1 and F-2701.2 are deleted and the following new sections F-2701.1 and F-2701.2 substituted in lieu thereof:

Section F-2701.1 General: It shall be a violation of this Code for any person to store, to offer for sale, expose for sale, sell at retail, or use or explode any fireworks, except as provided for by the fire official when granting a permit for supervised displays of fireworks by the jurisdiction, fair association, amusement park, or other organization. Every such display shall be handled by a competent operator approved by the fire official. The fireworks shall be arranged, located, discharged or fired in a manner that, in the opinion of the fire official, will not be a hazard to property or endanger any person.

In matters not specifically covered by this article, the provisions of N.Fi.P.A. Standard 1123-82 (Standard for Fireworks, Public Display of) and N.Fi.P.A. 1124-84 (Code for Fireworks; Manufacture, Transportation, and Storage of) shall be deemed to provide adequate protection.

**Section F-2701.2 Public Display:** The governing body of any municipality may, upon application in writing accompanied by proof of proper insurance coverage, grant a permit for the public display of fireworks by municipalities, religious, fraternal or civic organizations, fair associations, amusement parks, or other organizations or groups of individuals, approved by the governing body of such municipality to whom the application is made. The governing body is authorized to grant such permission by resolution. After such permission shall have been granted, and a permit shall have been issued by the fire official, pursuant to section 5:18-2.7(b)2.vii. of this Code, the possession and use of fireworks for such display shall be lawful for that purpose only.

v. The following new sections F-2701.2.2 and F-2701.2.3 are added:

**Section F-2701.2.2 Contents of Application for Permit; approval of storage space:** All applications for permits shall set forth the date, the hour, the place of making such display, and the place for storing of fireworks prior to the display. The application shall also contain the names of the person, persons, firm, partnership, corporation, association, or group of individuals making the display; the name of the person or persons in charge of the igniting, firing, setting-off, exploding or causing to be exploded such fireworks. The location of the storage place shall be subject to the approval of the fire official of the jurisdiction.

**Section F-2701.2.3 Surety by licensee:** The governing body of the municipality shall require insurance in a sum of not less than \$500,000, conditioned for the payment of all damages, which may be caused either to a person or persons or to property, by reason of the display so as aforesaid licensed, and arising from any acts of the licensee, his agents, employees, or subcontractors. Such surety shall run to the municipality in which the license is granted, and shall be for the use and benefit of any person, persons, or the owner or owners of any property so damaged, who is or are authorized to maintain an action thereon, or his or their heirs, executors, administrators, successors, or assigns.

vi. The following new sections F-2701.5 and F-2701.6 are added:

**Section F-2701.5 Fireworks showers in theaters or public halls.** The use of what are technically known as fireworks showers, or of any composition containing potassium and sulphur, in theaters or public halls shall be subject to prior approval by the fire official and the following conditions shall apply:

(1) Fireworks shall be discharged at a height no greater than 4' above the stage floor.

(2) Fireworks shall be discharged and operated in accordance with manufacturers directions and specifications.

(3) The owner/operator shall provide a full demonstration to the fire official prior to final operation.

(4) Fireworks shall be discharged so as not to endanger the public by escape of any hot particles from the stage area.

(5) A fire watch, with proper extinguishing equipment as approved by the fire official, shall be maintained during the operation at both sides of the stage area.

**Section F-2701.6 Prohibited fireworks:** It shall be unlawful to manufacture, sell, transport or use dangerous fireworks within the State.

vii. The following new sections F-2702.0, F-2702.1, F-2702.2, F-2702.3, F-2702.4, F-2702.5, F-2702.6, F-2702.7, F-2702.8, F-2702.9, F-2702.10, F-2702.11, F-2702.12, F-2702.13, F-2702.14, F-2702.15, and F-2702.16 are added:

**Section F-2702.0 Manufacturing:**

**Section F-2702.1 Factory buildings; location of:** No factory building shall be situated nearer than two hundred feet from any inhabited building or to any highway or to any railroad, nor nearer than fifty feet from any building used for the storage of explosives or fireworks, nor nearer than twenty-five feet to any other factory building. This section shall not apply to factory buildings existing on March twenty-fifth, one thousand nine hundred and thirty, in fireworks plants then in operation.

**Section F-2702.2 Storage buildings; location of:** No building in a fireworks plant used for the storage of finished fireworks, other than those containing only sparklers, shall be situated nearer than three hundred feet from any building not used in connection with the manufacture of fireworks, nor from any highway, railroad or navigable stream, nor within three hundred feet of the property line of the fireworks plant. This section shall not apply to such storehouses existing on March twenty-fifth, one thousand nine hundred and thirty.

**Section F-2702.3 Fences, gates, and watchmen:** All fireworks plants shall be inclosed on all sides by substantial fences and all openings to such inclosures shall be fitted with suitable gates, which, when not locked, shall be in charge of a competent watchman who shall have charge of the fireworks plant when it is not in operation.

**Section F-2702.4 Fire protection:** Fireworks plants and all buildings situated within fireworks plant inclosures, shall be equipped with suitable fire protection, commensurate with the hazard involved, to protect life and property from direct burning and exposure. Such fire protection shall be installed as directed by the fire official.

**Section F-2702.5 Precautions against fire:** No stoves, exposed flame or electrical heating devices shall be used in any part of any fireworks plant, except in the boiler room or machine shop. No fireworks or chemicals are to be stored in those rooms. All parts of the buildings in fireworks plants shall be kept clean, orderly, and free from accumulations of dust or rubbish.

**Section F-2702.6 Storage in factory buildings prohibited:** Fireworks in the finished state shall not be stored in buildings where fireworks are in process of manufacture.

**Section F-2702.7 Character of fireworks which may be manufactured:** No fireworks may be manufactured except such as shall be approved for transportation by the regulations of U.S. Department of Transportation.

**Section F-2702.8 Marking packages:** Each outside package of fireworks shall bear upon the outside thereof the words "Fireworks—Handle Carefully—Keep Fire Away" in letters not less than 7/16 inch in height, and in addition shall show the name of the fireworks manufacturer.

**Section F-2702.9 Uniforms of employees:** All factory employees in fireworks plants employed in loading, filling, or handling of charged fireworks in process of manufacture, or of explosive compositions, shall be clothed in suitable uniforms to be approved by the fire official.

**Section F-2702.10 Matches, liquor, and narcotics:** No employee or other person shall enter or attempt to enter any fireworks plant with matches or other flame-producing devices, nor with liquor or narcotics in his or her possession or control, nor which under the influence of liquor or narcotics, nor partake of intoxicants or narcotics while in the plant.

Section F-2702.11 Smoking and carrying matches in fire-works plant: No person shall smoke nor carry matches, a lighted cigar, cigarette, or pipe within any room or inclosed place or upon any part of a fireworks plant.

Section F-2702.12 Warning signs: All fireworks plants shall be properly posted with "Warning" and "No Smoking" signs.

Section F-2702.13 Containers for matches at entrances: It shall be the duty of the superintendent, foreman or other person in charge of any fireworks plant to provide safety containers for matches at all main entrances of the plant, where all matches in the possession of all persons shall be deposited before entering the plant inclosure.

Section F-2702.14 Inspection: On receipt of an application to operate a fireworks plant, the fire official shall cause an inspection to be made of the premises described in the appli-cation for the purpose of determining whether they conform to the provisions of this chapter, and applicable sections of the Uniform Construction Code and Subchapter 4 of this Code.

Section F-2702.15 Records and duplicate of certificates: A record of the certificates of registration issued and revoked shall be kept on file in the office of the Commissioner, and a notice sent to the fire official of each community, in which a fireworks plant is located.

Section F-2702.16 Indemnity bond: The owner or operator of any fireworks plant, within sixty days after demand there-for in writing by the Commissioner of Community Affairs, shall file and keep on file with the Department of Insurance of the State, an indemnity bond payable to the State of New Jersey in such sums as may be determined by the Commis-sioner and set forth in such demand, not in excess of \$1,000,000 nor less than \$500,000, with surety or sureties satisfactory to such department, conditioned for the payment of all final judgements that may be rendered against such owner or operator for damages caused to persons and prop-erty by reason of any explosion at such fireworks plant of the product or component part or parts thereof there manufac-tured, processed or handled.

[28.] 31. Article 28 (Flammable and Combustible Liquids) is amended as follows:

i.-ii. (No change.)

iii. Section F-2800.3.1 is deleted.

[iii.] iv. The words "listed in Appendix A" are deleted and the words "in effect at the time of first occupancy" substi-tuted in lieu thereof in sections F-2801.1, F-2801.7, and F-2805.3.

v. The following subsections are added to section F-2801.2:

F-2801.2.2 Color of containers: Portable containers in-tended to hold 10 gallons or less and to be used for gasoline or other flammable liquid shall be red in color. The name of the flammable liquid shall be prominently displayed on the con-tainer in bold letters of a contrasting color. The containers shall be of metal or approved plastic with a spring-loaded or screw cap. Containers for kerosene shall be blue.

F-2801.2.3 Sign: Wherever flammable liquids or kerosene are dispensed into or offered for sale in containers, there shall be a prominent sign located in a conspicuous location indi-cating the required color and construction of the container for each product sold. The sign shall not be less than 12 inches in the least dimension.

vi. Section F-2804.0 is deleted except for Section F-2804.5.5 which is amended in vii. below.

vii. Paragraph 5 of section F-2804.5 is amended to read as follows:

Periodic tests of underground tank storage systems may be required by the fire officials to determine that leakage has not occurred.

viii. Section F-2807.1.1 is amended to delete the word "buildings" and change "F.Fi.P.A. 30" to read N.Fi.P.A. 385".

[29.] 32. (No change.)

[30.] 33. Article 30 (Liquified Petroleum Gases) is amended as follows:

i.-iii. (No change.)

iv. The following new sections, F-3006.0, F-3006.1, F-3006.2, F-3006.3, and F-3006.4 are added:

Section F-3006.0 Container and Site Requirements

F-3006.1 Container labeling: Containers of 125 gallons or more water capacity shall be legibly marked with a warning followed by the name of the gas contained. The warning label shall read "Flammable Gas" followed by the name of the gas, such as "Propane" or "Butane".

F-3006.2 Storage site posting: Storage areas having contain-ers exceeding 125 gallons aggregate water capacity shall be posted with adequate "NO SMOKING" and "FLAMMA-BLE GAS" signs legibly marked. The warning "FLAMMA-BLE GAS" shall be followed by the name of the gas stored on the site, such as "PROPANE" or "BUTANE".

F-3006.3 Reporting emergency situation: All LP-gas instal-lations exceeding 250 gallons individual or aggregate water capacity shall be provided with a marker plate or sign indicat-ing who should be called in the event of an emergency involv-ing the LP-gas installation. The marker or sign shall include the following:

(1) The name of the gas supplier, plant installer, owner, or operator who will respond to the emergency.

(2) The telephone number of that person.

The LP-gas supplier, plant installer, owner or operator indicated on the marker plate or sign shall respond when notified to all LP-gas emergencies occurring at his installation and shall maintain a 24-hour phone service.

F-3006.4 Reporting of fires, explosions, or accidents:

Whenever there is a fire or explosion or accident involving injury or loss of life as a result of an incident at an LP-gas installation, the fire official shall be notified within 24 hours of its occurrence.

[31.-33.] 34.-36. (No change.)

37. Appendix A (Referenced standards) N.Fi.P.A. (Na-tional Fire Protection Association) is amended as follows:

i. Standard reference numbers 56A-78, 56B-82, 56D-82, and 56E-82 are deleted and the number 99-84 (Standard for Health Care Facilities) substituted in lieu thereof.

ii. Standard reference number 66-73 is deleted and the number 650-84 (Standard for Pneumatic Conveying Systems for Handling Combustible Materials) substituted in lieu thereof.

iii. Standard reference number 86A-77 is deleted and the number 86-85 (Standard for Industrial Furnace Design, Loca-tion and Equipment) substituted in lieu thereof.

iv. Standard reference number 653-71 is deleted and the number 120-84 (Dust Explosions in Coal Preparation Plants, Prevention of) substituted in lieu thereof.

v. Amend the following reference standard numbers, with no change in title of standard, as follows:

<u>delete</u>	<u>substitute</u>	<u>delete</u>	<u>substitute</u>	<u>delete</u>	<u>substitute</u>
80-81	80-83	59-79	59-84	303-75	303-84
91-73	91-83	61A-73	61A-84	10-81	10-85
22-81	22-84	61C-73	61C-84	12-80	12-85

24-81	24-84	72E-81	72E-84	13-83	13-85
30-81	30-84	74-80	74-84	15-82	15-85
50A-78	50A-84	96-80	96-84	17-80	17-85
54-80	54-84	211-80	211-84	32-79	32-85

5:18A-2.1 [Title; scope] **Scope**; intent

[(a) This subchapter, adopted pursuant to the "Uniform Fire Safety Act" and entitled "Enforcing Agencies, Establishment and Responsibilities" shall be known and may be cited throughout the regulations as N.J.A.C. 5:18A-2.]

Renumber (b)-(c) as **(a)-(b)**.

5:18A-2.2 Matter covered; jurisdictions; exceptions

(a) (No change.)

(b) Jurisdictional responsibilities for enforcing the Code are as follows:

1. (No change.)

2. County enforcing agencies, where established, shall be responsible for enforcement of the Code for:

i.-ii. (No change.)

iii. All property owned by **a municipality or municipal authority**, by the county or by any county or regional authority, this responsibility being concurrent with that of the local enforcing agency having jurisdiction in the area; and

iv. (No change.)

3.-4. (No change.)

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

5:18A-2.3 Local enforcing agencies; establishment

(a) (No change.)

(b) An ordinance creating one or more local enforcing agencies shall include at least the following provisions:

1.-7. (No change.)

[8. Designate either the local enforcing agency or the state Bureau of Fire Safety (hereinafter cited as the Bureau) to collect and account for the annual registration fees established by the Code. The income to the local enforcing agency shall be the same in either case.]

9. -12. Renumber as **8.-11**.

(c) Effective date of establishment of enforcing agency shall be as follows:

1. (No change.)

2. If no local enforcing agency has been established by [July 1,] **August 18, 1985**, or a local enforcing agency has been established but no election has been made by that date to enforce the Code in life hazard uses, the Bureau shall enforce the Code in life hazard uses within the municipality, or within such portion of the municipality as is not served by a local enforcing agency which enforces the Code in life hazard uses.

3. When, at any time after [July 1, 1985] **August 18, 1985** a municipality adopts an ordinance creating a local enforcing agency authorized to enforce the Code in life hazard uses, or the municipality [or fire district,] or county, as the case may be, adopts an ordinance or resolution authorizing an existing local enforcing agency to enforce the Code in life hazard uses, and a copy of the ordinance or resolution as the case may be, has been filed with the Bureau, the effective date of the assumption by the local enforcing agency of enforcement responsibility in life hazard uses shall be the date of the next quarterly publication of the Registry of Enforcing Agencies.

4.-6. (No change.)

5:18A-2.4 County enforcing agency; establishment

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

(c) The ordinance or resolution shall specify whether the county enforcing agency shall:

1.-3. (No change.)

[4. Where the ordinance or resolution indicates that the county will inspect life hazard uses or enforce the Code fully on behalf of a municipality or fire department or fire district then the ordinance or resolution shall specify whether the fees established by the Code are to be collected and accounted for by the county fire marshal or the Bureau. The income to the county shall be the same in either case;]

[5. Where the county desire to establish] **4. Establish, where desired**, additional periodic inspections, permits, and/or fees beyond those specified in the Code for areas within its jurisdiction [then the ordinance shall so provide].

5:18A-2.6 Collection of and accounting for fees and penalties

(a) State collection of registration fees.

1. [Where the local ordinance or county resolution so provides, the] **The Bureau of Fire Safety** shall annually bill for and take such steps as may be necessary to collect the annual registration fees provided for by the Code.

2. [Where the] **The Bureau of Fire Safety** [collects the fees it] shall remit 80 percent of the amount collected to the local enforcing agency **established for the inspection of life hazard uses**. This payment shall be disbursed by the end of the quarter next succeeding the one in which the fees were collected.

3. (No change.)

[(b) Local or county collection of registration fees shall be as follows:

1. Where the local ordinance or county resolution so provides, the local enforcing agency shall annually bill for and take such steps as may be necessary to collect the annual registration fees provided for by the Code.

2. In order to make local collection possible, the Bureau of Fire Safety shall provide the local enforcing agency with a copy of the registry of life hazard uses.

3. Where the local enforcing agency collects the fee it shall remit 20 percent of the fee to the Bureau of Fire Safety. This payment shall be disbursed by the end of the quarter next succeeding the one in which it was collected. For the purpose of this subsection quarters shall be deemed to end on May 31, June 30, September 30 and December 31.

4. The 20 percent State share shall not be considered local funds but State funds held in trust by the local enforcing agency.]

(c)-(e) Renumber as **(b)-(d)**.

[(f)] **(e)** [Neither the local enforcing agency nor the] **The Bureau of Fire Safety** shall have [any] **no** obligation to [each other] **a local enforcing agency** in respect of fees due but not collected in any given quarter.

5:18A-3.2 Local enforcing agencies; organization

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

(c) The local enforcing agency shall be [under the supervision of] subject to direction from the **appointing** authority [having jurisdiction] and such subordinate officers as [he or she may designate] **may be designated in the adopting ordinance**.

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

5:18A-3.3 Duties of fire officials

(a) The fire official shall enforce the Code and the regulations and shall endeavor to:

1.-24. (No change.)

**25. Investigate, or cause to be investigated, every reported fire or explosion occurring within the jurisdiction that involves the loss of life or serious injury or causes destruction or**

damage to property. Such investigation shall be initiated immediately upon the occurrence of such fire or explosion; and if it appears that such an occurrence is of a suspicious nature, the fire official shall take charge immediately of the physical evidence, and in order to preserve any physical evidence relating to the cause or origin of such fire or explosion, take means to prevent access by any person or persons to such building, structure or premises until such persons designated by law to pursue investigations into such matters become involved and shall further cooperate with such authorities in the collection of evidence and prosecution of the case.

(b) The fire official shall keep a record of all reported fires in life hazard uses and all facts concerning the same, including investigative findings and information as to the cause, origin and the extent of such fires and the deaths, injuries, and damage caused thereby.

5:18A-4.1 [Title; scope] **Scope**; intent

[(a) This subchapter of the regulations adopted pursuant to authority of the Uniform Fire Safety Act, entitled "Certification of fire officials," shall be known and may be cited throughout the regulations as subchapter 4, and when referred to in this part of the regulations may be cited as "this Subchapter".]

Renumber (c) as (a).

(b) (No change.)

Renumber (d) as (c).

5:18A-4.3 Certification required

(a) After July 1, [1985] **1986** no person shall carry out the duties of fire official or fire inspector unless that person is certified pursuant to this subchapter. The term "carry out the duties" shall mean and include representing oneself as authorized to carry out inspection of life hazard uses on behalf of the Commissioner, issuing orders pursuant to the act, and assessing or imposing any of the penalties provided for by the act.

(b) After July 1, [1985] **1986** no local enforcing agency shall employ any person to enforce the provisions of the Uniform Fire Code at a life hazard use, unless that person shall be certified in accordance with the provisions of this subchapter.

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

5:18A-4.4 Requirements for certification

(a) (No change.)

(b) A certification shall be issued to any applicant who meets any one of the following four standards:

1. A person who served as a fire inspector in the fire service for all of the period between [May 10, 1983 and May 10, 1984] **February 19, 1984 and February 19, 1985**. Such person shall have been appointed to the position of an inspector [by the appointing authority having jurisdiction], **whether full- or part-time**, and shall have been vested with authority to enforce a validly adopted fire prevention or fire safety code. Such appointments shall be verified by a letter signed by the appointing authority. The performance of inspections which are supplementary to the primary duty of a fire fighter shall not be considered experience as a fire inspector.

2. A person who has received a certificate of completion for a course in Fire Prevention and Control administered by the Building Official and Code Administrators International (BOCA) after January 1, 1978. A certificate of completion for the BOCA correspondence course in Fire Prevention and Control shall be valid only if issued prior to [May 10, 1984] **February 19, 1985**.

3.-4. (No change.)

(c) (No change.)

5:18B-3.2 High level alarm systems

(a) (No change.)

(b) In addition to the requirements specified in (a) above, each attended terminal at which a tank filled by pipeline is located shall comply with the following requirements:

1. The high level alarm system at the terminal shall provide **a visual signal and an audible sound alarm device. The audible sound shall be of sufficient decibels above ambient noise levels to alert personnel responsible for taking corrective action. The audible signal shall be a distinctive signal readily distinguishable from all other signals at the terminal. The visual signal shall be of an approved type which is of a distinctive color and candlepower to affect personnel action.**

2. (No change.)

(c) (No change.)

**(a)**

**Uniform Construction Code  
Annual Permits**

**Proposed Amendments: N.J.A.C. 5:23-1.4,  
2.14, 4.18 and 4.20**

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1985-243.

The agency proposal follows:

**Summary**

The proposed amendments relax and broaden the regulations pertaining to annual construction permits. The amendments will enable more facilities to apply for an annual construction permit since the requirements to obtain the permit are less stringent and the scope of the construction work permitted under the permit is broader. The annual construction permit program concerns work performed by the applicant's maintenance staff. The specific proposed amendments are as follows: The definition of "facility" is added at N.J.A.C. 5:23-1.4. At N.J.A.C. 5:23-2.4, government and business facilities are added to the list of establishments that may secure permits; permit requirements are discussed, and conditions for the granting of the annual permit are modified. Moreover, permit renewal procedure is amplified, and work performed pursuant to outside contract is exempted from the annual permit requirement. Furthermore, the keeping of a permanent work log is discussed, as are procedures for the treatment of drawings and inspection procedures, and the use of an instruction and training log, as well as training procedures, changes in the permit, and types of work that are not allowed are discussed. At N.J.A.C. 5:23-4.18, the formula for calculating municipal fees charged for the annual construction permit is modified, and a training registration fee of \$100.00 for each subcode is added. At N.J.A.C. 5:23-4.20, a formula for Department fees to be charged for the annual construction permit is set forth, and a training registration fee of \$100.00 per subcode, to be paid to the Department, is set forth.

**Social Impact**

The proposed amendments will ensure that maintenance and minor construction work being done inside educational,

industrial, institutional, mercantile, business and government facilities meets the Uniform Construction Code (UCC). The Department is also aware of the fact that construction work is being done in these facilities without the benefit of permits and inspections. The annual construction permit program concerns work performed by the applicant's maintenance staff. The proposed amendments will promote public safety by encouraging more frequent inspections, and will help applicant facilities to insure that the work performed by maintenance staffs meets UCC standards. Applicant facilities will have to comply with the requirements set forth for obtaining the annual construction permit, accompanying record keeping, and ensuring that their maintenance staffs receive the required amount of instruction, which will be furnished by the Department. In addition, applicants will pay an inspection to the enforcing agency, which may be either the Department or the municipal authority as set forth in N.J.A.C. 5:23-4.18 or 5:23-4.20, depending on the location of the construction, and will be required to pay a fee to the Department of \$100.00 per subcode for training registration of maintenance employees.

#### Economic Impact

There will be a fee charged to those facilities applying for the annual construction permit to cover the costs of inspection. The fee will be paid to the enforcing agency, which will be either to the Department or to the municipality, depending upon the location of the construction. In locations where the Department is the enforcing agency, the fee will be computed as follows: \$250.00 per member of the maintenance staff (up to 25 employees), and \$100.00 per each member of the maintenance staff over 25.

In locations where the municipality is the enforcing agency, the same formula is used, but the municipality will decide the amount of money that will be charged per employee.

In all cases, applicants will pay a training registration fee to the Department of \$100.00 per subcode. In addition to these costs, applicants will incur expenses for obtaining the permit and for record keeping.

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

#### 5:23-1.4 Definitions

"Building" through "Equipment" (No change).

**"Facility" for the purpose of applying for an annual permit means exclusive of a hotel/casino, a building or group of buildings under common ownership or control and whose maintenance work is performed under the direct supervision of a maintenance supervisor.**

"Health Care Facility" through "Subcode" (No change).

#### 5:23-2.14 Construction permits when required

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

(c) An annual construction permit may be issued by the construction official to educational, industrial, institutional, [and] mercantile, **business and government facilities** [upon proper application] **based upon submission of the following:**

**1. Identification of the facility and the buildings covered by the application for the annual permit.**

**2. Identification of the location within the facility where the annual permit records will be maintained.**

**3. A listing of the names, titles and trade specialties of the facilities full-time maintenance staff.**

**4. The name of the person responsible for the maintenance logs, job assignments and quality control.**

**5. A statement, from the management of the facility attesting that the maintenance staff performing work under the**

**annual permit are under the direct supervision of a qualified individual, as set forth under N.J.A.C. 5:23-2.14(e)1, or are individually qualified in their respective trades. Evidence of qualification shall be journeyman status, civil service status, trade experience, trade school certification, college degree, State licensure pursuant to law or other appropriate evidence of competence.**

**6. A statement from the management explaining their policies and procedures for providing training on construction codes on a regular basis for their entire maintenance staff.**

**7. A statement from the management explaining the procedures of the applicant to ensure proper quality control of the work performed under the annual permit.**

**8. Receipt of the required annual permit fee and training registration fee.**

(d) **The Construction Official, upon review of the application may issue or deny an annual construction permit in whole or in part. The construction permit (Form F-170) shall state that the permit is an annual permit and indicate the technical subcodes in which the facility is approved to do work under the annual permit. A copy of the annual permit shall be forwarded by the Construction Official to the Department of Community Affairs Training Section along with the appropriate training registration fee.**

[1] (e) Conditions of the annual permit:

1. [i. The facility must employ a full-time maintenance staff under the control and supervision of a person experienced in construction. Proof of experience shall be the possession of a technical license as issued by the Department pursuant to N.J.A.C. 5:23-5. At least one staff member, in each technical license classification, shall be licensed;] **The "annual permit" may be issued for building/fire protection, electrical, or plumbing work or any combination of those classifications of work, providing that the individual responsible for work done under the annual permit possesses knowledge, as evidenced in accordance with N.J.A.C. 5:23-2.14(c)5, in the technical work classification or classifications for which the annual permit is sought.**

2. [ii.] (No change.)

3. [iii.] The facility shall maintain a construction log of all work performed. The construction log shall contain the date, a brief description and estimated or actual cost of the project. This log shall be subject to a quarterly inspection by the construction official or his authorized representative. Any business record showing when and where work was done and the extent of such work shall be deemed to be a construction log; **Applications for the renewal of the "annual permit" shall be filed with the Construction Official at least 60 days prior to the expiration of the current annual permit. The facility application shall make current the information previously submitted to the Construction Official. The application for renewal shall be accompanied by the established fee.**

4. [iv. Work that is normally inspected prior to enclosing, shall be inspected by the appropriate municipal subcode inspector upon proper notice;] **The annual permit covers all construction or maintenance work done by the facilities full-time maintenance staff, but shall not include work performed by outside contract even if the contractor is hired by the facility and working under direct supervision of the facilities maintenance staff. Work performed by outside contract shall be subject to applicable UCC regulations and State Licensure Law.**

5. [v. Alterations permitted shall be limited in area to 2500 square feet;] **A permanent work log of all work done under the "annual permit" must be maintained at the facilities**

maintenance office. The log must contain the date, a brief description of the work and the name of the person supervising the work. The log shall be retained for three years.

6. [vi. New buildings and additions regardless of size shall not be permitted;] Architectural or engineering drawings, if necessary for work done under the annual permit, shall be prepared by a registered architect or licensed engineer as defined by the statutory requirements of the professional registration laws of this State and shall be kept permanently on file and be made available to the Construction Official and appropriate subcode official, for review upon request.

7. The appropriate subcode official, at least two (2) times a year, shall perform inspections of the facility for which an annual permit has been issued. The maximum time between inspections shall be a six month period.

8. Work, other than of a minor nature—similar to that listed in N.J.A.C. 5:23-2.17A, that is normally inspected prior to closing shall be inspected by the appropriately licensed subcode official upon proper notice. This notice shall be given at least 24 hours prior to the time inspection is desired. Such inspections shall be conducted within three (3) business days of the time for which it was requested. The fee for such inspections will be the permit fee per subcode that has been established as a minimum fee for such subcode by the enforcing agency having jurisdiction, as set forth at N.J.A.C. 5:23-4.18 and 4.20.

9. Any work that is done under the supervision of the facilities maintenance staff and under a regular construction permit shall be entered into the annual permit log. The construction permit number shall be listed as a part of the entry.

10. Any training material made available to the facility by this Department will be used as directed.

i. The facility will conduct a minimum of five (5) instructional hours per year per subcode area in which the annual permit has been issued. Management of the facility will insure that the training is attended by all supervisors, engineers, foremen and workers involved in construction or maintenance work done under the annual permit.

ii. A training log will be maintained by the management of the facility. This log will indicate the types of training conducted, the dates, names and signatures of the staff who attended the training and certification by management to the Construction Official that the information is correct.

11. Any changes to the annual construction permit application shall be forwarded to the Construction Official within 30 days of the change.

12. The following work is not permitted under an annual permit:

- i. Any work done on a facility that would result in a change of use of a building or part of a building;
- ii. New buildings and additions regardless of size;
- iii. Alterations completed between inspection periods in excess of 5,000 square feet per building;
- iv. Any work done on a facility that would result in an increase to the area of a building;
- v. The installation or alteration of a sprinkler system;
- vi. Any work that affects the required means of egress;
- vii. Any work that affects life safety systems, such as, but not limited to:

- (1) Emergency lighting systems;
- (2) Smoke and heat detection systems;
- (3) Stand-by generator systems;
- (4) Emergency smoke evacuation systems.

5:23-4.18 Standards for municipal fees  
 (a) General:

1.-3. (No change.)

(Delete current text of 4. and replace it with the following.)

4. The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers employed by the facility and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purposes of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing.

5. A training registration fee of \$100 per subcode shall be submitted by the applicant to the municipal construction official who shall forward the fee to the Department of Community Affairs, Training Section along with copies of the construction permit (Form F-170). Checks shall be made payable to "Treasurer, State of New Jersey".

(b)-(l) (No change.)

5:23-4.20 Department fees

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

(c) Departmental (enforcing agency) fees

1.-10. (No change.)

11. The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers employed by the facility and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing. Fees shall be as follows:

1-25 workers (including foremen)	\$250/worker
each additional worker over 25	\$100/worker

12. A training registration fee of \$100 per subcode shall be submitted by the applicant to the Department of Community Affairs, Training Section along with a copy of the construction permit (Form F-170). Checks shall be made payable to "Treasurer, State of New Jersey".

(a)

**Uniform Construction Code**

**Construction Permits Application; Renewal of License**

**Proposed Amendments: N.J.A.C. 5:23-2.15 and 5.7**

Authority: N.J.S.A. 52:27D-124.  
 Proposal Number: PRN 1985-244.

The agency proposal follows:

**Summary**

The amendment to N.J.A.C. 5:23-2.15 will require a home builder to actually show his current builder registration card when applying for a construction permit. The current regulation only requires that the registration number be given. This regulation has been abused by contractors who have been

reciting registration numbers which have expired because they have failed to renew their registration.

The amendments to N.J.A.C. 5:23-5.7 revise and clarify licensure regulatory renewal and reinstatement requirements for persons who have permitted their code enforcement license(s) to expire or to lapse, and specifies the conditions for renewal or reinstatement of these expired or lapsed licenses.

**Social Impact**

Fundamentally, the amendment to N.J.A.C. 5:23-5.7 realigns licensure renewal and reinstatement requirements of the Uniform Construction Code Enforcement Act Regulations to be more in accordance with other licensure systems in effect within New Jersey. In general, it will make renewal and reinstatement mandates less stringent by permitting licenses to expire over a two year interval, instead of the six month interval which is currently in effect, prior to an official being required to requalify under the educational and testing qualifications for licensure. It is expected that the change to N.J.A.C. 5:23-2.15 will bring an end to the practice of builders with an expired builder registration receiving building permits.

**Economic Impact**

Although a code enforcement official will be subject to less stringent renewal and reinstatement licensure mandates, these officials will be required to pay a penalty assessment on the basis of \$30.00 per annum and/or fraction thereof, in addition to the standard renewal fee of \$30.00. Additionally, an official would be required to make up or meet the annual continuing education training requirements for each year as specified herein. These additional fees would be used to compensate the Department for the increased administrative expenses involved in enactment of the new system and would hopefully comprise an incentive to the licensee to retain licenses in a current state. There will be no economic impact from N.J.A.C. 5:23-2.15.

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

5:23-2.15 Construction permits—application

(a) (No change.)

(b) In addition, the following information shall be required on any application for a construction permit when such information is available, but not later than the commencement of work.

1. The names and addresses of all contractors engaged or planned for engagement by the owner in the prosecution of the work.

i. [The registration number of the contractor,] **A current validated State builder registration card shall be shown by the contractor and [The] the registration number of the contractor[,] shall be recorded on the permit,** pursuant to the New Home Warranty and Builder's Registration Act (N.J.S.A. 46:3B-1 et seq.), if the project is a one or two family dwelling, condominium or cooperative, unless it is to be built in whole or in part by an owner, in which case an affidavit shall be filed by the owner on a form prescribed by the Department of Community Affairs, in which he acknowledges that work done by him, or by a subcontractor working under his supervision, is not covered under the New Home Warranty and Builders' Registration Act and states that he will disclose this information to any person purchasing the property from him within 10 years of the date of issuance of a certificate of occupancy.

2.-4. (No change.)

(c)-(e) (No change.)

5:23-5.7 Renewal of license

(a) (No change.)

(b) Every two years any license already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Office of Code Enforcement Official licensure that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Department shall renew the license previously issued for a term of two years. The renewal date shall be [45] **90** days prior to the expiration dates which shall be July or January 31.

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

(e) Where the holder of a license has allowed the license to lapse by failing to renew the license as provided for in (b) of this section, a new application and license shall be required. If such application is made within [six months] **two years** of the license having lapsed, then application may be made in the same manner as a renewal **application**. [, but the application shall be accompanied by the fee for a new application. Upon a finding that a license of the type applied for was previously held and that any applicable continuing education requirements have been satisfied the license shall be issued.] **The late renewal application shall be accompanied by the appropriate renewal fee and an additional late fee of \$30.00 per year or fraction thereof. Additionally, the licensee must make up or meet the annual continuing education training requirement for each active and expired year as specified herein.** Where [the] a [former] license has lapsed for a period exceeding [six months] **two years**, a new application shall be required in accordance with N.J.A.C. 5:23-5.5, **and the applicant must meet all current licensure requirements.**

(f) (No change.)

**(a)**

**Uniform Construction Code  
Private enforcing agency reauthorization  
fees; trainees**

**Proposed Amendments: N.J.A.C. 5:23-4.21  
and 5.4**

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1985-242.

The agency proposal follows:

**Summary**

The amendment to N.J.A.C. 5:23-4.21 will require the on-site inspection agencies to pay the reauthorization fee on a monthly basis rather than once for the preceding year. This procedure will be less onerous than requiring payment of the fee in a lump sum, and allows agencies to retain their funds for a longer period of time. The amendment to N.J.A.C. 5:23-5.4 will provide additional ways in which persons seeking to be trainees may qualify, by extending the acceptable categories of experience. Moreover, trainees who fail to successfully complete the appropriate courses with two years of the effective date of their employment will not be permitted to renew their registration until successful completion is achieved.

**Social Impact**

The payment of the reauthorization fee of private enforcing agencies in monthly installments will be less onerous than a lump sum payment, and will help reduce cash flow problems which the fee might create. The agencies will retain their funds for a longer period of time. The amendment to N.J.A.C. 5:23-5.4 will enable more individuals to register as trainees by extending the acceptable categories of experience. Moreover, trainees who fail to successfully complete the appropriate courses within two years of the effective date of their employment will not be permitted to renew their registration until successful completion is achieved.

**Economic Impact**

By accepting payment of the reauthorization fee in monthly installments rather than annually in advance, the State will lose interest which it might otherwise earn on the fee revenue and the private agencies will have the benefit of use of the money for a longer period of time. Additionally, trainees who do not successfully complete their required courses within two years of effective date of their employment will be adversely affected because they may not renew their registration until successful completion is achieved.

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

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

- (a) (No change.)
- (b) Reauthorization fee:

1. Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for reapproval as an inspection agency shall pay a fee of \$1000 for each subcode for which authorization is sought plus an amount equal to five percent of the gross revenue earned from State Uniform Construction Code enforcement activities during the previous 12-month period. **This fee shall be paid to the Department in 12 equal installments, beginning with the month immediately following the end of the 12 month period from which the fee is calculated. Payment shall be made prior to the last business day of each month.**

- 2. (No change.)

5:23-5.4 Licenses required

- (a)-(c) (No change.)
- (d) Rules concerning trainee personnel are:
  - 1.-2. (No change.)

3. Persons meeting the following experience requirements shall be eligible to be employed as trainees:

- i. Fire protection inspector trainee—a minimum of [three] **one year[s]** in the fire service or as [an] **a fire inspector, designer, architect, [or] engineer[,] or architectural/engineering field inspector.**
- ii. Building inspector trainee—a minimum of three years experience with building construction as a journeyman, contractor, designer, architect, [or] engineer,[.] **housing inspector, building inspector or as an architectural or engineering field inspector.**
- iii. Plumbing inspector trainee—a minimum of three years as a journeyman plumber, **plumbing inspector, designer, architect, [or] engineer [.] or as an architectural or engineering field inspector.**
- iv. Electrical inspector trainee—a minimum of three years experience as a journeyman electrician, **electrical inspector, designer, architect, [or] engineer [.] or as an architectural or engineering field inspector.**

4.-5. (No change.)

6. To remain employed by an enforcing agency, a trainee must enroll in, and successfully complete, the appropriate approved course(s) within two years of the effective date of his employment as required in N.J.A.C. 5:23-5.5(b). **Trainees who fail to successfully complete the appropriate course(s) within two years of the effective date of their employment will not be permitted to renew their registration until successful completion is achieved.**

- 7.-14. (No change.)
- (e) (No change.)

**(a)**

**Uniform Construction Code  
Engineers and Architects Proposal (See  
17 N.J.R. 645(b))**

Take notice that the Department of Community Affairs will defer taking any action on the amendments to N.J.A.C. 5:23-2.15 and 2.21 proposed in the March 18, 1985 Register, until such time as all appeals in the case of State of New Jersey Board of Architects v. North, Superior Court Docket No. C-0056-84, have been exhausted and a final judgment has been issued.

**EDUCATION**

**STATE BOARD OF EDUCATION**

Proposals numbered PRN 1985-249 and 250 are authorized by the State Board of Education, Saul Cooperman, Secretary.

Submit comments by June 5, 1985 to:  
Lorraine L. Colavita  
Executive Assistant for Administrative  
Practice and Procedure  
Department of Education  
225 West State Street  
Trenton, New Jersey 08625

**(b)**

**Standards for Determining Seniority  
Proposed Amendments: N.J.A.C. 6:3-1.10**

Authority: N.J.S.A. 18A:4-10, 18A:4-15, 18A:28-9 et seq.

Proposal Number: PRN 1985-249.

The agency proposal follows:

**Summary**

The proposed amendments to Standards for Determining Seniority, N.J.A.C. 6:3-1.10(1)16 are being introduced to clarify the intent of the Commissioner and the State Board of Education in regard to the manner in which seniority shall be accrued under the rules for determining seniority as revised in

September 1983 for persons serving in departmentalized grades seven and eight under elementary endorsement. It is also noted that the word "subject" has been inserted in subparagraph ii to correct an omission in the version adopted by the State Board on June 1, 1983. Additionally, there are proposed amendments in paragraph 15 of this subsection that codify the description of the secondary category to be consistent with the format utilized in the elementary category. The word "subject" has been inserted in subparagraph iii to again correct an omission in the rule adopted on June 1, 1983.

The rules for determining seniority as revised in September 1983 define the elementary category as being limited to ". . . Kindergarten, grades 1-6 and grades 7-8 without departmental instruction." Additionally, the authorization of the elementary endorsement has been interpreted for many years as permitting persons holding such endorsement to teach any subject in grades K-8. As a consequence of these two circumstances, some confusion has arisen as to where seniority will accrue under the new rules for persons holding elementary endorsements who taught in departmentalized grades seven and eight prior to September 1, 1983 and who continued to teach in these grades thereafter. The Commissioner, in a recent declaratory judgment, interpreted the intent of the rules to permit those persons who taught in departmentalized grades seven and eight under elementary endorsement to count all such time served prior to September 1, 1983 in the elementary category for seniority purposes. Further, the Commissioner's decision provided that those persons who continued to serve under elementary endorsement in departmentalized grades seven and eight after September 1, 1983 would begin accruing seniority in the secondary category limited to grades seven and eight and to the specific subject taught.

In January 1985, the State Board of Education affirmed the Commissioner's interpretation but recommended that the seniority rules be revised to provide explicit language to assure clarity and conformity with that interpretation. These proposed amendments will provide the necessary clarity of intent of the State Board of Education when it originally revised the rules for determining seniority in September 1983 and will simplify the process of future decision-making as it relates to seniority. Additionally, the State Board directed the Commissioner to review the rules pertaining to certification and to advise the Board of any amendment that would be required in order to insure consistency of intent and purpose between the rules governing seniority and certification. Rule changes related to defining the scope of the elementary authorization are presently under review, but will not be considered at this time.

**Social Impact**

The impact of the proposed amendments is limited to those teachers whose seniority entitlement may be or may have been affected by the amendments of the rules for determining seniority adopted in September 1983.

**Economic Impact**

There will be no additional cost to school districts or to the State resulting from the adoption of the proposed amendments since the adoption of said amendments results only in a change in who may claim seniority but does not either increase staff or create implementation costs.

**Full text** of the proposal follows (additions shown in bold-face thus).

6:3-1.10 Standards for determining seniority

(a)-(k) (No change.)

(l) The following shall be deemed to be specific categories but not necessarily numbered in order of precedence:

1.-14. (No change.)

15. Secondary. The word "secondary" shall include grades 9-12 in all high schools, grades 7-8 in junior high schools, and grades 7-8 in elementary schools having departmental instruction.

i. Any person holding an instructional certificate with subject area endorsements shall have seniority within the secondary category only in such subject area endorsement(s) under which he or she has actually served.

ii. Whenever a person shall be reassigned from one subject area endorsement to another, all periods of employment in his or her new assignment shall be credited toward his or her seniority in all subject area endorsements in which he or she previously held employment.

iii. Any person employed at the secondary level in a position requiring an educational services certificate or a special subject field endorsement shall acquire seniority only in the secondary category and only for the period of actual service under such educational services certificate or special **subject** field endorsement.

iv. Persons employed and providing services on a district-wide basis under a special subject field endorsement or an educational services certificate shall acquire seniority on a district-wide basis.

16. Elementary. The word "elementary" shall include Kindergarten, grades 1-6 and grades 7-8 without departmental instruction.

i. District boards of education who make a determination to reorganize instruction at grades seven and eight pursuant to these rules must do so by adoption of a formal resolution setting forth the reasons for such reorganization.

ii. Any person employed at the elementary level in a position requiring an educational services certificate or a special subject field endorsement shall acquire seniority only in the elementary category and only for the period of actual service under such educational services certificate or special **subject** field endorsement.

iii. Persons employed and providing services on a district-wide basis under a special subject field endorsement or an educational services certificate shall acquire seniority on a district-wide basis.

iv. **Persons serving under elementary endorsements in departmentally organized grades seven and eight prior to September 1, 1983 shall continue to accrue seniority in the elementary category for all such service prior to and subsequent to September 1, 1983. In addition, such persons shall accrue seniority in the secondary category but limited to the district's departmentally organized grades seven and eight and the specific subject area actually taught in such departmentally organized grades, subsequent to September 1, 1983.**

17. (No change.)

(m) (No change.)

**(a)****Pupil Transportation  
Standards for School Buses****Proposed Amendments: N.J.A.C. 6:21-5.1  
through 6:21-5.12****Proposed New Rules: N.J.A.C. 6:21-5.13  
through 6:21-5.24**

Authority: N.J.S.A. 18A:4-15 and 18A:39-21.  
Proposal Number: PRN 1985-250.

The agency proposal follows:

**Summary**

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 and 18A:39-21, proposes to amend Standards for School Buses, N.J.A.C. 6:21-5.1 through 6:21-5.12 and to propose new rules N.J.A.C. 6:21-5.13 through 6:21-5.24.

On June 1, 1983, the State Board of Education, adopted by reference, Standards for School Buses and Operations, National Minimum Standards for School Buses, 1980 Revised Edition, and repealed N.J.A.C. 6:21-5, 6:21-6, 6:21-18 and 6:21-19.

These proposed amendments are necessary to restore rules that were inadvertently repealed for school buses manufactured prior to June 1, 1983. The proposed new rules are enhancements to Standards for School Buses and Operations, National Minimum Standards for School Buses, 1980 Revised Edition and address New Jersey's standards of school bus safety as proposed by organizations and agencies associated with pupil transportation operations.

A summary of the proposed amendments N.J.A.C. 6:21-5.1 through 6:21-5.12 and a summary of the proposed new rules N.J.A.C. 6:21-5.13 through 6:21-5.24 are presented as follows:

**6:21-5.1 School bus standards**

This section details the Standards for School Buses and Operations, National Minimum Standards for School Buses, 1980 Revised Edition, which was adopted by reference and is incorporated throughout this subchapter. No amendments are proposed in this section but are included in the proposal for clarity and cross-reference purposes.

**6:21-5.2 Parking brakes**

This section specifies the requirements for parking brakes on school buses. The proposed amendment permits the mounting of a parking brake lever to the left of the driver on Types A and B buses, but mandates the mounting of the parking brake to the right of the driver on Types C and D buses.

Another proposed amendment in this section deletes the word "independent" to allow the warning device to be integrated into the parking brake system.

**6:21-5.3 Exhaust system**

This section specifies the requirements for exhaust systems on school buses. No amendments are proposed but are included in the proposal for convenience.

**6:21-5.4 Instruments and instrument panel**

This section specifies the requirements for instruments and instrument panels on school buses. The proposed amendment requires that gauges and instruments be identified and a tell-tale light be installed to indicate operation of the stop lights.

**6:21-5.5 Transmission**

This section specifies the requirements for transmissions on school buses. The proposed amendment changes the terminology to reflect technical language and requires other safety features pertaining to heavy duty parking brakes.

**6:21-5.6 Doors**

This section specifies the requirements for doors on school buses. The proposed amendments further enhance safety features on school bus doors.

**6:21-5.7 Identification**

This section specifies the requirements for school bus identification and "out of service" signs. The proposed amendment restores the "out of service" sign requirements for school buses manufactured prior to June 20, 1983, addresses advertising on school buses and specifies precise lettering of the words "school bus."

**6:21-5.8 Lamps and signals**

This section specifies the requirements for lamps and signals on school buses. The proposed amendment restores the specifications dealing with strobe lamps on school buses manufactured prior to June 20, 1983 and outlines alternative ways for compliance.

This proposed amendment also deletes certain specifications for sealed beam type strobe lamps and requires a monitoring system for school bus warning lamps.

**6:21-5.9 Mirrors**

This section specifies the requirements for mirrors on school buses. The proposed amendments detail the size of mirrors for different types of buses and mandates measurement of a cross over mirror.

**6:21-5.10 Tailpipe**

This section specifies the requirements for tailpipes on school buses. The proposed amendment permits tailpipes to extend up to a maximum of two inches beyond the rear bumper.

**6:21-5.11 Windows and windshield**

The proposed amendment expands the title to include windshield and the specifications for windshields. This section also specifies the requirements for windows on school buses.

**6:21-5.12 Special education vehicle standards**

This section specifies the requirements for vehicles used to transport special education pupils. The proposed amendments add specific safety features for this population of students.

**6:21-5.13 Horns**

This proposed new section specifies that school buses shall be equipped with dual horns.

**6:21-5.14 Color chassis**

This proposed new section permits wheels to be various colors.

**6:21-5.15 Color body**

This proposed new section mandates a contrasting color background for bus identification and the color of the words "emergency doors."

6:21-5.16 Emergency doors

This proposed new section requires an approved safety glazing vision panel and specifies location on Types B, C, and D buses.

6:21-5.17 Tires and rims

This proposed new section requires all tires to be the same size on a school bus.

6:21-5.18 Drive shaft

This proposed new section requires the drive shaft to be protected by a metal guard as a safety feature.

6:21-5.19 Fuel tank

This proposed new section allows the manufacturers flexibility in the standard for a fuel tank(s) on a Type A bus.

6:21-5.20 Heaters

This proposed new section mandates shut off valve in the hot water heater system on Types B, C and D buses, and authorizes the manufacturer's standard for Type A buses.

6:21-5.21 Insulation

This proposed new section details the specifications for materials to be used in insulating the floor of Type A buses.

6:21-5.22 Rub rails

This proposed new section requires the attachment of rub rails at specific points in the vehicle.

6:21-5.23 Seats and crash barriers

This proposed new section requires all seats to be forward facing.

6:21-5.24 Wheelhousing

This proposed new section specifies that 16-gauge steel shall be used in constructing the wheelhousing.

The Department of Education has submitted this proposal to the senior staff of the Department of Education and to the Department's Administrative Code Review Committee which includes representatives from the following individuals and associations for review and evaluation.

1. County Superintendents of Schools
2. New Jersey Association of School Administrators
3. New Jersey Association of School Business Officials
4. New Jersey Education Association
5. New Jersey Principals and Supervisors' Association
6. New Jersey School Boards Association

These amendments and additions will help to improve the safety environment of each transported pupil by incorporating the latest in school bus engineering design. Many of these recommendations and approvals came from representatives of school district and private contract bus operators who have had many years of experience in transporting New Jersey pupils. Other recommendations and approvals came from representatives of the Division of Motor Vehicles.

**Social Impact**

The improvement of school bus construction standards will ensure a higher degree of safety of pupils who are transported to and from school and to school related activities. Since some of these buses are also used for the transportation of senior citizens and adult handicapped persons, these groups will also be the beneficiaries of these increased safety standards.

**Economic Impact**

District boards of education will incorporate these revised amendments into their specifications when ordering school buses.

Since each of these changes or additions is a standard manufacturing item, these should be no increase in cost to the buyer.

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

6:21-5.1 School bus standards

(a) The State Board of Education authorizes the use of Standards for School Buses and Operations, National Minimum Standards for School Buses, 1980 Revised Edition, which are issued as recommendations of the Ninth National Conference on School Transportation. These standards are divided into sections covering definitions, chassis standards and body standards. The purpose is to define school buses, minimum chassis and body standards and assign responsibility for providing the defined equipment. Only pages 1 through 34 of the 1980 revised edition of Standards for School Buses and Operations (future editions, subsequent amendments and supplements, covering definitions and school bus chassis and body standards), are incorporated by reference and hereby adopted as a rule.

1. This document is available for review at the Office of Pupil Transportation, Division of Finance, New Jersey Department of Education, 1676 North Olden Avenue, Trenton, New Jersey 08638, or at the Office of Administrative Law, CN 301, Trenton, New Jersey 08625.

2. This document may be purchased from the National Safety Council, 444 North Michigan Avenue, Chicago, Illinois 60611.

6:21-5.2 Parking brakes

(a) The section on parking brakes, found at page 6, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. The parking brake shall hold the vehicle stationary, or to a limit of traction of the braked wheels, on a 20 percent grade under any condition of legal loading and on a surface free from snow, ice and loose material.

2. When applied, the parking brake shall remain in an applied position with the capability set forth in 1 above, despite exhaustion of the source of energy used for the application or leakage of any kind.

3. A parking brake lever shall be mounted to the right of the driver on **Types C and D buses** and in a position that is easily accessible. **On Types A and B buses, the parking brake lever may be mounted to the left of the driver.**

4. The parking brake shall be equipped with an [independent] on or off warning device.

6:21-5.3 Exhaust system

(a) The section on exhaust systems, found at page 9, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. An exhaust system shall not exit under any operating window of a bus.

6:21-5.4 Instruments and instrument panel

(a) The section on instruments and instrument panel, found at page 11, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. All gauges and instruments must be appropriately [labeled] **identified**.

2. **Telltale light, plainly visible to the driver, shall be installed to give a positive indication of the operation of the stop lights.**

6:21-5.5 Transmission

(a) The section on transmissions, found at page 14, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. A shifting control pattern shall be affixed to a point convenient to the driver.

2. There shall be a [manual lock] detent on the automatic transmission shift [control] lever to insure that the transmission cannot accidentally move from neutral to a drive gear without driver effort.

3. School buses not equipped with park position on the shift control selector for automatic or semi-automatic transmissions shall be equipped with a heavy duty parking brake.

6:21-5.6 Doors

(a) The section on doors, found at page 17, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. [Air doors and assemblies, excluding windshield washers, need a second air tank.] When a bus is equipped with air doors or other air operated assemblies, excluding windshield wipers, an additional air tank is needed for the operation of those assemblies.

2. The emergency door shall be designed to be opened from the inside and outside of the bus and shall be equipped with a fastening device which may be quickly released, but is designed to offer protection against accidental release. Control of the fastening device from the driver's seat shall not be permitted.

3. The emergency door fastening device shall be equipped with a suitable electric plunger-type switch connected with a buzzer located in the driver's compartment. The switch shall be enclosed in a metal case, and wires leading from the switch shall be concealed in the bus body. The switch shall be installed so that the plunger contacts the farthest edge of the slide bar in such a manner so that any movement of the slide bar will immediately close the circuit on the switch and activate the buzzer.

4. The emergency door may be equipped with a locking system which incorporates an [inter-locking] interlocking electrical circuit that prevents the bus from being started while the emergency door is locked.

6:21-5.7 Identification

(a) The section on identification, found at page 19, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. "Out of Service" signs, when installed, shall be placed front and rear, shall be of steel, aluminum or other durable material, and shall be 25 inches in length and 12 inches in width. A center type fold sign shall be utilized and the hinge shall have a nonrusting pin.

2. The letters shall be arranged as follows:

OUT OF

----- fold line

SERVICE

3. The color of all lettering shall be green on a background of yellow.

4. The size of the letters shall be as set forth in the following table[.]:

	HEIGHT	WIDTH	STROKE	SPACING
For the words OUT OF	three inches	two inches	1/2 inch	1/2 inch
For the word SERVICE	five inches	three inches	one inch	1/2 inch

5. The owning or operating organization shall be conspicuously identified in letters at least three inches high, located on each longitudinal side of the exterior of the bus. Such identification shall be completely horizontal and below the window line.

6. No advertisement of any kind shall be exhibited either on the interior or exterior of the school bus, with the exception that the manufacturer's and vendor's trade name(s) shall be permitted to be exhibited on the bus.

(b) For all school buses manufactured before June 20, 1983, the owner of said vehicles shall have a choice of conforming said vehicles to the specifications in (a) above or in the alternative shall be permitted to apply the following specifications:

1. School buses shall be identified with words "School Bus" printed in letters not less than eight inches high, located between the warning signal lamps, as high as possible without impairing visibility of the lettering on the front and rear of the vehicle. There shall be no other lettering on the front or rear of the vehicle, except that the words "Emergency Door" shall be applied on the emergency door.

2. The "Out-of-Service" signs shall meet the specifications described in (a)1 through 6 above.

6:21-5.8 Lamps and signals

(a) The section on lamps and signals, found at page 20 in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. Types A and B buses shall install incandescent signal lamps.

2. Types C and D buses shall use either the incandescent or strobe lamps.

3. Interior lamps shall be provided which adequately illuminate the aisle and step-well.

4. All lamps and their installation shall be of a type approved by the Director of the Division of Motor Vehicles.

5. If strobe lamps are utilized, the front and rear signal lamps on each school bus shall be equipped with eight electronic strobe lamps, four red and four amber, working in an automatic integrated system. The warning lamps shall be of a type approved by the Director of the Division of Motor Vehicles, Department of Law and Public Safety.

6. Eight Par 46 [clear] sealed beam type strobe lamps shall be utilized. [The lamps shall be equipped with four red and four amber, seven inch diameter, 7/8 inches high-dome plastic lenses. The exterior surfaces of the lenses shall be smooth so as to avoid entrapment of dirt and to provide for ease of cleaning.]

7. The solid-state strobe power supply shall provide the electrical power to energize the sealed beam flash tubes. The power supply shall energize the lamps at a combined alternating flash rate of 120-128 flashes per minute. The power supply shall be fully enclosed in a metal environmental container with a minimum metal wall thickness of 0.060 inch.

8. The power supply shall be fully enclosed within the bulkhead.

(b) [Paragraph] Item number 5, found at page 21, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and the following is substituted:

1. All buses shall be equipped with a monitor which monitors the front and rear school bus warning lamps of the school bus[.]. [t]The monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse or circuit breaker against any short circuit or intermittent shorts.

(c) Item number 6, found at page 21, in the document referenced in N.J.A.C. 6:21-5.1 is deleted.

(d) For all school buses manufactured before June 20, 1983, the owner of said vehicles shall have a choice of conforming said vehicles to the specifications in (a), (b) and (c) above or in the alternative shall be permitted to apply the following specifications:

1. Each school bus shall be equipped with eight electronic strobe warning lamps, four red and four amber, working in an automatic integrated system. The warning lamps shall be of a type approved by the Director of the Division of Motor Vehicles, Department of Law and Public Safety.

2. The strobe lamps shall be matching in size and the color shall be uniform for both the red and amber. Light emission shall be measured by a photometer.

3. The strobe lamps shall be installed and maintained to specifications promulgated by the Director of the Division of Motor Vehicles, Department of Law and Public Safety.

4. Two front and two rear red lamps shall be located approximately six inches below the top of the bus, as near the sides as is possible, and equidistant from the center.

5. The four amber lamps shall be actuated by the driver approximately 300 feet prior to each school bus stop. The lamps shall be controlled by a foot switch located in front of the clutch pedal on the floor board. In the case where automatic transmissions are used, the foot switch shall be located in front of where the clutch pedal normally would have been located. Opening the entrance door shall turn off the amber lamps and turn on the red lamps. Closing the entrance door shall turn off the red lamps and recycle the system automatically for the next stop.

6. Each strobe warning lamp shall have a monitoring device which gives positive visual indication, to the driver, of lamp status at all times.

7. Eight Par 46 sealed beam type strobe lamps shall be utilized.

8. Two independent dual alternating capacitive discharge solid-state strobe power supplies, one front and one rear, shall provide the required electrical power to energize the sealed beam flash tubes. The front power supply shall energize the front lamps at a combined alternating flash rate of 120-128 flashes per minute. The rear power supply shall energize the rear lamps at a combined alternating flash rate of 120-128 flashes per minute. Each power supply shall be fully enclosed in a metal environmental container with a minimum metal wall thickness of 0.060 inch.

9. The front power supply shall be fully enclosed within the front bulkhead. The rear power supply shall be fully enclosed within the rear bulkhead.

#### 6:21-5.9 Mirrors

(a) The section on mirrors, found at page 22, in the document referenced in N.J.A.C. 6:21-5.1 is amended by 1 below and is supplemented by 2 through [5] 7 below to include the following:

1. The second paragraph of the subsection entitled exterior mirrors is deleted.

2. **Types B, C and D school buses shall have [T]two exterior convex type mirrors [shall be] mounted forward, one to the left side and one to the right of the driver. Each mirror shall be a minimum of six by six inches overall, rectangular in shape and shall have a minimum 21 inch to a maximum 30 inch radius of curvature on the convex. Each mirror shall be firmly supported and adjustable to give the driver a clear view of the left rear wheels and the immediate adjacent area, and the right rear wheels and the immediate adjacent area.**

i. **Type A school buses shall have two exterior clear view, rearview mirrors mounted forward, below eye level, one to**

**the left and one to the right of the driver and each mirror shall be firmly supported and adjustable to give the driver a clear view past the left rear and right rear of the vehicle. Outside rearview mirrors, as a minimum, shall be four inches wide by six inches high.**

3. Mounting brackets shall be affixed to the bus so as to be securely fastened to the structural frame members of the bus body, or shall be affixed to the existing exterior rearview mirror mounting brackets.

4. The convex type mirrors shall not be a part of or attached to the exterior rearview mirrors.

5. The convex type mirror head and the rearview mirror head shall be mounted so as to have a minimum of two inches distance between the two mirrors.

6. **Cross over mirrors shall have a minimum measurement of six and one-half inches at the base.**

7. **The size of the interior mirror on Type A school buses shall be according to manufacturers' standard.**

#### 6:21-5.10 Tailpipe

(a) The section on tailpipes, found at page 26, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. The tailpipe shall terminate [a minimum of one inch and] **up to** a maximum of two inches beyond the rear bumper.

#### 6:21-5.11 Windows and Windshield

(a) The section on windows, found at page 27, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. Glass in all side and rear windows shall be of AS-2 or better grade. Equivalent plastic AS-4 or better, can only be used in side windows of the bus.

2. **The windshield shall have a horizontal gradient band starting slightly above the line of a driver's vision and gradually decreasing in light transmission to 20 percent or less at the top of the windshield. Glass in windshield shall be of AS-1 grade.**

(b) For all school buses manufactured before June 20, 1983, the owner shall have a choice of conforming said vehicle to the specifications in (a) above or in the alternative shall be permitted to apply the following specifications:

1. **All glass in the windshield, windows and doors shall be of approved safety glass, so mounted that a permanent mark is visible, and of sufficient quality to prevent distortion of the view in any direction.**

2. **Glass in the windshield shall be heat-absorbent, laminated plate. The windshield shall be large enough to permit the driver to see the roadway clearly, shall be slanted to reduce glare, and shall be installed between the front corner posts that are so designed and placed as to afford minimum obstruction to the driver's view of the roadway. Glass in windshield shall be of AS-1 grade.**

3. **The windshield shall have a horizontal gradient band starting slightly above the line of the driver's vision and gradually decreasing in light transmission to 20 percent or less at the top of the windshield.**

4. **Glass in all side and rear windows shall be of AS-2 or better grade, as specified in the American National Standards Institute Code Z26.1-1977, "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," which with all subsequent amendments and supplements is hereby adopted as a rule.**

i. **This document is available for review at the Office of Pupil Transportation, 1676 North Olden Avenue, Trenton, New Jersey 08638, or at the Office of Administrative Law, CN 301, Trenton, New Jersey 08625.**

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

5. Each full side window shall provide an unobstructed emergency opening at least nine inches high and 22 inches wide, obtained by lowering of the window.

6. Knockout-type, split-sash windows may be used.

7. All exposed edges of glass shall be banded.

8. The windows in the rear of the bus shall be stationary.

#### 6:21-5.12 Special education vehicle standards

(a) The section on special education vehicle standards is found at page 29 in the document referenced in N.J.A.C. 6:21-5.1. Type A school buses, found at page 33, is supplemented to include the following:

1. If a ramp device is installed, it shall have a non-skid surface and be securely stored and protected from the elements when not in use.

2. The ramp must have at least three feet of length for each foot of incline.

3. Seat belts or other suitable restraints shall be installed for each passenger including those seated in wheelchairs.

(b) The section on special service entrance doors, found at page 31, item number 9, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. Each door shall be equipped with a device that will actuate a visual or audible signal located in the driver's compartment when the door is not securely closed and the ignition is in the "on" position.

(c) The section on aisles, found at page 32, item 1, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. Any aisle leading from a wheelchair position to the emergency or exit door shall be a minimum width of 30 inches.

(d) The section on Type A school buses used for special transportation, found at page 33, item number 1, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. Special education vehicles of more than 10 persons capacity shall have a Gross Vehicle Weight (G.V.W.) of 10,000 pounds or less.

#### 6:21-5.13 Horns

(a) The section on horn, found at page 11, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. Buses shall be equipped with dual horns of standard make. Each horn shall be capable of producing a complex sound in a band of audio frequencies between approximately 250 and 2,000 cycles per second and each having a total sound level of 110 decibels within these frequency limits. Sound shall be measured at a point on the axis of the horn, three feet from the exit of the horn.

#### 6:21-5.14 Color chassis

(a) The section on color, found at page 7, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. Chassis, including front bumper shall be black. Cowl and fenders shall be in National School Bus Yellow. Hood may be painted National School Bus Yellow, low luster yellow or flat black. Wheels may be black, gray, silver or white. Grille shall be chrome or National School Bus Yellow.

#### 6:21-5.15 Color body

(a) The section on color, found at page 16, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. Bus identification applied to a black background shall be of a contrasting color.

2. The words "Emergency Door" shall be applied to the emergency door, both inside and outside and shall be in red letters at least two inches high.

#### 6:21-5.16 Emergency doors

(a) The section on emergency doors, found at page 17, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. On Types B, C and D school buses, the lower portion of the emergency door shall be equipped with a minimum of 350 square inches of approved safety glazing vision panel.

#### 6:21-5.17 Tires and rims

(a) The section on tires and rims, found at page 13, item number 3, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. All tires on a school bus shall be of the same size.

#### 6:21-5.18 Drive shaft

(a) The section on drive shaft, found at page 7, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. Drive shaft shall be protected by a metal guard or guards to reduce the possibility of the drive shaft whipping through the floor or dropping to the ground if broken.

#### 6:21-5.19 Fuel tank

(a) The section on fuel tank, found at page 10, item number 1, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. Type A school bus fuel tank(s) shall be according to manufacturers' standard.

#### 6:21-5.20 Heaters

(a) The section on heaters, found at page 19, item number 7, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. Each hot water heater system shall include a shutoff valve installed in the pressure lines at the engine. There shall be a water flow regulating valve installed for convenient operation by the driver. The hot water heater system in a Type A school bus shall be according to manufacturers' standard.

#### 6:21-5.21 Insulation

(a) The section on insulation, found at page 20, second paragraph, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. Floor covering in Type A school buses shall be either one-half inch exterior plywood securely fastened to the floor of the school bus in the passenger compartment, tapered to the forward level, or 14 gauge smooth steel floor.

#### 6:21-5.22 Rub rails

(a) The section on rub rails, found at page 23, item number 3, in the document referenced in N.J.A.C. 6:21-5.1 is deleted and substituted with the following:

1. Both rub rails shall be attached at each body post, sedan doors and all other upright structural members.

#### 6:21-5.23 Seats and crash barriers

(a) The section on seats and crash barriers, found at page 24, in the document referenced in N.J.A.C. 6:21-5.1 is supplemented to include the following:

1. All seats shall be forward facing.

#### 6:21-5.24 Wheelhousing

(a) Item number 2 in the section on wheelhousing, found at page 26, in the document referenced in N.J.A.C. 6:21-5.1 is amended to read as follows:

1. Wheelhousing shall be attached to floor sheets in such a manner to prevent any dust, water, or fumes from entering the body. Wheelhousing shall be constructed of 16-gauge steel.

## ENVIRONMENTAL PROTECTION

Proposals numbered PRN 1985-253 and 254 are authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection.

### DIVISION OF WASTE MANAGEMENT

(a)

#### Exemption from Registration

#### Proposed Amendment: N.J.A.C. 7:26-1.7

Authority: N.J.S.A. 13:1E-4 and 13:1E-6.

DEP Docket No. 018-85-04.

Proposal Number: PRN 1985-253.

Submit comments by June 5, 1985 to:  
Howard Geduldig  
New Jersey Department of Environmental Protection  
Office of Regulatory Services  
CN 402  
Trenton, N.J. 08625

The agency proposal follows:

#### Summary

The proposed amendment to N.J.A.C. 7:26-1.7 represents the criteria for exempting the on-site disposal of construction debris and vegetative waste from registration pursuant to the Solid Waste Management Act. The Department of Environmental Protection (the department) solid waste registration requirements are set forth in N.J.A.C. 7:26-2.2.

The proposed amendment requires the contractor's/owner's disposing of specific on-site generated construction waste or debris to follow a standard operating procedure which will provide for consistent disposal operations in New Jersey. The amendment requires that the contractor/owner submit specific information to the department pursuant to N.J.A.C. 7:26-1.7(e)1i, limit for on-site disposal those solids listed in N.J.A.C. 7:26-1.7(e)1iv; and follow specific operating procedures for the on-site disposal of construction debris pursuant to N.J.A.C. 7:26-1.7(e)1v through 1.7(e)1xi. The amendment is expected to reduce the amount of landfill space necessary for disposal of inert debris, thereby conserving the limited space available for solid waste disposal.

#### Social Impact

The proposed amendment provides a positive social impact in not requiring the contractor/owner to dispose of on-site generated construction debris at permitted facilities. The citizens of this State will benefit from the implementation of the proposal in that compliance by builders, land developers, and construction personnel will safely conserve landfill space for the disposal of solid wastes which require the more extensive control afforded by a permitted sanitary landfill.

#### Economic Impact

The proposed amendment will have a major positive economic impact upon builders, land developers, and contractors/owners because less money will need to be spent for off-site disposal of construction debris in New Jersey landfills. In addition, the proposal will benefit those who purchase new homes since this saving is expected to be reflected in lower housing prices. Although it is likely that solid waste landfills will be accepting less construction debris, the department expects there will be no adverse economic impact on solid waste disposal facilities. In addition, the reduction of use of available sanitary landfill space for construction debris will extend the useful life of the existing sanitary landfills and, thereby, reduce possible cost increases to home owners and others generating solid waste who would have to pay to have solid waste transported further if the landfill had closed sooner. The New Jersey Builders Association estimates that 200,000 cubic yards of sanitary landfill space is used each month for the disposal of tree stumps and harmless construction debris at a cost to the consumer of over \$1,000,000.00 per month.

#### Environmental Impact

No significant adverse environmental impact is expected from the exemption of on-site burial of construction debris. Specifically, the types of waste which are allowed to be disposed of on-site are expected to be inert, and, therefore, their disposal should have no negative effect on the environment or health and well being of the citizens of the State. The proposed amendment does provide for the department to indirectly monitor the on-site disposal of construction debris by making it mandatory for the contractor/owner to submit specific documents showing details of the disposal operation thereby ensuring that only those allowable wastes are disposed on site.

A positive environmental impact will result from this regulation, because the limited available landfill space in New Jersey can be conserved for the disposal of other types of solid waste requiring more stringent disposal standards.

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

#### 7:26-1.7 Exemption from registration

(a) Pursuant to N.J.S.A. 13:1E-4a., the commissioner shall exempt, from the requirement of registration as set forth in N.J.A.C. 7:26-2, and shall grant a permanent or temporary certificate of authority to operate, with or without conditions, to the class of solid waste collection or disposal facilities or operations which in the commissioner's opinion meets the general and applicable specific criteria set forth in [(c) and (d) below.] **this section.**

(b)-(d) (No change.)

(e) **Specific criteria for exempting on-site disposal of construction debris and vegetative waste removed in preparation for new construction are set forth in 1 below. Debris and waste resulting from rehabilitative work, partial or minor**

demolition, and agricultural clearing may be exempted subject to approval by the division as set forth in 2 below.

1. The contractor/owner disposing of on-site generated new construction waste, shall be exempt from the registration requirements at N.J.A.C. 7:26-2.2 provided that the following standard operating procedure is followed.

i. The contractor/owner shall submit to the division prior to disposal:

(1) An engineering design identifying the location(s) for disposal, size and depth of the fill area, amount and type of waste for disposal;

(2) An approval letter from the local Health Department and evidence of other applicable county and municipal government approvals; and

(3) Evidence of an approved Soil Erosion and Sediment Control Site Plan, where required, which shall include the information required at (1) above.

ii. The construction waste intended for disposal by the contractor/owner must be only that which is generated on-site. No other wastes shall be transported to the construction site for on-site disposal.

iii. The construction waste for disposal shall be limited to those solids listed below except as provided at iv. below:

stumps and tree parts	
wood	rock/gravel
cardboard	glass
paper waste	non-asbestos insulation
masonry materials (e.g.,	metal (e.g., pipe and wire)
brick, cement, concrete,	asphalt
plaster, and wallboard)	

iv. The department, at its discretion, may permit on-site disposal of additional inert construction debris or vegetative solids other than those listed in iii. above as identified in the engineering design submitted pursuant to i(1) above.

v. The on-site generated construction waste for disposal shall be placed so as to remain a minimum of three feet above the seasonal high groundwater table.

vi. There shall be no disposal of any kind in areas identified under the flood insurance studies prepared by the Federal Emergency Management Agency (FEMA). Pursuant to authority of the State Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., there shall be no disposal of any kind within the encroachment lines of an undelineated stream or within the floodway of a delineated stream. Prior to commencing disposal operations in the 100-year floodplain outside the encroachment lines of an undelineated stream or within the flood fringe area of a delineated stream, a stream encroachment permit shall be obtained.

vii. All fill areas for the disposal of on-site generated construction waste shall be a minimum of 25 feet from any foundation, utility line, or roadway and a minimum of 10 feet from any septic system.

viii. As the on-site generated construction waste is placed in a trench for disposal, layers of soil will be placed on the waste to minimize voids.

ix. Upon closure of a trench utilized for the disposal of on-site generated construction waste, the exposed top surface of the waste shall be covered to grade with at least two feet of clean soil. The surface of the filled area must be seeded or otherwise stabilized in accordance with the "Standards for Soil Erosion and Sediment Controls," adopted at N.J.A.C. 2:90-1 pursuant to N.J.S.A. 4:24-39 et seq., within one working day.

x. The contractor/owner shall store all on-site generated construction waste prior to disposal in an area with proper drainage and in a manner that will minimize the scattering of debris. No such waste shall be stored in an area considered a floodway, stream, or coastal or freshwater wetlands.

xi. The procedure for the disposal of on-site generated construction waste, including trench opening and closing, shall be completed within one working day.

2. The contractor/owner disposing of debris and waste resulting from rehabilitative work, partial or minor demolition, and agricultural clearing, may be exempted from the registration requirements at N.J.A.C. 7:26-2.2 by the division at its discretion. The individual exemptions shall be approved or denied by the division on a case by case basis.

i. The division shall consider the environmental impacts of disposal of waste from rehabilitative work, partial or minor demolition, and agricultural clearing including, but not limited to, the following:

(1) The likelihood of the waste material's contaminating the soil based upon the composition of the waste material; and

(2) The likelihood of the waste material's contaminating the soil based upon the nature and degree of any contamination of the waste material.

ii. If the division approves the disposal of waste from rehabilitative work, partial or minor demolition or agricultural clearing, the owner/operator shall comply with the standard operating procedure set forth in ii-xi above.

