

# NEW JERSEY REGISTER



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## REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS\*, PAGE 1716.

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See the Register Index for Subsequent Rulemaking Activity.

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# RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **September 17, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

## BANKING

### (a)

#### CEMETERY BOARD

##### Presence of Licensee at Disinterments and Reinterments

##### Proposed New Rule: N.J.A.C. 3:41

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

Authority: N.J.S.A. 8A:2-2.

Proposed Number: PRN 1986-332.

Submit comments by September 17, 1986 to:  
William L. Ingling, Executive Director  
New Jersey Cemetery Board  
CN 040  
Trenton, New Jersey 08625

The agency proposal follows:

##### Summary

The purpose of the proposed new rule is to clarify that the presence of a licensed practitioner of mortuary science or funeral director generally is not required during the removal and reinterment of human remains within the confines of a cemetery. This has been a source of some confusion among cemetery companies. Under the proposed new rule the only situation in which the presence of a licensed practitioner of mortuary science or funeral director will be required is when it is known that the condition of the casket or human remains warrants the presence of such practitioner or funeral director.

##### Social Impact

The presence of a licensed practitioner of mortuary science or funeral director will not be required at the disinterment or reinterment of human remains within a cemetery unless requested by a family member or when it is known that the condition of the casket or human remains warrants the presence of a licensed practitioner of mortuary science or funeral director.

##### Economic Impact

Consumers who choose not to have a licensed practitioner or funeral director present at disinterments and reinterments will save the costs associated therewith. Licensed practitioners and funeral directors may

find their fee income attributable to services rendered at disinterments and reinterments to be diminished. Cemetery companies will not be economically affected. The agency may incur investigative costs in the administration of the new rule.

Full text of the proposed new rule follows.

3:41-7.4 Presence of licensee at disinterments and reinterments

A disinterment or reinterment within the confines of a cemetery may be made without the presence of a New Jersey licensed practitioner of mortuary science or funeral director at the time of disposition, except when it is known that the condition of the casket or human remains warrants the presence of such practitioner or funeral director. This rule shall not prohibit a family member from requesting the presence of a licensed practitioner of mortuary science or funeral director at a disinterment or reinterment of human remains.

## CIVIL SERVICE

### (b)

#### CIVIL SERVICE COMMISSION

##### Certification and Appointment Report of Disposition of Certification by Appointing Authority

##### Proposed Amendment: N.J.A.C. 4:1-12.18

Authorized By: Civil Service Commission, Peter J. Calderone, Assistant Commissioner, Department of Civil Service.

Authority: N.J.S.A. 11:9-10.

Proposed Number: PRN 1986-314.

The Civil Service Commission will hold a **public hearing** on September 3, 1986 at 215 East State Street, Trenton, New Jersey at 9:30 A.M.

Submit comments by September 17, 1986 to:  
Peter J. Calderone  
Assistant Commissioner  
Department of Civil Service  
CN 312  
Trenton, New Jersey 08625

## NEW JERSEY REGISTER

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

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*The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 34-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to four volumes depending on the Department coverage desired.*

The agency proposal follows:

#### Summary

It is proposed that the present rule regarding the report of disposition of certifications by appointing authorities shall require the submission of relevant documentary material substantiating the requested removal of an eligible's name. At the present time, the certifications are often returned by appointing authorities without such supporting information, thus causing a delay in approving the final disposition and commencement of the appeal process.

#### Social Impact

The amendment is expected to have a positive social impact both on the operation of the Department of Civil Service as well as on rejected eligibles. The amendment will eliminate delays in the Department's certification process and provide eligibles with access to information they will need in the appeals process.

#### Economic Impact

The amendment is expected to have a certain positive economic impact in that it will expedite the appeal process.

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

4:1-12.18 Report of disposition of certification by appointing authority  
(a) Upon disposition of a certification, each appointing authority shall report the following information to the Department of Civil Service:

1. The name of the permanent appointees;
2. The title and character of their employment;
3. The date the appointee starts work;
4. The appointee's salary or compensation;
5. A statement of reasons for non-selection of the higher ranking eligibles **and, where removal of an eligible from a list is requested, all relevant proofs and arguments in support of the request;** and
6. Any other information the Department of Civil Service considers necessary.

(b) The appointing authority shall notify all interested eligibles of the certification results.

## COMMUNITY AFFAIRS

### (a)

#### NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

##### Procedural Rules

##### Proposed New Rule: N.J.A.C. 5:91-1.3

##### Proposed Amendments: N.J.A.C. 5:91-1.2, 2.1, 3.1, 5.1, 7.1, 13.3 and 13.4

Authorized By: The Council on Affordable Housing, Arthur R. Kondrup, Chairman.

Authority: N.J.S.A. 52:27D-301, et seq., specifically, 52:27D-308.

Proposal Number: PRN 1986-338.

Submit comments by September 17, 1986 to:

Douglas V. Opalski  
Executive Director  
Council on Affordable Housing  
375 West State Street  
CN 813  
Trenton, New Jersey 08625-0813

The agency proposal follows:

#### Summary

The procedural rules of the Council on Affordable Housing detail the process by which parties may make submissions to the Council, and participate in the administrative mechanism established under the Fair Housing Act. The proposed amendments to the procedural rules constitute refinements to the rules resulting from comments received after the initial comment period expired. The amendments clarify the submission and motion process, define "days", and provide compensation for privately retained mediators. A summary of those public comments and the responses thereto appear below.

#### Social Impact

No new or additional social impact will result from the adoption of the proposed amendments. A further discussion of the impact of these rules generally is contained at 18 N.J.R. 821, preceding the original publication of the procedural rules as proposed.

#### Economic Impact

The amendments provide that municipalities and objectors will share the cost of a private mediator, should the Council retain such a mediator.

#### Summary of Public Comments Received After Comment Period Expired and Agency Responses:

COMMENT: Inasmuch as a municipality may refile a petition for substantive certification within 60 days after denial or conditional denial of the petition, the following provision should be added to the procedural rules:

In any transferred case, if the municipality fails to refile a revised petition within said 60 days, reflecting all changes specified by the Council, the Council shall take appropriate action to compel the municipality to prepare and file a revised petition.

RESPONSE: The Supreme Court has provided, in the *Hills Development Company v. Bernards Township*, \_\_\_ N.J. \_\_\_ (1986), that those municipalities transferred by the Court in that case must comply with the Council's determinations. Actions that the Council may take to ensure such compliance will be determined on a case-by-case basis. In all other matters, failure of a municipality to refile petitions with satisfactory changes will result in a denial of substantive certification.

COMMENT: N.J.A.C. 5:91-7.2(c) provides that the Council or its designee may "rely upon or use any interim adjudications previously entered by the trial court in the matter, or any stipulations previously entered into by the parties." The rules should specify for what purposes the Council or its mediators may "rely upon or use" such adjudications or stipulations.

RESPONSE: The Council will rely upon previous orders and stipulations as warranted by the facts and circumstances of a particular case. The procedural rules provide that the Council will notify all parties when it intends to rely upon such orders and stipulations.

COMMENT: Are there to be fixed motion dates on which the Council will consider motions?

RESPONSE: The Council meets on the first and third Monday of each month; all motions, except for those which seek emergent relief, should be made returnable on the regularly scheduled meeting days of the Council. A party seeking emergent relief should contact the Executive Director to arrange for an emergency hearing of the Council.

COMMENT: To avoid confusion between calendar days and working days in computing the deadline for various actions under the rules, "days" should be defined to mean calendar days, as employed in the Municipal Land Use Law.

RESPONSE: The Council agrees with this suggestion and proposes to amend the procedural rules to include a definition of "days" to mean calendar days.

COMMENT: If the Council intends to appoint mediators who are not public employees, the rules should include a provision for compensation, such as:

The Council shall determine the method, amount, and other details of compensation for any private mediator retained. Payment of such a mediator's compensation shall be shared equally by the municipality and the objector.

RESPONSE: The Council agrees with this suggestion and proposes to amend the procedural rules to include such a provision.

COMMENT: The cost of serving copies of draft housing elements or any other documents to an interested party who requests these papers should be borne by the requesting party.

RESPONSE: Municipal submissions to the Council are public documents and, accordingly, will come within the purview of the Right to Know Law and the provisions of that statute which provide that a municipality may assess costs for providing copies of public documents.

COMMENT: Municipalities should be allowed the option of adopting ordinances "under protest".

RESPONSE: The Fair Housing Act makes no provision for a municipality to enact a zoning ordinance, upon obtaining substantive certification, "under protest". Such an action is contrary to the spirit and intent of the Act, which seeks to resolve exclusionary or zoning disputes through the mediation and review process. Consequently, no provision is made for the adoption of a zoning ordinance "under protest".

COMMENT: There is no specification in the proposed rules as to the manner in which an interested party must request that he be provided notice of municipal actions. The rules should specify an accepted manner in which requests for notice may be made.

RESPONSE: The Council agrees with the comment and proposes to amend the procedural rules to require the requests for notice are to be in writing and served upon the municipal clerk by certified mail.

COMMENT: N.J.A.C. 5:91-12.1, regarding regional contributions agreements, should be modified to allow a municipality to enter into a RCA with another municipality outside of its housing region, if so ordered by the Superior Court.

RESPONSE: The suggestion is contrary to section 12 of the Fair Housing Act, which provides that a municipality may only transfer a portion of its fair share to a municipality within its housing region. N.J.S.A. 52:27D-312(a).

COMMENT: N.J.A.C. 5:91-3.3 mandates dismissal and the loss of jurisdiction if a municipality fails to timely submit its housing element and fair share plan, or fails to undertake the required actions set forth in the administrative process. The provision should be made permissive, as opposed to mandatory, to give the Council the flexibility to retain jurisdiction and hear the matter even if the time periods are not precisely followed.

RESPONSE: Fair Housing Act provides that if a municipality fails to file a housing element and fair share plan within the statutory deadline "jurisdiction shall revert to the court." N.J.S.A. 52:27D-316. The Council has determined to apply this requirement uniformly with respect to all municipalities which must make timely submissions to the Council.

COMMENT: N.J.A.C. 5:91-3.1(c) requires that an interested party or potential objector file with the Council its objections to a municipality's proposed housing element; the rules should also require that the objector serve its comments upon the municipality.

RESPONSE: The Council agrees with this suggestion and proposes to amend the procedural rules accordingly.

COMMENT: The rules do not describe or define the extent to which premediation is required.

RESPONSE: Premediation, as that term is used throughout the procedural rules, refers to those informal efforts undertaken by the parties before mediation, as conducted by the Council, begins. It is the intent and purpose of the Council that any such efforts remain informal and unrestricted to allow the parties wide latitude in seeking to resolve the matter before the administrative process is formally initiated.

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

5:91-1.2 Definitions

"Days" means calendar days.

5:91-1.3 Waiver

Any party desiring a waiver or release from the express provisions of the regulations in this chapter may submit a written request to the Council to the attention of the Executive Director. Waivers may be granted only by the Council where such waiver would not contravene the provisions of the Act.

5:91-2.1 Form

(a) (No change.)

(b) Notice: At the time it files a resolution of participation, or at the time these regulations are promulgated, whichever is later, each participating municipality shall provide notice that it has submitted such a resolution to any interested party which has requested to receive such notice. **Requests for notice under this chapter are to be in writing and served upon the municipal clerk by certified mail.**

(c) (No change.)

5:91-3.1 Development of housing element

(a) General: A municipality which files a resolution of participation within four months after the effective date of the Act shall, within five months after the Council's promulgation of its substantive criteria and guidelines, prepare and file with the Council a housing element and any fair share housing ordinance introduced and given first reading and second reading in a hearing pursuant to N.J.S.A. 40:49-2 which implements the housing element. **All requests for notice, or copies of submission, as hereafter provided, are to be in writing and served upon the municipal clerk by certified mail.**

(b) (No change.)

(c) Objectors: Within 15 days of receipt of a municipality's letter of intent, any interested party or potential objector shall file with the Council **and the municipality** a statement of those portions of the report to which is objects, and shall state the reasons therefor.

(d)-(f) (No change.)

5:91-5.1 Objection

(a) General: Within 45 days of publication of the notice of a municipality's petition for substantive certification, any person [shall] **may** file objections with the Council **and the municipality**. These objections shall be in a form as may be determined by the Council and shall include at least:

1.-5. (No change.)

(b) (No change.)

5:91-7.1 General

(a) (No change.)

(b) **The Council shall determine the method, amount and other details of compensation for any private mediator retained. Payment of such a mediator's compensation shall be shared equally by the municipality and the objectors.**

5:91-13.3 Affidavits; Briefs and Supporting Statements

Motions and answering papers shall be accompanied by all necessary supporting affidavits and briefs or supporting statements. **A party shall submit an original and 12 copies of all motions and answering papers, and papers in support.** All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be annexed thereto.

5:91-13.4 Time for serving and filing motions and affidavits or briefs

A notice of motion shall be served and filed not later than 20 days before the time specified for the return date unless otherwise ordered by the Council. **All motions, except for those which seek emergent relief, shall be made returnable on the regularly scheduled meeting days of the Council. A party seeking emergent relief shall contact the Executive Director to arrange for an emergency hearing by the Council.** If a motion is supported by affidavit or brief, the affidavit or brief shall be served and filed with the motion. Any opposing affidavits or briefs, or any cross-motions, shall be served and filed not later than 10 days before the return date. Answers or responses to any opposing affidavits or briefs, or to any cross-motions, shall be served and filed not later than five days before the return date unless the Council otherwise orders.

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF FISH, GAME AND WILDLIFE

#### Fish and Game Council

#### 1987-88 Fish Code

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

Authorized By: Fish and Game Council, Anthony E.

DiGiovanni, Chairman.

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

DEP Docket No. 032-86-07.

Proposal Number: PRN 1986-337.

A public hearing concerning this proposal will be held on:

September 9, 1986 at 8:00 P.M.

Division of Fish, Game and Wildlife

363 Pennington Avenue

Trenton, N.J. 08625

Submit comments by September 17, 1986 to:

A. Bruce Pyle, Chief

Bureau of Freshwater Fisheries

Division of Fish, Game and Wildlife

Department of Environmental Protection

CN 400

Trenton, N.J. 08625

The agency proposal follows:

#### Summary

The proposed 1987-88 Fish Code states when, by what means, at which location, in what numbers, and at what sizes fish may be pursued, caught, killed or possessed.

The proposed amendments include the following revisions to the previous code:

1. New Jersey's trout season traditionally had opened on the first Saturday following the sixth of April; however in 1986 the Fish and Game Council adopted an earlier opening date, selecting the first Saturday in April. The proposed 1987-88 code continues this new format and declares opening day as Saturday, April 4, 1987.

2. A 1.3 mile stretch of the Pequest River located on the Pequest Wildlife Management Area will be designated as the "Pequest Trout Conservation Area" for the period beginning May 11 and extending through October 4, 1987. While under the Pequest Trout Conservation Area designation, this portion of the Pequest River shall be subject to the following regulations: (a) only artificial lures and flies may be used, (b) a 15" size limit on trout; and (c) a one trout daily bag limit. This stretch of the Pequest River will be stocked according to the same schedule set for the rest of the river and will be closed to angling from 5:00 A.M. to 5:00 P.M. on the days which the Pequest River is listed for stocking.

3. Two major impoundments, Clinton Reservoir (Passaic County) and Canistear Reservoir (Sussex County) located on the property of the Newark Watershed and accessible by the general public on a permit/fee basis, will be added to the trout stocked waters list.

4. Following a survey of their trout holding potential and their opening day angler utilization, the following waters were deleted from the trout stocked waters list: Alexandria Brook, Alexauken Creek, Mt. Pleasant Brook (Hunterdon County), Hop Brook, Willow Brook (Monmouth County), Den Brook, Reservoir Brook (Morris County), Belcher's Creek, Cooley's Brook (Passaic County), Dragon Brook, North Church Brook, Sparta Junction Brook (Sussex County), Delawanna Brook, Johnsonburg Creek, and Muddy Run (Warren County). In several cases, this action only involves a name change and not an actual deletion of stocking. There were also some adjustments made to decrease the number of in-season stockings on streams having chronic low water conditions.

5. A permit system is established to obtain information on the commercial netting of foodfish in the waters covered by this code.

6. Largemouth bass will be protected during their spawning period, April 1 through June 15, by the establishment of a reduced harvest regulation. During this period, anglers will be allowed to fish for large mouth bass, but the daily possession limit will be only one bass which must be greater than 19 inches in length.

7. Regulations on the minimum length and creel limit for striped bass have been brought into accord with the recommendations of the Atlantic States Marine Fisheries Commission State/Federal Striped Bass Management Plan.

8. Regulations governing the taking of muskellunge and their hybrids from Greenwood Lake have been brought into accord with the New York State regulations for this bi-state lake.

9. In addition to these revision and new proposals, editorial clarifications have been proposed in sections of the code to make it more understandable. These clarifications include the deletion of scientific names from the main body of the code. The common names of the fish mentioned in the code and their respective scientific names are listed in the code's "Definitions" section.

#### Social Impact

The intent of the early opening of the trout season is to maximize recreational potential, avoid conflicts with the opening days in neighboring states, and avoid the need for the closure of waters (for stocking) on Memorial Day. However, should pre-stocking bioassays indicate a risk of mortality of stocked trout, pre-season stocking will be suspended in all those waters where this risk exists. Should such cancellations take place, considerable adverse public reaction may be expected.

Considerable public support exists for the establishment of specially regulated trout fishing areas where the emphasis is on catching and releasing trout as opposed to killing them. The concept is that superior year-round fishing will be created when the majority of trout, which are caught, are released alive to be available to be caught again. However, considerable opposition has also been expressed over the application of these restrictive regulations. The proposed code attempts to strike a balance between the opposing points of view by allowing the Statewide

regulations governing the taking of trout to be in force during the majority of the spring and fall stocking periods with the more restrictive regulations being applied during the later part of the in-season stockings, through October 4, in an effort to maintain a high density of trout through the summer when no additional stockings normally are made. As the success of the program depends upon the survival of hooked and released trout, the artificial-lure-only restriction is necessary. The relative mortality rates between trout taken on bait (higher) as compared to those taken on artificials (lower) has been well documented. The compromise presented in the code is expected to draw criticism from the extremists on both sides of the issue, but is expected to be found acceptable by the majority of anglers.

The removal of waters from the trout stocking list invariably draws opposition from anglers that regularly fish them. In the cases created by this proposed code, such opposition is expected to be minimal as the streams in question are currently affording little in the way of angling because of their poor trout holding capabilities, chronic low water situations and access problems.

Some opposition has been expressed to the stocking of trout in waters where a fee is imposed (Clinton Reservoir and Canistear Reservoir). However, the Division's stocking policy does allow for this practice when it is demonstrated that the revenue from the fee is used to develop and/or maintain angler access sites and related facilities. The waters involved are excellent trout lakes, by New Jersey standards, and it is expected that many anglers will take advantage of this opportunity. It should also be noted that both impoundments were closed to public angling for many years and that if the Division has the opportunity to open up additional major waters for public angling, by stocking trout, it will do so.

Currently there is no information on the commercial netting of foodfish in the freshwaters of the State. This situation will be corrected by initiating a permit system. Although no fee may be set by the code, opposition may still arise from those netters involved as they currently operate without any form of registering with the Division.

The request for more restrictive regulations governing the taking of largemouth bass during the spawning season originating from the sport fishermen themselves. Dissenting comments, once again, have been on both sides of this issue, with some arguing that the proposed regulations are too liberal, others arguing that they are unnecessary and still others feeling that an increase in the size limit from nine to 12 inches would be more appropriate. The proposed code attempts to strike a balance between these extremes and recognizes that the impact of the regulation is primarily sociological (while it may foster an increase in the percentage of larger bass in the population over the long term, its most immediate impact will be to spread out the catch of large bass over the course of the year) rather than biological (the number of catchable bass is not directly related to spawning success except in extreme cases).

The establishment of a 33 inch size limit for retention of striped bass will turn the Delaware River fishery into strictly a "no-kill" situation. This may be opposed by those currently taking advantage of this fine fishing who customarily keep their catch.

#### Economic Impact

No specific, significant economic impact or detriment is foreseen arising from the proposal since the amendments are primarily a continuation, after annual review, of the existing Fish Code. The reduction of the "take home" catch of fish that will occur as a result of the more restrictive regulations governing the taking of trout and bass is not seen as imposing an economic burden as these fisheries are not considered to even approach subsistence levels.

#### Environmental Impact

The Fish Code has been established to promote the greatest recreational use of the State's freshwater fisheries without endangering the future of the resource. The Fish and Game Council gave due consideration to the division's position that, based on the results of scientific investigations, the April 4th opening date, proposed by the council, carries with it a greater risk of mortality of stocked trout, in certain central New Jersey streams, than the April 11th date proposed by the division, owing to prevailing water conditions which might reasonably be expected to be encountered on these dates. However, the council decided that the social benefits derived from the earlier date significantly outweigh the "cost" of any adverse impact and that the division had the ability to make any stocking adjustments that might be necessary to avoid trout mortality should prevailing stream conditions indicate that such might occur.

The stricter regulations governing the take of striped bass, which are in accord with the recommendations of the Atlantic States Marine Fisheries Commission State/Federal Striped Bass Management Plan, are designed to increase the spawning potential and bolster the stocks of this species, whose population status has been in a serious decline along the Atlantic coast.