(a)

Collection and Haulage

Proposed Readoption with Amendments:  
N.J.A.C. 7:26-3

Authority: N.J.S.A. 13:1E-6.  
DEP Docket No. 017-85-04.  
Proposal Number: PRN 1985-254.

Submit comments by June 5, 1985 to:  
Joseph N. Schmidt, Jr., Esq.  
Office of Regulatory Services  
New Jersey Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:26-3 expires on June 9, 1985. The readoption of the rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption.

The agency proposal follows:

Summary

The Department of Environmental Protection proposes to readopt the Collection and Haulage Regulations, N.J.A.C. 7:26-3 ("Subchapter 3") with minor technical amendments. The Department finds that Subchapter 3, which regulates the establishment, operation and maintenance of collection and/or haulage systems and under which any person engaged in the collection or haulage of solid waste shall complete a registration statement with the Department, continues to be necessary to protect the environment of the State.

N.J.A.C. 7:26-3.1 mandates that the collection and haulage of organic and/or combustible matter or other forms of solid waste be made only pursuant to Subchapter 3 or other methods of collection and haulage as may be approved by the Department. N.J.A.C. 7:26-3.2 establishes the Department's registration requirements for persons engaged in the collection and haulage of solid wastes in the State. N.J.A.C. 7:26-3.3 sets forth exceptions to the applicability of Subchapter 3. N.J.A.C. 7:26-3.4 and 3.5 establish general and specific collector-hauler requirements respectively. N.J.A.C. 7:26-3.6 remains a reserved section of Subchapter 3. N.J.A.C. 7:26-3.7 addresses the issue of smoking, smoldering or burning solid waste in collection or haulage vehicles. N.J.A.C. 7:26-3.8 incorrectly states that Subchapter 3 does not apply to activities associated with hazardous waste and references N.J.A.C. 7:26-7, 8, 9, 10, 11 and 12 for applicable hazardous waste rules. The minor technical amendments clarify the application of Subchapter 3 to the registration of all transporters of solid waste, including hazardous waste, in addition to the requirements of N.J.A.C. 7:26-7, 8, 9, 10, 11 and 12.

The Department has carefully reviewed Subchapter 3. Amendments have continued to be periodically adopted by the Department pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as deemed necessary. The Department now finds that Subchapter 3, in its present form, is necessary for the protection of the State's environment. The Department has determined that Subchapter 3 should continue in effect, subject to such continuing future modification as may be warranted.

**AGENCY NOTE:** Pursuant to the decision of Judge Clarkson Fisher of the United States District Court (DNJ), April 13, 1985, which declared N.J.S.A. 13:1E-126 through 13:1E-135, commonly known and referred to as A-901 unconstitutional, the Department will not attempt to enforce any rules promulgated thereunder including those in Subchapter 3 (specifically, N.J.A.C. 7:26-3.2(b) and (h), which were promulgated pursuant to that statute. However, at this time, the Department is not proposing to repeal those rules.

#### Social Impact

The proposed readoption of Subchapter 3 will allow the Department to continue in full force and effect the beneficial environmental programs resulting from the original promulgation of Subchapter 3. The proposed readoption of Subchapter 3 would provide the Department with the regulatory structure to enforce its responsibilities regarding the collection and haulage of solid waste.

The amendments will clarify the application of Subchapter 3 to the registration of all transporters of solid waste, including hazardous waste, in addition to the requirements of N.J.A.C. 7:26-7, 8, 9, 10, 11 and 12.

#### Economic Impact

The readoption of Subchapter 3 will continue the present economic impact of the regulation, through which transporters must comply with costs for filing and preparation of the registration statement, as well as the administrative requirements of the regulation. The Department will continue to incur costs for administration and overhead in implementing the regulation. The proposed amendments will not generate an economic impact.

#### Environmental Impact

The proposed readoption of Subchapter 3 will have the positive environmental impact of continuing the regulatory

framework necessary to implement the environmental protection benefits of the Department's regulation of the collection and haulage of solid waste in New Jersey.

The proposed amendments will aid in ensuring that transporting will be performed by parties who meet the requirements, and will aid in defining the identity of the transporters, thereby contributing to the protection of the environment.

**Full text** of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:26-3.

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

#### 7:26-3.2 Registration

(a) No person shall engage or continue to engage in the collection or haulage of solid [or hazardous] waste in this State without first filing a completed registration statement with the department. The registration statement shall be signed by the person engaged in or desiring to engage in the collection or haulage of solid [or hazardous] waste, shall be executed on forms prescribed by and furnished by the department and shall state such information necessary and proper to enforcement of this subchapter as the department may require.

(b) (No change.)

(c) No person shall engage in the collection or haulage of solid [or hazardous] waste in this State without first obtaining an approved registration from the department.

(d) No person shall engage in the collection or haulage of solid [or hazardous] waste in this State if such an operation does not meet the collector/hauler requirements listed in this subchapter. In addition, the operator must comply with any other conditions or limitations which may be specified on the approved registration.

(e)-(h) (No change.)

#### 7:26-3.5 Collector-hauler requirements (specific)

(a) (No change.)

(b) All vehicles used for collection and/or haulage [or] of bulky wastes shall be of such a design so as to preclude any spillage onto the roadways and highways of the State.

(c) (No change.)

(d) Rules concerning hazardous [and/or chemical] wastes, excluding all radioactive wastes include:

1. [All collectors and haulers of such wastes shall obtain from the generator of such wastes a bill of lading listing the material(s) to be hauled.] Such wastes shall not be mixed with other categories of wastes in shipment.

2. All collectors and haulers of such wastes are responsible for operating within existing laws governing the transportation of such materials including [Chapter 128, P.L. 1950.] **N.J.A.C. 7:26-7, 8, 9, 10, 11 and 12.**

3. All vehicles used for the collection and haulage of such wastes shall be of a design to preclude any spillage or leakage onto the roadways and highways of the State.

4. Collectors and haulers of such wastes shall not transport drummed hazardous wastes whereby said drums or containers are damaged, rusted, leaking or without proper tight fitting covers or lids.

5. All drums and containers of hazardous [or chemical] wastes in transport to a disposal facility shall be properly labeled in accordance with [existing statute and regulations of the State of New Jersey.] **N.J.A.C. 7:26-7, 8, 9, 10, 11 and 12.**

7:26-3.8 Applicability

[The regulations in this subchapter are not applicable to activities associated with hazardous waste.] See N.J.A.C. 7:26-7, 8, 9, 10, 11, 12 to find **additional** hazardous waste rules.

**HEALTH**

**(a)**

**DRUG UTILIZATION REVIEW COUNCIL**

**Interchangeable Drug Products**

**Proposed Amendments: N.J.A.C. 8:71**

Authority: N.J.S.A. 24:6E-6b.  
 Proposal Number: PRN 247.

A **public hearing** concerning this proposal will be held on May 28, 1985 at 10:00 A.M. at:  
 Hall Conference Room  
 Eighth Floor, Health-Agriculture Building  
 John Fitch Plaza, CN 364  
 Trenton, NJ 08625

Submit comments by June 5, 1985 to:  
 Thomas T. Culkin, Pharm D, MPH  
 Executive Director, Drug Utilization Review Council  
 New Jersey State Department of Health, CN 364  
 Trenton, NJ 08625

The agency proposal follows:

**Summary**

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant saving to consumers.

For example, the proposed propranolol tablets could then be used as a less expensive substitute for Inderal, a branded prescription medicine. Similarly, the proposed disopyramide tablets could be substituted for the more expensive branded product, Norpace.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency", any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including the negative comments of the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as the branded prescription medicines.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found in compliance with the U.S. Food and Drug Administration's regulations.

Of the 60 proposed medicines, only 28 (indicated by asterisks) are not currently listed in the List of Interchangeable Drug Products. The remaining 32 proposed products would only add additional manufacturers to the list.

**Social Impact**

The Social Impact of these proposed changes would primarily affect pharmacists, who would need to either place in their stock, or be prepared to order, those products ultimately found acceptable.

Those additional manufacturers proposed for medications already listed in the formulary simply expand the pharmacist's choice of options.

Physicians and patients are not adversely affected by the additions to the list because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the physician or patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

**Economic Impact**

The proposed amendment will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be quantitated because pharmacies vary in their prices.

Some of the economies occasioned by this proposal accrue to the State of New Jersey through its Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. These savings also cannot be totalled accurately.

**Full text** of the proposed additions follows.

*Acetic Acid/Aluminum Acetate Otic Soln	Pharmafair
Allopurinol tabs 100, 300 mg	Bolar
Aminophylline tabs 100, 200 mg	Cord
*Antipyrine with Benzocaine Otic Soln	Pharmafair
Bacitracin/Polymyxin B Ophth. Oint.	Pharmafair
Bacitracin/Neomycin/Polymyxin B Ophth. Oint.	Pharmafair
Belladonna/Phenobarbital Elixir	NASKA
Betamethasone Valerate Oint., Cream 0.1%	Pharmafair
Bromodiphenhydramine/Codeine P04 Syrup	NPC
*Brompheniramine Comp. E.R. tabs (Dimetapp Formula)	Amer. Ther.
Chlorpropamide tabs 100, 250 mg	Barr
Chlorthalidone tabs 25, 50 mg	Pharm. Basics
*Chlordiazepoxide 5/Clidinium Br 2.5 caps	Amer. Ther.
Dipyridamole tabs 25 mg	Bolar
Dipyridamole tabs 25, 50, 75 mg	Barr, Sidmak, Chelsea
*Disopyramide caps 100, 150 mg	Biocraft, Danbury
Doxycycline Hyclate tabs 100 mg	Barr
Ephedrine/Theophylline/Hydroxyzine Syrup	NASKA
Ergoloid Mesylates S.L. tabs 0.5, 1 mg	Barr
Erythromycin Ophth. Oint.	Pharmafair
*Erythromycin Topical Soln 1.5%	Pharmafair
Fluocinolone Acetonide 0.01% Soln	Pharmafair
Fluocinolone Acetonide Oint., Cream 0.01%, 0.025%	Pharmafair
Furosemide tabs 80 mg	Lederle
Gentamicin Cream, Oint. 0.1%	Pharmafair
Hydroxyzine HCL tabs 10, 25, 50 mg	Purepac
Hydroxyzine Pamoate caps 25, 50, 100 mg	Barr
Ibuprofen tabs 600 mg	Chelsea
Isosorbide Dinitrate S.L. tabs 10 mg	Barr
Isosorbide Dinitrate tabs 20, 30 mg	Barr
Methyclothiazide tabs 5 mg	Pharm. Basics
*Methyclothiazide 5/Deserpidine 0.25/0.5 tabs	Pharm. Basics
Metronidazole tabs 250, 500 mg	Ortho
*Neomycin, Polymyxin, Dexamethasone Ophth. Soln	Pharmafair

*Neomycin/Dexamethasone Ophth. Soln	Pharmafair
Nystatin Oral Susp. 100,000 u/ml	Pharmafair
*Oxyphenbutazone tabs 100 mg	Bolar
Phenazopyridine HCL tabs 100, 200 mg	Amer. Ther.
*Phenazopyridine 50/Sulfisoxazole 500 tabs	Amer. Ther.
*Phentermine HCL caps 30 mg	Chelsea
Prednisolone Sod. P04 0.125% Ophth. Soln	Pharmafair
Prenatal Vits. (Stuartnatal 1 + 1 Formula)	Amer. Ther.
*Promethazine/Codeine P04 Syrup	NPC
*Promethazine/Dextromethorphan Syrup	NPC
*Promethazine/Phenylephrine/Codeine P04 Syrup	NPC
*Promethazine/Phenylephrine Syrup	NPC
*Propranolol tabs 10, 20, 40, 80 mg	Lederle
*Propranolol tabs 10, 20, 40, 60, 80 mg	Chelsea, Schering
*Procainamide HCL sustained release tabs, 250, 500, 750 mg	Bolar
*Reserpine 0.1, Hydralazine 25, HCTZ 15 mg tab	Barr
*Reserpine 0.125/Hydroflumethiazide 50 tabs	Zenith
Sulfamethoxazole tabs 500 mg	Bolar
Sulfamethoxazole/Trimethoprim tabs 400/80, 800/160 mg	Par, Barr
*Thioridazine HCL tabs 100 mg	Cord
*Thioridazine HCL tabs 10, 15, 25, 50, 100 mg	Bolar, Zenith
*Thioridazine HCL mg 150, 200 mg	Barr
*Thioridazine HCL tabs 100 mg	Chelsea
*Trifluoperazine HCL tabs 1, 2, 5, 10 mg	Duramed
*Tropicamide 0.5, 1% Ophth. Solns	Pharmafair
*Warfarin Sodium tabs 2, 2.5, 5 mg	Pharm. Basics

The agency proposal follows:

**Summary**

Pharmacies that participate in the Medicaid and/or PAAD (Pharmaceutical Assistance for the Aged and Disabled) programs are reimbursed by the following method: cost of the drug, plus a dispensing fee. This proposal will raise the dispensing fee by \$0.375, or from \$3.155 to \$3.53. This fee increase pertains only to legend drugs.

The capitation fee for services to Medicaid patients in long term care facilities is also being increased by 11.89 per cent, or \$0.059 per patient day.

This proposal is being made in anticipation of funding for the State Appropriations Act for FY 1986. In order for the Department to implement the fee increase (if approved) on July 1, 1985, it is necessary to submit the proposal at this time.

**Social Impact**

There should be a positive social impact on both pharmaceutical providers and the community. The providers should continue to participate in both the Medicaid and PAAD programs, thereby enabling qualified individuals to receive necessary pharmaceutical services.

**Economic Impact**

The total cost of the fee increase has been projected to be approximately 4.75 million dollars. The cost to the state will be approximately 3.4 million dollars. The federal government will contribute approximately 1.35 million dollars. The reason for the difference in federal and state dollars is that only the Medicaid program is entitled to federal matching funds. The PAAD program is wholly state funded.

The economic impact on pharmaceutical providers who participate in Medicaid and/or PAAD will vary, depending on the number of prescriptions filled under these programs.

There will be no cost to the Medicaid patient. The PAAD beneficiary is required to pay a \$2.00 co-payment for each prescription.

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

10:51-1.17 Legend drug dispensing fee

(a) The dispensing fee for legend drugs, dispensed by providers having Retail Permits to patients other than those in long-term care facilities, shall be [~~\$3.155~~] **\$3.53**. Additional increments shall be given to pharmacy providers who provide the following:

- 1.-3. (No change.)
- (b) (No change.)

10:51-3.15 Capitation of dispensing fee for legend drugs provided to long-term care patients

(a) The New Jersey Medicaid program capitates the dispensing fee for legend drugs for patients in Medicaid approved long-term care facilities in accordance with the total number of Medicaid patient days in the facility(ies) served by the pharmacy.

1. Pharmacies with retail permits dispensing medication in a dispensing system in which a 24-hour supply of unit dose oral medication, both solid (i.e., tablets, capsules) and liquid formulations, is delivered for each patient daily, shall be reimbursed to the cost of all reimbursable legend medication plus a fee of [~~\$.579~~] **\$.638** per patient day.

- i. (No change.)

2. Pharmacies with a retail permit dispensing medication in a dispensing system in which up to a one month supply of oral

# HUMAN SERVICES

Proposals numbered PRN 1985-251 and 252 are authorized by George J. Albanese, Commissioner, Department of Human Services.

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Pharmaceutical Services Manual Dispensing Fee and Capitation Rates**

**Proposed Amendment: N.J.A.C. 10:51-1.17 and 3.15**

Authority: N.J.S.A. 30:4D-6b(6), 7, 7a, 7b, 4D-20, 24. Proposal Number: PRN 1985-252.

Comments may be submitted in writing by June 5, 1985 to:  
 Henry W. Hardy, Esq.  
 Administrative Practice Officer  
 Division of Medical Assistance and Health Services  
 CN 712  
 Trenton, N.J. 08625

Any comments submitted are available for public review at the above address. Copies of the proposed rule are available for review at the Medicaid District offices.

unit dose solid medication is delivered for each patient (i.e., unit dose solids, "bingo" card), shall be reimbursed the cost of all reimbursable legend medication plus a fee of [\$.470] **\$.529** per patient day.

3. Pharmacies with a retail permit dispensing medication in a dispensing system in which a maximum one month supply of medication is delivered for each patient monthly shall be reimbursed the cost of all reimbursable legend medication plus a fee of [\$.415] **\$.474** per patient day.

4. Pharmacies which provide ancillary computerized services, such as, but not limited to, continuously updated computerized patient profiles, clinical records (med sheets and physicians' orders on at least a monthly basis), etc., will receive an added increment of \$.05 per patient day, thereby making the total fee [\$.629] **\$.688**, [\$.520] **\$.579** or [\$.465] **\$.524** depending upon the dispensing system used.

5. (No change.)

**(a)**

**DIVISION OF PUBLIC WELFARE**

**Assistance Standards Handbook  
Income from Apartments or Housekeeping  
Units**

**Proposed Amendment: N.J.A.C. 10:82-4.11  
and 4.12**

Authority: N.J.S.A. 44:7-6 and 44:10-3.  
Proposal Number: PRN 1985-251.

Submit comments by June 5, 1985 to:

Audrey Harris, Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The reference to income from "roomers" at N.J.A.C. 10:82-4.11 is being deleted as superfluous and misleading. Such income is treated fully at N.J.A.C. 10:82-4.12. The current regulations at N.J.A.C. 10:82-4.12 which provide for the use of uniform cost figures for all cases involving rentals from rooms, apartments, or housekeeping units are not structured to provide adequately for those situations in which actual costs are higher. Therefore, this revision, with recasting for purposes of brevity and clarity, would allow the existing figures as a minimum but would require the use of actual cost figures when they are available or can be determined, if the actual cost is higher.

**Social Impact**

Because few, if any, persons are expected to change their behavior as a result of this amendment, the social impact is expected to be slight to non-existent.

**Economic Impact**

For the very small number of AFDC families who receive income as landlords, there could be a beneficial impact if their actual costs are known or can be determined and if those costs

are higher than the standard allowances. There will be no grant reductions as a result of this change. There could be a few cases in which the grants will increase somewhat. The offsetting negative impact on the public treasury is expected to be imperceptible.

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

10:82-4.11 Income from [roomers,] roomer-boarders and table boarders

[Roomers, r]Roomer-boarders or table boarders are non-eligible household members. See N.J.A.C. 10:82-2.3 regarding payment received from such persons.

10:82-4.12 Income from apartments, rooms or housekeeping units [in the eligible unit's home]

(a) When the eligible unit is receiving payment from rental of apartments, rooms or housekeeping units, the net income shall be determined by deducting **the** costs of operation and maintenance from the gross **rental** income received [as follows:].

[1. The monthly cost figure for operation and maintenance are as follows:

- i. With no utilities: \$23.00;
- ii. Including heat only: \$29.00;
- iii. Including all utilities: \$34.00.]

**1. The costs of operation and maintenance are the greater of:**

**i. The actual costs of operation and maintenance, if known or subject to determination, or such reasonable allocation of actual or determined costs as may be indicated according to the space being rented out; or**

**ii. The number of rooms, excluding bathrooms, being rented out multiplied by the applicable monthly cost figure as follows:**

- (1) With no utilities: \$23.00;**
- (2) Including heat only: \$29.00;**
- (3) Including all utilities: \$34.00.**

2.-3. (No change.)

**(b) When the functions of property management including the collection of rents are performed by a member(s) of the eligible unit, the net is earned income, otherwise it is unearned income.**

**INSURANCE**

**(b)**

**DIVISION OF ADMINISTRATION**

**Surplus Lines Insurance Guaranty Fund  
Surcharge**

**Proposed New Rule: N.J.A.C. 11:17-1**

Authorized By: Hazel F. Gluck, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e); N.J.S.A. 17:22-6.40 et seq., and P.L. 1984, c.101, as amended (N.J.S.A. 17:22-6.70 et seq.; 17:30A-1 et seq.).

Proposal Number: PRN 1985-255.

Submit comments by June 5, 1985 to:

Verice M. Mason, Director  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The New Jersey Surplus Lines Insurance Guaranty Fund Act (the "Act," N.J.S.A. 17:22-6.70 et seq.) was intended to "provide a mechanism for the payment of covered claims under certain insurance policies issued by eligible surplus lines insurers; to avoid excessive delays in the payment of the covered claims against insolvent eligible non-admitted insurers; and to avoid financial loss to claimants or policyholders because of the insolvency of an eligible, non-admitted insurer."

The Act authorizes imposition of a surcharge on policy premiums for certain surplus lines coverages issued or renewed by an eligible surplus lines insurer on or after the effective date of the Act. The Commissioner of Insurance has determined that a surcharge be imposed in order to protect New Jersey purchasers of surplus lines insurance issued by eligible unauthorized insurers from the potential impact of insurer insolvencies. In his Order dated January 14, 1985, then Commissioner Kenneth D. Merin set forth the specific surcharge amount of four percent, an inception date of February 1, 1985, and general conditions of handling the collection and forwarding of surcharge monies to the New Jersey Surplus Lines Insurance Guaranty Fund (the "Fund").

In order to provide further guidance to New Jersey surplus lines agents charged with the responsibility of implementing collection and forwarding of the surcharge, then Acting Commissioner Jasper J. Jackson issued an Order dated February 28, 1985. The February 28 Order provided more detailed procedural guidelines to agents pending adoption of parallel rules promulgated in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The proposed rules create a new chapter in Title 11 of the New Jersey Administrative Code under a new subtitle for surplus lines. The subchapter proposed herein sets forth the elements of the two orders mentioned above for public comment.

Section one of the proposed new rule provides a purpose statement; section two sets forth the scope of the proposed new rule. Section three contains definitions for the proposed subchapter.

N.J.A.C. 11:17-1.4 describes the four percent surcharge and its identification to the insured. Section four also sets forth the base gross premium amount upon which the surcharge is levied, and provides for return of any surcharge on unearned premiums to the policyholder.

N.J.A.C. 11:17-1.5 contains the general procedures for agent handling of surcharge monies. N.J.A.C. 11:17-1.6 deals with the forwarding of surcharge monies to the Fund, and provides for late penalties.

N.J.A.C. 11:17-1.7 deals with the filing and contents of a quarterly surcharge statement to be prepared by surplus lines agents. N.J.A.C. 11:17-1.8 sets forth recordkeeping and general compliance responsibility of surplus lines agents. The form to be used is a part of the proposed rule at Appendix A.

#### Social Impact

The proposed new subchapter codifies the Commissioner's Orders of January 14 and February 28, 1985, and will ease

compliance by surplus lines agents with the requirements of the New Jersey Surplus Lines Insurance Guaranty Fund Act. Insureds will benefit from the institution of procedural safeguards in the monitoring and reporting of surcharges which they must pay. The Department of Insurance will be aided in performing its function of ensuring proper collection and allocation of monies.

#### Economic Impact

Surplus lines agents will experience some increased administrative costs as a result of the Commissioner's Orders and the proposed new rules. Insureds, which are now obligated to pay the premium surcharge on policies issued or renewed after February 1, 1985, will not be affected economically by the provisions of the proposed rule. Department administrative costs will increase in overseeing compliance with the rule. This increase will be absorbed in the general budget.

Full text of the proposed new rule follows.

### SUBTITLE L SURPLUS LINES

#### CHAPTER 17 SURPLUS LINES RULES

#### SUBCHAPTER 1. SURPLUS LINES INSURANCE GUARANTY FUND SURCHARGE

##### 11:17-1.1 Purpose

This subchapter is intended to implement the surcharge provisions of the New Jersey Surplus Lines Insurance Guaranty Fund Act, N.J.S.A. 17:22-6.70 et seq. ("the Act"; P.L. 1984, c.101, as amended), as imposed by the Commissioner's Orders of January 14 and February 28, 1985.

##### 11:17-1.2 Scope

(a) This subchapter applies to all licensed New Jersey surplus lines agents. The premium surcharge applies to all insurance policies issued by eligible surplus lines insurers for property and casualty lines of direct insurance. The following lines are excepted:

1. Workers' compensation;
2. Title insurance;
3. Surety bonds;
4. Credit insurance;
5. Mortgage guaranty insurance;
6. Municipal bond coverage;
7. Fidelity insurance;
8. Investment return assurance;
9. Ocean marine insurance; and
10. Reinsurance.

##### 11:17-1.3 Definitions

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

"Association" means the New Jersey Property Liability Insurance Guaranty Association created pursuant to P.L. 1974, c.17 (N.J.S.A. 17:30A-1 et seq.).

"Fund" means the New Jersey Surplus Lines Insurance Guaranty Fund created pursuant to P.L. 1984, c.101 (N.J.S.A. 17:22-6.70 et seq.).

"Gross premium" means the direct premium written before any return premium; the total premium charged for insurance coverage.

"Net premium" means the original gross premium less granted return premiums.

“Return premium” means the amount of money due the insured if a policy is cancelled or reduced in coverage.

**11:17-1.4 Surcharge: identification; collection**

(a) A surcharge of four percent is imposed on all surplus lines policies written or renewed by an eligible surplus lines insurer on or after February 1, 1985.

1. Where the term of the policy is greater than one year and the premium thereon is payable in annual installments, surcharges shall be collected on any premium installment due and payable on or after February 1, 1985.

(b) All surcharges payable under the Act or this subchapter shall be identified to the insured as the “New Jersey Surplus Lines Insurance Guaranty Fund Surcharge.”

1. The “New Jersey Surplus Lines Insurance Guaranty Fund Surcharge” shall appear as a separate item on any cover note, binder, declaration sheet, renewal notice, policy, endorsement, or any other document on which the policy premium is quoted to the insured.

(c) Surcharges shall be collected on gross premiums, including additional gross premiums charged for coverage changes or basic premium adjustments.

1. Collection shall be at the time of payment of premium and delivery of the cover note, certification of insurance, policy or other initial confirmation of insurance;

2. No premium receipts tax, commissions or other assessments shall be levied or collected with respect to any surcharges imposed under the Act or this subchapter.

3. The surcharge which is applicable to any return premium shall be refunded to the policyholder.

**11:17-1.5 Handling of surcharge monies**

(a) All surcharges collected by surplus lines licensees must be deposited, within one business day of receipt, in a separate, insured, interest-bearing trust account established in a bank or other financial institution located in this State.

1. The trust account shall be captioned with the individual or trade name of the licensee; and

2. The trust account shall be captioned with the statement “in trust for the New Jersey Surplus Lines Insurance Guaranty Fund.”

(b) All interest credited to the trust account shall be due and payable to the Fund on or before the end of the month next following the close of the calendar quarter in which the interest has been credited to the trust account.

1. Late interest payments shall be subject to the same interest charge as provided in N.J.A.C. 11:17-1.6(b)(1).

**11:17-1.6 Transmittal of surcharge monies to the Fund; late payments**

(a) Surcharge monies shall be due and payable to the Fund on or before the end of the month next following the close of the calendar quarter in which the surcharges are received by the surplus lines licensee.

(b) Payments received more than three days after the end of the month in which payment is due shall be deemed late.

1. Late payments shall be subject to an interest charge based on the average 90-day Treasury bill rate as published by the Federal Reserve in *Selected Interest Rates*, for such bills auctioned during the week immediately preceding either the date of receipt of the payment or the date such payments are due, whichever is greater; and

2. Interest will be assessed for the period between the end of the month in which payments are due and the date of the month by which payments are actually received by the Fund. Interest will be computed at the rate set in this rule by apply-

ing one-twelfth of that rate for each month or part thereof for which payment is late.

(c) Late payment charges shall be assessed by the Fund in accordance with its plan of operation, which shall include provisions for collection of late payments by the Fund. The Fund shall review all late submissions, calculate the amount of late payment interest penalties and send an assessment notice to the licensee of any penalty amount due and a copy of that notice shall go to the Surplus Lines Examining Division.

**11:17-1.7 Quarterly Surcharge Statement**

(a) Each surplus lines licensee shall file, along with the surcharge and interest amounts described in this subchapter, a “Quarterly Surcharge Statement.” The Quarterly Surcharge Statement, included in this subchapter as Appendix A, and of which copies are available at the Surplus Lines Examining Office, Department of Insurance, shall be filed in duplicate as follows:

1. By mailing the original, along with a copy of a check or money order in the amount of surcharges and interest due, to the:

New Jersey Department of Insurance  
 Surplus Lines Examining Office  
 201 East State Street  
 CN 325  
 Trenton, New Jersey 08625

2. By also mailing a copy of the Quarterly Surcharge Statement, along with the original check or money order payable to the “New Jersey Surplus Lines Insurance Guaranty Fund” in the amount of surcharges and interest due, to the:

New Jersey Surplus Lines Insurance  
 Guaranty Fund  
 220 South Harrison Street  
 East Orange, New Jersey 07018

(b) The Quarterly Surcharge Statement shall be due on or before the end of the month next following the close of the calendar quarter and shall contain the following information:

1. Name, address and telephone number of the licensee and the surplus lines agent (SLA) number;
2. Name and address of the bank or other institution in which the surcharge trust account is established, along with the account number and specific bank branch;
3. Gross premiums received during the quarter;
4. Return premiums paid during the quarter;
5. Net premium (that is, (3-4));
6. Surcharge amount due;
7. Interest amount due;
8. Total due to Fund; and
9. A certification signed by the licensee that the information contained in the Statement is true and correct.

**11:17-1.8 Surplus lines agent recordkeeping and responsibility**

(a) Each surplus lines agent shall maintain in his or her office in this State sufficient documentation and records to enable the Commissioner to verify the accuracy of the information contained in the Quarterly Statement for a period of three years following the expiration or cancellation of any policies of insurance subject to a surcharge under the Act and this subchapter.

(b) Records to be maintained shall show, among other things required by law:

1. Date of delivery of the cover note, certificate of insurance, policy or other initial confirmation of insurance;
2. Date of receipt of the surcharge from the insured;

3. Date of cancellation of any policy for which a return premium is due or owing; and

4. Date of payment and amount of any return premium and associated return surcharge.

(c) Failure of a licensee to maintain proper records, to collect and remit surcharges and trust account interest, to collect and remit surcharges in a timely manner, to file true and correct Quarterly Surcharge Statements, or to file true and correct Quarterly Surcharge Statements in a timely manner, shall be deemed to be unworthy conduct, and shall be cause for disciplinary proceedings pursuant to N.J.S.A. 17:22-6.16, N.J.S.A. 17:22-6.61 and N.J.S.A. 17:22-6.76.

Appendix A

QUARTERLY SURCHARGE STATEMENT  
SURPLUS LINES INSURANCE

for the calendar quarter ending \_\_\_\_\_, 19\_\_.

- 1. Name and address of licensee and SLA number.
- 2. Name and address of the bank or other financial institution in which the surplus lines surcharge trust account is established (identify the specific bank branch, if any).
- 3. Surplus Lines surcharge trust account number.
- 4. a) New Jersey gross direct premiums received during quarter. \$ \_\_\_\_\_
- b) New Jersey additional premiums received during quarter. \$ \_\_\_\_\_
- c) Total gross premiums received during quarter. (Line 4(a) plus Line 4(b)). \$ \_\_\_\_\_
- 5. New Jersey return premiums paid during quarter. \$ \_\_\_\_\_
- 6. Total New Jersey net premiums. (Line 4(c) minus Line 5). \$ \_\_\_\_\_
- 7. Surcharge amount due (4% times amount on Line 6). \$ \_\_\_\_\_
- 8. Interest amount due. \$ \_\_\_\_\_

CERTIFICATION

I hereby certify that the above information is true and correct. I am aware that if any of the above information is willfully false, I am subject to punishment.

\_\_\_\_\_  
Original Signature of Licensed Surplus Lines Agent (no stamps or other facsimile signatures)

\_\_\_\_\_  
Name of Licensed Surplus Lines Agent (typed or printed)

LABOR

(a)

DIVISION OF EMPLOYMENT SERVICES

Workfare Employment Service General Assistance Employability Program

Proposed Readoption as New Rules:

N.J.A.C. 12:35

Proposed New Rules: N.J.A.C. 12:35-2.3, 2.4, 2.5, 2.6 and 12:35-5

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 44:8-114.

Proposal Number: PRN 1985-241.

Submit comments by June 5, 1985 to:

David L. Phillips, Chief  
Bureau of Manpower Training Programs  
Division of Employment Services  
Labor and Industry Building, Room 1013  
John Fitch Plaza  
Trenton, N.J. 08625

The agency proposal follows:

Summary

N.J.S.A. 44:8-114 requires that employable General Assistance (GA) recipients, except when good cause exists, perform public work in return for their General Assistance grant. The Division of Employment Services (ES) is designated with the responsibility to develop this public works program and to assign employable GA recipients to approved worksites. The director of welfare of the municipality providing public assistance may participate in worksite assignments under the auspices of the Division of Employment Service.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:35 expired on May 1, 1985. It is therefore proposed for readoption as a new rule. Amendments made to the expired text are shown in brackets and underlining. The Division of Employment Services has reviewed N.J.A.C. 12:35 and has determined that it is necessary, adequate, and reasonable. In order to improve the readability of the rule, N.J.A.C. 12:35-2.3 and 2.4 are proposed for deletion from those sections, and for recodification as new rules at N.J.A.C. 12:35-2.5 and 2.6. New rules are proposed for codification at N.J.A.C. 12:35-2.3 and 2.4. Subchapter 5 in N.J.A.C. 12:35 has been added to the rule, and is therefore proposed as a new subchapter.

The Division of Employment Services has coupled its legislative responsibilities to provide a public works program with its agency mission to develop and maintain employment opportunities for workers in New Jersey directed toward placing people in jobs and offering employability development services to registrants who require services beyond the labor-exchange function. The changes proposed by the proposed amendments would provide for (a) the timely identification of all required participants, (b) the providing of employability development services where warranted and (c) a clearly defined "Failure to Comply" regulation which will justify a GA disqualification request.

Specifically, the proposed revisions to the regulations include: (1) An employability appraisal interview to determine if services beyond a worksite assignment are indicated. Alternate services would be indicated if the registrants employment skills and/or work history indicates that a monitored work search would lead to employment; or a registrants' lack of skills, vocational and/or academic preparation, or need for rehabilitative services would preclude a GA recipient from securing employment and eventually leaving public assistance; (2) a provision that worksite assignments may only be made for worksites that have been approved by the Division of Employment Services and a Municipal Worksite Agreement is on file. This is the prevailing practice and it would ensure that the participant is not exposed to threatening health and safety conditions and that appropriate wage rates are assigned to all positions under agreements; (3) a provision that establishes a training worksite and job search activity in lieu of a municipal worksite assignment. This provision would allow participants to meet their worksite requirement while undertaking activities which would lead to employment in the shortest period of time; (4) a provision that identifies specific "Patterns of Behavior" which will justify a welfare termination request for "failure to comply" with workfare activities or employability development services. This provision will assure that the rights of the program participants are protected by clearly identifying failure to comply acts which could cause a welfare termination.

By subchapter, the specific changes are as follows: N.J.A.C. 12:35-1.2; subject changed to **Registration** and Reporting requirements; forms. Moreover, the proposed amendment clarifies that all but exempted GA recipients must report for registration to the Employment Service. It indicates use of 511F instead of 511B form and eliminates use of form NJES-1A as notification of E.S. registration. N.J.A.C. 12:35-1.2(b), (c) and (d) describe forms used and routing of forms between the Employment Service and the municipal welfare departments. N.J.A.C. 12:35-1.3 eliminates the concept of an interim worksite because in practice this form of worksite does not exist. Subsections (c), (d) and (e) describe criteria used by E.S. to ensure that worksites meet standards. N.J.A.C. 12:35-1.4 clarifies information listed on worksite notices and the routing of such notices. N.J.A.C. 12:35-1.5 and 1.6: the order in which these two sections appeared in the subchapter was reversed to put the sequence in which the events occur in the process of operating the program. N.J.A.C. 12:35-1.5 eliminates the need to evaluate an interim worksite since the category of worksite does not exist in practice. (b) describes what happens when a worksite is not approvable by the Employment Service. N.J.A.C. 12:35-1.6 delineates agency responsibility to monitor worksites. N.J.A.C. 12:35-2.3 describes training worksites as a new category to which a GA recipient may be assigned as a program participant. N.J.A.C. 12:35-2.3 and 2.4 identify training worksites and job orientation worksites as additional assignments for program participants and describes how they are established. N.J.A.C. 2.5 and 2.6 were originally codified as N.J.A.C. 12:35-2.3 and 2.4. They were recodified, with the text unchanged, to become N.J.A.C. 12:35-2.5 and 2.6, to improve the readability of these regulations. N.J.A.C. 12:35-3.1(a) and (b) describe how hours of participation in training worksites and job search orientation worksites are calculated. N.J.A.C. 12:35-3.2 removes responsibility from Municipal Welfare Department (MWD) for contacting E.S. labor market analysts for wage rate information. Proposed new rule N.J.A.C. 12:35-5 describes the behavior of a program partici-

pant or a recipient referred to E.S. for participation in the workfare program which could result in the termination of welfare benefits for "failure to comply" with program requirements. N.J.A.C. 12:35-5 also described the process that is followed when the Employment Service informs a welfare department that a recipient is not complying with program requirement and requests that appropriate action be taken.

#### Social Impact

N.J.A.C. 12:35 has enabled GA recipients the opportunity to work in jobs, thereby learning skills which aid in preparing them for long-term employment. Both the individual and society as a whole have benefitted thereby. Public employers have benefitted from the availability of an increased pool of workers, and employers in the private sector also have benefitted as well due to the availability of new employees for long-term employment. The readoption of N.J.A.C. 12:35 is necessary in order to continue these beneficial results.

The proposed amendments will have a positive social impact by strengthening protections and safeguards to participants mandated to participate in a workfare program as a condition of continued eligibility for public assistance. In addition, the expansion of the public worksite activity to include "training worksites" and "job search orientation" with its monitored worksearch will afford the participant an opportunity to find and retain unsubsidized employment and end their dependency on public assistance. The objectives of these regulations are as follows:

- a. To introduce recipients to new job skills.
- b. To reinforce the value of work in return for benefits received.
- c. To encourage successful job seeking experience by registrants.
- d. To modify work avoidance behavior by the hard-to-employ.
- e. To prepare unskilled workers to gain entry level jobs.
- f. To provide necessary rehabilitative and educational services that will benefit recipients of public assistance and the taxpayers of the State as welfare costs decrease and employment figures increase.

#### Economic Impact

N.J.A.C. 12:35 has had a beneficial economic effect in that it has improved the employability of the participants in the program. This has decreased the cost of the welfare benefits portion of the GAEP program by decreasing the number of individuals eligible to collect general assistance.

Participants in the program have been prepared to obtain long term employment, and the State's revenues have benefitted due to the increase in taxes received from these individuals. Readoption of N.J.A.C. 12:35 is necessary for the continuation of these beneficial effects. Over 15,000 welfare recipients have entered employment as a result of the GAEP. In fiscal year 1984, GAEP placed 2896 recipients in employment. As a result, an estimated 4.3 million dollars in welfare grants were not paid in welfare benefits. The work performed at worksite jobs by GA recipients was valued at approximately 5.5 million dollars, and the GAEP created seven dollars in welfare program reductions for every one dollar spent in GAEP program costs.

The proposed changes are expected to decrease the cost of the welfare benefits portion of the GA program by decreasing the number of individuals eligible to collect General Assistance. This decrease will be realized in two ways:

- a. By improving the employability potential of the participants by utilizing the Job Search Orientation and Training

Worksite activity. Improved employability will lead to successful attainment of private sector employment and a discontinuance of GA benefits.

b. By terminating GA benefits to individuals who refuse to cooperate in approved activities and/or refuse to seek employment. "Failure to comply" terminations will be based on clearly defined standards of conduct which will provide much-needed guidance to Municipal Welfare Departments which must rule on such complaints.

The savings due to these factors would be divided between the State and local municipality in 75 percent to 25 percent ratios respectively, the existing ratios for GA benefits costs.

Welfare savings will be the result of the participants accepting their responsibilities to secure employment through the services offered in the General Assistance Employability Program or understanding the consequence of not accepting this responsibility.

**Full text** of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 12:35.

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

## SUBCHAPTER 1. GENERAL PROVISIONS

12:35-1.1 (No change.)

12:35-1.2 **Registration** and reporting requirement's forms

(a) **All employable general assistance recipients not specifically exempted by the municipal welfare department** will report to municipal worksites only after the Employment Service/General Assistance Employability Programs staff is in receipt of Form 511[B]F and the Municipal Worksite Agreement (MWSA) from the municipal welfare department (MWD). [Upon receipt of the Municipal Worksite Agreement, Employment Service staff will notify the municipal welfare director of receipt of such by use of form NJES-1A] General assistance recipients may not be assigned to worksite activities until the ES/GAEP staff has received both form 511[B]F and the signed MWSA (See the GA Manual at N.J.A.C. 10:85-3.2(g)).

(b) **The MWD will submit the 511F to the appropriate office of the New Jersey Division of Employment Services (ES). Receipt of the 511F by ES shall fulfill registration requirement of recipients with ES.**

(c) **Once registered with ES, a recipient remains registered as long as he or she remains on an employable general assistance grant and is not exempt from work requirement.**

(d) **All recipients for whom a 511F is received shall be called into the ES for an appraisal of their employability potential and referral to an appropriate worksite, employability development service and/or job.**

12:35-1.3 Workers' Compensation coverage requirements

(a) To insure State Workers' compensation coverage for all worksite participants [in interim worksite assignments (interim being those worksites developed by municipal welfare directors),] [the] a Municipal Worksite Agreement must be on file with the Employment Service. (See Attachment 1).

(b) [signed by both] The municipal welfare director, and the worksite agent [the worksite agent being a paid employee of the agency for whom the worksite activity is being performed and who has the authority from that agency for conducting onsite supervision of participants and maintaining time and attendance reports) and a representative of the ES must sign Municipal Worksite Agreements.

(c) **The ES will monitor and evaluate all MWSA within 14 days after receipt of the agreement from the municipal welfare director. The worksite agreement will be evaluated by ES staff based on the following criteria:**

1. **Working conditions are such that they do not represent a substantial risk to the individual's health and safety;**

2. **That such employable persons will not be used to replace any regular employees of any department or unit of any municipality, county and state agency or nonprofit agency or institution;**

3. **That the wage rate for the position covered by the MWSA is commensurate with beginning regular employees similarly employed.**

(d) **If any of the above criteria is not met, ES staff will inform the municipal welfare director that the MWSA is not acceptable and no participants may be assigned to the worksite.**

(e) **Failure to comply with ES recommendations will lead to the municipality's assumption of responsibility for liability coverage on that worksite, as indicated in the GA Manual N.J.A.C. 10:85-10.2(f).**

12:35-1.4 [Notices] **Worksite assignments; notices**

A notice in duplicate will be prepared for each worksite participant and will be signed by the participant. (See Attachment 2.). The notice will inform the participant of his or her worksite **job title job description**, schedule ([days of the week, hours of work] **hours per month**) the wage rate used to determine this schedule, whom to report to on the worksite, [and] the address of the worksite **and the date to report**. One copy will be retained by the participant, the other will be kept in the participants' **welfare department** case folder. **Municipal welfare directors must forward an additional copy of the notice to the appropriate ES/GAEP office, for evaluation, for any worksite assignments they make.**

[12:35-1.5 Attendance and worksite activity monitoring

Attendance and worksite activity for interim worksite assignments developed by municipal welfare directors will be monitored during the two week period by the welfare director or other appropriate municipal welfare staff so designated by the director of the welfare.]

12:35-1.5 **Worksite assignments; evaluations**

(a) **Worksite assignments will be evaluated by ES/GAEP staff based on the following criteria:**

1. **The individual assigned is capable of performing the duties involved at the worksite;**

2. **Working conditions are such that they do not represent a substantial risk to the individual's health and safety;**

3. **The participant has a reasonable means of transportation to the worksite assignment. "Reasonable" shall in this case mean at no cost to the participant. See the GA Manual N.J.A.C. 10:85-10.2(e)3.**

(b) **If any of the criteria in (a) above is not met a worksite assignment will not be made. E.S. staff will inform the welfare director that the participant must be reassigned because the criteria in (a) above is not being met. Reassignment may include orientation, job search, active registrant pool, employability development services, training worksite, or another worksite assignment if such is available. Failure to comply with ES/GAEP recommendations for reassignment will lead to the municipality's assumption of responsibility for liability coverage on that worksite, as indicated in the G.A. Manual, N.J.A.C. 10:85-10.2(f).**

[12:35-1.6 Interim worksite assignments; evaluations

(a) Interim worksite assignments developed by the municipal welfare director will be monitored and evaluated by the Employment Service within 14 days after the ES has received a MWSA. The interim worksite assignments will be evaluated by ES/GAEP staff based on the following criteria:

1. The individual assigned is capable of performing the duties involved at the worksite.

2. Working conditions are such that they do not represent a substantial risk to the individual's health and safety.

3. The participant has a reasonable means of transportation to the worksite assignment. "Reasonable" shall in this case mean at no cost to the participant.

(b) If any of these criteria is not met, ES staff will inform the welfare director through use of form 1A that the participant is being reassigned immediately. Reassignment may include orientation, job search, active registrant pool, or another worksite assignment if such is available. Failure to comply with ES/GAEP recommendations for reassignment will lead to the municipality's assumption of responsibility for liability coverage on that worksite.]

#### 12:35-1.6 Attendance and worksite activity; monitoring

Attendance and worksite activity will be monitored by the agency (municipal welfare department or Employment Service) that develops the MWSA and makes the individual worksite assignments.

### SUBCHAPTER 2. LOCATION OF WORKSITE ACTIVITY

12:35-2.1 (No change.)

12:35-2.2 (No change.)

[12:35-2.3 Worksites in appropriate municipality

Efforts by either the Employment Service or municipal welfare director will be made to develop worksites in the municipality where the employable general assistance recipient receives his/her public assistance grant.]

#### 12:35-2.3 Establishment of training worksites

(a) Training worksites, in rehabilitative and educational agencies, may be established by ES/GAEP staff to allow registrants in need of these services to fulfill their worksite requirement by attending educational and vocational development classes or rehabilitative and therapeutic sessions.

(b) Training worksites may be established in municipal, county and State agencies as well as non-profit social service and/or community agencies and institutions.

(c) A Training Worksite Agreement must be on file with the E.S. and must be signed by the municipal welfare director, the training agent and a representative of the E.S. (See Attachment 3).

[12:35-2.4 Unavailability of worksites in certain municipalities

If worksites are not available in the municipality where an employable general assistance recipient receives his/her public assistance grant, the municipal welfare director will immediately notify the appropriate Employment Service staff, and worksite development will become the responsibility of the Employment Service.]

#### 12:35-2.4 Establishment of Job Search Orientation worksite

(a) Job Search Orientation worksite may be established by ES/GAEP staff to allow registrants with marketable employ-

ment skills to fulfill their worksite requirement by attending sessions for work search techniques and a monitored job search.

(b) Individuals assigned to this worksite activity will be required to supply documented employer contacts to ES/GAEP staff during the period assigned to the monitored worksearch. No participant shall remain in this activity more than three consecutive months without reassignment to a municipal worksite activity.

(c) A Training Worksite Agreement will be used to establish this worksite activity.

#### 12:35-2.5 Worksites in appropriate municipality

Efforts by either the Employment Service or municipal welfare director will be made to develop worksites in the municipality where the employable general assistance recipient receives his or her public assistance grant.

#### 12:35-2.6 Unavailability of worksites in certain municipalities

If worksites are not available in the municipality where an employable general assistance recipient receives his or her public assistance grant, the municipal welfare director will immediately notify the appropriate Employment Service staff, and worksite development will become the responsibility of the Employment Service.

### SUBCHAPTER 3. SCHEDULING WORKSITE ASSIGNMENTS

12:35-3.1 Hours of work or training

(a) Persons assigned to a municipal worksite by either N.J. E.S. or the MWD shall work only the number of hours equal to the amount of their grant divided by an hourly wage rate commensurate with beginning regular employees similarly employed.

(b) Persons assigned to a training worksite shall participate in accordance with the scheduling procedures of the training agency itself. A notice in duplicate will be prepared for each training worksite participant and will be signed by the participant and the MWD/GAEP representative.

(c) Persons assigned to a job search orientation worksite shall participate the number of hours equal to the amount of their grant divided by an hourly wage rate equal to the minimum wage rate of the state.

12:35-3.2 Determination of prevailing wage rate

In such cases where there are no beginning regular employees similarly employed the N.J. E.S. [or the MWD (See Attachment 3)] will contact the local labor market analyst and determine the prevailing wage rate for that particular worksite assignment. [This hourly wage rate will be recorded as part of the Municipal Worksite Agreement.]

### SUBCHAPTER 4. TYPES OF WORK ALLOWABLE UNDER WORKSITE ACTIVITIES (No change.)

### SUBCHAPTER 5. FAILURE TO COMPLY

12:35-5.1 Patterns of behavior

(a) The following actions or patterns of behavior shall constitute a failure or refusal to participate in ES/GAEP activities and will result in the E.S. making a GA disqualification request to the municipal welfare department:

1. An oral or written statement by a GAEP registrant that he or she will not participate or continue to participate in GAEP or its activities;

2. A registrant refuses a suitable municipal worksite or orientation assignment without good cause;

3. A registrant refuses a suitable job referral or job offer without good cause;

4. A registrant seriously disrupts a GAEP activity or the orderly administration of the overall program or behaves in a manner that constitutes a threat or hazard to agency staff, project agents and their staff and/or other GAEP registrants;

5. The record and employment history of the registrant shows that he or she has the required education, experience or aptitude to perform the assignment but fails to utilize these skills and experience to benefit from the activity. The determining factors would be the GAEP staff's reasonable judgment as to whether the individual intentionally is performing at or near his or her potential.

6. A registrant fails to make a bona fide application for employment when asked to do so by GAEP or other E.S. staff.

7. A registrant voluntarily leaves a training or rehabilitation worksite before completion of said assignment.

8. A registrant fails or refuses to respond to two call-in notices.

#### 12:35-5.2 Notification of failure to comply

(a) Notification of noncompliance is established through the use of the Interagency Report (NJES-1A).

(b) The municipal welfare director shall determine whether good cause existed for a failure or refusal to participate and shall notify the appropriate ES/GAEP staff of their decision through the use of the NJES-1A. (See the GA Manual at N.J.A.C. 10:85-3.2(g)7, 10:85-10.6-10.7 and 10:85-7.3-7.4).

(c) Participants determined in noncompliance by the municipal welfare director shall be denied all GA assistance according to regulations developed by the Division of Public Welfare.

## LAW AND PUBLIC SAFETY

### DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Proposals numbered PRN 1985-260, 261 and 262 are authorized by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control, and Amusement Games Control Commissioner.

Submit comments by June 5, 1985 to:

John F. Vassallo, Jr., Director  
Division of Alcoholic Beverage Control  
or

John F. Vassallo, Jr.  
Amusement Games Control Commissioner  
Division of Alcoholic Beverage Control

Richard J. Hughes Justice Complex  
CN 087  
Trenton, N.J. 08625

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:2-4 and 13:2-20 expire on July 3, 1985. The readoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of notices of readoption. The amendments to the readoptions become effective upon publication in the Register of notices of adoption.

(a)

### Issuance or Transfer of Municipal Retail Licenses Other Than Club Licenses, By the Director

Proposed Readoption without Change:  
N.J.A.C. 13:2-4.1, 4.7 and 4.10

Proposed Readoption with Amendments:  
N.J.A.C. 13:2-4.2 through 4.6, 4.8, 4.9 and 4.11

Authority: N.J.S.A. 33:1-20, 1-22, 1-23, 1-23, 1-25, 1-26, 1-27, 1-34 and 1-39.

Proposal Number: PRN 1985-260.

The agency proposal follows:

#### Summary

The basic responsibility to issue, renew and transfer retail liquor licenses is vested by law in the municipal governing body of the community where that license is located. In sixteen municipalities in New Jersey that authority has been delegated to a municipal board of alcoholic beverage control. For purposes of the Alcoholic Beverage Law, the governing body or municipal board is called the municipal "issuing authority".

The provisions of N.J.A.C. 13:2-4 are basically derived from the legislative provisions of N.J.S.A. 33:1-20. That Law has as its basic objective the avoidance of any actual or apparent conflicts of interest when a member of the issuing authority seeks to acquire an interest in a retail license in the same community. The Law specifically states that the municipal issuing authority cannot issue any license to any member of the local issuing authority or to any corporation, organization or association in which any member is interested directly or indirectly. Instead, the applications must be made directly to the Director, Division of Alcoholic Beverage Control. Exempt from this Law are club licenses, which can be acted upon by the issuing authority of a municipality, even though individual members of the issuing authority are members of the retail licensed club.

The provisions of Subchapter 4 are proposed for readoption with nonsubstantive and substantive changes. The nonsubstantive amendments will reflect that applications for licensure shall be filed in "triplicate", not "duplicate", as currently contained in Sections 2 and 3. Additionally, the current address of the Division will be inserted in Sections 8 and 11 to replace a former Division location. The substantive changes involve the reevaluation of previous interpretations in the Division of N.J.S.A. 33:1-20, 1-25 and 1-26 concerning fees. The amendments to Sections 3, 4, 5, 6 and 9 will now more clearly emphasize the provisions of N.J.S.A. 33:1-20. In Sections 3 and 9 the fee payable to the Division on renewal will be changed from \$55.00 to \$50.00. In Sections 4, 5 and 6, the required fee on transfer applications will be paid to the municipality where the license is located, not the Division. The Division will receive on such applications a \$50.00 nonrefundable fee.

With respect to provisions submitted for readoption without change, Section 1 restates the statutory language of N.J.S.A. 33:1-20. The provisions of Sections 2, 3, 4, 5, 6, 8, 9, 10 and 11 identify the procedure to file applications under

this Subchapter; including the required application forms, fees, advertisements, refunds on denials of applications and amendment of application on changed facts. These sections parallel the requirements of law and companion regulations in Subchapters 2 and 7 for retail licensure when the municipal issuing authority acts on other licenses in the community. Section 7 requires the issuing authority to submit a resolution that it knows of no reason why an application forwarded to the Director under this Subchapter should be denied.

The regulatory provisions in Subchapter 4 will sunset on July 3, 1985 pursuant to Executive Order 66(1978) in consequence of amendments to Sections 3 and 9 which revised the filing fee from \$50.00 to \$55.00 for retail licenses issued by the Director under the Subchapter. See 12 N.J.R. 343(b), 12 N.J.R. 494(b). The Subchapter has been reviewed within the agency and the regulations proposed for reoption with substantive and nonsubstantive changes are necessary, adequate, reasonable, efficient, understandable and responsive to the legislative objectives and purposes that exist today.

**Social Impact**

One of the primary tenets of alcoholic beverage control is to insure the “. . . fair, impartial, stringent and comprehensive administration of this chapter”, N.J.S.A. 33:1-23, 1-24 and 1-39. To eliminate any issues that might arise involving fairness and impartiality, the Legislature in adopting N.J.S.A. 33:1-20 disqualified the municipal issuing authority from acting on retail license applications where one or more of its members are interested directly or indirectly in the licensure request. Removing the municipal issuing authority from any actions concerning its own members totally eliminates any questions of possible favoritism or lack of impartiality.

Review of such applications will be done by the Director, Division of Alcoholic Beverage Control. This review will include an impartial and comprehensive background investigation of the applicant’s qualifications, the source of funds used to purchase a license or licensed premises and inquiry into the suitability of the proposed licensed premises by the New Jersey State Police—Alcoholic Beverage Control Enforcement Unit. Any required hearings will be conducted either by the Director completely or through initial processing before the Office of Administrative Law. The ultimate determination of whether the grant of an interest in a retail license to an issuing authority member is in the best public interest will be made by the Director.

This procedure for independent review, which is reiterated in the provisions of Subchapter 4, provides the best available method to eliminate any possible appearances of conflict in the quasi-judicial review of retail liquor license applications. It also enhances the integrity of the decision making process by affording the citizens of a municipality an independent agency to voice any concerns it may have to an application filed by one of their governing body members.

**Economic Impact**

As of February 20, 1985, there were 49 retail liquor licenses in which members of a municipal issuing authority possessed an interest in such licenses in their communities. The economic impact on the Division in reviewing and issuing these 49 licenses is borne essentially from the general budget allocations provided the Division and the Alcoholic Beverage Control Enforcement branch of the State Police. The minimal fees required to be filed in Subchapter 4 applications are deposited in the General Treasury of the State. The modifications in the amount of fees the Division receives on renewal (from \$55.00 to \$50.00) will only amount to a revenue reduction of \$245.00

per year. The transfer fees that will now be paid to the municipality will be recouped in most part by the receipt in the Division of \$50.00 on each transfer application. Existing resources and personnel can adequately handle these matters. Absent these regulations, greater expenditures of resources would be anticipated to process appeals or conduct disciplinary investigations based upon allegations of actual or apparent conflicts of interest in the issuance by the municipal issuing authority of licenses to one of its members.

**Full text** of the proposed reoption without change appears in the New Jersey Administrative Code at N.J.A.C. 13:2-4.1, 4.7 and 4.10.

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

SUBCHAPTER 4. ISSUANCE [OF THE] **OR** TRANSFER OF MUNICIPAL RETAIL LICENSES OTHER THAN CLUB LICENSES BY THE DIRECTOR

13:2-4.2 Application to the director

Application to the director shall be made upon the same prescribed application forms as are used in all applications for municipal licenses (copies are attainable from the clerk of the municipality wherein the premises sought to be licensed are situated). The application shall be fully executed and submitted in [duplicate] **triplicate**.

13:2-4.3 Fees; new or renewal licenses

(a) Where application is made for a new license or for a renewal of a license, there shall also be submitted supplemental application forms (copies may be obtained from the director), fully executed in [duplicate] **triplicate** and accompanied by:

1. A fee of [~~\$55.00~~] **\$50.00** in cash, money order or certified check drawn to the order of Division of Alcoholic Beverage Control; and
2. A certification from the municipal clerk or other responsible municipal official stating that the municipal **new** license or renewal fee has been paid and the amount of such fee.

13:2-4.4 Fee for license transfer to other persons

Applications for transfers of licenses to other persons shall be accompanied by a fee of 10 percent of the full municipal annual or term license fee for said license, which fee shall be paid **to the municipality wherein the license is located. In addition to that fee, a fee of \$50.00 shall be paid** in cash, money order or certified check drawn to the order of Division of Alcoholic Beverage Control and retained by the director whether or not the transfer is granted, and accounted for as are other license fees.

13:2-4.5 Fee for license transfer to other premises

Applications for transfer of licenses to other premises shall be accompanied by a fee of 10 percent of the full municipal annual or term license fee for said license, which fee shall be paid **to the municipality wherein the license is located. In addition to that fee, a fee of \$50.00 shall be paid** in cash, money order or certified check drawn to the order of Division of Alcoholic Beverage Control and retained by the director whether or not the transfer is granted, and accounted for as are other license fees.

## 13:2-4.6 Combined transfers

Transfers of licenses both as to person and place may be applied for simultaneously and in a single application, accompanied by a fee of 20 percent of the full municipal annual or term license fee for said license; which fee shall be paid **to the municipality wherein the license is located. In addition to that fee, a fee of \$50.00 shall be paid** in cash, money order or certified check drawn to the order of Division of Alcoholic Beverage Control and retained by the director whether or not the transfer is granted, and accounted for as are other license fees. Where there is such a combined transfer application, the applicant may not obtain a person-to-person transfer of the license if the place-to-place transfer is denied.

## 13:2-4.8 Advertising notice of application

The rules applicable to advertising notice of application for municipal license or the transfer thereof [subchapters 2 and 6 of this chapter] (N.J.A.C. 13:2-2 and N.J.A.C. 13:2-7) shall apply when application is made to the director. However, the notice of application, as published, shall state that such application has been made, and objections, if any, should be addressed[,] to the Director of the Division of Alcoholic Beverage Control, [25 Commerce Drive, Cranford, New Jersey 07016] **Richard J. Hughes Justice Complex, CN 087, Trenton, New Jersey 08625.**

## 13:2-4.9 Refund of fees

If the application for new or renewal license is denied for any reason whatsoever or withdrawn, statutory refund of 90 percent of the fee deposited with the municipality shall be made by said municipality to the applicant. The remaining 10 percent shall be deemed an investigation fee and shall be retained by the municipality. The [\$55.00] **\$50.00** fee accompanying the [supplemental] application shall be retained by the director.

## 13:2-4.11 Notice of change in facts in application

The rules applicable to filing with a municipal issuing authority notice of change in the facts set forth in application for retail license and publishing notice of change in corporate structure and furnishing proof thereof (N.J.A.C. [13:2-2:12] **13:2-2.12** through 2.14) shall apply to all retail licensees holding licenses issued by the director. However, the licensee shall file such notice with and furnish such proof to the director and such notice of change in corporate structure, as published, shall state that information concerning the qualifications of any of the current stockholders of the corporate licensee shall be addressed to the Director of the Division of Alcoholic Beverage Control, [25 Commerce Drive, Cranford, New Jersey 07016] **Richard J. Hughes Justice Complex, CN 087, Trenton, New Jersey 08625.**

**(a)****Transportation by Licensees; Transit Insignia****Proposed Readoption with Amendments:  
N.J.A.C. 13:2-20**

Authority: N.J.S.A. 33:1-1(x) and (y), 1-2, 1-3, 1-10, 1-11, 1-12, 1-13, 1-14, 1-23, 1-25, 1-26, 1-28, 1-28.1 through 28.4, 1-35, 1-39, 1-50, 1-55 and 1-66.

Proposal Number: PRN 1985-261.

The agency proposal follows:

**Summary**

The commercial transportation of alcoholic beverages into, out of or within the State of New Jersey is prohibited unless the vehicle transporting the alcoholic beverages is properly licensed by the Division of Alcoholic Beverage Control. N.J.S.A. 33:1-2 and 1-28. Most of the State issued licenses that authorize the production or wholesaling of alcoholic beverages in this State carry the privilege of transporting these products subject to rules and regulations. A similar privilege exists for retail consumption and retail distribution licensees. Additionally, a specific license to transport alcoholic beverages and maintain a warehouse is authorized by N.J.S.A. 33:1-13.

The provisions of N.J.A.C. 13:2-20, which are proposed for readoption with amendments, establish a procedure for licensees to acquire the appropriate transit insignia or special transportation permit to license the vehicles being utilized in their business operations. In addition, the privileges and limitations of a transit insignia or permit are outlined in the regulations. A brief explanation of the specific sections in Subchapter 20 and the proposed amendments follows:

Section 1—Identifies the requirement upon a licensee to obtain a transit insignia or special transportation permit for each vehicle to be used for the transportation of alcoholic beverages. The vehicle must be owned or leased by the licensee. In those cases where the licensee is utilizing a vehicle owned or leased by another person (most often a licensed solicitor of a wholesaler or manufacturer) there must be an agreement between the licensee and the solicitor recognizing that the solicitor's vehicle has been contracted for by the licensee to be utilized in furtherance of the licensee's business. Because of other section changes, the referenced sections will be amended in Section 1.

Section 2—Sets forth the delivery document requirements for retail licensees when they transport alcoholic beverages in licensed vehicles. True and complete records must be possessed with delivery, retained for one year, and be available for inspection. An amendment to this section will restructure the provisions into paragraphs (a) and (b).

Section 3—Sets forth the delivery document requirements for State licensees that have the privilege of selling at retail to consumers when they transport alcoholic beverages in licensed vehicles. An amendment adding the record retention and inspection availability requirements as in Section 2 will be cited as new subparagraph (a)3. Further, existing paragraph (b) will be relettered as paragraph (c). A new paragraph (b) will be added identifying the ability of a New Jersey plenary or farm winery licensee to ship its products to consumers via a registered parcel delivery service under stated terms and conditions comporting to the provisions of N.J.S.A. 33:1-28.1 et seq. enacted into law on November 12, 1982.

Section 4—A new regulation will be cited as Section 4. The provisions of current N.J.A.C. 13:2-39.2 will be placed in Section 4 for purposes of locating in one Subchapter all of the regulations referencing the current delivery document requirements involving transportation of alcoholic beverages. This section will encompass transportation by wholesalers, manufacturers or importers, whether licensed in New Jersey or not.

Section 5—A new regulation will be cited as Section 5 captioned "Eligibility for transit insignia or special transportation permit". The provisions of this section will be a consolidation of existing Sections 5, 8, 9 and 10. The subject matter includes: the identification of certain types of licensees that cannot obtain transit insignia because their underlying privileges do not permit transportation of alcoholic beverages; the requirement that the vehicle be properly registered in accord-

ance with state laws; the need to annex with application a copy of the lease agreement for a vehicle that is not owned by the licensee; and the requirement of a basic underlying sale and/or transportation license before issuance of transit insignia or permit.

Section 6—Identifies the application process and fees required for obtaining a transit insignia or special transportation permit. An amendment will identify the distinction between a transit insignia and a special transportation permit.

Section 7—The existing provisions of Section 14, dealing with the terms of a transit insignia or permit and their renewal, will be recited as Section 7.

Section 8—The basic substance of the provisions of Section 11, dealing with the affixing of a transit insignia to the vehicle, will be recited in Section 8. Proposed changes will also identify the requirements in affixing a special transportation permit sticker to passenger type vehicles. This sticker will replace the issuance of a permit which used to be carried within the vehicle.

Section 9—A new regulation will be cited as Section 9 captioned "Restrictions applicable to vehicles bearing transit insignia or permit". The provisions of this section will be a consolidation of existing Sections 4, 7, 12 and 13. The subject matter includes: the prohibition against using a licensed vehicle to transport alcoholic beverages except solely for the licensee's own business; the prohibition against transferring insignia and permit sticker to other vehicles; the requirement to replace marred, defaced or damaged insignia or sticker; and the requirement to remove insignia or sticker when a vehicle is sold or disposed of by the licensee.

Section 10—the existing provisions of Section 15, dealing with the consent of a licensee to a search of a licensed vehicle, will be recited as Section 10.

Sections 11 through 15—the current provisions of these Sections have been either recited or incorporated in previous Sections. The amendments to Subchapter 20, when adopted, will eliminate the need for these Sections.

By virtue of an amendment to N.J.A.C. 13:2-20.11 and N.J.A.C. 13:2-20.14, which changed the yearly expiration date for a transit insignia or special transportation permit from April 30 to August 31, (12 N.J.R. 343(b), 12 N.J.R. 494(b)—eff. 7/3/80), the entire Subchapter will expire on July 3, 1985. In compliance with Executive Order No. 66, all of the specific sections in Subchapter 20 have been reviewed within the Division and the regulations proposed for readoption with amendments, are necessary, adequate, reasonable, efficient, understandable and responsive to the legislative and regulatory objectives and purposes that exist today.

**Social Impact**

The control of the transportation of alcoholic beverages is an integral element in the legislative objectives of monitoring and regulating all alcoholic beverage activity in this State. The licensure of vehicles complements and completes the total public policy purpose of identifying through some form of licensure or permit all individuals who are licensed to manufacture, store or sell alcoholic beverages; the licensed locations where the product is produced, warehoused or offered for sale; and the licensed vehicles which are utilized to transfer or transport this product. These licensure activities, directed to those engaged in alcoholic beverage activity (over 12,000 State and municipally issued licensees or permittees) allow the State to more easily distinguish lawful activities from unlawful activity.

Through vehicle licensure, the incidents of unlawful diversion of product to improper sources can be disclosed. Protec-

tion against loss of tax revenues flows from this control. So also, licensure permits the State to review the qualifications of the individuals who seek to engage in alcoholic beverage activity in this State. This identification facilitates the overseeing of operations to insure compliance with numerous laws and regulations aimed at the maintenance of orderly, controlled and verifiable transportation of alcoholic beverages. Such statutory or regulatory prohibitions deterred by vehicle licensing and delivery document requirements include: delivery of "free goods", that is, illegal kickbacks; individual deliveries of cooperative orders (only one drop spot permitted); deliveries between nonidentically owned retail licensees (can only purchase from New Jersey licensed wholesalers or suppliers); diversion of goods to non-licensees; retail sales accompanied by delivery during prohibited hours or days of the week; deliveries between State Beverage Distributor licensees (no wholesale to wholesale privileges); deliveries and sales in contravention of the registered distribution—primary source law (transshipping); and house-to-house sale of alcoholic beverages (sales must occur on licensed premises).

**Economic Impact**

The method of obtaining a requisite transit insignia or special transportation permit to transport alcoholic beverages is relatively simple and the cost is moderate. The resultant control and audit tracing capabilities derived from the licensure and recordkeeping requirements encourages full and complete tax remittance to the general Treasury of the State of New Jersey, which tax amounted to approximately \$143,000,000 in 1984.

Strict and comprehensive enforcement of the laws and regulations concerning transportation of alcoholic beverages inures to the benefit of all of the citizens and licensees of this State in not only insuring a proper tax collection; but also in deterring the various illegal activities identified in the Social Impact section that would result in the need for a larger allocation of investigatory and adjudicatory resources to prevent improper alcoholic beverage activity.

In 1984 the Division issued 7,881 transit insignia and 1,819 special transportation permits to the following type licensees:

license type	transit insignia	special transportation permit
wholesale licensees	1,166	901
retail licensees	2,492	864
transportation licensees	4,223	54
	7,881	1,819

The total number of transit insignia and special transportation permits issued in 1984 amounted to 9,700. At a cost of \$25.00 per vehicle per license term, the fees obtained by the Division and remitted to the General Treasury for general use of the State amounted to \$242,500.00. The Division expenses in processing these permits are borne through the budget allocations provided the Division and existing employees in the Licensing Bureau perform these functions.

Absent a controlled, verifiable transportation regulation, the intent of the law would not be achieved and greater expenses and resources would be incurred to prevent product diversion, to collect due and owing taxes and to eliminate unqualified transporters and sellers of alcoholic beverages.

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

13:2-20.1 Transit insignia; transportation of alcoholic beverages

No licensee shall transport alcoholic beverages into, out of, or within the State of New Jersey[,] in any vehicle unless it is owned, [or] leased or contracted for by the licensee. [and unless the] **Such** vehicle, while so used, shall first have issued **thereto** a transit insignia or special transportation permit sticker [affixed thereto, or an inscription painted thereon, as provided in N.J.A.C. 13:2-20.11 or a special transportation permit in the vehicle] as provided in N.J.A.C. 13:2-20.6.

13:2-20.2 Transportation by retail licensee; delivery slip

(a) No retail licensee shall deliver or transport any alcoholic beverages into, out of, or within the State of New Jersey[,] in any vehicle[,] unless the driver of the vehicle has in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the date of delivery, the bona fide name and address of the purchaser or consignee, and the brand, size of container, [and] quantity and price of each item of the alcoholic beverages being delivered or transported. The original or true copy of such delivery slip, invoice, manifest, waybill or similar document shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery, **and shall be available for inspection by [the Director of the Division of Alcoholic Beverage Control and the other issuing authority, and by his or its deputies, inspectors, investigators and agents and by any officer defined by N.J.S.A. 33:1-1(p),] any person authorized to enforce the provisions of the Alcoholic Beverage Law, N.J.S.A. 33:1-1, et seq., unless the director shall have granted to the licensee written permission to keep such documents at another designated place.**

(b) No such licensee shall peddle, barter, or otherwise sell any alcoholic beverages from any vehicle.

13:2-20.3 Transportation by State licensee with retail privileges; delivery slip or route card

(a) No State licensee privileged to sell alcoholic beverages at retail shall deliver or transport any alcoholic beverages in any vehicle, unless:

1. The driver of the vehicle has in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the bona fide name and address of the purchaser or consignee, and the brand, size of container, [and] quantity **and price** of each item of the alcoholic beverages being delivered or transported; or

2. The driver of the vehicle has in his possession[,] a route card [bearing] **which shall contain** the name, address and standing order **of the customer**, and [having entered on such route card] **the entry** at the time of delivery of the date of delivery, [and] the brand, size of container, [and] quantity delivered and the price charged. [provided, however, that in] **In** addition to such route cards, there must be carried in the vehicle a loading list setting forth the total quantity of alcoholic beverages loaded for delivery, indicating as to each brand loaded the total quantity of each size of container[.]; and

3. **The original or true copy of such delivery slip, invoice, manifest, waybill, route card or similar document shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery, and shall be available for inspection by any person authorized to enforce the provisions of the Alcoholic Beverage Law, N.J.S.A. 33:1-1 et seq., unless the director shall have granted to the licensee written permission to keep such documents at another designated place.**

(b) [No such licensee shall peddle, barter, or otherwise sell any alcoholic beverage from any vehicle to any consumer.]

The holder of a New Jersey Plenary or Farm Winery license with retail privileges may authorize the shipment of wine purchased in person at retail on the licensed premises to a designation within this State by a parcel delivery service subject to the following terms and conditions:

1. The New Jersey Plenary or Farm Winery licensee with retail privileges must first file an application for authorization to utilize a parcel delivery service before it makes any such deliveries to consumers. The application is made on a form provided by the Division and must be accompanied by an annual fee of \$150.00. All parcel delivery service permits are for the calendar year and expire on December 31 and must be renewed annually; and

2. The parcel delivery service must first be registered and approved by the Director. Application for approval shall be made on a form to be provided by the Division. No fee is required. Once approved, a parcel delivery service shall not be required to obtain a Transportation License under N.J.S.A. 33:1-13 or any Transit Insignia or Permits under N.J.S.A. 33:1-28 or N.J.A.C. 13:2-20.1 et seq.; and

3. An invoice must be attached to every package stating the purchaser's name, address, destination, quantity of wine being shipped and place of purchase. A copy of the original invoice must be made available for inspection by any person authorized to enforce the provisions of the Alcoholic Beverage Law, N.J.S.A. 33:1-1 et seq. for a period of three years at the office of the licensee; and

4. It is the duty of personnel delivering the wine for a licensee in accordance with N.J.S.A. 33:1-28.1 et seq. and this subsection to seek to determine that, at the time of delivery of wine, the party signing a delivery receipt is of legal age to purchase and consume alcoholic beverages.

(c) No such licensee shall peddle, barter, or otherwise sell any alcoholic beverage from any vehicle to any consumer.

13:2-20.4 [Restriction on use of licensed vehicle] Transportation by other State licensees, importers and manufacturers; delivery documents

[No licensee shall allow, permit or suffer any vehicle for which a transit insignia or special transportation permit was issued to him to be used to transport alcoholic beverages except solely for the licensee's own business.]

(a) No manufacturer, importer or wholesaler shall deliver or transport, directly or indirectly, any alcoholic beverages into, out of, or within the State of New Jersey in any vehicle unless the driver of the vehicle has in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the name, address and New Jersey State assigned license number (if applicable) of the purchaser or consignee, the brand, size of container, terms of sale, quantity and price of each kind of alcoholic beverages being delivered or transported. Such document shall further bear a printed or stamped legend reading substantially as follows:

"The undersigned licensee hereby acknowledges that all of the alcoholic beverages itemized above have been ordered and were received on . . . . ."

(Date)

....."  
(Signature by or for licensee)

(b) Two copies of such delivery slip, invoice, manifest, waybill or similar document shall be truly dated and signed by the licensee or his agent at the time and on the date of actual delivery of any alcoholic beverage. One copy shall be retained

for a period of three years from the date thereof by the manufacturer, importer or wholesaler and the other by the purchasing licensee for a like period at its respective licensed premises, and shall be available for inspection by any person authorized to enforce the provisions of the Alcoholic Beverage Law, N.J.S.A. 33:1-1 et seq., unless the director shall have granted written permission to the manufacturer, importer, wholesaler or retailer to keep its copies at another designated place.

(c) Except that with regard to the following:

1. Sales or transfers from manufacturers or importers to wholesalers or distributors, when the nature of the documentation and transaction precludes the immediate availability of all documents required in (a) and (b) above, compliance shall be deemed to have occurred when all such records are available within a reasonable time following the sale, transfer, delivery and receipt; and

2. Sales or deliveries of keg beer or ale only to retail licensees, when the nature of the documentation and transaction precludes the immediate availability of all documents required in (a) and (b) above, compliance shall be deemed to have occurred when all such records are available upon completion of the operative period of the terms of such sales which shall have been set forth and shall be consistent with the seller's Marketing Manual and Current Price List pursuant to N.J.A.C. 13:2-24.

13:2-20.5 [Licensees ineligible for transit insignia]  
Eligibility for transit insignia or special transportation permit

[No transit insignia shall be issued to a bonded warehouse bottling licensee, plenary retail transit licensee, public warehouse licensee, or warehouse receipts licensee, unless such licensee also holds a license of some type not mentioned in this rule.]

(a) No transit insignia or special transportation permit shall be issued to a bonded warehouse bottling licensee, public warehouse licensee, or warehouse receipts licensee, unless such licensee also holds a license of some type which authorizes the transportation of alcoholic beverages.

(b) No transit insignia or special transportation permit shall be issued for any motor vehicle not properly registered in accordance with State law applicable to such vehicles.

(c) No transit insignia or special transportation permit will be issued for any leased vehicle unless said lease by its terms transfers to the licensee the right to exclusive possession, control and operation of such vehicle when utilized in connection with the licensed business. A copy of the lease must be annexed to any application.

(d) No transit insignia or special transportation permit shall be issued until after the basic manufacture, transportation, wholesale or retail license is issued, and in case of a municipally issued retail license, until the issuance of the license shall have been certified to the director by the municipal issuing authority.

13:2-20.6 Application; fees

(a) Applications for transit insignia shall be filed upon a prescribed form with the director accompanied by the full fee of \$25.00 for each insignia, in cash, money order or certified check payable to the order of the Division of Alcoholic Beverage Control.

(b) Applications for special transportation permit[s], which may be [carried in the vehicle] issued for passenger type vehicles and consist of a sticker that is less conspicuous than a transit insignia, shall be filed upon a prescribed form with the

director accompanied by the full fee of \$25.00 for each permit, in cash, money order or certified check payable to the order of the Division of Alcoholic Beverage Control.

13:2-20.7 [Transfer of transit insignia] Term of transit insignia or special transportation permit; renewal

[Transit insignia or special transportation permits are not transferable and may be used only for the vehicle for which issued, provided, however, that nothing herein contained shall prohibit the transportation of alcoholic beverages by a transferee in a vehicle for which a transit insignia or special transportation permit was issued to his transferor for a period not exceeding seven days subsequent to the effective date of the transfer of license to such transferee.]

All transit insignia and special transportation permit expire on August 31 following their issuance unless previously terminated by order of the director or by surrender, revocation or expiration of the basic license which authorized issuance of the insignia or permit. Renewals must be applied for in the same manner as a new insignia or permit.

13:2-20.8 [Vehicles ineligible for transit insignia] Affixing transit insignia or special transportation permit sticker to vehicle

[No transit insignia or special transportation permit shall be issued for any motor driven vehicle not registered as a commercial vehicle.]

(a) Transit insignia must be directly and securely affixed at the time of receipt to the exterior of the body of the vehicle on the left side thereof, so as to be clearly visible at all times.

(b) Special transportation permit stickers must be directly and securely affixed at the time of receipt to the rearmost side window on the driver's side of the vehicle. The sticker shall be placed in the lower left corner of such window, shall be affixed from the inside facing outward and shall be clearly visible at all times.

13:2-20.9 [Leased licensed vehicles] Restrictions applicable to vehicles bearing transit insignia or special transportation permit

[Application for transit insignia or special transportation permit for leased vehicle must be accompanied by a copy of the lease, which must, in appropriate terms, transfer to the licensee the right to exclusive possession, control and operation of such vehicle.]

(a) No licensee shall allow, permit or suffer any vehicle for which a transit insignia or special transportation permit is issued to him to be used to transport alcoholic beverages except solely for the licensee's or employer's own business.

(b) When any transit insignia or special transportation permit sticker shall become marred, defaced or damaged, the licensee shall forthwith notify the director in writing, so that there may be appropriate replacement, if necessary, of such insignia or sticker.

(c) Transit insignia or special transportation permit are not transferable and may be used only for the vehicle for which issued, provided however, that nothing herein contained shall prohibit the transportation of alcoholic beverages by a transferee of a license in a vehicle for which a transit insignia or special transportation permit was issued to his transferor for a period not exceeding seven days subsequent to the effective date of the transfer of license to such transferee.

(d) Except as provided in (c) above, no licensee shall sell or otherwise dispose of any vehicle to which a transit insignia or special transportation permit sticker is affixed, without having first removed said insignia or sticker and having notified the director of such removal.

**13:2-20.10 [Issuance of transit insignia] Search of licensed vehicle**

[No transit insignia or special transportation permit shall be issued until after the license is issued, and in case of a municipal retail licensee, until the issuance of the license shall have been certified to the director by the municipal issuing authority.]

**By acceptance of a transit insignia or special transportation permit, the licensee consents to the inspection and search of the vehicle for which such insignia or permit is issued, without search warrant, by any person authorized to enforce the provisions of the Alcoholic Beverage Law, N.J.S.A. 33:1-1 et seq.**

13:2-20.11 through 20.15 are deleted.

NOTE: The current text of 13:2-20.11 through 20.15 is proposed for deletion. The basic, if not identical, terms of these sections have been recited in different sections of the regulations proposed for readoption with amendments. A conversion chart for these sections follows:

- (a) 13:2-20.11 is now set forth in 13:2-20.8
- (b) 13:2-20.12 is now set forth in 13:2-20.9(b)
- (c) 13:2-20.13 is now set forth in 13:2-20.9(d)
- (d) 13:2-20.14 is now set forth in 13:2-20.7
- (e) 13:2-20.15 is now set forth in 13:2-20.10

**(a)****AMUSEMENT GAMES CONTROL BUREAU****Conduct of Licensees and Operation of Licensed Games; Types of Prizes Permitted; Value and Award of Prizes; Certification of Games****Proposed Amendments: N.J.A.C. 13:3-3.5, 3.6, and 7.9**

Authority: N.J.S.A. 5:8-79, 5:8-79.1, 5:8-85 and 5:8-107.

Proposal Number: PRN 1985-262.

The agency proposal follows:

**Summary**

In November, 1981, an affirmative referendum on P.L. 1981, c.219 amended N.J.S.A. 5:8-107 to provide that the maximum charges which can be accepted by an amusement games licensee, and the maximum value of a merchandise prize or prizes to be offered and given for the playing of an amusement game or games shall be determined by the Amusement Games Control Commissioner after a public hearing has been held thereon. Prior to the amendment of N.J.S.A. 5:8-107, that statute had set the maximum charge at 25 cents and the maximum value of a prize at \$15.00. Public hearings were held on June 1 and 4, 1982, pursuant to that referendum and, as a result of the evidence produced at those hearings, and a study of the industry by the Amusement Games Control Commissioner, N.J.A.C. 13:3.3.5(a) to 3.6 were amended to provide for a maximum charge of \$1.00 per game, with the

exception of arcade games, for which the maximum was set at 50 cents per game, and for a maximum prize value of \$300.00 average retail value.

The purpose behind the change was to continue the viability of the amusement games industry and to allow the licensees a certain degree of flexibility in the operation of the games. (See the summary statement, the social impact statement and the economic impact statement at 15 N.J.R. 681 (May 2, 1983), at which time the amendments to the regulations, which were subsequently adopted and as now exist, were proposed.)

With the increase of the prize value to \$300.00 from the previous limit of \$15.00, it was not known what the ultimate consequences would be or if such increase was sufficient. The increases have now been in effect for substantially all of the 1983 season and for the entire 1984 amusement game season. Since there are also some licensees that operate on a year-round basis, the experience has continued for them into 1985. With the experiences now being available as to the effect of the \$300.00 prize limit, the New Jersey Amusement Association requested that further public hearings be held with a view to increasing the amount to be charged per game and the value of prizes. In response, the Amusement Games Control Commissioner scheduled (see 17 N.J.R. 555) Preproposal Hearings on possible amendments to N.J.A.C. 13:3-3.3.5(a) to 3.6 for March 29, 1985. The hearing was held on that date and a transcript thereof is available at the offices of the Amusement Games Control Bureau, in the Division of Alcoholic Beverage Control, Richard J. Hughes Justice Complex, Third Floor, North Wing, Trenton, New Jersey 08625. At the hearing four members of the New Jersey Amusement Association testified, as well as one other licensee.

Based on the testimony presented at the hearings, it appears that the functional determination of prize limits results from public demand. The \$300.00 prize limit has only permitted entry level types of such items as color televisions, video cassette recorders, and microwave ovens. The \$300.00 limit does not allow advance features such as remote control. Based on the evidence, however, it appears that the public desires such prizes to be offered but such prizes cannot be offered unless the maximum value of the prizes is increased to \$500.00. The testimony also attempted to justify an increased limit to the maximum amount that can be charged, but such evidence was insufficient to justify a necessity for it. Increased value prizes can be given with adjustments in the accumulation of wins, points, tickets or tokens that are needed for the increased value prize without the charge for the game having to be increased. The character of the amusement games must be strongly retained as entertainment and amusement, and not be equated to gambling, and it is, therefore, the opinion of the Commissioner that the price to be charged for an entry fee or for playing of the games should not be increased and will remain as was established in 1983 by the amendment to N.J.A.C. 13:3-3.4.

The amendment to N.J.A.C. 13:3-3.5(a) is to include among the prohibited merchandise prizes that cannot be awarded anything of a lewd or obscene nature. Presently, alcoholic beverages and drug or narcotic paraphernalia are the only prohibitions set forth as prohibited merchandise. The amendment is being made because the Commissioner foresees video cassettes being utilized as prizes, and such amendment will make clear that pornographic movies, as well as other sexually-oriented paraphernalia, are not appropriate to be awarded as prizes for amusement games.

The amendment to N.J.A.C. 13:3-7.9 is to put into regulation what has been included in individual certifications since

1983. Because the licensee's overhead and profit are covered through merchandise and not from a direct percentage of the intake of an arcade game, the restrictions on arcade games, covered by certification number 2, have been that the machine must have a payout of at least 100 percent of ratio of coins in to tokens or tickets out. This means that for every coin which is inserted into the machine, based on an average of 8,000 plays, the average payout of the machine must be at least the same as the number of coins inserted into the machine. Many licensees have a payout exceeding the 100 percent, but the amendment to N.J.A.C. 13:3-7.9(a)2 will mandate that it not be less than 100 percent.

**Social Impact**

The amusement games industry has been a major tourist attraction in New Jersey since the legalization of the amusement games in 1959. The amendments made to the regulation in 1983, following the public hearings pursuant to the public referendum held in November, 1981 on P.L. 1981, c.291 (N.J.S.A. 5:8-107), have enhanced and it is believed, have restored the beneficial effect the amusement games industry has exhibited for the New Jersey economy. The proposed amendments to N.J.A.C. 13:3.5 and 3.6 will further allow the amusement games to be more viable and to offer the playing public more attractive prizes with advanced features than the present limit of \$300.00 now permits. Of course, players will have to achieve more wins, or accumulate more tickets or tokens to obtain such prizes, but at least they will be available for those who wish to do so. It is not felt that the increase will in any way adversely affect the availability of lower valued prizes which will still remain readily available. The increase in the prize value will only serve to make the amusement games a more attractive and viable part of the New Jersey tourist industry. The amendments to N.J.A.C. 13:3-3.5(a) and 7.9 will assure that the amusement games industry remains a family-oriented entertainment and amusement industry, and does not take on characteristics of being more akin to gambling than to amusement and entertainment.

**Economic Impact**

The proposed changes will permit amusement games licensees an even greater flexibility in the prizes that they can offer. The public will benefit from the prize value increase in that better quality prizes, with more advanced features, can be attainable. The State of New Jersey will also benefit in that the increases will continue to revitalize an industry which had been declining for many years. Additionally, State revenue will increase with the increase in prize value since operators pay sales tax on the wholesale value of the prizes they acquire.

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

13:3-3.5 Types of prizes permitted; value of prize

(a) No licensee shall offer or give, directly or indirectly, any prize in any single amusement game except merchandise other than alcoholic beverages; [or] drug or narcotic paraphernalia[.]; **or obscene, indecent, filthy, lewd, lascivious or disgusting recordings, printings, writings, pictures or other matter.**

(b) The retail value of such merchandise prize or prizes to be so offered and given in any such game or for an accumulation of wins from a series of games or plays shall not exceed an average retail value of [\$300.00] **\$500.00.**

(c) (No change.)

13:3-3.6 Determination of value of prizes

(a) No [license] licensee shall offer [or], give[,] or display any prize in the licensed premises unless its average retail value is not in excess of [\$300.00] **\$500.00.**

(b) (No change.)

13:3-7.9 Permissible amusement games certifications

(a) Pursuant to P.L. 1959, c.108 and this subchapter there is hereby granted certification of permissibility for licensing of the following amusement games:

1. (No change.)

2. Certification No. 2. Arcade games wherein a single player upon payment of fee is permitted to play a machine or device to obtain a prize or attain a score upon the basis of which a prize is awarded, generally known as Baseball Machine, Basketball Machine, Bouncing Ball Machine, Bowling Machine, Crane Machine, Dexterity Tester Machine, Digger Machine, Football Machine, Golf Machine, Gun Machine, Hockey Machine, Intelligence Tester Machine, Pinball Machine, Pokerino Machine, Pool Table Machine, Pusher Machine, Roll Down Machine, Rotary Arm Machine, Shooting Machine, Shuffle Alley Machine, Skee Ball Machine, Skill Tester Machine and Strength Tester Machine, and such similar games, including electronic games, as may from time to time be certified pursuant to this subchapter.

i. There is no restriction on the number of machines or devices that may be installed or available under one arcade license.

ii. If any machine or device has more than one player position, each player position shall be considered a separate machine or device in calculating the State license fee.

iii. **Any machine or device that awards tickets or tokens pursuant to N.J.A.C. 13:3-3.5(c) shall be set or adjusted so as to have a ticket or token payout for winning at the minimum ratio of one ticket or token paid out for each coin inserted as a charge to play or operate the machine or device, calculated on an average of 8,000 plays.**

3.-8. (No change.)

(a)

**DIVISION OF MOTOR VEHICLES**

**Enforcement Service**

**Inspection of New Motor Vehicles**

**Proposed Readoption: N.J.A.C. 13:20-28**

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:8-2.

Proposal Number: PRN 1985-257.

Submit comments by June 5, 1985 to:

Clifford W. Snedeker, Director  
 Division of Motor Vehicles  
 25 So. Montgomery Street  
 Trenton, New Jersey 08666

The readoption of N.J.A.C. 13:20-28 becomes effective upon acceptance for filing by the Office of Administrative Law of a notice of readoption.

The agency proposal follows:

#### Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:20-28 concerning inspection of new motor vehicles. This rule was initially filed and became effective on October 1, 1971. The rule was subsequently amended on December 10, 1971; July 1, 1975; August 5, 1980; and January 21, 1985. The rule will expire on August 5, 1985. The rule is now to be readopted in accordance with Executive Order 66(1978).

The rule implements those provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:8-2) pertaining to the character and frequency of inspections of new motor vehicles.

N.J.A.C. 13:20-28.1 sets forth the twofold purpose of the subchapter as (1) the effectuation of increased motor vehicle safety through the requirement that new motor vehicle dealers inspect new motor vehicles prior to delivery to ultimate purchasers in New Jersey and (2) that inspection performed in conformity with the subchapter satisfy the inspection requirement of N.J.S.A. 39:8-1 et seq. N.J.A.C. 13:20-28.2 applies the subchapter to all new motor vehicle dealers licensed by the director. N.J.A.C. 13:20-28.3 sets forth the definition of terms used in the subchapter.

N.J.A.C. 13:20-28.4 provides that dealers shall inspect and service the safety devices on new motor vehicles to bring them into conformity with specifications established by the manufacturer and contained on the manufacturer's pre-delivery check list. Subsection (c) of this section requires new motorcycle dealers who inspect new motorcycles under this subchapter to be licensed as motorcycle reinspection centers pursuant to N.J.A.C. 13:20-32.

N.J.A.C. 13:20-28.5 provides that new motor vehicles shall comply with the standards prescribed by the manufacturer, the United States Department of Transportation, statute or regulation adopted by the director. Standards prescribed by the Department of Transportation, statute or regulation supersede manufacturers' standards that are in conflict therewith.

N.J.A.C. 13:20-28.6 provides for the affixation of an inspection decal on a new motor vehicle upon the completion of the dealer's inspection. A new motor vehicle is required to be next inspected one year from the date of initial registration or one year from the date of expiration of the transferred registration.

N.J.A.C. 13:20-28.7 prohibits a dealer from delivering a new motor vehicle to an ultimate purchaser until the vehicle is determined to be in safe operating condition in accordance with the inspection standards established in this subchapter.

N.J.A.C. 13:20-28.8 provides that the dealer's completion of a manufacturer's pre-delivery check list is deemed to be evidence of compliance with the subchapter. The pre-delivery check list is required to be retained by the dealer for at least three years from the date of inspection. N.J.A.C. 13:20-28.9 requires that the pre-delivery check list specify the place and date of inspection, the person(s) performing the inspection and compliance with the inspection standards.

N.J.A.C. 13:20-28.10 provides that the subchapter shall not be construed to limit the director's authority to require additional inspections of new motor vehicles nor to abridge any regulation adopted pursuant to the "Air Pollution Control Act of 1954". N.J.A.C. 13:20-28.11 provides that the director or his designee may enter upon the premises of a dealer to determine compliance with the subchapter. N.J.A.C. 13:20-28.12 provides that a dealer who violates any

provision of the subchapter shall be subject to the suspension or revocation of his dealer license.

The Division of Motor Vehicles has reviewed the rules in accordance with Executive Order 66 and has determined that they are "necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which they were promulgated." The rules promote the public interest in an area relating to motor vehicle inspection. The rules will continue to promote the public interest in this regard.

#### Social Impact

The rules proposed for readoption have a positive impact on highway safety. New motor vehicles must be inspected by dealers to confirm compliance with safety standards prior to delivery to an ultimate purchaser.

The rules proposed for readoption will have a continuing beneficial impact on highway safety and have been determined necessary to assure such safety.

#### Economic Impact

There is an economic impact on the State in funding the Division's Bureau of Vehicle Inspection. The New Motor Vehicle Inspection Program is entirely State funded but the actual cost of administration is unknown since it is only a part of the overall vehicle inspection program. The administrative cost of continuing the Program is justified in light of the highway safety benefits which result. Presumably, the Program reduces costs to society by preventing unsafe motor vehicles from being operated on the public highways thereby reducing the number of accidents caused by vehicle defect.

There is no general impact on the general public.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:20-28.

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## STATE BOARD OF PROFESSIONAL PLANNERS

Proposals numbered PRN 1985-256 and 258 are authorized by the New Jersey State Board of Professional Planners, Mary Winder, President.

Submit comments by June 5, 1985 to:

Cathleen A. McCoy, Executive Secretary  
State Board of Professional Planners  
Room 317  
1100 Raymond Boulevard  
Newark, NJ 07102

(a)

Seal

### Proposed Readoption: N.J.A.C. 13:41-1

Authority: N.J.S.A. 45:14A-4 and 45:14A-12.  
Proposal Number: PRN 1985-258.

The readoption of N.J.A.C. 13:41-1 becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption.

The agency proposal follows:

**Summary**

Executive Order No. 66(1978) provides that any agency rule adopted after May 15, 1978 shall expire no later than five years after its effective date or sooner if indicated in the regulation itself. The purpose of this "sunset" provision is to insure that the State's administrative agencies periodically review their rules and regulations in order to insure their continued usefulness and necessity. The proposed readoption of N.J.A.C. 13:41-1 is made in accordance with N.J.A.C. 1:30-4.3 in order to maintain the effectiveness of the regulations. The regulations will expire on October 8, 1985. The regulations will expire on October 8, 1985. The regulations are proposed for readoption without change.

The subchapter contains rules which require that licensed Professional Planners must obtain a seal containing the planner's name and license number when affixing a seal (N.J.A.C. 13:41-1.1), and the licensee must place a dated signature below the seal (N.J.A.C. 13:41-1.2). The seal must be fixed to every instrument issued by the planner (N.J.A.C. 13:41-1.3).

**Social Impact**

The Board has reviewed the continued need and effectiveness of this subchapter and has determined that its usefulness has been demonstrated. It provides an effective way to insure to the public that every instrument issued by a planner, and relied upon by any party is duly authenticated. It also provides a uniform and consistent and immediate way for parties to authenticate any such instrument. As a method to discourage deception and misrepresentation the readoption of this subchapter will have favorable impact on the public.

**Economic Impact**

The readoption of this subchapter will pose minimal economic burden on licensees. Licensees must obtain a seal which must be affixed to all instruments issued by them. The subchapter has been in effect since 1980 and there has been no stated objection to its economic requirements at anytime.

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:41-1.

**(a)**

**General Provisions  
Fee Schedule**

**Proposed Readoption as a New Rule:  
N.J.A.C. 13:41-3.2**

Authority: N.J.S.A. 45:14A-4; 45:14A-8; 45:14A-11; 45:14A-12; 45:14A-14; 45:1-3.2.  
Proposal Number: PRN 1985-256.

The agency proposal follows:

**Summary**

Executive Order No. 66(1978) provides that any agency rule adopted after May 15, 1978 shall expire no later than five years after its effective date or sooner if indicated in the regulation itself. The purpose of this "sunset" provision is to insure that the State's administrative agencies periodically review their rules and regulations in order to insure their continued usefulness and necessity. The proposed readoption

as a new rule with amendments to the text of N.J.A.C. 13:41-3.2 is made in accordance with N.J.A.C. 1:30-4.3 in order to maintain the effectiveness of the regulation. The regulation was adopted on April 23, 1980. The regulation expired on April 22, 1985 and is being proposed as a new rule. The regulation is proposed for readoption with amendments to the expired text as proposed and summarized as follows.

N.J.A.C. 13:41-3.2 provides the fee schedule for the biennial registration of all licensees. It also provides the fees schedule for the costs of the application and examination.

The Board is currently reviewing the continued need for and usefulness of N.J.A.C. 13:4-3.1 and is not proposing its readoption at this time.

**Social Impact**

The regulation affects approximately 3,000 licensees in New Jersey. The fees for registration and other services performed by the administrative offices of the Board of Professional Planners are established by law to defray the costs incurred by the Board in its daily activity. Were these rules not readopted, the ability of the Board to collect fees for biennial registration and such other application and examination fees would be seriously hampered.

**Economic Impact**

The regulation will have a favorable economic impact on the public since the fees generated by the Board constitute its primary financial support for the licensure process and the regulation of the professional conduct of its licensees. The biennial registration fee has been reduced in half which will substantially decrease the financial burden upon licensees and encourage licensees to register in a timely manner. The fees for the National Examination have been increased to defray the actual cost of administering the examination. With regard to the State examination, the Board still subsidizes the costs of administration to a large degree. An application fee has been instituted in accordance with N.J.S.A. 45:14A-8. In summary, the fee schedule will place a minimal financial burden on the licensees, which is reasonable in view of the services performed by the Board in the processing of application forms and administering the examination. There is no record of any objection to reasonableness of the fees or the reasonableness of the fees charged for other services performed by the administrative offices of the Board of Professional Planners.

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

13:41-3.2 [Registration Fees] **Fee schedule**

(a) The [registration] fees charged by the State Board of Professional Planners shall be:

- [1. Application/Examination Fees:
  - i. Combined National and State Examinations ...\$110.00
  - ii. State Examination only .....\$ 60.00
  - iii. Licensure in accordance with N.J.S.A. 45:14A-11 ..... \$ 60.00]
- [2. Re-Examination Fees:
  - i. Combined National and State Examinations ...\$110.00
  - ii. National Examination .....\$110.00
  - iii. State Examination ..... \$ 25.00]

**B1. Application for a Professional Planner or Planner-In-Training license ..... \$25.00**

**B2. Examination and Reexamination Fees:**

- i. Combined National and State Examinations ...\$175.00**
- ii. State Examination only .....\$ 25.00**

- iii. **Licensure is accordance with N.J.S.A. 45:14A-11** ..... \$150.00
- 3. Duplicate Licensure Certificate ..... \$ 10.00
- 4. Fee for Secretary of State as required by N.J.S.A. 22A:4.1 ..... \$ 1.00
- 5. [Annual] **Biennial** License Fee and Renewal—Professional Planner ..... \$ 65.00
  - [i. Annual fee is collected biennially\* in the total sum of ..... \$130.00]
- 6. Late Renewal Fee ..... \$ 10.00
- 7. Reinstatement Fee ..... \$ 75.00  
(Plus \$10 for each year license is in arrears.)

[\*N.J.S.A. 45:1-7 requires biennial renewal. Therefore, effective June 1, 1980 applications for renewal will be for a two-year period to expire May 31, 1982 and each even numbered year thereafter.]

(a)

**AUDIOLOGY AND SPEECH LANGUAGE  
PATHOLOGY ADVISORY  
COMMITTEE**

**Fees and Charges**

**Proposed New Rule: N.J.A.C. 13:44C-1.1**

Authorized By: James J. Barry, Director, Division of Consumer Affairs.

Authority: N.J.S.A. 45:3B-1 et seq., specifically 45:3B-24.

Proposal Number: PRN 1985-259.

Submit comments by June 5, 1985 to:

Patricia Stuart, Executive Secretary  
Audiology and Speech Language Pathology  
Advisory Committee  
Room 513  
1100 Raymond Boulevard  
Newark, NJ 07102

The agency proposal follows:

**Summary**

The Director of the Division of Consumer Affairs, in consultation with the Audiology and Speech Language Pathology Advisory Committee, has determined that to meet the Committee's estimated expenses establishment of an application fee and a registration fee to be charged prospective audiologists and speech language pathologists is necessary.

**Social Impact**

The proposed new fees will benefit the Advisory Committee in that sufficient fund will be raised to cover its expenses. The proposed fees will be charged to prospective licensees and applicants.

**Economic Impact**

The proposed new fees will impose an economic burden on prospective licensees and applicants who will be charged application and registration fees. No economic impact on consumers is anticipated.

Full text of the proposed new rule follows.

13:44C-1.1 Fees and charges

- (a) The following fees shall be charged by the Committee:
  - 1. Application fee ..... \$ 10.00.
  - 2. License fee for two years ..... \$100.00.

**PUBLIC UTILITIES**

(b)

**OFFICE OF CABLE TELEVISION**

**Rules of Practice and Procedure**

**Proposed Amendments: N.J.A.C. 14:17-6.8, -6.14 and -6.17**

Authorized by: Bernard R. Morris, Director, Office of Cable Television.

Authority: N.J.S.A. 48:5A-10, -11, -40, and -43.

Proposal Number: PRN 1985-238.

A **public hearing** concerning this proposal will be held on: Tuesday, May 28, 1985 at 10:00 A.M.  
Office of Cable Television  
1100 Raymond Boulevard  
Newark, N.J.

Submit comments by June 5, 1985 to:  
Bernard R. Morris, Director  
Office of Cable Television  
Board of Public Utilities  
1100 Raymond Boulevard  
Newark, N.J. 07102

The agency proposal follows:

**Summary**

N.J.A.C. 14:17-6.8(a)(10) is amended to require notice to the municipality, utilities, and subscribers, as well as adjoining cable television systems, when a petition for transfer of a certificate of approval is filed.

N.J.A.C. 14:17-6.14(a)8 would be added to require that municipalities also be noticed when filing a petition for transfer of capital stock pursuant to N.J.S.A. 48:5A-43.

N.J.A.C. 14:17-6.17(b) is amended to provide notice to the Division of Rate Counsel and affected municipalities upon filing a petition proposing an increase in charges to customers. Such notice shall be simultaneous with filing at the Board. Notice to the municipality shall include a statement of the municipality's procedural rights.

N.J.A.C. 14:17-6.17(g) would require that at least one hearing for public comment shall be held in petitioner's service area.

**Social Impact**

The proposed amendments will enhance the opportunity for local municipal officials and residents to have timely input in transfers of CATV systems and cases affecting basic service rates. The amendments will also facilitate participation by the Division of Rate Counsel by replacing outdated, confusing service rules with a service rule consistent with other BPU rate increase filings procedures. The amendments will also formal-

ize the Board's policy of holding at least one hearing for public comment in each service area. These rules will not affect Common Tariff procedures, N.J.A.C. 14:17-18.1 et seq.

**Economic Impact**

Petitioners will incur the slight additional copying and mailing costs of notifying municipalities of an impending transfer, although such notification is usually made voluntarily. Rate case costs will be reduced by reducing delays due to inadequate or untimely notice.

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

14:17-6.8 Petitions for approval of the transfer of certificates of approval

(a) Petitions for approval of the transfer of certificates of approval shall conform to the requirements of subchapter 5 of this chapter and sections 1 through 5 of this subchapter to the extent applicable, and shall in the body thereof or in the attached exhibits also provide the following information:

1.-9. (No change.)

10. Proof of service of [the petition] **notice of the proposed transfer by way of bill insert or by publication in newspapers circulated in the cable television company's service area**, upon all cable television companies referred to in [paragraph 4, of this subsection.] **4. above, and upon the electric and telephone utilities serving the area, pursuant to N.J.A.C. 14:17-5.7.**

14:17-6.14 Petitions for authority to transfer capital stock

(a) **Petitions for authority to transfer upon the books and records of any CATV company pursuant to N.J.S.A. 48:5A-1 et seq., where applicable, any share or shares of its capital stock, shall conform to the provisions of subchapter 5 of this chapter and sections 1 through 5 of this subchapter to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:**

1.-7. (No change.)

**8. Proof of service of notice of the proposed transfer to the municipalities being served by the cable television company.**

14:17-6.17 Tariff filings or petitions which propose increases to customers

(a) (No change.)

(b) Each cable television company that makes a filing under [subsection a of this Section] **a above shall, at the same time, unless otherwise ordered or permitted by the Board, give notice thereof as follows:**

1. Serve a notice of this filing **which includes a statement of the municipality's procedural rights**, 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 cable television 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 Attorney General, at the State House Annex, Trenton, New Jersey 08625] **the Director, Division of Rate Counsel, Department of the Public Advocate.**

3. (No change.)

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

**(g) At least one hearing for public comment shall be held in the affected service area in a time and place convenient for subscribers.**

# TRANSPORTATION

Proposals numbered PRN 1985-230, 231, 239 and 245 are authorized by John P. Sheridan Jr., Commissioner, Department of Transportation.

Submit comments by June 5, 1985 to:

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

## (a)

### TRANSPORTATION OPERATIONS

#### Restricted Parking and Stopping Route U.S. 9 in Ocean County

#### Proposed Amendment: N.J.A.C. 16:28A-1.7

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-139.  
Proposal Number: PRN 1985-231.

The agency proposal follows:

#### Summary

The proposed amendment will establish a "no parking" zone along Route U.S. 9 in Berkeley Township, Ocean County, including all ramps and connections under the jurisdiction of the Commissioner of Transportation for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon 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 parking" zone was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7 based upon the request from local officials and the traffic investigation.

#### Social Impact

The proposed amendment will establish a "no parking" zone along Route U.S. 9 in Berkeley Township, Ocean County, including all ramps and connections under the jurisdiction of the Commissioner for Transportation 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 its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

**Full text** of the proposal follows (additions indicated in boldface **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.-6. (No change).

7. No stopping or standing in Berkeley Township, Ocean County:

i.-ii. (No change.)

iii. **Within the corporate limits of Berkeley Township including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.**

8.-18. (No change.)

(b) (See related proposal in this Register.)

**(a)**

**Restricted Parking and Stopping Routes U.S. 9 and 34 in Middlesex County**

**Proposed Amendments: N.J.A.C.**

**16:28A-1.7 and 1.24**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1985-230.

The agency proposal follows:

**Summary**

The proposed amendments will establish "no parking bus stop" zones along Routes U.S. 9 and 34 in Old Bridge Township, Middlesex County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

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 bus stop" zones were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7 and 1.24 based upon the requests from local officials and the traffic investigations.

**Social Impact**

The proposed amendments will establish "no parking bus stop" zones along Routes U.S. 9 and 34 in Old Bridge Township, Middlesex County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The local officials will bear the costs for the installation of 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) (See related proposal in this Register.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection 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.-33. (No change.)

**34. Along the northbound (easterly) side in Old Bridge Township, Middlesex County:**

**i. Mid-block bus stop:**

**(1) Between Inverness Drive and Ferry Road—Beginning 300 feet south of the southerly curb line of Inverness Drive and extending 135 feet southerly therefrom.**

**35. Along the southbound (westerly) side in Old Bridge Township, Middlesex County:**

**i. Near side bus stop:**

**(1) Inverness Drive—Beginning at the prolongation of the southerly curb line of Inverness Drive and extending 135 feet southerly therefrom.**

16:28A-1.24 Route 34

(a) (No change.)

(b) The certain parts of State highway Route 34 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

**1. Along the easterly (northbound) side in Old Bridge Township, Middlesex County:**

**i. Near side bus stop:**

**(1) Canyon Woods [Entrance] Drive—Beginning at the southerly curb line of the entrance to Canyon Woods Drive and extending 105 feet southerly therefrom.**

**ii. Far side bus stop:**

**(1) Canyon Woods Drive—Beginning at the northerly curb line of Canyon Woods Drive and extending 150 feet northerly therefrom.**

**2. Along the southerly (westbound) side in Old Bridge Township, Middlesex County:**

**i. Far side bus stop:**

**(1) Canyon Woods Drive—Beginning at the prolongation of the southerly curb line of Canyon Woods Drive and extending 150 feet southerly therefrom.**

**(b)**

**Restricted Parking and Stopping Routes U.S. 9W in Bergen County, U.S. 30 in Camden County, 36 in Monmouth County, 45 in Gloucester County, 67 in Bergen County and 71 in Monmouth County**

**Proposed Amendments: N.J.A.C.**

**16:28A-1.21, 1.26, 1.31, 1.38, 1.61 and 1.71**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Proposal Number: PRN 1985-239.

The agency proposal follows:

**Summary**

The proposed amendments will establish "no parking" and "no parking bus stop" zones along Routes U.S. 9W in Englewood Cliffs Borough, Bergen County; U.S. 30 in Winslow Township and Chesilhurst Borough, Camden County; 36 in the City of Long Branch, Monmouth County; 45 in Woodbury Heights Borough, Gloucester County; 67 in Fort Lee Borough, Bergen County and 71 in West Long Branch Borough, Monmouth County, and a "time limit parking" zone along Route 71 in Deal Borough, Monmouth County where parking will be limited to two hours between the hours of 8:00 A.M. and 8:00 P.M., for the safe and efficient flow of traffic, the enhancement of safety, the safety of the well-being of the populace and the safe on/off loading of passengers at established bus stops.

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," "no parking bus stop" and "time limit parking" zones along the Routes indicated were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.21, -1.26, -1.31, -1.38, -1.61, and -1.71 based upon the requests from local officials and the traffic investigations.

**Social Impact**

The proposed amendments will establish "no parking" and "no parking bus stop" zones along Route U.S. 9W in Englewood Cliffs Borough, Bergen County; U.S. 30 in Winslow Township and Chesilhurst Borough, Camden County; 36 in the City of Long Branch, Monmouth County; 45 in Woodbury Heights Borough, Gloucester County; 67 in Fort Lee Borough, Bergen County; 71 in West Long Branch Borough, Monmouth County and a "time limit parking" zone along Route 71 in Deal Borough, Monmouth County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no parking" zone signs and the local officials for "time limit parking" and "no parking bus stop" zone signs. Motorists who violate the rule will be assessed the appropriate fine.

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

16:28A-1.61 Route U.S. 9W

(a) The certain parts of State highway Route U.S. 9W described in [(a) of] this section shall be [, and hereby 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 [hereby] granted to erect appropriate signs at the following established bus stops:

1. (No change.)
2. [Within Englewood Cliffs Borough:] **Along the westerly (southbound) side in Englewood Cliffs Borough, Bergen County:**

i. [Along the westerly (southbound) side:] **Far side bus stop:**

- (1) Sage Road [(far side,) (105 feet);
- (2)-(6) (No change.)

ii. **Near side bus stops:**

- [(7)] (1) Demarest Avenue [(near side,) (120 feet);
- [(8)] (2) Palisades Avenue [(near side,) (120 feet);

**(3) Charlotte Place—Beginning at the northerly curb line of Charlotte Place and extending 105 feet northerly therefrom.**

[ii.] 3. Along the easterly (northbound) side[:] **in Englewood Cliffs Borough, Bergen County:**

i. **Far side bus stops:**

- (1) Demarest Avenue [(far side,) (105 feet);
- (2)-(6) (No change.)

ii. **Near side bus stops:**

- [(7)] (1) Palisades Avenue [(Near side,) (120 feet);
- [(8)] (2) Sage Road [(Near side,) (120 feet);

**(3) Charlotte Place—Beginning at the southerly curb line of Charlotte Place and extending 105 feet southerly therefrom.**

1. (No change.)
2. [Within Englewood Cliffs Borough:] **Along the westerly (southbound) side in Englewood Cliffs Borough, Bergen County:**

i. [Along the westerly (southbound) side:] **Far side bus stop:**

- (1) Sage Road [(far side,) (105 feet);
- (2)-(6) (No change.)
- [(7) Demarest Avenue (near side, 120 feet);
- [(8) Palisades Avenue (near side, 120 feet).]

ii. [Along the easterly (northbound) side:

- (1) Demarest Avenue (far side, 105 feet);
- (2) From a point 1,000 feet north of the northerly curb line of Demarest Avenue to a point 120 feet northerly therefrom;
- (3) From a point 500 feet southerly of the southerly curb line of Hollywood Avenue to a point 120 feet southerly therefrom;
- (4) From a point 500 feet northerly of the northerly curb line of Hollywood Avenue to a point 120 feet northerly therefrom;
- (5) From a point 1,600 feet southerly of the southerly curb line of Sage Road to a point 120 feet southerly therefrom;
- (6) From a point 1,000 feet northerly of the northerly curb line of Sage Road to a point 120 feet northerly therefrom;
- (7) Palisades Avenue (near side, 120 feet);
- (8) Sage Road (near side, 120 feet);]

**Near side bus stops:**

- (1) **Demarest Avenue (120 feet);**
- (2) **Palisades Avenue (120 feet);**
- (3) Charlotte Place—Beginning at the northerly curb line of Charlotte Place and extending 105 feet northerly therefrom.**

[2.ii.] 3. **Along the easterly (northbound) side in Englewood Cliffs Borough, Bergen County:**

i. **Far side bus stops:**

- (1) **Demarest Avenue (105 feet);**
- (2) **From a point 1,000 feet north of the northerly curb line of Demarest Avenue to a point 120 feet northerly therefrom;**
- (3) **From a point 500 feet southerly of the southerly curb line of Hollywood Avenue to a point 120 feet southerly therefrom;**
- (4) **From a point 500 feet northerly of the northerly curb line of Hollywood Avenue to a point 120 feet northerly therefrom;**

(5) From a point 1,600 feet southerly of the southerly curb line of Sage Road to a point 120 feet southerly therefrom;

(6) From a point 1,000 feet northerly of the northerly curb line of Sage Road to a point 120 feet northerly therefrom;

ii. Near side bus stops:

(1) Palisades Avenue (120 feet);

(2) Sage Road (120 feet);

(3) Charlotte Place—Beginning at the southerly curb line of Charlotte Place and extending 105 feet southerly therefrom.

(4) Clendinen Place—Beginning at the southerly curb line of Clendinen Place and extending 105 feet southerly therefrom.

Renumber 3.-6. as 4.-7.

(b) (No change.)

16:28A-1.21 Route U.S. 30

(a) (No change.)

(b) The certain parts of State highway Route U.S. 30 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.-7. (No change. See proposal at 17 N.J.R. 803.)

8.-9. (No change. See proposal at 17 N.J.R. 900.)

10. Along the northbound (westerly) side in Winslow Township, Camden County:

i. Mid-block bus stop:

(1) Between Waterford—Blue Anchor Road and Ehoke Road—Beginning 163 feet south of the southerly curb line of Waterford—Blue Anchor Road and extending 135 feet southerly therefrom.

ii. Near side bus stop:

(1) Elmtowne Boulevard—Beginning at the southerly curb line extension of Elmtowne Boulevard and extending 100 feet southerly therefrom.

11. Along the southbound (westerly) side in Winslow Township, Camden County:

i. Mid-block bus stop:

(1) Between Waterford Road and McDougal Road—Beginning 178 feet south of the southerly curb line of Waterford Road and extending 135 feet southerly therefrom.

ii. Near side bus stop:

(1) Ehrke Road—Beginning at the northerly curb line of Ehrke Road and extending 105 feet northerly therefrom.

12. Along the (White Horse Pike) on the southbound (westerly) side in Chesilhurst Borough, Camden County:

i. Near bus stop:

(1) Cleveland Avenue—Beginning at the southerly curb line of Cleveland Avenue and extending 105 feet therefrom.

13. Along the (White Horse Pike) on the northbound (easterly) side in Chesilhurst Borough, Camden County:

i. Near side bus stop:

(1) Cleveland Avenue—Beginning at the southerly curb line of Cleveland Avenue and extending 150 feet therefrom.

16:28A-1.26 Route 36

(a) The certain parts of State highway Route 36 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. No stopping or standing in the City of Long Branch[:], Monmouth County:

i.-iv. (No change.)

v. Along Joline Avenue (Route 36) and Myrtle Avenue:

(1) Along the south side.

(A) Along the south side of Joline Avenue (Route 36) from a point 250 feet west of the westerly curb line of Myrtle Avenue to a point 480 feet east of the easterly curb line of Myrtle Avenue.

(B) Along the south side of Joline Avenue (Route 36) from a point 50 feet east of the easterly curb line of Seventh Avenue to a point 50 feet west of the westerly curb line of Seventh Avenue.

(2) Along the north side:

(A) Along the north side of Joline Avenue (Route 36) from a point 225 feet west of the westerly curb line of Myrtle Avenue to a point 490 feet east of the easterly curb line of Myrtle Avenue.

(B) Along the north side of Joline Avenue (Route 36) from a point 46 feet east of the easterly curb line of Seventh Avenue to a point 56 feet west of the westerly curb line of Seventh Avenue.

2.-8. (No change.)

(b) (No change.)

16:28A-1.31 Route 45

(a) (No change.)

(b) The certain parts of State highway Route 45 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2.-3. (No change. See proposal at 17 N.J.R. 900.)

4. Along the northbound (easterly) side in Woodbury Heights Borough, Gloucester County:

i. Near side bus stop:

(1) Lincoln Avenue—Beginning at the southerly curb line of Lincoln Avenue and extending 115 feet southerly therefrom.

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in [(a) of] this section shall be [, hereby 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 [hereby] granted to erect appropriate signs at the following established bus stops:

1.-2. (No change.)

3. Along the easterly (northbound) side in Fort Lee Borough, Bergen County:

i. Far side bus stop:

1. Wall Street—Beginning at the northerly curb line of Wall Street and extending 107 feet northerly therefrom.

(b) The certain parts of State highway Route 67 described in [(b) 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. (No change.)

16:28A-1.38 Route 71

(a) The certain parts of State highway Route 71 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.-5. (No change.)

6. No stopping or standing in Long Branch City, West Long Branch Borough, and Ocean Township, Monmouth County:

i.-ii. (No change.)

iii. Along both sides (Monmouth Road) in West Long Branch Borough:

(1) Between Route 36 and Wall Street, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

7. No stopping or standing in Deal Borough, Monmouth County:

i. Along the easterly (northbound) side:

(1) From the northerly curb line of Roosevelt Avenue to the Deal Borough-City of Long Branch Corporate Line.

[1] (2) From 40 feet south of, to 40 feet north of the following intersections:

(A)-(D) (No change.)

(E) Parker Avenue

ii. Along the westerly (southbound) side:

(1) (No change.)

(A)-(B) (No change.)

(C) Parker Avenue;

(D) Phillips Avenue

8.-9. (No change.)

(b) (No change.)

(c) The certain parts of State highway Route 71 described in this section shall be designated and established as "Time Limit Parking" zones where parking is prohibited except as specified. 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. Time Limit Parking Zone—2 hours 8:00 A.M. to 8:00 P.M. in Deal Borough, Monmouth County:

i. Along the east side (Norwood Avenue):

(1) Between Poplar Avenue and Roosevelt Avenue.

ment for applicable environmental permits is not changed by these amendments. The increase in the grant ceiling, however, permits the local sponsors to apply for larger grants which may be used to fund environmental studies.

Economically, the increase in the grant ceiling will specifically promote more rapid investment in the States' transportation infrastructure, which directly contributes to the improvement of economic activities and mobility necessary for the common public benefit.

Placing a limit on the growth of loan balances and increasing opportunity for direct grants serves to control the growth at the local level of undesired long-term debt associated with necessary capital plant improvement.

These changes will permit more effective disbursement of State resources to local sponsors and promote greater local initiative.

**Social Impact**

The proposed amendment will increase the ceiling of Airport Safety Improvement Grants and encourage more rapid improvements in airport and air travel safety for the benefit of all citizens. Additionally, this increase permits the local sponsors to apply for larger grants which may be used to fund environmental studies.

**Economic Impact**

The proposed amendment will increase the ceiling from \$7,500 to \$15,000, and change the eligibility for "Airport Safety Improvement Loans" from an annual \$90,000 loan, to a maximum loan of \$90,000 to any one local sponsor, and will specifically promote continued investment in the State's transportation infrastructure, which directly contributes to the improvement of economic activities and mobility necessary for the common public benefit. The increase in the grant ceiling permits the local sponsors to apply for larger grants and permit more effective disbursement of State resources to local sponsors and promote greater local initiative. However, with a limit on the growth of loan balances and increasing the opportunity for direct grants serves to control the growth at the local level of undesired long-term debt associated with necessary capital plant improvement.

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

16:56-4.1 Classification of State aid

(a)-(d) 1. (No change.)

2. Airport safety improvement loans are limited to [an annual] \$90,000 maximum disbursements to any eligible local sponsor (airport).

3.-6. (No change.)

(e) 1. (No change.)

2. Airport safety improvement grants are limited to an annual [\$7,500] **\$15,000** maximum disbursement to any eligible recipient.

3. (No change.)

(f)-(g) (No change.)

1. The limit of State Airport Safety Improvement Grants is [\$7,500.] **\$15,000.**

2.-3. (No change.)

(a)

**AERONAUTICS**

**Airport Safety Improvement Aid Classification of State Aid**

**Proposed Amendment: N.J.A.C. 16:56-4.1**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29, 6:1-44 and "Airport Safety Act of 1983", P.L. 1983, c.264. Proposal Number: PRN 1985-245.

The agency proposal follows:

**Summary**

The proposed amendment will increase the annual ceiling on "Airport Safety Improvement Grants" from \$7,500 to \$15,000, and changes the eligibility for "Airport Safety Improvement Loans" from an annual \$90,000 loan (which may build up year after year) to a maximum loan ceiling of \$90,000 to any one local sponsor.

Under the "Airport Safety Act of 1983" P.L. 1983 c.264, approved July 11, 1983, the Legislature mandated the creation of an Airport Safety Fund, created by revenues derived from aviation fuel taxes and fees, which are disbursed back to the aviation industry for the improvement of air safety and the air transportation infrastructure.

The increased ceiling of Airport Safety Improvement Grants will encourage more rapid improvements in airport and air travel safety for the benefit of all citizens. The require-

# TREASURY-GENERAL

(a)

## DIVISION OF PENSIONS

### Administration Signature Cards

#### Proposed Amendment: N.J.A.C. 17:1-1.8

Authorized by: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1985-228.

Submit comments by June 5, 1985 to:

Peter J. Gorman, Esq.  
Administrative Practice Officer  
Division of Pensions  
20 West Front Street  
CN 295  
Trenton, N.J. 08625

The agency proposal follows:

#### Summary

The intent of the proposed amendment is to eliminate the requirement that retirants from the State-administered retirement systems sign a signature card before receiving their retirement checks. It is felt that signature verification, if necessary, is available from other sources and the elimination of the signature card requirement will aid in the operational efficiency of the Division of Pensions.

#### Social Impact

The proposed amendment will affect all future retirants of the State-administered retirement systems in the sense that they will no longer be required to execute the signature cards before receiving their retirement checks.

#### Economic Impact

This proposal will not have any significant, adverse economic effect upon retirants from the State-administered retirement systems but can lead to increased efficiency in the operational procedures of the Division of Pensions.

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

17:1-1.8 Disbursement; [signature cards;] limitations

[(a) Pension checks will not be released to those retirants or beneficiaries who fail to return completed signature cards. Second notices will be sent by certified mail one month following the transmittal date for the initial signature card.

(b) No interest shall accrue on such moneys.]

[(c)] All disbursements returned by the Federal post office as "undelivered" shall be redeposited promptly, and in no event shall any disbursement be made except by check delivered by the post office.

# TREASURY-TAXATION

## DIVISION OF TAXATION

Proposals numbered PRN 1985-246 and 263 are John R. Baldwin, Director, Division of Taxation.

(b)

### Local Property Tax Tax Maps

#### Proposed Repeal: N.J.A.C. 18:23A-1.1 through 1.29

#### Proposed New Rule: N.J.A.C. 18:23A-1.1 through 1.31

Authority: N.J.S.A. 54:1-15 and 54:50-1.

Proposal Number: PRN 1985-246.

Submit comments by June 5, 1985 to:

John C. Raney  
Superintendent  
Local Property Tax Branch  
Division of Taxation  
CN 52  
Trenton, N.J. 08646

The agency proposal follows:

#### Summary

Pursuant to his statutory authority, the Director of the Division of Taxation filed rules covering tax maps on February 6, 1979. Since that date multitudinous changes have occurred in assessment and surveying practices requiring revision of the Specifications, known as "Standards" which are incorporated by reference into N.J.A.C. 18:23A-1 et seq. Consequently, few, if any, of the rules remained unaffected by these revisions. The required modifications and adaptations resulted in a near-complete revision of the current rules found in the New Jersey Administrative Code. Although this proposal repeals the current text and proposes new rules in its place the changes between the old and new rules consist of technical and grammatical revisions and the redesignation of "specifications" as "standards." The changes in the rules are summarized as follows.

18:23A-1.1 (a) 10. is added to include certification of the entire map as a prerequisite to filing for approval.

18:23A-1.2 (a) 3. is changed to clarify local custodial authority and a new 4. is added to require tax maps made for revaluation purposes must be approved by Director.

18:23A-1.3 (a) Text is changed to include Director's approval of firms as a prerequisite to approval of an aerial photograph and in (d) the word—"fiscal" should be "physical."

18:23A-1.4 (a) Text is changed to give specific meaning and clarification; adds cross-reference to "Standards."

18:23A-1.5 (b) is changed for clarity and (c) adds the word "drawn."

18:23A-1.6 (a) adds a cross-reference to "Standards," and adds a new 14. concerning revision block; adds cross-reference to "Standards."

- 18:23A-1.7 (a) is changed to preclude use of "grid system."  
 18:23A-1.8 (a) adds one example to clarify meaning.  
 18:23A-1.9 (a) is changed for clarity and in (c), (f) and (g) cross-reference to "Standards" is added.  
 18:23A-1.10 (a), (c), (f) and (g) adds cross-reference to "Standards" and a new (i) is added which provides method of delineating mobile homes on tax map; involves cross-reference to "Standards."  
 18:23A-1.11 (a) through (c) contains minor word changes.  
 18:23A-1.12 a new (d) which regulates treatment of special assessments is added.  
 18:23A-1.13 hazardous waste sites are added.  
 18:23A-1.14 (c) 3. adds a provision which requires inscription of deed dimensions; precludes use of abbreviated methods. Also a new (i) is added to regulate details pertaining to overlapping dimensions.  
 18:23A-1.15 (d) is new covering private streets.  
 18:23A-1.16 minor text changes are proposed.  
 18:23A-1.17 minor text changes are proposed.  
 18:23A-1.18 (b) deletes prior reference to "Tax Maps" and adds cross-reference to "Standards."  
 (c), (d) and (e) adds cross-reference to "Standards."  
 18:23A-1.20 (a) text is changed to clarify method to be employed in itemizing lots.  
 (b) is changed to specify items to be included for an exempt designation.  
 18:23A-1.21 (a) adds cross-reference to "Standards."  
 18:23A-1.25 (e) is new and adds a provision covering review procedures.  
 18:23A-1.27 (c) is revised for clarity and minor textual changes are proposed for (d).  
 (g) is new and adds instructions for filing revised maps.  
 (h) is new and adds requirement to file copies with county tax boards.  
 18:23A-1.28 (a) is substantially revised by the addition of paragraph 1.  
 18:23A-1.29 (a) is changed to specify required details and adds a new (b) which instructs methods for inclusion of new data.  
 18:23A-1.30 is a new rule concerning miscellaneous assessment regarding details of unusual items; cross-reference to "Standards" is also included.  
 18:23A-1.31 is a new rule concerning the delineation of air rights; cross-reference to "Standards" is also included.

#### Social Impact

The repeal and new rules are proposed to provide an aid to municipal officials in the preparation of tax maps to conform with the statutory standards of uniformity. Not only are tax maps beneficial to such officials, but also to property owners who are able to ascertain whether or not their property is correctly delineated for purposes of taxation.

#### Economic Impact

The proposal has no adverse economic impact since it prescribes the work standards of officials engaged in the preparation of tax maps. On the other hand, the proposal benefits local and county governments and taxpayers who will, no doubt, experience a lessened incidence of costly tax appeals as a result of the uniform standards and guidelines set forth herein.

**Full text** of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 18:23A (including the Foreword).

**Full text** of the proposed new rule follows.

#### 18:23A-1.1 General provisions

(a) In accordance with the provisions of Chapter 175, Laws of 1913 (N.J.S.A. 54:1-15), Chapter 167, Laws of 1939 (N.J.S.A. 54:1-15.1) and Chapter 92, Public Laws of 1948 (N.J.S.A. 52:18A-46), the Director, Division of Taxation, Department of the Treasury, has adopted these rules for the preparation of tax maps.

1. Modifications of these rules may be desirable in some cases to meet special conditions and will be authorized upon application in writing to the Director if adequate reason is shown.

2. These rules are intended to cover the preparation and revision of all types of tax maps (N.J.S.A. 54:1-15(6)).

3. Existing surveys, maps, and aerial photographs may be used in the preparation of tax maps, provided their accuracy is first tested and found to be within the limits herein specified.

4. Tax maps may show lots as shown on a filed plan of development indicating the development block and lot numbers as well as the tax map block and lot numbers.

5. Tax maps are made primarily for the use of the assessor and should contain the information necessary for his purposes. Other data desired by the local authorities, (such as house numbers shown on street area, opposite pertinent lot), may be added, provided this is done without obscuring the details of the maps and without interfering with its stated use.

6. The line work and lettering on all tax maps shall be done with black waterproof ink.

7. Freehand or mechanical lettering may be used, but the style or type of lettering shall be consistent throughout the map.

8. On each Key or Index Sheet the following statement shall be shown:

"To show Conditions as of (date)," indicate the date of the latest deed plotted on the map or the date of the latest revision.

9. On each Key or Index Sheet the following certification shall be made: "I hereby certify that this map and any required survey have been made under my immediate supervision, and comply with the laws of the State of New Jersey." The seal, signature, and license number of the New Jersey Licensed Land Surveyor preparing the tax map shall be affixed under the above statement (See: New Jersey Attorney General's Formal Opinion 1959—No. 6, dated April 14, 1959).

10. A previously approved tax map, currently revised and re-submitted for an approval shall have the following certification:

"I hereby certify that this map has been revised under my immediate supervision, and complies with the laws of the State of New Jersey." The seal, signature, and license number of the New Jersey Licensed Land Surveyor revising the tax map shall be affixed under the above statement.

#### 18:23A-1.2 Approval of tax maps

(a) The law provides that the Director, Division of Taxation, "shall have full control over the preparation, maintenance, and revision of all tax maps however prepared" (See: Chapter 175, Laws of 1913 and N.J.S.A. 54:1-15(6)).

(b) No new map or set of maps shall be used for purposes of taxation until approved by the Director, Division of Taxation (Chapter 167, Laws of 1939; N.J.S.A. 54:1-15.3).

1. After maps have been completed and thoroughly checked by the maker for compliance with these rules the maps shall be submitted to the Local Property and Public Utility Branch for examination. Any revisions or corrections

found to be necessary shall be made by the maker of the tax map. The Branch reserves the right to reject any tax map for examination which, in its opinion, has not been adequately checked for compliance with these rules.

2. When the required revisions have been made, the tax map will be approved by the Director, Division of Taxation, and his official approval will be stamped on each tracing.

3. The Local Property and Public Utility Branch will make a set of prints of each approved tax map to be retained in its file. The tracings will then be made available to said municipality.

4. The tax maps to be approved for revaluation purposes in accordance with Chapter 424, P.L. 1971, shall conform to these rules as far as lot and block numbering system is concerned and all lot and block details. However, the original tax map tracings shall not be required to have the Director's official stamp.

#### 18:23A-1.3 Aerial photographs and surveys

(a) If aerial photographs of the municipality are to be used as an aid in the preparation of a tax map, they shall be taken by a bonded company experienced in and equipped for the production of such aerial photographs and approved by the Director.

(b) Vertical aerial photography may be used to assist in the preparation of a tax map, if the basic map detail such as highways, roads, streets, railroads, streams, rivers, lakes, shore lines, and municipal boundary lines are plotted by a stereoscopic or radial line method to avoid the displacement or wrong location of such detail. The tracing of an individual photograph or enlargement of the basic map detail will not be considered sufficiently accurate.

(c) The aerial photography shall be taken with a precision certified mapping camera.

(d) Aerial prints shall not be from a flight flown more than three years prior to date of tax map compilation.

NOTE: Physical changes such as recent land developments, road alignments, etc., would not be shown on older prints or photographs.

(e) Aerial prints to be used as an aid in the preparation of a tax map should be from a flight flown when the trees are bare of foliage and the ground is bare of snow.

(f) Aerial prints shall be supplemented by sufficient control points to insure their accuracy. The control points shall be derived from the following sources:

1. United States Coast and Geodetic Survey monuments and points;
2. United States Geological Survey monuments and points;
3. New Jersey Geological Survey monuments and points;
4. Existing surveys of private and public property;
5. Existing highway and road surveys (State, County and Municipal);
6. Actual field surveys by a tax map maker, a New Jersey Licensed Land Surveyor, to ascertain the proper location of a lot.

#### 18:23A-1.4 Size of tax map sheets

All completed tax map sheets shall be prepared on high-grade tracing cloth, film base material or polyester type plastic material, 36 inches long by 24 inches wide. Each sheet shall have a border with margins of one inch around the upper, lower and right sides, and a three inch margin on the left side (See Standards, Page 39).

#### 18:23A-1.5 Scales

(a) Maps shall be drawn to the following scales, depending on the density and classification of the municipality:

1. City and urban districts—1 inch = 50 feet and 1 inch = 100 feet;

2. Rural districts—1 inch = 200 feet and 1 inch = 400 feet;

3. Large State and Federal tracts—Scales to be agreed upon by this Branch, the municipality and the tax map maker.

(b) The same scale shall be used on all detail sheets throughout the taxing district, but where special conditions make it desirable to use more than one scale, this may be done by first obtaining permission from the Local Property and Public Utility Branch.

(c) A supplemental sheet, or sheets, drawn to a larger scale may be used to show properties in a minor settlement or development, if this cannot be clearly shown on a smaller scale.

#### 18:23A-1.6 Key map or sheet

(a) A Key Sheet shall be prepared for each map to a small scale which shall show the following data (See Standards, Page 40):

1. The boundary lines of the entire municipality, including bearings and distances when available;
2. The names and limits of all adjacent municipalities and counties;
3. All streets, roads, highways, main streams, lakes, local settlements, major public utilities rights-of-way, airports, bodies of water and railroads with their proper names;
4. The limits of special taxing districts within the municipality;
5. The outline and number of each detail sheet;
6. The outline and number of each block;
7. The meridian, true and magnetic, including declination on key sheet only;
8. Legend (See Standards, Page 40);
9. Title block (See Standards, Page 39);
10. Statement as follows: "To show conditions as of (date)";
11. The certification and seal of the New Jersey Licensed Land Surveyor;
12. A block or space for the Director's approval stamp;
13. A statement similar to the following: "The areas, boundaries and dimensions shown on this tax map are derived from ground surveys, aerial surveys, and recorded plans, maps, deeds, wills, and are to be used for assessment purposes only";
14. Revision block (See Standards, Page 39).

(b) One or more Key Sheets may be used to properly show the required data.

(c) The Key Sheet shall be drawn to a scale that shows the proper relationship of topographic features such as roads, railroads, streams, etc.

(d) When a new tax map supersedes an existing tax map, a note shall be placed on the Key Sheet or Key Sheets as follows: "This tax map supersedes the tax map approved (date)." This information is obtainable from the Local Property and Public Utility Branch.

#### 18:23A-1.7 Detail sheets

(a) Detail sheets of a tax map shall be laid out as systematically as possible to make the tax map easy to understand. Streets, roads, highways, streams and railroads, etc. should be used as sheet limits unless it is impractical to do so. The grid system shall not be used to detail a tax map.

(b) A true meridian shall be drawn on each detail sheet.

#### 18:23A-1.8 Sheet numbers

(a) The sheets of a tax map shall be numbered consecutively, and the sheet number shall be placed in the upper and

lower right-hand corners, outside of the borderline. A supplemental tax map sheet shall bear the original sheet number with a number added as a subscript. For example: If an original sheet numbered "9" is subdivided or a supplemental sheet is needed they would become 9, 9.01, 9.02, etc. (See Standards, Pages 42 and 43).

(b) Along the inside of each borderline shall be marked the number of each adjoining detail sheet.

#### 18:23A-1.9 Block numbers

(a) All blocks in the municipality shall be assigned block numbers set forth in numerical sequence commencing with the number "1".

(b) Care should be used in connection with the assignment of block numbers since "Electronic Data Processing" is being used on a county-wide basis to record reassessment information for each individual municipality.

1. The division of an old block number may be shown by using the decimal system in this manner—1.01, 1.02, etc.;

Example (1):

Old Block Number 100 is split by a freeway into four blocks, yet the identity of old Block 100 must be retained. Then the new Block Numbers may be designated as Block Number 100.01, 100.02, 100.03, and 100.04

2. There is another system of block numbering which identifies the sheet number as well as the block number.

Example (2):

Sheet 1 being the first sheet, would have the blocks numbered 101, 102, etc. Sheet 2 would then be the second sheet, having blocks numbered 201, 202, etc. It would be then possible to have at least 99 block numbers allocated to each tax map sheet, a situation not often encountered.

(c) Each block shall be bounded by streets, highways, rivers and prominent streams, but it shall be permissible, under special conditions to use artificial block limits, provided they are clearly shown by heavy solid lines and marked "Block Limit" or "B.L."

1. Artificial block limits may be established along a property line or lines;

2. In no case shall any block be so extended that it will include lands on both sides of any street, highway, or prominent stream;

3. Where rights-of-way of public utilities or railroads are assigned a block number to apply to their entire length, no other block shall be so extended that it will include lands on both sides of said rights-of-way or railroads (See N.J.A.C. 18:23.16 and Standards, Pages 51, 52, 53 and 72).

(d) Block numbers shall be made prominent and distinctive and placed near the center of each block.

(e) There shall be no duplication of a block number within a municipality.

(f) Block numbers used on filed maps which are located within the municipality may be shown but shall be distinct in appearance and less conspicuous than the block number to be used on the tax map. These filed map block numbers shall not be shown on the Key Sheet or Sheets (See Standards, Pages 48 and 49).

(g) If blocks as shown on an original tax map are later subdivided, each subdivision shall bear the original block number with a number added as a subscript. For instance: if an original block number 16 is later subdivided into three blocks, they would become block numbers 16.01, 16.02 and 16.03. Again, if the block 16.01 is further subdivided into several new blocks, they would become 16.01, 16.04, 16.05, etc. i.e., one area retaining a number of the area that was subdivided and other areas would take the next consecutive

number of the block with prefix number 16 (See Standards, Page 44).

#### 18:23A-1.10 Lot numbers

(a) Lot numbers shall be assigned to every lot in the municipality including lots along the boundary lines, which may be assessed by an adjoining municipality, and "exempted" property, except areas occupied by roads, streets, highways, and tidal waters outside of riparian grants (N.J.S.A. 40:146-27; See Standards, Pages 50 and 51).

(b) Lot numbers shall be consecutive in each block, commencing with the number "1". In those areas covered by a filed development the lot numbers from such filed maps may be adopted for use on the tax map, provided this method does not produce any duplication of lot numbers within any block.

(c) Lot numbers shall be shown in smaller and lighter figures than those used for block numbers and easily distinguishable therefrom.

(d) Lot numbers shall be placed on the lots in a systematic manner.

(e) Filed map lot numbers may be shown on the tax map, but shall be distinct in appearance and less conspicuous than the lot numbers used on the tax map (See Standards, Page 48).

(f) Where adjacent lots on a filed map are combined into one holding for the purpose of assessment, the lots may be shown on the tax map either as one lot or several lots, depending on the circumstances and preferences of the local officials. However, the method adopted should be used throughout the entire tax map (See Standards, Pages 48 and 49).

(g) If lots as shown on an original tax map are later subdivided, each subdivision shall generally bear the original lot number with a number added as a subscript. For example: if an original lot numbered 3 is subdivided into two lots, they would become lot numbers 3.01 and 3.02. Any later subdivision of former lot 3 would take the next consecutive numbers 3.03, 3.04, etc. (See Standards, Page 45).

(h) If a lot is completely detailed on one detail sheet, the lot shall not be detailed on any adjoining detail sheet or sheets.

(i) When applicable, lot numbers shall be assigned to areas on which mobile homes are situated, and the designated lot numbers should be part of the numbers previously assigned to the lot on which the individual mobile homes are located. For example: the mobile homes referred to as No. 1, No. 2, No. 3, etc., within the mobile home park area listed as Lot 1 on the tax map should be listed as being situated on Lots 1.01, 1.02, 1.03, etc. Detailing of the individual mobile home sites is permissible where the assessing practices of the tax districts require such delineation. The approximate location of the mobile home sites or lots should be indicated by a thin dashed line on the tax map (See Standards, Page 68).

#### 18:23A-1.11 Block and property lines

(a) Property lines of lots on a tax map shall be shown by a solid line only, somewhat lighter and thinner than that used for streets, roads, and artificial block limits.

(b) Property lines along streets, rivers, lakes, bays, and any other bodies of water should be clearly shown with a solid line.

(c) Property lines of lots from filed maps, when they do not coincide with the property lines of the tax map lots, shall be shown by a thin dashed line (See Standards, Page 48).

#### 18:23A-1.12 Boundary lines of municipalities

(a) Boundary lines of the municipality shall be determined either by running traverse lines in the field or from other reliable sources.

1. If traverses are run, they shall be closed and the computations may be requested by the Local Property and Public Utility Branch for review.

2. Reliable sources may be defined as recent tax maps of the adjoining municipalities, old maps and description of the municipality, known monuments and land marks in the boundary line itself, and agreement between local authorities as to the location of any disputed lines (See R.S. 40:43-67, 70 and 71, Chapter 37, Laws of 1953).

3. A description of the boundary lines of the municipality shall be furnished to this Branch when the tax map is submitted for review.

(b) Boundary lines of the municipality shall be shown by a very prominent, heavy dash and double dotted line.

(c) Along each portion of the boundary line of the municipality shall be shown the name and limit of each adjacent municipality, both on the Key Sheet or Sheets and on the Detail Sheets.

(d) Where required, by the municipality, tax maps may show a special assessment line for properties (lots) assessed on both sides of the municipal boundary (See Standards, Pages 37 and 51).

#### 18:23A-1.13 Boundaries of special taxing districts

Boundaries of special districts for which a separate tax is assessed, such as hazardous waste sites, garbage, fire and lighting districts, etc., shall be shown on both the Key Sheet or Sheets and on those Detail Sheets affected, by conspicuous dashed lines, with the name or other designation of such district prominently shown along said boundary line.

#### 18:23A-1.14 Dimensions and area of lots

(a) The width and depth dimensions of rectangular lots and all dimensions of irregular lots shall be shown on properties assessed as lots.

(b) All dimensions of acreage lots are required.

(c) A scaled distance may be used where the exact distance is unknown and cannot be determined at a reasonable cost.

1. In the case where scaled distances are used, the indication (S) shall be used after the dimension. Thus 1500' (S).

2. Where the deed distance is in conflict with the surveyed or scaled distance, the indication (D) may be shown after the deed dimension. Thus 1666.26' (D).

3. All dimensions (not in conflict with surveyed or scaled distance) shall indicate deed dimensions. No abbreviation or rounding of deed dimensions is permitted. Dimensions shall be given in feet and hundredths of a foot, where possible. However, where deed dimensions indicate a distance to the center of a road the calculated distance to the side line of the road or both the centerline and the sideline distances will be shown on the tax map.

(d) The area of each lot over one acre shall be given in acres and hundredths of an acre (decimal form) where possible. Lots with areas of under one acre may show such acreage or square foot area if required.

(e) Deed areas may be used where substantially correct. Where the deed area is incorrect, the surveyed area should be shown, but the deed area may also be shown for comparative purposes. Example: 1600.60 Ac. ± (S). 1490.10 Ac. ± (D). It is necessary to deduct road areas from the deed area to obtain actual assessment areas.

(f) Even though several lots in different blocks are covered by one deed, the area of each lot shall be shown separately (See Standards, Page 46).

(g) Where a lot extends across a Detail Sheet border but does not go beyond the limit of the sheet, the entire lot shall be shown on that Detail Sheet. Remove borderline where lot extends beyond.

(h) Where a lot must be shown in part on two or more detail sheets, the word "Total" shall be added before the acreage to indicate that the acreage shown includes also that portion of the lot shown on other detail sheets (See Standards, Page 41).

(i) Overlapping lot lines and dimensions shall be shown in accordance with descriptions appearing in the last deed of record for each parcel (See Standards, Pages 69 and 70).

#### 18:23A-1.15 Streets, roads, highways

(a) All dedicated streets, roads and highways shall be shown by a solid line, considerably heavier than the lines used to show lot lines (See Standards, Page 37).

(b) The proper and correct names of all streets, roads and highways shall be shown on Key Sheets and Detail Sheets.

(c) The widths of all streets, roads, alleys and highways when known or determinable shall be shown on the Detail Sheets.

(d) Private streets shall be shown with a separate lot number or shall be shown as dashed lines. Other private streets shall be part of the adjacent lot with the property lines as the division (See Standards, Pages 47, 62 and 71).

#### 18:23A-1.16 Rights-of-way and easements

(a) The rights-of-way and easements of all public utilities shall be shown with their widths and types (that is, private, sewer utility, etc.) set forth on the affected Detail Sheets.

(b) If the rights-of-way are owned in fee and are therefore assessable, they may be detailed in one of the following methods:

1. A right-of-way may be assigned a block number to apply to the entire length of such right-of-way in the municipality, assigning consecutive lot numbers to portions limited by roads, streets, etc., in which case the right-of-way shall be shown with a heavy solid block limit line (See Standards, Pages 51 and 52).

2. Each portion of a right-of-way limited by roads, streets, etc., may be assigned a lot number applicable to the block in which it is located, in which case the right-of-way shall be shown with the regular type lot lines (See Standards, Pages 51 and 52).

(c) If a right-of-way is not owned in fee, being an easement only, it shall be shown with a very short, thin-dashed line and shall not be assigned a lot number. The area included within the easement shall be included as part of the lot through which it runs.

(d) The name of the owner or user of all rights-of-way or easements shall be shown, such as Public Utility, Sewerage Authority, etc.

#### 18:23A-1.17 Railroads

(a) Tax maps shall show all railroads with their correct names and locations.

(b) The railroad property as assessed by the State will be shown in its two categories: namely Class I (Main Stem) and Class II (Second Class) (See Standards, Page 53).

(c) Railroad property may be shown in the same manner as outlined under "Rights-of-way and Easements, Par. 2" (See N.J.A.C. 18:23A-1.16; See Standards, Pages 51 and 52). However, the method adopted shall be used throughout the entire tax map.