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

#### SUBCHAPTER 6. [1986-87] 1987-88 FISH CODE

##### 7:25-6.1 General provisions

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

(d) This Code, when adopted and when effective, shall supersede the provisions of the [1985-86] **1986-87** Fish Code.

##### 7:25-6.2 Trout season and angling in trout-stocked waters

(a) The trout season for [1986] **1987** shall commence 12:01 A.M. January 1, [1986] **1987** and extend to midnight March [16, 1986] **15, 1987**. The trout season shall re-open at 8:00 A.M. Saturday, April [5, 1986] **4, 1987** and extend to include March [22, 1987] **20, 1988**. (See separate regulations for Greenwood Lake, the Delaware River between New Jersey and Pennsylvania, Round Valley Reservoir, Musconetcong River "No Kill" Area, **Pequest River Trout Conservation Area**, and the Van Campens Brook Natural Trout Fishing Area.)

(b) It shall be unlawful to fish for any species of fish from midnight of the [16th] **15th** of March to 8:00 A.M. on April [5, 1986] **4, 1987** in ponds, lakes or those portions of streams that are listed herein for stocking during [1986] **1987** [, except in those separately regulated areas as noted parenthetically at (a) above]. (See separate regulations for Lake Hopatcong, Spruce Run Reservoir, Swartswood Lake and Wawayanda Lake [at (j) below].)

(c) Waters with listed stocking dates shall be closed to all fishing from 5:00 A.M. to 5:00 P.M. on listed dates; included in these waters are all feeder and tributary streams for a distance of 100 feet from the main channel.

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

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April [11, 18, 25] **10, 17, 24**; May [2, 9, 16, 23] **1, 8, 15, 22**;
2. Black River—Route 206, Chester to Dam to lower end of Hacklebarney State Park—April [10, 17, 24] **9, 16, 23, 30**; May [1, 8, 15, 22] **7, 14, 21**;
3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April [7, 14, 21, 28] **6, 13, 20, 27**; May [5, 12, 19] **4, 11, 18**;
4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April [7, 14, 21, 28] **6, 13, 20, 27**; May [5, 12, 19] **4, 11, 18**;
5. Metedeconk River, S. Br.—Bennetts Mills dam to twin [wooded] **wooden** foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April [7, 14, 21, 28] **6, 13, 20, 27**; May [5, 12, 19] **4, 11, 18**;
6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April [11, 18, 25] **10, 17, 24**; May [2, 9, 16, 23] **1, 8, 15, 22**;
7. Paulinskill River—Limecrest Railroad Spur Bridge, Sparta Township, to Columbia Lake dam—April [10, 17, 24] **9, 16, 23, 30**; May [1, 8, 15, 22] **7, 14, 21**;
8. Pequest River—Source to Delaware River—April [11, 18, 25] **10, 17, 24**; May [2, 9, 16, 23] **1, 8, 15, 22**;
9. Pohatcong Creek—Route 31 to Delaware River—April [8, 15, 22, 29] **7, 14, 21, 28**; May [6, 13, 20] **5, 12, 19**;
10. Ramapo River—State line to Pompton Lake—April [10, 17, 24] **9, 16, 23, 30**; May [1, 15, 22]; May [1, 15, 22] **7, 14**;
11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April [9, 16, 23, 30] **8, 15, 22, 29**; May [7, 14, 21] **6, 13, 20**;
12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April [8, 15, 22, 19] **7, 14, 21, 28**; May [6, 13, 20] **5, 12, 19**;
13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April [7, 14, 21, 28] **6, 13, 20, 27**; May [5, 12, 19] **4, 11, 18**;

14. Toms River—Ocean County Route 528, Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571—April [7, 14, 21, 28] **6, 13, 20, 27**; May [5, 12, 19] **4, 11, 18**.

15. Wallkill River—W. Mt. Road to Route 23, Hamburg—April [7, 14, 21, 28] **6, 13, 20, 27**; May [5, 12, 19] **4, 11, 18**;

16. Wanaque River—Greenwood Lake dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez—April [11, 18, 25] **10, 17, 24**; May [2, 9, 16, 23] **1, 8, 15, 22**;

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

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force are as follows: (figures in parenthesis indicates the anticipated number of stockings to be carried out from April [14] **6** through May 31); note: the division reserves the right to suspend stocking when emergency conditions prevail):

1.-9. (No change.)

##### 10. Hunterdon County

[Alexandria Brook—Milford, entire length—(2)]

[Alexauken Creek—Mt. Airy, entire length—(2)]

Amwell Lake—Linvale—(4)

Beaver Brook—[Annandale] Clinton Township, entire length—(2)

Capoolong Creek—Pittstown, entire length—(6)

Delaware-Raritan Feeder Canal—Bulls Island to Hunterdon—Mercer County line—(6)

Everittstown Brook—Everittstown, entire length—(2)

Frenchtown Brook—Frenchtown, entire length—(1)

Hakihohake Creek—Milford, entire length—(2)

Little York Brook—Little York, entire length—(2)

Lockatcong Creek—Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal—[(3)] (2)

Milford Brook—Milford, entire length—(1)

[Mt. Pleasant Brook—Mt. Pleasant, entire length—(0)]

Mulhockaway Creek—Pattenburg, source to Spruce Run Reservoir—(2)

Neshanic River—Kuhl Road to Hunterdon County Route 514—(1)

Prescott Brook—Clinton Township, entire length—(1)

Rockaway Creek, N/B—Tewksbury and Readington Township, entire length—(4)

Rockaway Creek, S/B—Lebanon to Whitehouse, entire length—(3)

Round Valley Reservoir—Lebanon—(1)

Spring Mills Brook—Spring Mills, entire length—(0)

Spruce Run—Glen Gardner and Lebanon Township, entire length—(3)

Spruce Run Reservoir—Clinton—(6)

Sydney Brook—Sydney, entire length—(0)

Tetertown Brook—Tetertown, entire length—(0)

Wickecheoke Creek—Covered Bridge, Sergeantsville to Delaware River—(1)

11.-12. (No change.)

##### 13. Monmouth County

Big Brook—Clover Hill, Route 34 to Swimming River Reservoir—(2)

Englishtown Mill Pond—Englishtown—(2)

Garvey's Pond—Navesink—(2)

Hockhocks Brook—Hockhocks Road to Garden State Parkway bridge (northbound)—(3)

Holmdel Park Pond—Holmdel—(2)

[Hop Brook—Holmdel, Route 520 to Swimming River Reservoir—(2)]

Mingamahone Brook—Farmingdale, Hurley Pond Road to Manasquan River—(1)

Mohawk Pond—Red Bank—(1)

Pine Brook—Tinton Falls, Jersey Central Railroad to Hockhocks Brook—(2)

Shark River—Hamilton, Route 33 to Remsen Mill Road—(3)

Spring Lake—Spring Lake—(2)

Takanassee Lake—Long Branch—(2)

Topenemus Lake—Freehold—(2)

[Willow Brook—Holmdel, Route 520 to Swimming River Reservoir—(2)]

Yellow Brook—Heyers Mill Road to Muhlenbrink Rd., Atlantic Township—(3)

##### 14. Morris County

Beaver Brook—Rockaway, entire length—(3)

Burnett Brook—Ralston, entire length—(2)

Burnham Park Pond—Morristown—(1)

[Den Brook—Union Hill, entire length—(1)]

Drakes Brook—Flanders, entire length—(1)

Flanders Brook—Mt. Olive, entire length—(3)  
 Hibernia Brook—Hibernia, entire length—(4)  
 India Brook—Mt. Freedom to Rt. 24, Ralston, entire length—(2)  
 India Brook Impoundment—Colemans Hollow—(2)  
 Lake Hopatcong—Lake Hopatcong—[(3)] (2)  
 Lake Musconetcong—Netcong—(2)  
 Ledgewood Brook—Ledgewood—(2)  
 Mill Brook—Center Grove, entire length—(2)  
 Mt. Hope Pond—Mt. Hope—(2)  
 Passaic River—White Bridge to Dead River—(6)  
 Pompton River—Pequannock Township (see Passaic Co.)—(6)  
 [Reservoir Brook—Brookside, entire length—(1)]  
 Rhinehart's Brook—Hacklebarney State Park, entire length—(2)  
 Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—[(2)] (3)  
 Speedwell Lake—Morristown—(2)  
 Trout Brook—Hacklebarney State Park, entire length—(2)  
 Washington Valley Brook—Morristown, entire length—(3)  
 15. Ocean County  
 Lake Shenandoah—Lakewood, Ocean County Park—[(3)] (2)  
 Prospertown Lake—Prospertown—(2)  
 16. Passaic County  
 Barbour's Pond—West Paterson—(2)  
 [Belcher's Creek—West Milford, entire length—(0)]  
 Clinton Reservoir—Newark Watershed—(2)  
 [Cooley's Brook—West Milford, entire length—(0)]  
 Greenwood Lake—West Milford—(3)  
 Oldham Pond—North Haledon—(2)  
 Pequannock River—Route 23, Smoke Rise to North Main Street, Butler—(3)  
 Pompton Lake—Pompton Lakes—(2)  
 Pompton River—Pompton Lake to Newark-Paterson Turnpike—(6)  
 Ringwood Brook—State line to Sally's Pond, Ringwood Park—(4)  
 Sheppard's Lake—Thunder Mountain, Ringwood Borough—(3)  
 17. (No change.)  
 18. Somerset County  
 Harrison Brook—Liberty Corner, entire length—[(3)] (0)  
 Lamington River—Rt. 523 (Lamington Road) at Burnt Mills to Jct. with North Branch of Raritan River—(6)  
 Passaic River—White Bridge to Dead River—(6)  
 Peapack Brook—Peapack, entire length—(5)  
 Raritan River—Jct. of Raritan River N/Br and S/Br to dam at Edgewater Road—(4)  
 Rock Brook—Zion, entire length—(2)  
 Middle Brook; E/Br.—Martinsville, entire length—[(2)] (0)  
 19. Sussex County  
 Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)  
 Andover Junction Brook—Andover, entire length—(3)  
 Beaver Run Brook—Beaver Run, entire length—(1)  
 Bier's Kill—Shaytown, entire length—(2)  
 Big Flat Brook, Upper—Saw Mill Lake, High Point State Park to 100 ft. above Steam Mill Bridge on Crigger Road—(1)  
 Canistear Reservoir—Newark Watershed—(2)  
 Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(3)  
 Cranberry Lake—Byram Township—(2)  
 Culver's Lake Brook—Frankford Township, entire length—(2)  
 [Dragon Brook—Cranberry Lake, Byram Township, entire length—(3)]  
 Dry Brook—Branchville, entire length—(0)  
 Franklin Pond Creek—Hamburg Mt. W.M.A., entire length—(3)  
 Glenwood Brook—Lake Glenwood to Stateline—(1)  
 Hardystonville Brook—Hardystonville, entire length—(1)  
 Iliff Lake—Andover Township—(3)  
 Kymer's Brook—Andover, entire length—(2)  
 Lake Musconetcong—Netcong—(2)  
 Lake Hopatcong—Lake Hopatcong—(2)  
 Lake Ocquittunk—Stokes State Forest—(6)  
 Little Flat Brook—Sandyston Township, entire length—(3)  
 Little Swartswood Lake—Swartswood—(2)  
 Lubbers Run—Byram Township, entire length—(3)  
 Neldon Brook—Swartswood, entire length—(2)  
 [North Church Brook—Monroe, entire length—(1)]  
 Papakating Creek—Plains Road bridge to Route 565 Lewisburg—(2)  
 Papakating Creek, W. Br.—Libertyville, entire length—(2)

Parker Brook—Stokes State Forest, entire length—(1)  
 Pond Brook—Middleville, entire length—(2)  
 Roy Spring Brook—Stillwater, entire length—(2)  
 Saw Mill Lake—High Point State Park—(6)  
 Shimers Brook—Montague Township, entire length—(1)  
 [Sparta Junction Brook—Sparta Junction, entire length—(1)]  
 Stony Brook—Stokes State Forest, entire length—(2)  
 Stony Lake—Stokes State Forest—(3)  
 Swartswood Lake—Swartswood—(4)  
 Trout Brook—Middleville, entire length—(2)  
 Tuttle's Corner Brook—Tuttle's Corner, entire length—(2)  
 Wawayanda Lake—Highland Lakes—(4)  
 20. (No change.)  
 21. Warren County  
 Barker's Mill Brook—Vienna, entire length—(2)  
 Bear Creek—Southtown, entire length—(2)  
 Beaver Brook—Silver Lake Dam to Pequest River—(2)  
 Blair Creek—Hardwick Center to Blair Lake—(2)  
 Blair Lake—Blairstown—(0)  
 Buckhorn Creek—Roxburg, entire length—(2)  
 Dark Moon Brook—Johnsonburg, entire length—(1)  
 [Delawanna Brook—Delaware Lake to Delaware River—(1)]  
 Dunnfield Creek—Delaware Water Gap National Recreation Area, entire length—(3)  
 Furnace Brook—Oxford, entire length—(2)  
 Furnace Lake—Oxford—(5)  
 Honey Run—Swayze's Mill Road to Route 519, Hope Township—(2)  
 Jacksonburg Creek—Jacksonburg, entire length—(3)  
 [Johnsonburg Creek—Johnsonburg, entire length—(1)]  
 Lopatcong Creek—Route 519 to South Main Street, Phillipsburg—(3)  
 Merrill Creek—Stewartsville, entire length—(2)  
 Mountain Lake—Buttzeville—(5)  
 [Muddy Run—Hope Township, entire length—(2)]  
 Pohatcong Creek—Mt. Bethel to Route 31—(2)  
 Pophandusing Creek—Oxford Road, Hazen to Delaware River—[(2)] (1)  
 Roaring Rock Brook—Brass Castle, entire length—(2)  
 [Silver Lake—Hope—(5)]  
 Trout Brook—Hackettstown, entire length—(3)  
 Trout Brook—Hope, entire length—(2)  
 Yards Creek—Mount Vernon to Paulinskill River—(2)  
 (g) (No change.)  
 (h) No person shall take, kill, or have in possession in one day more than [6] six in the aggregate of brook trout, brown trout, rainbow trout, or hybrids thereof, during the period extending from 8:00 A.M. April [5, 1986] 4, 1987 until midnight May 31, [1986] 1987, or more than four of these species during the periods of January 1, [1986] 1987 to midnight March [16, 1986] 15, 1987 and June 1, [1986] 1987 through midnight March [22, 1987] 20, 1988 except as designated for [Special Regulation Trout Fishing Areas and Round Valley Reservoir] **specially designated trout fishing areas.**  
 [(i) Landlocked Atlantic salmon (*Salmo salar*), if caught may be retained during the open season for trout prescribed herein. Authority: N.J.S.A. 23:5-1.]  
 [(j)] (i) Lake Hopatcong in Morris County, Spruce Run Reservoir in Hunterdon County, Swartswood Lake and Wawayanda Lake in Sussex County will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March [16, 1986] 15, 1987 and extending to 8:00 A.M., April [5, 1986] 4, 1987, must be returned to the water immediately and unharmed.  
 7:25-6.3 Fly-fishing waters  
 (a) From [and after] 5:00 A.M. on Monday, April [14, 1986] 13, 1987 to and including November 30, [1986] 1987 the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:  
 1.-2. (No change.)  
 (b) Beginning January 1, [1986] 1987 at midnight to March [16, 1986] 15, 1987 and from 8:00 A.M. on April [5, 1986] 4, 1987 to midnight, March [22, 1987] 20, 1988, the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:  
 1. (No change.)  
 (c) (No change.)  
 (d) The following regulations shall apply to the above designated fly-fishing waters:  
 1. (No change.)

2. No more than [(6)] six trout may be killed daily during the April [5] 4 through May 31 portion of the season; at other times the limit is four.

- i. (No change.)
- 3.-5. (No change.)

7:25-6.4 Natural trout fishing areas

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

- (a) (No change.)
- (b) The following regulations apply to the above-designated Natural Trout Fishing Area:

1.-2. (No change.)

3. No person may have in possession while [engaged in angling on the waters designated as Natural Trout Fishing Areas] **fishing**, any natural bait, live or preserved. [Authority: N.J.S.A. 23:5-11, 23:5-15.1]

4. No person [shall] **may** kill or have in possession while fishing any trout less than ten inches in total length. [Authority: N.J.S.A. 23:5-7]

5. No person [shall] **may** have in possession while [engaged in angling on the waters designated as Natural Trout Fishing Areas] **fishing**, any more than one dead, creeled or otherwise appropriated trout, except that additional [fish] **trout** may be caught providing they are returned to the water immediately and unharmed. [Authority: N.J.S.A. 23:5-10, 23:5-7]

7:25-6.5 Pequest River Trout Conservation Area

(a) **Beginning at 12:01 A.M. on May 11, 1987 and extending to midnight October 4, 1987, the following stretch of the Pequest River is designated as the Pequest River Trout Conservation Area: an approximately 1.3-mile portion of the Pequest River, within the Pequest Wildlife Management area, extending from the County bridge on Pequest Furnace Road at Pequest upstream to the railroad bridge adjacent to the Pequest Trout Hatchery.**

(b) **The following regulations shall apply to the Pequest River Trout Conservation Area:**

1. **No bait or lures of any kind may be used except artificial lures and flies.**

2. **No person may have in possession while fishing, any natural bait, live or preserved.**

3. **No person may kill or have in possession while fishing any trout less than fifteen inches in total length.**

4. **No person may have in possession while fishing, any more than one dead, creeled or otherwise appropriated trout, except that additional trout may be caught providing they are returned to the water immediately and unharmed.**

5. **Size limits and creel limits on species other than trout are in accordance with Statewide regulations.**

6. **The area shall be closed to angling from 5:00 A.M. to 5:00 P.M. on those days that the Pequest River is listed for stocking.**

7:25-[6.5] 6.6 Round Valley Reservoir

(a) The minimum size of smallmouth bass [(Micropterus dolomieu)] shall be 13 inches. There shall be no size limit on largemouth bass [(Micropterus salmoides)]. Daily bag and possession limit for largemouth bass and smallmouth bass shall be [5] five in aggregate.

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

(d) The season for lake trout shall extend from 12:01 A.M. January 1 to midnight September 30, [1986] 1987.

(e) (No change.)

7:25-[6.6] 6.7 Baitfish

(a) (No change.)

(b) In waters listed in this code to be stocked with trout, it is prohibited to net, trap or attempt to net or trap baitfish from March [16] 22 to June 15 except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and four feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than two inches in diameter or an umbrella net no greater than three and one-half feet square.

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

7:25-[6.7] 6.8 Nets

(a) Except as provided for the taking of baitfish, it shall be illegal to take fish from the freshwaters of the State, including tidal freshwaters, by means of nets except **under special permit issued by the division at its discretion** and as hereafter provided for.

(b) In the tidal freshwaters of New Jersey other than the Delaware River, its tributaries and tributaries to Delaware Bay:

1.-2. (No change.)

3. It shall be legal to take foodfish as defined in N.J.A.C. 7:25-[6.16(k)] 6.18(k) by the following means.

i.-iv. (No change.)

(c) In the waters of the tributaries of the Delaware River, in New Jersey, between Trenton Falls and Birch Creek:

1.-2. (No change.)

3. It shall be legal to take foodfish as defined in [N.J.S.A.] N.J.A.C. 7:25-[6.16(k)] 6.18(k) by means of a seine, gill net, eelpot or fyke net, each without wings, or a parallel net at the edge of low water. [Authority: N.J.S.A. 23:5-11]

4.-7. (No change.)

(d) (No change.)

7:25-[6.8] 6.9 Snagging prohibited

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

7:25-[6.9] 6.10 Warmwater fish

(a) Except for largemouth bass and as noted for waters stocked with trout, closed seasons are hereby eliminated in open (unfrozen) waters on all freshwater fish [of] and on striped bass [from] or any hybrid thereof in and upstream of any impoundment or inland lake or pond. The season for the taking of striped bass from all other freshwaters is March 1 to December 31. (See Delaware River between New Jersey and Pennsylvania, and ice fishing sections for separate regulations.)

(b) The size limits on rock bass [(Ambloplites rupestris)], black crappie [(Pomoxis nigromaculatus)], white crappie [(Pomoxis annularis)], redbfin pickerel [(Esox americanus americanus)] and chain pickerel [(Esox niger)] are hereby eliminated in all waters except in Lake Hopatcong, Swartswood Lake (Sussex County), Farrington Lake (Middlesex County), and Hammonton Lake (Atlantic County) where there shall be a minimum size of 15 inches for chain pickerel. (See separate regulations for Greenwood Lake.)

(c) (No change.)

(d) The minimum size of [largemouth bass (Micropterus salmoides) and] smallmouth bass [(Micropterus dolomieu)] shall be nine inches [in all waters except for Mountain Lake (Warren County), Parvin Lake (Salem County), Lake Musconetcong (Sussex County), Mercer Lake (Mercer County), and Lake Carasaljo including the South Branch of the Metedeconk River on South Lake Drive and Lake Manetta to the bridge over Watering Place Brook on Sunset Avenue (Ocean County) where the minimum size shall be 12 inches. Daily bag and possession limit for largemouth bass and smallmouth bass shall be not more than five in the aggregate] —except for Monkville Reservoir (Passaic County), where the minimum size shall be 13 inches. (See separate regulations for Greenwood Lake, and the Delaware River between New Jersey and Pennsylvania, and Round Valley Reservoir.)

(e) The minimum size of largemouth bass shall be nine inches, except that during the period of April 1 through June 15 a 19-inch minimum size limit shall be in effect. (See separate regulations for Mountain Lake (Warren County), Parvin Lake (Salem County), Lake Musconetcong (Sussex County), Mercer Lake (Mercer County), Lake Carasaljo, including the South Branch of the Metedeconk River on South Lake Drive and Lake Manetta to the bridge over Watering Place Brook on Sunset Avenue (Ocean County), Greenwood Lake, the Delaware River and Round Valley Reservoir.)

(f) Daily bag and possession limit for largemouth bass and smallmouth bass shall not be more than five in the aggregate except during the period of April 1 through June 15 only one largemouth bass may be possessed (see separate regulations for Mountain Lake (Warren County), Parvin Lake (Salem County), Lake Musconetcong (Sussex County), Mercer Lake (Mercer County), and Lake Carasaljo, including the South Branch of the Metedeconk River on South Lake Drive and Lake Manetta to the bridge over Watering Place Brook on Sunset Avenue (Ocean County), Greenwood Lake, the Delaware River and Round Valley Reservoir.)

(g) In Mountain Lake (Warren County), Parvin Lake (Salem County), Lake Musconetcong (Sussex County), Mercer Lake (Mercer County) and Lake Carasaljo, including the South Branch of the Metedeconk River on South Lake Drive and Lake Manetta to the bridge over Watering Place Brook on Sunset Avenue (Ocean County), the minimum size for largemouth bass shall be 12 inches at all times and the daily bag limit and possession shall be not more than five in the aggregate with smallmouth bass.

[(e)] (h) (No change.)

[(f)] (i) Eels [(*Anguilla rostrata*)] may not be taken from non-tidal waters of this state by use of eel baskets, fykes, or traps of any kind, except that eel weirs may be operated under permit of the division in accordance with [Statute] N.J.S.A. 23:3-55. [Authority: N.J.S.A. 23:5-11]

[(g)] (j) The minimum length on northern pike [(*Esox lucius*)] shall be 24 inches and 30 inches for the [muskie] muskellunge [(*Esox masquinongy*)] and tiger muskie [(*Esox lucius* X *Esox masquinongy*)]. The daily bag and possession limit for these species shall be two in aggregate. [Authority: N.J.S.A. 23:5-7, 23:5-10.]

[(h)] (k) (No change.)

[(i)] (l) Daily bag and possession limit for chain pickerel [(*Esox niger*)] and walleye [(*Stizostedion vitreum vitreum*)] shall be not more than five of each. [Authority: N.J.S.A. 23:5-10]

[(j)] (m) The minimum length on walleye [(*Stizostedion vitreum vitreum*)] shall be 15 inches. [Authority: N.J.S.A. 23:5-7]

[(k)] (n) The minimum length for striped bass [(*Morone saxatilis*)] shall be [24] 33 inches and the minimum length for their hybrids shall be 18 inches. [Except for the Delaware River the] The daily bag and possession limit for either shall be two [in waters upstream of dams. For the Delaware River and all other freshwaters, tidal and non-tidal, the daily bag and possession limit shall be five].

7:25-[6.10] 6.11 Ice fishing

(No change in text.)

7:25-[6.11] 6.12 Bow and arrow fishing

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

7:25-[6.12] 6.13 Closed waters

(No change in text.)

7:25-[6.13] 6.14 Emergency closure notice

(No change in text.)

7:25-[6.14] 6.15 Greenwood Lake

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

I.	Season	Size	Bag Limit
Trout	No closed season	No minimum	3
Largemouth bass & smallmouth bass	No closed season	9" minimum	5 singly or in aggregate
Chain pickerel	No closed season	No minimum*	10
Muskellunge & any hybrid thereof	[No closed season] June 20-November 30	30" minimum	1
All other species	No closed season	No minimum	no limit

2.-5. (No change.)

7:25-[6.15] 6.16 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

I. (a)	Season	Size Limit	Bag Limit
Trout	April [5] 4-Sept. 30	No minimum	5
Largemouth bass & smallmouth bass	No closed season	9" minimum	5 in aggregate
Walleye	No closed season	15" minimum	5
Chain pickerel	No closed season	12" minimum	5
Muskellunge, & any hybrid thereof	No closed season	30" minimum	2
Northern pike	No closed season	24" minimum	2
Striped bass	March 1-Dec. 31	[24] 33" minimum	[5] 2
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	closed-endangered species		
All other freshwater species	No closed season	No minimum	no limit

2.-7. (No change.)

7:25-[6.16] 6.17 Fresh [T]tidal [T]tributaries of the Delaware River and Bay

The minimum length on Atlantic sturgeon [(*Acipenser oxyrinchus*)] shall be 60 inches with no daily bag limit. [Authority: N.J.S.A. 28:5-10, 13:1B-30, 13:1B-31]

7:25-[6.17] 6.18 Definitions

Unless the context clearly implies a differing usage, the following definitions shall apply in this Code[.] :

... "Foodfish" for purposes of N.J.A.C. 7:25-[6.6] 6.8 only, means the following species.

1.-18. (No change.)

... "Open waters" (all sections except N.J.A.C. 7:25-[6.8] 6.9) means these waters in which angling is permitted, particularly in reference to time.

"Open waters" (N.J.A.C. 7:25-[6.8] 6.9) means these waters not covered with ice.

"Other fish species", and all hybrids and strains thereof, which are provided for by the provisions of this Code, either directly or implied, are as follows:

[1. Landlocked Atlantic salmon—*Salmo salar*]  
Renumber 2.-12. as 1.-13. (No change in text.)

## CORRECTIONS

### THE COMMISSIONER

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

A public hearing concerning the proposals will be held on September 9, 1986 at 10:00 A.M. in the Correction Officers Training Academy (C.O.T.A.), Stuyvesant Avenue and Whittlesey Road, Trenton, New Jersey.

Interested persons who wish to present oral comments should contact Elaine Ballai at (609) 292-8942 to be scheduled.

Submit written comments by September 17, 1986 to:

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

(a)

### Classification Process

#### Proposed New Rule: N.J.A.C. 10A:9

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

Proposal Number: PRN 1986-331.

The agency proposal follows:

#### Summary

The proposed new rules are part of the Department of Corrections effort to codify existing Standards. The proposed rules provide the detailed criteria to be used by various classification committees in decision making regarding the needs of inmates from admission until they are paroled or have served their maximum sentences.

#### Social Impact

The proposed new rules will have no new or additional social impact since they are simply a codification of Standards into rules. These proposed rules serve to implement procedures to ensure that inmates are provided classification services from admission to discharge.

#### Economic Impact

The proposed new rules will have no new or additional economic impact because facilities are already adhering to these Standards and no additional costs are necessary to implement or maintain them.

Full text of the proposed new rules follows.

CHAPTER 9  
CLASSIFICATION PROCESS

SUBCHAPTER 1. INTRODUCTION

10A:9-1.1 Purpose

(a) The purpose of this Chapter is to:

1. Establish criteria for eligibility for reduced custody status;
2. Establish procedures regarding the award and forfeiture of commutation time and work credits;
3. Provide an orderly process for deciding the degree of custody and appropriate correctional facility for each inmate;
4. Provide an orderly process for considering transfers of inmates between correctional facilities;
5. Establish a mechanism for deciding whether to recommend parole for persons confined pursuant to N.J.S.A. 2C:47 and 2A:164; and
6. Provide a process for assignment and transfer of juvenile offenders.

10A:9-1.2 Scope

(a) Subchapter 2 through Subchapter 6 shall be applicable to the Division of Adult Institutions.

(b) Subchapter 7 shall be applicable to the Division of Adult Institutions and the Division of Juvenile Services.

(c) Subchapter 8 shall be applicable to inmates sentenced under N.J.S.A. 2C:47 and 2A:164 who are housed at either the Adult Diagnostic and Training Center (A.D.T.C.) or other facilities.

(d) Subchapters 9 through 12 shall be applicable to the Division of Juvenile Services.

10A:9-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise.

“A.D.T.C.” means the Adult Diagnostic and Training Center, the correctional facility designated to house persons who have been convicted pursuant to N.J.S.A. 2C:47 and 2A:164.

“Classification Committee” means a group of correctional staff persons that have been designated to make decisions related to the needs of inmates from admission to discharge.

“Classification material” means documents in the classification folder on which information regarding an inmate is recorded such as psychological or psychiatric evaluations, rap sheets, disciplinary charges, program participation, pre-sentence reports, medical records, etc.

“Commissioner” means the Commissioner of the New Jersey Department of Corrections.

“Detainer” means a warrant or formal authorization to hold an inmate for prosecution or detention by a federal, state or local law enforcement agency or the U.S. Immigration Department. Detainers may include, but are not limited to:

1. Adjudicated criminal charges for which sentence has been imposed;
2. Criminal charges resulting from indictment, for which there is no final disposition (open charges);
3. Warrants for violation of parole or probation; and
4. Immigration detainers.

“Division of Adult Institutions” means an administrative unit of the Department that is responsible for the operation of the adult correctional facilities.

“Division of Juvenile Services” means an administrative unit of the Department that is responsible for the operation of the juvenile correctional facilities.

“Indeterminate sentence” means a sentence of imprisonment which contains no fixed terms. See N.J.S.A. 30:4-148.

“Increased custody” means assignment of an inmate to a custody level that requires more supervision.

“Jones Farm” means a community based satellite unit of the State Prison, Trenton, which houses inmates in full minimum custody status that meet the criteria for assignment to that facility.

“Prison Complex” means the state correctional facilities designated to house inmates serving prison sentences.

“Prison sentence” means a definite term of imprisonment having fixed minimum and maximum time limits.

“Reduced custody” means assignment of an inmate to a custody level that requires less supervision.

“Superintendent” means the chief executive officer of any State correction facility in the New Jersey Department of Corrections.

“Vroom Readjustment Unit” (V.R.U.) means the Administrative Segregation and Protective Custody Unit for inmates, located in the Vroom Building on the grounds of Trenton Psychiatric Hospital.

“Youth Complex” means state correctional facilities designated to house inmates between the ages of 15 and 26, who have not previously been sentenced to a state prison in New Jersey or in any other state.

10A:9-1.4 Forms

The following form related to classification shall be reproduced by each correctional facility from the original which is available by contacting the Standards Development Unit, New Jersey Department of Corrections.

1. 852-I Authorization for Emergency Transfer.

SUBCHAPTER 2. RECEPTION CLASSIFICATION

10A:9-2.1 Reception activity

(a) Adult male offenders are admitted to the Youth Reception and Correction Center (Y.R.C.C.) at Yardville or the Adult Diagnostic and Treatment Center (A.D.T.C.) at Avenel, and female offenders are admitted to the Correctional Institution for Women (C.I.W.) at Clinton where they begin a reception classification process.

(b) Upon admission to the reception unit, assignment to housing shall be made based upon the inmate's:

1. Age;
2. Size;
3. Offense;
4. Sentence;
5. Previous incarcerations;
6. Mental status; or
7. Security needs.

(c) The reception process shall be completed within three weeks, unless unusual circumstances arise.

(d) During the reception classification process the inmate shall be:

1. Photographed;
2. Fingerprinted;
3. Given orientation;
4. Given medical and dental examinations;
5. Given educational, psychological and vocational aptitude tests; and
6. Interviewed by the psychologist, social worker and other staff members.

(e) At the end of the reception process, a male inmate admitted to the Y.R.C.C. shall appear before the Inter-Institutional Classification Committee (I.I.C.C.) or the Youth Reception Classification Committee and the decisions on the degree of custody and the appropriate correctional facility to which the inmate will be assigned shall be made.

(f) At the end of the reception process, a male inmate admitted to the A.D.T.C. shall appear before the Institutional Classification Committee (I.C.C.) and decisions on the inmate's program (for example, housing, therapy, education, etc.) while he is at the A.D.T.C. shall be made at that time.

(g) At the end of the reception process, a female inmate admitted to the C.I.W. shall appear before the Institutional Classification Committee (I.C.C.) and decisions on the inmate's program (for example, housing, degree of custody, education, job, etc.) while she is at C.I.W. shall be made at that time.

SUBCHAPTER 3. INSTITUTIONAL CLASSIFICATION COMMITTEE (I.C.C.)

10A:9-3.1 Composition of the Institutional Classification Committee (I.C.C.)

(a) The members of the Institutional Classification Committee (I.C.C.) at each of the adult correctional facilities shall be composed of the:

1. Superintendent or Assistant Superintendent;
2. Director of Psychology;
3. Director of Education;
4. Social Work Supervisor;
5. Director of Custody Operations or Correction Captain;
6. Supervisor of State Use Industries; and
7. Classification Officer (non-voting member).

(b) Staff members other than those listed above, may be designated by the Superintendent to serve as members or alternate members of the I.C.C.

(c) The I.C.C. shall meet weekly, and more often as required.

10A:9-3.2 Responsibilities of the Institutional Classification Committee (I.C.C.)

(a) Each institution shall establish an Institutional Classification Committee(s) (I.C.C.) which shall be responsible for:

1. Assigning inmates to work, educational, vocational and treatment programs appropriate to their needs;

2. Monitoring the progress of inmates by scheduling periodic reviews to ensure that rehabilitative efforts are being maximized;
3. Reviewing the applications of inmates for changes in custody status;
4. Reviewing the requests of inmates for transfers to other facilities;
5. Making changes in the housing or program assignments of inmates;
6. Assigning the inmate to community release programs;
7. Approving the application for restoration of commutation time;
8. Reviewing the imposition of Administration Segregation; and
9. Reviewing Restrictive Activities Program assignments at the Adult Diagnostic and Treatment Center (A.D.T.C.).

10A:9-3.3 Institutional Classification Committee (I.C.C.) decision making criteria

(a) Decisions on transfers and assignments to housing, work, educational, vocational, or treatment programs, custody status and community release programs shall be made after consideration of the the following factors:

1. Needs and interests expressed by inmate;
2. Age;
3. Family status;
4. Social contacts with family and friends;
5. Correctional facility adjustment;
6. Educational history and needs;
7. Vocational history and needs;
8. Military history;
9. Nature and circumstance of present offense;
10. Prior offense record;
11. Records from previous confinement;
12. Detainers on file or pending;
13. Drug dependency and/or involvement;
14. Sexual adjustment;
15. History of escape, attempted escape or propensity for escape;
16. Current psychological and/or psychiatric reports;
17. Medical history and recommendations;
18. Arson history; and
19. Needs of the correctional facility; and/or,
20. Any other factor pertinent to the inmate's case.

10A:9-3.4 Initial classification

(a) Upon assignment to an adult correctional facility or its satellite, and inmate shall undergo a series of tests and interviews to determine his or her aptitudes, abilities, interests and problems.

(b) The inmate's appearance before the Institutional Classification Committee (I.C.C.) shall occur within 21 days after admission to the correctional facility. (c) At the initial classification, the I.C.C. shall, subject to availability, assign an inmate to a program which may include:

1. A work assignment;
2. A treatment program;
3. An education program; and/or
4. A vocational training program.

(d) An inmate may be referred by the I.C.C. to a subcommittee or department head for consideration for individual components of the program.

(e) A review date shall be set and the decision of the I.C.C. shall be forwarded to the appropriate departments.

10A:9-3.5 Review dates

(a) An inmate shall be scheduled for a review date at his or her initial classification that is no more than twelve months from the date of initial classification.

(b) The frequency of case review shall be dependent on the review date determined by the Institutional Classification Committee (I.C.C.) or a change in the inmate's status. Status changes may include:

1. Parole date changes;
2. Sentence changes;
3. Changes in personal needs;
4. Referrals from the Disciplinary Hearing Officer; or
5. Other situations arising which make a case review appropriate.

(c) The Classification Office shall be responsible for scheduling all reviews set by the I.C.C.

(d) An update of the inmate's psychological status shall occur on a yearly basis, or more often as the need arises.

(e) An inmate shall be notified of his or her review date no later than 48 hours prior to its occurrence. When the inmate appears before the I.C.C., he or she may submit a request for reassignment in the areas of:

1. Housing;
2. Work;
3. Education;

4. Vocational training;
5. Counselling or treatment; and
6. Custody status.

10A:9-3.6 Special reviews

(a) Inmates desiring a special review of their cases because of a change in status may submit a written request which indicates the reason for the review to the staff member(s) designated by the Superintendent.

(b) It shall be the responsibility of the staff member to determine if the requested review is appropriate, and the reports that will be necessary for consideration. If the review is recommended, the staff member will forward all appropriate information to the Institutional Classification Committee (I.C.C.).

10A:9-3.7 Discussions

(a) An inmate's case may be brought to the attention of the Institutional Classification Committee (I.C.C.) prior to his or her review date if it has been referred by a staff member or an institutional committee for the purpose of making a change in:

1. Work assignment;
2. Custody status;
3. Housing assignment; or
4. Program assignment.

10A:9-3.8 Work assignment

(a) Decisions on inmate work assignments shall be made by the Institutional Classification Committee (I.C.C.) based upon:

1. Physical condition;
2. Mental and mechanical aptitudes;
3. Past work experience;
4. Occupational interests;
5. Vocational needs of the inmate;
6. Opportunities upon release; and
7. Availability of jobs within the correctional facility.

(b) When the I.C.C. has assigned an inmate to a job, he or she is not eligible for a job change until at least two months of work has been completed on the job.

10A:9-3.9 Education assignments

(a) Determining factors in referring an inmate to an educational program shall be:

1. Recommendation of the Supervisor of Educational programs;
2. Test results;
3. Interest and aptitude of the inmate;
4. Sentence length; and/or
5. Community employment plan.

10A:9-3.10 Counseling assignments

(a) Inmates with emotional and/or personal problems shall be referred to the appropriate staff members.

(b) Inmates shall be approved for group counseling and other therapy programs by the Institutional Classification Committee (I.C.C.) and shall be assigned by the staff member in charge of the program.

(c) Inmates may be removed from these programs only by the decision of the I.C.C.

10A:9-3.11 Reassignments

(a) Reassignments are cases referred to the Institutional Classification Committee (I.C.C.) for a change in some area of an inmate's program.

(b) Any change in or addition to the inmate's initial program shall be made by the I.C.C. Reassignments may be made upon inmate or staff request, as the need arises.

10A:9-3.12 Community Release Programs

(a) The Institutional Classification Committee (I.C.C.) may assign an inmate to a community release program when the inmate is eligible for:

1. Full minimum custody; and
2. Assignment to the program in which he or she will participate.

10A:9-3.13 Transfers

(a) Except for inmates assigned to the Adult Diagnostic and Treatment Center (A.D.T.C.) and the Correctional Institution for Women (C.I.W.) at Clinton, the I.C.C. shall review an inmate's request for transfer to another correctional facility.

(b) When it has been determined that the inmate meets the criteria for assignment to the correctional facility he or she has requested, the request for transfer shall be referred to the Inter-Institutional Classification Committee (I.I.C.C.), the Yardville Reception Classification Committee (Y.R.C.C.) or the Special Classification Committee (S.C.C.) for consideration.

10A:9-3.14 Written procedures

(a) Each correctional facility shall develop written classification procedures that are in accordance with this Subchapter.

(b) These written procedures shall be reviewed and updated annually and submitted to the Bureau of Correctional Information and Classification Services for review and approval.

SUBCHAPTER 4. ELIGIBILITY CRITERIA FOR REDUCED CUSTODY CONSIDERATION

10A:9-4.1 Eligibility for reduced custody

(a) The criteria set forth in this Subchapter shall be applied by Classification Committees to determine whether an inmate is eligible for reduced custody consideration, as follows:

1. Eligible to be considered for full minimum custody status, preceded by the successful completion of a period of time in gang minimum or in-and-out status;
2. Eligible to be considered for gang minimum or in-and-out status only; or
3. Not eligible to be considered for any type of reduced custody status.

10A:9-4.2 No right to reduced custody

A reduction in custody status is a privilege and not a right.

10A:9-4.3 Custody levels

(a) Inmates classified as "maximum custody" shall be assigned to activities within the confines of the correctional facility under continuous supervision.

(b) Inmates classified as "gang minimum custody status" or "in-and-out custody status" shall be assigned to activities or jobs which routinely require them to move outside the security of the correctional facility, but on the grounds of the facility and within eyesight of a correction officer, civilian instructor or other employee authorized to supervise inmates.

(c) Inmates classified as "full minimum custody status" are those assigned to either:

1. Work details, jobs or programs outside the main correctional facility, (on or off the grounds of the facility) with minimal supervision;
2. A satellite unit or minimum security trailer unit; or
3. Both (c)1 and 2 above.

(d) Except as provided by N.J.A.C. 10A:9-4.4, the successful completion of a period of time in gang minimum custody status or in-and-out custody status shall be a prerequisite for full minimum custody status.

1. The amount of time in gang minimum custody or in-and-out status shall be at the discretion of the Institutional Classification Committee (I.C.C.).