(d) Prints of the railroad lands as assessed by the State of New Jersey may be obtained, upon application, at a minimal cost from the Local Property and Public Utility Branch.

#### 18:23A-1.18 Rivers, streams, riparian grants

(a) Tax maps shall show all rivers and streams with their proper names on the Key Sheet or Sheets and on the respective Detail Sheets.

(b) Dashed and triple dotted lines shall be used to show rivers, streams and similar bodies of water (See Standards, Page 54).

(c) A single solid line may be used to indicate a small stream when it is also a property line, provided it is marked "P/L" (See Standards, Pages 55 and 56).

(d) On navigable and tidal waters, dimensions shall indicate distances to the extent of ownership only (See Standards, Page 54).

(e) Riparian grants shall be indicated and assigned lot numbers.

Example: Where a property owner also has a riparian grant, the grant should be shown as a lot and assigned a subscript number to the present lot number (See Standards, Page 56). Parcels detailed from "Claims Maps" adopted by the Tidelands Resource Council shall indicate such information. A note shall be placed on the tax map sheet showing name, number and date of a claims map.

#### 18:23A-1.19 Marshes, timberlands, mines, and other features having material influence on land values

(a) If required by the municipality, the tax map may show with a light dotted line the outlines of features that may have a material influence on land values, such as marshes, timberlands, active mines, quarries, clay pits and agricultural or farm lands.

1. If the above features tend to distort the format of the tax map in any way, they should not be used.

2. Such indications may be added to the tax map tracings in pencil after its approval by this Branch, provided the local authorities so desire.

#### 18:23A-1.20 Exempted lands

(a) All lots actually exempted from taxation shall be marked with the word "exempted" and numbered sequentially in accordance with the appropriate lot and block numbers.

(b) Every parcel designated "Exempted" shall conform with the following data:

1. Reason for exemption;
2. Name of exempt owner.

#### 18:23A-1.21 Titles

(a) All tax map sheets shall contain in the lower right-hand corner and within the borderlines, a title giving the name of the municipality, name of county, date, scale of the individual sheet, and the name and address of the New Jersey Licensed Land Surveyor who made the tax map (See Standards, Page 39).

(b) Location of the title other than as described in (a) above will be permitted if a reasonable explanation is indicated and approval granted.

#### 18:23A-1.22 Name of property owners

(a) The names of owners of acreage lots in rural townships may be shown on the tracings in pencil if the local authorities so desire.

(b) Where the transfer of property is active and changes in ownership are frequent, the names of owners should be omitted.

#### 18:23A-1.23 Surveys

(a) Where required on surveyed tax maps in locating "control points" for aerial photographs, surveys can be made with any degree of accuracy desired by the local authorities, but errors shall not exceed the following limits:

1. Measuring in city and suburban areas, error not to exceed 0.1 feet in 1,000 feet;
2. Measuring in rural districts, flat country, error not to exceed 0.5 feet in 1,000 feet;
3. Measuring in rural districts, rough and hill country, error not to exceed 1.0 feet in 1,000 feet.

#### 18:23A-1.24 Supplementary field surveys

Supplementary field surveys shall be made where property lines cannot be determined from deed descriptions or other available suitable information in order to insure the proper location and size of all lots shown on the tax map.

#### 18:23A-1.25 Review procedures employed by Local Property and Public Utility Branch

(a) The Local Property and Public Utility Branch will review and note corrections to be made by the tax map maker.

(b) Corrections to be made on the tax map will be listed on a sheet or sheets so provided, and will be shown on prints of the map, if prints are provided by the tax map maker.

(c) The Branch reserves the right to ask for corrections in compliance with requirements of these rules during any period or periods of the reviewing procedure involved in the preparation of any tax map.

(d) After the map has been corrected, the tracings will be stamped as an approved tax map.

(e) For the purpose of this Branch's review procedure, the individual tax map sheets should not be fastened together, or bound in any manner or printed on both sides.

#### 18:23A-1.26 Outline maps

(a) "Outline maps" are ordinarily only a temporary expedient; their use is permitted only in townships, and only after permission is obtained from the Director, Division of Taxation (See N.J.S.A. 54:1-15(3)).

(b) The provisions of the rules for other types of tax maps are to apply to "outline maps".

#### 18:23A-1.27 Maintenance of tax maps

(a) The Director, Division of Taxation, has full control over the preparation, maintenance, and revision of all tax maps, however prepared (See N.J.S.A. 54:1-15(d)).

(b) An approved tax map should be maintained and revised as specified in this section to provide for its maximum and best use by the local assessor.

(c) Current maintenance of tax maps should be achieved by changing tracings whenever a land transfer occurs on a regular weekly or monthly basis. A revision block should be set forth on key map or detail sheets indicating the following:

1. Name and number of New Jersey Licensed Land Surveyor who made revisions;
2. Key maps will indicate dates when last revisions were made on the tax map;
3. Detail Sheets will indicate last revisions on that sheet only.

(d) The Formal Opinion 1959—No. 6 by the Attorney General of the State of New Jersey required New Jersey Licensed

Land Surveyors to seal and to certify all tax maps made and filed in this State. Thus, the maintainer of a tax map shall also be a New Jersey Licensed Land Surveyor.

(e) If any tracing of a tax map has been completely revised due to new roads, land developments or other improvements it should be re-checked and re-stamped by this Branch. Similar procedure should follow with any new tax map sheets.

(f) Any tax map, previously approved and later revised and re-submitted for re-approval, shall conform to the latest tax map rules as far as lot, block and sheet numbering system is concerned and all lot and block required details.

(g) In cases of renumbering blocks and lots, a map size sheet may be attached to the tax map for a cross reference list.

(h) The municipal tax assessor of every taxing district shall, on or before January 10, of each year, file with the county board of taxation a duplicate copy of a municipal tax map which conforms to the block and lot designations reflected on the current year's tax list submitted by the assessor to the county board of taxation on or before January 10 of the tax year. Each municipality shall provide for the preparation of yearly revisions of the tax map. The municipal tax assessor shall be responsible for providing the municipality's New Jersey Licensed Land Surveyor with deeds and/or subdivision maps necessary for the revision. However, in any year in which no revisions were required to be made to a municipal tax map, the county board of taxation may, upon proper notification by the tax assessor of that municipality, waive the requirement of filing a duplicate copy of the tax map with the board for that year.

18:23A-1.28 Condominiums

(a) Lot numbers shall be assigned to all lots having condominiums. Separate condominium units shall be shown as indicated in the filed "Master Deed". Lot acreages shown on such lots will indicate area included or not included under condominium units.

1. Detailing condominium units shall be performed as follows:

i. Assign lot numbers (unit numbers) to all individually assessed condominium units;

ii. Indicate total acreage of an area known as common elements (See (a) above and Standards, Pages 60 through 65);

iii. Dashed lines shall be used to show all private streets, courts, parking areas, swimming pools, etc.;

iv. The use of alphabetical designations shall be avoided in reference to numerical designations. However, types or models may be assigned alphabetical designations, i.e., a, b, c, d, etc., but shall be inset on a map in lighter print than used for lot numbers (See Standards, Pages 66 and 67);

v. Show legend on detail sheet which will contain every detail of the condominium models indicating size and dimensions (See Standards, Pages 66 and 67);

vi. Where unattached car garages are detailed and the condominium unit numbers are 30, 31, 32, the respective garage numbers shall be 30.01, 31.01 and 32.01 or assign next consecutive unit numbers (See Standards, Pages 66 and 67).

18:23A-1.29 Flood hazards

(a) Where applicable, the tax map shall show boundaries of flood hazard areas with dashed lines.

(b) Additional information, such as acreage and/or dimensions should indicate flood hazard limits.

18:23A-1.30 Miscellaneous assessments

Where applicable the tax map shall indicate areas of coastal wetlands, encroachments, solar rights, etc., in the same man-

ner as indicated for flood hazard areas with dashed lines (See Standards, Pages 57 and 58).

18:23A-1.31 Air rights

(a) When subject to assessment and taxation, air rights must be shown on tax maps in accordance with the following:

1. The area included in the air rights should be circumscribed by dashed lines and inscribed with the words "Air Rights".

2. The lot number of the parcel subject to air rights shall also be the number assigned to the air rights with a decimal added commencing with "01".

Example: Lot 15 is subject to air rights in favor of an independently owned parking lot atop a building. The parking lot will appear as lot 15.01 (See Standards, Page 59).

3. The elevation above ground to be shown when available (See Standard, Page 59).

OFFICE OF ADMINISTRATIVE LAW NOTE: A copy of the Map Standards which are referred to throughout the text of the proposal is incorporated by reference and is available for review at the Office of Administrative Law and the Division of Taxation.

(a)

**Spill Compensation and Control Tax**

**Proposed Readoption: N.J.A.C. 18:37**

Authority: N.J.S.A. 58:10-23.11 et seq.

Proposal Number: PRN 1985-263.

Submit comments by June 5, 1985 to:

Jack Silverstein  
Chief Tax Counselor  
Division of Taxation  
50 Barrack Street  
Trenton, N.J. 08646

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:37 expires on May 6, 1985.

The agency proposal follows:

**Summary**

Tax liability under the Spill Compensation and Control Act (P.L. 1976, c.141), effective April 1, 1977, is incurred when hazardous substances are transferred to a major facility or vessel within the jurisdiction of the State of New Jersey by vessel or transferred to a major facility in New Jersey from another major facility located outside or within New Jersey.

The tax burden falls upon the operator or owner of the receiving major facility or vessel irrespective of the ownership of the hazardous substance transferred (except for transfers to certain major facilities designated as public storage terminals).

Spill Compensation and Control Tax liability is limited to the first transferee of a hazardous substance within New Jersey. Secondary and later transferees of the same hazardous substance (or any product derived therefrom) are exempt from tax liability if they are in receipt of a valid Secondary Transfer Certificate from the transferor.

The Spill Compensation and Control Act has been amended three times since its original enactment.

Effective January 18, 1979, P.L. 1979, c.6 amended the act to provide that in the event of a transfer of a hazardous substance to a major facility operating as a "public storage terminal" in New Jersey, the owner of the substance upon receipt at the terminal, rather than the owner or operator of the terminal, is held to be the transferee and taxpayer.

This amendment was designed to relieve those terminals merely providing warehousing facilities from taxpayer status.

The amendment did not change the taxpayer status of major facilities that own hazardous substances stored at their facility and lease a portion of their tankage space to another company. In such an instance the owner or operator of the major facility and not the owner of the hazardous substance is liable for tax payment on all taxable transfers into their facility.

P.L. 1979, c.346, signed into law on January 23, 1980 and applicable to transfers occurring on and after April 1, 1980, was designed to alleviate the imbalance of revenues received by the Spill Compensation and Control Fund from the petroleum and chemical industries by applying an alternate tax rate to non-petroleum hazardous substance transfers.

The tax rate was \$0.01 per barrel for all taxable transfers of hazardous substances, whether petroleum or non-petroleum, occurring between April 1, 1977 and March 31, 1980. P.L. 1979, c.346 amended the tax rate for taxable transfers of hazardous substances other than petroleum products occurring on and after April 1, 1980 to \$0.01 per barrel or 0.4 percent of fair market value of the substance, whichever is greater.

Chapter 346 further provided that in the event that revenues collected from transfers of hazardous substances other than petroleum products exceeded \$7 million during any calendar year, the excess should be refunded or credited, except under certain conditions, to the taxpayers who paid such taxes in proportion to all taxes paid by all taxpayers on such transfers.

The definition of "major facility" was also amended. A major facility is a facility used to refine, produce, store, handle, transfer, process or transport hazardous substances, as defined in the Act, and which has a total combined above ground or buried storage capacity of 400,000 gallons or more for all hazardous substances, including petroleum products. However, effective April 1, 1980, the Act was amended to reduce the storage capacity to 50,000 gallons or more for hazardous substances other than petroleum products. The 400,000 gallon threshold remains as a storage capacity requirement for petroleum products.

Chapter 346 also amended the Act to provide tax liability on the transferor, rather than on the transferee, for transfers of hazardous substances other than petroleum, on and after April 1, 1980, which have not been previously taxed, and are transferred from a major in-state facility to a facility which is not a major facility.

P.L. 1980, c.73, effective July 22, 1980 and applicable to transfers on or after April 1, 1980, imposed a tax rate of \$0.01 per barrel on transfers of hazardous substances other than petroleum products which are, or contain, any precious metals to be recycled, refined, or rerefined in New Jersey, or which are transferred into New Jersey subsequent to being recycled, refined or rerefined. Precious metals mean gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium and copper.

P.L. 1980, c.73 also amended the "petroleum or petroleum products" definition to include substances or additives to be utilized in the refining or blending of crude petroleum or petroleum stock in New Jersey. These substances would,

therefore, be taxed at the \$0.01 per barrel petroleum tax rate.

Due to the condition of the Fund balance in October 1980 the tax rates, as required by subsection 9(b) of the Act, were revised for the November 1980 taxable period and thereafter to: (1) Nonpetroleum hazardous substances—the greater of \$0.04 per barrel transferred or 0.8 percent of the fair market value of the substance; (2) Precious metals—\$0.04 per barrel transferred; and (3) Petroleum products—remained at \$0.01 per barrel transferred. The condition of the Fund balance in July 1982 was such that the tax rates were again revised for the August 1982 tax period and thereafter up to the present to: (1) Nonpetroleum hazardous substances—the greater of \$0.01 per barrel transferred or 0.4 percent of the fair market value of the substance; (2) Precious metals—\$0.01 per barrel transferred; and (3) Petroleum products—remained unaffected at \$0.01 per barrel transferred.

N.J.A.C. 18:37 contains the administrative rules which implement the tax act, its legislative purpose and its amendments. Pursuant to Executive Order No. 66(1978), the Division of Taxation proposes to readopt these rules without change since they are adequate, reasonable and necessary for their originally intended purpose. The social and economic impacts, in general, remain the same as they have been since the original promulgation of the rules.

Subchapter 1 deals with the imposition of the tax. Subchapter 2 contains the tax rates. Subchapter 3 provides rules regarding refunds or credits of tax on transfers of hazardous substances other than petroleum products. Subchapter 4 covers rules regarding the suspension of tax and relevy of the tax.

**Social Impact**

The Spill Compensation and Control Act (P.L. 1976, c.141) was enacted to protect the citizenry of New Jersey from the adverse effects of environmental mishaps which may result from spills of petroleum products or other hazardous substances. To expedite the clean-up process and provide adequate compensation to victims when spills occur, the legislature established a special fund within the Department of the Treasury and since transferred to the Department of Environmental Protection, supported by the Spill Compensation and Control Tax. These rules are being readopted to provide taxpayers in the petrochemical industry guidance and assistance in preparing tax returns and to assist Division of Taxation personnel in auditing such returns.

**Economic Impact**

The proceeds from the Spill Compensation and Control Tax constitute a fund, the New Jersey Spill Compensation Fund, to insure compensation for cleanup costs and damages associated with the discharge of petroleum products and other hazardous substances.

This tax has produced the following revenue since its inception:

Fiscal Year	
1978	\$ 6,429,830
1979	6,402,848
1980	6,850,324
1981	12,788,846
1982	15,346,938
1983	10,510,454
1984	9,817,014

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 18:37.

# RULE ADOPTIONS

## EDUCATION

(a)

### STATE BOARD OF EDUCATION

#### Business Services; State Aid District of Residence; Method of Determining and Address Submission

#### Adopted New Rules: N.J.A.C. 6:20-5.3 and 5.4

Proposed: February 19, 1985 at 17 N.J.R. 344(a).

Adopted: April 3, 1985 by State Board of Education, Saul Cooperman, Secretary.

Filed: April 12, 1985 as R.1985 d.208, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:4-15 and 18A:7B-12.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): November 15, 1989.

#### Summary of Public Comments and Agency Responses and Reasons for Making Changes:

No comments were received on the proposal. However, the Department made technical changes in 6:20-5.3(f) which substituted the term "commissioner" for "Commissioner of Education." This is consistent with other references to the commissioner used throughout N.J.A.C. Title 6.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

#### 6:20-5.3 Method of determining the district of residence

(a) The district of residence for school funding purposes shall be determined according to the following criteria:

1. The "present district of residence" of a child in a residential State facility defined in N.J.S.A. 18A:7A-3 and referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day of September of the pre-budget year.

2. The "present district of residence" of a child placed by a State agency in a group home, private school or out-of-State facility also referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's initial placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth in 1, above.

3. The "district of residence" referred to in paragraph two of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district

of residence in which the child resided with his or her legal guardian immediately prior to his or her initial admission to a State facility or placement by a State agency.

(b) The commissioner shall determine the "present district of residence" or "district of residence" referred to in N.J.S.A. 18A:7B-12(b) based upon the address submitted by the Department of Corrections or the Department of Human Services on forms prepared by the Department of Education.

(c) The commissioner shall notify district boards of education of the determination of the district of residence.

(d) A district board of education contesting the commissioner's determination of district of residence shall submit a written notification that a dispute exists to the Assistant Commissioner, Division of Finance, within 30 days of the receipt of a final notice that a child was determined to be a resident of the district for purposes of State funding. As part of this written notice, the following information shall be submitted:

1. A written statement detailing the effort of the district board of education to verify the determination of the commissioner;

2. Written rationale for rejecting the determination of the commissioner;

3. Any additional information the district board of education has obtained which might enable redetermination of the district of residence.

(e) The Division of Finance shall attempt to resolve the dispute administratively and shall notify the district whether a redetermination of district of residence will be made within 90 days of the receipt of the written notification that a dispute exists.

(f) A district board of education may initiate a formal proceeding before the **\*[Commissioner of Education]\* \*commissioner\*** to resolve such a dispute if the Division of Finance is unable to resolve a dispute within the 90 day time limit, by filing a Petition of Appeal with the **\*[Commissioner of Education]\* \*commissioner\*** pursuant to the provisions of N.J.A.C. 6:24-1.1 et seq.

#### 6:20-5.4 Address submission for determining the district of residence

(a) The address submitted to the Department of Education for determining the district of residence for school funding purposes for a child described below shall be the address defined below:

1. If the State has custody of the child or if a court or the State has appointed a third party as the custodian of the child, the present address of the parent(s) or guardian(s) with whom the child resided immediately prior to his or her initial admission to a State facility or placement by a State agency shall be submitted.

2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required by N.J.A.C. 6:20-5.3 (a)1 or 2 shall be submitted.

3. If the child never resided with his or her parent(s) or guardian(s), the address of the facility, group home, or private school shall be submitted.

4. If the child's sole parent or legal guardian resides in a State facility, the address of the State facility wherein the parent or guardian resides shall be submitted.

(a)

**STATE BOARD OF EDUCATION****Special Education****Identification, Individualized Education Program, General Requirements and Provision of Programs and Services for Nonpublic School Pupils and Programs Operated by Other Departments of New Jersey State Government****Adopted Amendments: N.J.A.C. 6:28-3.2, 3.6, 6.1, 6.3 and 8.3**

Proposed: February 19, 1985 at 17 N.J.R. 345(a).

Adopted: April 3, 1985 by State Board of Education, Saul Cooperman, Secretary.

Filed: April 12, 1985 as R.1985 d.209, **without change.**

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 39:1-1, U.S. P.L. 93-112, Sec. 504 and 94-142.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): June 1, 1989.

**Summary of Public Comments and Agency Responses:**

The Department received three written comments from one person on its proposed changes to the rules for special education. One comment questioned the authority of the State Board to amend the special education rule regarding early age identification of handicaps (N.J.A.C. 6:28-3.2(a)). There is no State law; therefore, the federal regulations cited in this regard (34 C.F.R. 300) are not applicable to this State. The Department responded that it is required by N.J.S.A. 18A:46-6.2 to provide programs for children under the age of three, therefore, the amended rule is consistent with State law as well as with federal requirements. Further, the Department believes that the procedures used by the State Board to amend the rule were proper and consistent with N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30. Two comments suggested that U.S.P.L. 93-380 should be included as the authority for the Child Find activities described in N.J.A.C. 6:28-3.2(a). The Department believes that U.S.P.L. 93-142 is the authority for this rule and supersedes U.S.P.L. 93-380.

**Full text of the adoptions follows.****6:28-3.2 Identification**

(a) Each district board of education shall adopt written procedures for screening and identifying those pupils between the ages of three and 21 who reside within the local school district who may be educationally handicapped and who are not receiving special education and/or related services as required by this chapter. Children below age three shall be identified, located and evaluated through programs operated

by or through contracts with the Department of Education.

(b) (No change.)

(c) (No change.)

(d) A pupil new to the local school district and identified, but not classified as educationally handicapped, by the school district from which the pupil came shall be placed in a regular public school program. If the chief school administrator, after consultation with the child study team, determines that such placement of the pupil may do serious harm to the pupil or to others, the pupil may be placed on home instruction for a period not to exceed 30 calendar days pending evaluation and determination of special education eligibility. Simultaneously with such placement of a pupil on home instruction, the chief school administrator shall initiate referral to the child study team according to N.J.A.C. 6:28-3.3(b) through (h).

**6:28-3.6 Individualized education program**

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

(e) The basic plan of the individualized education program shall include, but not be limited to:

1.-4. (No change.)

5. A description of the pupil's educational program which includes:

i. (No change.)

ii. An explanation of why the type of program and placement is the least restrictive environment appropriate in light of the pupil's needs. Determination of a pupil's least restrictive environment shall also include the following:

(1) The placement shall be in an appropriate educational setting as close as possible to the pupil's home.

(2) (No change.)

iii.-ix. (No change.)

(f)-(m) (No change.)

**6:28-6.1 General requirements**

(a) Each district board of education shall provide pupil evaluation to determine eligibility for special education and/or related services, compensatory education, supplementary instruction, home instruction and instruction in English as a second language for pupils enrolled in nonpublic schools located within the district.

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

**6:28-6.3 Provision of programs and services**

(a)-(h) (No change.)

(i) When the provision of programs and/or services under this subchapter requires transportation, or the maintenance of vehicular classrooms, the board of education of the district in which the nonpublic school is located shall provide the transportation and maintenance and the cost shall be paid from State aid received under this subchapter by the district board of education.

(j) (No change.)

**6:28-8.3 Procedural safeguards**

(a) A due process hearing request may be made to the Department of Education for a pupil confined in a residential facility operated by or under contract to a department of State government on issues of classification or the components of an education program or an educational placement.

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

(a)

**STATE BOARD OF EDUCATION****State Library Assistance Programs  
Incentive Grant Program****Readoption with Amendments: N.J.A.C.  
6:68-2**

Proposed: February 19, 1985 at 17 N.J.R. 346(a).  
 Adopted: April 3, 1985 by State Board of Education,  
 Saul Cooperman, Secretary.  
 Filed: April 12, 1985 as R.1985 d.207, **without change**.  
 Authority: N.J.S.A. 18A:4-15 and 18A:74-6.

Effective Date for Readoption: April 12, 1985.  
 Effective Date for Amendments: May 6, 1985.  
 Expiration Date pursuant to Executive Order No. 66  
 (1978): April 12, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the readoption follows.

6:68-2.1 Definitions  
 (No change.)

6:68-2.2 General policy  
 There are two separate incentive grant categories: Program A, to encourage the establishment of county library branches, and Program B, to encourage individual and cooperative library service projects. In general, construction and remodeling projects are not eligible for funding under either program. A minimum of 50 percent of the total incentive grant funds available in any one year will be reserved for funding projects under Program B, provided sufficient approvable applications are submitted.

6:68-2.3 Program A; the establishment of county library branches

(a) The State Library Aid Incentive Grant Program will offer special grants for projects leading to the establishment of and assisting in the initial financing of county library branches.

(b) For the purpose of this program, a county library branch is defined as an auxiliary outlet of the county library, funded primarily and administered totally by the county library commission, and meeting the following qualifications:

1. A county branch must be established as part of an overall master plan for county-wide library service.
2. It must be under the full-time supervision of a paid certified professional librarian.
3. It must have a population service base, generally, of not less than 10,000 nor more than one-quarter of the entire population serviced by the county library system.
4. It must have a geographical base with access to all sections of its service area of not more than 20 minutes by automobile.
5. It must have a library building adequate to house the collection and provisions should be made for a separate meeting room and at least three readers' seats for every 1,000 population in the branch service area. The building may be owned by either a municipality or the county, or it may be rented.

6. It must meet the quantitative State Aid criteria for a public library serving the population of the branch service area.

(c) It is possible to enter the program at any one of the first three phases, provided requirements for earlier phases have already been met.

(d) All initial applications shall be ranked in terms of the counties' ability to pay with priority given to applicants demonstrating the least financial resources. The ratio of equalized valuation (as listed in the "Certification of Table of Equalized Valuations", promulgated annually on October 1st by the New Jersey Division of Taxation) of the year preceding the date of application to the population estimate (as promulgated by the New Jersey Department of Labor) of the county for the year preceding the date of application shall be used as the criterion determining this financial ability. When applications for funds exceed the amount available, preference will be given to projects which have already been initiated under Incentive Grant Program A.

6:68-2.4 Program A; Phase 1

(a) A planning grant of up to \$5,000 will be provided to a county library to fund the preparation of up-dating of a master plan outlining the future development and directions of the entire library program for that county.

(b) This plan must include a ten-year population projection, a study of traffic and use patterns including maximum driving time and mileage on major routes to any proposed county branch libraries from all parts of their proposed service areas, a study of existing library resources within the county and specific recommendations for the future establishment of full county branches and stations.

(c) Only one Phase 1 grant will be made to any individual county library.

(d) At the end of the funding year, the project may be terminated without further obligation or for county libraries presenting a master plan for countywide library service acceptable to the State Librarian, either Phase 2 or Phase 3 grants will be requested for the establishment of one or more county branches.

(e) A county library may apply for more than one grant, but a separate application must be submitted for each branch to be funded.

6:68-2.5 Program A; Phase 2  
 (No change.)

6:68-2.6 Program A; Phase 3

(a) In order to be eligible for a Phase 3 grant under Program A of the incentive grant program, the county library making the application must meet all State Library Aid criteria (N.J.A.C. 6:68-1) applicable.

(b) This newly established branch must be established in accordance with the provisions of the county master plan and must, in addition, meet the six basic qualifications of a county branch enumerated in N.J.A.C. 6:68-2.3(b).

(c) An exception may be granted to the quantitative State Aid criteria (N.J.A.C. 6:68-1) if it can be shown the criteria will be met by the end of the Phase 3 grant year.

(d) Exceptions may also be requested for paragraphs 3 and 4 of the branch library qualifications enumerated in N.J.A.C. 6:68-2.3(b) if the exception requested can be justified by the county master plan and is approved by the State Librarian.

(e) A county library having newly established and contracted for a branch meeting the above minimum criteria or having been granted by the State Librarian one or more exceptions to those criteria will be eligible in the first year of the

## ADOPTIONS

branch's operation for an incentive grant of 25 percent of the branch's operating budget, not to exceed \$25,000.

### 6:68-2.7 Program A; Phase 4

(a) During the second year of the operation of the newly established county branch library under Phase 4 of this program, the newly established branch must meet all of the quantitative State Aid criteria (N.J.A.C. 6:68-1.) as well as the general criteria for the establishment of a branch library.

(b) Where the branch to be funded meets these criteria, the county library will be eligible for an incentive grant of 20 percent of the amount of the branch library's operating budget up to a maximum grant of \$25,000.

### 6:68-2.8 Program A; Phase 5

In the third and final year of operating the newly established county branch library under Phase 5 of the Incentive Grant Program A, the branch must continue to meet the criteria enumerated above and the county library will be eligible for an incentive grant of 15 percent of the amount of the branch's operating expenditures not to exceed \$25,000.

### 6:68-2.9 Program B; Individual and cooperative library projects

(No change.)

### 6:68-2.10 Eligibility

(a) Each library must, at the time of application, meet in full the quantitative State Aid rules for libraries serving its population (N.J.A.C. 6:68-1).

(b) Cooperating libraries in a joint project must serve a total population of not less than 10,000.

(c) Cooperating libraries must serve, when possible, contiguous municipalities.

(d) Projects must represent services that could not reasonably be provided solely with local funds. Requested equipment or materials must represent items essential to the proposed project.

### 6:68-2.11 Project costs

(a) An incentive grant must be matched by an expenditure from local funds equal to 50 percent of the total project costs. In-kind services (for example, released staff time) are not eligible as matching funds.

(b) For individual or cooperative library projects, the minimum grant per library is \$500.00; the maximum grant per library is \$5,000.

### 6:68-2.12 Grant application procedures

(a) Application forms for each of the two programs may be obtained from the Library Development Bureau of the New Jersey State Library, and must be sent to that office, post-marked no later than June 1, in the year preceding the fiscal year in which the grant will be awarded. The application must be signed by the President of the Library Board of Trustees or County Library Commission of each of the applicant libraries. It must be accompanied by a resolution passed by each Board of Trustees or County Library Commission at a duly authorized meeting, authorizing the submission of the application.

(b) Applications will be reviewed by the staff of the State Library.

(c) Recommendations for approval will be forwarded by the State Librarian, to the Commissioner of Education and the State Board of Education.

## EDUCATION

### 6:68-2.13 Priorities in award of grants

(a) Each approvable application shall first be assigned to one of two priority groupings.

(b) First priority grouping in award of grants shall be given to cooperative projects from groups of libraries. Second priority grouping shall be given to applications from individual libraries. The percentage of funds allocated to each priority grouping will be established each year by the State Librarian.

### 6:68-2.14 Criteria for approval

(a) Applications will be evaluated on the basis of the following criteria:

1. Contribution of the project to "A Developing State Plan for Library Services," New Jersey State Library;

2. Adequacy of evidence of the interest, need or demand by the community for the proposed service;

3. Where applicable, documentation of community agency involvement in planning the project;

4. Adequacy and realism of budget and cost estimates;

5. Provision of adequate and appropriate space for the project;

6. Provision of adequate staff and staff training;

7. Proposed method of measurement and evaluation;

8. Provision for the dissemination of information regarding the proposed service;

9. In any grant year, when grant applications meeting the above criteria exceed funds available in Program B, consideration shall be given to applicants demonstrating the least financial resources through the lowest ratio of equalized valuation to population (per capita wealth).

### 6:68-2.15 Notification of applicants

Applicants will be informed of the State Librarian's recommendations of approval or rejection within 90 days of application deadline.

### 6:68-2.16 Appeal procedures

(a) Applicants whose projects have been rejected will be given, upon request, opportunity for an informal fair hearing before the State Librarian.

(b) In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

### 6:68-2.17 Reports and audits

Grant recipients will be required to submit an annual report of activities and expenditures for the project for each year of funding. An annual financial audit and a six-month progress report of the program may be required by the State Librarian.

# ENVIRONMENTAL PROTECTION

(a)

## DIVISION OF WATER RESOURCES

### Flood Hazard Area Delineations Delineated Floodways for the Pequest River and its Tributaries Beaver Brook, Honey Run and Kymers Brook within Sussex and Warren County

#### Adopted Amendment: N.J.A.C. 7:13-7.1 (formerly 7:13-1.11)

Proposed: June 4, 1984 at 16 N.J.R. 1306(a).  
Adopted: April 15, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.  
Filed: April 15, 1985 as R.1985 d.218, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 58:16A-50 et seq.

Effective Date: May 6, 1985.  
Expiration Date pursuant to Executive Order No. 66(1978): May 4, 1989.  
DEP Docket No. 030-84-05.

#### Summary of Public Comments and Agency Responses:

The Department of Environmental Protection held a public hearing on June 28, 1984 at the Independence Township Municipal Building, Great Meadows, New Jersey. Seventeen people attended the hearing. General questions concerning the purpose of the delineation were answered. Testimony by officials of Belvidere opposed the delineation in the area of the business district of the Town of Belvidere, due to questions about the study's assumptions about the timing of the flood-peak of the adjacent Delaware River, the methodology which increased the floodway from 31 acres to 52 acres within Belvidere, and the effect of flood control improvements under consideration. The Department agrees that anticipated flood control improvements, now actively under consideration, would modify the delineation within the Town of Belvidere. Therefore Plate LP-1 should be excluded from the set of 26 plates. No other comments were received concerning the remaining 25 plates.

**Full text** of the adoption follows (additions shown in bold-face with asterisks \*thus\*; deletions shown in brackets with asterisks \*[thus]\*).

#### 7:13-7.1 Delineated floodways

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

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

1.-26. (No change.)

27. . . . The floodway and flood hazard area of the Pequest River from \*[its confluence with the Delaware River through]\* the **\*boundary between\*** the Town of Belvidere and the Township of White to the White Township-Liberty Township municipal boundary, the Pequest River from 100 feet downstream from Route #46 in Independence Township upstream to its third crossing of Route #206 in Andover Township through the Townships of Independence, Liberty, Allamuchy, Green and Andover, Beaver Brook from its confluence with the Pequest River upstream to Route #80 through White and Hope Townships, Honey Run from its confluence with Beaver Brook upstream to the Swayze Mill Road (Route #610) in Hope Township and Kymers Brook from its confluence with the Pequest River upstream through Green and Andover Townships to Route #206 in Andover Borough, all in the Delaware River Basin.

28.-29. (No change.)

30. (See adoption in this Register.)

31. (No change.)

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

(b)

## DIVISION OF WATER RESOURCES

### Flood Hazard Area Delineations Delineated Floodways for the Paulins Kill and its tributaries, Dry Brook, Culvers Creek, Lafayette Township Tributary, Moore's Brook and Sparta Junction Tributary

#### Adopted Amendment: N.J.A.C. 7:13-7.1 (formerly 7:13-1.11)

Proposed: September 17, 1984 at 16 N.J.R. 2397(a), 2885(a).

Adopted: April 1, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: April 15, 1985 as R.1985 d.217, **without change**.

Authority: N.J.S.A. 58:16A-50 et seq.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 4, 1989.

DEP Docket No. 054-84-05.

#### Summary of Public Comments and Agency Responses:

The Department of Environmental Protection held a public hearing on November 18, 1984 at 1:00 P.M. at the County Administration Building, Newton, New Jersey. No one attended the hearing; nor were any written comments received.

**Full text** of the adoption follows.

## ADOPTIONS

7:13-7.1 Delineated floodways

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

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

1.-26. (No change.)

27. (See adoption in this Register.)

28.-29. (No change.)

30. Paulins Kill within Blirstown Township, Warren County and from West End Drive, Stillwater Township, Sussex County, upstream to its confluence with Moore's Brook in the Town of Newton; Dry Brook from its confluence with the Paulins Kill upstream through Branchville Borough; Culvers Creek from its confluence with Dry Brook upstream to the Culvers Lake Dam; Lafayette Township Tributary from its confluence with the Paulins Kill to 4720 feet upstream; Sparta Junction Tributary from its confluence with the Paulins Kill upstream to Layton Lane in Sparta Township; and Moore's Brook from its confluence with the Paulins Kill upstream to 1350 feet upstream from Lake Avenue in the Town of Newton.

31. (No change.)

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

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(a)

## DIVISION OF WATER RESOURCES

### Flood Plain Management Dam Safety Standards

**Adopted New Rule: N.J.A.C. 7:20-1**

**Adopted Repeal: N.J.A.C. 7:20-1 to 7:20-6**

Proposed: April 16, 1984 at 16 N.J.R. 790(a).

Adopted: April 10, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: April 15, 1985 as R.1985 d.214, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

## ENVIRONMENTAL PROTECTION

Authority: N.J.S.A. 58:4-1 et seq.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): May 6, 1990.

DEP Docket No. 014-84-03.

### Summary of Public Comments and Agency Responses:

The Department of Environmental Protection (the "Department") held two regional public hearings and received written comments through May 16, 1984. The following summary describes all substantive comments received and the Department's responses thereto:

**Comment:** A time frame should be established for the permit review process.

**Response:** Permit application review time depends upon the complexity of the project being reviewed. Establishment of a mandatory deadline for completion of review could result in a less comprehensive examination of applications for major projects. It is just these projects for which comprehensive review is most important.

**Comment:** The rules should provide procedures for compliance with the rules by owners or operators of existing dams.

**Response:** The Department agrees that procedures are needed to specify how owners or operators of existing dams are to comply with these rules. Therefore, the Department has augmented the proposal to specifically address compliance by existing dams, see N.J.A.C. 7:20-1.5(a) and (c). The Department also included references to repair and modification of existing dams in the general requirements in 7:20-1.1(a) and 7:20-1.4(a).

**Comment:** Why does the definition of "Dam" in N.J.A.C. 7:20-1.2 include structures related to detention ponds?

**Response:** The threat of failure of a dam associated with a detention pond is no different from that of other dams. The Department believes that the Legislature intended that the Department protect New Jersey's citizens from all threats of dam failure, including detention dams.

**Comment:** Why does the definition of "Dam" include the language "five feet above the usual, mean, low water height"?

Response: This language parallels that of the Safe Dam Act at N.J.S.A. 58:4-1, where the scope of Department authority is described.

Comment: The definition of "Dam" could be interpreted to apply to roadway embankments.

Response: The proposed definition requires that the structure be built "for the purpose of impounding water". A roadway embankment is not built for that purpose.

Comment: The definition of "100-year storm" is inconsistent with the design criteria in N.J.A.C. 7:20-1.9, in that it assumes a time variable which the design standards do not.

Response: The Department agrees and has changed the rules to remove reference to a time factor in computation of the 100-year storm.

Comment: There should be a definition of "low flow outlet".

Response: The Department considers the definition of "outlet" in N.J.A.C. 7:20-1.2 to be sufficient for the purpose of these rules.

Comment: The limit of one-half square mile, as the maximum allowable for a pond to be considered an agricultural impoundment, is too low.

Response: The Department believes that the one-half square mile cutoff is reasonable, since most agricultural impoundments are much smaller. Further, dams which impound more than one-half square mile of water are sufficiently large to justify Department review, despite the desirability of lessening the regulatory burden on farmers.

Comment: Agricultural impoundments, under N.J.A.C. 7:20-1.3(a)2, should include impoundments for fire control and for fish and wildlife development.

Response: The Department agrees, and the rule is changed accordingly.

Comment: Some documentation should be required for determining compliance with N.J.A.C. 7:20-1.3(a)2.

Response: The Department is reviewing the rule and may propose such changes in the future.

Comment: The discretion of the Department in N.J.A.C. 7:20-1.3(c) is too broad.

Response: The purpose of this provision is to allow the Department to insure ongoing compliance with the rules and to insure that no aspect of construction or operation contributes to a threat to the safety of the dam. The rule has been changed to so state.

Comment: The requirement in N.J.A.C. 7:20-1.4(b) is unclear.

Response: The Safe Dam Act places responsibility on the Department to insure that human health and safety are not unreasonably threatened by dam construction. That authority necessarily includes the right to deny a permit where there is an unacceptable potential for harm to human health or safety. This rule simply states that authority.

Comment: The effects of reservoir backwater on the water table should be considered, see N.J.A.C. 7:20-1.4(c).

Response: The rule as proposed allows the Department to consider such effects.

Comment: Under N.J.A.C. 7:20-1.4(c), the Department should consider the effects of backwater on groundwater at the point of the 100-year storm.

Response: The Department believes that the appropriate point for evaluating impacts on groundwater is under normal pool conditions. Use of the 100-year storm as the level for impact evaluation serves no significant purpose, since 100-year storm events are fleeting and infrequent. The Department is concerned in this rule with ongoing impacts of reservoirs on ground and surface water.

Comment: Use of the 100-year storm level for determining what backwater property rights must be obtained by a permit applicant is too stringent, see N.J.A.C. 7:20-1.4(c). The standards for backwater property rights (see above) should be the spillway design flood level, rather than the 100-year storm level, as was proposed.

Response: The issue here involves when a dam owner must obtain approval from landowners whose land may be flooded, as a result of the dam. The Department believes that a potential impact of this magnitude warrants a conservative regulatory standard. The 100-year storm level is the standard chosen by the Department.

Comment: Will the Department consider extensions beyond the two year construction time limit, see N.J.A.C. 7:20-1.4(e).

Response: N.J.A.C. 7:20-1.4(e) has been changed to allow extensions of up to five years, for good cause shown.

Comment: The requirement in N.J.A.C. 7:20-1.4(e), that dam construction must be started within one year and completed within two years, is too restrictive.

Response: The rules now permit the Department to grant extensions of time for good cause shown, see above. However, because dam construction impacts the surface waters associated with the proposed dam and because the downstream hazard may change, the Department believes the deadlines are appropriate. They allow reconsideration by the Department, based upon changed circumstances.

Comment: In many cases, construction of a fish ladder may not be feasible from an engineering viewpoint, see N.J.A.C. 7:30-1.4(d)2.

Response: N.J.S.A. 23:5-29.1 makes it "unlawful to construct a dam in any water of this State which is a runway for migratory fish without installing a fish ladder or other contrivance to permit the fish to pass over the dam in either direction. . .". This law leaves no discretion to consider feasibility.

Comment: The Department should allow for review of a decision to deny a dam permit application, see N.J.A.C. 7:20-1.4(f) and standards for application review, generally.

Response: The Department agrees and has inserted a provision allowing for administrative appeal of a permit denial, see new N.J.A.C. 7:20-1.5(d).

Comment: The Department should formally respond to the preliminary report submitted at the pre-application stage, see N.J.A.C. 7:20-1.6.

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Response: Language has been added at 7:20-1.6(b) to provide for notification to the applicant in response to the preapplication.

Comment: The preapplication stage should not require a report, see N.J.A.C. 7:20-1.6(a)1ii.

Response: The Department is requiring a preliminary report in order to determine the hazard class and applicable design standards.

Comment: Requiring the applicant to identify all utilities within one-half square mile is unnecessary, see N.J.A.C. 7:20-1.6(a)2vi.

Response: The Department agrees that this requirement is too comprehensive and has changed the provision to provide for identification of "major" utilities only.

Comment: Loading conditions should be identified for the stability analyses required by N.J.A.C. 7:20-1.7(e)5.

Response: Standard design loading conditions are applicable in this area of engineering design and need not be detailed in the rules.

Comment: Environmental Impact Statements (EIS) should be submitted with all dam permit applications, N.J.A.C. 7:20-1.7(g).

Response: Since the scope of the Safe Dam Act is quite broad, dams and associated impoundments are included which are small and have minimal environmental impact. Though some environmental impact analysis should be and is required (N.J.A.C. 7:20-1.6(a)1ii, as changed herein), a full EIS is not always needed.

Comment: What is the relationship between the environmental impact analysis required in N.J.A.C. 7:20-1.6(a)1ii and the EIS requirement at N.J.A.C. 7:20-1.7(g)?

Response: The initial environmental impact analysis at the preapplication stage is required of all applicants and provides the Department with vital information, relating to the applicants' potential design requirements. The full EIS will be required of applicants whose projects will cause significant environmental impact and/or pose significant environmental threats.

Comment: Stability analyses should not be required to be submitted with the application but should be made available to the Department upon request, see N.J.A.C. 7:20-1.7(e)5.

Response: The Department wishes to review the actual data relating to stability analyses, since they directly relate to the future safety of the dam.

Comment: The various names for dam classifications should be changed, see N.J.A.C. 7:20-1.8. Each proposed name describes a hazard potential which is inappropriate in most cases.

Response: The hazard classification names are consistent with the Corps of Engineers National Dam Safety Program and with usage in most states.

Comment: Why are special exceptions allowed for Class III agricultural impoundments, see N.J.A.C. 7:20-1.3(a)2 and 7:20-1.8(a)3?

Response: It has been the policy of the State of New Jersey for some time to endeavor to minimize regulatory impacts on

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our fragile farming industry, where the countervailing public interest permits. Additionally, the United States Department of Agriculture supervises the design and construction of such impoundments.

Comment: Class IV dams should extend to dams with a greater drainage area than 100 acres, as proposed at N.J.A.C. 7:20-1.8(a)4.

Response: The Department agrees and has raised the drainage area maximum from 100 to 150 acres.

Comment: How will the Department determine the hazard classifications under N.J.A.C. 7:20-1.8?

Response: Engineering judgment outlined in the regulations is required. At times, a dam break analysis may be necessary. These same hazard classifications are used by the Army Corp of Engineers, the Federal Soil Conservation Service and throughout the United States. There is a depth of experience to draw upon to make the analyses contemplated by this rule.

Comment: References in the rules to both the "spillway design flood" and the "spillway design storm" are confusing, in that they denote somewhat deferring concepts. Consistent use of one or the other is necessary to insure accuracy of analysis.

Response: The Department intended to uniformly apply the spillway design storm standard and has changed the proposal accordingly.

Comment: A provision should be included for the containment within the reservoir of the spillway design storm, see N.J.A.C. 7:20-1.9(c).

Response: The Department agrees, and N.J.A.C. 7:20-1.9(c) is changed to include containment.

Comment: Upstream and downstream earthen slopes do not always have to be sloped, as required by N.J.A.C. 7:20-1.9(1), in order to be adequately stable.

Response: The Department agrees that, in certain circumstances, alternative sloping may be permissible. The rule is changed to allow the applicant to attempt to so demonstrate.

Comment: Why does the presence of an emergency spillway increase the freeboard requirement in N.J.A.C. 7:20-1.9(m)?

Response: The freeboard level requirement is not governed by the height of the emergency spillway but rather is established by relation to the height of the emergency spillway crest.

Comment: The one-foot freeboard requirement in N.J.A.C. 7:20-1.9(m) is excessive when the probable maximum precipitation is the spillway design storm.

Response: The Department has built a degree of conservatism into the standards in this proposal. Though one foot of freeboard may be adequate for most foreseeable circumstances, the extra margin of protection is not considered excessive by the Department.

Comment: N.J.A.C. 7:20-1.9(b) seems to create design requirements greater than specific standards set elsewhere in the rules.

Response: The Department's purpose with this provision is to have applicants endeavor to design their dams, such that future protections which might prove necessary in response to

increased, downstream hazards will be easier to install. The rule is changed to clarify the Department's intent.

Comment: The leakage prohibition in N.J.A.C. 7:20-1.9(g)1 may be interpreted to be so strict as to be unattainable.

Response: This design condition is a standard one for dam design, and its interpretation will be consistent with common practice. The Department does not believe that change is warranted.

Comment: The scope of the riparian rights discussed in N.J.A.C. 7:20-1.9(k) is unclear.

Response: The term riparian rights, as used in this provision, refers to the rights of riparian land owners to use the waters adjacent to their properties, according to general usage. Therefore, any rights of downstream property owners to use the stream or stream water, which could be impacted by the dam or its construction, must be protected. The term requires no further clarification.

Comment: N.J.A.C. 7:20-1.9(n) gives the Department overly broad discretion.

Response: The Department agrees, and the rule has been changed to associate the requirement for design and installation of additional measures in a dam to potential health and safety threats.

Comment: Water diversion during construction of a dam project should be the responsibility of the contractor and not part of the application, see N.J.A.C. 7:20-1.10(a)1ii.

Response: The Department believes that safety and environmental concerns justify Departmental review of diversion procedures, as part of the permit application.

Comment: There should be no evaluation of hazard, as indicated in N.J.A.C. 7:20-1.10(a)3, beyond the initial hazard class identification under N.J.A.C. 7:20-1.8.

Response: N.J.A.C. 7:20-1.10(a)3 requires that a reservoir not be filled until the dam and associated structures are sufficiently completed to insure that there is no hazard to life, health or property. This hazard evaluation only relates to determining when it is safe to commence filling of the reservoir. It has no relationship to the hazard class determination in N.J.A.C. 7:20-1.8.

Comment: Field modifications in the approved plans for a dam project should not require written approval by the Department, see N.J.A.C. 7:26-1.10(a)5.

Response: The proposed rule does not require written approval by the Department. However, this comment drew the Department's attention to the question of the form of the Department's approval, and the rule is changed to require written approval of major modifications.

Comment: What is the difference between "approval of construction" and "final approval", see N.J.A.C. 7:20-1.10(b)4?

Response: Final approval comes after the dam has been operating for one year. Approval of construction allows filling of the reservoir after the construction has been completed.

Comment: Annual inspection under N.J.A.C. 7:20-1.11 should include the taking of photographs to document conditions.

Response: Photographs are required in the guide for the inspection of dams, supplied by the Department.

Comment: For owners of more than one dam, it will be difficult to comply with the requirement in N.J.A.C. 7:20-1.11(h)2 that dam inspection reports be submitted within 30 days.

Response: The inspection procedure allows a five-month period to inspect dams. Should this still be a problem an extension procedure is provided.

Comment: Will more restrictive local standards be enforced over Department standards?

Response: The Safe Dam Act does not preclude more stringent local standards, beyond those adopted by the State.

Comment: Informal inspections required under N.J.A.C. 7:20-1.11(d) should be required four times a year, and associated inspection reports should not have to be submitted to the Department.

Response: The Operation and Maintenance Manual required by N.J.A.C. 7:20-1.11(a) will include procedures for more frequent owner inspection. The Department believes the inspections need to be reported to the Department only on an annual basis. It is necessary to monitor the results of the annual dam condition inspections, and therefore, submission of the report is required. Such submission helps to ensure that dam owners comply with the minimum inspection requirements.

Comment: The dam inspection guide, referred to in the rules at N.J.A.C. 7:20-1.1(h)1, should be subject to public review and comment.

Response: The Department believes that the detailed nature of dam inspection procedures make it an inappropriate subject matter for formal rulemaking. However, the guide is a public document, and the Department welcomes any comments or recommendations concerning its contents.

Comment: Projects regulated by the Federal Energy Regulatory Commission (FERC) should be exempt from the requirements of this proposal.

Response: The Safe Dam Act does not contemplate any exemptions from Departmental review and approval.

Comment: Do these rules apply to offstream dams?

Response: Yes.

The New Jersey Legislature enacted a revision to the Safe Dam Act, N.J.S.A. 58:4-1 et seq., since these rules were proposed. Public Laws 1985, chapter 33 contained amendatory language identical to new N.J.A.C. 7:20-1.1(a)3.

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 20

### DAM SAFETY STANDARDS

#### SUBCHAPTER 1. APPLICATION PROCEDURE \*[AND]\*\*; DESIGN CRITERIA FOR DAM CONSTRUCTION\*[:]\*\*; DAM INSPECTION PROCEDURE

## 7:20-1.1 Scope and applicability

(a) The rules in this subchapter were adopted pursuant to the authority of N.J.S.A. 58:4-1 et seq., as amended by the Safe Dam Act of 1981.

1. These rules set forth procedures for application to construct **\*repair or modify\*** a dam, as defined in N.J.A.C. 7:20-1.2, and set standards for design and maintenance of dams. These rules also establish a dam inspection procedure.

2. Any dam which raises the waters of a stream five feet or less above its usual, mean, low water height falls under the jurisdiction of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

**\*3. The requirements in this subchapter shall not affect or relate to a dam or reservoir in the pinelands area, as designated by subsection a. of section 10 of P.L. 1979, c.111 (C. 13:18A-11), which will raise the waters of any river or stream less than eight feet above the surface of the ground where the drainage area above the same is less than one square mile in extent and where the water surface created by the dam or reservoir is less than 100 acres in extent except that the commissioner may investigate and take appropriate action regarding any dam or reservoir about which he has a security or safety concern. With respect to dams and reservoirs located on lands utilized for agricultural or horticultural purposes within the pinelands area, the commissioner's actions shall be undertaken after consultation with the Secretary of Agriculture. See N.J.S.A. 58:4-1, P.L. 1985, c. 33, §1 and 2.\***

## 7:20-1.2 Definitions

"Applicant" means any person making application for a dam permit.

"Dam" means any artificial dike, levee or other barrier, together with appurtenant works, which is constructed for the purpose of impounding water **\*[for] \* ,on\*** a permanent or temporary basis **\*,\* that raises the water level five feet or more above the usual, mean, low water height \* [prior to construction of the dam, during passage of the spillway design flood conditions] \* \*when measured from the downstream toe-of-dam to the emergency spillway crest or, in the absence of an emergency spillway, the top-of-dam.\***

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

"Design freeboard" means the minimum freeboard which would exist during passage of the design flood.

"Division" means the Division of Water Resources in the Department of Environmental Protection.

"Environmental impact statement" means a report which describes the real and potential impacts which will or may result from the construction and operation of a proposed dam project, the adverse environmental impacts which cannot be avoided, the steps to be taken to minimize adverse impacts and the alternatives to the project with reasons for the acceptability or unacceptability.

1. The report shall address real or potential impacts upon ecology, natural resources, historical and archeological resources, recreational resources, aesthetic resources, endangered and non-game species, fisheries and any other identifiable impacts; and

2. The report shall include a listing of qualifications of those preparing the report and a reference list of pertinent published information relating to the project, the project site and the surrounding region.

"Formal inspection" means the inspection by a New Jersey licensed professional engineer to reevaluate the safety and integrity of the dam and appurtenant structures to determine if the structure meets current design criteria, including a field

inspection and a review of the records on project design, construction and performance.

"Freeboard" means the vertical dimension between the crest of the embankment of a dam (without camber) and the reservoir water surface at the spillway design flood stage.

"Height-of-dam" means the vertical dimension from the lowest point in the original stream bed or natural ground surface at the downstream toe of the dam to the elevation of the top of dam **\*(without camber)\***.

"Informal inspection" means the visual inspection of the dam by the dam owner or operator to detect apparent signs of deterioration or other deficiencies of the dam structure or function.

"Levee" or "dike" means any artificial barrier together with appurtenant works that will divert or restrain the flow of a stream or river.

"One-hundred-year storm" means the **\*[intensity-duration combination of precipitation which produces the most severe flood runoff that may be equalled or exceeded on the average of one time in 100 years. The time duration of the 100-year storm will vary depending on the hydrologic and physiographic characteristics of a specific drainage area] \* \*storm which is estimated to have a one percent chance, or one chance in 100, of being equalled or exceeded in any one year\* .**

"Outlet" means an opening through which water can be freely discharged from a reservoir for a particular purpose.

"Owner and/or operator" means any person who owns, controls, operates, maintains, manages or proposes to construct a dam.

"Permit" or "dam permit" means all approvals required under N.J.S.A. 58:4-1 et seq. for the construction and operation of a dam.

"Person" means any individual, proprietorship, partnership, association, corporation, municipality, county or public agency.

"Pipe conduit" means any hollow tube which conveys water through a dam from a reservoir, either as a spillway or as a drain.

"Probable maximum precipitation" or "(PMP)" means the theoretically greatest depth of precipitation for a given duration that is physically possible **\*,\* over a \*[particular drainage area]\*\* given size storm area, at a particular geographic location,\* at a certain time of year.**

"Regular inspection" means the visual inspection of a dam by a New Jersey licensed professional engineer to detect any signs of deterioration in material, developing weaknesses or unsafe hydraulic or structural behavior.

"Reservoir" means any impoundment or any potential impoundment that will be created by a dam, dike or levee.

"Spillway" means a structure other than low flow outlets, over or through which flood flows are discharged.

"Spillway design **\*[flood] \* \*storm\*\***" means the **\*[flood discharge] \* \*storm\*** upon which the hydraulic capacity of the spillway structure is designed.

## 7:20-1.3 Permit-by-rule

(a) All dams must be designed, constructed, operated and maintained in compliance with the rules in this subchapter except as set forth below:

1. Owners and operators of Class IV dams (see N.J.A.C. 7:20-1.8, Dam classification) are not required to file documents with nor obtain a permit from the Department, but must meet the following requirements, in addition to those set forth elsewhere in this subchapter:

i. Design must be based upon a spillway design **\*[flood] \* \*storm that results from a rainfall\*** of 50 percent greater than

a 24-hour, 100-year, Type II storm **\*(Later technology adopted by the United States Department of Agriculture, Soil Conservation Service may be substituted for the use of the Type II storm.)\*** and

ii. All necessary local approvals must be obtained.

2. Owners and operators of Class III agricultural impoundments, meaning any impoundment used for **\*fish and wildlife, fire control or\*** livestock or crop production and maintenance, where the drainage area is less than one-half square mile in extent, must meet only the following requirements:

i. All necessary local approvals must be obtained; and

ii. Design and construction must be supervised by the United States Department of Agriculture, Soil Conservation Service.

3. Applicants for hazard classification in Class III, pursuant to N.J.A.C. 7:20-1.8, may initially submit a preliminary application, including only that information needed to establish Class III hazard classification. Thereafter, some of the documentation and inspection requirements set forth in these rules may be waived by the Department.

(b) The Department may, in its discretion, require the owner or operator of any dam subject to (a) above to obtain a permit and/or to submit any information relating to dam design, construction, operation or maintenance.

(c) The Department may, in its discretion, require the owner or operator of any dam to make modification of the design, construction or operation of the dam **\*in order to comply with the intent of this chapter and the Safe Dam Act, N.J.S.A. 58:4-1 et seq.\***

#### 7:20-1.4 General **\*requirements and\*** prohibitions

(a) No person may construct or operate a new dam or modify **\*or repair\*** an existing dam without first having obtained a permit from the Department, unless subject to the permit-by-rule provision in N.J.A.C. 7:20-1.3. **\*Where emergency circumstances justify, repairs of a dam may be undertaken prior to obtaining a permit, in accordance with (i) below.\***

(b) No dam may be approved by the Department where **\*, in the opinion of the Department,\*** there is an unacceptable potential for harm to human health or to human safety.

(c) Backwater created by a dam during a 100-year **\*[flood]\* \*storm\*** shall be **\*the minimum which is\*** contained within the applicant's property unless written consent is obtained from all potentially affected property owners. Effects on both surface and ground water shall be considered **\*, during normal pool conditions\*.**

(d) No person may construct a dam in any waterway of this State which is a runway for migratory fish, without installing a fish ladder or other approved structure to permit the fish to pass the dam in either direction (see N.J.S.A. 23:5-29.1).

1. This provision is applicable to dams of any size.

2. The Department will determine whether a stream is currently a runway for migratory fish, during the review of the dam permit application. Applicants should consult the Division of Fish, Game and Wildlife in this matter prior to finalizing the application.

(e) Unless otherwise approved by the Department, dam construction shall commence within one year from the date of the permit and be completed within two years from the said date or the permit will become null and void. **\*For good cause shown, the Department may extend the two year construction deadline for a total of no more than five years, one year at a time. Applicants must make written request for an extension, prior to the expiration date of the permit or prior extension.\***

(f) No action shall be brought against the State or the Department or its agents or employees for the recovery of damages caused by the partial or total failure of any dam or reservoir or through the operation of any dam or reservoir upon the ground that **\*[such defendant]\* \*the Department\*** is liable by virtue of any of the following:

1. The approval of the dam or reservoir, or approval of flood handling plans during construction.

2. The issuance or enforcement of orders relative to maintenance or operation of the dam or reservoir.

3. Control, regulation and inspection of the dam or reservoir.

4. Measures taken to protect against failure during an emergency.

(g) The Department may deny any application for a dam permit, based upon its conclusion that the construction or operation of dam will cause an unacceptable threat to or impact on natural or cultural resources or the environment.

**\*(h) Retention and detention basins for storm water management must be constructed in accordance with criteria of the State Storm Water Management Regulations, N.J.A.C. 7:8.**

**(i) Situations which threaten the public health, safety and welfare and require emergency dam repair will be considered by the Department under the following procedure:**

1. **Inform the Department by telephone as to the extent of work to be performed, the reason for the emergency and the location of the project.**

2. **Perform the emergency work upon verbal approval of the Department, which approval shall be verified by the Department in writing within three working days. The Department shall offer guidance and instructions in performing the work.**

3. **After the work has been completed in accordance with the Department's instructions, a dam permit application and "as built" drawings shall be submitted to the Department for review. A letter shall then be issued by the Department in lieu of a dam permit.\***

#### 7:20-1.5 General application procedures

(a) The procedures for applying for a dam construction **\*,modification or repair\*** permit and for submitting the supporting engineering documents **\*,\*** include the preapplication stage and the application stage, as described below. For Class III dams (see N.J.A.C. 7:20-1.8) all required information may be submitted at one time, with such detail as is appropriate to the safe design of the type of structure proposed.

(b) The applicant for a dam permit must use a New Jersey licensed professional engineer to prepare the plans and specifications and **\*to supervise\*** inspect **\*ion of\*** the construction.

**\*(c) The Department may require any owner or operator of an existing dam to obtain a permit for repair or modification of the dam and appurtenances where:**

1. **Repair or modification is necessary to insure protection of human health or safety; or**

2. **Modification is required to comply with the provisions of this chapter, unless the following circumstances exist:**

i. **Compliance is impracticable; and**

ii. **Noncompliance poses no unacceptable threat to human health or safety.**

**(d) Appeal procedures; permit denials**

1. **An applicant for a dam permit may request in writing an administrative hearing from the Department within 15 days of receipt of the decision by the Department to deny the application.**

2. The request for a hearing shall specify in detail the basis for the request, including all issues of fact or law. The Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate. Should the efforts to settle the dispute fail and if the Department determines that the matter is a contested case, the Department shall forward the request for a hearing to the Office of Administrative Law, pursuant to the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).\*

#### 7:20-1.6 Preapplication stage

(a) The applicant must submit a written Preliminary Report which must include the following:

1. A general description of the dam and all appurtenances thereto, and the proposed dam classification, pursuant to N.J.A.C. 7:20-1.8. The description shall include the following:

i. A statement of the purpose for which the dam and appurtenances are to be used; and  
 ii. **\*[A statement setting forth the environmental impact of the construction and operation of the facility with special regard to any potential for endangering life, health or property]\* \*A description of the potential effects of project construction and operation upon the environment.\***

2. Maps of the area within one-half mile of the dam and impoundment boundary, showing the following:

i. The location of the proposed dam and all appurtenances, thereto;  
 ii. The location of all structures;  
 iii. The county and township;  
 iv. The boundary of the reservoir;  
 v. The location of all streets and roads;  
 vi. The location of all **\*major\*** utilities, i.e. pipe lines and transmission, telegraph, and telephone lines; **\*all minor utilities shall be identified in the immediate vicinity of the dam and impoundment area.\***  
 vii. The topography and scale; and  
 viii. All other structures or facilities affected by the proposed dam, including the area downstream from the dam (State, county, and U.S.G.S. maps and aerial photographs may be used for this purpose).

3. A written report of the surficial conditions (i.e. geology, topography, and culture), based upon a field reconnaissance by the applicant's engineer;

4. Typical cross-sections of the dam, and any dike(s) and levee(s), showing proposed elevations, pool levels and top and bottom widths;

**\*[5. Logs and borings in the foundation and in the borrow areas. The results of seismic and resistivity subsurface investigations must be included where available;]\***

**\*[6.]\* \*5.\* Preliminary design data, tentative conclusions and references. The design data shall address hydrologic features such as drainage area and rainfall data, the basis for proposed dam location, the basis for the type of structure and spillway proposed **\*[and geologic and soils engineering assumptions]\* \***, **the soils and geologic engineering criteria and the basis for design and construction\*;****

**\*[7.]\* \*6.\* The hydrologic design procedure and the storm durations which are used in the design;**

**\*[8.]\* \*7.\* All documentation and information related to determining hazard classification; and**

**\*[9.]\* \*8.\* Other information required by the Department.**

**\*(b) Upon review of the pre-application, the Department will notify the applicant of what design criteria will apply.\***

#### 7:20-1.7 Application stage

(a) The application shall be on forms specified and supplied by the Department and must be accompanied by two copies of the final design report and construction specifications and five sets of all plans, drawings, designs and specifications.

(b) The application shall include a Final Design Report, which must contain the following:

1. A report of the field and laboratory investigation(s) of the foundation soils and/or bedrock, **\*a location map to identify borings\*** and the materials that will comprise the dam and any dikes or levees. Stability and settlement analyses and seepage and underseepage studies are required, unless the applicant can demonstrate to the satisfaction of the Department that these analyses are not necessary.

2. The bases, references, calculations and conclusions relative to hydrologic studies and design of spillway.

3. Structural and hydraulic design studies and calculations. **\*Structural,\* \*[\*H]\* \*h\*hydraulic and hydrologic design procedures should be used, as established by **\*one of the following\*:** the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, the U.S. Soil Conservation Service and other procedures universally accepted as sound engineering practice.**

(c) The application must include all drawings necessary to fully describe the proposal. Drawings must be prepared in accordance with the following:

1. All drawings must be prepared by a New Jersey licensed professional engineer or land surveyor, as appropriate. Each drawing shall have a title block which meets the requirements of the State Board of Professional Engineers and Land Surveyors.

2. Drawings must clearly show the datum to which elevations shown are referred. The National Geodetic Vertical Datum of 1929 (N.G.V.D.), formerly known as the U.S. Coast & Geodetic Survey Datum, should be used wherever possible. If the N.G.V.D. datum is not used, an appropriate conversion equation must be indicated on the drawings.

3. The applicant must submit drawings showing the following information:

i. A general plan of the dam, drawn to an appropriate scale, which must show accurately the position of all essential details, such as the spillway and its point of discharge into the stream, pipes through the dam, inlets, outlets, screen chambers, gate or valve houses, head-races, the canal mill or power plant, tailraces and downstream bridges which might cause backwater on the dam;

ii. A longitudinal section of the dam and cross-section of the valley at the site of the dam, showing the elevation of the crest of the dam, the elevation of the normal and design storm flow line of the lake or reservoir, the original surface of the ground, the nature and depth of the underlying strata, the probable depth of the excavation for the foundation of the dam and for the cutoff, **\*foundation treatment,\*** elevation of the restored surface of the ground, the location and elevation of all pipes or conduits passing through the dam, the core wall, if any, and the spillway structure;

iii. Typical cross sections, including a maximum section of the dam and of a spillway section which shall meet the following requirements:

(1) Cross sections must show the original surface of the ground, subsurface conditions as disclosed by test pits or borings, the probable depth of excavations for the foundation and for cutoff, the elevations of the top of the dam, the crest of the spillway and the normal flow line or water surface in the reservoir;

(2) For earth dams, the depth of stripping must be shown, as well as the position, material and dimensions of the cutoff or core wall, the width of the crest, the slopes and the nature and dimensions of the slope protection, the position and dimensions of the outlet pipes or conduits and the cutoff to prevent seepage along such structures, the disposition of different classes of embankment material if of varying composition, toe drains and clay blankets;

(3) For concrete or other composite dams, the cross sections shall show all dimensions and shall indicate the position and kinds of **[masonry]** **\*material\*** to be included in the structure.

iv. If not clearly indicated on one or more of the drawings listed above, the following details shall be shown on additional detail sheets:

(1) Detail of spillway or overflow, showing the length and depth of opening, together with the width and shape of the crest, grade and shape of the approach and discharge channels, if any, methods of protecting the toe of the dam or end of the discharge channel from erosion and the dimensions of all walls, floors and paving;

(2) Details of the intake and outlet works, showing the location and dimensions of all valves or sluice gates, intakes, screen chambers, racks, outlet **[towards]** **\*towers\*** and gate houses and appurtenances;

(3) For reinforced concrete dams, detailed drawings must also be submitted, showing the size, spacing and arrangement of all reinforcing steel and expansion joints; and

(4) Special drawings shall be submitted showing any special construction features not otherwise shown, such as piling, fishways, aprons, materials used in the core wall, movable dams, tainter gates and mechanical devices **\***, **drains and instrumentation\***.

(d) The application must include specifications, containing the following:

1. General provisions, specifying the rights, duties and responsibilities of the owner, applicant, applicant's engineer and the builder;

2. The estimated project schedule and sequence of work; and

3. Technical provisions, describing carefully and in detail the approved work methods and procedures, standards for equipment and testing, materials to be used and the results to be obtained.

(e) The application shall complete all investigations, including the following, prior to submission of the final design report which shall meet the following requirements:

1. The scope and the degree of precision of investigations required for a specific project shall be based on the complexities of the site, the importance of the proposed structure and the hazard created by the proposed structure.

2. The foundation investigation shall consist of borings, test pits, **[seismic]** **\*seismic\*** investigations or other subsurface explorations and must be performed so as to accurately define the soil and rock stratigraphy and the ground water conditions to the satisfaction of the Department.

3. Laboratory testing of undisturbed and remolded soil specimens and rock samples may be required by the Department.

4. The applicant must determine the nature**[, locations]** and extent of materials which are proposed for use in the structure, (e.g. borrow material, concrete aggregate, riprap stone, filter materials) and their structural properties when incorporated into the proposed structure.

5. Stability analysis and calculations for the proposed structure to ensure safety against failure due to overturning,

sliding or overstressing must be submitted and approved by the Department.

6. Topographic surveys must be performed with sufficient accuracy to locate the proposed construction and to define the volume of the storage in the reservoir and the flowage limits. The upstream and downstream area must be investigated in order to delineate the area of potential damage in case of failure or flooding. Locations of baselines, centerlines and other horizontal and vertical control points must be shown on the topographic map of the site.

7. The drainage area must be accurately determined. Both present and projected future land use must be considered in determining the runoff characteristics of the drainage area. The most severe of these two conditions must be used in the design. The hydrologic assumptions and design calculations used in spillway designs shall be specified and shall include:

i. Drainage area size;

ii. Rainfall and runoff data;

iii. Reservoir inflow hydrographs;

iv. Reservoir area-capacity-elevation data;

v. Spillway elevation-discharge data; and

vi. Reservoir flood routings, except as otherwise provided in this subchapter.

(f) All applicants for Class I and II dams (see N.J.A.C. 7:20-1.8) shall prepare and submit an Emergency Action Plan which shall at least include a Dam Breach Analysis, Inundation Maps and Emergency **\*Notification\*** and Evacuation Plans.

(g) The Department may require the submission of an Environmental Impact Statement, as defined in N.J.A.C. 7:20-1.2, by any applicant for a dam permit.

#### 7:20-1.8 Dam classification

(a) The Department will use the following guidelines to classify dams according to hazard. Probable future development of the area downstream from the dam which might be affected by its failure will be considered in determining the hazard classification. The Department may, in its discretion, raise the hazard class of any proposed or existing dam.

1. Class I—High Hazard Potential: This classification includes those dams, the failure of which may cause the probable loss of life or extensive property damage.

i. The existence of normally occupied homes in the area that are susceptible to significant damage in the event of a dam failure will be assumed to mean "probable loss of life".

ii. Extensive property damage means the destructive loss of industrial or commercial facilities, essential public utilities, main highways, railroads or bridges. A dam may be classified as having a high hazard potential based solely on high projected economic loss.

iii. Recreational facilities below a dam, such as a campground or recreation area, may be sufficient reason to classify a dam as having a high hazard potential.

2. Class II—Significant Hazard Potential: This classification includes those dams, the failure of which may cause significant damage to property and project operation, but loss of human life is not envisioned. This classification applies to predominantly rural, agricultural areas, where dam failure may damage isolated homes, major highways or railroads or cause interruption of service of relatively important public utilities.

3. Class III—Low Hazard Potential: This classification includes those dams, the failure of which would cause loss of the dam itself but little or no additional damage to other property. This classification applies to rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands or non-major roads.

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4. Class IV—Small Dams: This classification includes any project which impounds less than 15 acre/feet of water [during the passage of the spillway design flood] **to the top of dam**, has less than 10 feet height-of-dam and which has a drainage area above the dam of [100] **150** acres or less in extent. No dam may be included in Class IV if it meets the criteria for Class I or II, but any applicant may request consideration as a Class III dam upon submission of a positive report and demonstration proving low hazard.

### 7:20-1.9 Design criteria

(a) The minimum design storm used to calculate required spillway capacity must be determined according to the following table:

Hazard	Spillway Design [Flood (SDF)]† <b>Storm (SDS)</b> *
Class I	PMP
Class II	One-half PMP
Class III	24 hour 100 year frequency, Type II storm†
Class IV	24 hour 100 year frequency, Type II storm plus 50%†

\*[†Use of Type II Storm may be substituted by any equivalent later technology adopted by the U.S. Soil Conservation Service.]\* **Any later technology adopted by the U.S. Department of Agriculture, Soil Conservation Service may be substituted for the use of the Type II storm.**\*

(b) All Class II and III dams shall **where practicable**, incorporate in the proposed design [necessary]\*\*, **the ability to make** modifications **necessary** to increase the spillway capacity of the facility or other alternative measures if the downstream hazard potential increases.

(c) All dams shall have **adequate storage for the design storm or have** a spillway system which will safely pass the design [flood]\*\***storm** without endangering the safety of the dam.

(d) Each spillway shall include a satisfactory means of dissipating the energy of flow at its outlet without endangering the safety of the dam.

(e) The capacity of the spillway system shall be equal to the peak inflow of the design flood unless the applicant demonstrates by flood routing procedures that the spillway system has the capacity to safely pass the resulting water flow.

(f) Pipe conduits may be used for the primary (principal) spillway. When so used, the following requirements shall be met:

1. All pipe conduits must convey water at the maximum design velocity without damage to the interior surface;
2. The pipe conduits must be designed so that negative pressures will not occur at any point along the primary (principal) spillway system;
3. Anti-seep collars or other methods approved by the Department must be installed to control seepage along the conduit;
4. Adequate allowances shall be incorporated in the design to compensate for differential settlement and possible elongation of the pipe conduit;
5. An anti-vortex device [approved by the Department, must be installed at the intake]\* **must be included in the design, unless the applicant can demonstrate that one is not necessary.**\*
6. A trash rack, approved by the Department, shall be installed at the intake to prevent clogging of the pipe conduit; and
7. **Should**\*\*[A]\*\***a** vegetated or unlined secondary (emergency) spillway, approved by the Department, [shall]\* be installed [that will]\* **it must be able to** pass the design [flood]\* **storm** without jeopardizing the safety of the structure and that has a predicted average frequency of use less than:

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- i. Once in 100 years for Class I dams;
- ii. Once in 50 years for Class II dams; or
- iii. Once in 25 years for Class III and IV dams.

(g) Pipe conduit and spillway requirements are as follows:

1. When used for Class I and Class II dams, pipe conduits shall be of such design as to safely support the total external loads in addition to the total internal hydraulic pressure without leakage. The minimum allowable inside dimension of the pipe conduit is 30 inches. The type of construction material used must be consistent with the anticipated life of the structure. **Corrugated metal pipe shall not be used in new construction relating to Class I or II dams.**\*

2. When used for Class III and IV dams, pipe conduits shall be of such design as to safely support the total external loads. They must be designed to be water tight and meet the following requirements:

- i. The minimum allowable inside diameter of the pipe is 18 inches for Class III dams and 12 inches for Class IV dams;
- ii. If corrugated metal pipe is used, it must be close-ribbed or welded, have watertight connecting bands and be of a minimum gage specified by the manufacturer as safe for a height of fill over the pipe of not less than 35 feet;
- iii. If corrugated metal pipe is used, the maximum fill height over the pipe may not exceed 15 feet; and
- iv. Cathodic protection for all metal pipes shall be provided.

(h) [Drain]\*\***Drawdown**\* requirements are as follows:

1. Except for excavated impoundments, all dams shall include a [device]\* **facility** to permit draining the reservoir, as approved by the Department.

2. **For earth dams**\*\*[V]\* **valves** or sluice gates in pipe conduit drains must be installed upstream of the dam; and

3. All pipe conduits used as **drawdown**\* drains for all dam classifications shall meet the requirements of (f) and (g) above, except that the minimum allowable inside dimension may be less than 30 inches.

(i) Design references used shall be cited in the information submitted to the Department.

(j) Monitoring devices to permit inspection and assessment of the dam's condition may be required by the Department for use in the inspections during and after completion of construction.

(k) The applicant shall demonstrate to the Department that the riparian rights of downstream property owners will be protected during construction, during the period when the reservoir is being filled and during the life of the dam and reservoir.

(l) **Unless the applicant can demonstrate that an alternative slope is acceptable**,\*[U]\*\***u**pslope slopes of an earth dam may be no steeper than three horizontal to one vertical ratio, and downstream slopes may be no steeper than two horizontal to one vertical ratio. Measures are required for protection of upstream slopes against wave action or rapid draw-down and for protection of the downstream slope against scour or erosion due to high tailwater.

(m) Freeboard requirements are as follows:

1. Sufficient freeboard shall be provided to prevent overtopping of the dam or any dike or levee due to passage of the design flood or due to frost damage, ice damage or wave action.

2. For all dams the minimum elevation of the top of the dam must be [that necessary to]\*:

- i. **That necessary to**\*\*[P]\*\***p**ass the design [flood]\* **storm** with at least one foot of freeboard to the top of dam; or

ii. Two feet higher than the crest elevation of the secondary (emergency) **\*or primary\*** spillway.

3. Where special conditions of severe frost damage, ice damage or wave action may occur, higher elevations than required in (m)2i and ii above, may be required and should be considered by the applicant.

(n) The Department may require the design and installation of any additional or modified measures by any applicant for a dam permit **\*where appropriate to insure the protection of human health or safety\***.

#### 7:20-1.10 Construction

(a) Requirements relating to supervision of dam construction are as follows:

1. All applicants shall submit a written description and schedule of the proposed construction, including:

i. The estimated time to complete the construction activities, see N.J.A.C. 7:20-1.4(e);

ii. Where applicable, a description of the means by which stream flow will be diverted around or through the dam site, or otherwise kept from interfering with the work;

iii. The number of inspectors designated for **\*inspection for construction\*** quality control; and

iv. Steps to be taken to minimize erosion and sediment production during construction.

2. The extent and method of **\*inspection for construction\*** quality control must be described and approved by the Department, including an inspection schedule.

3. The **\*[drain]\* \*diversion facility, as outlined under 1.i above,\*** must remain open and no water may be **\*permanently\*** stored in the reservoir until the permittee demonstrates to the Department that storage of water will neither interfere with construction activities nor create a hazard to life, health or property.

4. The professional engineer responsible for inspecting the construction must submit progress reports to the Department at least once each month during the construction period.

5. The permittee shall promptly advise the Department of all proposed changes in the approved design, plans or specifications. There may be no change in the approved design, plans or specifications without prior approval of the Department. **\*Written prior approval from the Department is required for major modifications, which shall include significant changes in scale, use, design, impact, etc. of the project, as initially approved. The Department may require written, prior approval of any proposed modification.\*** All approved changes must be recorded on the complete set of as-built plans, required in (a)6 below. The Department may require the submission of revised designs at any time.

6. A complete set of as-built designs, plans and specifications must be submitted to the Department upon completion of the project.

7. The professional engineer who has inspected the construction shall submit written certification that the structure has been built in conformance with the designs, plans and specifications, and with any changes approved by the Department.

(b) Construction inspection program requirements are as follows:

1. The Department may inspect the dam during construction to insure that it is being built in compliance with the designs, plans and specifications submitted to the Department. Departmental inspections in no way relieve either the permittee or the professional engineer in charge from the responsibility of providing adequate inspection of the work.

2. If, at any time during the progress of the work, the Department finds that the work is not being performed in accordance with the approved designs, plans and specifications and any approved changes, the Department will serve a written notice to that effect on the permittee or his representative. Such notice will state the particulars with which the work has not complied. Additionally, the Department may order the immediate compliance with such designs, plans, specifications, and changes and suspension of all other work until compliance has been effected. If the owner or his representative fails to comply with this order, the permit under which construction is authorized may be revoked or suspended by the Department.

3. Upon receipt of the as-built plans required in (a)6 above and the engineer's certification required in (a)7 above, the Department will inspect the completed construction within 30 days. If the Department finds that construction was completed in accordance with the approved designs, plans, specifications and approved changes, the construction will be approved in writing within 14 days. The approval date shall be the date such approval is sent by the Department.

4. In the 12th month following approval of construction by the Department pursuant to (b)3 above, the Department will make a final inspection of the construction. A final approval will be given by the Department if the final inspection shows that the terms of the permit, designs, plans, specifications and approved changes thereof have been met.

#### 7:20-1.11 Dam operating requirements and inspections\*: new and existing dams\*

(a) All owners and operators of Class I and II dams shall develop and use an Operational and Maintenance Manual which meets the following requirements:

1. The purpose of this manual is to provide guidance and instruction to project personnel for the proper operation and maintenance of the reservoir and dam.

2. The manual shall be composed of two parts.

i. Part one must include an introduction, project description, project authorizations, project history and list of project contracts.

ii. Part two must contain the operation and maintenance instructions for major project facilities and equipment.

(b) Permittees for Class III dams shall develop and use an Operation and Maintenance Manual in the event that the dam classification is raised.

(c) The owners or operators of **\*all\*** dams which raise the waters of any stream more than 70 feet above its usual mean low-water height or which impound\*[s]\* more than 10,000 acre-feet of water shall have a regular inspection performed annually and formal inspections performed every three years by a New Jersey licensed professional engineer. These inspections must **\*[occur in the company of an]\* \*be attended by a professional\*** engineer assigned from the Department. In the year of the formal inspection, regular or informal inspections need not be performed.

(d) Owners or operators of all dams shall have an informal inspection performed on the off-year from the regular inspection (see (f) below).

(e) Owners or operators of dams not covered by (c) above shall have a regular inspection performed once every two years and a formal inspection performed once every six years. In the year of the formal inspection, regular and informal inspections need not be performed.

(f) All dam inspections shall be performed from March through July (Season I) or from August through December (Season II).

(g) All dam inspections shall be performed in compliance with the following schedule:

1. All dams within the counties of Sussex, Morris, Hunterdon, Union and Essex shall have regular inspections performed in Season I of the first year after the effective date of these rules. Informal inspections shall be performed in Season I of the following year.

2. All dams within the counties of Passaic, Warren, Somerset, Bergen and Hudson shall have regular inspections performed in Season II of the first year after the effective date of these rules. Informal inspections shall be performed in Season II of the following year.

3. All dams within the counties of Middlesex, Monmouth, Burlington, Salem and Atlantic shall have regular inspections performed in Season I of the second year after the effective date of these rules. Informal inspections shall be performed in Season I of the first year.

4. All dams within the counties of Mercer, Ocean, Camden, Gloucester, Cumberland, and Cape May shall have regular inspections performed in Season II of the second year after the effective date of these rules. Informal inspections shall be performed in Season II of the first year.

5. Successive regular and informal inspections shall be performed in the opposite inspection season from that of the prior inspection. For example, if a regular inspection is performed in Season I of the first year, the next regular inspection must be performed in Season II of the third year.

(h) All inspections shall be performed in compliance with the following requirements:

1. A written guide provided by the Department for the preparation of a Report on Condition of the dam shall be used for all inspections.

2. Formal and regular dam inspections shall be performed by a licensed New Jersey professional engineer. Except for Class IV dams, the required report shall be submitted to the Department by the engineer within 30 days of completion of the inspection. The report shall indicate the results of the inspection, documenting the conclusions and recommendations. Reports for Class IV dams shall be submitted to the county and/or municipal engineer having jurisdiction over the dam structure.

3. [Except for Class IV dams, ;] informal inspections may be performed by the dam owner or operator and \*, **except for Class IV dams,** the Report on Condition shall be submitted to the Department within 30 days. Reports for Class IV dams shall be submitted to the county and/or municipal engineer having jurisdiction over the dam structure.

4. The Department may extend the time for submission of the required material for up to 30 days, if the owner or operator justifies the need for such extension.

5. Failure by the permittee to inspect within the required time periods or failure to submit the Report on Condition may result in an order to drain the impoundment under the provisions of the Safe Dam Act (N.J.S.A. 58:4-1 et seq.), and/or any other remedy allowed by law.

(i) For good cause, the Department may require the owner or operator of any dam to perform an inspection of any type at any time.

**\*(h) The owner or operator of all Class I and II dams shall prepare and use an Emergency Action Plan, as described in N.J.A.C. 7:20-1.7(f).\***

(a)

**DIVISION OF FISH, GAME AND WILDLIFE**

**List of Endangered Species and Defining Status of Indigenous Nongame Wildlife Species**

**Osprey**

**Adopted Amendments: N.J.A.C. 7:25-4.13 and 4.17**

Proposed: February 19, 1985 at 17 N.J.R. 350(a).  
Adopted: April 10, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.  
Filed: April 15, 1985 as R.1985 d.215, **without change.**

Authority: N.J.S.A. 23:2A-4.

Effective Date: May 6, 1985.  
Expiration Date pursuant to Executive Order 66(1978):  
March 25, 1989.  
DEP Docket No: 001-85-01.

**Summary of Public Comments and Agency Responses:**

One written comment was received from the Public Service Electric Gas Co., who endorsed the goal of the proposal.

**Full text** of the adoption follows.

7:25-4.13 List of endangered species

(a) (No change.)

(b) In accordance therewith, the following species are determined to be endangered:

1.-11. (No change.)

12.-34. (No change in text.)

7:25-4.17 Defining status of indigenous nongame wildlife species of New Jersey

(a) The following table defines the status of indigenous nongame wildlife species of New Jersey

...

Osprey, Pandion haliaetus (b) T

...

(a)

**BUREAU OF SHELLFISHERIES****Oyster Management****Adopted Repeal: 7:25A-1, -2, and -3****Adopted New Rule: 7:25A-1**

Proposed: February 19, 1985 at 17 N.J.R. 352(a).

Adopted: April 10, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: April 15, 1985 as R.1985 d.216, **without change.**

Authority: N.J.S.A. 50:1-5, 50:1-23, and 50:1-27.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order 66(1978):

May 6, 1990.

DEP Docket No. 004-85-01.

**Summary of Public Comments and Agency Responses:**

At the March 18, 1985 meeting of the Delaware Bay Shellfish Council the proposed rule was discussed. No adverse comment was received and the Council voted unanimously to approve the adoption, finding this rule to be in the interest of the efficient operation of the oyster industry in Delaware Bay and the successful preservation and enhancement of the State's oyster resource.

**Full text** of the adoption follows.

**SUBCHAPTER 1. OYSTER MANAGEMENT****7:25A-1.1 Scope**

The following shall constitute the rules governing the issuance and renewal of oyster dredging licenses, the leasing of oyster ground in Section E in Delaware Bay, and the taking of seed oysters from the State's natural seed beds.

**7:25A-1.2 Purpose**

The purpose of this subchapter is to provide an orderly procedure for the licensing of oyster vessels, the leasing of oyster grounds in Section E in Delaware Bay, and the taking of seed oysters from the State's natural seed beds.

**7:25A-1.3 Construction**

These rules shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5, 50:1-23, and 50:1-27.

**7:25A-1.4 Definitions**

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

"Bay season" means from May 1 to June 30, the season during which the natural seed beds are legally open for the taking of seed oysters.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Fish, Game and Wildlife.

"Natural seed beds" means any of the natural beds or grounds in Delaware Bay or Delaware River above the southwest line, except that area known as Section "E".

"Section 'E' " means all of the area within the boundaries described herein: Beginning at a point (X = 1820400) (Y = 146800) said point being Channel Buoy R"32" and corner #1 of said section and running thence N 28° -14' -14.2" E 6612.18 feet to corner #2 (X = 1826233) (Y = 149914); thence S 56°-32' -38.4" E 33401.27 feet to corner #3 being also corner #1 lot 530 section D leased oyster ground lot (X = 1854100) (Y = 131500) located on or near the southwest line; thence along the southwest line S 55°-16' -29.1" W 19222.67 feet to old Crossledge Lighthouse foundation being corner #4 of the section (X = 1838301) (Y = 120550); thence N 16°-02' -14.0" W 17740.41 feet to corner #5 being also BR "WR" buoy marking a wreck in the bay (X = 1833400) (Y = 137600); thence N 42°-42' -33.7" W 3538.36 feet to a point in Delaware Bay being corner #6 of section E (X = 1831000) (Y = 140200); thence S 70°-17' -31.3" W 7116.88 feet to corner #7 being a point on the east side of the Main Ship Channel in Delaware Bay (X = 1824300) (Y = 137800); thence N 23°-25' -43.3" W 9818.67 feet to corner #1 the place of beginning.

"Seed oysters (seed)" means all oysters taken from the natural seed beds.

"Southwest line" means a line running directly from the mouth of Straight Creek to Crossledge Lighthouse in Delaware Bay.

**7:25A-1.5 Licenses**

No new oyster licenses authorized by N.J.S.A. 50:3-1 shall be issued except to those vessels validly licensed during the previous year.

**7:25A-1.6 Substitution of vessels; license renewal**

(a) Any person who owns a vessel validly licensed pursuant to N.J.S.A. 50:3-1 may substitute a new vessel for the previously licensed vessel, except that no substituted vessel shall have a greater gross tonnage than the previously licensed vessel.

(b) Two persons owning vessels validly licensed pursuant to N.J.S.A. 50:3-1 may exchange their vessels with the approval of the commissioner of Environmental Protection and the Delaware Bay Section of the Shellfisheries Council and be exempt from the tonnage limitation set forth in (a) above.

(c) A person transferring ownership of his licensed oyster vessel may do one of the following:

1. File a notarized Statement of Intent with the Department indicating that he has sold the vessel and wishes to replace it with another vessel within one year; or

2. File a notarized Statement of Intent with the Department indicating that he will waive all rights and conditions of that license, not apply for a replacement license, and transfer the right to a license with the vessel to its new owner who shall meet all statutory criteria for licensing.

(d) The new owner of a transferred vessel must have its license reissued in his own name. Application for reissue must include documentation as to ownership of the vessel and the current year's license.

(e) A licensed vessel, lost, destroyed or disabled may be replaced within two years of December 31 of the year for which the lost, destroyed, or disabled vessel was licensed. The owner shall file a Statement of Intent with the Department, on or before December 31 of the year for which the lost, destroyed, or disabled vessel was licensed, that he will replace the vessel. The replacement vessel shall be licensed upon proof of loss and of replacement of the previously licensed vessel. No replacement vessel shall have a greater gross tonnage than the previously licensed vessel.

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(f) Except as specified in (c)1 and (e) above, oyster dredge boat licenses must be renewed annually on or before December 31. Application for renewal must include proof of ownership of the vessel, and the previous year's license. An applicant may be issued a license if he had a license in the preceding year.

(g) A license not renewed within the calendar year shall be retired together with the license holder's Section E leases.

(h) License renewal is specifically conditioned on the continuing conformance of the licensee with all the requirements of this chapter.

(i) Nothing in this subchapter shall allow the issuance of two licenses for one.

**7:25A-1.7 Leasing of Section E**

The owner of an operable vessel which is licensed to dredge oysters pursuant to N.J.S.A. 50:3-1 may lease ground in Section E upon application and approval of the Delaware Bay Section of the Shellfisheries Council.

**7:25A-1.8 Expiration and renewal of Section E lot leases**

(a) Each Section E lot lease will expire at the end of the calendar year in which it was issued. Lease holders or their heirs and assigns will have the option to renew each year provided the leased lot to be renewed has been, in the judgment of the Delaware Bay Section of the Shellfisheries Council and the division, actively worked by the recorded lease holder, and an accurate report of the use to which the lot was put is first filed with the division on a form provided by the division.

(b) Nothing in this chapter shall be construed to affect the exclusive power of the Shellfisheries Council, subject to approval by the Commissioner of Environmental Protection, to lease shellfish ground as defined in N.J.S.A. 50:1-18.

**7:25A-1.9 Oyster seed beds**

(a) The division, with the advice of the Delaware Bay Section of the Shellfisheries Council and the Oyster Research Laboratory of Rutgers University, shall determine the season for the taking of seed oysters from the natural seed beds above the southwest line in Delaware Bay and shall determine which of the natural seed beds above the southwest line shall be opened. Reasonable notice will be given by the division to all oyster dredge boat license holders of the dates and of the beds to be opened. Oyster seed beds shall be closed as determined in accordance with (f) below. Daily harvest shall be from 7:00 A.M. to 3:30 P.M. Monday through Friday.

(b) Seed oysters (seed) may be taken for the purpose of planting or replanting at the times and in the manner prescribed on leased grounds:

- 1. Below the southwest line; or
- 2. In the Atlantic Coast Section only on days and at times designated by prior arrangement with the division; or
- 3. In Section E.

(c) Seed oysters shall be planted by spreading them loosely on the bottom, not in bags, baskets, or other containers. All oysters taken from the natural beds are considered to be seed oysters until planted in the manner prescribed in this section. Seed oysters shall not be marketed or sold for any other purpose.

(d) The Advisory Committee shall be appointed by the Commissioner and shall be composed of two members of the

Delaware Bay Section of the Shellfisheries Council, two members of the Oyster Research Laboratory of Rutgers University, and the Director of the division or his designee.

(e) Physical tests of all areas opened pursuant to this subchapter shall be made near the end of each week by the Advisory Committee described in (d) above. These tests shall be the determining factor in the Advisory Committee's recommendation to close any or all beds opened by regulation.

(f) Based upon the data and tests referred to in (e) above and the recommendation of the Advisory Committee described in (d) above, the Delaware Bay Section of the Shellfisheries Council, with the approval of the Commissioner, may immediately close those beds as may be necessary for the preservation and improvement of the shellfish industry.

1. It shall be illegal to harvest seed oysters from any closed beds.

2. It shall be prima facie evidence of the violation of 1 above if any vessel is observed by Radar or LORAN or other reliable means to be on closed beds with dredge in water.

(g) The Bureau of Shellfisheries of the division shall publish coordinates of any boundary line or lines established by the Delaware Section of the Shellfisheries Council, and may, as practical, place marker buoys along such line or lines.

(h) Nothing in this section shall be construed to affect any existing regulations concerning areas condemned for the taking of shellfish by the State of New Jersey.

(i) The top and sides of licensed oyster vessels shall be marked with the license number, each number at least 18 inches in size, clearly legible and in good repair, and with no obstruction to view.

(j) No vessel shall take or possess seed oysters from the natural seed beds above the southwest line on the same day such vessel works or harvests on leased shellfish grounds.

(k) During Bay Season, harvesters must notify the Bivalve Shellfish Office to give notice of intent to work any leased grounds.

(l) If a vessel works any part of the day on the seed beds, all oysters in possession shall be deemed seed oysters and must be planted as required in (c) above.

(m) Any person who violates the provisions of this section shall be liable to a penalty of not less than \$100.00 or more than \$3,000 for the first offense and not less than \$200.00 or more than \$5,000 for any subsequent offense, as provided in N.J.S.A. 23:2B-14.

**7:25A-1.10 Review**

The division and the Delaware Bay Section of the Shellfisheries Council shall review this subchapter annually at a regularly scheduled meeting of the Council.

**SUBCHAPTER 2. (RESERVED)**

**SUBCHAPTER 3. (RESERVED)**

**SUBCHAPTER 4. OYSTER CULTCH PROGRAM  
(No change.)**

# HUMAN SERVICES

(a)

## DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

### Procedure Code Manual Immunizations

#### Adopted Amendments: N.J.A.C. 10:54-3

Proposed: March 4, 1985 at 17 N.J.R. 546(a).  
Adopted: April 12, 1985 by George J. Albanese, Commissioner, Department of Human Services.  
Filed: April 12, 1985 as R.1985 d.211, **without change**.

Authority: N.J.S.A. 30:4D-6a(4)(b), a(5), 7, 7a, 7b.

Effective Date: May 6, 1985.  
Expiration Date pursuant to Executive Order 66(1978):  
May 14, 1989.

Summary of Public Comments and Agency Responses:  
**No comments received.**

Full text of the adopted amendments follows.

		MEDICAID DOLLAR VALUE
	S	NS
9075	RHO(D) Immune Globulin (Human) (Microdose for Abortions and Miscarriages)	42.40
9450	Immunization—Measles	10.25
9451	Immunization—Rubella	10.65
9452	Immunization—Mumps	11.55
9453	Immunization—Measles and Rubella combined vaccine	15.35
9454	Immunization—Measles, Mumps, Rubella combined vaccine	22.15
9455	Immunization—Diphtheria, Pertussis, Tetanus combined vaccine	5.86
9456	Immunization—Diphtheria, Tetanus Toxoid combined vaccine	4.65
9457	Immunization—Diphtheria Toxoid	4.90
9459	Immunization—Tetanus Toxoid	3.90
9460	Immunization—Oral polio vaccine	7.10
9461	Immunization—Pneumococcal vaccine polyvalent	9.25
9462	Immunization—Rubella, Mumps combined vaccine	16.50
9445	Immunization—Influenza	4.70
9446	Immunization—Tetanus Antitoxin	5.45

(b)

## DIVISION OF PUBLIC WELFARE

### Public Assistance Manual Continuing IV-D Services for Families that Lose AFDC Eligibility

#### Adopted Amendment: N.J.A.C. 10:81-11.1, 11.4, and 11.12

Proposed: January 21, 1985 at 17 N.J.R. 164(a).  
Adopted: April 12, 1985 by George J. Albanese, Commissioner, Department of Human Services.  
Filed: April 12, 1985 as R.1985 d.210, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-6 and 44:10-3; 49 FR 36764, and the Federal Child Support Amendments of 1984 (P.L. 98-378).

Effective Date: May 6, 1985.  
Expiration Date pursuant to Executive Order 66(1978):  
April 16, 1985.

#### Summary of Public Comments and Agency Responses:

Comment: Comment was received from one county welfare agency regarding amendments to N.J.A.C. 10:81-11.4(d)1vi and vii(2). On recovery of costs incurred in collection of child support, the agency suggests that such procedures be more explicit. With regard to the application fee for nonpublic assistance services, the agency recommends that the amount of the fee should have appeared in the regulations.

Response: Prior to implementation, procedures on recovery of costs incurred in child support collections will be issued to the appropriate agencies. Thus, language is retained as proposed at N.J.A.C. 10:81-11.4(d)1vi. However, N.J.A.C. 10:81-11.4(d)1vii(2) has been revised to identify the \$5.00 application fee for nonpublic assistance services.

Full text of the adoption follows (additions to proposal indicated by boldface with asterisks \*thus\*).

#### 10:81-11.1 Introduction

The regulations contained in this subchapter are applicable, as appropriate to the AFDC and non-AFDC program in New Jersey. P.L. 93-647 establishes Title IV-D of the Social Security Act, which mandates procedures for enforcing support obligations owed by absent parents to their children, locating absent parents and establishing paternity for children born out-of-wedlock. If any regulations herein contradict or conflict with any previously published portions of this manual, such material shall be superseded by this subchapter, except as stated in N.J.A.C. 10:81-11.16(a)2.

#### 10:81-11.4 Assignment of support rights

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

(d) IM worker's responsibility: The IM worker shall advise the AFDC applicant/recipient that upon signing an application (PA-IJ) for AFDC he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments

which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC applicant/recipient shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CSP Unit: The IM worker, at the time of application for AFDC-C, shall complete the appropriate parts of the CSP referral document and route this form to the CWA/CSP Unit within two working days of issuance of an assistance check.

i.-iv. (No change.)

v. Continuing IV-D services for families that lose AFDC eligibility: the IV-D agency is required to collect support payments for a period of five months after the final AFDC payment the family receives under the Title IV-A program. The IV-D agency is required to pay all amounts collected representing support to the family. A IV-D agency may not recover costs from either parent during this period.

vi. After the five-month continued IV-D service of collections: If the IV-D agency is authorized by the individual to collect current support payments from the absent parent, the IV-D agency collects such support amounts and pays the net amount collected to the family after deducting (optional) any costs incurred in making the collection from the amount of any recovery made. The IV-D agency is permitted to recover costs from either the custodial or the absent parent.

vii. Application fee for continuation of services: The IV-D agency is prohibited from requiring any formal application or imposing any application fee in cases where the IV-D agency is authorized to continue to collect and distribute support payments after a family ceases to receive AFDC payments. The IV-D agency is permitted to recover costs incurred in the collection of such support from either the absent parent or the custodial parent as specified in Section 457(C)(2) of the Social Security Act as modified by Section 7 of P.L. 98-378; amounts collected must be paid to the family on the same basis as they are paid in other non-AFDC IV-D cases.

(1) If collection services are terminated by the family after the five-month time period for continuation of IV-D collection services, the IV-D agency may require that a IV-D application be filed for services if the family requests these services to be reinstated.

(2) The application for non-AFDC services will require a **\*\$5.00\*** fee on all cases where an application is filed on or after October 1, 1985.

10:81-11.12 Notification of deletions, terminations, suspension or transfer of case/individual

(a) (No change.)

(b) In the case of termination of AFDC assistance, the IV-D agency will notify the family that it will continue to collect and distribute current child support payments. The appropriate IV-D agency collecting support must be notified of the continuation of IV-D services for families that lose AFDC eligibility.

**(a)**

**DIVISION OF PUBLIC WELFARE**

**Public Assistance Manual  
Child Support and Paternity Program:  
Medical Support**

**Adopted Amendment: N.J.A.C. 10:81-11.7  
and 11.9**

Proposed: January 21, 1985 at 17 N.J.R. 165(a).

Adopted: April 12, 1985 by George J. Albanese, Commissioner, Department of Human Services.

Filed: April 15, 1985 as R.1985 d.219, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3; the Federal Child Support Amendments of 1984 (P.L. 98-378); 45 CFR 302.80(b); 45 CFR 304.20; 45 CFR 305.56; and 45 CFR 306.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order 66(1978): April 16, 1989.

**Summary of Public Comments and Agency Responses:**

Comment: One comment was received from a county welfare agency concerning the difficulty experienced by county welfare agencies in securing health benefits information and transmitting such information to the Child Support and Paternity Unit and the Division of Medical Assistance and Health Services.

Response: Health benefits information is acquired at the time of a support hearing when both the probation department and county welfare agency are required to be represented. In addition, the probation department enters the information on the Child Support Program Form CSP 158, Case Preparation Information Sheet, and subsequently, send the form to the county welfare agency. Therefore, since the information is available for transmission, the regulation at N.J.A.C. 10:81-11.7(a)ix is being adopted as proposed.

Comment: Two comments were received from county welfare agencies opposing the addition of the word "enforcing" in N.J.A.C. 10:81-11.9(a), relative to the responsibilities of the county welfare agencies in providing child support services for non-public assistance persons.

Response: It should be noted that county welfare agencies do "enforce" support each time they become a litigant in a child support hearing. Moreover, the Appellate Division of the Superior Court of New Jersey, on April 16, 1984, rendered a decision, in the case of **Shapiro vs. Albanese**, concerning the distribution of incentive payments in the Child Support and Paternity Program. The decision awarded incentives to the county welfare agencies because they "enforce" and collect support. In light of those observations, the Department feels that the word "enforcing" should be retained as proposed.

**Full text** of the adoption follows.

10:81-11.7 Child support collection and establishment of paternity under Title IV-D

(a) State agency responsibilities: The State Bureau of Child Support and Paternity Programs, located in the Division of Public Welfare, shall be the single organizational unit responsible for the supervision of the administration of the Child Support and Paternity Program. This unit shall be referred to as the Bureau of CSP Programs.

1. Responsibilities of the Bureau of CSP Programs include but are not limited to the following:

i.-viii. (No change.)

ix. Transmittal of all health benefits information, both voluntary and/or on support orders for AFDC clients to the State's Division of Medical Assistance and Health Services.

10:81-11.9 Responsibilities of the CWA/CSP Unit

(a) This unit shall be responsible for taking appropriate action to locate absent parents, to establish paternity and/or

secure child support due AFDC recipients; for securing and timely transmittal of all health benefits information, both voluntary and from new or modified court orders for support of AFDC clients to the State Child Support and Paternity Bureau and the State Division of Medical Assistance and Health Services; for referral of cases, when the whereabouts of the absent parent is unknown, to the State Parent Locator Service; and for providing services for location, filiation and obtaining and enforcing support for non-public assistance persons.

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

## CORRECTIONS

### (a)

#### STATE PAROLE BOARD

##### Parole Board Rules

##### Readoption with Amendments: N.J.A.C.

10A:71-1, 2, 3, 4, 5, 6, 7, 8

##### Adopted New Rules: N.J.A.C. 10A:71-3.31,

3.32, 3.33, 3.34, 3.35, 3.36, 3.37, 3.38,

3.39, 3.40, 3.41, 3.42, 3.43, 3.44, 3.45,

3.46

Proposed: December 17, 1984 at 16 N.J.R. 3391(a).

Adopted: March 27, 1985 by Christopher Dietz, Chairman, New Jersey State Parole Board (with consent and approval of members of the New Jersey State Parole Board).

Filed: April 15, 1985 as R.1985 d.213, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4-123.48(d), 30:4-123.51(g), 30:4-123.54(d).

Effective Date of Readoption: April 15, 1985.

Effective Date of Amendments and New Rules: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 15, 1990.

##### Summary of Public Comments and Agency Responses:

During the comment period, the Board received written comments from the Department of Corrections, the Department of Law and Public Safety—Division of Criminal Justice, the Department of the Public Advocate, a Judge of the Superior Court—Chancery Division—Family Part, several Prosecutors, two County Jail Wardens and two inmate representatives. The principal comments and the Board's responses follow:

##### 1. Economic Impact

(a) Comment: The Department of Corrections indicated that the proposed revisions to N.J.A.C. 10A:71-3.5, 3.7(e)(8), 3.16(c)(1), 3.18(b)(1) and 3.26 will create an additional workload which clearly cannot be absorbed with existing comple-

ment of staff within the institutions. In order to adequately provide the additional information required, the Department felt that additional secretarial and clerical positions would be necessary. The Department reports that the cost of the additional positions is estimated at \$323,565.

Response: The Department of Corrections since October, 1983 has been complying with the procedures as proposed for formal adoption in N.J.A.C. 10A:71-3.16(c)(1) and 3.18(b)(1). To the Board's knowledge no increase in staff resulted from the implementation of the procedures. In reference to N.J.A.C. 10A:71-3.7(e)(8), compliance with the rule is merely an extension of the procedures reflected in N.J.A.C. 10A:71-3.16(c)(1) and 3.18(b)(1) and should not result in any additional cost. In reference to N.J.A.C. 10A:71-3.5, the Board does not believe that the number of cases processed in any given month would create an undue burden on the institutional staff who are already presently assigned to prepare pre-parole reports for the regular monthly parole hearings. Perhaps additional staff may be necessary. However, staff assigned to prepare reports pursuant to N.J.A.C. 10A:71-3.5 would not devote full-time to said function and could, therefore, assist in the preparation of pre-parole reports for the parole hearing process. In reference to N.J.A.C. 10A:71-3.26, the Board has deleted from the rule the requirement of additional reports and any estimated cost associated with compliance to the deleted sections of the rule have been eliminated. Overall, the Board does not concur that the estimated number of additional positions and costs involved in establishing the positions are at the level as suggested by the Department.

(b) Comment: The Department of Corrections indicated that a major expense will be incurred by the Bureau of Parole upon the community service program for county correctional cases being instituted. The Department estimates the cost for establishing additional parole office and stenographic positions as well as the purchase or rental of vehicles at \$444,000.

Response: The community service program for county jail inmates on parole will not involve every parolee from a county jail. The requirement of community service as a special condition of parole for a county jail inmate will only be imposed by the Board panel in those cases deemed appropriate. It is the intention of the Board to pursue discussions with the Administrative Office of the Courts for the possible contracting for probation administration of the program. If an agreement is concluded for the administration of the program by county probation departments the cost to the Bureau of Parole would be non-existent or negligible at best.

(c) Comment: The Department of Corrections indicated that if the Bureau of Parole was to commence the conducting of adjustment hearings (N.J.A.C. 10A:71-6.7) the cost would be estimated at \$444,000. The Department did not provide an explanation as to the basis for the cost estimate.

Response: The adjustment hearing process is established by statute and is designed to handle those cases of parolees committing violations of the conditions of parole which do not constitute a basis for the return of the parolee to custody. The hearing process is similar to the probable cause hearing process which is presently supervised by the Bureau of Parole through the regional District Parole Offices. The Board does not believe that an adjustment hearing process would be a burden on District Parole Office staffs since informal adjustment sessions occur routinely and since staffs are familiar with procedural matters pertaining to a hearing process as a result of direct and active involvement in the similar but separate probable cause hearing process. The cost incurred, if any, would certainly be minimal and not at the suggested and unsupported figure of \$444,000.

(d) Comment: The Department of Corrections estimates that the implementation of rules N.J.A.C. 10A:71-3.31 to 3.44 would require the Department to employ a minimum of four field representatives to assist the county jails in preparing and gathering information for parole hearings on county jail inmates, employ at least one secretarial staff person, and purchase or lease four vehicles. The cost for additional positions and vehicles is estimated at \$159,349.

Response: In July, 1982 the Parole Act was amended to expand the jurisdiction of the Board to include county jail inmates serving sentences in excess of 60 days and vested in the chief executive officers of the various county jail and correctional facilities the responsibility to prepare the necessary reports for parole hearings in county jail inmate cases and cooperate with Board in said process. The proposed rules represent the procedures that have been developed, refined and practiced since July, 1982. The Department of Corrections was not obligated, upon amendment to the Parole Act, to actively participate in the parole process for county jail inmates and the formal adoption of rules by the Board in no way is intended to obligate the Department to do so. If the Department wishes to voluntarily assist the county jail authorities, and present indications are that the Department will do so, the cost involved should not be attributed to the Board adopting rules governing the parole process for county jail inmates.

(e) Comment: The Department of Corrections advised that it anticipates as a result of the proposed revisions to the presumptive parole eligibility schedule (N.J.A.C. 10A:71-3.3) for young adult offenders the requirement of an additional 300 bedspaces. The Department advised that the recategorization of offenses will move many offenses from a lower to a higher eligibility category. The Department advised that the need for additional bedspaces will occur on a gradual basis and that the full complement of bedspaces will be required by the 32nd month after implementation of the proposal. The Department assumes that the cost for all 300 beds to the Department would be \$14,700. per day or \$5,365,500. per annum.

Response: The Board does not concur that the proposal would require an additional 300 bedspaces and that the eventual cost will be over five million dollars as projected by the Department. The Board believes that the proposal as originally developed represents the present practices of the young adult Board panel in the establishment of parole eligibility terms. It is believed that additional bedspaces would be contingent on the volume of offenders that will be sentenced and who will receive time goals and not necessarily contingent on the length of the time goal imposed. However, the Board in evaluating the concerns of the Department (and the Department of the Public Advocate) determined that the majority of time goals were established in the cases of offenders serving third degree offenses and that the next major category for the imposition of time goals was for second degree offenses. In view of the statutory limit provided on time goals, the Board concluded that modifications could be made to the proposal which would reduce the presumptive time goals for most offenses and thereby ameliorate the cost factor and yet insure the Board panel's flexibility in establishing higher time goals for offenders sentenced for crimes involving violence. The Board has modified the proposal accordingly. The principal modifications are the reinstatement of the original categorization of offenses with some exceptions, the maintaining of the original presumptive terms for most first degree crimes and third degree crimes, and amendment to the presumptive terms

for most second degree crimes. Such modifications were submitted to the Department of Corrections and, upon being reviewed by the Department, the Board was informed that no additional comments would be forthcoming on the modifications.

2. Comment to N.J.A.C. 10A:71-1.9(b): The Department of Corrections suggested that the Board specify that the handbooks be reviewed annually.

Response: The Board does not believe that there is a necessity to require an annual review of the handbooks on the parole process. The handbooks will be reviewed periodically to insure the updating of information as a result of court decisions, amendments to the parole statute or modification of administrative procedures.

3. Comment to N.J.A.C. 10A:71-2.3: The Department of the Public Advocate commented that the Board does not appear to be properly exercising its sanctions in instances where certain state officials and police have failed to honor subpoenas. It was recommended that the provision be dropped if sanctions are not going to be exercised.

Response: The Board by statute is vested with the power to issue subpoena and the failure to respond to a subpoena shall, per statute, carry the penalty prescribed by law for failure to so respond in the Superior Court. The Board will decide under what circumstances a sanction should be imposed. The failure to exercise its authority to institute a sanction is not sufficient cause to eliminate a rule which is provided for by statute.

4. Comment to N.J.A.C. 10A:71-2.4: The Department of the Public Advocate commented that there are many questionable practices in effect at prison disciplinary hearings and that where obvious questionable practices exist in a particular case, evidence relating to an inmate's guilt or innocence must be considered. It was suggested that the res judicata principle presently in effect be deleted.

Response: In exercising the power to parole, the Board does not sit as an appellate tribunal for inmates to relitigate factual determinations made at prison disciplinary hearings. An inmate should pursue a judicial appeal of the finding of the disciplinary hearing officer and a superintendent's affirmation. It is the position of the Board that if no such appeal is taken, then it is free to rely upon that prior administrative adjudication and on all other permissible data in deciding if parole should be rescinded or a parole eligibility date altered. The Board's position has been upheld by the Appellate Division and the Board will, therefore, not delete the res judicata principle from the rule.

5. Comments to N.J.A.C. 10A:71-3.2(c)(6), 3.2(f) and 3.10(d): The Department of the Public Advocate advised that there is a slight technical problem with the language chosen in regard to Adult Diagnostic and Treatment Center sentences. The Department advised that the Board should make reference to the sentence "being served" and not the sentence "imposed." The Department advised that the distinction is important given N.J.S.A. 2C:47-4(b) which provides that when a person is transferred out of the Adult Diagnostic and Treatment Center his sentence becomes ordinary and parole eligibility is based the same as any other person sentenced under the criminal code. Thus, though a sentence to the Adult Diagnostic and Treatment Center may be originally imposed, the person, upon being transferred out of the Adult Diagnostic and Treatment Center under N.J.S.A. 2C:47-4(b), is considered serving an ordinary and not an Adult Diagnostic and Treatment Center term.

Response: The Board recognizes the distinction in the use of the terms "sentence imposed" and "sentence being

served" and recognizes that sections 3.2(c)(6) and 3.2(f) do not address the transfer of an offender out of the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-4(b). The Board has, therefore, amended the rules to include language which will clarify the status of the transfer type of case. The Board has also clarified rule 3.10(d) by deleting reference to N.J.S.A. 2C:47-1, et seq.

6. Comment to N.J.A.C. 10A:71-3.2(c)(7): The Department of Corrections believed that in the cases of inmates whose eligibility dates are passed prior to a parole hearing, the new book date should be calculated from the old book date as opposed to the hearing date and that commutation credits should be applied also for the time between the old book date and the parole hearing.

Response: The proposed rule is based on a practice implemented by the Board and subsequently supported by an opinion issued by the Department of Law and Public Safety—Division of Law. Since the rule is supported by the Department of Law and Public Safety—Division of Law, the Board does not concur with the position expressed by the Department of Corrections.

7. Comment to N.J.A.C. 10A:71-3.2(f): The Department of Corrections questioned why the establishment of the parole eligibility term for the purpose of aggregation cannot occur prior to the recommendation of the Special Classification Review Board. The Department alleges that to do so would be helpful to the inmate and the therapist as they undertake preparations for release.

Response: An adult inmate sentenced to the Adult Diagnostic and Treatment Center only becomes primarily eligible for parole upon the recommendation by the Special Classification Review Board, except that no such inmate shall become primarily eligible prior to expiration of any mandatory or fixed minimum term imposed. There is, therefore, no set eligibility term established by statute which can be aggregated with any specific or life term. The commitment to A.D.T.C. is for therapeutic reasons and the adult Board panel will establish an eligibility term, when necessary for the purpose of aggregation, only after the panel is satisfied that therapeutic progress has been achieved to satisfy the statutory standard for parole release. Only at that point will the panel determine that aggregation with a punitive eligibility term may occur. The Board will not require the adult Board panel to establish an eligibility term without the recommendation of the Special Classification Review Board and the panel's concurrence with the same. The Board will not permit the recommendation of the Special Classification Review Board, which is a referral body not vested with the authority to grant parole, to be the dispositive factor in the establishment of an eligibility term for the purpose of determining an aggregate eligibility date on all sentences being served.

8. Comment to N.J.A.C. 10A:71-3.3: A prosecutor noted that N.J.S.A. 2C:11-5 has been amended and that the offense of Death by Auto is now a crime of the third degree. It was recommended that the offense of Death by Auto be placed in the same category as other third degree offenses.

Response: The Board concurs with the Prosecutor and has amended the rule to reflect Death by Auto as a third degree offense.

9. Comment to N.J.A.C. 10A:71-3.3(a): The Department of the Public Advocate advised that the Board has chosen to categorize drug offenses as a level higher than what is justified by them. The Department states that the Board has made distribution and possession with intent to distribute equivalent to a second degree offense and made possession the

equivalent of a third degree offense. The Department concludes that based on its interpretation of the statutes each of the offenses should be one degree lower for the purpose of establishing parole eligibility.

Response: The Board has for the purpose of parole eligibility placed possession of a controlled dangerous substance in the same category as third degree offenses. However, the Board has not placed the offenses of sale or distribution of a controlled dangerous substance or possession of a controlled dangerous substance with the intent to distribute in the same category as second degree offenses. The Board has placed these offenses in a separate category between the categories consisting of third and second degree crimes. The Board is of the opinion that these offenses are more serious than third degree offenses and yet not equivalent to second degree offenses which generally are of a violent nature. The Department recognizes that the Code of Criminal Justice gives no guidance in this area. The Board is, however, of the opinion that the categorization of the offenses is a reasonable exercise of the Board's authority and a reasonable interpretation of the relevant statutes.

10. Comments to N.J.A.C. 10A:71-3.3(a): The Department of the Public Advocate advised that the upgrading of presumptive terms for the most significant offenses will result in youthful offenders serving a longer time period in custody than an adult offender. The Department advised that the Parole Act stated that presumptive eligibility dates should be such that youthful offenders are treated no more harshly than adult offenders and that to treat a youthful offender more harshly would be illegal.

Response: The Board does not concur in the assessment that the upgrading of presumptive terms would result in youthful offenders serving longer periods of confinement than adult offenders. The Board recognizes the intent of the Parole Act to insure a distinction in the parole eligibility for youthful and adult offenders. The Board does not believe that the proposal was contrary to the intent of the Parole Act. However, cognizant of the concerns of the Department of the Public Advocate (and the Department of Corrections), the Board reassessed the proposal and determined that modifications to the proposal would be appropriate. The principal modifications are the reinstatement of the original categorization of offenses with some exceptions, the maintaining of the original presumptive terms for most first degree crimes and third degree crimes, and the amendment to the presumptive terms for most second degree crimes. The reinstatement of the original categorization of offenses and the maintaining of original presumptive terms for most first degree crimes and third degree crimes will continue to reflect the presumptive distinction of parole eligibility for youthful and adult offenders. Even in the modified presumptive term for second degree crimes, the presumptive distinction will be maintained. The modified presumptive term, which is higher than presently reflected in the rule but lower than proposed, will also satisfy the Board's perception that a higher presumptive term is necessary based on the violent nature of the offenses and the panel's experience in establishing presumptive parole eligibility terms upon assessment of youthful offenders' cases. Further, in view of the modification to this section, the Board has made the necessary modifications to N.J.A.C. 10A:71-3.19(b) to ensure the compatibility of the two rules.

11. Comment to N.J.A.C. 10A:71-3.4: The Department of the Public Advocate suggested that the time frame for the chief executive officer to notify the senior Board representative at the institution that an adult inmate has committed an

institutional infraction be established at 48 hours. Also, it was suggested that language be inserted to specify that an inmate's designated representative be allowed to submit a statement pertaining to any mitigating circumstances.

Response: The Board has amended the time period for referral from 30 days to seven days. The Board is of the opinion that seven days is not an inordinate amount of time for the referral to occur and is of the opinion that 48 hours is too short of a time period for the chief executive officer to insure that the referral of the inmate's case with the appropriate documentation is made to the Board's representative. Further, the Board is not of the opinion that "designated representative" language need be inserted. If statements are received from any source on behalf of an inmate the statements will be given consideration and lack of specific language will not preclude consideration of the statements.

12. Comment to N.J.A.C. 10A:71-3.4: The Department of Corrections suggests that the Board impose a time frame within which the Board must commence its review process of inmates committing institutional infractions.

Response: The Board is not of the opinion that time periods should be imposed which would limit the Board's ability to review an inmate's case and extend, if appropriate, an inmate's parole eligibility date due to the commission of an institutional infraction.

13. Comment to N.J.A.C. 10A:71-3.4(f): The Department of Corrections suggests that the institution's classification department should be notified in writing in all cases of an increase in an inmate's parole eligibility date.

Response: The Board concurs that the institutional authorities should be notified in writing as to a decision to increase (or not increase) an inmate's parole eligibility date. The Board has amended the rule to require notification to the chief executive officer of the institution or designee.

14. Comment to N.J.A.C. 10A:71-3.5: A Prosecutor noted that there was no provision for notifying prosecutors of the final decision rendered. It was recommended that the decision be communicated to prosecutors since it will have a bearing on whether the prosecutor should object in the future to parole in any given case.

Response: The Board concurs with the recommendation and has amended the proposal to include notification not only to a prosecutor but also to the chief executive officer of the institution, the Board of Trustees and the court.

15. Comment to N.J.A.C. 10A:71-3.5: The Department of the Public Advocate suggests that designated representatives on behalf of eligible inmates should be allowed to seek an eligibility reduction via written reports. Further, the Department advises that the available educational and training programs at institutions vary. The Department suggests that inmates that are ready, willing and able to participate in programs, though not available to them, should receive the same credit that inmates in other institutions with programs might receive.

Response: The Board is not of the opinion that "designated representative" language need be inserted. If a valid written request for exceptional progress eligibility reduction is received from any source on behalf of the inmate, the written request will be given appropriate consideration. Further, the Board does not concur that inmates who have not completed programs should receive the same credit consideration of those inmates who have completed programs. In addition, the availability of programs and the custody location of inmates are under the jurisdiction of the Department of Corrections and not the Board and any concerns regarding these issues must be addressed by the Department of Corrections.

16. Comment to N.J.A.C. 10A:71-3.5: The Department of Corrections notes that inmates may apply for an exceptional progress eligibility reduction by submitting a written request to the senior Board representative at the institution; that upon the Board's preliminary determination that the information provided in the application indicates that the inmate may have achieved exceptional progress, the chief executive officer of the institution will be required to provide the panel with updated reports and recommendations concerning the inmate's conduct and progress; and that the Department will be required to submit its recommendations and comments of the Board of Trustees. The Department expressed concern that the procedure created an additional workload for institutional staff.

Response: The Board recognizes that institutional staff would be required to provide updated reports and recommendations concerning the inmate's conduct and progress. The Board does not intend to request reports and recommendations in every case but in only those cases having merit, thereby, requiring further assessment. The reduction in initial parole eligibility affects the punitive aspect of the sentence and such reduction, if exceptional progress has been deemed achieved, cannot occur without the consent of the sentencing court. It is imperative, in the Board's opinion, that the sentencing court have input from all relevant components of the criminal process, especially the agency who has custody of the offender, before the court is requested to consent to reducing the parole eligibility term. If a reduction in the eligibility term is granted with the court's consent, the inmate would eventually be released on an earlier date and the cost savings to the Department by the early release should off-set any cost involved in the preparation and submission of reports to the Board.

17. Comments to N.J.A.C. 10A:71-3.5: The Department of Corrections questioned whether the procedure applies to inmates sentenced as sex offenders pursuant to N.J.S.A. 2C:47 or whether the provisions of the aforementioned statute, which permits the Commissioner to recommend release, apply.

Response: The section is designed to apply only to adult inmates serving in the prison complex specific or life terms which do not include the imposition of a mandatory-minimum term. An inmate sentenced as a sex offender under N.J.S.A. 2C:47 and who is subject to parole consideration under N.J.S.A. 2C:47-5 would not be eligible for a reduction in his parole eligibility term. Since inmates classified as sex offenders would be excluded, treatment staff at the Adult Diagnostic and Treatment Center would not be required to expend additional time or have any additional responsibilities in the exceptional progress review procedure.

18. Comment to N.J.A.C. 10A:71-3.7(e)(8): The Department of Corrections noted that this section would require in addition to the offender's actual maximum date, a projection of the offender's maximum expiration date. The Department noted that the computation of the projected maximum expiration date was a more detailed, complicated and tedious exercise.

Response: In re-evaluating the section, the Board concluded that the inclusion of the actual maximum date in the pre-parole package was sufficient for the Board's purpose. Accordingly, the section has been amended to delete the requirement for inclusion of the projected maximum expiration date in the pre-parole package.

19. Comment to N.J.A.C. 10A:71-3.7(e)(8): The Department of Corrections recommended that maximum dates be computed and established by the Board.

Response: The Department of Corrections and not the Board is responsible for the custody of an offender during the service of a custodial obligation to the State. The Department of Corrections and not the Board is responsible for the maintaining of an offender's records and determining the date on which the offender's custodial obligation to the State and the jurisdiction of the Department over the offender terminates. The Board by administrative regulation will not assume a responsibility vested in the Department of Corrections.

20. Comment to N.J.A.C. 10A:71-3.7(f)(1) and (2): The Department of Corrections assumed that the therapist's semi-annual review reports presently prepared for the Special Classification Review Board and the treatment staff's routine notices to the inmate would satisfy the requirements of these sections.

Response: The Department assumed correctly that the present reports prepared would comply with these sections.

21. Comment to N.J.A.C. 10A:71-3.7(f)(3): The Department of Corrections noted that it is not the present practice to record the identity of the individuals who cast negative votes and that the treatment staff strongly prefers not to issue dissenting statements, in part, because of their perception of confidentiality.

Response: In evaluating the Department's concerns, the Board elected to eliminate the provision and the rule has been amended accordingly.

22. Comment to N.J.A.C. 10A:71-3.7(f)(8): The Department of Corrections advised that the Special Classification Review Board members do not as a matter of policy issue dissenting opinions and nor does the Special Classification Review Board record the identity of the dissenting Board members.

Response: The matter was discussed with Commissioner Fauver and explanations provided as to the need for the Board to receive all information reviewed by the Special Classification Review Board and dissenting opinion of Special Classification Review Board members. Based on the discussions, the rule was amended to require that the board receive all information reviewed and considered by the Special Classification Review Board and amended to require the comments of dissenting Special Classification Review Board members when only three members of the Special Classification Review Board recommend a case for parole consideration to the Board.

23. Comment to N.J.A.C. 10A:71-3.10(c): The Department of Corrections indicated that it is unclear as to whether or not the Board will establish an aggregation policy for consecutive prison terms or if it will not parole on Adult Diagnostic and Treatment Center terms if a consecutive term is imposed. The Department notes that even if an aggregation policy is established, it is likely inmates will be staying for longer periods of time.

Response: This section does not pertain to the aggregation of sentences but to the parole criteria to be used in the evaluation of the inmate's case. The section specifies that the independent determinations required by subsections (a) and (b) are to be made when the inmate is being considered for parole on a sentence to the Corrections Complex and a sentence to the Adult Diagnostic and Treatment Center. The aggregation of sentences is reflected in N.J.A.C. 10A:71-3.2.

24. Comment to N.J.A.C. 10A:71-3.10(d): The Department of Corrections indicated that the language "acceptable therapeutic progress" would appear to be unnecessary given the Special Classification Review Board's role in the release process.

Response: The Board is of the opinion that the language is essential in order to insure that all inmates committed as sex offenders meet the same standard and that inmates recognize the need to achieve acceptable therapeutic progress whether in the Adult Diagnostic and Treatment Center or a correctional facility.

25. Comment to N.J.A.C. 10A:71-3.11 and 3.24: The Department of the Public Advocate suggests that an inmate or counsel should have the opportunity to review for accuracy any statement submitted to the Board by a Prosecutor, the Office of the Attorney General or any other criminal justice agency.

Response: The Board is of the opinion that the suggestion merits further consideration. It is the intention of the Board to discuss the suggestion with the Department of Law and Public Safety—Division of Criminal Justice and the State's Prosecutor Association. Upon input being received, the Board will evaluate whether the statements should be released and, if so, whether revisions to the rules are needed to effectuate the release of the statements.

26. Comment to N.J.A.C. 10A:71-3.11, 3.45 and 3.46: The Department of Corrections notes that these three sections will significantly impact on the present determination of suitability of parole by the Board. The Department notes that at the Adult Diagnostic and Treatment Center, the inmate's therapist proposes an inmate for the release process when there appears to be a substantial likelihood of satisfactory adjustment within the community. It is not possible for the therapist or the Special Classification Review Board to anticipate with any degree of certainty whether there are interested parties who offer testimony at parole hearings. Thus, the inmate who is deemed therapeutically ready for release may be denied parole on the basis of testimony permitted by these sections. Thus, a denial on other than therapeutic issues provides little incentive to continue participation in therapy at the Adult Diagnostic and Treatment Center. The Department anticipates that these sections will have a negative impact, throughout the system, on all inmates involved in treatment.

Response: The sections reflect the establishment of the right of certain individuals and criminal justice agencies to participate in the parole release process by either submission of written documents or testifying at a hearing. The right has been established by amendment to the parole statute and/or by case law. The Board, therefore, cannot exclude the participation of the individuals or criminal justice agencies in the parole process. As to the impact the participation of victims or the nearest relatives of a murder victim or criminal justice agencies will have on the correctional system, the extent cannot be determined since each case is evaluated on its own merits. The Board cannot consider what negative impact the rules may have on inmates. The Board must evaluate whether there is a substantial likelihood that the inmate will commit a crime if released on parole. The Board is required to receive and consider all relevant information pertaining to the issue of parole release and if information provided pursuant to these sections leads the Board to conclude that there does exist a substantial likelihood of criminal activity on the part of the inmate if released then the Board must fulfill its statutory responsibility and deny the inmate parole.

27. Comment to N.J.A.C. 10A:71-3.14(f) and 3.17(f): The Department of Corrections believed that the Board should be responsible to notify the chief executive officer in writing for the failure of a hearing officer or board panel to conduct scheduled hearings.

Response: The Board recognizes its responsibility to notify the chief executive officer for the failure not to conduct

scheduled hearings. The responsibility is one of common courtesy and necessary for cooperative working relationships. It is not deemed appropriate by the Board to be the subject of an administrative rule.

28. Comment to N.J.A.C. 10A:71-3.16(c)(1) and 3.18(b)(1): The Department of Corrections noted that the sections would specifically require the chief executive officer or his designee to notify the senior board representative at the institution immediately upon an acceleration of an offender's previously established and certified credit earning pattern. This would necessitate constant monitoring of credit earnings and frequent adjustments as disruptions in earning patterns occur.

Response: These sections codify practices that have been in continuous use since October, 1983. The Commissioner of the Department of Corrections in September, 1983 directed all institutional Superintendents and Classification Departments to comply with the procedure in order that the Board may award all possible credits to an inmate and insure the earliest possible release date for an inmate who has been certified for parole release. Procedures and forms were mutually agreed upon and implemented. The practices have not proven to be burdensome to the Department or the Board personnel and, to the contrary, have proven beneficial to the Department, the Board and those inmates certified for parole release. The Board accordingly perceives no problem in the adoption of the rule as proposed.

29. Comment to N.J.A.C. 10A:71-3.19(d): Inmate representatives questioned what criteria will be utilized in determining the extent of the future eligibility date which will be imposed pursuant to this rule.

Response: The three member Board panel or the board will assess the circumstances of the offender's crime, the characteristics and prior criminal record of the offender and the offender's institutional behavior. Based on the review and assessment of these factors or other relevant information, the three member Board panel or the Board will determine the appropriate length of the future parole eligibility term.

30. Comment to N.J.A.C. 10A:71-3.19(e): Inmate representatives questioned whether the standard pre-parole reports will be prepared pursuant to N.J.A.C. 10A:71-3.7 for the annual review hearing scheduled under this rule.

Response: The Board intends to request the preparation of a report similar to that requested pursuant to N.J.A.C. 10A:71-3.7. The report will be modified in its scope since the annual hearing is not designed to assess the parole release of the inmate.

31. Comment to N.J.A.C. 10A:71-3.19(e): Inmate representatives questioned what type of programs are being planned and developed for prisoners' participation which will provide the Board with new and current information thereby allowing Board members to accurately and intelligently evaluate an inmate's progress toward rehabilitation at the time of his annual review hearing.

Response: The Board does not concur with the inmates' inference that the development of programs is a pre-requisite for providing the Board members with new and current information on the offender. The Board concurs that additional programs would be beneficial to the rehabilitative progress of the inmate population. The development of programs and the rehabilitation of offenders are the responsibility of the Department of Corrections. The Board will encourage and support any effort by the Department to provide appropriate program opportunities within the institutional complex.

32. Comment to N.J.A.C. 10A:71-3.19(e): Inmate representatives questioned whether the annual review hearing date will parallel a parole eligibility date in terms of a basis for calculating an inmate's eligibility for participation in community based programs.

Response: The Department of Corrections and not the Board determines eligibility criteria for inmate participation in community programs. The Board, therefore, cannot respond to the inquiry. Such an inquiry should appropriately be directed to the Department of Corrections.

33. Comment to N.J.A.C. 10A:71-3.19(e): Inmate representatives inquired as to what information will the reviewing Board panel rely upon in assessing the inmate's progress at an annual review hearing.

Response: The Board intends to request the preparation of a modified report from the chief executive officer. Based on the report, any information provided by the inmate, and the personal interview of the inmate at the annual review hearing, the Board members will assess the inmate's progress.

34. Comment to N.J.A.C. 10A:71-3.19(e): Inmate representatives state that inmates sentenced pursuant to the statutes referred to in this rule attain the highest level of rehabilitation when achieving full minimum custody status and a transfer to a satellite unit. If parole is then denied and the inmate receives an extended term, the inmates inquire as to who will be responsible for structuring a program for the inmate to continue progress towards his rehabilitative potential.

Response: The Board does not concur with the inmates' statement that an inmate achieves the highest level of rehabilitation by attaining full minimum status and transfer to a satellite unit. The evaluation of custody status is a separate and distinct determination from assessing whether there is a substantial likelihood that the inmate would commit a crime if released on parole and whether the punitive aspects of the inmate's sentence have been satisfied in that the rehabilitative potential has been achieved. The Department of Corrections is responsible for the development of programs and the rehabilitation of an offender. Upon denial of parole and the imposition of an extended term, it is apparent that the Department should insure the availability of programs to offenders.

35. Comment to N.J.A.C. 10A:71-3.19(e)(1): Inmate representatives question how an extended future eligibility date alters those factors which led to the inmate's incarceration, how the Board determines what factors need to be altered, and how the Board expects an inmate to alter those factors when there are no programs geared to that specific purpose.

Response: The extended future eligibility date in and of itself is not intended to alter those factors which resulted in the incarceration of the offender. It is the time period imposed, during which the punitive aspects of the sentence will be deemed to have been served provided the inmate has progressed to the point of achieving his rehabilitative potential, which is relevant. The Board panel or Board will determine the factors that need to be altered based on the review of the total circumstances of the inmate's case. The Board's responsibility is to assess the inmate for parole release and if the criteria for parole is not met the Board must deny the inmate parole and establish an appropriate future parole eligibility term. The existence or non-existence of programs within the institution cannot be the dispositive factor in the Board's determination. The Board will continue to encourage the development of programs within the institutional complex.

36. Comment to N.J.A.C. 10A:71-3.21: A Judge of the Superior Court—Chancery Division—Family Part noted that

a juvenile commitment is for an indeterminate term pursuant to statute. The Judge questioned how an administrative regulation can change the statutory law of this State.

Response: The Board concurs with the Judge that juvenile commitments are for an indeterminate term. The Board, however, does not concur with the opinion that the administrative regulations modify the existing statutory law. The administrative regulations establish a structure for the monitoring of the juvenile inmate's progress in rehabilitative programs and such structure and the pre-determination of a release date eliminates any uncertainty on the part of the juvenile as to when he will be released on parole. Since a juvenile inmate is immediately eligible for parole, the juvenile inmate could be released at any time prior to the established release date when it is determined by the juvenile Board panel members that the juvenile inmate meets the statutory parole release criteria.

37. Comment to N.J.A.C. 10A:71-3.21(a): The Department of the Public Advocate believed that the presumptive term for a juvenile inmate serving a disorderly persons was too high. The Department noted that the presumptive term is longer than the parole eligibility term for an adult inmate serving a sentence in a county jail for a disorderly persons offense.

Response: The Board concurs with the Department of Public Advocate's position that juveniles should not be treated more harshly than adults. The Board, therefore, has amended the presumptive parole release term and the range to a lesser time period and range.

38. Comment to N.J.A.C. 10A:71-3.21(a): The Department of the Public Advocate advised that the reorganization of presumptive terms by degree for juvenile offenders is not unreasonable. However, the Department repeated its concerns regarding the categorization of drug offenses which the Department expressed in the youthful offender area (please refer to above comment on N.J.A.C. 10A:71-3.3(a)).

Response: Generally, the Board's response to the Department of the Public Advocate is the same as expressed by the Board in the youthful offender area (please refer to above response on N.J.A.C. 10A:71-3.3(a)). However, in reviewing the proposal, the Board noted that in the present rules there is a distinction in the presumptive terms that a juvenile and young adult offender would serve for the offenses of sale or distribution of a controlled dangerous substance and possession of a controlled dangerous substance with the intent to distribute; that the proposed rule placed these offenses in the same category as second degree offenses, whereas in the young adult presumptive parole eligibility term schedule the offenses were in a separate category; and that under the proposed rule a juvenile offender would receive the same presumptive term as a young adult offender. In light of the Board's modifications to the young adult presumptive parole eligibility term schedule and to insure a distinction in the treatment of juvenile and young adult offenders, the Board determined to modify the proposed rule. The Board modified the rule by placing the offenses of sale or distribution of a controlled dangerous substance or possession of a controlled dangerous substance with the intent to distribute in a separate category; by establishing a presumptive release term of 12 months; and by establishing a range of 10 to 14 months.

39. Comment to N.J.A.C. 10A:71-3.21(e): A Judge of the Superior Court—Chancery Division—Family Part noted that this section seems to provide for double credit in that county detention time is credited against the sentence and again to reduce the parole date.

Response: The Board is of the opinion that time served during a period of pre-sentence incarceration is in fact time

served on the sentence and that, therefore, the juvenile inmate should be credited in full in the determination of a parole release date. The clear intent of R.3:21-8 is to afford the individual who has been required to remain in custody pending disposition of charges full credit for such time served against the ultimate sentence in the event of conviction. For the credit to be realistic it is necessary for the inmate to receive credit towards the parole release date. Furthermore, the Board is of the opinion that credit on the term of a custodial sentence necessarily implies credit for parole release purposes, since the date of parole release and not the date of expiration of the maximum term is the practical framework against which an inmate's concern must be measured.

40. Comment to N.J.A.C. 10A:71-3.21(f): A Judge of the Superior Court—Chancery Division—Family Part noted that this section would continue the integrity of the court system in that the court is given the authority to supercede without limitations the actions of the Board.

Response: This section appropriately reflects the language of the Code of Juvenile Justice which requires the consent of the sentencing court prior to the Board releasing a juvenile inmate on parole prior to the service of one-third of any term imposed for murder or a crime of the first, second or third degree or one-fourth of any term imposed for any other crime. This section is based on the statutory language and the authority of the court to intervene in the parole release determination prior to the service of the specific fraction of the term is vested in the court by the statute.

41. Comment to N.J.A.C. 10A:71-3.22: A Judge of the Superior Court—Chancery Division—Family Part noted with concern that this section provides for a juvenile inmate to earn 50 percent credit on the time spent in confinement.

Response: Juvenile offenders are committed to suitable institutions maintained by the Department of Corrections for a program of supervision, care and rehabilitation. As an incentive to participate in rehabilitative programs and maintain acceptable institutional conduct and in recognition of levels of participation in programs and maintaining acceptable institutional conduct, the board had developed a schedule of credits by which a juvenile offender may reduce his parole release date. The Board believes that the awarding of credits in recognition of the juvenile inmate's rehabilitative effort is a vital and a legitimate tool to the correctional authorities in their efforts to insure the successful rehabilitation of the juvenile offender.

42. Comment to N.J.A.C. 10A:71-3.24: A Judge of the Superior Court—Chancery Division—Family Part questioned why the sentencing judge's reasons for the commitment of the juvenile should not be considered as a factor in the parole determination.

Response: As published in the New Jersey Register, the Board proposed two additional factors to be considered in evaluating a juvenile inmate for parole. The rule already includes the statement by the sentencing court as a factor for consideration and such factor will be maintained in the rule upon re-adoption by the Board.

43. Comment to N.J.A.C. 10A:71-3.26: The Department of Corrections noted that this section would require a significant number of additional reports submitted by the chief executive officer of the institution or designee in preparation of the juvenile offender's quarterly review.

Response: The Board in re-evaluating the section has determined that the additional information requested is, in essence, included in various reports already being required to be submitted by the chief executive officer of the institution. The Board has determined that the provisions may be redundant

and, therefore, unnecessary. The Board has determined to delete paragraphs 8, 9, 10, 11 and 12 of N.J.A.C. 10A:71-3.26(b).

44. Comment to N.J.A.C. 10A:71-3.27: The Department of the Public Advocate inquired whether the Board had considered the number of additional rescission hearings that would be conducted in juvenile inmate cases and whether the Board's hearing officers and public advocate staff could handle the anticipated increase without additional staff.

Response: The Board recognized that there would be an increase in the number of rescission hearings and anticipated that initially the increased workload could be handled by the Board's present staff. As to whether additional staff may be necessary in the future, such a determination can only be made upon statistical data being developed after adoption and implementation of the rule. The Board cannot comment on whether the Department of the Public Advocate may or may not need additional staff to represent juvenile inmates at rescission hearings.

45. Comments to N.J.A.C. 10A:71-3.31 to 3.44: A Warden of a county jail facility advised that many jails are operating short handed; that maintaining present service requirements is extremely difficult; and that requesting additional correctional personnel, clerical work and transporting of inmates out of the institution requires further review and discussion.

Response: The county parole process has been functioning since July, 1982 and the proposed new rules represent the codification of the process that has been developed since that date. The amendments to the Parole Act of 1979, creating the county parole process, imposed a statutory obligation on the chief executive officer of county institutions and it is their responsibility to secure the necessary resources to fulfill their statutory obligations pertaining to the parole process. The Department of Corrections has created liaison positions to assist county jail wardens and facilitate the county parole process. The Board will continue to cooperate with county jail wardens and to assist them, when possible, to insure the efficient functioning of the parole process and prevent unnecessary fiscal expenditures.

46. Comments to N.J.A.C. 10A:71-3.33 to 3.44: A Prosecutor suggested that the county parole hearing proceeding should be more summary and, therefore, less costly.

Response: The parole statute requires that the parole hearing process for a county jail inmate be the same as for an adult inmate in the state system. The Board is only authorized by statute to modify in county jail inmate cases the scope of the required reports and time periods for rendering such reports. Where appropriate, the Board has made these modifications. The Board does not concur with the recommendation to make the parole hearing process for county jail inmates more of a summary proceeding.

47. Comment to N.J.A.C. 10A:71-3.33(c)(3): A Warden of a county jail advised that municipal court complaints upon which a county inmate's commitment is based are not available at the present time.

Response: The Board is of the opinion that the municipal court complaint is a relevant document for the overall assessment of a county jail inmate's suitability for parole release. The Board will work with Wardens to insure that the document(s) are obtainable for use in the parole process.

48. Comment to N.J.A.C. 10A:71-3.33(c)(9): A Warden of a county jail advised that an inmate's parole plan is not available at the present time for inclusion in the pre-parole report.

Response: The Board recognizes that the Bureau of Parole is responsible for the investigation of an inmate's parole plan. The report should be made available to the Board when completed by the Bureau of Parole. A county jail inmate will not be released on parole until a parole plan has been verified and accepted.

49. Comment to N.J.A.C. 10A:71-3.34(a): A Warden of a county jail advised that a county jail inmate receives a copy of the work and housing report and that the Board's hearing officer has been providing the inmate with same.

Response: The chief executive officer of the institution where an inmate is confined is statutorily responsible for providing the inmate a copy of the pre-parole report which is filed with the Board. All reports not classified confidential are to be served on the inmate. The language of this rule is compatible with the Parole Act and no amendment to the rule is perceived necessary.

50. Comment to N.J.A.C. 10A:71-3.45: The Department of the Public Advocate questions whether any effort will be taken to substantiate information provided by a victim. If an investigation is conducted, the Department suggests reference be made to same.

Response: The Parole Act provides victims with the right to participate in the parole process and specifies the nature of the information that may be included in the victim's statement or testimony. Some information is of an objective nature and other information is of a subjective nature. Objective information may be substantiated by an investigation and as to whether substantiation may be necessary will depend on the information provided and the assessment of the credibility of the victim by the person receiving the information. If information of a questionable nature is submitted, the Board's staff will pursue the matter. However, the Board is not of the opinion that formal investigation procedures need to be developed and codified at the present time.

51. Comment to N.J.A.C. 10A:71-3.46: The Division of Criminal Justice and several Prosecutors objected to the implementation of the informational hearing process being subject to the approval of the Chairperson or designee. The Division of Criminal Justice and the Prosecutors believed that based on case law and the parole statute Prosecutors have the absolute right to participate in the parole process and present evidence at informational hearings and that said right cannot be subjected to the prior approval by the Chairperson or designee. It was recommended that the rule be amended to permit prosecutorial agencies to participate in the parole process without requiring approval of the Chairperson or designee.

Response: The Board concurs with the recommendation and has amended the rule by deleting references to participation by a prosecutorial or criminal justice agency being subject to the approval of the Chairperson or designee.

52. Comment to N.J.A.C. 10A:71-3.46: A Prosecutor suggested that the Board should amend the rule to include the requirement that the Board provide a statement of reasons for granting parole in those cases in which the prosecutor participates in an informational hearing under this rule.

Response: The Supreme Court in *In Re Hawley*, \_\_\_\_\_ N.J. \_\_\_\_\_ (1984) did not legally require the Board to provide a statement of reasons for granting parole. The Board, at the present time, will not adopt a rule requiring the issuance of a statement of reasons for granting parole.

53. Comment to N.J.A.C. 10A:71-3.46: A Prosecutor recommended that the section be amended to include the provision that a parole release decision shall not result in the release of an inmate for at least 120 days.

Response: The Board by statute is required to release an inmate, upon parole release being certified, at the time of parole eligibility. The adoption of a provision delaying release for 120 days would result in most cases in release occurring after the parole eligibility date. This would be contrary to the statutory language. The Board, therefore, does not concur with the recommendation of the Prosecutor.

54. Comment to N.J.A.C. 10A:71-3.46: The Department of the Public Advocate claims that at the first stage of the informational hearing process the inmate and/or counsel is not allowed to hear the information presented; that those inmates who cannot afford counsel will be harmed; that there are no protections for inmates who are subjected to rescission hearings based on evidence obtained at an informational hearing; and that the hearing process may create an irrebuttable presumption in favor of rescission and will affect the outcome of a parole hearing. The Department also suggests that the Board should bar news coverage or public statements from victims or witnesses on state grounds or property.

Response: The rule does provide that at the first stage of the informational hearing process the inmate may be represented by counsel or such other qualified representative as the inmate may designate. There is, therefore, participation on behalf of the inmate in the first stage of the process. If not represented, the inmate will receive a summary report of the information/evidence presented except as may be deemed confidential.

The informational hearing is not an adversarial proceeding. The purpose is the gathering of relevant information for the Board's consideration in determining the suitability of an inmate's release. Though the Board will permit the participation of counsel, there is not presently a legal requirement for counsel in such a proceeding. Since the hearing is of an informational and not adversarial nature, the Board does not perceive the alleged harm to an inmate if counsel does not participate in the process.

If an informational hearing is conducted after a decision certifying parole release and the information or evidence is of such a nature which may warrant the rescission of the parole grant, the Board may determine to conduct a rescission hearing. At such a hearing the inmate may be represented by counsel, will be advised of the information or evidence presented at the informational hearing except that deemed confidential, will have the opportunity to rebut the information or evidence, question the reliability or accuracy of the information or evidence, and present evidence on his own behalf. N.J.A.C. 10A:71-5.7 provides sufficient safeguards for an inmate participating in a rescission hearing.

The Board is required to receive all information relevant to the parole consideration of an inmate. The information may affect the decision as to whether an inmate will be released on parole and may subsequently affect a decision if the information is received after the rendering of the decision. The Board must evaluate the information and the potential will always exist that the information will have a bearing on the decision. This is the expectation and the Board perceives no problem with the receiving and evaluating of relevant information.

The Board cannot legally be expected to censor the statements of any victim or witnesses to the news media. State agencies may have regulations concerning the presence of persons on their property and to the use of their property. The question of barring public statements by victims or witnesses on state grounds or property should appropriately be addressed to other State agencies and not the Board.

55. Comment to N.J.A.C. 10A:71-5.2(b): The Department of Corrections questioned why the language of "the appropriate supervising agency" and "the Bureau of Parole" is used in the same sentence.