2. Inasmuch as the Youth Correctional Institution at Annandale is classified as a minimum security facility, inmates at that facility are not required to fulfill the prerequisite time in gang minimum custody status or in-and-out custody status.

(e) Full minimum custody status is a prerequisite for participation in all community release programs.

10A:9-4.4 Authority of Classification Committees

(a) Reductions in inmates' custody levels within a particular correctional facility shall be made by the Institutional Classification Committee (I.C.C.).

1. In an emergency situation, or when additional information is received which negatively affects an inmate's suitability to remain in reduced custody, the inmate's custody level can be increased temporarily by order of the Superintendent, Assistant Superintendent or Director of Custody Operations.

2. Such custody level changes must be reviewed and approved by the I.C.C. at its next regularly scheduled meeting.

(b) The Inter-Institutional Classification Committee (I.I.C.C.) is authorized to change the custody status of any inmate whom it transfers or reassigns to another correctional facility or unit.

(c) The I.I.C.C. is authorized, at initial classification, to assign eligible inmates directly to full minimum custody status at Jones Farm without the prerequisite service of time required for gang minimum custody status or in-and-out custody status.

10A:9-4.5 Discretion of Classification Committees; factors to be considered

(a) Except as otherwise noted, Classification Committees are the only bodies authorized to reduce or increase an inmate's custody status.

(b) In making decisions to reduce an inmate's custody status, Classification Committees shall take into consideration all relevant factors which, in their professional judgment, bear upon the inmate's suitability for reduced custody. These factors shall include, but not be limited to:

1. Field account of the offense;

2. Prior criminal record;
  3. Previous incarcerations;
  4. Correctional facility adjustment; and
  5. Reports from professional and custody staff.
- (c) When considering inmates whose present offense or past history involves arson, escape, assault, murder or sexual offenses, or who have been known to have psychological problems, the Classification Committees shall utilize psychiatric or psychological evaluations which are not more than six months old and which confirm suitability for reduced custody status.

(d) Classification Committees shall not be compelled by these criteria to automatically grant a reduction in custody to every inmate who is eligible for consideration.

(e) Classification Committees have no authority to grant reductions in custody to inmates who fall outside the eligibility guidelines unless appropriate requests for variances are filed and approved, pursuant to N.J.A.C. 10A:1. ADMINISTRATION, ORGANIZATION AND MANAGEMENT

(f) An inmate who has been granted reduced custody may revert to maximum custody for any of the following reasons, subject to onfirmation by the Classification Committee:

1. On recommendation of the Disciplinary Hearing Officer;
2. Upon receipt of a non-permissive detainer;
3. Upon receipt of credible, reliable information from official authorities or informants, that the inmate may be an escape risk;
4. Failure of the inmate to adjust to the social or programmatic needs of the reduced custody unit;
5. Serious health problems as determined by the correctional facility physician; and/or
6. Any reason which, in the opinion of the Superintendent and Classification Committee, relates to the best interests of the inmate or the safe and orderly operation of the correctional facility.

(g) The inmate shall receive a written notice of the reason(s) for the return to maximum custody status within five working days.

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

(a) Except as provided in N.J.A.C. 10A:9-4.7 and 10A:9-4.8, inmates who meet the criteria set forth in this section are eligible to be considered for full minimum custody status preceded by the successful completion of a period of time in gang minimum custody or in-and-out status. Pursuant to N.J.A.C. 10A:9-4(d), the amount of time in gang minimum custody shall be at the discretion of the Institutional Classification Committee (I.C.C.).

(b) Classification Committees are not obligated to advance an inmate from gang minimum custody status or in-and-out custody status to full minimum custody status even though the inmate qualifies for consideration under the criteria set forth in this section.

(c) When considering inmates for reduced custody status who are serving ordinary or extended prison sentences with no mandatory minimum, the (I.C.C.) shall take into account all New Jersey County Jail credits awarded prior to commitment on the instant offense. Inmates must have served the following number of years of their sentences in maximum custody to be eligible to be considered for gang minimum custody status, in-and-out custody status and full minimum custody status.

Length of Sentence:	Years in Maximum
Over 30 years to life	5
Over 25 up to and including 30 years	4
Over 20 up to and including 25 years	3
Over 15 up to and including 20 years	2
Over 10 up to and including 15 years	1
10 years and under	none

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

1. If the mandatory minimum is one-half or greater than one-half of the term imposed, the inmate shall serve one-half of the mandatory minimum. (EXAMPLE: If the term is 20 years and the mandatory minimum is 10 years, the inmate must serve 5 years.)

2. If the mandatory minimum is less than one-half of the term imposed, the inmate shall serve one-third of the mandatory minimum. (EXAMPLE: If the term is 20 years and the mandatory minimum is 8 years, the inmate must serve 2 years and 8 months.)

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

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

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

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

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

1. Nature of the offense;
2. Type of C.D.S.;
3. Amount of C.D.S.;
4. Dollar value of the substance involved;
5. Inmates's drug offense history; and
6. Any statement by the sentencing judge as to the severity or commercial aspect of the offense.

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

1. Inmates with detainers for adjudicated offenses shall be eligible to be considered for gang minimum custody status and full minimum custody status provided the detainers are for concurrent sentences which do not exceed the maximum of the term currently being served.

2. Inmates with detainers for open charges (unadjudicated offense, parole violation or immigration) are not eligible unless the detainer is more than five years old.

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

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

1. Homicide;
2. Arson;
3. Controlled dangerous substance offense;
4. Sex offense;
5. Offense of an assaultive nature as defined by N.J.S.A. 2C:12-b (Aggravated Assault) or N.J.S.A. 2A:90-1 et seq.;
6. Kidnapping as defined by N.J.S.A. 2C:13 or 2A:118-1 et seq.;
7. Burglary as defined in N.J.S.A. 2C:18-2b and 2A:94-1 et seq.;
8. Escape;
9. Bail jumping as defined in N.J.S.A. 2C:29-7 and 2A:15-1 et seq.;
10. Prohibited weapons and devices as defined in N.J.S.A. 2C:39-3, 4, 5, 7, 9, 10 and 2A:151;
11. Criminal or malicious mischief as defined in N.J.S.A. 2C:17-3 and 2A:122-1;
12. Robbery as defined in N.J.S.A. 2c:15-1 AND 2a:141.1 et seq. and/or

13. Terroristic threats as defined in N.J.S.A. 2C:12-3.

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

1. If an inmate is presently serving a sentence for escape or attempted escape from inside the security of a main correctional facility or county jail, within or outside New Jersey, he/she shall be eligible to be considered for gang minimum custody status or in-and-out custody status and full minimum status only when five years have elapsed since the date of apprehension of the escape or the date of attempted escape and he or she is otherwise eligible according to the criteria set forth in this Subchapter.

2. If an inmate is presently serving a sentence for escape or attempted escape from a minimum security detail or unit, within or outside New Jersey, he or she shall be eligible to be considered for gang minimum custody status or in-and-out custody status and full minimum status when two years have elapsed from the date of apprehension of the escape or two years from the date of the attempted escape and he or she is otherwise eligible according to the criteria set forth in this Subchapter.

10A:9-4.7 Criteria for consideration for gang minimum custody status or in-and-out custody status only

(a) Inmates who meet the criteria set forth in this section shall be eligible to be considered for gang minimum custody status or in-and-out custody status, but not for full minimum custody status.

(b) In no case shall offenses adjudicated by a juvenile court be the sole basis for excluding an inmate from consideration.

(c) An inmate who is presently serving a sentence for one count of a sexual offense and has no prior adult convictions for sexual offenses, or an inmate who is presently serving a sentence for a non-sexual offense but who has a prior adult conviction for one count of a sexual offense may be considered for gang minimum custody status or in-and-out custody status provided:

1. He or she is otherwise eligible according to the criteria set forth in this Subchapter;

2. There is a psychiatric or psychological evaluation, not more than six months old, which focuses specifically on the inmate's criminal sexual behavior and his or her likelihood for success in reduced custody; and

3. There is positive recommendation for parole from the Special Classification Review Board (See N.J.A.C. 10A:9-8) if the inmate has been sentenced pursuant to N.J.S.A. 2A:164-3 et seq. or N.J.S.A. 2C:47-1 et seq.

(d) An inmate who presently is serving a sentence for one conviction of arson or fire setting or malicious destruction involving arson, with no previous such adult convictions; or an inmate presently serving a sentence for a non-arson offense but who has a prior adult conviction for arson, fire setting or malicious destruction involving arson, is eligible to be considered provided:

1. He or she is otherwise eligible according to the criteria set forth in this Subchapter; and

2. There is a psychiatric or psychological evaluation, no more than six months old, which focuses specifically on the inmate's likelihood for success in gang minimum custody status or in-and-out custody status in light of the present or past conviction for arson.

10A:9-4.8 Not eligible to be considered for reduced custody

(a) Inmates serving sentences for the offenses described below are not eligible to be considered for any type of reduced custody status.

(b) In no case may offenses adjudicated by a juvenile court be the sole basis for excluding an inmate from consideration.

(c) An inmate who presently is serving a sentence for one count of a sexual offense and who has a prior adult conviction for one count of a sexual offense under the laws of this State, any other state or the United States; an inmate who presently is serving a sentence for more than one count of a sexual offense under the laws of this State, any other state or the United States, or an inmate who presently is serving a sentence for a non-sexual offense and has prior adult convictions for more than one count of a sexual offense under the laws of this State, any other state of the United States, is not eligible for reduced custody.

1. For purposes of this Subchapter, a sexual offense shall include a conviction obtained in a court of competent jurisdiction of another state, or of the Federal government, or a conviction obtained under the following New Jersey Statutes:

- 2C:14-2 Sexual assault; aggravated sexual assault;
- 2C:14-3 Aggravated criminal sexual contact; criminal sexual contact;

- 2C:24-4 Endangering welfare of children where the official version of the crime indicates that the inmate engaged in sexual contact pursuant to 2C:24-4(a) or committed an offense under 2C:24-4(b) (3, 4 or 5);
- 2C:5-1 Criminal attempt to commit any offense under 2C:14-2, 14-3, 23-4;
- 2C:5-2 Conspiracy to commit an offense under 2C:14-3, 24-4;
- 2C:47-1 Et seq. any conviction obtained under this Section;
- 2A:86-3 Abduction of female under age 18 for purpose of marriage or carnal abuse;
- 2A:90-2 Assault with intent to commit rape or sodomy, or to carnally abuse a female under the age of 16, with or without her consent;
- 2A:96-3 Debauching or impairing the morals of a child under the age of 16;
- 2A:138-1 Rape or carnal abuse;
- 2A:138-2 Carnal knowledge of female inmates of a home or institution for the feeble minded or mentally ill;
- 2A:143-1 Sodomy;
- 2A:143-2 Sodomy with children under 16;
- 2A:85-5 Attempt to commit any of the foregoing offenses;
- 2A:85-14 Aiding and abetting the commission of any of the foregoing offenses;
- 2A:98-1 Conspiracy to commit any of the foregoing offenses; and/or
- 2A:164-3 Any conviction obtained under this section, except lewdness.

(d) An inmate who presently is serving a sentence for one count of an arson offense and who has a prior adult conviction for an arson offense; an inmate who presently is serving a sentence for more than one count of an arson offense; or an inmate who presently is serving a sentence for a non-arson offense but who has more than one prior adult conviction for an arson offense, may not be considered for reduced custody.

(e) An inmate who presently is serving a sentence for escape or attempted escape from any type of correctional facility or setting and who has a previous adult conviction for escape or attempted escape from any type of correctional facility or setting, is not eligible to be considered for any type of reduced custody.

#### SUBCHAPTER 5. COMMUTATION AND WORK TIME

##### 10A:9-5.1 Authority

(a) Commutation time is awarded to inmates pursuant to N.J.S.A. 30:4-140, which provides:

1. For every year or fractional part of a year of sentence imposed upon any person committed to any State correctional facility for a minimum-maximum term there shall be remitted to him or her from both the maximum and minimum term of his or her sentence, for continuous orderly deportment, the progressive time credits indicated in the schedule herein.

2. When a sentence contains a fractional part of a year in either the minimum or maximum thereof, then time credits in reduction of such fractional part of a year shall be calculated at the rate set out in the schedule for each full month of such fractional part of a year of sentence.

3. No time credits shall be calculated as provided for in the subchapter on time served by any person in custody between his or her arrest and the imposition of sentence.

4. In case of any flagrant misconduct the board of managers may declare a forfeiture of the time previously remitted, either in whole or in part, as to them shall seem just.

(b) Work time credit is awarded to inmates pursuant to N.J.S.A. 30:4-92, which provides:

1. The inmates of all correctional, charitable, hospital, relief and training institutions within the jurisdiction of the State Board of Institutional Trustees (Commissioner) shall be employed in such productive occupations as are consistent with the inmate's health, strength and mental capacity and shall receive such compensation therefor as the State Board of Institutional Trustees (Commissioner) shall determine.

2. Compensation for inmates of correctional facilities may be in the form of cash or remission of time from sentence or both. Such remission from the time of sentence shall not exceed one day for each five days of productive occupation, but remission granted under this section shall in no way affect deductions for good behavior or provided by law.

3. All inmates classified as minimum security and who are considered sufficiently trustworthy to be employed in honor camps, farms or details shall receive further remission of time from their sentences at the rate

of three days per month for the first year of such employment and five days per month for the second and each subsequent year of such employment.

##### 10A:9-5.2 Exceptions; time in custody; failure to work

(a) No commutation or work credits shall be given to any inmate sentenced for sex offenses under the provisions of N.J.S.A. 2A-164. However, those inmates who have been sentenced or resentenced under N.J.S.A. 2C are eligible to receive compensation and work credits from the effective date of that law, September 1, 1979.

(b) In all cases where the sentence includes a mandatory minimum term of imprisonment, commutation and work credits may not be applied to the mandatory minimum term, but may only reduce the maximum term.

(c) No commutation credits shall be given for any time served in custody between arrest and imposition of sentence. Work credits may be given for work performed in the county jail prior to sentencing if the work time is verified in writing by the County Jail Superintendent.

(d) Work credits may not be applied in cases where an inmate does not work because of choice, unavailability of sufficient job assignments, medical lay-in, court remand, disciplinary lockup or similar incapacity. Inmates who refuse to perform assigned work shall receive disciplinary charges in accordance with N.J.A.C. 10A:4.

##### 10A:9-5.3 Forfeiture of commutation time

(a) Commutation time may be declared to be forfeited as a penalty for misconduct. See N.J.S.A. 30:4-140.

(b) Forfeitures shall be determined by the Disciplinary Hearing Officer or Adjustment Committee pursuant to N.J.A.C. 10A:4. All decisions shall be reviewed by the Superintendent or Acting Superintendent, who may approve or modify the amount of commutation time forfeited.

(c) In no case shall more than 365 days of commutation time be declared forfeited for any single disciplinary offense.

##### 10A:9-5.4 Forfeiture of commutation time by parolees

A parolee under the supervision of the State Parole Board is subject to forfeiture of commutation time in the event the parolee violates a condition of parole.

##### 10A:9-5.5 Restoration of forfeited commutation time

(a) The following procedures for restoring forfeited commutation time apply to all inmates who received charges for acts which occurred on or after May 24, 1979.

1. Up to 75 percent of the forfeited commutation time may be restored to inmates over the three year period following the incident which resulted in the loss of commutation credits. The three years must run consecutively, calculated beginning with the date of the incident. Credits shall be restored at the rate of 25 percent for each year which is free of any disciplinary charges with a guilty finding, as follows:

i. If the inmate completes only one year without a charge which results in a guilty finding, he or she will have 25 percent of the forfeited credits restored at the completion of that year.

ii. If the inmate completes any two years of the three year period without a charge which results in a guilty finding, he or she will have 50 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective two years.

iii. If the inmates completes all three years without a charge which results in a guilty finding, he or she will have 75 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective three years.

2. Credits will be restored to the above regardless of the inmate's housing assignment.

(b) An inmate who receives a parole date at any point in the third one year period and has been charge free during both the first and second one year periods may, at the discretion of the Superintendent, have the commutation credits which he or she could earn in the third year period restored on a pro-rated basis.

1. A grant of credits on a pro-rated basis is applicable only when the parole date falls in the third one year period and only where the inmate has had 50 percent of the forfeited credits already restored.

2. Such action shall be taken only in exceptional cases for good cause shown.

(c) Any inmate who feels that he or she meets the qualifications for restoration must submit an application for restoration of commutation credits to the Institutional Classification Committee (I.C.C.) for consideration at the appropriate time intervals. The I.C.C. will not act unless an inmate submits an application. A recommendation on restoration shall be made in accordance with this Subchapter by the I.C.C. and forwarded to the Superintendent, who shall then order the restoration.

Example: An inmate commits a disciplinary infraction on June 30, 1979. The sanction imposed includes a forfeiture of 160 commutation credits. The inmate receives no findings of guilty through the disciplinary process between June 30, 1979 and June 30, 1980. He, therefore, has 40 credits restored on June 30, 1980. He is again free of guilty findings from June 30, 1980 through June 30, 1981 and receives another 40. He is to be paroled on March 30, 1982. Thus, he will only serve nine months (or 3/4) of the third year. The Superintendent, in his or her discretion, may restore 75 percent of 40 credits or 30 credits as of March 30, 1982.

#### 10A:9-5.6 Work credits for inmates housed in county facilities

(a) State sentenced inmates who are being housed in county facilities shall be credited with one day work credit for every five days worked. All inmates confined in county facilities are charged with the responsibility to keep their cells clean; such assignments shall be considered as five day per week jobs.

(b) Parole violators being held in county facilities on parole warrants but no additional charges will not receive work credits until after revocation of parole. Credits may be given for work performed, beginning on the day the Parole Panel issues the decision of revocation.

(c) Parolees housed in county correctional facilities on additional charges and sentenced on additional charges may receive work credits and wages beginning fifteen days after sentencing. If an inmate's parole is revoked prior to sentencing, the effective date on which to begin wages and work credits shall be the date of the parole revocation.

(d) Parolees serving county jail sentences in conjunction with parole violations may receive wages and work credits beginning upon completion of the county jail sentence, providing that parole has been revoked.

(e) Inmates with approved parole dates who are transferred to county correctional facilities prior to parole shall receive work credits as if they were assigned to a five day or seven day per week job in a State correctional facility. Inmates in minimum custody status prior to transfer, shall continue to receive compensation for that status during their stay in the county correctional facility in accordance with N.J.S.A. 30:4-92.

#### 10A:9-5.7 Inmates in Vroom Readjustment Unit (V.R.U.)

Inmates who have been assigned to the Vroom Readjustment Unit (V.R.U.) shall receive commutation time and may also earn work credits provided they perform work assignments.

#### 10A:9-5.8 Reports of earned credits

Regular reports of earned credits should be forwarded to the parent correctional facility when inmates are housed at V.R.U., in county correctional facilities or in half-way house assignments.

### SUBCHAPTER 6. INTER-INSTITUTIONAL CLASSIFICATION COMMITTEE (I.I.C.C.)

#### 10A:9-6.1 Responsibilities of the Inter-Institutional Classification Committee (I.I.C.C.)

(a) The Inter-Institutional Classification Committee (I.I.C.C.) shall be responsible for the initial assignment, to an appropriate facility, of adult male inmates who have been committed to the Youth Correction and Reception Center by the Courts.

(b) Inmates shall be assigned to the State Prison at Trenton, Rahway, Leesburg, Mid-State, Southern State or Riverfront or to the Youth Correctional Institutions at Yardville, Bordentown or Annandale, when appropriate.

(c) The I.I.C.C. shall also have the following responsibilities:

1. Decide requests for transfer to correctional facilities within the Prison Complex;
2. Assign parole violators, escapees and inter-state compact transferees;
3. Reassign inmates referred back to the I.I.C.C. by an Institutional Classification Committee (I.C.C.) for administrative transfer;
4. Confirm assignment of State sentenced inmates directly to the county jails under contractual agreement to house them;
5. Review assignments to Vroom Administrative Segregation (see N.J.A.C. 10A:5);
6. Recommend appropriate inmates for Protective Custody (see N.J.A.C. 10A:5);
7. Review emergency transfers, including those to the Vroom Readjustment Unit (see N.J.A.C. 10A:5.); and
8. Decide whether inmates from the Vroom Readjustment Unit shall be returned to the general population upon recommendation by the Vroom Readjustment Unit Review Team.

(d) Adult female inmates are assigned to the Clinton Correctional Institution. The I.I.C.C. is not responsible for decisions regarding the assignment or transfer of female inmates.

#### 10A:9-6.2 Composition of the Inter-Institutional Classification Committee (I.I.C.C.)

(a) The Deputy Director of the Division of Adult Institutions shall serve as permanent Chairperson of the Inter-Institutional Classification Committee (I.I.C.C.). In addition, the I.I.C.C. shall be composed of the Superintendents of the State Prisons at Trenton, Rahway, Leesburg, Mid-State, Southern State and Riverfront.

1. Each Superintendent may appoint a substitute to act in his or her behalf, provided that the substitute shall be a highly qualified staff member with prior Institutional Classification Committee (I.C.C.) experience. The substitute shall be selected from a level not lower than Assistant Superintendent.

2. The Superintendent of State Prison, Trenton may appoint an Assistant Superintendent or the civilian Supervisor of the Vroom Readjustment Unit to substitute at I.I.C.C. meetings and act in his or her behalf.

(b) Representatives from Youth Coorectional Institutions at Yardville, Bordentown and Annandale may be designated to attend and participate in meetings of the I.I.C.C. when cases involving inmate assignments to their correctional facilities are being considered.

#### 10A:9-6.3 Criteria for assignment of inmates

(a) Decisions regarding the degree of custody required for each inmate and the correctional facility of assignment shall be made by the Inter-Institutional Classification Committee (I.I.C.C.) while the inmate is in the reception process. These decisions shall be based on:

1. Length of sentence;
2. Type of offense;
3. Age of inmate;
4. Previous history; and
5. Review of pertinent pre-sentence report documents.

(b) Inmates assigned to the State Prison, Trenton shall generally be men who, in the opinion of the I.I.C.C., require a higher degree of custody and more constant supervision than inmates in other State prisons. Known instigators and agitators, and extreme assaultive types, shall be assigned to the State Prison, Trenton. Other criteria which shall be considered in an assignment to State Prison, Trenton include:

1. Maximum sentence in excess of 20 years; or
2. Maximum sentence of less than 20 years but history of poor adjustment in previous incarcerations; and/or
3. Serious medical conditions that require specialized care or diets.

(c) Inmates who, in the opinion of the I.I.C.C., are not extreme escape risks, extreme assaultive types, known agitators or instigators may be assigned to State Prison, Rahway. Other criteria which shall be considered in making an assignment to State Prison, Rahway include:

1. Maximum sentences in excess of 15 years, but less than 20 years;
2. Maximum sentence of less than 15 years but inmate is otherwise ineligible for assignment to Leesburg.

(d) Inmates who have a maximum sentence of 20 years or less may be assigned to State Prison, Leesburg. An inmate shall not be assigned to State Prison, Leesburg if he has:

1. An aggressive homosexuality record;
2. A chronic psychiatric history;
3. A serious escape risk history;
4. A repetitive sex offender history; or
5. A known agitator or instigator history.

(e) Inmates eligible for parole within three years may be assigned to Mid-State. An inmate shall not be assigned to Mid-State if he has:

1. An aggressive homosexuality history;
2. A chronic psychiatric history;
3. A serious escape risk history; or
4. A known agitator or instigator history.

(f) Inmates with a maximum sentence of 15 years may be assigned to State Prison, Southern State. An inmate shall not be assigned to State Prison, Southern State if he has:

1. An aggressive homosexuality history;
2. A chronic psychiatric history;
3. A serious escape risk history; or
4. A known agitator or instigator history.

(g) Inmates with a maximum sentence of 20 years or a minimum sentence of 10 years may be assigned to State Prison, Riverfront. An inmate shall not be assigned to State Prison, Riverfront if he has:

1. A serious escape risk history; or
2. A known agitator or instigator history.

(h) An inmate may be assigned directly to Jones Farm if he meets the following requirements:

1. A maximum sentence of five years or less;

2. No previous history of failure at Jones Farm;
3. A psychological examination administered during the reception period which reflects that he is capable of handling the responsibilities inherent in assignment to Jones Farm; and
4. He is classified as minimum custody pursuant to N.J.A.C. 10A:9-4.
  - (i) Assignment to Jones Farm shall be permitted for those individuals who have previous convictions for assaultive offenses, if the present offense(s) and sentence(s) fall within the presently established criteria for assignment to Jones Farm.
  - (j) An inmate shall be assigned to one of the correctional facilities within the Youth Correctional Complex at Yardville, Bordentown or Annandale if, in the opinion of the I.I.C.C., he is younger and less sophisticated than other prison inmates or he can benefit from the educational, vocational, therapeutic and rehabilitative programs available at those facilities.
  - (k) The I.I.C.C. may assign a male inmate directly from reception to the Correctional Institution for Women, Clinton. The male inmate may be assigned at any time thereafter, if he meets the criteria governing male admittance to that correctional facility.

#### 10A:9-6.4 Transfers

- (a) Upon referral from an Institutional Classification Committee (I.C.C.), the Inter-Institutional Classification Committee (I.I.C.C.) shall make decisions on inmate requests for transfer to another correctional facility within the Prison Complex.
- (b) The I.I.C.C. shall confirm all transfers of State sentenced inmates from the Prison and/or Youth Complex to county jails under contract to house them.
- (c) The I.I.C.C. shall make decisions on referrals from an I.C.C. in cases where an inmate's correctional facility adjustment and/or custody status shall indicate that a transfer to another correctional facility is appropriate.

#### 10A:9-6.5 Emergency transfers

- (a) Superintendents may effect the transfer of inmates within the same Complex, prior to review by Inter-Institutional Classification Committee (I.I.C.C.) only for reasons of emergency. (See N.J.A.C. 10A:4-9.20.)
- (b) If, in the opinion of the Superintendent of the correctional facility in which the inmate is housed, an immediate transfer is necessary, the Superintendent shall notify the Assistant Commissioner or Deputy Director of the proposed transfer. With the verbal approval either of the Assistant Commissioner or the Deputy Director, the transfer shall be made as soon as possible. If both the Assistant Commissioner and Deputy Director are unavailable, the Deputy Commissioner shall be contacted for approval.
- (c) Form 852-I AUTHORIZATION FOR EMERGENCY TRANSFER shall be utilized for disciplinary or administrative transfers of an emergency nature. Two copies of Form 852-I shall be forwarded to the individual from whom verbal approval was secured within three working days of the verbal approval.
- (d) In determining whether an emergency transfer is necessary the Superintendent shall consider the following factors, but is not limited to these factors:
  1. The safety and welfare of the inmate;
  2. The safety of other inmates and staff; and
  3. The safe, orderly and secure operation of the correctional facility.
- (e) All emergency transfers shall be reviewed by the I.I.C.C. at its next regularly scheduled meeting.

### SUBCHAPTER 7. SPECIAL CLASSIFICATION COMMITTEE (S.C.C.)

#### 10A:9-7.1 Responsibilities of the Special Classification Committee (S.C.C.)

- (a) The Special Classification Committee (S.C.C.) shall be responsible for considering the following types of transfers:
  1. Youth Correctional inmates serving indeterminate sentences to the Prison Complex;
  2. Training School residents to an adult unit within the Youth Correctional Complex;
  3. Prison or Youth Correctional inmates to or from the Adult Diagnostic and Treatment Center (A.D.T.C.);
  4. Youth Correctional Complex inmates to the Training School; and
  5. Prison and Youth Complex inmates to Division of Juvenile Services facilities.
- (b) The Deputy Director of the Division of Adult Institutions shall serve as permanent Chairperson of the Special Classification Committee

(S.C.C.). In addition, the S.C.C. shall be made up of a staff member from the Commissioner's Office and a Superintendent or Assistant Superintendent from the Prison and Youth Complexes.

(b) The Superintendent or the Assistant Superintendent of the Adult Diagnostic and Treatment Center (A.D.T.C.) and the Deputy Director of the Division of Juvenile Services shall participate as members when transfer cases involving their correctional facilities are considered by the S.C.C.

(c) The Superintendents or Assistant Superintendents who represent the Prison and Youth Correctional Complexes on the S.C.C. shall alternate annually with other Superintendents or Assistant Superintendents of their respective Complexes so that their terms of service shall be no longer than one year at a time.

(d) A Superintendent may designate a substitute member from a level not lower than Assistant Superintendent to represent his or her correctional facility at a S.C.C. meeting in the event he or she is unable to attend.

(e) The S.C.C. shall meet at least once a month on a date that is designated by the Chairperson at alternate sites so that no individual member is unduly inconvenienced.

#### 10A:9-7.3 Procedure for initiating transfer requests

- (a) Requests for transfer to another Complex within the Department of Corrections may be initiated by the inmate or by the Superintendent of the correctional facility in which the inmate is confined.
- (b) Requests for transfer also may be initiated by the Commissioner, Deputy Commissioner, Assistant Commissioner of the Division of Adult Institutions or Assistant Commissioner of the Division of Juvenile Services.
- (c) All requests for transfer and the reason(s) therefor shall be submitted, in writing, to the appropriate Institutional Classification Committee (I.C.C.). No request shall be considered without an accompanying statement of reasons.
- (d) Requests for transfer received from attorneys or other third parties on behalf of an inmate shall not be considered. All third party individuals making such requests shall be advised that the inmate must initiate the request. However, third parties shall be advised that they may submit written comments to the appropriate I.C.C. in conjunction with an inmate request, all of which shall be considered by the I.C.C. and the Special Classification Committee (S.C.C.) when they review the inmate's request.

#### 10A:9-7.4 Procedure for reviewing non-emergency transfer requests

- (a) All requests for transfers are submitted first to the Institutional Classification Committee (I.C.C.) at the correctional facility where the inmate is housed.
- (b) When the request is initiated by the Superintendent or any person other than the inmate authorized by N.J.A.C. 10A:9-7.3, the I.C.C. shall send a written notice to the inmate advising him or her that a transfer request has been made and advising him or her that the request will be considered at its next regularly scheduled meeting. The I.C.C. shall also advise the inmate that he or she may submit written comments to the I.C.C. regarding the proposed transfer.
- (c) The I.C.C. may direct that the inmate appear at its meeting if the Committee determines that an appearance is necessary.
- (d) After considering all information which the I.C.C. shall deem relevant, the Committee shall render a decision to recommend or deny the transfer request. A notice of decision and a statement of reasons therefor shall be sent to the inmate and to the Superintendent.
- (e) If the I.C.C. recommends approval of the transfer request, the Superintendent shall submit the recommendation to the Special Classification Committee (S.C.C.) together with a full set of classification materials and any other information upon which the recommendation was made. The Superintendent shall also submit a letter to the Chairperson of the S.C.C. which shall state whether the Superintendent supports the I.C.C. recommendation and the reasons therefor.
- (f) The S.C.C. shall consider all information submitted at its next regularly scheduled meeting and shall determine whether the requested transfer shall be approved.
  1. The inmate shall not appear at this meeting.
  2. The S.C.C. shall determine the appropriate correctional facility to which the inmate shall be assigned if the transfer is approved.

(g) The S.C.C. shall send a written notification of its decision and the reasons therefor to:

1. The Superintendent;
2. The authorized person who made the request; and
3. The I.C.C.

(h) The I.C.C. shall give written notice of the final decision to the inmate.

## 10A:9-7.5 Procedure for reviewing emergency transfer requests

(a) Whenever, in the opinion of the Superintendent of the correctional facility in which the inmate is housed, an immediate transfer is necessary, the Superintendent shall notify the Assistant Commissioner or Deputy Director having responsibility for the correctional facility to which the transfer is proposed.

(b) With the verbal approval either of the Assistant Commissioner or the Deputy Director, the transfer shall be made as soon as possible. If both the Assistant Commissioner and Deputy Director are unavailable, the Deputy Commissioner shall be contacted for approval.

(c) Form 852-I AUTHORIZATION FOR EMERGENCY TRANSFER shall be utilized for disciplinary or administrative transfers of an emergency nature. Two copies of Form 852-I shall be forwarded to the individual from whom verbal approval was secured within three working days of the verbal approval.

(d) In determining whether an emergency transfer is necessary, the Superintendent shall consider the following factors but is not limited to these factors.

1. The safety and welfare of the inmate;
2. The safety of other inmates and staff; and
3. The safe, orderly and secure operation of the correctional facility.

(e) The Superintendent shall refer the emergency transfer of the inmate to the Institutional Classification Committee (I.C.C.) for consideration at its next regularly scheduled meeting. The I.C.C. shall make its review and recommendation and shall then refer the transfer to the Special Classification Committee (S.C.C.).

(f) When the S.C.C. confirms or fails to confirm the transfer, it shall notify in writing the following:

1. The inmate;
2. The Superintendent; and
3. The I.C.C.

(g) A copy of the written notice shall be placed in the inmate's file.

(h) If the S.C.C. fails to confirm the transfer, the correctional facility to which the inmate was transferred shall make arrangements to return the inmate to his or her previous correctional facility as soon as possible.

## 10A:9-7.6 Criteria for reviewing transfer requests

(a) In reviewing requests for transfer or reassignment to correctional facilities in other Complexes, the Institutional Classification Committee (I.C.C.) and the Special Classification Committee (S.C.C.) shall consider all relevant factors including, but not limited to:

1. Disciplinary reports;
2. Correctional facility adjustment;
3. Progress in programs;
4. Nature and circumstances of present offense(s);
5. Records from previous confinement(s);
6. Current psychological and psychiatric reports;
7. History of escape, attempted escape or propensity for escape;
8. Educational needs and history;
9. Prior offense record;
10. Drug dependency or involvement;
11. Age; and
12. Medical condition.

## 10A:9-7.7 Procedures for transfers

Upon approval of a requested transfer by the Special Classification Committee (S.C.C.), the sending correctional facility shall arrange for processing the inmate through the proper identification and change of number procedures, if appropriate, and then coordinate with the receiving correctional facility the date and time of the transfer of the inmate along with his or her records and property.

## SUBCHAPTER 8. SPECIAL CLASSIFICATION REVIEW BOARD

## 10A:9-8.1 Responsibilities

(a) The Special Classification Review Board (S.C.R.B.) shall decide whether inmates sentenced under N.J.S.A. 2C:47 and 2A:164 shall be recommended for parole, as required by N.J.S.A. 2C:47-5 and 2A:164-8:

(b) Any person committed to confinement under the terms of this chapter shall be released under parole supervision when it shall appear to the satisfaction of the State Parole Board, after recommendation by a Special Classification Review Board appointed by the Commissioner that such person is capable to making an acceptable social adjustment in the community.

## 10A:9-8.2 Composition of the Special Classification Review Board (S.C.R.B.)

(a) The Commissioner shall appoint five persons to serve on the Special Classification Review Board (S.C.R.B.). The S.C.R.B. membership shall be composed of the following:

1. A representative from the Bureau of Parole;
2. A representative from another administrative unit within the Department; and
3. Three persons from the community at large who are professionals in fields associated with mental health and criminal justice.

(b) Terms of membership shall be three years and shall be staggered so that no more than two members are replaced or reappointed in any one year.

(c) Members shall elect a Chairperson and Vice Chairperson annually at the S.C.R.B.'s July meeting. These offices shall be rotated among members, when practicable.

(d) The S.C.R.B. shall meet at the Adult Diagnostic and Treatment Center (A.D.T.C.) once per month or more often as deemed necessary, on a day and at a time agreed on by S.C.R.B. members. Special meetings may be held when called by the Chairperson or Vice Chairperson. A majority of S.C.R.B. members must be present to conduct official business.

## 10A:9-8.3 Coordinator for the Special Classification Review Board (S.C.R.B.)

(a) A staff member of the Adult Diagnostic and Treatment Center (A.D.T.C.) shall be designated by the Superintendent to serve as Coordinator for the Special Classification Review Board (S.C.R.B.).

(b) The Coordinator shall be responsible for the following duties:

1. Maintaining S.C.R.B. statistics and records;
2. Maintaining minutes of S.C.R.B. meetings;
3. Informing S.C.R.B. members and maintaining a file of all court decisions regarding the New Jersey Sex Offender Program;
4. Providing notice to each inmate scheduled for in-person review by the S.C.R.B., at least three working days in advance of the scheduled hearing date;
5. Providing each S.C.R.B. member with copies of written materials for review prior to each scheduled hearing date;
6. Notifying the Commissioner at least six months prior to the termination of a S.C.R.B. member's term to provide adequate time to review prospective applicants for possible appointment; and
7. Providing other services as requested by the Superintendent or S.C.R.B. members.

## 10A:9-8.4 Reviews of inmates housed at the Adult Diagnostic Treatment Center (A.D.T.C.).

(a) The Superintendent of the Adult Diagnostic and Treatment Center (A.D.T.C.) shall report in writing (Form SCRB 2A) at least twice per year to the Special Classification Review Board (S.C.R.B.) concerning the physical and psychological condition of each inmate eligible for parole consideration.

(b) The Superintendent shall include in each report a recommendation as to whether the inmate should continue to be confined or should be considered for release on parole.

(c) The Superintendent shall also recommend whether the inmate shall have an in-person or non in-person review by the S.C.R.B. Generally, only inmates being recommended for consideration for parole will receive an in-person review.

(d) During in-person reviews, the inmate appears before the S.C.R.B. and shall be afforded the opportunity to present any matter which he or she believes is related to his or her possible parole. S.C.R.B. members may question the inmate regarding:

1. Criminal conduct;
2. Record of adjustment to incarceration;
3. Progress in therapy; or
4. Any matter which the S.C.R.B. members think is relevant.

(e) During non in-person reviews, the inmate does not appear before the S.C.R.B. The S.C.R.B. shall review all documents provided pursuant to (g) below.

(f) The following shall apply to all reviews:

1. The Board shall not be bound by judicial rules of evidence;
2. Attorneys shall not be permitted to appear before the S.C.R.B. at meetings;
3. Letters from attorneys, relatives or other interested persons shall be considered and, if relevant, may be made part of the record;
4. News media representatives shall be permitted to attend reviews only as authorized by N.J.A.C. 10A:19.

5. Other observers may be permitted to attend by the Chairperson, with the approval of the Superintendent.

(g) In preparation for all reviews, the Coordinator shall provide each S.C.R.B. member with copies of the following:

1. Report of the primary therapist, which shall include a summary of the inmate's overall adjustment and progress of therapy;
2. Staff recommendations;
3. Chronological semi-annual reviews;
4. Outpatient report; and
5. Presentence report.

(h) For in-person reviews, the Coordinator shall provide each S.C.R.B. member with copies of the Parole Plan formulated by the Bureau of Parole along with any progress notes.

#### 10A:9-8.5 Review of inmates housed at other correctional facilities

(a) The Superintendent of a correctional facility other than the Adult Diagnostic Treatment Center (A.D.T.C.) where an inmate sentenced under N.J.S.A. 2A:164 is housed shall forward in writing (Form SCR 2A) the required semi-annual reports (see N.J.A.C. 10A:9-8.4) to the Superintendent of the A.D.T.C. The report shall contain a recommendation as to the inmate's continued confinement or consideration for release on parole.

(b) If the inmate is recommended for consideration for parole, the inmate shall be transported to the A.D.T.C. for the day to appear before the A.D.T.C.'s treatment staff. If the A.D.T.C. treatment staff concurs with the recommendation, the inmate shall remain at A.D.T.C. for an in-person review before the Special Classification Review Board (S.C.R.B.).

(c) If the inmate is not recommended for parole, the S.C.R.B. shall conduct a non in-person review.

#### 10A:9-8.6 Decisions of the Special Classification Review Board (S.C.R.B.); in-person review

(a) After each in-person review, a vote shall be taken to determine whether the Special Classification Review Board (S.C.R.B.) will recommend parole. A tie vote shall be deemed a rejection.

(b) An inmate who has been rejected shall not be rescheduled for an in-person review for at least six months, except as permitted by (c) below.

(c) The S.C.R.B. may defer its decision in appropriate cases, or in those cases where additional information is requested. Such cases may be presented for in-person review in three months.

(d) SCR 2A shall be signed by each S.C.R.B. member in attendance so as to provide documentation as to its decision and the date reviewed.

(e) Within ten working days after each in-person hearing, the S.C.R.B. shall provide the inmate with a copy of its written decision on A.D.T.C. Form 296 (R-1). The form shall be signed by the S.C.R.B. chairperson or his or her designee.

(f) The S.C.R.B. shall summarize in its written decision the reasons for its conclusion. The reasons are within the S.C.R.B.'s sole discretion, and may include therapeutic issues deemed to require additional work.

(g) The Coordinator shall prepare a summary of each inmate's presentation to the S.C.R.B. The summary shall be reviewed and signed by the Chairperson and placed in the inmate's classification and S.C.R.B. folders.

#### 10A:9-8.7 Decisions of the S.C.R.B.; non in-person review

(a) SCR 2A shall be signed by each S.C.R.B. member in attendance so as to provide documentation as to its decision and the date reviewed.

(b) Within ten working days after each non in-person review, the S.C.R.B. shall provide the inmate with a copy of its written decision on A.D.T.C. Form 296 (R-1). The form shall be signed by the Chairperson or his or her designee.

#### 10A:9-8.8 Referrals to the State Parole Board

(a) The Coordinator shall notify the State Parole Board of those inmates whom the Special Classification Review Board (S.C.R.B.) has recommended for parole, and forward the necessary documents to the State Parole Board for its use in reaching a decision as to parole.

(b) No inmate shall be referred to the State Parole Board for reconsideration within a period of less than three months following his denial of parole by the State Parole Board, except under unusual circumstances.

#### 10A:9-8.9 Parole records

(a) For all parolees who were sentenced under N.J.S.A. 2C:47 and 2A:154, the Coordinator shall receive copies of the following:

1. Parole Certificates;
2. Supervisory reports;

3. Special reports;
4. Arrest reports;
5. Termination Certificates; and
6. Notices of discharge of inmates from parole.

(b) The Coordinator shall advise the Special Classification Review Board (S.C.R.B.) of those cases in which probable cause to revoke parole has been established.

(c) The Coordinator shall also notify the Board when a parolee is returned as a violator or as a new commitment.