Response: An offender on parole may be supervised by the Bureau of Parole or, if residing in another state, by the parole authorities of the other state under the Interstate Compact. Therefore, the appropriate supervising agency could be an out-of-state parole authority. If an out-of-state parole plan has not been accepted by the out-of-state parole authority, the Bureau of Parole in New Jersey and not the out-of-state parole authority is the logical agency to administrate the suspension of a release date for an inmate confined in a New Jersey correctional facility if an out-of-state parole plan has not been accepted.

56. Comment to N.J.A.C. 10A:71-5.7: The Department of the Public Advocate questions how the Board can adopt a res judicata policy on institutional infractions and thereby refuse to relitigate a matter and yet permit the right to confront and cross-examine adverse witnesses.

Response: In the cases of rescission hearings based on the commission of institutional infractions, the Board will comply with its res judicata policy. However, not all rescission hearings are based on the commission of institutional infractions and in such cases, for example, the alleged commission of a crime on work release, the confrontation and cross-examination of adverse witnesses may be permitted, if deemed appropriate under the circumstances of the case.

57. Comment to N.J.A.C. 10A:71-6.1(b): The Department of Correction alleges that without the proposed deletion of the language of "any payment of any fine" the Bureau of Parole and the Board would have returned to an earlier era when the Board retained responsibility in the parolee's case after the expiration of the parolee's custodial term. The Department notes that once the time portion of the sentence has expired, accountability of the offender to the Board ceases no matter what the unpaid revenue balance may be.

Response: The Department of Corrections is incorrect in its assessment of this rule. The Department of Law and Public Safety—Division of Law by opinion issued on August 20, 1980 advised the Board that under the terms of the Parole Act of 1979 the Board has no authority to revoke parole or take other action against offenders for their failure to pay a fine after the maximum custodial sentence has expired. Since the Board is not authorized by statute to act in such cases, the Board is deleting the language from the rule. The Board has not exercised extended supervision in such cases since the issuance of the opinion and the deleting of the language conforms the rule to reflect that the Board's jurisdiction terminates upon the expiration of the maximum custodial sentence.

58. Comment to N.J.A.C. 10A:71-6.4(a)(4): The Department of Corrections expressed concern that prior approval from the Bureau of Parole before a parolee accepts any pre-trial release, including bail, after an arrest will no longer be required.

Response: The Board is prohibited by statute to implement the parole revocation process based on a new arrest for criminal charges unless an application to commence the revocation process is submitted by the prosecuting authority to the Board. Since the revocation process cannot be implemented by the Board independently, it is not logical to permit the Bureau of Parole the implied discretion to deny a parolee the approval to accept pre-trial release, including bail. The Board is of the opinion that notification by the parolee to the Bureau

of Parole after obtaining his release is more in line with the statutory intent than the pre-acceptance approval requirement.

59. Comment to N.J.A.C. 10A:71-6.4(a)(5)(ii): The Department of Corrections questions why parolees should be permitted to travel outside of the state for at least 24 hours without the prior approval of a parole officer. The Department alleges that a trip out-of-state without a parole officer's consent becomes complicated if an out-of-state agency makes an arrest.

Response: The Board is of the opinion that to permit parolees in general to travel out-of-state for a 24 hour period without prior approval is not unreasonable and does not detract from the overall supervision of parolees. The rule has been in effect since August, 1980 and the Board does not conclude that the problems that have arisen are of such a degree to warrant the non-readoption of or amendment to the rule.

60. Comment to N.J.A.C. 10A:71-6.4(c): The Department of Corrections noted that since the inception of the county service program the Bureau of parole has pointed out the lack of insurance as prohibiting placement in public service jobs.

Response: The Board in evaluating the rule has determined to delete reference to the specific requirement that the Bureau of Parole document the basis for a county inmate not performing public service. The Bureau of parole presently records the failure of parolees to comply with conditions of parole in the Bureau's individual case records. Upon the imposition of community service as a condition of parole, it is expected that the Bureau of Parole will document the failure of a parolee to comply with the condition. The Board, therefore, does not believe it is necessary to specifically state in a rule that the Bureau of Parole must document the failure to comply with this condition of parole.

61. Comment to N.J.A.C. 10A:71-6.5: The Department of the Public Advocate questions whether guidelines, if any, have been established to ascertain the inmate/parolee's ability to make restitution payments and whether a parole officer will have input in the evaluation of the inmate/parolee's ability to make restitution payments.

Response: At the present time the Board panels evaluate the circumstances of the inmates' cases in order to determine whether the imposition of restitution as a special condition of parole is appropriate and evaluate the ability of the inmate to pay restitution. If restitution is deemed appropriate, the Board must request the sentencing court to set the amount of restitution. Per guidelines established by the Supreme Court in *In Re Parole Application of Thomas Trantino*, 89 N.J. 347 (1982), the Board must identify the various factors to be considered by the sentencing court in determining the amount of restitution. Restitution must be realistically limited and related to the inmate/parolee's ability to pay and must be integrated into an overall plan so as to not jeopardize rehabilitation. Upon the release of the inmate, a parole officer does have input as to the payment schedule since the parole officer will have first-hand knowledge as to any changes in the parolee's employment status and expenses. Further, the Board did receive a grant from the National Institute of Corrections. The goal of the project funded by this grant is to develop model guidelines for and explore the use of restitution as a special condition of parole. Upon the completion of the project, the Board will be in a better position to assess whether specific guidelines shall be adopted.

62. Comment to N.J.A.C. 10A:71-6.6: The Department of the Public Advocate questions whether notice will be given

to parolees so that they may apply directly to the Board for modification of their conditions of parole.

Response: The board recognizes that notice is essential for a parolee to avail himself of the opportunity to seek modification of a condition of parole by a Board panel. It is the intent of the Board to include information pertaining to the modification of parole conditions in a handbook for the inmate/parolee population. Upon implementation of the revised and new rules, a handbook will be developed and upon distribution appropriate notification will be provided to the inmate/parolee population of their ability to request modification of the conditions of parole.

63. Comment to N.J.A.C. 10A:71-7.2: The Department of Corrections expressed concern that the proposed revision to this section did not provide authorization for the Supervisor of the Office of Interstate Services or the Supervisor of P.R.O.O.F. to issue parole warrants.

Response: The Board concurs that the Supervisor of the Office of Interstate Services should be delegated the authority to issue parole warrants and the Board has amended the section accordingly. The Board does not believe that the Supervisor of P.R.O.O.F. needs to be specifically identified as having authorization to issue parole warrants. N.J.A.C. 10A:71-7.2 provides for the authority to issue parole warrants in emergency situations and such authority is sufficient in the Board's opinion for the Supervisor of P.R.O.O.F. to act in a face-to-face crisis situation.

64. Comment to N.J.A.C. 10A:71-7.3: The Department of the Public Advocate suggests that a prosecutor be required to appear at a probable cause hearing and final revocation hearing in those cases in which the parole revocation process is implemented upon the application of the prosecutor. The Department also suggests that failure to appear should be grounds for dismissal of the application and the parolee's release from confinement.

Response: The Board does not concur with the suggestion that the rule be amended to require mandatory attendance of the prosecutor at probable cause or final revocation hearings. In the Board's assessment, the presence of the prosecutor is not necessary and the attendance of a prosecutor would not have a substantial effect on the hearing process. The Board does not concur with the suggestion that the revocation process be terminated due to the failure of a prosecutor to participate in the hearing processes. The Board will not amend the rule to require mandatory attendance by a prosecutor at probable cause or final revocation hearings.

65. Comment to N.J.A.C. 10A:71-7.3: The Department of the Public Advocate suggests that the rule be amended to refer to "the prosecuting authority or his designated representative." Such amendment would then cover situations in which an application to implement the parole revocation is submitted by a county detective.

Response: The Board is of the opinion that use of the term prosecuting authority is sufficiently broad enough to encompass the Prosecutor or any representative of the prosecutor's office. The Board, therefore, does not concur with the suggestion that the phrase "designated representative" be incorporated into the rule.

66. Comment to N.J.A.C. 10A:71-7.10(d): The Department of Corrections questioned why a copy of the comments submitted by the parolee and/or his counsel to the Board should not be provided to the parole officer or hearing officer involved in the case.

Response: The Board reviews the decision of the probable cause hearing officer and determines whether to affirm, mod-

ify or overrule the hearing officer's decision. As the reviewing body, the comments of the parolee and/or his counsel should be submitted to the Board. The Board does not perceive that requiring a copy of the comments be provided to the parole officer or the hearing officer as being necessary and the Board is, therefore, not inclined to amend the rule.

67. Comment to N.J.A.C. 10A:71-7.15: The Department of Corrections questioned why a copy of the final revocation hearing summary report should not be provided to the parole officer and probable cause hearing officer involved in the case.

Response: The Board has since the institution of the parole revocation process under *Morrissey* guidelines provided the District Parole Supervisor of the supervising parole office a copy of the summary report prepared by the Board's hearing officer who conducted the revocation hearing. Since the Board has done so in practice, the Board has elected to amend the rule to reflect that the appropriate District Parole Supervisor is to receive a copy of the summary report. The Board is not of the opinion that the supervising parole officer or probable cause hearing officer, both staff people under the District Parole Supervisor, need to receive a separate copy of the summary report.

68. Comment to N.J.A.C. 10A:71-7.16(f)(5): The Department of the Public Advocate questioned whether the phrase "murder and kidnapping" should actually read "murder or kidnapping".

Response: The phrase should read "murder or kidnapping" and the Board has made the necessary revision to the rule.

69. Comments to N.J.A.C. 10A:71-7.17: The Department of the Public Advocate suggests that the phrase "shall issue" a written notice of decision should be changed to "shall mail" a decision.

Response: The issuance of a decision incorporates the actual transcription and forwarding or mailing of a decision and the Board perceives no reason to modify the language of the rule as suggested.

70. Comment to N.J.A.C. 10A:71-7.17(a): The Department of Corrections suggested that the language be more specific than "Department" and that a copy of the written notice of decision be directed to the district parole office and central office of the Bureau of Parole.

Response: The Board has since the institution of the parole revocation process under *Morrissey* guidelines provided the District Parole Supervisor of the supervising parole office a copy of the written notice of decision issued by the Board or a Board panel in the cases of parole violators. Since the Board has done so in practice, the Board has elected to amend the rule to reflect that the appropriate District Parole Supervisor is to receive a copy of the notice of decision. The Board will continue the use of the term "Department" as the designation for the various other units or personnel that will receive copies of the notice of decision.

71. Comment to N.J.A.C. 10A:71-7.18: The Department of the Public Advocate suggested that the rule include a specific time period by which reports should be submitted by the staff of the Adult Diagnostic and Treatment Center to the adult Board panel and suggests that a time frame should be established for the actual conducting of the evaluation of inmate cases.

Response: The Board is of the opinion that the establishing of special time frames would be inappropriate and that the language "as soon as practicable" is sufficient guideline for staff to schedule and conduct evaluations and submit evalua-

tion reports to the adult Board panel. The Board does not concur that the time periods in which the Board receives evaluation is of such an unreasonable nature which would require delineation of time periods.

72. Comment to N.J.A.C. 10A:71-7.18(f): The Department of the Public Advocate expressed concern over the inclusion of language denying Adult Diagnostic and Treatment Center reports to a parolee which are deemed confidential by the rules and regulations of the Department of Corrections. The Department of the Public Advocate advised that the basic view of the Adult Diagnostic and Treatment Center is that anything in their reports is inherently confidential and that there is no basis in law for their position.

Response: The Board does not concur with the assessment of the Department of the Public Advocate. The reports prepared are the documents of the Department of Corrections and any release of the reports to a parolee should be subject to the rules and regulations of the Department of Corrections pertaining to confidentiality. The Board does not believe that the language of the Parole Act is to the contrary. The Board declined to amend the rule.

73. Comment to N.J.A.C. 10A:71-7.18(g): The Department of the Public Advocate believes that it is patently unfair that the Board must concur with the Adult Diagnostic and Treatment Center staff's evaluation if the conclusion is that the inmate be released and yet if the conclusion is that parole should be revoked the Board will automatically affirm the revocation. The Department believes that if the Adult Diagnostic and Treatment Center's expertise is sufficient for revocation then it should be sufficient for release.

Response: The Board and not the staff of the Adult Diagnostic and Treatment Center is authorized to grant and revoke parole in the cases of parolees originally sentenced as sex offenders. The evaluation performed by the Adult Diagnostic and Treatment Center staff will not be dispositive as to whether a parolee who is classified as a sex offender, and who has violated his parole status will be released from confinement. The final determination is the Board's and the rule reflects said authority which is vested by statute.

As a result of the Board's internal review of the proposed rules and upon evaluation of the comments received, several technical and substantive changes have been made to the rules in order to reflect legitimate concerns expressed in the comments, clarify their intent, delete unnecessary language, correct technical errors and correct publication errors.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks \*[thus]\*):

## SUBCHAPTER 1. BOARD ORGANIZATION

### 10A:71-1.1 Definitions

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

"County correctional facilities" shall mean all institutions operated by county authorities to which offenders are committed under sentence as adults and shall include all jails and facilities where sentenced offenders may, from time to time, be housed.

"County inmate" shall mean an inmate who is: (1) sentenced to serve a term of incarceration of 364 days or less or terms which, in the aggregate, do not exceed 364 days in a county jail facility; or (2) sentenced to serve a term of incar-

ceration not to exceed 18 months or terms which in aggregate, do not exceed 18 months in a county penitentiary or a workhouse.

“County Penitentiary/Workhouse” shall mean a county correctional facility designated by the Board of Chosen Freeholders to house offenders sentenced to terms of imprisonment not exceeding 18 months.

...

“District Parole Supervisor” shall mean any District Parole Supervisor in the Bureau of Parole of the New Jersey Department of Corrections.

“Juvenile inmate” shall mean any person committed by a juvenile court to a term of incarceration pursuant to N.J.S.A. 2A:4-61(h) or committed by the Family Court to a term of incarceration pursuant to N.J.S.A. 2A:4A-44d(1).

“Parolee” shall mean any inmate who is subject to the parole jurisdiction of the Board and who has been released on parole.

...

**10A:71-1.2 Board meetings**

(a)-(i) (No change.)

(j) If no majority decision is reached, no Board action shall result.

1.-2. (No change.)

**10A:71-1.3 Parole release hearings and board panel hearings**

(a) The Chairperson shall establish the schedule of all parole release hearings and Board panel hearings.

(b) The Chairperson shall give reasonable notice of such hearings to the Board panel members.

(c) In addition to appropriate Board personnel, parole release hearings and Board panel hearings shall be open only to such persons as authorized by the Board panel with the consent of any inmate who may be present for a hearing on his or her case. The inmate’s consent shall be in writing and made a part of the Board’s record on the inmate.

(d) Except as provided in N.J.A.C. 10A:71-1.4, two members of the Board panel shall constitute a quorum of the panel.

(e) (No change.)

(f) When a Board panel hearing is conducted by two members, such hearing shall be adjourned if a unanimous decision on the case cannot be reached.

1. In such instances, the third Board panel member shall review all records of the hearing, and the hearing shall be reconvened within 90 days prior to the Board panel’s final decision on the case.

2. In such instances, if the third Board panel member is disqualified pursuant to N.J.A.C. 10A:71-1.5(a) or (b), the case shall be considered by a Board member(s) designated pursuant to N.J.A.C. 10A:71-1.5(e) or (f).

**10A:71-1.5 Disqualification or incapacity of board members**

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

(d) When by reason of incapacity a quorum of the Board or Board panel is lost, the Chairperson shall immediately request that the Governor appoint a qualified person to act in the incapacitated Board member’s stead during the period of such incapacity.

(e) When by reason of disqualification of a member of a Board panel on adult inmates, a quorum of the Board panel is lost, the Chairperson shall immediately assign another member of one of the Board panels on adult inmates to act in the

disqualified Board member’s stead during the period of disqualification or, if circumstances merit, assign the case(s) to another panel of Board members on adult inmates.

(f) When by reason of disqualification a quorum of the juvenile board panel is lost, the Chairperson shall immediately request the Governor to appoint a qualified person to act in the stead of the disqualified Board member(s) during the period of disqualification.

**10A:71-1.9 Published information**

(a) (No change.)

(b) The Board will periodically review and update with appropriate amendments handbooks for distribution to all inmates subject to the jurisdiction of the Board detailing parole policies and procedures and shall request the chief executive officer of each State and county facility to make such handbooks available to all inmates subject to the jurisdiction of the Board.

**SUBCHAPTER 2. GENERAL ADMINISTRATIVE PROVISIONS**

**10A:71-2.3 Subpoenas**

Any hearing officer or Board member may issue a subpoena to compel the appearance of witnesses and the production of documentary evidence relevant to any proceedings before such hearing officer or Board member.

**10A:71-2.4 Institutional infractions**

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

(c) When the basis for the rescission hearing or the alteration of the parole eligibility date is an institutional infraction, the Board panel or hearing officer reviewing the case shall consider aggravating and mitigating circumstances but shall not consider evidence relating to the inmate’s guilt or innocence of the commission of the institutional infraction.

**SUBCHAPTER 3. PAROLE RELEASE HEARINGS**

**10A:71-3.1 Definitions**

“Actual eligibility date” shall mean the date that an adult inmate is actually eligible for consideration for parole. Such date shall be calculated, except as otherwise provided by statute, by the application of the following credits: commutation credits; credit for time served in a county jail prior to the date of sentence; earned work and earned minimum custody credits as of a specified date.

“Book eligibility date” shall mean the parole eligibility date established pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64. Such date shall be calculated by application of credit for time served in a county jail prior to the date of sentence, and except as otherwise provided for by statute, commutation credits.

“Flat eligibility date” shall mean the parole eligibility date established on an individual term pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64 prior to aggregation for the purposes of the calculation of a single parole eligibility date. Such date shall be calculated by the application of credit for time served in a county jail prior to the date of sentence.

(No change in text.)

“Projected eligibility date” shall mean that date calculated by the application, except as otherwise provided by statute, of the following credits: commutation credits; credit for time served in a county jail prior to the date of sentence; earned work and minimum custody credits as of a specific date and projected work and minimum custody credits based on a pattern of such credits established by the Department. Any

change in the pattern shall be reported by the Department to the Board.

"Maximum date" shall, except as otherwise provided by statute and herein, mean the court ordered maximum date less commutation credits, credit for time served in a county jail prior to the date of sentence, earned work and earned minimum custody credits as determined by the Department or the county correctional authority.

#### 10A:71-3.2 Calculation of parole eligibility terms

(a) (No change.)

(b) Except as provided in N.J.A.C. 10A:71-3.3(i), this section shall not apply to juvenile or young adult inmates.

(c) The parole eligibility terms for adult inmates shall be determined by the following:

1. Where a life term, with no mandatory-minimum term, has been imposed, the parole eligibility term shall, except as provided in (c)3 below, be 25 years;

2. Where a specific term, with no mandatory-minimum term, has been imposed, the parole eligibility term shall, except as provided in (c)3 below, be one-third of the specific term or 25 years, whichever is less;

3. Where a life term or a specific term with a judicial or statutory mandatory minimum term has been imposed, the parole eligibility term shall be the mandatory minimum term, provided that such minimum term is greater than otherwise required by subsection (c)1 or (c)2 above.

4. Where the inmate is serving time due to a revocation of parole, the parole eligibility term shall be the future parole eligibility term set by the appropriate Board panel upon revocation of parole pursuant to N.J.A.C. 10A:71-7.16.

5. Where the inmate has been required to serve an additional term due to institutional infractions, the parole eligibility term shall include any additional term of incarceration required to be served.

6. Where a specific term to the Adult Diagnostic and Treatment Center has been imposed, the inmate shall be eligible for parole consideration only upon recommendation by the Special Classification Review Board pursuant to N.J.S.A. 2C:47-5 except that in no case shall an inmate committed to the Adult Diagnostic and Treatment Center become eligible for parole prior to the expiration of any mandatory minimum term imposed.

**\*i. When an inmate committed to the Adult Diagnostic and Treatment Center is transferred out of the Adult Diagnostic and Treatment Center by order of the Commissioner pursuant to N.J.S.A. 2C:47-7(b), the inmate shall be eligible for parole consideration pursuant to (C) 1., 2., 3. or 5. above as appropriate.\***

7. Where the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.19, a new book eligibility date shall be established by adding the additional term to the current book eligibility date and by including, in the case of an adult inmate, commutation credits based on the additional term only. If an inmate's parole eligibility date has passed at the time of the initial parole release hearing, upon the inmate being denied parole and being required to serve an additional term pursuant to N.J.A.C. 10A:71-3.19, a new book date shall be established by adding the additional term to the date of the initial parole release hearing and by including, in the case of an adult inmate, commutation credits based on the additional term only and any work and minimum custody credits not applied in the computation of the previous parole eligibility date.

(d) When a consecutive term is imposed, the parole eligibility term derived from the consecutive term, less county jail credits, shall be added to the parole eligibility term derived from the original term, less county jail credits, to determine the aggregate parole eligibility term. Applicable credits pursuant to (g)(2) and (g)(3) below shall be deducted from the aggregate parole eligibility term unless said term is determined pursuant to (c)(3) above.

(e) When a concurrent term(s) is imposed, the parole eligibility term from the original term, less county jail credits, shall be added to the date the original term began to determine the flat eligibility date on the original term. The parole eligibility term on the concurrent term(s), less county jail credits, shall be added to the date the concurrent term(s) began to determine the flat eligibility date on the concurrent sentence. The aggregate parole eligibility term shall be that period of time between:

1. The earlier of the two dates on which the terms began, and

2. The later of the two flat parole eligibility dates. Applicable credits pursuant to (g)(2) and (g)(3) below shall be deducted from the aggregate parole eligibility term unless said term is determined pursuant to (c)(3) above.

(f) Where a specific term to the Adult Diagnostic and Treatment Center has been imposed, **\*and the inmate has not been transferred out of the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-4(b)\***, the parole eligibility term, for the purposes of aggregation with any specific or life term, shall be set by the adult Board panel upon its acceptance of the recommendation by the Special Classification Review Board pursuant to N.J.S.A. 2C:47-1, et seq.

(g) Credits shall reduce parole eligibility terms as follows:

1. County jail credits pursuant to R.3:21-8 shall reduce any parole eligibility terms determined pursuant to (c) above.

2. (No change.)

3. When an aggregate parole eligibility term includes a parole eligibility term determined pursuant to (c)3, such aggregate term shall be reduced by credits pursuant to (g)(2) provided, however, that such credits accrued shall only be awarded subsequent to the expiration of the eligibility term determined pursuant to (c)3 above as calculated from the date such parole eligibility term began.

(h) Parole eligibility terms shall be restricted as follows:

1. No inmate committed for a specific term(s) of years at the State Prison or the Correctional Institution for Women shall become primarily eligible for parole until service of a full nine months of the aggregate term less any county jail credits, provided, however, that when the specific terms of years to the State Prison or the Correctional Institution for Women is less than 12 months this restriction shall not apply.

2. No aggregate parole eligibility term resulting from the aggregation of specific terms, which do not include a mandatory-minimum term(s), shall exceed 25 years.

3. No parole eligibility term resulting from a non-criminal violation(s) of parole conditions shall, after deductions for credits pursuant to (g)2 above, exceed 12 months.

#### 10A:71-3.3 Parole eligibility for young adult inmates

(a) Except as provided herein, an inmate sentenced to an indeterminate term of years as a young adult inmate shall be primarily eligible for parole consideration on a date established by a hearing officer or the young adult Board panel pursuant to the following schedule of presumptive primary eligibility dates:

PRESUMPTIVE PRIMARY ELIGIBILITY DATES  
(MONTHS)

LENGTH OF INDETERMINATE TERM  
(Years)

CRIME CATEGORY	0-4	5-9	10-14	15-19	20-24	25-29	30-Life
Category A		40	56	74	90	106	120
Category B	16	32	40	48	56	56	
Category C	16	*[24]* *28*	*[32]* *36*	*[40]* *44*	*[48]* *52*		
Category D	14	*[16]* *20*	*[24]* *28*	*[32]* *36*	*[40]* *44*	*[ 40]*	*[ 40]*
Category E	12	*[12]* *14*	*[16]* *18*	*[19]* *22*	*[19]* *22*	*[ 19]*	*[ 19]*
Category F	*[ 8]* *10*	*[ 8]* *10*					
*Category G	8*						

Category A: Murder.

Category B: Aggravated manslaughter, kidnapping first degree, aggravated sexual assault, \*[robbery first degree]\* or any other first degree crime.

Category C: \*[Manslaughter,]\* **R**[robbery **first degree**\* **S**[second degree, aggravated assault second degree, sexual assault, or any other second degree crime]\*.

Category D: \*[Sale or distribution of controlled dangerous substance and possession of controlled dangerous substance with intent to distribute.]\* **M**anslaughter, **R**obbery **second degree**, **A**ggravated assault **second degree**, **S**exual assault, or any other **second degree crime**.\*

Category E: \*[Burglary third degree, possession of weapon for unlawful purpose third degree, unlawful possession of a weapon third degree, terroristic threats, aggravated assault third degree, endangering the welfare of a child third degree, any other third degree crime or possession of a controlled dangerous substance.]\* **S**ale or **d**istribution of **controlled dangerous substance and possession of controlled dangerous substance with intent to distribute**.\*

Category F: \*[Death by auto, criminal sexual contact, forgery fourth degree, unlawful possession of weapon fourth degree, certain persons not to have weapons, criminal trespass, or any other fourth degree crime.]\* **B**urglary **third degree**, **P**ossession of a **weapon for an unlawful purpose third degree**, **U**nlawful possession of a **weapon third degree**, **T**erroristic threats, **A**ggravated assault **third degree**, **D**eath by auto, **E**ndangering the welfare of a **child third degree**, **A**ny other **third degree crime or possession of controlled dangerous substance**.\*

\***Category G: Criminal sexual contact, forgery fourth degree, unlawful possession of a weapon fourth degree, certain persons not to have weapons, criminal trespass, or any other fourth degree crime**.\*

(b) The presumptive primary eligibility date established pursuant to (a) above may be reduced by up to ten months if the young adult Board panel or the hearing officer establishing the date determines that one or more mitigating factors such as, but not limited to, the following are present:

1.-5. (No change.)

(c) The presumptive primary eligibility date established pursuant to above (a) may be increased by up to ten months if the young adult Board panel or the hearing officer establishing the date determines that one or more of the following aggravating factors are present:

1.-7. (No change.)

(d) If an inmate has received more than one term, the longest term imposed shall be used in determining the pre-

sumptive primary eligibility date or, if the terms are of equal length, the crime which, in the opinion of the hearing officer or the young adult Board panel, represents the most serious crime shall be used in determining the presumptive primary eligibility date.

(e) The young adult Board panel may establish a primary eligibility date which differs from that required by the provisions of (a), (b) and (c) above, if the primary eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime and the characteristics and prior criminal record of the inmate.

1.-3. (No change.)

(f) Except as provided herein, any primary eligibility date for a young adult offender established pursuant to this section or N.J.A.C. 10A:71-7.16 may be reduced through program participation by the inmate.

1.-4. (No change.)

5. Notwithstanding the provisions of (f)1 through 4 above, no reduction of the primary eligibility date shall be made for the first six months of the inmate's primary eligibility term less jail credits.

(g) (No change.)

(h) Parole eligibility dates shall be restricted as follows:

1. (No change in text.)
2. (No change in text.)
3. (No change in text.)

4. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a fourth degree crime be established at greater than nine months.

(i) If an adult inmate has received an indeterminate sentence and a State Prison sentence, the parole eligibility term derived from the indeterminate sentence shall be aggregated with the eligibility term on the State Prison sentence and credits pursuant to N.J.A.C. 10A:71-3.2 (g)2 shall apply to the aggregate parole eligibility term.

(j) The **\*prior\*** provisions of (a), (b) and (c) above shall apply to young adult inmates whose offenses were committed prior to **\*[the effective date of the amendments]\* \*May 6, 1985\*** and shall continue in effect for that purpose. The amendments to (a), (b) and (c) above shall apply to young adult inmates whose offenses were committed on or after **\*[the effective date of the amendments]\* \*May 6, 1985\***.

10A:71-3.4 Institutional infractions; adult inmates

(a) It shall be the responsibility of the chief executive officer, within seven days of resolution of any administrative appeal, to notify in writing the senior Board representative at the institution that an adult inmate has committed an institutional infraction listed in (c) below.

(b) Except as otherwise provided in N.J.A.C. 10A:71-5, upon being advised by the senior Board representative at the institution that an adult inmate has committed an institutional infraction listed in (c) below, the appropriate Board panel or designated hearing officer may increase the inmate's eligibility date according to the schedule listed herein.

(c) The appropriate Board panel, designated hearing officer or senior Board representative at the institution shall, at least 14 days prior to the consideration of the adult inmate's case, notify the inmate in writing of the following:

1. The inmate's case and institutional records will be reviewed for the possible increase in the inmate's parole eligibility date as a result of the commission of an institutional infraction(s);

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2. The inmate may submit in writing to the appropriate Board panel or designated hearing officer a statement pertaining to any mitigating circumstances.

(d) Institutional infractions specified and defined by the Department shall be assigned to categories on the following basis:

1.-3. (No change.)

4. Infraction Category D shall consist of .002, Assaulting any person; .102, Attempting or planning escape (provided such attempt is from a minimum security location); .151, Setting a fire; .155, Adulteration of any food or drink; .203, Possession or Introduction of any narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical or dental staff; .204, Use of any narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical or dental staff; .207, Possession of money or currency (in excess of \$50.00 unless specifically authorized); .214, Possession of unauthorized keys or other security equipment; .253, Engaging in, or encouraging, a group demonstration; .255, Encouraging others to refuse to work or to participate in work stoppage; .552, Being intoxicated; and .751, Giving or offering any official or staff member a bribe, or anything of value.

5. Infraction Category E shall consist of .005, Threatening another with bodily harm or with any offense against his person or his property; .153, Stealing (theft); .257, Violating a condition of any community release program; .258, Refusing to submit to urine analysis; .352, Counterfeiting, forging or unauthorized reproduction or unauthorized use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document; .704, Perpetrating frauds, deceptions, confidence games, riots or escape plots through the mail; and .708, Refusal to submit to a search.

6. Infraction Category F shall consist of \*[.005, Threatening another with bodily harm or with any offense against his person or his property; .151, Setting a fire;]\* .205, Misuse of authorized medication; .306, Conduct which disrupts or interferes with the security or orderly running of the institution; and .601, Gambling.

7. Infraction Category G shall consist of .803, Attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act, or making plans to commit such acts shall be considered the same as a commission of the act itself.

(e) Except as provided herein, an infraction in any category defined pursuant to (d) above shall result in an increase in the inmate's eligibility date as follows:

1. Category A: 60 months

2.-6. (No change.)

7. Category G: One half of the increase which would be required pursuant to this subsection if the inmate's action had resulted in the commission of the infraction which he or she attempted.

(f) The appropriate Board panel or designated hearing officer shall notify the inmate **\*and the chief executive officer of the institution or designee\*** in writing of a determination to increase or not increase the inmate's parole eligibility date.

1. If the inmate's parole eligibility date is to be increased, the notice shall include the time period by which the parole eligibility date is to be increased.

2. If the inmate's parole eligibility date is to be increased, the senior Board representative at the institution shall, within 90 days of the appropriate Board panel's or designated hearing officer's decision, notify the inmate **\*and the chief execu-**

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**tive officer of the institution or designee\*** in writing of the new parole eligibility date.

(g) When, in the opinion of the designated hearing officer or Board panel reviewing an infraction pursuant to this section, the inmate's conduct and the characteristics of the inmate warrant an adjustment in the increase in the eligibility date required pursuant to (e) above the eligibility date may be further increased due to aggravating factors or may be decreased due to mitigating factors by up to the following time periods:

1.-4. (No change.)

5. Category E-four months

6. (No change.)

7. Category G-Three months, provided no reductions of the previous eligibility date is made.

(h) The appropriate Board panel, upon the recommendation from the designated hearing officer, may determine that no increase in the eligibility date shall result from an infraction, or the Board panel may establish an increase which differs from that required by the provisions of (e) and (g) if the increase which would be established pursuant to such subsections is clearly inappropriate in consideration of the severity of the inmate's conduct and the characteristics of the inmate.

1. If, in the opinion of the hearing officer establishing the increase in the eligibility date, the increase which would be established pursuant to (e) and (g) above is clearly inappropriate as provided herein, the hearing officer shall refer such case to the appropriate Board panel.

2. Upon determining that the increase in eligibility pursuant to (e) and (g) above is inappropriate, the hearing officer shall, at least 14 days prior to the Board panel's consideration of the case, notify the inmate in writing that an increase in the eligibility date pursuant to (e) and (g) above has not been established and the reasons therefor.

3. The Board panel shall, upon disposition of the case, state in writing to the inmate and the Board the reasons for the establishment of any increase in the eligibility date which differs from the provisions of (e) and (g) above.

(i) (No change in text.)

(j) If an assigned hearing officer or the appropriate Board panel determines that an inmate has persistently violated institutional rules by committing infractions other than those listed in (d) above, the inmate's eligibility date may be increased by no more than three months in any 12 month period by the hearing officer or Board panel.

(k) If, by operation of this section, an inmate serving a sentence of three years or more will serve the maximum sentence(s) prior to parole eligibility, the inmate's case shall be scheduled for a hearing before the appropriate Board panel at least nine months prior to the expiration of the maximum sentence(s) to determine whether the inmate shall serve his maximum sentence(s) or whether the inmate shall be released on parole status prior to the expiration of the maximum sentence(s).

(l) Except as otherwise provided for by statute, an inmate shall not be required to serve the maximum sentence(s) imposed without being considered for parole by the appropriate Board panel unless deemed administratively unfeasible.

(m) Any increase in an inmate's eligibility date established pursuant to this section shall be reduced by any loss of commutation time imposed by the Department which affects parole eligibility due to the commission of the same institutional infraction.

(n) (No change in text.)

(o) The **\*prior\*** provisions of (d), (e) and (g) above shall apply to inmates whose institutional infractions were committed prior to **\*[the effective date of the amendments]\* \*May 6, 1985\*** and shall continue in effect for that purpose. The amendments to (d), (e) and (g) above shall apply to inmates whose institutional infractions were committed on or after **\*[the effective date of the amendments]\* \*May 6, 1985\***.

10A:71-3.5 Parole eligibility term reductions (exceptional progress)

(a) The appropriate Board panel will consider requests for exceptional progress eligibility term reductions from adult inmates if the following requirements are met:

1.-2. (No change.)

3. Unless otherwise authorized by the panel for good cause, the inmate has served at least two years in a State correctional facility, is within two and one-half years of parole eligibility, and has not received any institutional infractions within the last two years.

(b) Eligible inmates may apply for an exceptional progress eligibility reduction by submitting a written request to the senior Board representative at the institution in which the inmate is incarcerated. The request shall include documentation to support the inmate's application.

(c) Upon certification from the senior Board representative that the inmate is eligible pursuant to (a)2 and 3 above, the senior Board representative shall forward the application to the appropriate Board panel. Upon receipt of the application, the appropriate Board panel shall review the application and make one of the following determinations:

1. If the Board panel determines that the information provided in the application indicates that the inmate may have achieved exceptional progress, the panel shall request the chief executive officer of the institution of incarceration to provide the panel with updated reports and recommendations concerning the inmate's conduct and progress.

2. If the Board panel determines that the information provided in the application does not indicate that the inmate may have achieved exceptional progress, the panel shall notify the inmate in writing of its determination.

(d) Upon receipt of the chief executive officer's report, a designated Board representative shall forward to the appropriate representative of the Department a copy of the chief executive officer's report and shall request the Department of Corrections to submit its recommendation and comments and the recommendation and comments of the appropriate Board of Trustees to the Board panel. The Department shall return the chief executive officer's report and any relevant documents on the inmate to the designated Board representative.

(e) Upon receipt of the chief executive officer's report, the designated Board representative shall interview the inmate.

(f) The designated Board representative upon completion of said interview shall review all relevant information and evaluate whether or not the inmate has made exceptional progress as evidenced by participation and progress in institutional or community educational, training or other programs and by a substantial alteration of those factors which led to the inmate's incarceration. The designated Board representative shall then prepare and submit a written report to the appropriate Board panel.

(g) The designated Board representative shall notify the appropriate prosecutor(s) of the inmate's application and shall request that the prosecutor submit comments on the application for inclusion into the Board representative's report.

(h) The appropriate Board panel shall review the application, the recommendations, and the comments submitted and the prepared reports to determine whether the inmate has achieved exceptional progress. The Board panel shall consider the following factors in its determination: significant contributions to the institution, other inmates, or to society; participation and progress in institutional or community educational, training or other programs; initiative in developing institutional or community programs; and whether or not there has been a substantial alteration of those factors which led to the inmate's incarceration. If the Board panel approves the application, the panel shall grant a specific parole eligibility term reduction or, in the case of an inmate who has not served the primary parole eligibility term established pursuant to N.J.A.C. 10A:71-3.2, recommend to the appropriate court that a parole eligibility term reduction be granted.

(i) Unless otherwise authorized by the Board for good cause, any reduction in an inmate's parole eligibility term shall not exceed two years.

(j) Upon final decision, the Board panel shall advise the inmate **\*, the chief executive officer of the institution, the Board of Trustees, the prosecutor and the court\*** in writing of such decision.

(k) The Board panel may vacate any reduction granted if the inmate fails to maintain acceptable conduct.

(l) The young adult and juvenile Board panels consider exceptional progress of young adult and juvenile inmates respectively at the time of reviews conducted pursuant to N.J.A.C. 10A:71-3.3(g), 3.23, 3.25 and 3.30.

10A:71-3.7 Preparation of cases for parole hearings; adult inmates

(a) Five to seven months in advance of the actual eligibility date, the Board shall promulgate a list of those adult inmates who appear to be eligible for parole consideration.

(b) This list shall be distributed to the chief executive officer of the institution of incarceration, the Chairman of the Board of Trustees for the institution of incarceration and to the Bureau of Parole.

(c) The receipt of this eligibility list by the chief executive officer of the institution of incarceration and by the Bureau of Parole shall be notice to initiate the preparation of a pre-parole report pursuant to (e) below.

(d) It shall be the responsibility of the chief executive officer to file a report concerning the inmate with the appropriate Board panel and the Bureau of Parole within 30 days of the receipt of the Board's list.

(e) Such report shall consist of the following information:  
1.-7. (No change.)

8. The inmate's actual maximum date based on current credits **\*[and the inmate's projected maximum date based on the work and minimum custody credit pattern as established by the classification department.]\***

9. In the case of an inmate serving a specific term or life term, the projected work and minimum custody credit pattern as established by the classification department.

(f) Upon the recommendation of the Special Classification Review Board pursuant to N.J.S.A. 2C:47-5 and the expiration of any mandatory minimum term, the chief executive officer of the Adult Diagnostic and Treatment Center shall file a report concerning the inmate with the adult Board panel. In addition to the information required pursuant to (e) above, the report shall include:

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1. The treatment record of the inmate and the comments, evaluations and recommendations of the inmate's therapist(s);

2. The comments, evaluations and recommendations of treatment staff;

\*[3. The comments of any member of the treatment staff who dissents in the determination to refer the inmate's case to the Special Classification Review Board for consideration;]\*

\*[4.]\*\*3.\* The comments, evaluation and recommendations of the chief executive officer;

\*[5.]\*\*4.\* The comments, evaluation and recommendations of the members of the Special Classification Review Board;

**\*5. All information reviewed and considered by the Special Classification Review Board;\***

6. A statement from the Special Classification Review Board as to the inmate's capability of making an acceptable social adjustment in the community;

7. The name, title and agency affiliation of the members of the Special Classification Review Board participating in the evaluation of the inmate's case for referral to the Board for parole consideration;

8. **\*In the case of an inmate recommended to the Board for parole consideration by three members of the Special Classification Review Board,\*** the comments **\*and concerns\*** of any member of the Special Classification Review Board who dissents in the determination to recommend the inmate's case to the Board for parole consideration.

10A:71-3.8 Public notice; adult inmates

(a) (No change in text.)

(b) In no case shall an inmate serving a life term, a fixed minimum and maximum term, a specific term or an indeterminate term be released on parole unless public notice pursuant to (a) above has been provided on these terms.

10A:71-3.9 Inmate statements; adult inmates

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

(c) Such statement shall be filed within 15 days of the date the inmate receives his or her copy of such report, unless the inmate requests and receives a postponement of the hearing process pursuant to N.J.A.C. 10A:71-3.48.

10A:71-3.10 Purpose of parole hearing; adult inmates

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

(c) If an inmate is being considered for parole on sentences to both the Corrections Complex and to the Adult Diagnostic and Treatment Center, the hearing officer or Board panel shall make independent determinations required pursuant to both (a) and (b) above.

(d) In the cases of inmates committed to the Adult Diagnostic and Treatment Center \*[pursuant to N.J.S.A. 2C:47-1, et seq.]\*, the absence of six months of continuous acceptable therapeutic progress in the Adult Diagnostic and Treatment Center, or the absence of documented acceptable therapeutic progress in a correctional facility other than the Adult Diagnostic and Treatment Center caused by either N.J.S.A. 2C:47-4(b) or the imposition of a consecutive term of incarceration in a correctional facility, may rebut, unless the facts of the inmate's case indicate \*[d]\* to the contrary, the presumption for parole.

10A:71-3.11 Factors considered at parole hearings; adult inmates

(a) (No change.)

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(b) The hearing officer, Board panel or Board shall consider the following factors and, in addition, may consider any other factors deemed relevant:

1.-20. (No change.)

21. Statements or evidence presented by the appropriate prosecutor's office, the Office of the Attorney General, or any other criminal justice agency.

22. Statement or testimony of any victim or the nearest relative(s) of a murder victim.

(c) Any detainers shall be noted by the hearing officer, Board panel or Board and shall not be grounds for denial of parole.

10A:71-3.13 Parole hearing procedures; adult inmates

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

(g) The inmate shall have the right to request, in writing, a postponement of the hearing at any time, and the hearing officer or Board panel may grant such request. However, such postponement shall not be deemed a waiver of the time limits contained in this subchapter unless authorized pursuant to N.J.A.C. 10A:71-3.48.

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

10A:71-3.14 Scheduling of initial parole hearing; adult inmates

(a) (No change.)

(b) Except as provided in N.J.A.C. 10A:71-3.48, such hearings shall be conducted at least 60 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the schedule of such hearings at least seven days prior to the hearings.

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

(f) It shall be the responsibility of the chief executive officer to notify the assigned hearing officer, in writing, of the reason for the failure of an inmate to appear at a scheduled parole hearing.

10A:71-3.16 Board member review; adult inmates

(a) When the hearing officer recommends that an inmate be released on parole, the Chairperson shall assign a member of the appropriate Board panel to review such recommendation. In cases of offenders serving terms for crimes of the first and second degree, such recommendation shall be reviewed by two members of the appropriate Board panel.

(b) If such Board member(s) concurs with the recommendation of the hearing officer, the member(s) shall certify parole release as soon as practicable after the parole eligibility date by:

1. Establishing a parole release date based upon the inmate's projected parole eligibility date; or

2. Establishing a specific parole release date; and

3. Establishing appropriate pre-release conditions; and

4. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6 and

5. Issuing a written decision within 21 days of Board member action **\*to the inmate, the Department and the Board\***.

(c) If a parole release date has been established based upon a projected parole eligibility date, the chief executive officer of the institution or designee shall:

1. Notify the senior Board representative at the institution immediately upon an acceleration in the credit pattern. If an acceleration in the credit pattern has occurred then:

i. The parole eligibility date shall be recalculated; and

ii. A new parole release date shall be established; and

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iii. The inmate shall be notified of the new parole release date.

2. Certify to the senior Board representative at the institution, within 72 hours prior to the date of release, that the inmate has maintained the credit pattern as established by the classification department. If the inmate has failed to earn the projected credits then:

i. The inmate's release on parole shall be deferred;  
ii. The parole eligibility date shall be recalculated;  
iii. A new parole release date shall be established unless good cause exists to suspend or rescind the parole release date pursuant to N.J.A.C. 10A:71-5; and

iv. The inmate shall be notified that release on parole has been deferred and that a new parole release date has been established.

(d) If such Board member(s) does not concur with the recommendation of the hearing officer, the member(s) shall refer the case to the appropriate Board panel for a hearing and issue a written decision to the inmate, the Department and the Board within seven days consisting of the reasons for the Board member's referral.

10A:71-3.17 Board panel hearing; scheduling for adult inmates

(a) (No change.)

(b) Except as provided in N.J.A.C. 10A:71-3.48, such hearing shall be conducted at least 30 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the schedule of such hearings at least seven days prior to the hearings.

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

(f) It shall be the responsibility of the chief executive officer or designee to notify the Board panel, in writing, of the reason for the failure of an inmate to appear at a scheduled parole hearing.

10A:71-3.18 Board panel hearing; notice of decision for adult inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1. Certify parole release as soon as practicable after the parole eligibility date by:

i. Establishing a parole release date based upon the inmate's projected parole eligibility date; or  
ii. Establishing a specific parole release date; and  
iii. Establishing appropriate pre-release conditions; and  
iv. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6.

2.-4. (No change.)

(b) If a parole release date has been established based upon a projected eligibility date, the chief executive officer of the institution or designee shall:

1. Notify the senior Board representative at the institution immediately upon an acceleration in the credit pattern. If an acceleration in the credit pattern has occurred then:

i. The parole eligibility date shall be recalculated;  
ii. A new parole release date shall be established; and  
iii. The inmate shall be notified of the new parole release date.

2. Certify to the senior Board representative at the institution, within 72 hours prior to the date of release, that the inmate has maintained the credit pattern as established by the classification department. If the inmate has failed to earn the project credits then:

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i. The inmate's release on parole shall be deferred;  
ii. The parole eligibility date shall be recalculated;  
iii. A new parole release date shall be established unless good cause exists or suspend or rescind the parole release date pursuant to N.J.A.C. 10A:71-5; and

iv. The inmate shall be notified that release on parole has been deferred and that a new parole release date has been established.

(c) Within 21 days of the Board panel hearing, the Board panel shall issue a written \*[N]\* \*n\*otice to the inmate, the Department and the Board.

(d) Such \*[N]\* \*n\*otice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole or defer decision, the \*[N]\* \*n\*otice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

10A:71-3.19 Board panel action; schedule of future parole eligibility dates for adult inmates

(a) Upon determining to deny parole to a prison inmate, a two member adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1. Except as provided herein, a prison inmate serving a sentence for murder, manslaughter, aggravated sexual assault or kidnapping or serving any minimum-maximum or specific sentence in excess of 14 years for a crime not otherwise assigned pursuant to this section shall serve 27 additional months.

2. (No change.)

3. Except as provided herein, a prison inmate serving a sentence for burglary, narcotics law violations, theft, arson or aggravated assault or serving any minimum-maximum or specific sentence of at least four but less than eight years for a crime not otherwise assigned pursuant to this section shall serve 20 additional months.

4. (No change.)

(b) Upon determining to deny parole to a young adult inmate, a two-member young adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Categories A or B defined in N.J.A.C. 10A:71-3.3 shall serve 24 additional months.

2. Except as provided herein, a young adult inmate serving a term for an offense listed in Category C of N.J.A.C. 10A:71-3.3 shall serve 20 additional months.

3. (No change in text.)

4. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category E of N.J.A.C. 10A:71-3.3 shall serve \*[10]\* \*12\* additional months.

5. Except as provided herein, a young adult inmate serving a sentence for a crime contained in category F of N.J.A.C. 10A:71-3.3 shall serve \*[8]\* \*10\* additional months.

**\*6. Except as provided herein, a young adult inmate serving a sentence for a crime contained in category G of N.J.A.C. 10A:71-3.3 shall serve eight additional months.\***

(c) The future parole eligibility dates required pursuant to (a) and (b) above may be increased or decreased by up to nine months when, in the opinion of the Board panel, the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment.

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(d) A three-member Board panel may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

1. If, in the opinion of a two-member Board panel denying parole, the future parole eligibility date which would be established pursuant to (a) or (b) and (c) above is clearly inappropriate as provided herein, the two-member Board panel shall adjourn the hearing for participation of the third Board panel member. In such instances, the third Board panel member shall review all records and the hearing shall be reconvened within 90 days for the purpose of establishing a future parole eligibility date.

2. The two-member Board panel shall, pursuant to N.J.A.C. 10A:71-3.18, notify the inmate in writing that parole has been denied, that a future parole eligibility date pursuant to (a) or (b) and (c) above has not been established and the reasons therefor, and that a three-member Board panel hearing will be scheduled for the purpose of establishing a future parole eligibility term which differs from the provisions of (a) or (b) and (c) above.

3. The three-member Board panel shall, upon disposition of the case, state in writing to the inmate the reasons for the establishment of a future eligibility date which differs from the provisions of (a) or (b) and (c) above.

4. The decision of the three-member Board panel to establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above shall be by unanimous decision only. Failure to establish a future parole eligibility date pursuant to this subsection by unanimous decision shall result in the referral of the inmate's case to the Board for the establishment of a future parole eligibility date.

5. If the three-member Board panel fails to establish, by unanimous decision, a future parole eligibility date pursuant to this subsection, the three-member Board panel shall notify the inmate, in writing, that his case has been referred to the Board for the establishment of a future parole eligibility date.

6. The Board's establishment of a future parole eligibility date shall be based on the review of all records of the panel hearing(s). Upon disposition of the case, which shall not occur earlier than 14 days from the date of the panel referral to the Board, the Board shall state in writing to the inmate the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) or (b) and (c) above.

(e) If a three-member Board panel or the Board establishes, in the case of an inmate sentenced pursuant to N.J.S.A. 2A:113-4 for a term of life imprisonment, N.J.S.A. 2A:164-17 for a fixed minimum and maximum term or N.J.S.A. 2C:1-1(b), a future parole eligibility date which differs from that required by the provisions of (a) and (c) above, the inmate shall be scheduled for an annual review hearing. The first annual review hearing shall be scheduled 12 months from the month in which the decision to deny parole was rendered. Thereafter, annual review hearings shall be scheduled every 12 months until the inmate is within seven months of the actual parole eligibility date.

1. At the annual review hearing, which shall be conducted by a Board panel as designated by the Chairperson, the Board panel shall assess the inmate's progress in institutional or community educational, training or other programs, progress

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in substantially altering those factors which led to the inmate's incarceration, and progress which may indicate that the punitive aspects of the sentence have been satisfied in that the rehabilitative potential of the inmate may be achieved by a date earlier than the future parole eligibility date.

2. At the conclusion of the annual review hearing, the Board panel shall:

i. Accept and note documentary evidence of the progress that the inmate has achieved; and

ii. Determine whether the inmate's case shall be referred for a parole release hearing pursuant to this subchapter; or

iii. Determine whether the progress achieved by the inmate merits a reduction in the future parole eligibility date. If such determination is made, the Board panel shall recommend to the three-member Board panel or the Board, as appropriate, that a reduction in the future parole eligibility date be granted; or

iv. Defer a decision pending receipt of additional information; or

v. Continue the case until the next annual review.

3. The Board panel shall advise the inmate in writing of its determination.

4. If the Board panel determines that the inmate's case shall be referred for a parole release hearing pursuant this subchapter, the Board panel shall provide personal notice to each member of the three-member Board panel or the Board, as appropriate, of its determination.

5. If the Board panel recommends that a reduction be granted in the future parole eligibility term, the three-member Board panel or the Board, as appropriate, shall review the inmate's case and the Board panel's recommendation within 60 days of the Board panel's determination. The three-member Board panel or the board shall, within 14 days of reviewing the inmate's case, notify the inmate in writing whether the future parole eligibility date will be reduced and, if so, the specific time period by which the future parole eligibility date will be reduced.

6. The provisions of N.J.A.C. 10A:71-3.8 shall not apply to an annual review hearing conducted pursuant to this subsection.

(f) (No change in text.)

(g) (No change in text.)

(h) The **\*prior\*** provisions of (b) above shall apply to young adult inmates whose offenses were committed prior to **\*[the effective date of the amendment]\* \*May 6, 1985\*** and shall continue in effect for that purpose. The amendments to (b) above shall be applicable to young adult inmates whose offenses were committed on or after **\*[the effective date of the amendment]\* \*May 6, 1985\***.

(i) The amendments to (d) above shall apply to the cases of adult inmates in which a decision to deny parole has been rendered on or after **\*[the effective date of the amendments]\* \*May 6, 1985\***.

10A:71-3.20 Notice of parole release dates:  
juvenile inmates

(a) (No change.)

(b) Upon such notification and within 90 days of admission to a State correctional facility, each juvenile inmate shall be informed in writing of his or her parole release date.

(c) Upon establishment of the parole release date pursuant to N.J.A.C. 10A:71-3.21, the juvenile Board panel shall notify in writing the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee of the parole

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release date established. The chief executive officer or designee may further distribute notice of the parole release date as deemed appropriate.

**10A:71-3.21 Establishment of parole release dates: juvenile inmates**

(a) Except as provided herein, parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive parole release terms and ranges for parole release terms.

Act of Delinquency	Presumptive Term (months)	Range (months)
Murder (N.J.S.A. 2C:11-3a (1) or (2))	100	80-120
Murder (N.J.S.A. 2C:11-3(a)(3))	50	40-60
Crime of First Degree (except Murder)	20	16-24
Crime of Second Degree, * <b>[Sale or Distribution of Controlled Dangerous Substance, or Possession of Controlled Dangerous Substance with Intent to Distribute]*</b>	*[16]*	*[12-18]*
* <b>Sale or Distribution of Controlled Dangerous Substance, or Possession of Controlled Dangerous Substance with Intent to Distribute*</b>	*12*	*10-14*
Crime of Third Degree or Possession of Controlled Dangerous Substance	10	8-12
Crime of Fourth Degree	5	4-6
Disorderly Persons Offense	*[2.5]* *1.5*	*[2-3]* *1-2*

(b) If a juvenile inmate has been committed for several acts of delinquency, the act of delinquency which represents the most serious act of delinquency shall be considered in determining the parole release date.

(c) The hearing officer, the juvenile Board panel member or the juvenile Board panel shall consider the following mitigating and aggravating factors in determining whether to alter the parole release date from the presumptive term established pursuant to (a) above:  
1.-2. (No change.)

(d) The juvenile Board panel may establish a parole release date outside the range contained in the provisions of (a) above, if a parole release date within the range is clearly inappropriate in view of the circumstances of the act of delinquency, the prior record of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4).

1. If, in the opinion of the hearing officer or juvenile Board panel member establishing the release date, a date within the range contained in the provisions of (a) above is clearly inappropriate in view of the circumstances of the act of delinquency, the prior record of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 22A:4A-44(d)(3) and (d)(4), the hearing officer or the juvenile Board panel member shall refer such a case to the juvenile Board panel.

2. The hearing officer, juvenile Board panel member or the juvenile Board panel shall, at least 14 days prior to the Board panel's determination of the release date, notify the juvenile

inmate in writing that a parole release date pursuant to (a) above has not been established and the reasons therefor.

3. The juvenile Board panel shall, upon disposition of the case, state in writing to the juvenile inmate, the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee, the reasons for the establishment of any parole release date which is outside the range contained in the provisions of (a) above.

(e) Pursuant to R.3:21-8, credit for time served in a county detention facility prior to the date of sentence shall reduce the parole release date established pursuant to this section.

(f) In no case shall a juvenile inmate committed by the Family Court to a term of incarceration be released on parole without the consent of the sentencing court prior to the service of one-third of any term imposed for murder or a crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4) or one-fourth of any term imposed for any other crime.

**\*(g) The prior provisions of (a) above shall apply to juvenile inmates whose offenses were committed prior to May 6, 1985 and shall continue in effect for that purpose. The amendments to (a) above shall apply to juvenile inmates whose offenses were committed on or after May 6, 1985.\***

**10A:71-3.22 Alteration of parole release dates: juvenile inmates**

(a) At the time of a quarterly review, any previously established parole release date may be altered pursuant to N.J.A.C. 10A:71-3.28 or 3.30.

(b) If the juvenile inmate has participated satisfactorily in institutional programs or demonstrated good institutional adjustment, the parole release date may be reduced.

1. If such inmate's level of institutional adjustment or program participation is above average, the reduction may be at the rate of 15 days for every month of the parole release term.

2. If such inmate's level of institutional adjustment or program participation is average, the reduction may be at the rate of ten days for every month of the parole release term.

3. If such inmate's level of institutional adjustment or program participation is below average, the reduction may be at the rate of five days for every month of the parole release term.

4. (No change.)

(c) The juvenile board panel or a juvenile Board panel member upon the recommendation by a hearing officer may reduce a parole release date outside of the schedule contained in the provisions of this subsection when deemed appropriate in view of the juvenile inmate's participation in institutional programs or the juvenile inmate's institutional adjustment.

(d) If a juvenile inmate has committed serious and/or persistent institutional infractions or, has demonstrated poor institutional adjustment, the parole release date may be rescinded pursuant to N.J.A.C. 10A:71-5.6, 5.7 and 5.8.

1. If the juvenile Board panel rescinds a parole release date, the written decision shall include a future parole release date.

2. A future parole release date shall not be established at a date which exceeds 12 months from the rescinded parole release date.

**10A:71-3.23 Scheduling of quarterly reviews-juvenile inmates**

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(a) Except as provided herein, each juvenile inmate shall be scheduled for a quarterly review during the third month following the establishment of the parole release date and during each third month thereafter; provided, however, that the juvenile Board panel may direct that a quarterly review be conducted prior to a quarterly review otherwise required pursuant to this section.

1. The Chairperson shall establish a schedule of quarterly reviews to be conducted by a hearing officer or juvenile Board panel member assigned by the Chairperson.

2. The Chairperson, when practicable, shall notify the chief executive officer of the institution of the schedule of such quarterly reviews at least seven days prior to the date of the quarterly review.

3. It shall be the responsibility of the chief executive officer to immediately notify the Chairperson if any juvenile inmate schedule for a quarterly review is transferred from the institution or is not expected to be available for any reason.

4. It shall be the responsibility of the chief executive officer of the institution to make arrangements to have any juvenile inmate scheduled for a quarterly review brought to the review, unless such juvenile inmate is physically unable to appear or refuses to appear for the quarterly review.

5. It shall be the responsibility of the chief executive officer of the institution or designee to notify the assigned hearing officer, the juvenile Board member or the juvenile Board panel, in writing, of the effort expended to produce the juvenile inmate and the reason(s) for the failure of the juvenile inmate to appear at a scheduled quarterly review.

### 10A:71-3.24 Factors considered at quarterly reviews: juvenile inmates

(a) Parole decisions shall be based on the aggregate of all pertinent factors, including material supplied by the juvenile inmate and reports and material which may be submitted by any person or agencies which have knowledge of the juvenile inmate.

(b) The hearing officer, juvenile Board panel member, juvenile Board panel or Board shall consider the following factors and in addition may consider any other factors deemed relevant:

1.-20. (No change.)

21. Statements or evidence presented by the appropriate prosecutor's office, the Office of the Attorney General, or any other criminal justice agency.

22. Statement or testimony of any victim or the nearest relative(s) of a murder victim.

(c) Any detainers shall be noted by the hearing officer, juvenile Board panel member, juvenile Board panel or Board and shall not be grounds for denial of parole.

### 10A:71-3.25 Quarterly review procedures: juvenile inmates

(a) Quarterly reviews shall be conducted by a hearing officer, a juvenile Board panel member or the juvenile Board panel as determined by the Chairperson and shall include a personal interview with the juvenile inmate.

(b) The purpose of the quarterly review shall be to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine whether the parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c), or to determine whether the juvenile inmate's case shall be referred for a rescission hearing.

(c) (No change.)

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(d) Prior to the evaluation segment of the quarterly review, a designated Board representative, the hearing officer, or the juvenile Board panel member(s) shall discuss with and explain to the juvenile inmate all documents relevant to the juvenile inmate's case, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

### 10A:71-3.26 Preparation of progress reports: juvenile inmate

(a) Prior to a quarterly or annual review, it shall be the responsibility of the chief executive officer of the institution or designee to prepare and file with the hearing officer or juvenile Board panel a report concerning the juvenile inmate.

(b) The report shall include the following:

1. The commitment order(s), including any written reasons for the commitment;

2. The predisposition report(s);

3. An appraisal of the inmate's institutional housing, work, education and program participation;

4. An investigative report by the Bureau of Parole on the inmate's parole plans;

5. An up-to-date report on any outstanding detainer(s);

6. A complete report on the juvenile inmate's social, physical and mental condition, including any psychological or psychiatric reports and any additional reports requested by the juvenile Board panel member(s) or hearing officer;

7. Any additional information pertaining to the likelihood that the juvenile inmate, if released, will cause injury to persons or substantial injury to property;

\*[8. A comprehensive analysis of the problems which were operative in causing the offense(s);

9. The recommended program of training or intervention and the extent of the juvenile's participation or lack of participation in recommended programs;

10. Program success in enhancing the inmate's abilities, knowledge or skills for leading a law-abiding life;

11. An analysis of the relationship between the commission of a significant disciplinary infraction(s) and the achievement of institutional program objectives;

12. Any additional program objectives which should be achieved considering the characteristics of the juvenile inmate, the family environment and offenses committed.]\*

(c) The reviewing juvenile Board panel member(s) shall submit such progress report and any other documents deemed relevant or necessary with the notification of reduction in the parole release date or certification of parole release to the sentencing court in those cases in which court approval is required. Additional information or documents shall be submitted to the sentencing court upon the request of the sentencing court.

### 10A:71-3.27 Quarterly review notice of decision-jvenile inmates

(a) At the conclusion of the quarterly review, the hearing officer or juvenile Board panel member shall:

1. Recommend to a member of the juvenile Board panel that the juvenile inmate be released on parole; or

2. Defer a recommendation pending receipt of additional information; or

3. Continue the case until the next quarterly review; or

4. Recommend an increase or decrease in the parole release date in accordance with N.J.A.C. 10A:71-3.22(a), (b) or (c); or

5. Refer the juvenile inmate's case for a rescission hearing; or

6. Refer the case to the juvenile Board panel.

(b) The hearing officer\***r**\* or juvenile Board panel member, at the conclusion of the quarterly review, shall immediately advise the juvenile inmate in writing of the determination and submit the written determination to the assigned member(s) of the juvenile Board panel.

(c) If the hearing officer or a juvenile Board panel \***mem-ber**\* defers a decision, the juvenile inmate and the assigned member(s) of the juvenile Board panel shall be advised in writing of the decision once it is rendered by the hearing officer or a juvenile Board panel member.

(d) If the hearing officer or a juvenile Board panel member recommends the juvenile inmate's release on parole, the juvenile inmate shall be advised of any special conditions recommended.

10A:71-3.28 Board member review: juvenile inmates

(a) Upon review of the recommendation of the hearing officer or juvenile Board panel member, the assigned member of the juvenile Board panel shall render the following determination(s):

1. A certification of:

i. A new parole release date or the continuation of the current parole release date;

ii. Appropriate additional pre-release condition(s); and

iii. Appropriate special condition(s) pursuant to subchapter 6 when the parole release date is within 90 days.

2. Defer a decision pending the receipt of relevant information.

3. Certify a reduction in the parole release date pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c).

4. Refer the juvenile inmate's case for a rescission hearing.

5. Refer the case to the juvenile Board panel for a decision.

(b) A written report shall be filed with the juvenile Board panel within 21 days of the decision and shall consist of the determination of the juvenile Board panel member and the reasons therefor, except that information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department. A copy of such notice shall be forwarded to the juvenile inmate, the juvenile's parent(s) \***[and]**\* \***or**\* guardian(s), the committing court, the prosecutor, and the chief executive officer of the institution or designee. The chief executive officer or designee may further distribute the report as deemed appropriate.

(c) If the assigned member of the juvenile Board panel certifies a reduction in the parole release date and/or certifies parole release on a specific date prior to the juvenile inmate serving one-third of the term imposed for the crime of murder or any crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term, or one-fourth of any term imposed for any other crime, the reduction in the parole release date or the juvenile inmate's release on parole on the specific date shall be subject to the approval of the sentencing court.

(d) In those cases in which court approval of a reduction in the parole release date and/or parole release of the juvenile inmate is required:

1. The assigned member of the juvenile Board panel shall notify the sentencing court of the determination certifying a reduction in the parole release date or certifying parole release in the juvenile inmate's case and the specific parole release date. The sentencing court shall be forwarded such progress

report and any other document deemed relevant and shall be forwarded any additional information or documents upon request.

2. The sentencing court shall have 30 days from the date of the notice to advise the juvenile Board panel member whether the reduction in the parole release date or the parole release of the juvenile inmate on the specified date is approved.

3. If the sentencing court approves the reduction in the parole release date, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to this section.

4. If the sentencing court does not approve the reduction in the parole release date, the parole release date shall not be reduced.

5. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to this section.

6. If the sentencing court approves the release on parole of the juvenile inmate, the juvenile inmate shall be released on the specified date.

7. If the sentencing court does not approve the parole release of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.23. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the certified parole release date.

9. The juvenile inmate shall be notified of the determination of the sentencing court. If parole on the specified date is not approved by the sentencing court, the juvenile inmate shall be notified accordingly and shall be advised of the date on which he can be released on parole status. The juvenile inmate shall also be notified when he will be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.23.

10A:71-3.29 In absentia quarterly previews: juvenile inmates

(a) When a juvenile inmate is physically unable to appear at a quarterly or case review or if a juvenile inmate refuses to appear at a quarterly or case review, the hearing officer, juvenile Board panel member or juvenile Board panel, upon the chief executive officer of the institution or designee providing in writing a reasonable explanation for the juvenile inmate's inability or refusal to appear, may either consider the case in the juvenile inmate's absence or conduct an in person review where the juvenile inmate is currently located.

(b) (No change.)

10A:71-3.30 Juvenile Board panel case reviews

(a) Each juvenile inmate shall be scheduled for a comprehensive case review by the juvenile Board panel during the twelfth month following the establishment of the parole release date and yearly thereafter instead of the quarterly review otherwise required pursuant to N.J.A.C. 10A:71-3.23(a). A schedule of such case reviews shall be established in accordance with the provisions of N.J.A.C. 10A:71-3.23(a).

(b) The purpose of such case review shall be to monitor the cumulative progress of the juvenile inmate, to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine the reasons for the continued confinement

of the juvenile inmate, to determine whether the previously established parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c) and to determine whether the juvenile inmate's case shall be referred for a rescission hearing.

(c) At the conclusion of the case review, the juvenile Board panel shall render the following determination(s):

1. A certification of:
  - i. A new parole release date or the continuation of the current parole release date;
  - ii. Appropriate additional pre-release condition(s); and
  - iii. Appropriate special parole condition(s) pursuant to N.J.A.C. 10A:71-6 when the parole release date is within 90 days.
2. Defer decision pending receipt of relevant information;
3. Certify a reduction in the parole release date pursuant to N.J.A.C. 10A:71-3.22(a), (b) or (c);
4. Refer the juvenile inmate's case for a rescission hearing.
5. (No change in text.)

(d) The juvenile Board panel shall file a report of such case review within 21 days with the Board, the Commissioner, the committing court, the prosecutor, the chief executive officer of the institution or designee, the juvenile inmate and the juvenile's parents or guardians. Such report shall consist of the decision of the panel and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department. The chief executive officer or designee may further distribute the report as deemed appropriate.

(e) If the juvenile Board panel certifies a reduction in the parole release date or certifies parole release on a specific date prior to the juvenile inmate serving one-third of the term imposed for the crime of murder or any crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term, or one-fourth of any term imposed for any other crime, the reduction in the parole release date or the juvenile inmate's release on parole on the specific date shall be subject to the approval of the sentencing court.

(f) In those cases in which court approval of a reduction in the parole release date and/or parole release of the juvenile inmate is required:

1. The juvenile Board panel shall notify the sentencing court of the determination certifying a reduction in the parole release date or certifying parole release in the juvenile inmate's case and the specific parole release date. The sentencing court shall be forwarded such progress report and other documents deemed relevant and shall be forwarded any additional information or documents upon request.

2. The sentencing court shall have 30 days from the date of the notice to advise the juvenile Board panel whether the reduction in the parole release date or the parole release of the juvenile inmate on the specified date is approved.

3. If the sentencing court approves the reduction in the parole release date, the juvenile inmate shall be released on the reduced date upon parole release *\*[as]\* \*being\** certified pursuant to N.J.A.C. 10A:71-3.28 or this section.

4. If the sentencing court does not approve the reduction in the parole release date, the parole release date shall not be reduced.

5. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the reduced date upon parole release *\*[as]\* \*being\** certified pursuant to *\*N.J.A.C. 10A:71-3.28 or\** this section.

6. If the sentencing court approves the release on parole of the juvenile inmate, the juvenile inmate shall be released on the specified date.

7. If the sentencing court does not approve the parole of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.23. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on parole on the certified parole release date.

9. The juvenile inmate shall be notified of the determination of the sentencing court. If parole on the specified date is not approved by the sentencing court, the juvenile inmate shall be notified accordingly and shall be advised of the date on which he can be released on parole status. The juvenile inmate shall also be notified when he will be scheduled for a *\*[case]\* \*quarterly\** review pursuant to N.J.A.C. 10A:71-3.23.

10A:71-3.31 Calculation of parole eligibility: county inmates

(a) A county inmate committed for a specific term in a county jail, workhouse or penitentiary shall become primarily eligible for parole upon the service of any judicial or statutory mandatory minimum term or one-third of the sentence imposed where no judicial or statutory mandatory minimum term or 60 days of his aggregate term *\*[(s)]\**, whichever is greater.

(b) If the parole eligibility date is based on a judicial or statutory mandatory minimum term or 60 days of the aggregate term, the parole eligibility date shall include credit *\*pursuant to R.3:21-8\** for time served in the county jail prior to the date of sentence.

(c) If the parole eligibility date is based on one-third of the sentence imposed, the parole eligibility date shall include commutation credits, credit for time served in the county jail prior to the date of sentence, and earned work and earned minimum custody credits.

(d) In no case shall a county inmate be eligible for parole prior to the service of 60 days of his aggregate *\*[sentence]\* \*term\**, less credit *\*pursuant to R.3:21-8\** for time served *\*in the count jail\** prior to the date of sentence.

10A:71-3.32 Notice of parole eligibility: county inmates

(a) Whenever a county inmate's parole eligibility date is within six months of the date of sentence, the sentencing judge shall state such inmate's parole eligibility on the record. This action shall satisfy all public and inmate notice requirements.

*\*[(b) If a county inmate's parole eligibility date is greater than six months from the date of sentence, the chief executive officer of the county jail, workhouse or penitentiary or designee shall notify in writing the inmate of his primary eligibility date within 60 days of the commencement of the sentence.*

1. Each county inmate shall be given the opportunity to acknowledge in writing the receipt of such notice.]\*

10A:71-3.33 Preparation of cases for parole hearings: county inmates

(a) Forty-five days in advance of the parole eligibility date, the chief executive officer of the institution of incarceration

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or designee shall initiate the preparation of up-to-date staff reports.

(b) It shall be the responsibility of the chief executive officer or designee to file a report concerning the county inmate with the designated hearing officer or appropriate Board panel within 30 days in advance of the parole eligibility date.

(c) Such report shall consist of the following information:

1. The commitment order, including the sentencing court's written reasons for any sentence imposed, on all sentences being served;

2. The pre-sentence report, including a criminal case history record, on any offense of the fourth degree or greater;

3. The municipal court complaint(s) upon which the inmate's commitment is based;

4. A criminal case history record in the case of a commitment from a municipal court;

5. Division of Motor Vehicle case record (or Driver's Abstract) in the case of a commitment for any motor vehicle violation(s) or related offense(s);

6. Any statement or information submitted by the sentencing court, the prosecutor, the probation office or any other interested agency;

7. The status of any detainer(s);

8. A report on the inmate's institutional adjustment, conduct and program participation including housing, work, educational or vocational training;

9. A report on the inmate's parole plan, \*[if]\* **\*when\*** available;

10. The recommendation or comments of the chief executive officer or designee at their discretion;

11. Any other information reflecting on the likelihood that the inmate will commit a crime if released on parole;

12. The inmate's credit earning pattern as established by the chief executive officer or designee.

### 10A:71-3.34 Inmate statements: county inmates

(a) It shall be the responsibility of the chief executive officer of the institution or designee to provide each inmate with a copy of the report filed pursuant to N.J.A.C. 10A:71-3.33 at the time such report is filed with the designated hearing officer or Board panel, except such information classified as confidential by the Board pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

(b) The inmate may file with **\*the\*** designated hearing officer or the Board panel a written statement regarding such report and any other information such inmate wishes the hearing officer or Board panel to review.

### 10A:71-3.35 Purpose of parole hearing; county inmates

(a) The hearing officer or Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of this State if released on parole.

### 10A:71-3.36 Factors considered at parole hearings: county inmates

(a) Parole decisions shall be based on the aggregate of all pertinent factors including material supplied by the inmate and reports and material which may be submitted by persons or agencies which have knowledge of the inmate.

(b) The hearing officer, Board panel or Board shall consider those factors as specified in N.J.A.C. 10A:71-3.11 and any other factor(s) deemed relevant.

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(c) Any detainer shall be noted by the hearing officer, Board panel or Board and shall not be grounds for denial of parole.

### 10A:71-3.37 In absentia hearings: county inmates

The provisions of N.J.A.C. 10A:71-3.12 shall be applicable in the cases of county inmates \*[who are physically unable to appear at a hearing or if an inmate refuses to appear at a hearing]\*.

### 10A:71-3.38 Parole hearing procedures: county inmates

(a) The parole hearing provisions of N.J.A.C. 10A:71-3.13, except subsection (c), shall be applicable in the cases of county inmates.

(b) All information not classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution shall be disclosed to the inmate.

### 10A:71-3.39 Scheduling of initial parole hearings: county inmates

(a) The Chairperson shall establish a schedule of parole hearings to be conducted by a hearing officer assigned or designated by the Chairperson.

(b) Except as provided by N.J.A.C. 10A:71-3.48, such hearings shall be conducted at least 21 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

(c) The Chairperson or designee, when practicable, shall notify the chief executive officer of the institution or designee of the schedule of such hearings at least seven days prior to the hearings.