#### 10A:9-8.10 Notice of release

A copy of the notice of release at the expiration of maximum sentence shall be forwarded by the housing correctional facility to the Coordinator, who shall so advise the Special Classification Review Board (S.C.R.B.) members.

#### 10A:9-8.11 Confidentiality

(a) The Special Classification Review Board (S.C.R.B.) members shall not discuss or give information to any unauthorized person regarding specific inmates reviewed.

(b) Confidentiality of inmate/parolee records shall be governed by N.J.A.C. 10A:22.

### SUBCHAPTER 9. RECEPTION AND PLACEMENT PROCESS FOR MALE JUVENILES

#### 10A:9-9.1 Reception activity

(a) Male juvenile offenders are committed by the courts to the Training School for Boys and Girls at Jamesburg.

(b) Male juveniles, under the age of 16 years, 11 months, that have been committed to Jamesburg, may be placed at the Training School for Boys at Skillman within 24 hours.

(c) Upon admission to Jamesburg or Skillman, male juveniles shall be assigned to housing within the juvenile reception unit.

(d) The reception process shall be completed in as short a period as possible, usually within two weeks.

(e) During the reception process, an orientation program shall be presented which familiarizes the resident with the details of correctional facility life.

(f) A social history shall be prepared and medical and dental examinations shall be given. The resident shall also be given psychological, education and/or vocational tests.

(g) The needs of the resident shall be assessed by reviewing the social history and the results of:

1. Medical and dental examinations;
2. Psychological tests; and
3. Education and/or vocational tests.

(h) An admissions summary shall be developed from a compilation of the information listed in (g) above. The summary shall include a recommended initial program statement and a description of the resident's:

1. Current offense;
2. Previous criminal history;
3. Family situation;
4. Psychiatric or psychological report summaries;
5. Medical condition; and
6. Academic and vocational assessment.

(i) At the end of the reception process, the resident shall appear before the Juvenile Reception Classification Committee (J.R.C.C.) and he will be assigned to the appropriate correctional facility.

#### 10A:9-9.2 Composition of the Juvenile Reception Classification Committee (J.R.C.C.)

(a) The Chairperson of the Juvenile Reception Classification Committee (J.R.C.C.) shall be the Assistant Commissioner of the Division of Juvenile Services or his or her designee.

(b) The J.R.C.C. shall also be composed of the:

1. Superintendent of the Training School for Boys and Girls at Jamesburg;
2. Superintendent of the Training School for Boys at Skillman;
3. Superintendent of the Juvenile Medium Security Facility at Bordentown; and
4. Chief, Bureau of Community and Residential Services, Division of Juvenile Services.

(c) Each Superintendent and the Chief of the Bureau of Community and Residential Services may appoint a substitute to act in his or her behalf.

(d) The J.R.C.C. shall meet weekly and the Classification Officer and clerical staff shall be in attendance.

10A:9-9.3 Responsibilities of the Juvenile Reception Classification Committee (J.R.C.C.)

(a) The Juvenile Reception Classification Committee (J.R.C.C.) shall be the decision making body for the Division of Juvenile Services regarding classification, placement and transfer of male juveniles.

(b) The J.R.C.C. shall be responsible for:

1. Classifying all male juvenile residents in the reception units of the Training School for Boys and Girls at Jamesburg and the Training School for Boys at Skillman.
2. Deciding on the initial placement of residents within the Division of Juvenile Services;
3. Informing the residents on the decisions regarding placement and assignments; and
4. Reviewing and considering cases for transfer or reassignment to other correctional facilities. Types of transfer shall include, but are not limited to:
  - i. Transfer of Training School or other juvenile facility residents to or from units within the Youth Correctional complex;
  - ii. Transfer of residents to community based facilities from correctional facilities or transfer of residents from community based facilities to correctional facilities;
  - iii. Transfer of residents to other correctional facilities for disciplinary or administrative reasons;
  - iv. Transfer of residents to more appropriate programs within other correctional facilities because of exceptionally good facility adjustment;
  - v. Transfer to other correctional facilities that are requested by the residents; and
  - vi. Transfer of residents for emergency reasons.

10A:9-9.4 Decision making criteria for initial assignment

(a) The decisions on the initial assignment of residents shall be made by the Juvenile Reception Classification Committee (J.R.C.C.) based on:

1. Length of sentence;
2. Type of offense;
3. Diagnostic reports; and
4. Previous history.

10A:9-9.5 Non-institutional programs

(a) Non-institutional programs are provided by the Division of Juvenile Services at:

1. Residential group centers;
2. Community treatment centers; and
3. Community release status placements.

(b) These non-institutional programs may be assigned to juveniles by the Juvenile Reception Classification Committee (J.R.C.C.).

(c) Assignment to these programs are generally made to juveniles who are being incarcerated for the first time for relatively minor offenses and are not considered to be chronic escape or serious assault risks.

(d) Juveniles not eligible for non-institutional program assignments are those who have been committed for:

1. Homicide;
2. Rape;
3. Arson; or
4. Sexual assault.

10A:9-9.6 Institutional programs

(a) Institutional programs are provided by the Division of Juvenile Services at the Training School for Boys at Skillman, the Training School for Boys and Girls at Jamesburg and the Juvenile Medium Security Facility at Bordentown.

(b) The Training School for Boys at Skillman was established to accept the youngest juvenile offender and is designed to be the least restrictive juvenile facility. Male juveniles over the age of 16 years and 11 months shall not be assigned to this facility.

(c) The Training School for Boys and Girls at Jamesburg is for juveniles who are 13 years of age or older and who, in the opinion of the Juvenile Reception Classification Committee (J.R.C.C.), appear to be able to function in open program units. Juveniles who are in need of assignment to self-contained units within a minimum security correctional facility may also be assigned to this facility.

(d) The Juvenile Medium Security Facility at Bordentown is for juveniles who:

1. Have serious behavioral problems;
2. Have a history of escape or attempted escape;
3. Have been committed for serious offenses; or
4. Are not appropriate for placement at other facilities, within the Division of Juvenile Services.

10A:9-9.7 Emergency transfer procedures

(a) A Superintendent who wishes to request an emergency transfer shall contact the Deputy Director of the Division of Juvenile Services, by telephone, and state the reasons for which the request is made.

(b) The Deputy Director, Division of Juvenile Services, shall immediately review the reasons given for the request and approve or reject the transfer. If the Deputy Director approves, he or she shall make the necessary arrangements and contact the Superintendent, by telephone, to notify him or her that the transfer can be made.

(c) All emergency transfers shall be reviewed by the Juvenile Reception Classification Committee (J.R.C.C.) at the next scheduled meeting.

10A:9-9.8 Staff requested transfer procedures

(a) The Juvenile Institutional Classification Committee (J.I.C.C.) shall review and consider staff recommended requests for non-emergency transfers of residents to other correctional facilities.

(b) Upon approval of the request by the J.I.C.C., the request shall be referred to the Juvenile Reception Classification Committee (J.R.C.C.) by the Superintendent.

(c) The Superintendent shall submit a set of classification material on the resident along with a cover letter to the Deputy Director of the Division of Juvenile Services which shall state the detailed reasons for recommending that a transfer be made.

(d) The J.R.C.C. shall make a decision on the appropriateness of the request for transfer to another correctional facility at its next regularly scheduled meeting.

10A:9-9.9 Resident requested transfer procedures

(a) A resident may request a transfer to another correctional facility by submitting a written request, which states his reasons, to the Juvenile Institutional Classification Committee (J.I.C.C.).

(b) If the J.I.C.C. determines that the resident can satisfy the criteria for assignment to the facility he has requested and if the J.I.C.C. approves the request, it shall be referred to the Superintendent.

(c) The Superintendent shall refer the request, along with a set of classification material on the resident, to the Juvenile Reception Classification Committee (J.R.C.C.) for consideration.

10A:9-9.10 Criteria for assignment or transfer of residents

(a) Decision making criteria for transfer or reassignment to other facilities shall include, but shall not be limited to:

1. Disciplinary reports;
2. Correctional facility adjustment;
3. Progress in programs;
4. Educational needs and history;
5. Nature and circumstances of present offense;
6. Prior offense record;
7. Records from previous confinement(s);
8. Drug dependency and/or involvement;
9. Current psychological and psychiatric reports;
10. History of escape or attempted escape or propensity for escape;
11. Expressed needs and interests;
12. Age;
13. Social contacts with family and friends;
14. Sexual adjustment; and
15. Medical history.

10A:9-9.11 Written procedures

The Assistant Commissioner of the Division of Juvenile Services or his or her designee shall be responsible for developing written procedures consistent with this Subchapter. These procedures shall be reviewed and updated annually.

SUBCHAPTER 10. JUVENILE INSTITUTIONAL CLASSIFICATION COMMITTEE (J.I.C.C.)

10A:9-10.1 Members of the Juvenile Institutional Classification Committee (J.I.C.C.)

(a) The Juvenile Institutional Classification Committee (J.I.C.C.) at the Training School for Boys and Girls at Jamesburg shall be composed of the:

1. Superintendent
2. Assistant Superintendent;
3. Director of Professional Services;
4. Director of Education
5. Director of Social Services
6. Supervisors of the cottages;
7. Director of Custody Operations; and
8. Classification Officer

(b) The J.I.C.C. is called the Administrative Case Review Committee at the Training School for Boys at Skillman. This Committee shall be composed of the:

1. Superintendent;
2. Assistant Superintendents;
3. Director of Professional Services;
4. Director of Custody Operations;
5. Supervisor of Education;
6. Social Work Supervisor;
7. Cottage Supervisors; and
8. Classification Officer.

(c) The Juvenile Institutional Classification Committee (J.I.C.C.) at the Juvenile Medium Security Facility shall be composed of the:

1. Superintendent;
2. Assistant Superintendent;
3. Director of Custody Operations;
4. Director of Education;
5. Unit Supervisors; and
6. Classification Officer.

#### 10A:9-10.2 Juvenile Institutional Classification Committee (J.I.C.C.) responsibilities

(a) The Juvenile Institutional Classification Committee (J.I.C.C.) shall provide the decision making process whereby male juvenile offenders are assigned after admission and during their correctional experience to:

1. Housing;
2. Education;
3. Treatment;
4. Therapy;
5. Work; and/or
6. Other programs according to need.

(b) In order to ensure that the needs of male juvenile offenders shall be assessed and met from commitment to recall, discharge or parole, the J.I.C.C. shall:

1. Gather, analyze and evaluate the results of diagnostic studies of each resident;
2. Plan programs to meet the needs of each resident; and
3. Assign residents to facilities that are appropriate for their training, treatment and/or security.

(c) After a resident has been assigned, the J.I.C.C. shall monitor the resident's progress regularly by reviewing and evaluating the reports from:

1. Work supervisors;
2. Custody staff;
3. Education staff; and
4. Social work staff.

(d) The resident shall be encouraged to verbalize his goals and frustrations to the J.I.C.C. so that his thinking can be considered when adjustments are made in the resident's program.

(e) The J.I.C.C. shall make changes in a resident's job, housing and custody status upon written recommendations from appropriate staff members.

(f) Resident requests for transfer to other correctional facilities or programs shall be considered by the J.I.C.C. and appropriate requests shall be referred to the Juvenile Reception Classification Committee (J.R.C.C.).

#### 10A:9-10.3 Classification records and services

(a) The records of male juveniles assigned to the Training School for Boys and Girls at Jamesburg and to community based facilities, except for Turrell and Cedar Run, shall be maintained at the Training School for Boys and Girls at Jamesburg. The classification services for these juveniles shall be provided by the Juvenile Institutional Classification Committee (J.I.C.C.) at Jamesburg.

(b) The records of male juveniles assigned to the Training School for Boys at Skillman, Turrell Residential Group Center and Cedar Run Residential Group Center shall be maintained at the Training School for Boys at Skillman. The classification services for these juveniles shall be provided by the Administrative Case Review Committee at Skillman.

(c) The records of male juveniles assigned to the Juvenile Medium Security Facility at Bordentown shall be maintained at that correctional facility. The classification services for these juveniles shall be provided by the Juvenile Institutional Classification Committee (J.I.C.C.) at the Juvenile Medium Security Facility.

#### 10A:9-10.4 Juvenile Institutional Classification Committee (J.I.C.C.) decision making factors

(a) Decisions on assignments to housing, work, educational, vocational and treatment programs, custody status, transfers and participation in community release programs shall be made after consideration of the following factors:

1. Resident's expressed needs and interests;
2. Age;
3. Family status;
4. Social contacts with family and friends;
5. Correctional facility adjustments;
6. Educational needs and history;
7. Vocational needs and history;
8. Nature and circumstances of present offense;
9. Prior offense record;
10. Records from previous confinement;
11. Detainers on file or pending;
12. Drug dependency or involvement;
13. Sexual adjustment;
14. Escape history;
15. Current psychological and psychiatric reports; and
16. Medical history and recommendations.

#### 10A:9-10.5 Initial classification

(a) Upon assignment to the Training School for Boys and Girls at Jamesburg, the Training School for Boys at Skillman or the Juvenile Medium Security Facility at Bordentown by the Juvenile Reception Classification Committee (J.R.C.C.), a resident shall undergo a series of tests and interviews to determine his or her aptitudes, abilities, interests and problems.

(b) Psychological, educational and social work reports shall be obtained by the Classification Officer. These reports shall be available at the resident's initial appearance before the J.I.C.C. which will occur within 15 days after admission to the correctional facility. At the initial classification, a program will be developed which includes:

1. Work assignments;
2. Treatment;
3. Education program; and
4. Vocational training program.

(c) Upon assignment to the Training School for Boys at Skillman, a resident shall be assigned immediately to the educational program by the education staff. The Administrative Case Review Committee shall evaluate the appropriateness of his assignments and the extent of his program adjustment at the admission summary review.

#### 10A:9-10.6 Review dates

(a) A resident's program shall be reviewed after his initial classification to determine the extent of his progress. This program review may occur within a range of time from one to no more than twelve months from the date of initial classification.

(b) The frequency of the program review shall be determined by the Juvenile Institutional Classification Committee (J.I.C.C.) or when there is a change in the resident's status such as:

1. Parole date;
2. Length of commitment;
3. Personal needs; or
4. Situations which make a program review appropriate.

(c) The Classification Office shall be responsible for scheduling all reviews set by the J.I.C.C.

(d) Reports from the social worker, custody staff, work supervisor and all others involved in the resident's assigned program will be submitted during the month preceding the review. An update of the resident's psychological status shall occur on a yearly basis.

(e) A resident shall be notified one week prior to his review date. At that time, he may submit a written request for reassignment in the areas of:

1. Housing;
2. Work;
3. Education;
4. Vocational; and
5. Counselling or treatment.

#### 10A:9-10.7 Special reviews

(a) A resident desiring a special review of his case because of a change in status may submit a written request to the social worker or Social Work Supervisor which indicates the reason(s) for the request. It shall be the responsibility of the social worker or Social Work Supervisor to determine:

1. If review is appropriate; and
2. The reports that will be necessary for the review.

(b) If the review is recommended, the social worker or Social Work Supervisor shall forward all appropriate information to the Juvenile Institutional Classification Committee (J.I.C.C.).

#### 10A:9-10.8 Discussions

(a) A resident's case may be brought to the attention of the Juvenile Institutional Classification Committee (J.I.C.C.) prior to his review date if it has been referred by a staff member or an institutional committee. Any staff member may request a review of a resident's case for the purpose of making a change in:

1. Job;
2. Custody;
3. Housing; or
4. Program.

#### 10A:9-10.9 Work assignments

(a) The Juvenile Institutional Classification Committee (J.I.C.C.), except at the Training School for Boys at Skillman, shall be responsible for the decisions on all resident work assignments. Decisions on work assignments shall be made based upon:

1. Physical condition;
2. Mental and mechanical aptitudes of the resident;
3. Work experience;
4. Occupational interests;
5. Needs and opportunities upon release; and
6. Availability of jobs within the correctional facility.

#### 10A:9-10.10 Education assignments

(a) The Juvenile Institutional Classification Committee (J.I.C.C.) shall be responsible for the assignment or approval of residents to participate in vocational, social or academic education programs.

- (b) Determining factors in assigning a resident to these programs are:
1. The recommendation of the Supervisor of Education Programs;
  2. The results of tests;
  3. The interests and aptitude of the resident;
  4. The length of sentence; and
  5. The plan for community employment.

#### 10A:9-10.11 Counselling assignments

(a) Residents with emotional and/or personal problems shall be referred to the appropriate program supervisor.

(b) Residents shall be approved for group counselling and other therapy problems by the Juvenile Institutional Classification Committee (J.I.C.C.).

#### 10A:9-10.12 Reassignments or special referrals

(a) Reassignments or special referrals shall be cases referred to the Juvenile Institutional Classification Committee (J.I.C.C.) for a change in some area of a resident's program.

(b) Any change or addition to the resident's initial program shall be made by the J.I.C.C. Reassignments shall be made upon resident or staff request, as the need arises.

#### 10A:9-10.13 Community release programs

The Juvenile Institutional Classification Committee (J.I.C.C.) may make the assignment of a resident to a community release program when he can satisfy the criteria of the program.

#### 10A:9-10.14 Inmate requested transfers

(a) The Juvenile Institutional Classification Committee (J.I.C.C.) shall review a resident's request for transfer to another facility.

(b) When it has been determined that the resident can satisfy the criteria for assignment to the facility he has requested, the resident's request shall be referred to the Juvenile Reception Classification Committee (J.R.C.C.) for consideration.

#### 10A:9-10.15 Written procedures

(a) The Superintendent or his or her designee shall be responsible for developing written procedures consistent with this Subchapter.

- (b) These procedures shall be reviewed and updated annually.

### SUBCHAPTER 11. JUVENILE FEMALE CLASSIFICATION COMMITTEE (J.F.C.C.)

#### 10A:9-11.1 Responsibilities of the Juvenile Female Classification Committee (J.F.C.C.)

(a) The Juvenile Female Classification Committee (J.F.C.C.) is the initial decision-making body which determines the appropriate correctional facility and/or program to which a female juvenile is assigned.

(b) The J.F.C.C. shall also review and consider female juvenile cases in which requests have been made for transfer or reassignment to other facilities or programs. These requests may include, but shall not be limited to, the following:

1. Transfers of residents to community based facilities from correctional facilities or transfers from community based facilities to correctional facilities.

2. Transfers of residents to another correctional facility for disciplinary or other administrative reasons;

3. Transfers of residents to more appropriate programs within other correctional facilities because of exceptionally good adjustments;

4. Transfers that are requested by a resident; and

5. Transfers that are made immediately for emergency reasons.

(c) The J.F.C.C. shall maintain responsibility for ensuring that the educational, medical, social and vocational needs of residents are met while in placement under the jurisdiction of the Division of Juvenile Services.

(d) The J.F.C.C. shall review progress reports and make recommendations to the State Parole Board.

(e) The J.F.C.C. shall ensure that the placements that are planned for female juveniles when they are released are appropriate to the female juvenile's needs.

#### 10A:9-11.2 Composition of the Juvenile Female Classification Committee (J.F.C.C.) and frequency of meetings

(a) The Supervisor of Juvenile Female Programs shall serve as permanent Chairperson of the Juvenile Female Classification (J.F.C.C.). He or she may appoint a designee to act in his or her absence or in the absence of other Juvenile Female Classification Committee (J.F.C.C.) members.

(b) The J.F.C.C. shall also be composed of the:

1. Superintendent of the Female Unit at Skillman;
2. Superintendent of Turrell; and
3. Superintendent of Alpha House.

(c) The staff psychologist and/or other persons may attend the J.F.C.C. meetings at the request of or upon the approval of the Chairperson.

(d) The J.F.C.C. shall meet every two weeks.

#### 10A:9-11.3 Initial assignment

(a) Female juveniles are committed by the courts to the Training School for Boys and Girls at Jamesburg.

(b) Upon arrival at Jamesburg, female juveniles shall be medically screened.

(c) Immediately following the receipt of numbers and the medical screening, female juveniles are transported to the Division of Juvenile Services facility to which they have been assigned by the Juvenile Female Classification Committee (J.F.C.C.)

#### 10A:9-11.4 Decision making criteria for facility or program assignment

(a) The Juvenile Female Classification Committee (J.F.C.C.) may assign female residents to community and non-correctional facility programs or to correctional facility programs. Decisions to assign residents to a particular program shall be based on:

1. Type of offense;
2. Length of sentence;
3. History;
4. Diagnostic reports; and
5. Correctional facility or program criteria.

(b) Criteria for assignment to a correctional facility or program is as follows:

1. Alpha House Community Treatment Center is a community program to which female juveniles between 13 and 18 years of age are assigned directly by the courts as a condition of probation. The J.F.C.C. may assign a committed female juvenile to this program for a short period of time until a recall can be obtained, or until she is released. A female juvenile shall not be assigned to Alpha House if she has:

- i. Severe alcohol or drug addiction history;
- ii. A homicide offense;
- iii. An arson offense; or
- iv. An aggravated assault offense.

2. Turrell Residential Group Center provides a residential program to which committed female juveniles between 13 and 18 years of age may be assigned by the J.F.C.C.

3. Skillman Unit located at the Training School for Boys at Skillman provides a structured, closely supervised treatment program for female juvenile offenders between 13 and 18 years of age requiring a controlled environment.

4. Jamesburg Detention Unit located at the Training School for Boys and Girls at Jamesburg provides a disciplinary unit for female juvenile offenders when behavior is of such a nature that they can no longer be contained at the Turrell Residential Group Center or the Skillman Unit.

i. Transfers to the Jamesburg Detention Unit must be approved by the Supervisor of Juvenile Female Programs. In his or her absence, the Deputy Director or the Assistant Commissioner of the Division of Juvenile Services shall be contacted for approval.

ii. Whenever a female juvenile is transferred to the Jamesburg Detention Unit, it shall be considered a disciplinary action, subject to the due process requirement stated in N.J.A.C. 10A:4 INMATE DISCIPLINE.

10A:9-11.5 Reception process

(a) The facility or program to which a female juvenile is assigned shall conduct reception procedures and an orientation program.

(b) The needs of the resident shall be assessed by reviewing the:

1. Medical and dental examination results;
2. Psychological tests;
3. Education and/or vocational tests; and
4. Social history.

(c) An admissions summary shall be prepared which shall include a description of:

1. Current offense;
2. Previous criminal history;
3. Family situation;
4. Psychiatric or psychological report summaries;
5. Medical condition;
6. Academic and vocational assessment; and
7. Recommended initial program statement.

(d) The reception process shall be completed within three weeks, whenever possible.

10A:9-11.6 Reviews, progress reports

(a) Each female juvenile shall have her case reviewed by the Juvenile Female Classification Committee (J.F.C.C.) at least every three months.

(b) A female juvenile's case may be brought to the attention of the J.F.C.C. prior to her review date by a staff member. A staff member may request a review of a female juvenile's case at any time for adjustments in the female juvenile's program.

(c) Whenever a review is scheduled, the facility or program where the female juvenile is assigned shall be responsible for preparing a progress report for the J.F.C.C. The report shall include, but is not limited to, the following information:

1. Adjustment in the facility or program;
2. Educational/vocational progress;
3. Work responsibility and participation;
4. Group/individual counseling progress;
5. Medical status;
6. Family involvement and relationship; and
7. Ultimate placement planning.

(d) Progress reports shall be maintained in the resident's main file at the Training School for Boys at Skillman and a copy shall be retained in the duplicate file at the resident's assigned facility.

10A:9-11.7 Emergency transfer procedures

(a) A Superintendent or a Supervisor of a female unit who wishes to request an emergency transfer shall contact the Supervisor of Juvenile Female Programs, by telephone, and state the reasons for which the request is made.

(b) In the absence of the Supervisor of Juvenile Female Programs, the Superintendent or the Supervisor of a female unit shall contact the Deputy Director or the Assistant Commissioner of the Division of Juvenile Services.

(c) The Supervisor of Juvenile Female Programs or, in his or her absence, the Deputy Director or Assistant Commissioner shall immediately review the reasons given for the request and determine whether to approve the transfer.

(d) If the request is approved, the necessary arrangements shall be made and the Superintendent or the Supervisor of the female unit shall be contacted, by telephone, to give notification that the transfer can be made.

(e) All emergency transfers shall be reviewed by the Juvenile Female Classification Committee (J.F.C.C.) at the next scheduled meeting.

10A:9-11.8 Non-emergency transfer procedures

(a) Requests for non-emergency transfers may be submitted in writing by the Superintendent or Supervisor of a female unit to the Supervisor of Juvenile Female Programs. The request shall state the reasons for requesting the transfer.

(b) A female resident may request a transfer to another facility or program by submitting a written request to the Juvenile Female Classification Committee (J.F.C.C.).

(c) The J.F.C.C. shall review any requests for non-emergency transfers at the next scheduled meeting.

10A:9-11.9 Criteria for transfers or reassignment

(a) The Juvenile Female Classification Committee (J.F.C.C.) shall consider the following factors when deciding whether to approve a request for transfer or reassignment. The J.F.C.C. is not limited to these criteria in exercising its decision making responsibilities.

1. Disciplinary reports;
2. Correctional facility or program adjustment;
3. Program progress;
4. Educational needs and history;
5. Nature and circumstances of present offense;
6. Prior offense record;
7. Records from previous confinement(s);
8. Drug dependency and/or involvement;
9. Current psychological and psychiatric reports;
10. History of escape or attempted escape or propensity for escape;
11. Expressed needs and interests;
12. Age;
13. Social contacts with family and friends;
14. Medical history; and
15. Previous associations with presently incarcerated residents.

(a)

**Medical and Health Services**

**Proposed New Rule: N.J.A.C. 10A:16**

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

Proposal Number: PRN 1986-330.

The agency proposal follows:

**Summary**

The proposed new rules are intended to provide guidelines for the provision of medical and health services to inmates assigned to facilities within the Department of Corrections. These proposed new rules also establish the guidelines for obtaining informed consent to perform certain medical procedures; providing notification to next of kin in the event of an inmate's critical illness or death; providing burial or cremation of unclaimed inmates bodies; applying for medical clemency; executing persons sentenced to death; and assigning inmates to the Medical Unit Annex.

**Social Impact**

The proposed new rules will have no new or additional social impact on the public or correctional facilities since they simply reflect a codification of existing Standards into rules.

**Economic Impact**

The proposed new rules will have no new or additional economic impact because facilities are already adhering to these Standards and no additional costs are necessary to implement or maintain them.

Full text of the new rule follows.

**CHAPTER 16  
MEDICAL AND HEALTH SERVICES**

**SUBCHAPTER 1. INTRODUCTION**

10A:16-1.1 Purpose

(a) The purpose of this Chapter is to establish guidelines for:

1. Providing medical services for inmates;
2. Providing dental services for inmates;
3. Providing psychological services for inmates;
4. Obtaining informed consent from an inmate or guardian to perform certain medical procedures;
5. Providing assistance to pregnant inmates and placement of their newborn;
6. Providing notification to next of kin in the event of an inmate's critical illness or death;
7. Providing for burial or cremation of unclaimed inmate bodies;
8. Applying for medical clemency.
9. Executing persons sentenced to death pursuant to N.J.S.A. 2C:11-3; and

10. Assigning inmates to the Medical Unit Annex.

10A:16-1.2 Scope

This Chapter shall be applicable to all correctional facilities within the Department of Corrections unless the context clearly indicates otherwise.

10A:16-1.3 Definitions

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

"Annex Classification Committee" means a group of Office of Institutional Support Services and Medical Unit Annex staff persons who provide classification and program monitoring services for inmates assigned to the Medical Unit Annex.

"Executive clemency" means the exclusive power of the Governor to commute the sentence of an inmate making the inmate eligible for parole consideration.

"Formulary" means a book or listing containing the names of pharmaceutical substances and their uses.

"Medical clemency" means the exclusive power of the Governor to commute the sentence of an inmate for medical reasons, making the inmate eligible for parole consideration.

"Medical Unit Annex" means a unit, on the grounds of Trenton State Prison, that is designated for the assignment of inmates with chronic illnesses.

"St. Francis Unit" means a unit within the St. Francis Hospital that is designated for the treatment of inmates who need hospitalization.

10A:16-1.4 Forms

(a) The following forms related to Medical and Health Services are printed by the Bureau of State Use Industries and each correctional facility shall purchase a supply of these forms by contacting the Bureau.

1. 301-V Report of Consultation; and
2. 301-VI Medication Card.

(b) The following forms related to Medical and Health Services shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 301-I Admission-Medical Record;
2. 301-II Medical Continuation;
3. 301-III Physician's Order Sheet and Progress Notes;
4. 301-IV Nurse's Notes;
5. 306-I Consent for Medical, Dental or Surgical Treatment; and
6. 520-I Inmate-Therapist Confidentiality

SUBCHAPTER 2. MEDICAL SERVICES

10A:16-2.1 Medical services provided

Medical services within the Department of Corrections shall be provided in the disciplines of medicine, surgery and psychiatry.

10A:16-2.2 Director of Medical Services

(a) The Director of Medical Services of the Department serving under the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator, shall be responsible for formulating directives and policies for the operation of the medical programs within the Department.

(b) Copies of all directives and policies of the Department shall be available in the medical area of each correctional facility.

10A:16-2.3 Administration of medical services and program

(a) Each correctional facility shall designate a staff member who will be administratively and/or clinically responsible for the management and direction of the facility's medical services and/or program.

(b) In all correctional facilities, a physician shall be designated Chief Physician and he or she shall be clinically responsible for the correctional facility's medical program. The Chief Physician shall be responsible for insuring that medical conditions which existed prior to incarceration or developed during incarceration are treated.

10A:16-2.4 Licensure

(a) All consulting physicians and allied health staff shall maintain valid and current licenses or certifications, as appropriate, to practice within their respective disciplines in the State of New Jersey.

(b) An applicant with exemption licensure shall not be considered for employment.

(c) The Personnel Officer of a correctional facility shall be responsible for forwarding the license of each medical staff member to the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator immediately after the initial decision to hire a medical staff person.

(d) The Personnel Officer of the facility shall also forward copies of renewal licenses to the O.I.S.S. Health Services Coordinator within fourteen days of renewal.

(e) Copies of the licenses required by this section shall be maintained both within the staff member's personnel file at the correctional facility and at the Office of the O.I.S.S. Health Services Unit.

(f) The O.I.S.S. Health Services Coordinator shall develop a license expiration list which shall be utilized, if necessary, to request copies of renewed licenses from the medical staff.

(g) All persons taking dental x-rays shall be licensed by the State of New Jersey in accordance with N.J.S.A. 45:25-1 et seq.

(h) A physician may not begin employment until the O.I.S.S. Health Services Unit has verified the authenticity of his or her license.

10A:16-2.5 Medical students and interns

(a) Any program to utilize students or interns in health care delivery to inmates must receive the prior written approval of the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator.

(b) The Chief physician of the correctional facility shall be responsible for the overall supervision of any medical student or intern.

(c) All medical students and interns shall be directly supervised by a licensed or certified medical professional.

(d) The correctional facility shall formulate written policy and procedures which limit student or intern services to a level commensurate with the program training goals.

10A:16-2.6 Use of community facilities and consultants

(a) The Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator shall contract with community medical facilities to provide inpatient and outpatient hospital care when in-house treatment is unavailable.

(b) Correctional facilities and community based facilities shall utilize the contracted community medical facilities whenever possible and may utilize local medical facilities in life-threatening emergencies.

(c) The O.I.S.S. Director of Medical Services shall be responsible for developing and maintaining a priority treatment schedule for all inmate hospital admissions to the contracted medical facility. The priority treatment program shall not provide for elective surgery unless the condition sought to be corrected will progress to a life-threatening condition or is one which has a substantial adverse effect on the inmate's physical well-being.

(d) The O.I.S.S. Director of Medical Services shall also coordinate the acquisition of services for specialized care not provided in a contract medical facility or local hospital.

(e) The Chief Physician at each correctional facility and the O.I.S.S. Director of Medical Services shall develop a list of physician consultants for utilization when appropriate. Consultants on record with the O.I.S.S. Director of Medical Services shall be utilized whenever possible for all prospective inmate admissions to a contract medical facility.

10A:16-2.7 Restrictive use of inmates as employees in medical services.

(a) Inmates shall be prohibited from performing the following duties:

1. Providing direct patient care services;
2. Scheduling health care appointments;
3. Determining the access of other inmates to health care services;
4. Handling or having access to:
  - i. Surgical instruments;
  - ii. Syringes;
  - iii. Needles;
  - iv. Medications; and
  - v. Health Records.
5. Operating x-ray equipment;
6. Operating equipment for which they are not trained; and
7. Performing diagnostic procedures.

(b) Inmates may assist in the medical program as orderlies for the performance of such chores as cleaning, sanitation work, handling linen and other such duties.

(c) Inmates shall be kept under constant observation while working the medical areas.

10A:16-2.8 Sick call

(a) Daily sick call shall be conducted at each correctional facility by a physician and/or other qualified health personnel at a regularly scheduled time. However, inmates shall be offered the opportunity to see medical personnel, when necessary.

(b) If an inmate's custody status precludes attendance at sick call, arrangements shall be made to provide sick call services in the place of the inmate's detention.

10A:16-2.9 Correctional facility infirmary care

(a) Infirmary care is in-patient bed care, provided in the correctional facility infirmary, for illness or diagnosis which requires limited observation and/or management and does not require submission to a licensed hospital.

(b) Written policies and procedures for infirmary care shall be developed which include, but are not limited to requirements that:

1. A description of the scope of infirmary care services be prepared;
2. A physician be on call 24 hours per day;
3. A minimum of one Registered Nurse be on duty 24 hours per day;
4. All patients be within sight or sound of a staff person;
5. A separate and complete medical record for each inmate be maintained; and
6. A manual of nursing care procedures be prepared.

10A:16-2.10 Emergency medical treatment

(a) Written standard operating procedures (S.O.P.'s) shall be established which provide for 24 hour emergency medical care availability. These procedures shall be outlined in a written plan which includes, but are not limited to, arrangements for:

1. On-site emergency first aid;
2. Use of an emergency vehicle;
3. Use of one or more designated hospital emergency rooms or other appropriate health facility;
4. An emergency on-call physician when the emergency health facility is not located in a nearby community; and
5. The provision of security when the immediate transfer of inmates is necessary.

(b) All employees likely to be needed or involved in a medical emergency shall be trained in the giving of first aid under emergency conditions. This training shall include, but not be limited to:

1. Types of action required for potential emergency situations;
2. Signs and symptoms of an emergency;
3. Administration of first aid;
4. Methods of obtaining emergency care;
5. Location of the correctional facility's first aid kits; and
6. Procedures for transferring patients to appropriate medical facilities or health care providers.

10A:16-2.11 Medical examinations

(a) A preliminary history and physical examination shall be made on each new admission within 24 hours which shall include, but is not limited to:

1. A medical history;
2. A physical examination; and
3. Any test determined necessary by the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services.

(b) A preliminary history and physical examination will not be done on inmates who are transferred from other correctional facilities within the Department of Corrections.

(c) Inmates 50 years of age or over and inmates with known medical problems shall be given annual physical examinations. All other inmates shall receive complete physical examinations biannually.

(d) Each inmate shall be given a physical examination and clinical evaluation not more than two calendar weeks prior to release from the correctional facility. A summary report of findings shall be prepared, signed and dated by the physician. This summary shall include a resume of any significant medical problems encountered during the inmate's incarceration, and it shall be made part of the inmate's medical record.

(e) No correction officer of the opposite sex shall be present during a physician's medical examination of an inmate. Female attendants shall always be present during the physical examination of female patients by a male physician.

10A:16-2.12 Athletes and food handlers medical examinations

(a) If deemed appropriate, medical examinations shall be given to inmates prior to participation in sports.

(b) All food handlers shall be given a medical examination, to the extent that the Superintendent and medical staff may require, to ensure cleanliness and freedom from communicable diseases.

10A:16-2.13 Medical facilities and equipment

- (a) All medical areas shall have:
1. Facilities where inmates can be examined and treated with a modicum of privacy; and
  2. Medical equipment and supplies that meet with the specifications of the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services.

(b) Hypodermic needles and syringes shall be of the single service variety and their control shall be in strict compliance with N.J.S.A. 24:21-5. Hypodermic needles and syringes shall be destroyed immediately after use and in the manner described in N.J.S.A. 2A:170-25.17.

(c) The Chief Physician of each correctional facility shall write and institute procedures approved by the Superintendent to ensure that used and unused hypodermic needles and syringes are protected against theft or pilferage by providing:

1. Locked storage;
2. Distribution supervision; and
3. Inventories which shall be signed at the termination of each shift by the incoming and outgoing nurse.

10A:16-2.14 First aid kits

(a) First aid kit(s) and equipment shall be available in designated areas of the correctional facility based on need. The Chief Physician of the correctional facility or the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services, in the case of community based facilities, shall approve the:

1. Contents of kits;
2. Number of kits; and
3. Location of kits.

(b) Written procedures for the use and monthly inspection of all kits shall be established. All kits shall be numbered and a record shall be maintained of:

1. Location;
2. Contents; and
3. Dates of inspections.

(c) First aid kits shall contain material in sufficient amounts to meet the emergency needs of the population where they are located.

(d) The contents shall be arranged so that the desired package can be found quickly without unpacking the entire kit.

(e) The materials in the kits shall be wrapped so that unused portions do not become contaminated when handled.

10A:16-2.15 Reportable diseases

(a) All correctional facilities shall adhere strictly to the reporting requirements of diseases declared reportable in N.J.A.C. 8:57-1 REPORTABLE DISEASES.

(b) Information on reportable diseases shall also be available by contacting the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator.

(c) Forms for reporting these diseases are also available by contacting the New Jersey Department of Health, Division of Epidemiology and Disease Control.

(d) Copies of these reports shall be sent to the O.I.S.S. Health Services Coordinator.

10A:16-2.16 Prosthetic devices

(a) Medical services include the provision of prosthetic devices, including:

1. Eyeglasses;
2. Hearing aids;
3. Artificial limbs; and
4. Such other devices as are deemed medically necessary by the physician with the approval of the Superintendent or his or her designee.

10A:16-2.17 Satellite units and community based facilities

Written policy and procedure shall specify the provision of medical services (nonemergency and emergency illness or injury) for inmates housed at correctional facility satellite units and community based facilities.

10A:16-2.18 Medical records

(a) A complete medical record shall be maintained for each inmate to accurately document all health care services provided throughout the inmate's period of incarceration. This record shall contain the following items:

1. Completed receiving screening;
2. Physical examination forms;
3. Health history records;
4. Each health encounter with health care staff including sick call appearances;
5. Progress notes for all health care visitations, treatments, medical findings and diagnosis;
6. Prescribed medications and their administration;
7. Health service reports and consultations, including dental and psychiatric;
8. Prescribed diets and other treatments;
9. Laboratory, x-ray and diagnostic studies;

10. Discharge summary of hospitalizations and other terminations summaries; and

11. Refusal and consent forms.

(b) Only qualified correctional facility medical personnel shall collect and record health history, vital signs and other health appraisal data.

(c) Each patient encounter shall be recorded in the appropriate section of the medical record. Each entry in the medical record shall be written in ink, or typed, and signed and dated by the appropriate health care staff. All non-physician medical staff entries shall be co-signed by the physician or health care provider.

(d) All active medical records shall be maintained separately from the confinement records.

(e) Inactive medical records shall be stored separate from the active records and in accordance with the Records' Management Program's retention schedule.

(f) Medical records (excluding the Patient's Profile Record card which is retained by the pharmacist) shall accompany inmates when transferred to another correctional facility in order to assure continuity of care and to avoid the duplication of tests and examinations.

(g) The Patient's Profile Record card is not sent with the medical records when an inmate is transferred. The Patient's Profile Record card is retained by the pharmacist.

(h) Confidentiality of inmate records shall be maintained in accordance with N.J.A.C. 10A:22 RECORDS

#### 10A:16-2.19 Informed consent for treatment

Informed consents for treatment shall be handled in accordance with N.J.A.C. 10A:16-5 INFORMED CONSENT TO PERFORM MEDICAL, DENTAL OR SURGICAL TREATMENT.

#### 10A:16-2.20 Medical research or experimentation prohibited

(a) Absolutely no medical, pharmaceutical or cosmetic experiments shall be conducted involving the use of inmates or employees in the Department of Corrections.

(b) This prohibition does not preclude individual treatment of an inmate based on his or her need for a specific medical procedure which is not generally available.

(c) Non-medical, non-pharmaceutical and non-cosmetic research projects shall be conducted in accordance with N.J.A.C. 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT.

#### 10A:16-2.21 Reporting responsibilities of all medical services

(a) Monthly and annual reports shall be prepared and submitted in accordance with 10A:21 REPORTS.

(b) A copy of each medical program's monthly and annual report to the Superintendent shall be submitted to the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services for purposes of information and program review.

#### 10A:16-2.22 Medical Services Manual

(a) The medical services of each correctional facility shall develop and maintain an operations manual that specifies its goals, objectives, policies and procedures consistent with the requirements of this Subchapter.

(b) The manual shall be reviewed at least annually, updated as needed and made accessible to employees. Each document contained in the manual shall bear the date of the most recent review or revision and signature of the reviewer.

(c) The manual shall include, but not be limited to, the areas addressed in this Subchapter.

#### 10A:16-2.23 Medical forms

(a) Medical programs shall use the standardized forms required in (b) and (c) below.

(b) Forms 301-I through 301-IV shall be obtained from the Standards Development Unit, Department of Corrections, and reproduced by the correctional facility as needed.

(c) Forms 301-V and 301-VI shall be purchased by the correctional facility directly from the Bureau of State Use Industries.

### SUBCHAPTER 3. DENTAL SERVICES

#### 10A:16-3.1 Director of Dental Services

(a) The Director of Dental Services of the Department, serving under the Office of Institutional Support Services (O.I.S.S.) Health Service Coordinator, shall be responsible for formulating directives and policies for the provision of dental services within the Department.

(b) Copies of all directives of the Department shall be available in the dental clinic of each correctional facility.

#### 10A:16-3.2 Correctional facility dental staff

(a) The staff dentist with the highest Civil Service title, at each correctional facility shall be designated as the Senior Staff Dentist of the facility. The Senior Staff Dentist shall be administratively responsible for the dental services within the dental clinic.