(d) It shall be the responsibility of the chief executive officer of the institution or designee to immediately notify the Chairperson or designee if any inmate is not expected to be available for a hearing for any reason.

(e) It shall be the responsibility of the chief executive officer of the institution or designee to make arrangements to have any inmate scheduled for a parole hearing brought to the hearing, unless such inmate is physically unable to appear or refuses to appear for the hearing.

(f) It shall be the responsibility of the chief executive officer of the institution or designee to notify the assigned hearing officer in writing of the reason for the failure of an inmate to appear at a scheduled parole hearing.

### 10A:71-3.40 Initial hearing notice of decision: county inmates

(a) At the conclusion of the parole hearing, the hearing officer shall:

1. Recommend to a member of the appropriate Board **\*panel\*** that the inmate be released on parole; or

2. Refer the case to the appropriate Board panel for a hearing; or

3. Defer decision for up to 30 days in order to obtain relevant information.

(b) At the time of the hearing, the hearing officer shall issue a written case assessment to the inmate, the chief executive officer of the institution or designee, the Bureau of Parole and the appropriate Board panel.

(c) Such case assessment shall consist of the hearing officer's determination and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

(d) If the hearing officer recommends that the inmate be released on parole, the hearing officer shall advise the inmate, at the time of the hearing or upon resolution of any deferred decision, of any special conditions recommended.

10A:71-3.41 Board member review: county inmates

(a) When the hearing officer recommends that an inmate be released on parole, the Chairperson shall assign a member of the appropriate Board panel to review such recommendation. In cases of offenders serving sentences for crimes of the first and second degree, such recommendation shall be reviewed by two members of the appropriate Board panel or one Board member of the appropriate panel and one senior hearing officer.

(b) If such Board member(s) **\*or one Board member of the appropriate panel and one senior hearing officer\*** concurs with the recommendation of the hearing officer, the **\*Board\* member(s) \*or one Board member and one senior hearing officer\*** shall certify parole release as soon as practicable after the parole eligibility date by:

1. Establishing a specific parole release date as soon after the inmate's actual parole eligibility date as practicable; and
2. Establishing appropriate pre-release conditions; and
3. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6; and

4. Issuing a written **\*[decision]\* \*notice of this action\*** within seven days **\*[of the Board member action]\* \*to the inmate, the chief executive officer of the institution, the Bureau of Parole and the Board.\***

(c) If such Board member(s) **\*or one Board member of the appropriate panel and one senior hearing officer\*** do\*[es]\* not concur with the recommendation of the hearing officer, the **\*Board\* member(s) \*or one Board member and one senior hearing officer\*** shall refer the case to the appropriate Board panel for a hearing and issue a written decision to the inmate, the chief executive officer and the Board within seven days of the decision consisting of the reasons for the **\*[Board member's]\* referral.**

10A:71-3.42 Board panel hearings: scheduling for county inmates

(a) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.40 or by a Board member(s) **\*or a Board member and a senior hearing officer\*** pursuant to N.J.A.C. 10A:71-3.41 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(b) The Board panel may be composed of any two Board members or any one Board member and one senior hearing officer as necessary for the efficient functioning of the Board.

(c) Except as provided in N.J.A.C. 10A:71-3.48, such hearing shall be conducted at least 14 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

(d) The Chairperson, when practicable, shall notify the chief executive officer of the institution of the schedule of such hearings at least seven days prior to hearings.

(e) It shall be the responsibility of the chief executive officer of the institution or designee to immediately notify the Chairperson or designee if any inmate scheduled for a hearing is not expected to be available for any reason.

(f) It shall be the responsibility of the chief executive officer of the institution or designee to make arrangements to have any inmate scheduled for a parole hearing brought to the hearing, unless such inmate is physically unable to appear or refuses to appear for the hearing.

(g) It shall be the responsibility of the chief executive officer of the institution or designee to notify the Board panel, in writing, of the reason for the failure of an inmate to appear at a scheduled parole hearing.

(h) At the request of the Chairperson, it shall be the responsibility of the chief executive officer of the institution or

designee to transport any inmate to another county correctional facility designated by the Chairperson for a scheduled parole hearing. A request to a chief executive officer or designee to transport an inmate shall only be made to insure the efficient functioning of the Board panel and in no case shall a chief executive officer or designee be requested to transport more than two inmates to another county correctional facility.

10A:71-3.43 Board panel hearing: notice of decision for county inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1. Certify parole release as soon as practicable after the parole eligibility date by:

- i. Establishing a specific parole release date as soon after the inmate's actual parole eligibility date as practicable; and
- ii. Establishing appropriate pre-release conditions; and
- iii. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6.

2. Deny parole;

3. Defer decision pending receipt of relevant information:

- i. No such deferral shall extend more than 30 days unless otherwise authorized by the Board.

- ii. If such additional relevant information is of an adverse nature, then the parole hearing shall be reconvened as soon as possible after receipt of such information.

4. Refer to the Board for final decision.

(b) At the Board panel hearing or within 21 days of the Board panel hearing, the Board panel shall issue a written notice to the inmate, the chief executive officer of the institution, the Bureau of Parole and the Board.

(c) Such notice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

10A:71-3.44 Board panel action: denial of parole

Upon determining to deny parole to a county inmate, the Board panel shall either establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole or direct the inmate to serve the balance of the sentence.

10A:71-3.45 Victim input

(a) Any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder victim shall be entitled to present a statement for the parole report, filed pursuant to N.J.A.C. 10A:71-3.7, to be considered during the parole hearing process or to testify to the Board concerning the victim's harm.

(b) At the time of sentencing, the prosecutor shall notify any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder victim of the opportunity to present a statement for the parole report to be considered during the parole hearing process or to give testimony to the Board concerning the victim's harm.

(c) Each victim or nearest relative of a murder victim shall be responsible for notifying the Board of his or her intent to submit a statement, or to testify, and to provide and keep current an appropriate mailing address.

(d) The statement or testimony of the victim or nearest relative of a murder victim may include the following:

1. The continuing nature and extent of any physical, psychological or emotional harm or trauma suffered;

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2. The extent of any loss of earnings or ability to work suffered by the victim; and

3. The continuing effect of the crime upon the victim's family.

(e) At the time public notice is given pursuant to N.J.A.C. 10A:71-3.8, the Board shall notify any victim or nearest relative of a murder victim who has previously contacted the Board of the opportunity to provide a statement for inclusion in the parole report or to present testimony at a parole hearing. The Board shall notify such person at the address of record.

(f) The victim or nearest relative of a murder victim shall notify the Board within 30 days from the date of the notice provided pursuant to (e) above of his or her intent to submit a statement or to testify at a parole hearing. This time period may be waived by the Board for good cause.

(g) Upon the victim or nearest relative of a murder victim submitting a written statement to the Board subsequent to notice being provided pursuant to (e) above, the statement shall be made a part of the Board's file on the inmate and the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

(h) Upon the victim or nearest relative of a murder victim informing the Board subsequent to notice being provided pursuant to (e) above that such person intends to testify, the Chairperson shall assign the inmate's case to a senior hearing officer for the purpose of receiving such person's testimony.

(i) Except as provided in N.J.A.C. 10A:71-3.48, the assigned senior hearing officer shall conduct a hearing within 30 days from the date the Board received notification pursuant to (h) above of the intent to offer testimony.

(j) The hearing shall be conducted at a time and place and on a date determined by the Chairperson or designee. Notice of the time, place and date of the hearing shall be provided to the victim or nearest relative of a murder victim in writing and shall be mailed at least 10 days prior to the hearing date.

(k) The hearing shall be recorded by an electronic recording device.

(l) The senior hearing officer shall prepare a written report within 14 days of the hearing date. A copy of the report shall be forwarded to the person offering testimony. A copy of the report shall be made a part of the Board's file on the inmate.

(m) Upon the completion of the written report, the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

(n) The hearing scheduled pursuant to this section shall be conducted, when possible, prior to a parole release hearing and prior to the appropriate Board member(s), Board panel or the Board rendering a decision pursuant to N.J.A.C. 10A:71-3.16 and 3.18. However, nothing herein shall be construed to preclude the Board from conducting a timely parole release hearing.

(o) If notice pursuant to (f) above is received subsequent to the conducting of an initial parole hearing but prior to a decision being rendered in the inmate's case, the appropriate Board member(s), Board panel or the Board shall not render a decision in the inmate's case until the hearing has been conducted and the written report prepared and made a part of the Board's file.

(p) If notice pursuant to (f) above is received subsequent to the rendering of a decision certifying parole release, the appropriate Board member(s), Board panel or the Board shall suspend the parole release date pursuant to N.J.A.C. 10A:71-

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5.1 pending the completion of the hearing and the submission of a report.

1. Within 14 days of submission of the report, the Board member(s), Board panel or Board shall:

i. Evaluate the information provided;

ii. Determine whether the decision shall be affirmed or modified;

iii. Determine whether a rescission hearing shall be conducted pursuant to N.J.A.C. 10A:71-5; and

iv. Notify the inmate and the Department in writing of its decision.

(q) Any and all statements or testimony of the victim or nearest relative of a murder victim submitted to the Board pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family shall not be deemed confidential and shall be released to the inmate unless the withholding of the statements or testimony is requested by the victim and the hearing officer determines that the release of the statements or testimony would endanger the safety of the person providing the statements or testifying. The Board on its own motion may for good cause identify all or part of the statements or testimony as confidential.

(r) The provisions of this section except for public notice required pursuant to N.J.A.C. 10A:71-3.8 shall be applicable to the cases of juvenile and county inmates.

(s) Nothing in this section shall preclude the Board from receiving statements or testimony from any victim injured as a result of a crime or the nearest relative of a victim.

(t) A victim or the nearest relative of a victim who has submitted a written statement for the parole report or testified at a hearing pursuant to this section shall be notified by the appropriate Board panel or the Board of the final decision rendered in the inmate's case.

### 10A:71-3.46 Informational hearing

(a) Upon public notice of an inmate's parole eligibility being issued pursuant to N.J.A.C. 10A:71-3.8, the Attorney General, the appropriate county prosecutor, any other criminal justice agency and any interested party whose information and comment may be relevant as to the necessity or desirability of an inmate's parole shall be permitted, upon their application \*[and subject to the approval of]\* \*to\* the Chairperson or designee, to submit to the appropriate panel or the Board evidence, to give testimony, examine and cross-examine witnesses and present such other information on all matters directly relevant to the parole of an inmate.

(b) The application shall be submitted to the Chairperson or designee in writing and shall include a description of the nature and type of evidence or testimony to be presented. A list of potential witnesses and a statement as to the relevancy of their testimony to the issue of parole must be submitted to the Chairperson or designee as part of the application or prior to the date of the hearing scheduled pursuant to this section.

(c) Upon receipt of the application \*[and upon approval by the Chairperson or designee]\* , the Chairperson or designee shall assign the case to a hearing officer for the conducting of a hearing.

(d) A designated representative shall notify the inmate in writing that a hearing will be scheduled for the purpose of receiving information relevant to his parole release. The inmate shall be informed of the identity of the agency or interested party requesting the hearing.

(e) Except as provided in N.J.A.C. 10A:71-3.48, the assigned hearing officer shall conduct the hearing within 30 days from the date the Chairperson or designee \*[approved]\* **\*received\*** the application submitted pursuant to (a) above.

(f) The hearing shall be conducted at a time and place and on a date determined by the Chairperson or designee. Primary consideration shall be given to the conducting of the hearing within the county most convenient for the majority of the parties concerned.

(g) A designated representative shall provide notification of the time, date and location of the hearing to all interested parties and the inmate. The notice shall be in writing and shall be mailed no later than 15 days prior to the date of the hearing.

(h) The hearing shall be informal and non-adversarial in nature. The hearing officer shall have the authority to exclude from participation in the hearing any person who attempts to use the hearing as a forum for public commentary or as a public contest or whose participation becomes more adversarial than informative in nature.

(i) Prior to any person offering testimony the hearing officer shall advise the person of the following:

1. That his testimony will be summarized in a written report;

2. That the person will receive a copy of that portion of the report summarizing his statement; and

3. That the inmate will receive a copy of the summarized statement unless the hearing officer determines that the release of the information would endanger the safety of the person.

4. The Board on its own motion may for good cause identify all or part of the testimony summarized in the written report as confidential.

(j) The admissibility of any statement, document or information shall not be governed by the statutory or judicial rules of evidence of this State. Any statement, document, or information relevant to the issue of the inmate's suitability for parole may be received as evidence. The hearing officer is authorized to exclude any statement, document or information not relevant to the issue of the inmate's suitability for parole.

(k) Upon the completion of the hearing, which shall be recorded by an electronic recording device, the hearing officer shall prepare a written report within 14 days of the hearing date. The report shall summarize the information, testimony and documentation admitted at the hearing. A copy of the complete summary report shall be forwarded to the agency or interested party originally requesting the conducting of a hearing and to the inmate and/or counsel. A copy of the summary of each of the witnesses' testimony shall be forwarded to each witness. A complete summary report shall be made a part of the appropriate Board panel's or Board's file on the inmate.

(l) The inmate and/or counsel shall have 30 days to prepare a written response to the hearing officer's summary report and to submit the response to the Board. In addition, upon request, the inmate shall be provided an opportunity to present relevant information to the hearing officer. The request shall be in compliance with (b) above.

(m) Upon receipt of the inmate's request to present relevant information, the hearing officer shall proceed in accordance with (f), (g), (h), (i), (j) and (k) above.

(n) The inmate and the agency or interested party originally requesting the conducting of a hearing shall have 14 days to prepare comments to the hearing officer's summary report and submit the comments to the Board.

(o) The inmate may be represented by an attorney or such other qualified representative as the inmate may designate at both the initial hearing segment, at which the inmate may not be present, and at any subsequent hearing segment at which the inmate submits information and/or testimony. If a subsequent hearing segment is conducted at the request of the inmate, the Attorney General, the prosecutor, a criminal justice agency or an interested party may appear, subject to the security regulations of the institution, and participate in the hearing.

(p) Upon completion of the hearing process, the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

(q) The hearing scheduled pursuant to this section shall be conducted, when possible, prior to a parole release hearing and prior to the appropriate Board member(s), Board panel or the Board rendering a decision pursuant to N.J.A.C. 10A:71-3.16 and 3.18. However, nothing herein shall be construed to preclude the Board from conducting a timely parole release hearing.

(r) Upon receipt of an application \*[and upon approval]\* by the Chairperson or designee subsequent to the conducting of an initial parole hearing and prior to a decision being rendered in the inmate's case, the appropriate Board member(s), Board panel or the Board shall not render a decision in the inmate's case until a hearing(s) has been conducted and the written report(s) prepared and made a part of the Board's file.

(s) Upon receipt of an application \*[and upon approval]\* by the Chairperson subsequent to the rendering of a decision certifying parole release, the appropriate Board member(s), Board panel or the Board shall suspend the parole release date pursuant to N.J.A.C. 10A:71-5.1 pending the completion of the hearing(s) and the submission of a report(s).

1. Within 21 days of submission of the report(s), the Board member(s), Board panel or the Board shall:

i. Evaluate the information provided;

ii. Determine whether the decision shall be affirmed or modified;

iii. Determine whether a rescission hearing shall be conducted pursuant to N.J.A.C. 10A:71-5; and

iv. Notify **\*the interested party who submitted the application pursuant to (a) above,\*** the inmate and the Department in writing of its decision.

(t) The provisions of this section, except for public notice required pursuant to N.J.A.C. 10A:71-3.8, shall be applicable to the cases of juvenile and county inmates.

#### 10A:71-3.47 Conditions for parole release

(a) Release on a parole release date certified by a Board member or members is conditioned upon:

1. The completion of a parole plan approved by the Board member or members certifying parole release and acceptable to the Bureau of Parole; and

2. Satisfactory completion of any specific pre-release conditions established by the Board member or members certifying parole release pursuant to N.J.A.C. 3.16(b)2 or 3.18(a)1.ii.; and

3. (No change.)

#### 10A:71-3.48 Waiver of Time Limits

(No change in text.)

### SUBCHAPTER 4. APPEALS

#### 10A:71-4.2 Appeals by inmates

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

(d) Any rescission of parole release date by a Board panel shall be appealable to the Board provided one of the following criteria is met:

1. The hearing officer or Board panel failed to consider material facts or failed to document that preponderance of the evidence indicates a substantial likelihood that the inmate will commit a crime if released on parole;

2. The Board panel's decision is contrary to written Board policy or procedure;

3. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest in the case which affected the decision.

(e) (No change in text.)

(f) A Classification of offender status pursuant to N.J.S.A. 30:4-123.12 shall be appealable to the adult Board panel \*provided\* one of the following criteria is met:

1.-4. (No change.)

(g) A classification of offender status pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.12 shall be appealable to the Board provided a showing is made that the adult Board panel's classification is contrary to written Board policy or procedure.

(h) (No change in text.)

10A:71-4.4 Review of hearing officer, board member or board panel decisions

(a) A Board panel may, upon its own motion for good cause, reconsider any decision to grant, deny or revoke parole.

(b) A Board member who participated as a hearing officer or Board panel member in a case may request that the Board review any decision of the Board panel on such case.

1. (No change.)

2. Such request shall be made by stating the reasons therefor in writing to the Chairperson. A copy of such request shall be forwarded to the inmate and the chief executive officer of the institution where the inmate is housed.

3. Such request shall be made within seven days from the date of issuance of the Board panel's decision.

4. The Chairperson shall schedule a meeting of the Board to consider such request within 45 days from the date the request was received.

5. The Chairperson shall advise the inmate and the chief executive officer of the institution where the inmate is housed in writing of the decision of the Board within 14 days of the decision.

(c) The Board may, upon the request of at least two Board members for good cause, review the decision of any hearing officer, Board member or Board panel.

1. Such request shall be made by stating the reason therefor in writing to the Chairperson. A copy of such request shall be forwarded to the inmate and the chief executive officer of the institution of incarceration.

2. Such request shall be made within 14 days from the date of issuance of the decision being reviewed.

3. The Chairperson shall schedule a meeting of the Board to consider such request within 45 days from the date the request was received.

4. The Chairperson shall advise the inmate and the chief executive officer of the institution of incarceration in writing of the decision of the Board within 14 days of the decision.

(d) (No change.)

SUBCHAPTER 5. SUSPENDING OR RESCINDING A PAROLE RELEASE DATE

10A:71-5.1 Suspension of a parole release date

(a) Any suspension by the Chairperson or a designated representative of a parole release date shall act to prohibit the release of the inmate by the Department on the original parole release date unless such suspension is subsequently vacated.

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

10A:71-5.2 Approval and acceptance of parole plan

(a) (No change.)

(b) If a parole plan has not been accepted by the appropriate supervisory agency, the inmate's parole release date shall be suspended by a designated representative of the Bureau of Parole pending acceptance of a parole plan. If such suspension exceeds 60 days from the parole release date, the Bureau of Parole shall advise the Board in writing as to the reasons for the failure to approve or accept a parole plan.

(c) Upon the Board receiving notification from the Bureau of Parole of the failure to approve or accept a parole plan, the Board member or members certifying parole release shall review the inmate's case, evaluate the reasons for the failure to approve or accept a parole plan, and determine if further action is appropriate.

10A:71-5.3 Alteration of parole eligibility

(a) If, by reason of an additional parole eligibility term which is aggregated pursuant to N.J.A.C. 10A:71-3.2, an inmate's parole eligibility date is altered, such parole release date shall be suspended.

(b) If an inmate receives an additional sentence as a young adult offender, any parole release date shall be suspended pending consideration of whether a new primary parole eligibility date should be established pursuant to N.J.A.C. 10A:71-3.3 and 5.5. If a new primary parole eligibility date is established, the original parole release date shall be suspended.

(c) If an inmate receives an additional sentence pursuant to N.J.S.A. 2A:113-4, N.J.S.A. 2A:164-17, or N.J.S.A. 2C:1-1(b), such inmate may request that the original parole release date be suspended.

1.-2. (No change.)

10A:71-5.6 Parole rescission hearing—scheduling

(a) (No change.)

(b) The purpose of the rescission hearing shall be to determine whether, due to circumstances of an institutional infraction committed by such inmate and/or due to circumstances of the inmate's case which were not previously considered, there is good cause for the Board panel to reconsider the prior determination certifying parole release.

(c) Upon the initiation of the rescission hearing process, the parole release date shall be suspended for a period of not more than 60 days, and within said time period, a rescission hearing shall be conducted unless the inmate requests a postponement of the rescission hearing.

(d) If the inmate requests a postponement of the rescission hearing, the postponement shall be granted by the hearing officer or Board panel. Such request shall be made in writing and shall be made a part of the inmate's case record.

10A:71-5.7 Parole rescission hearing—notice of hearing

(a) (No change in text.)

(b) Such notification shall inform the inmate of the following rights to which he or she shall be entitled at the rescission hearing;

1.-5. (No change.)

6. The right to confront and cross-examine adverse witnesses upon request, unless the hearing officer determines that such witnesses would be subjected to risk of harm.

7.-8. (No change.)

## SUBCHAPTER 6. SUPERVISION

## 10A:71-6.1 Administration

(a) (No change.)

(b) Supervision shall continue until the expiration of the maximum sentence or sentences subject, however, to earlier discharge from parole in accordance with the provisions of N.J.A.C. 10A:71-6.9.

## 10A:71-6.3 Certificate of parole

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

(c) Responsibility for the delivery of the certificates of parole shall rest with the Chief of the Bureau of Parole or a designated representative of the Board.

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

## 10A:71-6.4 Conditions of parole

(a) The certificate of parole shall contain the following general conditions of parole:

1.-3. (No change.)

4. You are to notify your parole officer immediately after any arrest and after accepting any pre-trial release including bail.

5. You are to obtain approval of your parole officer:

i. For any change in your residence or employment location.

ii. Before leaving the state of your approved residence for longer than 24 hours, except as otherwise directed for good cause by the parole officer.

6. You are not to own or possess a firearm for any purpose.

7. You are required to make payment to the Bureau of Parole of any fine or penalty or restitution imposed by the sentencing court.

(b) (No change.)

(c) In the case of a county inmate, the performance of public service for the remainder of the term of the sentence shall be a required condition of parole where appropriate. **\*[The Bureau of Parole shall document for the record the basis for a county inmate not performing public service]\***  
**\*The Chairperson shall be authorized to pursue a contract for services for the supervision by the appropriate county probation department for the performance of public service by county inmates.\***

(d) (No change in text.)

(e) Additional special conditions may be imposed by the District Parole Supervisor when, **\*[on]\* \*in\*** the opinion of the District Parole Supervisor, such conditions would reduce the likelihood of recurrence of criminal or delinquent behavior. The parolee and the Board shall be given written notice upon the imposition of such additional conditions.

(f) If a parolee owes a fine, penalty or restitution, the District Parole Supervisor shall, unless otherwise ordered by the Board or members certifying parole release or the sentencing court, be responsible for specifying a reasonable schedule for payment of such fine, penalty or restitution.

## 10A:71-6.5 Restitution

(a) (No change.)

(b) The Board shall identify for the sentencing court the elements or factors to be considered in computing the amount of restitution and specify to the court the manner in which the following factors are to be applied.

1. Limitation of restitution to actual loss or damage caused by the crime. Damage may be limited to medical expenses and related costs, funeral expenses, specific personal property losses, other losses if clearly provable, and lost wages for

limited periods of time which do not involve assessments of life expectancy.

2. Restitution is to be made to the persons most directly affected by the parolee's criminal acts.

3. Restitution must be related to the parolee's ability to pay and should not exceed an amount which would jeopardize its rehabilitative purpose.

4. Restitution must be directly related to the losses occurring as a result of the criminal act and to the attitude of the offender.

(c) Upon being notified by the sentencing court as to amount of restitution set, the Board shall notify the inmate, or, if released on parole, the parolee and the District Parole Supervisor of the amount of restitution.

## 10A:71-6.6 Modification of conditions

(a) (No change.)

(b) Except as provided in N.J.A.C. 10A:71-6.4(e), a parolee or the parolee's parole officer may apply to the appropriate Board panel at any time for modification of the conditions of parole.

(c)-(g) (No change.)

## 10A:71-6.7 Adjustment hearings: State prison parolees

(a) (No change.)

(b) Such adjustment hearings shall be conducted by a hearing officer appointed by the Chief of the Bureau of Parole.

1. (No change.)

2. Such appointment shall be made by that authority of the Chairperson, and shall in no way limit or otherwise alter the authority of the Chairperson to designate or appoint a hearing officer for adjustment hearings in cases where the Chairperson deems such action appropriate.

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

## 10A:71-6.8 Forfeiture of commutation time credits

(a) If the preliminary hearing officer pursuant to N.J.A.C. 10A:71-7.4 or the adult Board panel pursuant to N.J.A.C. 10A:71-7.12 determines that a State prison parolee has violated a condition of parole but that such violation is not serious or persistent or that revocation of parole is not desirable, the hearing officer or Board panel may order the forfeiture of up to 365 days of commutation time credits.

(b) Any such action by the preliminary hearing officer shall be appealable to the adult Board panel pursuant to the provisions of N.J.A.C. 10A:71-6.7(f).

## 10A:71-6.9 Discharge from parole

(a) The appropriate Board panel may grant any parolee a complete discharge from parole prior to the expiration of the maximum term for which he or she was sentenced, provided that;

1.-2. (No change.)

3. The parolee has made full payment of any fine or penalty or restitution.

(b) The Board panel will consider requests for discharge after the following periods of parole supervision have been completed:

1. (No change.)

2. Except as provided above, in the case of juvenile parolees for murder and manslaughter and in the case of adult parolees serving sentences for murder, manslaughter, kidnapping, aggravated sexual assault (including attempts), robbery first degree, arson, aggravated assault second degree, and sale or distribution or sale of controlled dangerous substance and possession of controlled dangerous substance with intent to

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distribute, after a period of two years provided the parolee is under advanced supervision status.

3.-5. (No change.)

(c) (No change.)

(d) When a parolee has completed two years of parole supervision and thereafter on an annual basis, the parole officer and the District Parole Supervisor shall review the case to determine whether good reason exists to require continued supervision.

1.-3. (No change.)

(e) (No change.)

### SUBCHAPTER 7. REVOCATION OF PAROLE

#### 10A:71-7.2 Issuance of warrants

(a) (No change.)

(b) In accordance with the provisions of N.J.S.A. 30:4-123.62, the Chief of the Bureau of Parole\*, **the Supervisor of the Office of Interstate Services\*** and the District Parole Supervisors are hereby authorized to issue warrants on behalf of the Chairperson.

(c) (No change.)

(d) If an emergency exists and if the individual(s) authorized to issue warrants pursuant to (b) and (c) above are not available, a parole officer may issue a warrant pending review by the individual(s) authorized to issue warrants pursuant to (b) and (c) above.

1. When a warrant is issued pursuant to (d) above, the individual(s) authorized to issue warrants pursuant to (b) or (c) above shall review the basis for the issuance of such warrant within 48 hours of the issuance of the warrant.

2. (No change.)

#### 10A:71-7.3 Prosecutor's motion for accelerated revocation

(a) (No change.)

(b) If the prosecuting authority determines that the charges against the parolee are of a serious nature and the parolee otherwise poses a danger to public safety, the prosecuting authority may apply in writing to the Chairperson or his or her designated representative for the prompt initiation of revocation proceedings. Such application shall include:

1.-2. (No change.)

3. Appropriate discovery material which will clearly document that the parolee may have committed a new crime or an act of delinquency; and

4. (No change.)

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

(e) The prosecuting authority may appear at any preliminary and any revocation hearing initiated pursuant to this subsection in order to present evidence and/or testimony in regard to the parolee's alleged violation of parole conditions.

(f)-(g) (No change.)

#### 10A:71-7.6 Designation of preliminary hearing officers

(a) Preliminary hearings shall be conducted by a hearing officer appointed by the Chief of the Bureau of Parole.

(b) (No change.)

(c) Such appointment shall be made by authority of the Chairperson, and shall in no way limit or otherwise alter the authority of the Chairperson to designate or appoint a hearing officer for preliminary hearings in cases where the Chairperson deems such action appropriate.

#### 10A:71-7.7 Preliminary hearing; notice of hearing

(a) (No change.)

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(b) Such notice shall be served upon the parolee by personal service or by regular mail to the institution where the parolee is housed or to the address of record.

(c) (No change.)

#### 10A:71-7.9 Status of parolee pending parole revocation hearing

(a) (No change.)

(b) When the hearing officer determines that probable cause exists to believe that the parolee has seriously or persistently violated conditions of parole, it shall be the responsibility of the hearing officer to determine whether the parolee shall be taken into custody pursuant to N.J.A.C. 10A:71-7.2, continued in custody or released from custody pending the revocation hearing.

1. (No change.)

2. The parolee shall be taken into custody or continued in custody only where, in the opinion of the hearing officer, the parolee poses a danger to the public safety or where the parolee may not appear at the revocation hearing.

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

#### 10A:71-7.10 Preliminary hearing; notice of decision

(a) At the conclusion of the preliminary hearing, it shall be the responsibility of the hearing officer to forward a Notice of Decision to the parolee and the parolee's attorney, the Department and the appropriate Board panel within seven days of the date of the preliminary hearing.

(b) (No change.)

(c) Such notice shall be served upon the parolee's attorney and the parolee by personal service or by regular mail to the institution where the parolee is housed or to the address of record.

(d) The parolee and the parolee's attorney may submit written exceptions or comments on the hearing summary. Such exceptions shall be forwarded to the appropriate Board panel within seven days after the receipt of the hearing officer's report unless the parolee waives the right to submit exceptions.

#### 10A:71-7.11 Board panel action pending revocation hearing

(a) The Board panel, upon review of the preliminary hearing Notice of Decision, may modify or overrule the determinations of the preliminary hearing officer.

(b) If the Board panel modifies or overrules the determinations of the preliminary hearing officer, the panel shall take appropriate action on the parolee's case and shall notify the parolee, the parolee's attorney, and the hearing officer in writing as to its decision and the reasons therefor.

(c) (No change.)

#### 10A:71-7.12 Parole revocation hearing

(a) (No change.)

(b) A parole revocation hearing may be conducted when the parolee has been convicted of a disorderly persons offense committed while on parole.

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

(e) The parole revocation hearing shall be conducted by a hearing officer who shall be a designated representative of the Board and who did not conduct the preliminary hearing.

#### 10A:71-7.13 Revocation hearing; scheduling

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

(d) If the request for postponement by the hearing officer or by a parolee who is not in custody is due to unanticipated scheduling problems or other emergent circumstances, such postponement shall be granted by the appropriate Board

panel and shall not exceed 60 days from the originally scheduled date of the revocation hearing.

10A:71-7.14 Revocation hearing; notice of hearing

(a) (No change.)

(b) Such notice shall be served upon the parolee by personal service or by regular mail to the institution where the parolee is housed or to the parolee's address of record.

(c) Such notice shall inform the parolee of the following: the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the name(s) of any witness(es) scheduled to appear at the hearing; and the following rights to which the parolee shall be entitled at the revocation hearing:

1.-4. (No change.)

5. The right to have the hearing officer issue a subpoena to compel the appearance of witnesses, provided that a prima facie showing is made that the prospective witnesses will provide material testimony relevant to the alleged violation(s) of parole.

6.-9. (No change.)

10A:71-7.15 Record of the revocation hearing

(a) (No change.)

(b) The hearing officer shall prepare a written summary which shall summarize the revocation hearing and contain the hearing officer's opinion as to whether the alleged violation(s) has been substantiated and the reason(s) therefor.

1. (No change.)

2. A copy of the hearing summary shall be forwarded to the parolee's attorney or directly to the parolee where he or she has appeared pro se in order that the parolee or his or her attorney may object to or comment on the hearing summary by submitting written exceptions to such summary. Such exceptions shall be forwarded to the appropriate Board panel within seven days after receipt of the hearing officer's hearing summary. **\*A copy of the hearing summary shall also be forwarded to the appropriate District Parole Supervisor.\***

(c) The hearing officer may verbally advise the parolee at the time of the hearing of the hearing officer's opinion as to whether the alleged violation(s) has been substantiated.

10A:71-7.16 Board panel action; schedule of future parole eligibility dates upon revocation of parole

(a) After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12, and, if parole is revoked, the two-member Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

(b) Except as provided herein, upon revocation of parole, an adult inmate shall serve 12 months, a young adult inmate shall serve nine months, and a juvenile inmate shall serve six months, if the inmate has committed one of the following violations of parole:

1. Failure to report to the parole officer, N.J.A.C. 10A:71-6.4(a)3, provided that such parolee is declared by the District Parole Supervisor to be missing from parole supervision.

2. Owning or possessing a firearm for any purpose, N.J.A.C. 10A:71-6.4(a)6.

3. Failure to comply with any special condition of parole imposed pursuant to N.J.A.C. 10A:71-6.4(d) or 6.4(e).

(c) The future parole eligibility date required pursuant to (b) above may be increased or decreased by up to three months when, in the opinion of the two-member Board panel

pursuant to (n) and (o) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(d) Except as provided herein, upon revocation of parole, an adult inmate shall serve eight months, a young adult inmate shall serve six months and a juvenile inmate shall serve four months, if the inmate has violated, by non-criminal conduct, any parole condition not specified under (b), above.

(e) The future parole eligibility date required pursuant to (d) above may be increased or decreased by up to three months in the case of an adult inmate or by up to two months in the case of a young adult or juvenile inmate when, in the opinion of a two-member Board panel pursuant to subsections (n) and (o), below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(f) Except as provided herein, upon revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve:

1. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a fourth degree crime shall serve less than eight nor more than 12 months.

2. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a third degree crime or for possession of a controlled dangerous substance shall serve less than 12 nor more than 16 months.

3. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a second degree crime, for sale or distribution of a controlled dangerous substance or for possession of controlled dangerous substance with intent to distribute shall serve less than 16 nor more than 28 months.

4. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a first degree crime shall serve less than 28 nor more than 48 months.

5. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for the commission of the crimes of murder \*and\* \*or\* kidnapping shall serve less than four years, eight months nor more than eight years, four months.

6. Upon the second or subsequent revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve whatever time remains on the maximum sentence(s).

(g) Except as provided herein, upon a two-member adult Board panel determining that an adult inmate shall serve a future parole eligibility term upon revocation of parole, the two-member adult Board panel shall establish such terms as follows:

1. The two-member adult Board panel shall establish the following:

i. A term of ten months for the commission of a fourth degree crime;

ii. A term of 14 months for the commission of a third degree crime or for possession of controlled dangerous substance;

iii. A term of 22 months for the commission of a second degree crime, for the sale or distribution of controlled dangerous substance or for the possession of controlled dangerous substance with intent to distribute;

iv. A term of 38 months for the commission of a first degree crime;

v. A term of six years, six months for the commission of the crime of murder or kidnapping.

2. The term established may be increased or decreased within the limits provided by (f) above when, in the evaluation of the two member adult Board panel, the aggravating and mitigating factors as set forth in (n) and (o) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(h) Except as provided herein, upon a two member young adult Board panel determining that a young adult inmate shall serve a future eligibility term upon the revocation of parole, the two-member young adult Board panel shall establish the following:

1. Except as provided in (i) and (p) below, a term of 8 months for the commission of a fourth degree crime.

2. Except as provided in (i) and (p) below, a term of ten months for the commission of a third degree crime or possession of controlled dangerous substance.

3. Except as provided in (i) and (p) below, a term of 16 months for the commission of a second degree crime, for the sale or distribution of controlled dangerous substance or for the possession of controlled dangerous substance with intent to distribute.

4. Except as provided in (i) and (p) below, a term of 24 months for the commission of a first degree crime.

5. Except as provided in (i) and (p) below, a term of 30 months for the commission of the crimes of murder or kidnapping.

(i) The future parole eligibility date required pursuant to (h) above may be increased or decreased when, in the opinion of the two-member young adult Board panel pursuant to (n) or (o) below, the circumstances of the parole violation and the characteristics and past records of the parolee warrant such consideration. The increase or decrease shall be no more than the following:

1. Two months in the case of the commission of a fourth degree crime;

2. Four months in the case of the commission of a third degree crime or possession of controlled dangerous substance;

3. Six months in the case of the commission of a second degree crime, sale or distribution of controlled dangerous substance or possession of controlled dangerous substance with intent to distribute;

4. Eight months in the case of the commission of a first degree crime;

5. Ten months in the case of the commission of the crimes of murder or kidnapping.

(j) Except as provided herein, upon the juvenile Board panel determining that a juvenile inmate shall serve a future parole release term upon revocation of parole, the juvenile Board panel shall establish the following:

1. Except as provided in (k) and (p) below, a term of six months for the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;

2. Except as provided in (k) and (p) below, a term of eight months for the commission of a third degree crime, an offense which constitutes a crime of the third degree if committed by an adult or the offense of possession of controlled dangerous substance;

3. Except as provided in (k) and (p) below, a term of 12 months for the commission of a second degree crime, an offense which constitutes a crime of the second degree if committed by an adult, the offense of sale or distribution of controlled dangerous substance or the offense of possession of controlled dangerous substance with intent to distribute;

4. Except as provided in (k) and (p) below a term of 16 months for the commission of a first degree crime or an

offense which constitutes a crime of the first degree if committed by an adult;

5. Except as provided in (k) and (p) below, a term of 20 months for the commission of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

(k) The future parole release term required pursuant to (j) above may be increased or decreased when in the opinion of the juvenile Board panel, pursuant to (n) or (o) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such consideration. The increase or decrease shall be no more than the following:

1. Two months in the case of the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;

2. Four months in the case of the commission of a third degree crime, an offense which constitutes a crime of the third degree if committed by an adult or the offense of possession of controlled dangerous substance;

3. Six months in the case of the commission of a second degree crime, an offense which constitutes a crime of the second degree if committed by an adult, the offense of sale or distribution of controlled dangerous substance, or the offense of possession of controlled dangerous substance with intent to distribute;

4. Eight months in the case of the commission of a first degree crime or an offense which constitutes a crime of the first degree if committed by an adult;

5. Ten months in the case of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

(l) Except as provided herein, an inmate, upon the revocation of parole for the commission of crime while on parole, shall serve at least six months or that portion of the custodial term remaining whichever, is less.

(m) In no case shall a future parole eligibility date established pursuant to (b), (c), (d), (e), (f), (g), (h), (i) above or the future parole release date established pursuant to (j) and (k) above be greater than the balance of the custodial term remaining.

(n) A two-member Board panel may decrease, pursuant to (c), (e), (g)2 or (i) above, the future parole eligibility date required pursuant to (b), (d), (f), (g)1 or (h) above, or decrease pursuant to (k) above the future parole release date required pursuant to (j) above if the two-member Board panel determines that one or more of the following mitigating factors is present:

1.-7. (No change.)

(o) A two-member Board panel may increase, pursuant to (c), (e), (g)2 or (i) above, the future parole eligibility date required pursuant to (b), (d), (f), (g)1, or (h) above or decreased pursuant to (k) above, the future parole release date required pursuant to (j) above, if the two member Board panel determines that one or more of the following aggravating factors is present:

1.-7. (No change.)

(p) A three-member Board panel may establish a future parole eligibility date which differs from that otherwise required by the provisions of this section if the future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which would otherwise be established pursuant to this section is clearly inappropriate in consideration of the circumstances of the parole violation and the characteristics and prior criminal record of the parolee.

1. If, in the opinion of a two-member Board panel revoking parole, the future parole eligibility date or, in the case of a

juvenile inmate, the future parole release date which would otherwise be established pursuant to this section is clearly inappropriate as provided herein, the two-member Board panel shall refer such case for a three-member Board panel review for the purpose of establishing a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

(i) In such instances, the third Board panel member shall review the record.

2. The two-member Board panel shall, at least 14 days prior to the three-member Board panel's determination, notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.17 that a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, pursuant to this section has not been established and the reasons therefor and that a three member Board panel review of the record will be scheduled.

3. The three member Board panel shall, upon disposition of the case, state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date which differs from that otherwise required by the provisions of this section.

4. The decision of the three-member Board panel to establish a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that required by the provisions of this section shall be by unanimous decision only. Failure to reach an unanimous decision shall result in the referral of the inmate's case to the Board for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

5. If the three-member Board panel fails to reach an unanimous decision, the three-member Board panel shall notify the inmate and the inmate's attorney, in writing, that his case has been referred to the Board for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

6. The Board's establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date shall be based on the review of the record. Upon disposition of the case, the Board shall state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that otherwise required by the provisions of this section.

(q) Any future parole eligibility term determined pursuant to this section shall commence on the date the parolee was returned to custody as a parole violator, unless otherwise determined as a result of a court imposing a sentence for a crime committed while on parole.

(r) In the case of a county inmate who has been granted parole and whose parole has been revoked, the inmate shall not be credited for any time served on parole and shall not be eligible for parole consideration on the remainder of the original county sentence.

(s) This section shall apply to all parolees whose parole is revoked by the Board or a Board panel after May 15, 1980, and shall apply to all inmates who have not yet begun to serve time on a parole violation. The adult Board panel may apply this section to any adult inmate currently serving a parole violation who requests such application.

(t) The prior provisions of (d), (f), (g) (redesignated as (h) above) and (h) (redesignated as (i) above) shall apply to inmates who have violated their parole prior to \*[the effective date of the amendments]\* **\*May 6, 1985\*** and shall continue

in effect for that purpose. The amendments to (d), (f), (g), (h) above (formerly (g)) and (i) above (formerly (h)) shall apply to inmates who have violated their parole on or after \*[the effective date of the amendments]\* **\*May 6, 1985.\***

(u) The amendments to (o) above shall apply to the cases of inmates in which a parole warrant has been executed on or after \*[the effective date of the amendments]\* **\*May 6, 1985.\***

10A:71-7.17 Revocation hearing; notice of decision

(a) Within 21 days of the revocation hearing, the appropriate Board panel shall issue a written Notice of Decision to the parolee and the parolee's attorney, **\*the appropriate District Parole Supervisor\***, the Department and the Board.

(b) (No change.)

10A:71-7.18 Adult diagnostic and treatment center examination for sex offenders

(a) If a parolee has been sentenced and paroled under provisions of the "Sex Offender Act," N.J.S.A. 2C:47-1, et seq., and if the adult Board panel has revoked parole, a request for a complete psychiatric examination, containing a copy of the hearing summary of the revocation hearing and the adult Board panel's Notice of Decision, shall be forwarded to the chief executive officer of the Adult Diagnostic and Treatment Center.

(b) The adult Board panel, in cooperation with the chief executive officer of the Adult Diagnostic and Treatment Center, shall schedule such examination and forward written notice of the date, time and place of such examination to the parolee and the parolee's attorney and, when the parolee is in custody, to the chief executive officer of the institution of incarceration.

(c) Such examination shall be for the purpose of determining whether the violation(s) of the parole conditions reflects emotional or behavioral problems as a sex offender, evidence that the parolee is incapable of making an acceptable social adjustment in the community, and the necessity for continued custodial supervision and further specialized treatment as a sex offender.

(d) As soon as practicable upon completion of such examination, it shall be the responsibility of the chief executive officer of the Adult Diagnostic and Treatment Center to forward a written report of such examination to the adult Board panel.

(e) (No change in text.)

(f) The adult Board panel shall forward a copy of such report to the parolee's attorney, or directly to the parolee where he or she has appeared pro se, provided said report is not classified as confidential by the rules and regulations of the Department, in order that the parolee or his or her attorney may object or comment on the report by submitting written exceptions. Such exceptions shall be forwarded to the adult Board panel within a reasonable period of time after the receipt of the report.

(g) If the Adult Diagnostic and Treatment Center staff determines that the following conditions exist, then the adult Board panel shall, if it concurs with the report, vacate its revocation of parole and release the inmate on parole as soon as practicable:

1. That the parolee's conduct does not reflect emotional or behavioral problems as a sex offender;

2. That there is no evidence that the parolee is incapable of making an acceptable social adjustment in the community; and

3. That the parolee's condition does not warrant continued custodial supervision and further specialized treatment as a sex offender.

(h) If the Adult Diagnostic and Treatment Center staff determines that the following conditions exist, the adult Board panel shall affirm the revocation \*[hearing]\* \*of parole\*:

1. That the parolee's conduct does reflect emotional or behavioral problems as a sex offender;

2. That there is evidence that the parolee is incapable of making an acceptable social adjustment in the community; and

3. That the parolee's condition does warrant continued custodial supervision and further specialized treatment as a sex offender.

(i) An inmate who has had his parole revoked and who remains confined under the provisions of the "Sex Offender Act" shall be considered for parole by the adult Board panel upon the recommendation by the Special Classification Review Board that the inmate is capable of making an acceptable social adjustment in the community.

10A:71-7.19 Withdrawal of parole warrants

(a) When a warrant for the arrest of a parolee is withdrawn, such warrant shall be immediately cancelled. Such cancellation shall not alter any forfeiture of time pursuant to N.J.S.A. 30:4-123.65.

(b) If the Board panel determines that a parole warrant was issued in error, upon withdrawal of such warrant the warrant shall be rescinded. Such rescission shall eliminate any forfeiture of time pursuant to N.J.S.A. 30:4-123.65.

10A:71-7.20 Revenue cases

(a) (No change.)

(b) If a Board panel revokes parole pursuant to (a) above, the Board panel shall determine the length of time to be served; however, the term shall not exceed one day for each \$20.00 of the fine or penalty or restitution, nor 40 days if the fine or penalty or restitution was imposed upon a disorderly persons offense, nor 25 days if the fine or penalty or restitution was imposed for a petty disorderly persons offense nor one year in any case, whichever is the shorter period.

(c) In cases where a parolee has violated a condition of parole requiring payment of restitution and such condition was imposed pursuant to N.J.A.C. 10A:71-6.5, the Board panel may suspend the condition, modify the payment schedule or request the sentencing court to reduce the amount of restitution. If none of these alternatives is warranted, the Board panel, upon revoking parole, may impose a term of incarceration pursuant to (b) above.

SUBCHAPTER 8. CERTIFICATE OF GOOD CONDUCT

10A:71-8.1 Definition

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

(c) Issuance of a Certificate of Good Conduct pursuant to N.J.S.A. 2A:168A-1, et seq. precludes a licensing authority, as defined in N.J.S.A. 2A:168A-2, from disqualifying or discriminating against the applicant because of any conviction for a crime unless N.J.S.A. 2C:51-2 is applicable.

**INSURANCE**  
**(a)**

**INSURANCE**  
**DIVISION OF ACTUARIAL SERVICES**

**Health Insurance**

**Minimum Standards, Health Insurance Solicitation, Individual Health Insurance Rate Filings**

**Readoption: N.J.A.C. 11:4-16, 17 and 18**

Proposed: March 4, 1985 at 17 N.J.R. 554(a).  
Adopted: April 15, 1985 by Hazel Frank Gluck, Commissioner, Department of Insurance.  
Filed: April 15, 1985 as R.1985 d.221, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1c-6(e), 17B:22-1, 17B:26-1 et seq., 17B:26-44.6 and 17B:26-45.

Effective Date: April 15, 1985.  
Expiration Date pursuant to Executive Order No. 66(1978): April 15, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 11:4-16, -17 and -18.

**(b)**

**DIVISION OF LIFE AND HEALTH**

**Employees' Dental Benefit Plans; Alternate Coverage**

**Adopted Amendments: N.J.A.C. 11:10-2**

Proposed: January 7, 1985 17 N.J.R. 45(a).  
Adopted: April 15, 1985 by Hazel Frank Gluck, Commissioner, Department of Insurance.  
Filed: April 15, 1985 as R.1985 d.220, **without change**.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); P.L. 1983, c.142 through 145 (17:48D-9.1 to 9.3; 48C-18.1 to 18.3; 17B:27-51.10a to 51.10c; 17B:44.4 to 44.6).

Effective: May 6, 1985.  
Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

**Summary of Public Comments and Agency Response:**

The Department received only two comments from the industry in regard to the proposed amendments to N.J.A.C. 11:10-2 Employees' Dental Benefit Plans; Alternate Coverage.

The first comment was from the New Jersey Dental Association's Executive Director and applauded the proposed amendments to the rule.

The other comment was from the counsel for a DPO, the Atlantic Southern Dental Foundation. Although counsel indicated that the proposal is appropriate under a "narrow reading" of the statutes, he suggested that the rule be amended to require at least one non-insured alternative plan be offered whenever a traditional plan is offered. Counsel argued that it would be advantageous to the consumer because the non-traditional plans offer greater benefits. Counsel also argued that it would allow for true open competition, and correct the "discriminatory and therefore unconstitutional nature" of the statutes which authorize the rule, namely P.L. 1983, Chapters 142 through 145.

Counsel's suggestion is beyond the scope of this rule and requires a statutory amendment.

Full text of the adoption follows.

#### 11:10-2.2 Scope and application

(a) (No change.)

(b) Insurers, dental plan organizations, and dental service corporations which are authorized to enter into contracts providing dental coverage are also subject to this subchapter.

#### 11:10-2.3 Definitions

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

"Alternative coverage" means a plan that permits covered persons to obtain dental services from any licensed dentist.

"Dental plan contract" means any contract issued by a health insurer, dental plan organization, or dental service corporation which restricts covered persons in selecting the providers of dental services to a single provider or a limited number of providers.

"Enrollment period" means a period of time, of not less than one month's duration, prior to the renewal of a dental plan contract during which employees or members are afforded the option to be covered under the dental plan contract or alternative coverage.

"Other organization" means a group of 25 or more members to which a dental plan contract has been or is to be issued including, but not limited to, labor unions and associations.

"Renewal" means to begin a new term of the contract or to add an amendment to the contract.

#### [11:10-2.3] 11:10-2.4 Notification of affected parties (No change in text.)

#### 11:10-2.5 General rules

(a) Each health insurer, dental service corporation, or dental plan organization shall, at the time a dental plan contract is offered or at the time of renewal, obtain written verification from each employer or other organization of compliance with P.L. 1983, c.142 through 145, and this subchapter.

(b) Each employer or other organization, at the time of offering or renewal of a dental plan contract shall furnish to the health insurer, dental service corporation, or dental plan organization written verification of compliance with P.L. 1983, c.142 through 145 and this subchapter.

(c) Each employer or other organization at the time of offering or renewal of a dental plan contract shall provide in the written notice required by N.J.A.C. 11:10-2.4(b) and (c) an outline of the differences in coverages and cost to the employee or members and their eligible dependents between a dental plan contract and the alternative coverage.

(d) The alternative coverage may be provided through an insurance contract, on a self-funded basis, or by any means

which meets the approval of the Commissioner of Insurance.

(e) Each employer or other organization shall contribute to the alternative coverage an amount equal to the premium or cost which it pays or contributes to the dental plan contract. Such contribution shall be adjusted when the premium or cost which it pays or contributes to the dental plan changes.

[11:10-2.4] 11:10-2.6 Separability  
(No change in text.)

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION OF CRIMINAL JUSTICE

##### Instructor Certification

##### Adopted Amendment: N.J.A.C. 13:1-4.6

Proposed: February 19, 1985 at 17 N.J.R. 377(a).

Adopted: April 10, 1985 by Leo A. Culloo, Executive Secretary, New Jersey Police Training Commission.

Filed: April 15, 1985 as R.1985 d.226, **without technical changes.**

Authority: N.J.S.A. 52:17B-71h.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): July 19, 1988.

Summary of Public Comments and Agency Responses:  
**No comments received.**

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

#### SUBCHAPTER 4. INSTRUCTOR CERTIFICATION

##### 13:1-4.6 Certification requirements for instructors of specialized subjects

(a) Applicants who seek certification to instruct in specialized subjects must possess the basic qualifications set forth in N.J.A.C. 13:1-4.1 through 13:1-4.4 and, further, must comply with the following requirements:

1. An individual seeking certification to serve as a firearms instructor must successfully complete a commission-recognized firearms instructor course. Under the immediate supervision of a school's Range Master, the individual must successfully:

- i. Identify the principal parts of the weapons used in the training program;
- ii. Demonstrate familiarity with the proper and safe handling of weapons;
- iii. Demonstrate familiarity with the established range safety rules; and
- iv. Score no less than 90 in the commission-required firearms course.

2. In order to be eligible for recertification, instructors used for firearms training must successfully perform (a)li

through iv above annually under the immediate supervision of a Range Master.

3. An individual seeking certification as a radar instructor must meet the following requirements:

i. Prior completion of a Course for Radar Operators, which shall have included a minimum of eight hours of training consisting of four hours of classroom instruction and four hours of supervised practice training;

ii. Two years of experience as a radar operator, with a minimum of 80 hours of hands-on experience;

\*iii.\* \*4.\* Successful completion of a commission-recognized Course for Radar Instructors.

**(a)**

**DIVISION OF MOTOR VEHICLES**

**Licensing Service  
Titles**

**Readoption: N.J.A.C. 13:21-4.1 through  
13:21-4.4**

**Adopted Repeal: N.J.A.C. 13:21-4.6**

Proposed: February 19, 1985 at 17 N.J.R. 377(b).  
Adopted: March 27, 1985 by Clifford W. Snedeker,  
Director, Division of Motor Vehicles.  
Filed: April 2, 1985 as R.1985 d.200, **without change**.

Authority: N.J.S.A. 39:10-4.

Effective Date: April 15, 1985.  
Expiration Date pursuant to Executive Order No.  
66(1978): April 15, 1990.

**Summary of Public Comments and Agency Responses:  
No comments received.**

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:21-4.

**Full text** of the adopted amendment to the readoption follows.

13:21-4.6 (Reserved)

**(b)**

**DIVISION OF MOTOR VEHICLES**

**Licensing Service  
Bus Drivers**

**Readoption: N.J.A.C. 13:21-14  
Adopted Repeal: N.J.A.C. 13:21-14.4**

Proposed: March 4, 1985 at 17 N.J.R. 556(a).  
Adopted: April 9, 1985 by Clifford W. Snedeker, Director, Division of Motor Vehicles.  
Filed: April 11, 1985 as R.1985 d.205, **without change**.

Authority: N.J.S.A. 39:3-10, 39:3-10.1 and 39:5-30.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 6, 1990.

**Summary of Public Comments and Agency Responses:  
No comments received.**

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:21-14.

**Full text** of the adopted repeal appears at N.J.A.C. 13:21-14.4.

13:21-14.4 (Reserved)

**(c)**

**BOARD OF MEDICAL EXAMINERS**

**Licensing Examinations and Endorsements,  
Fee Schedule, Limited Exemptions from  
Licensure Requirements**

**Proposed Amendments: N.J.A.C. 13:35-3.1,  
3.2, 3.3, and 3.4**

Proposed: March 4, 1985, at 17 N.J.R. 562(a).  
Adopted: April 10, 1985 by the New Jersey State Board of Medical Examiners, Edward W. Luka, M.D., President.  
Filed: April 15, 1985 as R.1985 d.224, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 45:9-2.

Effective Date: May 6, 1985.  
Expiration Date pursuant to Executive Order No. 66(1978): August 1, 1988.

**Summary of Public Comments and Agency Responses:  
No comments received.**

Upon adoption the Board amended N.J.A.C. 13:35-3.1 by adding subsection (e), which provides one last opportunity for those persons whose test results on the prior FLEX examination were immediately below the required passing grade. Those persons will be permitted to take the old FLEX examination which is now being phased out, at one final text examination to be given in June 1985.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***).

13:35-3.1 Federation licensing examination (FLEX)

(a) (No change.)

(b) FLEX examination for medical licensure in New Jersey, when taken for the first time, must be taken as a complete unit, that is, a consecutive three-day two-component examination.

(c) A candidate who attains a score of 75 or over in both Component I and Component II shall be adjudged to have successfully passed the examination, and the executive secretary of the Board shall be authorized to issue a certificate of medical licensure in New Jersey to the successful candidate who has met all other requirements of N.J.S.A. 45:9-1 et seq. for medical licensure in this State.

(d) A candidate shall be eligible to re-take the Component failed, but only within five years of passing the other Component. Thereafter, no passing credit shall be carried over, and a candidate shall be required to take both Components as in (b) and (c) above.

**\*(e) Any candidate who took the FLEX examination given on or before December 1984 and who attained a 74 percent FLEX weighted average but who failed to pass Day I of the examination, shall be permitted to retake Day I, provided that the reexamination shall be taken during the June 1985 test administration. If the candidate receives a score in Day I that would provide a weighted grade average of 75 or over, the Secretary of the Board shall be authorized to issue a certificate of medical licensure in New Jersey to such successful candidate as has met all the requirements of N.J.S.A. 45:9-1 et seq. for medical licensure in this State. This section shall be inoperative after June 1985.\***

13:35-3.2 Endorsement; Federation Licensing Examination

(a) The Board shall grant without examination a license to practice medicine and surgery to any person who shall furnish proof that he or she can fulfill the requirements demanded in N.J.S.A. 45:9-1 et seq. relating to applicants for admission by examination provided that satisfactory proof is presented by such applicant of licensure by FLEX examination to practice medicine and surgery in another state, territory or possession of the United States, or another country, with a FLEX weighted grade of 75 or better in an examination taken prior to June 1985, or a score of 75 or better in each of the two Components of the new FLEX examination, both Components of which were passed within a five year period.

13:35-3.3 Endorsement of sister-state M.D. or D.O. license after extended practice or specialty board or national board certifications or by any combination of national boards and FLEX examinations; also, podiatry board endorsement and chiropractic endorsement

(a) The Board shall grant without examination a license to practice medicine and surgery to any person who shall furnish proof of satisfaction of the requirements demanded in N.J.S.A. 45:9-1 et seq. relating to applicants for admission by examination who shall further furnish proof of any of the following:

1.-3. (No change.)

4. Certification of either the National Board of Medical Examiners or of Osteopathic Examiners that the applicant has attained a passing score in the first two parts of the National Boards as well as the third part of the FLEX examination taken in another state and passed with a score of 75 or better prior to June 1985, or FLEX Component II passed in New Jersey or in another state with a score of 75 or better. Such

license granted under this provision shall be deemed a FLEX examination license.

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

13:35-3.4 Examination in FLEX Component Two after proof of passing first two parts of National Boards of Medical or Osteopathic Examiners

An applicant who provides certification of passing the first two parts of the National Board of Medical Examiners or of Osteopathic Examiners examination, as applicable, and who satisfies the requirements of N.J.S.A. 45:9-1 et seq. relating to admission by examination, shall be permitted to take FLEX Component II alone. Such applicant, upon attaining a passing score of 75 or better in the FLEX examination Component II, shall be granted a license to practice medicine and surgery. The license herein to be granted shall be a FLEX examination license.

(a)

**BOARD OF MEDICAL EXAMINERS**

**Fee Schedule**

**Adopted Amendments: N.J.A.C. 13:35-6.13**

Proposed: March 4, 1985 at 17 N.J.R. 562(a).

Adopted: April 10, 1985 by the New Jersey State Board of Medical Examiners, Edward W. Luka, M.D., President.

Filed: April 15, 1985 as R.1985 d.223, **without change.**

Authority: N.J.S.A. 45:9-2 and 45:2C and P.L. 1984, c. 203.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): August 1, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery (M.D. or D.O. license)
  - i. Examination—\$300.00
  - Both Components
  - ii. Re-examination
    - Component I 200.00
    - Component II 225.00
  - iii.-vii. (No change.)
- 2.-5. (No change.)
- Athletic Trainer (registration)
  - i. Temporary registration or authorized registration without examination 60.00
  - ii. Examination (reserved)

iii. Re-examination	(reserved)
iv. Registration fee after examination	60.00
v. Biennial registration	60.00
vi. Reinstatement fee	25.00
vii. Endorsement	(reserved)
7. (No change.)	
8. Acupuncturist [registration] <b>certification</b>	
i. Examination including [license] <b>certification</b>	150.00
ii. Re-examination	150.00
iii. Endorsement	150.00
iv. Biennial registration	60.00
v. Reinstatement	25.00
9.-10. (No change.)	

(a)

**BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

**Release of Project Records**

**Adopted New Rule: N.J.A.C. 13:40-8**

Proposed: May 7, 1984 at 16 N.J.R. 1027(a).  
 Adopted: April 4, 1985 by New Jersey Board of Professional Engineers and Land Surveyors, Marcia Forman, President.  
 Filed: April 15, 1985 as R.1985 d.225, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 45:8-27 et seq.  
 Effective Date: May 6, 1985.  
 Expiration Date pursuant to Executive Order No. 66(1978): May 6, 1990.

**Summary of Public Comments and Agency Responses:**

Seven comments were received. Three were from professional societies representing engineering and/or land surveying practitioners and the remainder were from individual practitioners or firms. Only one comment expressed an absolute objection to the rule and its intent, while others favored the rule but suggested certain amendments for clarification.

The comments received were generally repetitive. The most frequently received comment suggested that N.J.A.C. 13:40-8(d) be amended to permit the professional to recover costs of research to find requested records in addition to costs of reproduction. The Board found this a good suggestion, recognizing that, under certain circumstances, costs incurred in locating records may be significant. The Board, therefore, amended subsection (d) to permit the professional to recover the reasonable costs of both research and reproduction.

A second comment suggested that the rule expressly state that the professional should be afforded a reasonable period of time to secure requested records. Although the Board felt that the rule would be interpreted this way, it concluded that such a clarification might be helpful. Moreover, upon further consideration, the Board felt that requiring the client to make the record request in writing would better enable it to determine what might constitute a "reasonable" period of time to satisfy such a request.

A third frequently received comment suggested that the rule specify how long records must be kept. Retention periods of anywhere between seven and ten years were suggested. The Board did not believe it advisable to amend the rule at this time to specify a rule retention period. Recent judicial decisions imposing liability on design professionals after traditional statutes of limitations have run suggest that this aspect of the law may be in flux and that imposing a static rule retention period at this time may be inappropriate. The rule is not intended to require the professional to retain records for an infinite period of time, but rather to clarify that, as between client and professional, the professional retains the originals and the client is given copies under usual circumstances. Unless otherwise provided by statute or contract, the professional may refuse to turn over originals to the client. At the present time, the Board intends to leave to the discretion of the professional the length of time that records will be retained.

A fourth comment suggested that the term "client" be defined to cover situations where it may be unclear to whom the records must be released. The Board does not believe that a fixed definition of the term "client" is appropriate. Rather, the Board has always viewed it the primary responsibility of the professional to determine who is his or her client. Where a question arises, the Board may deal with the issue on a case by case basis. However, the Board does not expect the rule to apply to situations where there may be successors in interest to the professional's original client. Rather, the primary intent of the rule is to permit the continuation of a project without undue financial hardship to the professional's immediate client. Under these circumstances, the Board does not believe there should be any difficulty in identifying the professional's client.

A fifth comment expressed the concern that it may be difficult or impossible to comply with the rule in situations where a firm has dissolved or reorganized. The Board felt that such circumstances would have to be considered on a case by case basis. If records are unavailable for bona fide reasons, the Board would likely not view this as a rule violation.

Finally, a concern was expressed that the rule would jeopardize the professional's ability to recover fees in the event of a contractual dispute. Although the rule would prohibit the professional from immediately withholding all records until he or she is paid all fees for which the professional contracted, it would not otherwise impinge upon the professional's ability to recover on the contract. Rather, the rule envisions that the professional must be paid for the value of the benefits conferred reflected as the proportion of fees for all work performed. The professional may charge an hourly rate or a percentage of the contract price. Thereafter, the professional may recover the benefit of the bargain, but the project may be continued by a subsequent professional.

**Full text** of the adoption follows (additions to the proposal shown in boldface with asterisks **\*thus\***).

**SUBCHAPTER 8. MAINTENANCE OF PROJECT RECORDS**

**13:40-8.1 Release of project records**

(a) As used in this subchapter, the term "records" shall include, but not be limited to, any plans, reports, documents, field notes, or other items of work product generated for an engineering or land surveying project **\*as contractually defined\*** which would be reasonably necessary to the completion

of the project for which the professional engineer or land surveyor was originally retained.

(b) Originals of records shall remain in the possession of the professional engineer or land surveyor unless otherwise provided by statute or written contractual agreement.

(c) The client of a professional engineer or land surveyor shall be entitled to complete copies of all records generated for the engineering and/or land surveyor surveying project **\*within a reasonable period of time after forwarding a written request to the professional engineer or land surveyor and\*** upon payment of such proportion of fees as reflect the extent of **\*all\*** services performed.

(d) The professional engineer or land surveyor shall be compensated for the reasonable costs of **\*research and\*** reproduction for copies of records released pursuant to this rule.

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(a)

## BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

### Responsible Charge of Engineering or Land Surveying Work

#### Adopted New Rule: N.J.A.C. 13:40-9

Proposed: August 6, 1984 at 16 N.J.R. 2067(b).

Adopted: March 7, 1985 by New Jersey Board of Professional Engineers and Land Surveyors, Marcia Forman, President.

Filed: April 15, 1985 as R.1985 d.222, **without technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 45:8-27 et seq.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 6, 1990.

#### Summary of Public Comments and Agency Responses:

Three comments were received. The New Jersey Society of Professional Land Surveyors and an individual licensee expressed unconditional support for the rule proposal.

The Consulting Engineers Council of New Jersey (CEC) expressed the opinion that the Board of Professional Engineers and Land Surveyors already possesses adequate statutory and regulatory authority to redress the improper practices to which the rule is directed. The CEC, therefore, felt the rule was unnecessary.

Although the Board agrees with the CEC's opinion that it already has the authority to discipline licensees who render no or insufficient supervision over subordinates, it feels that clarifying certain evidentiary standards in reviewing such cases will better enable licensees to bring their practices into total compliance. It will also put licensees who may otherwise render adequate supervision on notice that the Board views comprehensive record-keeping and availability to clientele as part of good professional practice. Therefore, the Board does not view the rule as merely superfluous.

The CEC also expressed concern that the term "responsible charge" as used in the rule does not coincide with "responsi-

ble charge" as defined in N.J.S.A. 45:8-28(g). The Board and its legal counsel disagree that any conflict exists between the statutory definition and the term as used in the rule. The term "responsible charge" is used throughout N.J.S.A. 45:8-27 et seq., to refer to a level of competence expected of an individual who may be placed in "the control and direction" of an engineering or land surveying project. See, for example, N.J.S.A. 45:8-28(g), 45:8-35(1)(a), 45:8-35(2)(a), 45:8-40(3).

The CEC also suggests clarification of the term "records" as used in N.J.A.C. 13:40-9.1(b), suggesting that review of a simple project requiring minimal time might not appear on the time card of the licensee in responsible charge. The Board does not believe that greater clarification of the term "records" is necessary given the qualifying language in the rule that such records need only be those which are "reasonably necessary" to establish adequate supervision. The Board recognizes that situations such as that posited by the CEC may sometimes occur. Time cards for a given project are but one acceptable indicia of adequate supervision. If, for example, the licensee in responsible charge of the project can show significant presence in the office during that period of time, and a familiarity with the project, there may be a sufficient showing of adequate supervision. On the other hand, if the licensee in responsible charge was absent from the office entirely for a significant period of time, no entry on a time card for review of the subordinate's work would tend to corroborate a charge of violation of the rule.

The CEC suggested an amendment to N.J.A.C. 13:40-409(c)(4) providing that a client give the professional reasonable notice of a need for consultation and inspection. The Board found this suggestion helpful and has incorporated it into the rule.

Finally, the CEC questioned how the rule could be enforced where "in-house" licensees, such as those professionals employed by governmental agencies, are involved. Although the Board recognizes that time-keeping and other requirements for in-house licensees might differ from those of private practitioners, it felt that other safeguards, including scrutiny of work product and time-keeping by other public officials, were in place to assure adequate supervision in the public sector. The Board is, of course, open to suggestion as to the formulation of a rule addressing itself with particularity to adequate supervision in the public sector if licensees do not believe that the rule, as adopted, will remedy any problems which might exist.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***).

#### SUBCHAPTER 9. RESPONSIBLE CHARGE OF ENGINEERING OR LAND SURVEYING WORK

13:40-9.1 Supervision of subordinates; maintaining records of adequate supervision; acts reflecting inadequate supervision

(a) A licensee in responsible charge of an engineering or land surveying project shall render regular and effective supervision to those individuals performing services which directly and materially affect the quality and competence of engineering or land surveying work rendered by the licensee.

(b) A licensee shall maintain such records as are reasonably necessary to establish that the licensee exercised regular and effective supervision of an engineering or land surveying project of which he was in responsible charge.

(c) A licensee engaged in any of the following acts or practices shall be deemed not to have rendered the regular and effective supervision required herein:

1. The regular and continuous absence from principal office premises from which professional services are rendered; except for performance of field work or presence in a field office maintained exclusively for a specific project;
2. The failure to personally inspect or review the work of subordinates where necessary and appropriate;
3. The rendering of a limited, cursory or perfunctory review of plans or projects in lieu of an appropriate detailed review;
4. The failure to personally be available **\*on a reasonable basis or with adequate advance notice\*** for consultation and inspection where circumstances require personal availability.

**(a)**

**NEW JERSEY RACING COMMISSION**

**Thoroughbred Rules: Horsemen's Bookkeeper Account**

**Adopted Amendment: N.J.A.C. 13:70-3.46**

Proposed: January 21, 1985 at 17 N.J.R. 173(a).  
Adopted: April 2, 1985 by Harold G. Handel, Executive Director, New Jersey Racing Commission.  
Filed: April 11, 1985 as R.1985 d.204, **without change**.  
Authority: N.J.S.A. 5:5-30.

Effective Date: May 6, 1985.  
Expiration Date pursuant to Executive Order No. 66(1978): February 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

13:70-3.46 Horsemen's bookkeeper account  
(a)-(b) (No change.)

(c) The income realized from the invested funds shall be used firstly, to reimburse the track association for one-half of the cost and expense of operating the horsemen's bookkeeper's account, with the remainder of the income being used for programs managed by the Horsemen's Benevolent and Protective Association, and designed to benefit the racing industry.

The specific programs and anticipated budget for the Horsemen's Benevolent and Protective Association for any calendar year shall be submitted to the New Jersey Racing Commission for its approval no later than December 1 of the preceding calendar year. The programs and budget may be amended during said calendar year with prior approval of the New Jersey Racing Commission.

**(b)**

**LAW AND PUBLIC SAFETY  
NEW JERSEY RACING COMMISSION**

**Thoroughbred Rules: Eligibility; Registration Required**

**Adopted Repeal: N.J.A.C. 13:70-6.53**

**Adopted New Rule: N.J.A.C. 13:70-6.53**

Proposed: February 4, 1985, at 17 N.J.R. 271(a).  
Adopted: April 2, 1985 by Harold G. Handel, Executive Director, New Jersey Racing Commission.  
Filed: April 11, 1985 as R.1985 d.203, **without change**.  
Authority: N.J.S.A. 5:5-30.

Effective Date: May 6, 1985.  
Expiration Date pursuant to Executive Order No. 66(1978): May 18, 1989.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

13:70-6.53 Eligibility; registration required  
(a) In order to be eligible to enter and start in races exclusively for New Jersey bred foals, each horse must be registered with the Thoroughbred Breeders' Association of New Jersey.

(b) To qualify for such registration the said horse must have been foaled in the State of New Jersey and;

1. The breeder must be a resident of New Jersey or an individual or entity that maintains a breeding farm in New Jersey or;

2. If the breeder is a non-resident or an entity not owned entirely by New Jersey residents, the foal must meet one of the following conditions:

i. Be the produce of a mare conceived in New Jersey the previous season or;

ii. If conceived outside of New Jersey, the mare must be bred to a registered New Jersey stallion the season of the birth of said foal or;

iii. If conceived outside of New Jersey by a resident mare which leaves New Jersey for breeding purposes, the resident mare must return by September 1 of that year, and the non-resident breeder must immediately notify the Thoroughbred Breeders' Association the mare has returned, where the mare is domiciled, where the mare will foal and certify that a copy of the mare's Jockey Club Foal papers is at the farm where the mare is.

(c) A horse is bred where it is foaled. The breeder is the owner of the dam at the time of foaling.

(d) The breeder is responsible for the registering of the foal as a New Jersey bred thoroughbred.

(e) A breeder who registers or attempts to register a foal based upon false or fraudulent information may be subject to any or all of the following sanctions by the Thoroughbred Breeders' Association:

1. The horse may no longer be considered a New Jersey bred;

2. Any New Jersey breeder awards earned by an ineligible horse shall be forfeited to the State;

3. The breeder may be denied the privilege of registering any horses as a New Jersey bred for a time period determined by the Thoroughbred Breeders' Association;

4. The breeder may be denied the benefit of any and all breeder awards in New Jersey for a time period determined by the Thoroughbred Breeders' Association.

(f) Any owner or breeder may appeal the decision of the Thoroughbred Breeders' Association of New Jersey concerning the registration of a horse under this rule to the New Jersey Racing Commission.

(g) To be considered a New Jersey stallion, it is required that the stallion stand in the State of New Jersey the full breeding season, commonly understood to be the period from February 1 through July 1 of any year, and remain in the State, or if the stallion is brought in subsequent to the start of the breeding season, he must be approved as a New Jersey stallion by the New Jersey Racing Commission upon recommendation of the Board of Trustees of the Thoroughbred Breeders' Association of New Jersey and the appropriate annual fee paid to the Association prior to serving the first mare in the State of New Jersey and annually thereafter prior to February 1.

1. Should any stallion die in New Jersey prior to completion of one full breeding season he may also be considered a New Jersey stallion upon approval of the New Jersey Racing Commission upon recommendation of the Board of Trustees of the Thoroughbred Breeders' Association of New Jersey.

2. A copy of the Stallion Report of Mares Bred as filed with the Jockey Club must be provided to the Thoroughbred Breeders' Association of New Jersey no later than September 1.

(h) All fees for registration of foals, horses of racing age and stallions as established by the Thoroughbred Breeders' Association of New Jersey shall be subject to the approval of the Commission, which approval shall be based upon the Commission's review of a full accounting of fees received and the disposition and purposes for which the revenue collected by the Association is utilized in order to comply with the rules of racing and the terms of New Jersey statutes, the purposes of which are to improve and develop the thoroughbred breeding industry in the State.

The Board of Public Utilities proposed amendments to N.J.A.C. 14:3-8.1 and 8.2 in the June 18, 1984 New Jersey Register. After taking into consideration the public comments received, the Board revised the original proposal. Said revised proposed amendments were published in the January 21, 1985 New Jersey Register. A summary of the comments received follows.

The New Jersey Builders Association stated that the section of the Social and Economic Impact Statement was incorrect when it stated:

municipal utility authorities are permitted, in certain circumstances, to require deposits covering all of the costs of an extension, and no appreciable reduction in construction has resulted in those areas served by such authorities.

The Association states that no statutory power exists for any utility authority to require deposits covering all costs of extension.

This rationale was originally given in support of the regulation change in comments filed by the petitioner, the New Jersey Chapter of the National Association of Water Companies. The Board of Public Utilities does not regulate municipal utility authorities. This rationale did not weigh heavily in the Board's Decision to modify the suggested formulae for extension of utility service. The remaining arguments still strongly support the Board's amendment to this regulation.

Upon adoption, the Board has amended N.J.A.C. 14:3-8.3 by adding language to reflect changes in N.J.A.C. 14:3-8.2. Although the amendments to 14:3-8.3 were not proposed, their addition upon adoption is not considered a substantive change since the amendments are being added simply to be consistent with 14:3-8.2.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*).

14:3-8.1 General provisions

(a) These formulae shall not be binding on the parties but are suggested as a guide to customers and utilities. Parties are still free to exercise their rights under N.J.S.A. 48:2-27. When an applicant for an extension is dissatisfied with the utility's proposal he may petition the Board for a finding that the extension should be made without charge.

(b) An extension shall be construed to mean the extension of facilities located on streets, highways, and/or rights-of-way acquired by the utility for common distribution and shall not include the meter or transformer or any part of the house service connections, nor shall the cost of extension as referred to in these regulations include the cost of fire hydrants or their branches. The utility may require that the applicant furnish security to insure the use of services which security will be returned upon the commencement of service.

(c) Extension deposits are not to carry interest; except when the amount of the deposit exceeds the actual cost of the extension, the rate established in N.J.A.C. 14:3-7.5 for customer deposits shall be paid on the excess amount. In the event that the actual cost of the extension is less than the amount deposited, interest shall be computed from the date of deposit, or if more than one deposit payment is made, from the date on which the excess amount is deposited if other than the initial date of deposit. This provision shall take effect one month after the effective date of this subchapter, and shall apply to excess extension deposits received by a utility after that date. Interest on excess extension deposits previously collected and held by a utility shall be apportioned so that interest shall be computed from one month after the effective date of this subsection.

**PUBLIC UTILITIES**

**(a)**

**BOARD OF PUBLIC UTILITIES**

**Suggested Formulae for Extension of Utility Service**

**Adopted Amendments: N.J.A.C. 14:3-8.1, 8.2, and 8.3**

Proposed: January 21, 1985 at 17 N.J.R. 174(a).

Adopted: March 29, 1985 by Board of Public Utilities, Barbara A. Curran, President.

Filed: April 3, 1985 as R.1985 d.202, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 48:2-13 et seq.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 6, 1990.

**Summary of Public Comment and Agency Responses:**

**ADOPTIONS**

**TRANSPORTATION**

14:3-8.2 Residential land developer; extension other than telephone

(a) Except as otherwise provided, where applications for extensions into newly developed tracts of land are made by individuals, partnerships or corporations interested in the development or sale of land, but not as ultimate residents, the utility may require a deposit from the applicant covering the estimated cost of the extension as defined in (b) above, necessary to serve the tract. The deposit shall be subject to adjustment when the actual cost of construction is determined. The actual cost of construction shall be determined and presented to the developer within 30 days after actual costs are known, but not more than 90 days after the date construction is completed.

(b) Except as otherwise provided, extension deposits are to be returned as provided in (c) below to the depositor when new houses abutting on the extended facilities are completed and the house is occupied by a bonafide owner or responsible tenant who has entered into a contract for use of the utility's service and, in addition, in the case of water main extensions, when the municipality agrees to pay fire protection charges related directly to said extensions.

(c) Except as otherwise provided, the deposit shall be returned in amount equal to five times the estimated annual revenue from each such completion and occupancy. The deposit for a water or sewer main extension shall be returned in an amount equal to two and one-half times the estimated annual revenue from each such completion and occupancy and from fire protection charges on said extension. If during the ten-year period from the date of the original deposit, the actual annual revenue during any year of said ten-year period from premises abutting upon said extension and from amounts received from the municipality for fire protection service in the case of water main extensions shall exceed the annual revenue which was the basis for the previous deposit return, there shall be returned to the depositor an amount equal to five times such excess, two and one-half times such excess in the case of a water or sewer main extension. In no event shall more than the deposit be returned to the depositor nor shall any part of the deposit remaining after ten years from the date of the original deposit be returned.

AGENCY NOTE: Retain the current example found in the New Jersey Administrative Code and add the following example:

**EXAMPLE**

Cost of Extension to Utility and Net Deposit Collected from Land Developer		\$1,000.00
Estimated Annual Revenue, First House Completed and Occupied	\$150.00	
Factor	2-1/2	
Deposit Returned to Land Developer		\$ 375.00
Deposit Remaining with Utility		\$ 625.00
Estimated Annual Revenue, Second House Completed and Occupied	\$150.00	
Factor	2-1/2	
Deposit Returned to Land Developer		\$ 375.00
Deposit Remaining with Utility		\$ 250.00
Actual Revenues in a Subsequent Year from Above House	\$400.00	
Estimated Annual Revenue from Above Houses	\$300.00	
Excess Annual Revenues	\$100.00	
Factor	21/12	
Deposit Returned to Land Developer		\$ 250.00
Deposit Remaining with Utility		\$ 0

14:3-8.3 Individual residential customer; extension other than telephone

(a) (No change.)

(b) Where the estimated cost of an extension exceeds the amount which the utility must install without cost to the customer, in accordance with (a) above, the excess cost of the extension shall be deposited and remain with the utility without interest until such time as the actual annual revenue from premises abutting upon said extension, as well as from amounts paid by the municipality for fire protection service in the case of a water main extension, exceeds the amount which was used as the basis for the initial deposit computation, or the basis for a previous return, there shall be returned to the depositor an additional amount equal to five times such excess. The deposit shall be subject to adjustment when the actual cost of construction is determined. **\*The actual cost of construction shall be determined and presented to the customer within 30 days after actual costs are known, but not more than 90 days after the date construction is completed.\*** In no event shall more than the deposit be returned nor shall any part of the original deposit **\*remaining after ten years from the date of the original deposit\*** be returned.

EXAMPLE (No change.)

(c) (No change.)

**TRANSPORTATION**

**(a)**

**DEPARTMENT OF TRANSPORTATION**

**TRANSPORTATION OPERATIONS**

**Restricted Parking and Stopping  
Route 183 in Sussex County**

**Adopted Amendment: N.J.A.C. 16:28A-1.96**

**Speed Limits**

**Route 94 in Lafayette, Sparta and Hardyston  
Township**

**Adopted Amendment: N.J.A.C. 16:28-1.79**

Proposed: February 19, 1985 at 17 N.J.R. 384(a).  
Adopted: March 25, 1985 by Jarrett R. Hunt, Assistant  
Chief Engineer, Traffic and Local Road Design.  
Filed: March 27, 1985 as R.1985 d.198, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98, 39:4-138.1 and 39:4-139.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

**Summary of Public Comments and Agency Responses:  
No comments received.**

**Full text of the adoption follows.**

## 16:28A-1.96 Route 183

(a) The certain parts of State highway Route 183 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in the Borough of Stanhope, Sussex County:

i. Along the easterly (northbound) side:

(1) (No change.)

(2) From Musconetcong Avenue to U.S. Route 206.

ii. Along the westerly (southbound) side:

(1) From U.S. Route 206 to the southerly intersection of Main Street.

(b) (No change.)

## 16:28-1.79 Route 94

(a) The rate of speed designated for the certain part of State highway Route 94 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i.-xii. (No change.)

xiii. In Sussex County:

(1) Lafayette Township: 45 miles per hour between the northernmost intersection of Route 15 and the Sparta Township corporate line. (Mileposts 28.17 to 28.82)

(2) Sparta Township:

(A) 45 miles per hour between the Lafayette Township corporate line and 1100 feet south of Old Prospect School Road. (Mileposts 28.82 to 31.06)

(B) 40 miles per hour between 1100 feet south of Old Prospect School Road and the Hardyston Township corporate line. (Mileposts 31.06 to 31.36)

(3) Hardyston Township:

(A) 40 miles per hour between the Sparta Township corporate line and 450 feet north of the Sparta Township corporate line. (Mileposts 31.36 to 31.4)

(B) 45 miles per hour between 450 feet north of the Sparta Township corporate line and North Church Road (Co. Rd. 631). (Mileposts 31.4 to 33.07)

xiv.-xxi. (No change.)

(a)

## DEPARTMENT OF TRANSPORTATION TRANSPORTATION OPERATIONS

### Turns

#### Route 35 in Monmouth County

#### Adopted Amendment: N.J.A.C. 16:31-1.4

Proposed: March 4, 1985 at 17 N.J.R. 566(b).

Adopted: April 8, 1985 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.

Filed: April 11, 1985 as R.1985 d.206, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-183.6.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order 66(1978):  
November 7, 1988.

Summary of Public Comments and Agency Response:  
**No comments received.**

Full text of the adoption follows.

## 16:31-1.4 Route 35

(a) Turning movements of traffic on the certain parts of State highway Route 35 described [herein] below are regulated as follows:

1. No left turn:

i.-ix. (No change.)

x. North to west onto Haddon Avenue in Shrewsbury Borough, Monmouth County.

## OTHER AGENCIES

(b)

### HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

#### Official Zoning Map

#### Adopted Amendment: N.J.A.C. 19:4-6.28

Proposed: December 17, 1984 at 16 N.J.R. 3423(b).

Adopted: April 18, 1985 by Vincent P. Fox, Deputy Executive Director, Hackensack Meadowlands Development Commission.

Filed: April 15, 1985 as R.1985 d.212, **without change** to the proposed amendment to N.J.A.C. 19:4-6.28 (with portions of the proposal not adopted, but still pending).

Authority: N.J.S.A. 13:1 /-6(i) and N.J.S.A. 19:4-6.27.

Effective Date: May 6, 1985.

Expiration Date pursuant to Executive Order No. 66 (1978): November 7, 1988.

#### Summary of Public Comments and Agency Responses:

There was no adverse public comment received pertaining to the recommended rezoning of Block 169, Lot 1 in Ridgefield, New Jersey, from Marshland Preservation to Light Industrial "B", thereby constituting a change to N.J.A.C. 19:4-6.28. The Hackensack Meadowlands Development Commission has not adopted that portion of the proposal regarding amendments to N.J.A.C. 19:4-4.33, 4.35, 4.36, 4.37, 4.39, 4.40 and 4.42 which amendments are still pending.

Full text of the adoption follows:

#### 19:4-6.28 Official zoning map

The Hackensack Meadowlands District official zoning map dated November 8, 1972, is hereby made a part of these rules and regulations of the Hackensack Meadowlands Development Commission.

OFFICE OF ADMINISTRATIVE LAW NOTE: A map showing the adopted change in zoning designation was submitted as part of the Commission's notice of adoption. The adopted change follows:

The zoning designation of Block 169, Lot 1, in Ridgefield from Marshland Preservation to Light Industrial "B". The subject property consists of approximately 8 acres.

# MISCELLANEOUS NOTICES

## CIVIL SERVICE

(a)

### CIVIL SERVICE COMMISSION

#### Public Hearings concerning Rule Proposals

#### Public Notice

To afford additional opportunity for comments, the Civil Service Commission has directed that all rule proposals will be subject to a public hearing and, as feasible, the time, date and place of such hearing will be included with the proposed notice in the New Jersey Register. Such hearings will be conducted pursuant to N.J.S.A. 52:14B-4(a)(3) and (g).

## ENVIRONMENTAL PROTECTION

(b)

### OFFICE OF SCIENCE AND RESEARCH

#### Industrial Survey Project: N.J.A.C. 7:1F

#### New Expiration Date pursuant to Executive Order No. 66(1978): March 27, 1987

**Take notice** that on March 15, 1985, Governor Thomas H. Kean by virtue of the authority vested in him by Executive Order No. 66, dated April 14, 1978 (effective May 15, 1978), to grant a waiver of the requirements in that Order with regard to any administrative regulation, and having determined that good cause exists, ordered and directed, that the provisions of Executive Order No. 66 be waived as regards the Department of Environmental Protection Industrial Survey Project regulations, N.J.A.C. 7:1F for the period March 27, 1985 through March 27, 1987 inclusive of both dates. As a result of Governor Kean's Order, N.J.A.C. 7:1F shall expire on March 27, 1987.

(c)

### OFFICE OF SCIENCE AND RESEARCH

#### Worker and Community Right to Know Act

#### N.J.A.C. 7:1G

**Take Notice** that Federal district court Judge Dickinson R. Debevoise has ruled that the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., (Right to Know Act) is preempted by the Federal Occupational Safety and Health Act of 1970 (the OSH Act), 29 U.S.C. 651 et seq. to the extent that the Right to Know Act affects employers in the manufac-

turing sector (Standard Industrial Classification (SIC) codes 20-30). Employers having SIC codes 20-39 will not be required to comply with the Department's Right to Know Act regulations, N.J.A.C. 7:1G. Employers having SIC codes 20-39 who have already received surveys from the Department are encouraged to complete them and return them to the Department; if they do not submit a form they are advised to retain the forms.

**Background:** Two actions were filed in Federal district court for the District of New Jersey challenging the Right to Know Act on the ground that it is preempted by regulations or standards promulgated under the OSH Act (see *New Jersey Chamber of Commerce et al. v. Hughey et al. and Rodriguez et al., Intervenors*, Civ. No. 84-3255 (D.N.J. 1985) and *Fragrance Materials Assn. et al. v. Van Note et al. and Rodriguez et al., Intervenors*, Civ. No. 84-3892 (D.N.J. 1985), (consolidated cases)). Plaintiffs also challenged the trade secret provisions of the Right to Know Act. Judge Debevoise filed his decision on January 3, 1985 and it is effective as of that date. The court ruled that the Right to Know Act is preempted by the OSH Act and the Federal hazard communication standard, 29 C.F.R. Part 1910, 48 Fed. Reg. 53280. As to manufacturing employers the Right to Know Act is preempted entirely. The Right to Know Act is not preempted (and is, therefore, in full effect) for covered non-manufacturing employers. The trade secrets provisions are left intact. The Attorney General, on behalf of the Department, has filed an appeal of the Federal district court decision.

Any inquiries concerning N.J.A.C. 7:1G should be addressed to:

Right to Know Project  
New Jersey Department of Environmental Protection  
Office of Science and Research  
436 E. State Street  
CN 405  
Trenton, New Jersey 08625  
(609) 292-6714

(d)

### OFFICE OF SCIENCE AND RESEARCH

#### Worker and Community Right to Know Act

#### Petition for Rulemaking

**Petitioner: William N. Connelly, AIA,  
Director, Division of Housing and  
Development, New Jersey Department of  
Community Affairs.**

Authority: N.J.S.A. 52:14B-(4)f and N.J.A.C. 1:30-3.6.

**Take notice** that the Department of Environmental Protection has received a petition for rulemaking from William N. Connelly, AIA, Director, Division of Housing and Development, Department of Community Affairs ("petitioner"), dated December 13, 1984. The petitioner requests that the

Department repeal N.J.A.C. 7:1G-5.4. Pursuant N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, notice is hereby given of that petition.

Pursuant to the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., the Department adopted N.J.A.C. 7:1G-5 (emergency services information (ESI) survey). N.J.A.C. 7:1G-5 provides that within 90 days of receipt of ESI survey an employer shall complete the survey and submit a copy to the Department of Environmental Protection, the local fire department and the local police department. An ESI survey is a written form prepared by the Department on which an employer provides information concerning hazardous materials at his facility including but not limited to the U.S. Department of Transportation Identification No., the U.S. DOT designated hazard class, the approximate range of the maximum inventory quantity, the units of measure, the major methods of storage or types of containers, and whether the substance is present in a mixture. This information is then used by emergency response personnel to enable them to adequately respond to emergencies at employer facilities.

N.J.A.C. 7:1G-5.4 provides that the Department shall grant a waiver of 7:1G-5 where local fire departments certified that an employer has "prepared a plan concerning the identity, characteristics, and quantities of hazardous substances used and stored at its facility to enable the local fire officials to adequately plan for, and respond to, any emergencies; that the local fire department has approved the plan; and that the local fire department does not need a completed Emergency Services Information Survey to adequately plan for, and respond to, emergencies." (N.J.A.C. 7:1G-5.4(a).)

The Division of Housing and Development submitted the petition on the advice of the Fire Safety Commission, which advises the Department of Community Affairs with regard to the implementation of the Uniform Fire Safety Act. The petition notes that the Commission expressed concern about the following issues:

1. Who acts on behalf of a volunteer fire department and how is the approval of waiver given?
2. How do firemen determine whether they need additional information under N.J.A.C. 7:1G-5?
3. Approval of a waiver may affect the liability of firemen since it affects the amount of information available to them regarding hazardous materials on an employer's facility.
4. The Department of Environmental Protection is better able to evaluate information on hazardous materials than is a local fire department.
5. Local fire departments, particularly volunteer companies dependent on contributions, may be subject to pressure to approve a request for a waiver, whereas the Department of Environmental Protection is better able to withstand such pressure.

It should be noted that on January 3, 1985, Judge Dickinson R. DeBevoise for the Federal district court, District of New Jersey, ruled that the Worker and Community Right to Know Act is preempted by Federal law as it pertains to employers in the manufacturing sector, Standard Industrial Classification codes 20-39. Until such time as the ruling is reversed on appeal or the Act is amended, employers in SIC codes 20-39 will not be required to complete the ESI Survey. At the time of signing of this notice, only employers covered by the Act in the non-manufacturing sector are eligible to be granted a waiver pursuant to N.J.A.C. 7:1G-5.4.

**Interested persons** may submit written comments concerning the subject to the petition to:

Scott B. Dubin, Esq.  
 Regulatory Officer  
 New Jersey Department of Environmental Protection  
 CN 402  
 Trenton, New Jersey 08625

This is a notice of petition for a rule (see N.J.A.C. 1:30-3.6). Any rule concerning the subject of this notice of petition for a rule must comply with the rulemaking requirement of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

**(a)**

**DIVISION OF COASTAL RESOURCES**

**Coastal Resource and  
 Development Policies  
 Affordable Housing Policy**

**Notice of Correction: N.J.A.C. 7:7E-7.2**

**Take notice** that an omission appears in the New Jersey Administrative Code at 7:7E-7.2(e) concerning affordable housing. N.J.A.C. 7:7E-7.2(e) should have appeared as follows:

7:7E-7.2 Housing use policies

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

**(e) Affordable Housing:**

**1. Definitions:**

i. "Affordable" means housing with monthly carrying costs which are no greater than 25 percent of a household's gross monthly income for rental housing, and no greater than 30 percent of a household's gross monthly income for housing offered for sale.

ii. "Affordable housing" means housing which is affordable by low or moderate income households.

iii. "Low income household" means a household eligible for Section 8 housing (income less than 80 percent of the region's median income adjusted for household size, as determined by the U.S. Department of Housing and Urban Development).

iv. "Moderate income household" means a household eligible for Section 235 housing (income less than 95 percent of the region's median income, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development).

**2. Policy:**

i. New residential developments shall provide an appropriate amount of affordable housing for low and moderate income households, where needed and feasible.

ii. The number of bedrooms in the affordable housing shall be appropriate to the size of the families needing affordable housing in the region.

iii. Appropriate agreements shall ensure that the sale, resale and rental of affordable housing is limited to households eligible for low and moderate income housing, and that the units remain affordable.

iv. In determining the need for affordable housing, the following factors shall be considered:

(1) The present and projected future shortage of affordable housing in the region, normally at least in a county.

(2) The number of jobs for low and moderate income people in the region.

(3) The number of existing affordable housing units in the municipality and the need for additional units in the municipality and region.

v. In determining the feasibility of providing affordable housing the following factors shall be considered:

- (1) The size and type of the development;
- (2) The mix of unit types being built;
- (3) Whether the size of affordable units would be comparable to established standards for minimum floor space for the bedroom size involved;
- (4) The absence of frills or unnecessary cost generating features from the unit;
- (5) The allocation of land costs and on-site improvements among the affordable units and the other units;
- (6) Whether the developer can make a fair return on the entire development if affordable housing is required;
- (7) The availability of federal and state housing subsidies;
- (8) The availability of special financing for affordable housing through agencies such as county improvement authorities;
- (9) The developer's commitment to building least cost units on-site or affordable units off-site, if affordable units on-site are infeasible.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(f)-(i) (No change in text.)

(a)

**DIVISION OF WATER RESOURCES**

**Application Period for the Water Supply Bond Rehabilitation Loan Program**

**Public Notice**

Take notice that Robert E. Hughey, Commissioner of the Department of Environmental Protection, pursuant to the Water Supply Bond Act of 1981, P.L. 1981, c.261, and the Consolidated Water Supply Bond Loan Regulations, N.J.A.C. 7:1A-1 et seq., announces that the Department will be accepting loan applications until **June 28, 1985** for State or local projects for the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly owned water supply transmission facilities. Any political subdivision of the State or agency thereof shall be eligible to apply for a water supply bond rehabilitation loan. Note that N.J.A.C. 7:1A-2.3(a) requires every applicant to schedule an informal pre-application conference with the Division of Water Resources prior to making a formal application for a water supply bond rehabilitation loan.

Applications may be obtained and pre-application conferences may be scheduled by contacting the Division of Water Resources as listed below. Any questions concerning the water supply bond rehabilitation loan program should be addressed to:

Robert Oberthaler, Section Chief  
 Division of Water Resources  
 Water Supply and Watershed Management Element  
 1474 Prospect Street  
 CN 029  
 Trenton, New Jersey 08625  
 (609) 633-7486

Note that all applications for the water supply bond rehabilitation loan program must be received on or before **June 28, 1985**.

This Notice is published as a matter of public information.

(b)

**DIVISION OF WATER RESOURCES**

**Amendment to Mercer County Water Quality Management Plan**

**Public Notice**

Mercer County has submitted for approval an amendment to the Mercer County Water Quality Management (WQM) Plan. This amendment proposes to include within the sewer service area (of the Stony Brook Regional Sewerage Authority) the additional parcels of land within West Windsor Township generally with the drainage area of the Delaware and Raritan Canal, as delineated on Map 4-3 on file at the Mercer County Planning Division. The amendment also designates Upper Bear Swamp and the wetlands along the Assunpink Creek as areas where sewer service or sewer lines, except those located in existing transportation corridors to the maximum extent practicable, will not be provided. The boundary between the wetlands area and the sewer service area will be established on a case by case basis. All land development within the designated sewer service area will be subject to the approved policies and provisions of the Non-Point Source Control component of the WQM Plan applicable to land development.

This notice is being given to inform the public that a plan amendment has been developed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the Mercer County Planning Board, Room 420, County Administration Building, 640 South Broad Street, P.O. Box 8068, Trenton, N.J. 08650; and the NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN 029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to the Secretary, Mercer County Planning Board, at the Mercer County address cited above; and George Horzempa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Planning Board and County Executive with respect to the amendment request. In addition, if the amendment is adopted by Mercer 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.

Any **interested person** may request in writing that the Planning Board 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 the Secretary at the address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended for 15 days following the public hearing.

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**(a)**

## BUREAU OF SHELLFISHERIES

### Notice of Closure of State Waters to Sea Clam Harvest

Authority: N.J.S.A. 50:2-6.1 and 50:2-6.3.

**Take notice** that the harvest of an additional 100,000 bushels of sea clams, as authorized by the Notice of Increase of Sea Clam Quota published in the New Jersey Register at 17 N.J.R. 990(b) on April 15, 1985, will have been achieved by 6:00 P.M. (1800 hours) on April 20, 1985. Therefore, in accordance with the aforementioned notice, the State waters will be closed to further sea clam harvest, effective at 6:00 P.M. (1800 hours) on April 20, 1985.

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**(b)**

## HAZARDOUS WASTE ADVISORY COUNCIL

### Analysis of New Jersey's Hazardous Discharge Site Cleanup Program

#### Public Notice

**Take notice** that pursuant to N.J.S.A. 58:10-23.22, the New Jersey Hazardous Waste Advisory Council will hold public hearings as follows:

Thursday, June 6, 1985  
7:00 P.M.-10:00 P.M.  
Labor Education Center  
Rutgers University  
New Brunswick, New Jersey

Tuesday, June 11, 1985  
10:00 A.M.-2:00 P.M.  
State Museum Auditorium  
205 West State Street  
Trenton, New Jersey

Tuesday, June 11, 1985  
7:00 P.M.-10:00 P.M.  
Woodbury High School  
Auditorium  
25 North Broad Street  
Woodbury, New Jersey

The purpose of the hearings is to receive comments on the Council's *Analysis of New Jersey's Hazardous Discharge Site Cleanup Program*. Pursuant to N.J.S.A. 58:10-23.22, the Council has undertaken a review and evaluation of the technical and financial practices and procedures employed by agencies involved in prior efforts to detoxify hazardous discharge sites and of chemical contamination contingency response planning, and is now prepared to make recommendations to the New Jersey Department of Environmental Protection concerning the Department's hazardous discharge cleanup program which the department conducts pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., (Superfund) and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.

The Council's recommendations, which are included in the analysis document, address four issues which were identified by the Council as being of special significance for the State's cleanup program. Those issues are:

1. Criteria for ranking sites of hazardous discharge;
2. Methods of contracting for cleanup of hazardous discharge sites;
3. Sources for financing cleanup efforts; and
4. The role of the community affected by a hazardous discharge.

After the public hearings, the Council will carefully review all comments relevant to the recommendations and will transmit its final analysis document to the Legislature and the Governor. The final Council recommendations will be transmitted to the department for the adoption, by the department pursuant to N.J.S.A. 58:10-23.24, of a Hazardous Substance Contingency Response Master Plan, which shall, to the greatest extent practical and feasible, incorporate the findings and recommendations of the Council.

The department will also prepare and adopt a master list for cleanup of hazardous discharge sites pursuant to N.J.S.A. 58:10-23.16. The list will comprise an inventory of all known hazardous discharge sites in the State and a ranking, based on criteria established by the department, after considering the Council's recommendations, of the sites in the order in which the department intends to clean up the sites. The master list will be adopted by the department after making a proposed list available to the public and after public hearings as required by N.J.S.A. 58:10-23.17.

Copies of the *Analysis of New Jersey's Hazardous Discharge Site Cleanup Program* are available at all libraries in the State Library depository system. In addition, copies of the Executive Summary are available at the offices of all County Freeholder Directors and the Mayors of each municipality. Written comments on the document may be submitted during the comment period which will end on June 21, 1985 to:

Dr. John Liskowitz, Chairman  
Hazardous Waste Advisory Council  
28 West State Street, Suite 614  
Trenton, N.J. 08625

For additional information on hearing confirmations, please call (609) 633-7399.

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**(a)**

**NEW JERSEY HAZARDOUS WASTE FACILITIES SITING COMMISSION**

**New Jersey Hazardous Waste Facilities Plan  
Public Notice**

Take notice that on March 26, 1985, pursuant to the provisions of the "Major Hazardous Waste Facilities Siting Act," N.J.S.A. 13:1E-49 et seq., the **New Jersey Hazardous Waste Facilities Plan** was adopted by unanimous vote of the New Jersey Hazardous Waste Facilities Siting Commission.

Copies of the Plan and the Response to Comments document are available from the Commission at 28 West State Street, Room 614, Trenton, New Jersey 08608.

**HUMAN SERVICES**

**(b)**

**DIVISION OF PUBLIC WELFARE**

**Assistance Standards Handbook**

**Overpayments and Underpayments,  
N.J.A.C. 10:82-2.19**

**Exempt Resources, N.J.A.C. 10:82-3.2**

**Notice of Correction**

Take notice that errors appear in the New Jersey Administrative Code at N.J.A.C. 10:82-2.19, Overpayments and underpayments and at N.J.A.C. 10:82-3.2, Exempt resources.

N.J.A.C. 10:82-2.19(a)4, 5 and 6 were proposed amendments published in the August 6, 1984 New Jersey Register at 16 N.J.R. 2055(a) and were not adopted and should not have appeared in the New Jersey Administrative Code.

N.J.A.C. 10:82-3.2(a)6vi, 7 and 9 were proposed in the March 19, 1984 Register at 16 N.J.R. 487 and were not adopted and should not have appeared in the Code.

The corrected text for N.J.A.C. 10:82-2.19(a)4, 5 and 6 and N.J.A.C. 10:82-3.2(a)6vi, 7 and 9 follows:

10:82-2.19 Overpayments and underpayments

(a) Upon discovery of an overpayment, the CWA shall take action as outlined in (a) of this section. The CWA shall seek recovery of all overpayments regardless of fault including overpayments caused by administrative action or inaction.

1.-3. (No change.)

4. **If an adult eligible unit member responsible for an overpayment is no longer eligible or becomes a member of another assistance unit, recovery shall be sought from that individual. When two adults are responsible for an overpayment and one or both are no longer eligible, a proportionate share of the overpayment shall be assigned to each individual and recovery sought. In the event that a dependent child is responsible for the overpayment, recovery shall be sought from all members of the eligible unit.**

5. **For cases of overpayment caused by administrative error, recovery shall be sought from all members of the eligible unit.**

6. **Overpayments to an eligible unit which is no longer receiving AFDC, shall be recovered by the CWA through a court of appropriate jurisdiction.**

7.-10. (No change.)

(b)-(d) (No change.)

10:82-3.2 Exempt resources

(a) (No change.)

(b) The exempt resources are as follows:

1.-5. (No change.)

6. Resources designated for special purposes as follows:

i.-v. (No change.)

vi. **Savings: Those funds set aside by an eligible unit which is in fact receiving public assistance so long as the amount thus accumulated does not exceed the total of three months' public assistance allowance standard for that eligible unit.**

vii.-viii. was not renumbered as vi.-vii. (No change.)

7. **Occasional gifts and contributions of nominal amount or value, such as those received on birthdays, Christmas or other holidays. A gift received by an applicant or recipient has exempt status only during the month in which it is received and the calendar month immediately following. Thereafter, it becomes a resource but may continue to be exempt if (b)6vi above is applicable.**

8. (No change.)

9. **Certain lump sum proceeds: At the discretion of the county welfare agency, up to \$500.00 of lump sum proceeds resulting from settlement of claims based on accidents or negligence in order to cover expenses incurred as a direct result of the incident for which the settlement is made. Such exception shall be recorded in the case file. Unless applied to this exemption, all funds so received are subject to reimbursement to the CWA in accordance with N.J.A.C. 10:82-3.7(a)4. Neither the exemption of \$500.00 nor the remainder of funds, if any, shall be applied to savings.**

10.-11. (No change.)

**(c)**

**DIVISION OF PUBLIC WELFARE**

**Monthly Reporting Policy Manual  
Recovery of Overpayments and Correction  
of Underpayments for AFDC Cases**

**Notice of Correction: N.J.A.C. 10:90-4.8**

Take notice that an error appears in the New Jersey Administrative Code at N.J.A.C. 10:90-4.8 concerning recovery of overpayments and correction of underpayments for AFDC cases. N.J.A.C. 10:90-4.8, a proposed new rule, was not adopted and should not have appeared in the New Jersey Administrative Code. A proposal notice concerning this rule and other rules relating to the Monthly Reporting Policy Handbook was published in the July 18, 1983 New Jersey Register at 15 N.J.R. 1162(a). In the adoption notice for these rules, published in the September 19, 1983 Register at 15 N.J.R. 1584(a), the summary of changes subsequent to proposal indicated that N.J.A.C. 10:90-4.8 was not being adopted.

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule changes proposed in this issue will be entered in the Index of the next Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the date of the latest update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the March 4, 1985 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to timely adopt a proposed rule requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

### **Terms and abbreviations used in this Index:**

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1984 d.300 means the three hundredth rule adopted in 1984.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A number and date verifying the currency of rules found in each Title of the New Jersey Administrative Code: rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to quickly find the issue of publication of a rule proposal or adoption.

# N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
16 N.J.R. 941 and 1130	May 7, 1984	16 N.J.R. 3067 and 3240	November 19, 1984
16 N.J.R. 1131 and 1294	May 21, 1984	16 N.J.R. 3241 and 3336	December 3, 1984
16 N.J.R. 1295 and 1406	June 4, 1984	16 N.J.R. 3337 and 3518	December 17, 1984
16 N.J.R. 1407 and 1634	June 18, 1984	17 N.J.R. 1 and 140	January 7, 1985
16 N.J.R. 1635 and 1832	July 2, 1984	17 N.J.R. 141 and 236	January 21, 1985
16 N.J.R. 1833 and 2026	July 16, 1984	17 N.J.R. 237 and 338	February 4, 1985
16 N.J.R. 2027 and 2184	August 6, 1984	17 N.J.R. 339 and 502	February 19, 1985
16 N.J.R. 2185 and 2318	August 20, 1984	17 N.J.R. 503 and 634	March 4, 1985
16 N.J.R. 2319 and 2390	September 4, 1984	17 N.J.R. 635 and 762	March 18, 1985
16 N.J.R. 2391 and 2474	September 17, 1984	17 N.J.R. 763 and 858	April 1, 1985
16 N.J.R. 2475 and 2708	October 1, 1984	17 N.J.R. 859 and 1006	April 15, 1985
16 N.J.R. 2709 and 2864	October 15, 1984	17 N.J.R. 1007 and 1158	May 6, 1985
16 N.J.R. 2865 and 3066	November 5, 1984		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>			
1:1, 1:2	Readopt General Hearing and Summary Proceedings rules	17 N.J.R. 2(a)	
1:2-2	Civil Service cases: readopt conference hearings	16 N.J.R. 3338(a)	R.1985 d.77 17 N.J.R. 569(a)
1:2-3	Motor Vehicle cases: readopt hearings on the papers	16 N.J.R. 3339(a)	R.1985 d.78 17 N.J.R. 569(b)
1:10	Public welfare hearings	16 N.J.R. 3068(a)	R.1985 d.79 17 N.J.R. 569(c)
1:10-17.1	Division of Public Welfare cases	16 N.J.R. 945(a)	
1:11-1.1, 15.1	Insurance filing cases	16 N.J.R. 2866(a)	R.1985 d.76 17 N.J.R. 572(a)

(TRANSMITTAL 10, dated December 17, 1984)

<b>AGRICULTURE—TITLE 2</b>			
2:16-2	Seed certification standards	17 N.J.R. 636(a)	
2:16-4	Field corn standards (commercial hybrids)	17 N.J.R. 638(a)	
2:16-5	Sweetcorn standards (inbred lines)	17 N.J.R. 639(a)	
2:16-6	Sweetcorn standards (single cross hybrids)	17 N.J.R. 639(b)	
2:16-7	Small grain standards	17 N.J.R. 640(a)	
2:16-9	Soybean standards	17 N.J.R. 641(a)	
2:16-10	Vegetable standards	17 N.J.R. 641(b)	
2:16-13	Turfgrass sod standards	17 N.J.R. 642(a)	
2:16-15	Vegetatively propagated grass standards	17 N.J.R. 643(a)	
2:16-16	Asparagus seed standards	17 N.J.R. 643(b)	
2:16-17	Asparagus crown standards	17 N.J.R. 644(a)	
2:16-19	Flatpea certification standards	17 N.J.R. 644(b)	
2:24-1.1, 1.2	Bee diseases: acarine mite quarantine	17 N.J.R. 118(a)	R.1985 d.107 17 N.J.R. 573(a)
2:24-1.1, 1.2	Disease of bees: repeal Acarine mite quarantine	17 N.J.R. 860(a)	
2:24-1.3, 1.4, 1.5	Bee diseases: Tracheal mite quarantine	Emergency	R.1985 d.197 17 N.J.R. 985(a)
2:32-2	Sire Stakes Program	17 N.J.R. 3(a)	R.1985 d.108 17 N.J.R. 573(b)
2:32-2.7	Sire Stakes Program	17 N.J.R. 3(a)	R.1985 d.135 17 N.J.R. 686(a)
2:52-2.1, 3.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)	R.1985 d.75 17 N.J.R. 576(a)
2:53-4.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)	R.1985 d.75 17 N.J.R. 576(a)
2:69-1.11	Commercial values of fertilizers and soil conditioners	17 N.J.R. 764(a)	
2:70-1	Liming materials: readopt fineness classification	17 N.J.R. 765(a)	
2:71-2.2-2.7	Jersey Fresh Logo program	17 N.J.R. 765(b)	
2:90-2.24	Cost share rates for soil and water conservation projects	17 N.J.R. 861(a)	

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
2:90-3	Water conservation project cost sharing	17 N.J.R. 7(a)	R.1985 d.158	17 N.J.R. 807(a)
2:90-3.6	Soil and water conservation management problems	17 N.J.R. 861(b)		

(TRANSMITTAL 28, dated January 21, 1985)

**BANKING—TITLE 3**

3:1-9.2-9.5	Home mortgage disclosure	16 N.J.R. 2872(a)	R.1985 d.98	17 N.J.R. 577(a)
3:2-1	Readopt rules on Advertising by Financial Institutions	17 N.J.R. 238(a)	R.1985 d.183	17 N.J.R. 904(a)
3:22-1.1	Premium finance agreement			17 N.J.R. 990(a)
3:30-2.1	Savings associations and Federal reserve requirements	17 N.J.R. 142(a)	R.1985 d.172	17 N.J.R. 904(b)

(TRANSMITTAL 25, dated December 17, 1984)

**CIVIL SERVICE—TITLE 4**

4:1-12.12	Restorations to promotional lists	17 N.J.R. 645(a)		
4:1-12.15	Appointment of eligible certified	17 N.J.R. 10(a)		
4:1-14.7	Emergency appointments	16 N.J.R. 2191(a)	R.1985 d.124	17 N.J.R. 686(b)
4:1-18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:2-18.1, 18.2, 18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:3-15.1	Repeal rule concerning transfer of county caseworkers	16 N.J.R. 3073(a)	R.1985 d.125	17 N.J.R. 686(c)

(TRANSMITTAL 23, dated February 19, 1985)

**COMMUNITY AFFAIRS—TITLE 5**

5:12	Homelessness Prevention Program	16 N.J.R. 3497(a)	R.1985 d.74	17 N.J.R. 577(b)
5:23-2.15, 2.21	UCC: engineers and architects	17 N.J.R. 645(b)		
5:23-3.14, 3.20	Building and mechanical subcodes	17 N.J.R. 239(a)	R.1985 d.154	17 N.J.R. 810(a)
5:23-3.14, 3.21	One and two-family dwelling construction subcode	17 N.J.R. 862(c)		
5:23-4.5	UCC: duties of construction officials	17 N.J.R. 340(a)		
5:23-5.4	UCC: trainee suspension, fire protection trainees	16 N.J.R. 3372(a)	R.1985 d.85	17 N.J.R. 579(a)
5:23-5.4	UCC: private enforcing agencies and trainee positions	17 N.J.R. 341(a)		
5:23-8	Asbestos hazard abatement subcode	17 N.J.R. 767(a)		
5:27	Readopt rules on Rooming and Boarding Houses	17 N.J.R. 341(b)		
5:27-1.6	Rooming and boarding houses: owner and operator training	17 N.J.R. 777(a)		
5:31-7.5	Local authorities: audit reports	17 N.J.R. 504(a)		
5:71	Readopt County Offices on Aging rules	17 N.J.R. 342(a)	R.1985 d.176	17 N.J.R. 904(c)
5:80	Rules of the Housing and Mortgage Finance Agency	17 N.J.R. 505(a)		
5:80-7	Housing and Mortgage Finance Agency projects: Tenant Selection Standards	16 N.J.R. 954(a)	R.1985 d.106	17 N.J.R. 580(a)

(TRANSMITTAL 27, dated February 19, 1985)

**DEFENSE—TITLE 5A**

5A:2	Leaves of absence for members of National Guard	17 N.J.R. 646(a)		
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**EDUCATION—TITLE 6**

6:3-1.2	Board of school estimate	17 N.J.R. 143(a)	R.1985 d.151	17 N.J.R. 811(a)
6:3-1.17, 1.23	School facility planning services	17 N.J.R. 650(a)		
6:8-6.2	Evaluation and certification of school districts	17 N.J.R. 143(b)	R.1985 d.149	17 N.J.R. 811(b)
6:11-4.3	Emergency certification: operative date			17 N.J.R. 687(a)
6:20-3	Readopt rules on Tuition Public Schools	17 N.J.R. 144(a)	R.1985 d.157	17 N.J.R. 811(c)
6:20-3.1	Tuition public schools: determining rates	17 N.J.R. 119(a)	R.1985 d.91	17 N.J.R. 583(a)
6:20-5.3, 5.4	State facility pupil assignments: district of residence	17 N.J.R. 344(a)	R.1985 d.208	17 N.J.R. 1076(a)

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
6:20-5.5	Asbestos removal and encapsulation reimbursement	17 N.J.R. 863(a)		
6:20-6	Readopt rules on Purchase and Loan of Textbooks	17 N.J.R. 148(a)	R.1985 d.150	17 N.J.R. 814(a)
6:20-8	Readopt rules on Public School Contracts	16 N.J.R. 3372(b)	R.1985 d.88	17 N.J.R. 584(a)
6:22	School facility planning services	17 N.J.R. 650(a)		
6:28-3.2, 3.6, 6.1, 6.3, 8.3	Special Education	17 N.J.R. 345(a)	R.1985 d.209	17 N.J.R. 1077(a)
6:29-6.4	Athletics procedures	17 N.J.R. 659(a)		
6:29-7.1	Readopt Family Life Education Programs	16 N.J.R. 3377(a)	R.1985 d.185	17 N.J.R. 906(a)
6:68-2	Library assistance: readopt Incentive Grant Program rules	17 N.J.R. 346(a)	R.1985 d.207	17 N.J.R. 1078(a)

**(TRANSMITTAL 28, dated February 19, 1985)**

**ENVIRONMENTAL PROTECTION—TITLE 7**

7:1C-1	90-day construction permits	16 N.J.R. 3243(a)		
7:1E	Readopt rules on Discharges of Petroleum and Other Hazardous Substances	17 N.J.R. 865(a)		
7:1F	Industrial Survey Project rules: waiver of Executive Order No. 66	17 N.J.R. 866(a)		
7:2-2.14, 3.4, 3.5	Use of State Park lands	17 N.J.R. 778(a)		
7:2-12	Open lands management	17 N.J.R. 866(b)		
7:7F-1, 3	Shore Protection Program; local government grants	16 N.J.R. 2881(a)	R.1985 d.184	17 N.J.R. 907(a)
7:9-4, 5	Surface water quality and treatment of wastewater discharges	16 N.J.R. 3080(a)		
7:11-2.3, 2.5, 2.8-2.12	Delaware and Raritan Canal water supply system	17 N.J.R. 11(a)		
7:12-1.3, 1.4	Shellfish-growing water classifications	17 N.J.R. 661(a)		
7:13-1.11(c)27	Floodways along Pequest River in Sussex and Warren counties	16 N.J.R. 1306(a)	R.1985 d.218	17 N.J.R. 1080(a)
7:13-1.11(d)49	Floodway delineations in Union County	16 N.J.R. 1146(a)		
7:13-1.11(d)51	Floodways along North Branch Raritan (Project U)	16 N.J.R. 1307(a)		
7:13-7.1(c)17	Redelineation of Delaware River in Harmony Township, Warren County	17 N.J.R. 151(a)		
7:13-7.1(c)30	Floodway delineation along Paulins Kill	16 N.J.R. 2397(a)	R.1985 d.217	17 N.J.R. 1080(b)
7:13-7.1	Paulins Kill floodway delineation: public hearing	16 N.J.R. 2885(a)		
7:13-7.1(d)50	Floodway delineation along North Branch Foulerton's Brook	16 N.J.R. 2398(a)		
7:13-7.1(d)52	Supplemental Project I floodway delineations in the Passaic River Basin	16 N.J.R. 1865(b)	R.1985 d.130	17 N.J.R. 687(b)
7:14A-1.8	Fee schedule for NJPDES permits and applicants	17 N.J.R. 13(a)		
7:19-5	Small water company takeover	16 N.J.R. 3380(a)	R.1985 d.182	17 N.J.R. 910(a)
7:19-6	Water Supply Management Act Rules	16 N.J.R. 2399(a)	R.1985 d.133	17 N.J.R. 687(c)
7:20	Dam Safety Standards	16 N.J.R. 790(a)	R.1985 d.214	17 N.J.R. 1081(a)
7:25-2	Readopt rules on Use of Land and Water Areas under DEP control	16 N.J.R. 1309(a)		
7:25-4.2, 4.14, 4.17	Possession of endangered and nongame species	17 N.J.R. 516(a)		
7:25-4.13, 4.17	Status of the osprey	17 N.J.R. 350(a)	R.1985 d.215	17 N.J.R. 1091(a)
7:25-7.10, 7.11	Taking of oysters and mussels	16 N.J.R. 3385(a)		
7:25-7.13	Crab dredging in Atlantic coast section	16 N.J.R. 3216(a)	R.1985 d.131	17 N.J.R. 697(a)
7:25-12.1	Preservation of sea clams	16 N.J.R. 2885(b)	R.1985 d.132	17 N.J.R. 698(a)
7:25-12.1	Increase of sea clam quota			17 N.J.R. 990(b)
7:25-16.1	Readopt freshwater fishing license lines	16 N.J.R. 2044(a)		
7:25-22.2	Purse seine fishing of menhaden	16 N.J.R. 1668(a)		
7:25-23	Permit to kill wild deer	17 N.J.R. 350(b)		
7:25A	Oyster management	17 N.J.R. 352(a)	R.1985 d.216	17 N.J.R. 1092(a)

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
7:26	Solid and hazardous waste collector-haulers: Disclosure Statement Forms	16 N.J.R. 1425(a)		
7:26-6.5	Solid waste flow: Atlantic County	17 N.J.R. 517(a)		
7:26-6.5	Solid waste flow: Hunterdon County	17 N.J.R. 517(b)		
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.8	Restriction of land disposal of hazardous waste	17 N.J.R. 779(a)		
7:26-8.13, 8.16	Hazardous waste from non-specific sources; hazardous constituents	17 N.J.R. 354(a)		
7:26-8.13	Correction: Hazardous waste from non-specific sources	_____	_____	17 N.J.R. 842(b)
7:26-8.15	Hazardous waste management: warfarin and zinc phosphide	17 N.J.R. 356(a)		
7:26-9.10, 9.11, App. A.	Hazardous waste facilities: closure letters of credit	17 N.J.R. 241(a)		
7:26-10.5	Tank storage containment requirements	17 N.J.R. 152(a)		
7:26-14	Resource Recovery grants and loans	16 N.J.R. 3385(b)		
7:26-14	Resource recovery grants and loans: extension of comment period	17 N.J.R. 242(a)		
7:26-16.4	Solid and hazardous waste: transporters and facilities	17 N.J.R. 518(a)		
7:27	Air quality standards: State Implementation Plan for lead	16 N.J.R. 1669(a)		
7:27-8	Air pollution control: permits and certificates	16 N.J.R. 1671(a)	R.1985 d.96	17 N.J.R. 587(a)
7:27-13.1, 13.2, 13.5-13.8	Ambient air quality standards	16 N.J.R. 1676(a)		
7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887		
7:27-15.4	Air pollution and gas-fueled motor vehicles	17 N.J.R. 781(a)		
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889		
7:27B-4.6	Air pollution and gas-fueled motor vehicles	17 N.J.R. 781(a)		
7:28-24	Readopt Nuclear Medicine Technology rules	17 N.J.R. 22(a)	R.1985 d.140	17 N.J.R. 699(a)
7:29-1.1-1.5	Noise control	16 N.J.R. 1682(a)	R.1985 d.129	17 N.J.R. 699(b)
7:29-1.1-1.5	Noise control: extension of comment period	16 N.J.R. 2405(a)		
7:30	Pesticide Control Code	17 N.J.R. 242(b)		
7:36	Green Acres Program	16 N.J.R. 2405(b)		

**(TRANSMITTAL 28, dated February 19, 1985)**

**HEALTH—TITLE 8**

8:19	Readopt Newborn Hearing Screening rules	17 N.J.R. 869(a)		
8:20-1	Birth Defects Registry	16 N.J.R. 3118(a)	R.1985 d.92	17 N.J.R. 591(a)
8:21A	Good drug manufacturing practices	16 N.J.R. 3248(a)	R.1985 d.141	17 N.J.R. 815(a)
8:21A-2.55	Drug manufacturing: medical gas lot or control numbers	16 N.J.R. 1685(a)		
8:31-26.3, 26.4	Health care facilities: employee physicals; child abuse	16 N.J.R. 3249(a)		
8:31-26.5	Health care facilities: licensure fees	17 N.J.R. 664(a)		
8:31A	Readopt SHARE Guidelines	16 N.J.R. 2898(a)	R.1985 d.121	17 N.J.R. 702(a)
8:31B-2, 3, 4	Hospital Rate Setting rules: temporary waiver of expiration	16 N.J.R. 2733(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	16 N.J.R. 2848(b)		
8:31B-3.23	Correction: Hospital reimbursement	16 N.J.R. 2733(b)		
8:31B-3.23, 3.24, 3.43, 3.75	Hospital rate setting; outpatient dialysis reimbursement hospital-based physician costs	16 N.J.R. 669(a)	Expired	
8:31B-3.26, App. II	Hospital reimbursement: economic factor	17 N.J.R. 153(a)	R.1985 d.189	17 N.J.R. 914(a)
8:31B-3.72	Hospital reimbursement: periodic rate adjustments	17 N.J.R. 872(a)		
8:31B-3.79	Hospital reimbursement: post-acute care patients	17 N.J.R. 873(a)		
8:31B-5.2	Diagnosis Related Groups: outliers	16 N.J.R. 3119(a)	R.1985 d.122	17 N.J.R. 704(a)
8:33A-1.1	New and expanded surgical services: deferral of need applications	16 N.J.R. 2734(a)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
8:33A-2	Surgical facilities: planning and need review	17 N.J.R. 154(a)	R.1985 d.188	17 N.J.R. 915(a)
8:33E-2.1-2.5, 2.10, 2.12, 2.13	Cardiac surgical centers: need review	16 N.J.R. 2196(a)		
8:33F-1.4	Renal disease services: acute hemodialysis standards	17 N.J.R. 874(a)		
8:40	Licensure of invalid coach and ambulance services	16 N.J.R. 3127(a)	R.1985 d.192	17 N.J.R. 919(a)
8:42-1	Home health agencies: readopt licensure standards	16 N.J.R. 3250(a)	R.1985 d.117	17 N.J.R. 704(b)
8:42-1.2	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.118	17 N.J.R. 705(a)
8:43A	Licensure of ambulatory care facilities	16 N.J.R. 3254(a)		
8:43B-1	Licensure of hospital facilities	16 N.J.R. 3275(a)	R.1985 d.115	17 N.J.R. 705(b)
8:43B-1.7	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.116	17 N.J.R. 705(c)
8:43B-1.14	Hospital facilities: psychiatric patient rights	17 N.J.R. 665(a)		
8:43B-8.33-8.44	Newborn care services: physical plant standards	17 N.J.R. 519(a)		
8:43F	Medical day care facilities: readopt licensure standards	16 N.J.R. 3277(a)	R.1985 d.120	17 N.J.R. 706(a)
8:43F-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.119	17 N.J.R. 706(b)
8:45	Clinical laboratory services	17 N.J.R. 268(a)		
8:57-1	Readopt Reportable Diseases rules	17 N.J.R. 784(a)		
8:57-4.15	Immunization of school children: mumps vaccine	17 N.J.R. 358(a)		
8:57-4.16	Emergency Powers of Commissioner	17 N.J.R. 483(a)	R.1985 d.195	17 N.J.R. 955(a)
8:60-1-5, 7	Asbestos licenses and permits	17 N.J.R. 788(a)		
8:60-2, 6	Asbestos training courses	Emergency	R.1985 d.144	17 N.J.R. 741(a)
8:65-5	Controlled dangerous substances: records and reports of registrants	17 N.J.R. 524(a)		
8:65-6	Controlled dangerous substances: Federally-required order forms	17 N.J.R. 528(a)		
8:65-7.3	Controlled dangerous substances: issuing of prescriptions	17 N.J.R. 876(a)		
8:65-10.1, 10.2	Controlled dangerous substances: rescheduling of Sufentanil	16 N.J.R. 2900(a)	R.1985 d.83	17 N.J.R. 592(a)
8:65-10.4	Controlled dangerous substances: add Triazolam to Schedule IV	16 N.J.R. 2901(a)	R.1985 d.191	17 N.J.R. 956(a)
8:65-10.4	Controlled dangerous substances: additions to Schedule IV	16 N.J.R. 3390(a)	R.1985 d.190	17 N.J.R. 957(a)
8:65-10.8	Controlled dangerous substances: exempt chemicals	16 N.J.R. 3280(a)	R.1985 d.84	17 N.J.R. 592(b)
8:65-11.2	Narcotic treatment programs: registration fee	17 N.J.R. 359(a)		
8:71	Generic drug list additions (see 16 N.J.R. 2672(b), 17 N.J.R. 200(b))	16 N.J.R. 1436(a)	R.1985 d.170	17 N.J.R. 957(b)
8:71	Generic drug list additions (see 17 N.J.R. 201(a))	16 N.J.R. 2483(a)	R.1985 d.171	17 N.J.R. 957(c)
8:71	Additions to generic drug list	17 N.J.R. 158(a)		

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**HIGHER EDUCATION—TITLE 9**

9:2-1, 2, 3, 8, 9	Repeal (See 9:6)	16 N.J.R. 2209(a)		
9:2-4, 5, 6, 7, 12, 13	Readopt Administrative Policies for colleges and universities	16 N.J.R. 2216(a)		
9:2-11	Recodify as 9:7-7	16 N.J.R. 2218(a)		
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)		
9:6	State College: policies and standards	16 N.J.R. 2209(a)		
9:6-1.2, 3.1, 3.4, 3.5, 3.6, 3.11, 4.4, 4.7, 5.2, 5.13	State Colleges: policies and standards	17 N.J.R. 160(a)		
9:7-2.4, 2.9	Student assistance programs: eligibility; award combinations	17 N.J.R. 787(a)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
9:7-3.1	Tuition Aid Grant Award Tables	17 N.J.R. 23(a)	R. 1985 d.155	17 N.J.R. 815(b)
9:7-4.1, 4.7, 4.8	Distinguished Scholars Program	17 N.J.R. 787(b)		
9:7-4.2	Garden State Scholars: award amounts	16 N.J.R. 3281(a)	R. 1985 d.153	17 N.J.R. 816(a)
9:7-5.1, 5.4, 5.10	Public Tuition Benefits Program	17 N.J.R. 24(a)	R. 1985 d.156	17 N.J.R. 816(b)
9:7-7	Readopt Veteran's Tuition Credit Program	16 N.J.R. 2218(a)		
9:9-1.6	Student loan applications: prohibited fee	16 N.J.R. 3281(b)		
9:9-1.16	Defaulted student loans: interest liability	16 N.J.R. 1012(a)		
9:9-9.2	PLUS Program: direct loan prerequisites	16 N.J.R. 1012(b)		
9:14	Readopt Independent College and University Assistance rules	17 N.J.R. 25(a)		

(TRANSMITTAL 24, dated December 17, 1984)

**HUMAN SERVICES—TITLE 10**

10:44A-1.1-1.5, 2.2, 2.4, 3.1, 3.3, 4.3, 5.2, 9	Community residences for developmentally disabled: Supportive Living Programs	16 N.J.R. 1438(a)		
10:44B	Skill development homes and family-based respite care homes	17 N.J.R. 359(b)	R.1985 d.181	17 N.J.R. 958(a)
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)		
10:48	Division of Mental Retardation: appeal procedures	17 N.J.R. 876(b)		
10:49-1	Administration Manual: readopt General Provisions	17 N.J.R. 532(a)		
10:49-1.1	Medicaid eligibility	16 N.J.R. 2219(a)		
10:49-1.27	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)	R.1985 d.177	17 N.J.R. 966(a)
10:52-1.1, 1.20	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:52-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)	R.1985 d.87	17 N.J.R. 593(a)
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:53-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)	R.1985 d.87	17 N.J.R. 593(a)
10:53-2	Special Hospital Services: admission and billing	17 N.J.R. 544(a)		
10:54-3	Procedure Code Manual: immunizations	17 N.J.R. 546(a)	R.1985 d.211	17 N.J.R. 1094(a)
10:55-1	Prosthetic and orthotic services	17 N.J.R. 26(a)	R.1985 d.152	17 N.J.R. 817(a)
10:55-1.5, 1.8, 3.1	Shoes and shoe appliances: provider reimbursement	17 N.J.R. 162(a)	R.1985 d.167	17 N.J.R. 967(a)
10:59-1.2, 1.4, 1.9, 1.12	Medical Supplier Manual: recycling of durable medical equipment	16 N.J.R. 2048(a)		
10:60	Readopt Home Care Services Manual	17 N.J.R. 28(a)		
10:60-3	Community Care Waiver Program for Elderly and Disabled	16 N.J.R. 3161(a)		
10:61-1.2	Medicaid participation by State, county and municipal labs	16 N.J.R. 3162(a)		
10:63-1.6	Changes in level of long-term care	16 N.J.R. 2049(a)		
10:63-1.22	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)	R.1985 d.177	17 N.J.R. 966(a)
10:66-1.1, 1.2, 1.3, 1.6, 1.7, 1.9	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:67-1, 2.6	Readopt Psychologist's Services Manual	16 N.J.R. 3163(a)	R.1985 d.114	17 N.J.R. 706(c)
10:69A-1.2, 2.1, 5.3, 5.6, 6.1, 6.4, 6.6, 6.10, 6.11	Pharmaceutical Assistance for Aged and Disabled	17 N.J.R. 367(a)		
10:81-3.9, 3.17, 3.40	PAM: support rights; continued absence	16 N.J.R. 3282(a)	R.1985 d.99	17 N.J.R. 594(a)
10:81-3.27	PAM: transmission of data to receiving county	17 N.J.R. 878(a)		
10:81-3.34	PAM: temporary absence of children from home	17 N.J.R. 163(a)		

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10:81-11.1, 11.4, 11.12	PAM: continuing IV-D services for families that lose AFDC	17 N.J.R. 164(a)	R.1985 d.210	17 N.J.R. 1094(b)
10:81-11.7, 11.9	PAM: child support and health benefits	17 N.J.R. 165(a)	R.1985 d.219	17 N.J.R. 1095(a)
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 369(a)		
10:81-11.18	PAM: weekly second family adjustment	17 N.J.R. 879(a)		
10:82-1.2, 2.13, 3.11, 5.11	ASH: AFDC payment standards	17 N.J.R. 880(a)		
10:82-2.2	ASH: initial grant computation	17 N.J.R. 546(b)		
10:82-2.19	ASH: recovery of overpayments	16 N.J.R. 2055(a)		
10:85-3.1	GAM: household size	17 N.J.R. 37(a)	R.1985 d.168	17 N.J.R. 968(a)
10:85-3.2	GAM: determination of unemployability	17 N.J.R. 547(a)		
10:85-3.2, 10.6	GAM: willingness to work and penalty period	16 N.J.R. 2741(a)		
10:85-3.3	GAM: monthly assistance payment for residential health care	16 N.J.R. 2742(a)		
10:85-3.3	General Assistance rate in residential health care facilities	_____	_____	17 N.J.R. 485(c)
10:85-3.3, 12	GAM: medical care eligibility; repeal income standards rules	16 N.J.R. 3165(a)	R.1985 d.81	17 N.J.R. 595(a)
10:85-3.4	GAM: suits and claims	17 N.J.R. 548(a)		
10:85-4.1, 9.4	General Assistance payment levels	17 N.J.R. 882(a)		
10:85-8	GAM: readopt Referral to Other Agency Programs	16 N.J.R. 3166(a)	R.1985 d.80	17 N.J.R. 596(a)
10:85-App. A	Expiration of List of Forms			17 N.J.R. 616(a)
10:87-1.14	Food Stamps: release of case file information	17 N.J.R. 166(a)	R.1985 d.179	17 N.J.R. 968(b)
10:87-2.16, 2.17, 8.2	Food Stamps: quality control case review	17 N.J.R. 167(a)	R.1985 d.180	17 N.J.R. 969(a)
10:87-2.19, 3.17-3.20	Food Stamp Program: work registration and voluntary quit		R.1985 d.145	17 N.J.R. 818(a)
10:87-2.21, 2.24, 2.28, 2.31, 2.35, 9.7, 11.29	Food Stamp Program revisions	17 N.J.R. 883(a)		
10:87-5.7	Food Stamp Program: treatment of moneys used to repay overpayments	Emergency	R.1985 d.178	17 N.J.R. 986(a)
10:94-3.16	Medicaid district offices	17 N.J.R. 38(a)		
10:94-5.6	Medicaid Only: health insurance premiums	17 N.J.R. 39(a)	R.1985 d.169	17 N.J.R. 969(b)
10:122-2.3, 2.6, 3.2, 3.3, 4.1, 4.3, 4.6, 6.8, 6.9	Child care centers	17 N.J.R. 548(b)		
10:123-3.2	Residential health care: personal needs allowance	17 N.J.R. 39(b)	R.1985 d.134	17 N.J.R. 707(a)
10:129-2	Confidentiality of child abuse records	17 N.J.R. 885(a)		

(TRANSMITTAL 26, dated February 19, 1985)

**CORRECTIONS—TITLE 10A**

10A:32	County juvenile detention centers	17 N.J.R. 40(a)	R.1985 d.97	17 N.J.R. 598(a)
10A:71	State Parole Board rules	16 N.J.R. 3391(a)	R.1985 d.213	17 N.J.R. 1096(a)

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**INSURANCE—TITLE 11**

11:1-2.5-2.8	Property-liability: rate counsel participation	16 N.J.R. 2918(a)		
11:1-16	Request for rate decrease	16 N.J.R. 3169(a)		
11:1-18	Approval of business names	17 N.J.R. 41(a)		
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)		
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)		
11:2-20	License renewal: continuing education requirement	16 N.J.R. 2922(a)		
11:2-21	Property and casualty coverage: underwriting guidelines	16 N.J.R. 2924(a)		
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)		

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11:3-7	Automobile Reparation Reform Act rules: 90-day waiver of expiration	16 N.J.R. 2414(a)		
11:3-7	Automobile Reparation Reform Act rules	16 N.J.R. 3417(a)		
11:3-7	Readopt Automobile Reparation Reform Act rules	17 N.J.R. 43(a)	R.1985 d.109	17 N.J.R. 707(b)
11:3-8	Nonrenewal of auto insurance policies	16 N.J.R. 2930(a)		
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)		
11:3-16	Private passenger automobile rate filings	16 N.J.R. 2934(a)		
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)		
11:3-18	Filing review procedures	16 N.J.R. 2937(a)		
11:3-20	Reporting excess profits	17 N.J.R. 370(a)		
11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 887(a)		
11:4-8	Charitable annuities	16 N.J.R. 3172(a)	R.1985 d.94	17 N.J.R. 598(b)
11:4-9	Annuity and deposit fund disclosure	16 N.J.R. 2939(a)		
11:4-16, 17, 18	Readopt health insurance standards	17 N.J.R. 554(a)	R.1985 d.221	17 N.J.R. 1129(a)
11:4-20	Insuring of handicapped	17 N.J.R. 168(a)	R.1985 d.161	17 N.J.R. 820(a)
11:4-21	Readopt Limited Death Benefit Forms	17 N.J.R. 891(a)		
11:4-25	Social security disability offset	16 N.J.R. 3287(a)		
11:5-1.15, 1.25	Advertising of real estate; sale of interstate property	17 N.J.R. 666(a)		
11:5-1.19	Real estate branch offices	16 N.J.R. 2228(a)	R.1985 d.187	17 N.J.R. 970(a)
11:5-1.24	Closing or transfer of real estate brokerage	16 N.J.R. 2228(b)	R.1985 d.186	17 N.J.R. 970(b)
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)		
11:5-1.32	Residential rental referral agencies	16 N.J.R. 2952(a)	R.1985 d.93	17 N.J.R. 600(a)
11:10-1	Dental plan organizations	16 N.J.R. 2230(a)		
11:10-2	Employees' dental benefit plans	17 N.J.R. 45(a)	R.1985 d.220	17 N.J.R. 1129(b)
11:14-1.3, 2.1, 2.4, 3.1, 3.3, 4.1, 4.2	Auto body repair facilities	16 N.J.R. 2235(a)		
11:15-2.15	Payment of joint fund assessments by local governments	17 N.J.R. 218(a)	R.1985 d.128	17 N.J.R. 709(a)
11:16	Provider verification of services	17 N.J.R. 47(a)		
<b>(TRANSMITTAL 26, dated February 19, 1985)</b>				
<b>LABOR—TITLE 12</b>				
12:15-1.1	Unemployment Compensation: contributions, records and reports	16 N.J.R. 2488(b)		
12:16	Contributions, records, reports	16 N.J.R. 2488(b)	R.1985 d.147	17 N.J.R. 820(b)
12:19	Contributions, records, reports	16 N.J.R. 2488(b)	R.1985 d.147	17 N.J.R. 820(b)
12:120-1-5, 7	Asbestos licenses and permits	17 N.J.R. 788(a)		
12:120-2, 6	Asbestos training courses	Emergency	R.1985 d.144	17 N.J.R. 741(a)
<b>(TRANSMITTAL 19, dated December 17, 1984)</b>				
<b>COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A</b>				
12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)
<b>LAW AND PUBLIC SAFETY—TITLE 13</b>				
13:1-4.6	Police Training Commission: radar instructor certification	17 N.J.R. 377(a)	R.1985 d.226	17 N.J.R. 1130(a)
13:2-23.16, -24, -35	ABC preproposal: industry marketing and sales practices	16 N.J.R. 3292(a)		
13:2-33	ABC: readopt Brand Registration rules	17 N.J.R. 794(a)		
13:13	Discrimination against handicapped persons	16 N.J.R. 838(a)		
13:13	Discrimination against handicapped persons	17 N.J.R. 671(a)		
13:18-6.1	DMV: notification of liability coverage termination	16 N.J.R. 3174(a)	R.1985 d.162	17 N.J.R. 831(a)
13:19-13.1, 13.2, 13.3	Motor vehicle insurance surcharges	17 N.J.R. 893(a)		
13:20-26.5, 26.12, 26.16	State inspection of certain trucks and truck tractors	17 N.J.R. 270(a)	R.1985 d.174	17 N.J.R. 971(a)

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13:20-32.16	Motor vehicle reinspection centers	17 N.J.R. 676(a)		
13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)		
13:20-34	Motor vehicle registration identifying marks	16 N.J.R. 2743(a)	R.1985 d.101	17 N.J.R. 601(a)
13:20-37	Motor vehicles with modified chassis height	16 N.J.R. 2501(a)	R.1985 d.100	17 N.J.R. 603(a)
13:21-1.3, 1.4, 1.5	Driver's licenses and social security numbers	16 N.J.R. 2746(a)		
13:21-4	Readopt rules on Motor Vehicle Titles	17 N.J.R. 377(b)	R.1985 d.200	17 N.J.R. 1131(a)
13:21-14	Readopt rules on licensing of bus drivers	17 N.J.R. 556(a)	R.1985 d.205	17 N.J.R. 1131(b)
13:21-15.6	Auto dealers: acceptance of altered title documents	17 N.J.R. 169(a)		
13:25-3.15, 3.16, 3.17	Motorized bicycle operator license	17 N.J.R. 48(a)	R.1985 d.112	17 N.J.R. 709(b)
13:27-8	Certified landscape architects	17 N.J.R. 169(b)	R.1985 d.163	17 N.J.R. 833(a)
13:28-1	Readopt Beauty Culture Industry rules	17 N.J.R. 49(a)	R.1985 d.139	17 N.J.R. 709(c)
13:28-2	Readopt rules on Beauty Culture Schools	17 N.J.R. 172(a)	R.1985 d.160	17 N.J.R. 835(a)
13:29-1.1-1.6, 1.8-1.12	Board of Accountancy general rules	17 N.J.R. 557(a)		
13:29-2.1, 2.2, 2.3	Registered municipal accountants	17 N.J.R. 559(a)		
13:29-3	Accountancy: readopt rules of professional conduct	16 N.J.R. 3418(a)	R.1985 d.104	17 N.J.R. 604(a)
13:30-8	Readopted Board of Dentistry general provisions	17 N.J.R. 378(a)	R.1985 d.196	17 N.J.R. 972(a)
13:30-8.1, 8.4, 8.6	Board of Dentistry general provisions	17 N.J.R. 378(a)		
13:33-1.38	Eyeglass standards and tolerances	16 N.J.R. 3288(b)	R.1985 d.113	17 N.J.R. 710(a)
13:33-4.1	Readopt Dispensing of Contact Lenses rule	16 N.J.R. 2513(a)	R.1985 d.136	17 N.J.R. 710(b)
13:35-2.4	Chiropractic licensure	16 N.J.R. 3177(a)	R.1985 d.102	17 N.J.R. 605(a)
13:35-2.15	Physician-nurse anesthetist standards	17 N.J.R. 796(a)		
13:35-3.1-3.4	Licensing of medical practitioners	17 N.J.R. 561(a)	R.1985 d.224	17 N.J.R. 1131(c)
13:35-6.1	Medical practice identification	16 N.J.R. 3178(a)	R.1985 d.103	17 N.J.R. 606(a)
13:35-6.4	Pre-proposal: professional conduct of Medical Board licensees	17 N.J.R. 894(b)		
13:35-6.13	Medical examiners board: fee schedule	17 N.J.R. 562(a)	R.1985 d.223	17 N.J.R. 1132(a)
13:35-6.14	Therapeutic treatment by unlicensed medical aides	16 N.J.R. 2065(a)	R.1985 d.159	17 N.J.R. 836(a)
13:36-1.6	Mortuary Board fees and charges	17 N.J.R. 50(a)	R.1985 d.175	17 N.J.R. 973(a)
13:36-2.10, 2.12, 4.4, 4.13, 5.1, 5.6, 5.9, 6.8, 7.1, 7.2	Mortuary science rules	17 N.J.R. 797(a)		
13:37-1.8	Schools of professional nursing	17 N.J.R. 51(a)		
13:37-2-6	Nursing licensure	16 N.J.R. 3179(a)	R.1985 d.105	17 N.J.R. 607(a)
13:38-3.2, 5.1	Board of Optometrists: fee schedule	17 N.J.R. 677(a)		
13:40-3.2, 4.1, 5.1	Professional engineers and land surveyors: Board rules	17 N.J.R. 799(a)		
13:40-8	Engineers and land surveyors: release of project records	16 N.J.R. 1027(a)	R.1985 d.225	17 N.J.R. 1133(a)
13:40-9	Supervision of engineering and land surveying projects	16 N.J.R. 2067(b)	R.1985 d.222	17 N.J.R. 1134(a)
13:42-1.5	Psychological Board licensees: notification of current address	17 N.J.R. 896(a)		
13:43-3.4	Certified Shorthand Reporting exam: conditional credit	17 N.J.R. 801(a)		
13:43-3.5	Shorthand reporting licensees: change of address notification requirement	17 N.J.R. 801(b)		
13:44-4.1	Veterinary medicine: training certificate fee	17 N.J.R. 383(a)		
13:45A-9	Merchandise advertising: readopt rules	17 N.J.R. 678(a)		
13:45A-16	Home improvement practices: readopt rules	17 N.J.R. 679(a)		
13:45A-22.1, 22.2	Deceptive watercraft repair practices	17 N.J.R. 680(a)		
13:46	Boxing Rules	16 N.J.R. 2962(a)		
13:46-4.20, 5.26, -23	Boxing and wrestling standards of conduct	17 N.J.R. 55(a)	R.1985 d.164	17 N.J.R. 837(a)

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13:70-3.46	Thoroughbred rules: horsemen's bookkeeper account	17 N.J.R. 173(a)	R.1985 d.204	17 N.J.R. 1135(a)
13:70-6.53	Thoroughbred rules: qualification as New Jersey bred	17 N.J.R. 271(a)	R.1985 d.203	17 N.J.R. 1135(b)
13:70-12	Thoroughbred racing: readopt Claiming rules	17 N.J.R. 57(a)	R.1985 d.137	17 N.J.R. 710(c)
13:71-7.7	Harness racing applications	17 N.J.R. 57(b)	R.1985 d.138	17 N.J.R. 711(a)
13:71-14	Harness Racing: readopt Claiming rules	17 N.J.R. 57(a)	R.1985 d.137	17 N.J.R. 710(c)

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**PUBLIC UTILITIES—TITLE 14**

14:1-5.2, 5.3	Filings with Board of Public Utilities	17 N.J.R. 802(a)		
14:3-7.12, 7.13	Discontinuance of service for non-payment of combined utilities	16 N.J.R. 2747(a)	R.1985 d.166	17 N.J.R. 974(a)
14:3-8.1, 8.2	Suggested formulae for extension of utility service	17 N.J.R. 174(a)	R.1985 d.202	17 N.J.R. 1136(a)
14:3-10.9	Petitions by solid waste collectors	16 N.J.R. 3292(b)		
14:9-6	Small water company takeover	16 N.J.R. 3419(a)	R.1985 d.182	17 N.J.R. 910(a)
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16:29-1.4, 1.46, 1.47, 1.48	No passing zones: Routes 31, 324, 15, and 159	17 N.J.R. 59(a)	R.1985 d.126	17 N.J.R. 711(c)
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16:31-1.4	No left turn on Route 35 in Shrewsbury	17 N.J.R. 566(b)	R.1985 d.206	17 N.J.R. 1138(a)
16:32-2	Trucks exempted from Federal bridge formula	16 N.J.R. 2072(a)	R.1985 d.194	17 N.J.R. 975(a)
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16:44-5.1	Receipt of bids: requirements	16 N.J.R. 3191(a)		
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16:53A	Readopt Bus Operating Assistance Program rules	17 N.J.R. 272(a)	R.1985 d.193	17 N.J.R. 977(a)
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<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
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**(TRANSMITTAL 13, dated February 19, 1985)**

**Spring 1985**

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