(b) Correctional facilities may employ the following dental personnel to provide services:

1. Dentists;

2. Dental Specialists (consultation basis—when advanced training and experience required);

3. Dental Hygienists (full-time position if yearly population care exceeds 1,000); and

4. Dental Assistants.

(c) Dental externs and dental students entering the fourth year of dental school, may be employed. They shall only provide dental services under the direct supervision of a dentist working at the correctional facility as an employee of the Department of Corrections. This dentist must also be a member of the teaching faculty at one of the New Jersey dental colleges.

(d) The suggested staff for a dental clinic is one dentist and one dental auxiliary for approximately 500 inmates. This suggested staffing is dependent upon factors which include:

1. Turnover of population;

2. Objectives of the Dental Services staff; and

3. Dental pathology input compared with the dental pathology output.

(e) Dental staff shall be used to the maximum allowed by the Dental Practice Act N.J.S.A. 46:6.1 et seq.

#### 10A:16-3.3 Licensure

(a) Only persons licensed and registered in accordance with N.J.S.A. 45:6-1 et seq. shall be permitted to practice dentistry within the State of New Jersey. This prohibition is extended to the administration of first aid for alleviation of toothache.

(b) The Personnel Officer of a facility shall be responsible for forwarding the license for each dental staff member to the Office of Institutional Support Services (O.I.S.S.) Health Service Coordinator immediately after the initial decision to hire him/her. No dentist may begin employment until the O.I.S.S. Health Services Coordinator has verified the authenticity of the license.

(c) The Personnel Officer of a facility shall forward copies of renewal licenses to the O.I.S.S. Health Services Coordinator within fourteen days of renewal.

(d) Copies of licenses of dental personnel shall be maintained both within each staff member's personnel file at the correctional facility and at the O.I.S.S. Health Services Unit.

(e) The O.I.S.S. Health Services Coordinator shall develop a license expiration list which shall be utilized, if necessary, to request copies of renewed licenses from the staff.

(f) All persons taking dental x-rays shall be licensed by the State of New Jersey in accordance with N.J.S.A. 45:25-1 et seq. Information regarding licensure may be obtained from the Bureau of Collection and Licensing and Management, Department of Environmental Protection.

(g) Inmates may not be licensed as x-ray technicians and, therefore, shall not perform such duties.

#### 10A:16-3.4 Restrictive use of inmates as employees in dental clinics

(a) Inmates shall not be used to perform or assist in direct or indirect patient dental care services.

(b) Correctional facilities using inmates to perform or assist in direct or indirect patient dental care shall submit a request for a variance in accordance with 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT clearly delineating the specific duties of these inmates.

#### 10A:16-3.5 Twenty-four hour coverage

(a) Arrangements shall be made to provide twenty-four hour, seven days per week coverage by using:

1. Other dentists within the Department;

2. Community dentists; or

3. Community dental departments.

(b) Written standard operating procedures (S.O.P.'s) shall be established for emergency dental care when the correctional facility dentist is not available. These written procedures shall include arrangements for the following:

1. Emergency evacuation procedures with a designated hospital for severe dental procedures or trauma;

2. On-site emergency first aid;

3. Use of an emergency vehicle;

4. Emergency on-call dentist when the emergency health facility is not located in a nearby community;

5. Providing security when the immediate transfer of inmates is appropriate; and

6. Notification to the Director of Dental Services as soon as possible in all emergencies requiring evacuation or hospitalization.

10A:16-3.6 Use of community facilities and consultants

(a) Provision shall be made for the use of general and specialist community dental offices, practitioners or hospitals when dental treatment facilities are not available within the correctional facility and when special cases require it. Definite prearrangements shall be made for such utilization in advance of need.

(b) Inmates may be treated in dental facilities of other correctional facilities if personnel and equipment as related to the particular pathology to be treated make such treatment necessary or desirable.

10A:16-3.7 Admission examination

(a) An admission examination shall be accomplished within fourteen working days after the inmate's arrival. The examination shall include a manual and visual examination of the structures related to the dental field using using a mirror and an explorer.

(b) The examination should be augmented by an x-ray examination with appropriate reading and application to the clinical findings. Such diagnostic mechanisms as study models, photographs, tooth vitality determination may also be used.

(c) The findings of the examination shall be recorded on the Form DMH8 "ORAL DIAGNOSIS AND RECORD", and an individual dental treatment plan shall be developed.

10A:16-3.8 Classification and priority treatment program

Dental staff in each correctional facility, shall follow the written Classification and Priority Treatment Program of the Department so that all inmates shall be provided dental services in an equitable manner.

10A:16-3.9 Emergency dental treatment

Written procedures shall be established to ensure that inmates with severe trauma shall be examined immediately and the other dental emergencies shall be seen within 24 hours.

10A:16-3.10 Routine dental treatment

Excluding emergency treatment, dental treatment shall be rendered in accordance with the Department's written Classification and Priority Treatment Program.

10A:16-3.11 Oral surgery

(a) Reconstructive oral surgery techniques shall be used when the prognosis for success, and the anticipated gain is sufficient to offset any risk to the patient.

(b) Surgery of the mouth and associated structures shall be accomplished by applying techniques which ensure optimum preservation of tissue and minimum postoperative sequels.

(c) Using the closed or the open approach, erupted and impacted teeth shall be extracted and associated areas of infection shall be removed. Indicated bone reduction shall be accomplished at that time, keeping in mind prosthetic replacement. Primary enclosure of the extraction and bone trim sites shall be accomplished using sutures where indicated, especially when postoperative bleeding can be expected.

(d) Hard and soft lesions shall be removed in total or in part and shall be sent for pathologic evaluation when the surgical diagnosis is not absolute. When there is questionable pathology, follow-up shall be maintained as part of the recall system.

(e) Infectious pathologies shall be treated through surgical and/or hemotherapeutic mechanism.

(f) Trauma shall be managed within the scope of the qualification(s) and experience of the dentist(s) or by referral. Trauma shall include:

1. Suturing of facial and oral mucosal lacerations;
2. Reimplantations;
3. Repositioning and affixation of involved teeth and alveolar processes;
4. Management of facial bone fractures; and
5. Control of bleeding.

10A:16-3.12 Preventive dentistry

(a) Preventive dentistry shall be an important part of routine dentistry. It shall include educational programs as well as direct instructional programs. It shall include, but not be limited to, the following:

1. Care of teeth;
2. Function of teeth;
3. Brushing and flossing of teeth; and
4. Prosthetic appliance maintenance.

(b) Procedures shall be implemented through the correctional facility's water supply or through direct dietary intake to provide for the ingestion of appropriate amounts of fluoride by all inmates under the age of twelve.

10A:16-3.13 Administration of medications

(a) Medications prescribed by the dentist may be administered, in the manner prescribed, by staff personnel designated for this purpose.

(b) Drugs prescribed shall be issued either in envelopes labeled with the patient's name and directions for taking them or by a member of the medical staff at a central location.

(c) No one shall give medications or administer treatment, with the exception of first aid, unless it is under the expressed direction or prescription of the dentist or the physician.

10A:16-3.14 Local anesthesia

Local anesthesia is considered the anesthesia of choice. It shall be used whenever it is considered to be in the best interest of the patient's comfort, or in the dentist's judgment, for success of the procedure.

10A:16-3.15 General anesthesia

(a) General anesthesia shall be indicated when patients have certain medical complications that would contraindicate the use of local anesthetics. These problems can include psychological and allergic conditions. Dentistry is accomplished under general anesthesia only:

1. After adequate medical work-up;
2. With the anesthesia administered by qualified personnel and the dentistry accomplished by qualified dentists;
3. In an environment consistent with general operating room standards, adequate monitoring and emergency equipment;
4. With the assurance that there is adequate preoperative, operative and postoperative nursing care; and,
5. When the recovery mechanisms are consistent with those of general hospitals.

(b) Consultation shall be made prior to the administration of general anesthesia consistent with the statements found in this Subchapter.

10A:16-3.16 Records

(a) The following shall be completed on each inmate admitted to the correctional facility:

1. Form DMH8 ORAL DIAGNOSIS AND TREATMENT FORM;
2. Classification Assignment; and
3. Priority within treatment program.

(b) Written procedures shall be established by the Senior Staff Dentist which shall ensure that all special and routine recalls are accomplished.

(c) Dental records and x-rays shall be sent with inmates when they are transferred to another correctional facility so that the original treatment plan may be continued without diagnostic duplication. The dentist receiving the dental records and x-rays shall be responsible for their safe-keeping.

(d) A daily record shall be maintained describing the Dental Department's activity on a statistical and narrative basis. These shall be compiled by the week, month and year.

(e) Confidentiality of inmate records shall be maintained in accordance with 10A:22 RECORDS.

10A:16-3.17 Informed consent for treatment

Informed consent for treatment shall be handled in accordance with 10A:16-5 INFORMED CONSENT TO PERFORM MEDICAL, DENTAL OR SURGICAL TREATMENT.

10A:16-3.18 Dental equipment and supplies

(a) The dental equipment, instruments and supplies shall be closely supervised by salaried personnel.

(b) Written procedures on proper use and security of supplies and equipment shall be established by the Senior Staff Dentist and approved by the Superintendent. These written procedures shall ensure that used and unused needles and syringes are protected against theft or pilferage by:

1. Providing locked storage;
2. Providing supervision of distribution; and
3. Requiring signed inventories at the termination of each shift by the incoming and outgoing dentist.

(c) The dental staff shall pay particular attention to the equipment maintenance recommended by the manufacturers. The equipment shall be brought up to operating normal by the correctional facility's maintenance staff, the dentist and/or community dental maintenance personnel.

(d) Repeated equipment failure or under-performance shall be a basis for recommending replacement.

(e) Supplies shall be ordered under the direction of the Senior Staff Dentist, consistent with budget allocation. Supplies shall be ordered in sufficient quantities, quality and variety while maintaining a minimum of shelf inventory.

(f) Shelf life of supplies shall be current.

10A:16-3.19 Dental research

(a) There shall be no dental research, excepting that which involves study of clinical records and data.

(b) Dental Research projects shall be conducted in accordance with 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT.

10A:16-3.20 Reporting responsibilities of all dental clinics

(a) Monthly and annual reports shall be prepared and submitted in accordance with 10A:21 REPORTS;

(b) A copy of each dental clinic's monthly and annual report to the Superintendent shall be submitted to the Office of Institutional Support Services (O.I.S.S.) Director of Dental Services for purposes of information and program review.

(c) The annual report must be submitted by August 31 of each year and will include all periods involved on a fiscal year basis.

10A:16-3.21 Annual inspection

(a) The Office of Institutional Support Services (O.I.S.S.) Director of Dental Services shall visit and inspect the dental clinics at all correctional facilities at least once a year in order to review the facility's dental treatment activities.

(b) Within fourteen days after the annual inspection, a written report of the findings shall be prepared by the O.I.S.S. Director of Dental Services and submitted to the Commissioner, the Superintendent and the Senior Staff Dentist.

SUBCHAPTER 4. PSYCHOLOGICAL SERVICES

10A:16-4.1 Office of Institutional Support Services (O.I.S.S.) Director of Psychological Services

(a) The Office of Institutional Support Services (O.I.S.S.), Director of Psychological Services, serving under the Director, Office of Institutional Support Services (O.I.S.S.), shall be the designated authority with primary responsibility of serving as a consultant in psychology and providing professional review, evaluation and guidance of all psychological programs and activities of the Department with particular emphasis upon the maintenance of professional standards and the coordination of planning, training, recruitment and research.

(b) The O.I.S.S. Director of Psychological Services shall be responsible for:

1. Initiating necessary and appropriate action to coordinate and integrate the psychological activities of the Department;
2. Providing consultative service and support to all units of the Department in the specialized area of psychology;
3. Developing procedures of reporting on the quality of service provided by psychologists within the Department;
4. Evaluating psychological programs and initiating recommendations to insure that appropriate and necessary operations are being carried out within the Department;
5. Developing intermediate and long range plans for the improvement of psychological services within the Department;
6. Reviewing all budget requests, personnel appointments (whether temporary or on a per diem basis), promotional adjustments, training and research requests within the area of psychology and making recommendations to the appropriate appointment authority;
7. Providing necessary liaison with other State agencies within and outside of New Jersey in order to coordinate the psychological activities;
8. Developing training programs in the area of psychology and assisting in the recruiting, selection and supervision of psychological interns within the Department. The day-to-day supervision and evaluation of interns, however, shall be under the direction of a licensed psychologist of at least the grade of Staff Psychologist I in the correctional facility; and,
9. Developing programs for the recruitment of personnel into psychological services for the Department of Corrections and assisting in the formulation of personnel practices in order to maintain staffing patterns which will facilitate a high level of quality service.

(c) The O.I.S.S. Director of Psychological Services shall visit and inspect each correctional facility at least annually in order to review psychological activities and prepare a report of findings. Copies of the report shall be submitted to the:

1. Commissioner;

2. Assistant Commissioner; and
3. Superintendent of the correctional facility inspected.

10A:16-4.2 Correctional facility staff and structure

(a) A licensed psychologist, of at least the grade of Staff Clinical Psychologist I, shall be designated Director of Psychology at each correctional facility and he or she is directly responsible to the Superintendent or his or her designee.

(b) The Director of Psychology of a facility shall be responsible for:

1. Ensuring adequate, equitable and consistent psychological services;
  2. Providing the procedural mechanisms for psychological staff practices and functions within the correctional facility; and
  3. Coordinating the activities of the psychological service with other professional and technical groups, both within and outside the facility.
- (c) All persons offering psychological services who do not meet the requirements as a qualified psychologist as defined by Civil Service specifications shall be supervised by a Staff Clinical Psychologist I or a psychologist of a higher level.

(d) Each correctional facility shall develop a table of organization which delineates the lines of authority for psychological personnel.

10A:16-4.3 Access to psychological services

(a) At the time of admission to a correctional facility, inmates shall receive a written communication explaining the procedures for gaining access to psychological services.

(b) New or revised information regarding inmate access to psychological services shall be posted in housing units and incorporated into the next printing of the Inmate Handbook.

10A:16-4.4 Inmate/therapist confidentiality

(a) Confidential relations between and among clinical practitioners and individuals or groups in the course of practice, are privileged communications, not to be disclosed to any person.

(b) Privileged communications are subject to certain exceptions where it is found or believed that disclosure is more important to the present and future interests of substantial justice or safety of persons, than protection from injury to the clinical practitioner/patient relationship or to the inmate or others whom disclosure is likely to harm.

(c) The following exceptions to privileged communications are applicable only in situations which present a clear and imminent danger to the inmate or others.

1. Where the inmate discloses planned action which involves a clear and substantial risk of imminent serious injury, disease or death to the inmate or another identifiable person;
2. Where an escape plan is disclosed to the clinical practitioner;
3. Where drug trafficking for profit or illicit influence on others, involving Controlled Dangerous Substances (C.D.S.) or drug paraphernalia which may result in:
  - i. Injury (for example transmission of disease by sharing of hypodermic needles, etc.);
  - ii. Disorder; or
  - iii. Other interference with the orderly operation of the correctional facility is disclosed.
4. Where the inmate discloses suicide plans or other life threatening behavior; and/or
5. Where the inmate discloses a past, previously unreported murder, aggravated sexual assault, or arson which resulted in a death. For the purpose of this Subsection, aggravated sexual assault shall mean those offenses set forth in N.J.S.A. 2C:14-2(a). Past crimes shall be disclosed only where circumstances present a reasonably foreseeable danger in the present or future due to the nature of the past crime.

(d) When a clinical practitioner receives information concerning the exception categories listed in (c) above, he or she shall immediately confer with his or her Chairperson to determine whether disclosure is necessary. Relevant considerations, in addition to the information given to the clinical practitioner may include, but are not limited to; whether:

1. It is known that another individual is serving a sentence for the crime confessed by the inmate to the clinical practitioner;
2. It can be ascertained that the crime was in fact committed, but no one was prosecuted;
3. The inmate is under consideration for parole and the Superintendent, Special Classification Review Board, or State Parole Board is unaware that the inmate has committed, or plans to commit, another serious crime;
4. The inmate has described the criminal event or plan in such intimate detail as to render his or her story credible; and/or

5. Consequences of the inmate's past or intended conduct are considered dangerous to the health or well being of correctional facility residents or personnel.

(e) In any case in which the clinical practitioner and his or her Chairperson agree and conclude that the information does not fall within any of the exception categories described in (c) above, no disclosure need be made.

(f) If the clinical practitioner and his or her Chairperson believe that the subject matter falls within one of the exception categories, they shall immediately make this information known to the correctional facility Superintendent, and they shall provide the Superintendent with the facts and background information that are necessary to give the Superintendent a clear understanding of the case.

(g) In any case in which the clinical practitioner and his or her Chairperson disagree as to whether disclosure should be made, the staff person who believes that the matter should be disclosed shall notify the Superintendent immediately.

(h) The Superintendent shall institute such action as is deemed appropriate considering the needs of the correctional facility and facts of the particular case. This action may include, but is not limited to:

1. Requesting the Internal Affairs Unit to investigate further or to administer a polygraph test;
2. Transmitting information to the Internal Affairs Unit, Central Office, to refer to prosecutor;
3. Initiating disciplinary charges against the inmate;
4. Placing the inmate in close custody pending result of investigation; and/or

5. Increasing the inmate's custody status from minimum to maximum.

(i) Upon entry into the correctional system the inmate shall be advised of the limitations on confidentiality. The inmate shall be required to sign Form 520-I INMATE-THERAPIST CONFIDENTIALITY.

(j) Each staff person who engages in inmate therapy or psychiatric counselling shall be provided with a copy of the Commissioner's policy directive regarding inmate/therapist confidentiality.

(k) Questions concerning the interpretation of the policy on inmate/therapist confidentiality shall be addressed to the Special Assistant for Legal Affairs, Office of the Deputy Commissioner.

#### 10A:16-4.5 Psychology department manual

(a) The Psychology Department of each correctional facility shall develop and maintain an operations manual that specifies its goals, objectives, and procedures.

(b) The psychology manual, which is approved and promulgated by the Superintendent, shall be reviewed at least annually, updated as needed and be available to employees.

(c) As psychology manuals are reviewed and revised, copies shall be forwarded to the Office of Institutional Support Services (O.I.S.S.) Director of Psychological Services.

(d) The psychology manual shall include, but not be limited to:

1. Procedures for making appointments for psychological services which include a method for establishing priorities of appointments;
2. Procedures for making recommendations and/or referrals to other persons or agencies and the condition under which such recommendations and/or referrals can be made;
3. Sequence of events in the delivery of services presented in writing or in the form of a flow chart;
4. Designation of the person(s) responsible for developing the psychological treatment programs in coordination with the Director of Psychology of the correctional facility;
5. Method of reporting results of psychological services; and
6. Method of establishing accountability for obtained results.

#### 10A:16-4.6 Records

(a) Documentation shall be made of psychological services provided. Records kept of psychological services shall include, but are not limited to:

1. Identifying data;
2. Date of service;
3. Types of services; and
4. Action taken.

(b) Psychologists shall ensure that essential information concerning psychological services rendered is appropriately recorded within a reasonable time after the services are provided.

(c) Collection of psychological evaluation data shall be performed only by psychological services staff personnel or facility staff trained by the psychological service staff. All such reviews, written reports and development of plans of treatment shall be done under the supervision of a licensed psychologist.

(d) Confidentiality of inmate records shall be maintained in accordance with N.J.A.C. 10A:22 RECORDS

#### 10A:16-4.7 Psychological research

Psychological research projects shall be conducted in accordance with N.J.A.C. 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT.

#### 10A:16-4.8 Reporting responsibilities

(a) Monthly and annual reports shall be prepared and submitted in accordance with N.J.A.C. 10A:22 RECORDS.

(b) A copy of each monthly and annual report of the Psychology Department to the Superintendent shall be submitted to the Office of Institutional Support Services (O.I.S.S.) Director of Psychological Services for purposes of information and program review.

(c) Correctional facilities shall report the following to the appropriate Assistant Commissioner and the O.I.S.S. Director of Psychological Services.

1. Misconduct by psychology staff members;
2. Resignations of psychology staff; and
3. Conflicts between interdisciplinary staff.

(d) Monthly reports, annual reports and, as required, special reports shall be prepared by the O.I.S.S. Director of Psychological Services of the Department and submitted to the Director, Office of Institutional Support Services (O.I.S.S.).

#### SUBCHAPTER 5. INFORMED CONSENT TO PERFORM MEDICAL, DENTAL OR SURGICAL TREATMENT

##### 10A:16-5.1 Express written consent required

(a) The express written consent of the inmate shall be required for:

1. Surgery;
2. Invasive procedures;
3. Medical/dental treatment; and
4. Medical and dental procedures governed by informed consent standards in the community.

(b) In order to obtain written informed consent, Form 306-I CONSENT

FOR MEDICAL, DENTAL OR SURGICAL TREATMENT shall be completely filled in and signed by the inmate or guardian and a witness. The signed consent form shall be maintained in the inmate's medical record.

(c) The inmate or guardian must:

1. Have legal capacity to give written consent and be able to exercise free choice without any element of force or coercion;
2. Have sufficient knowledge and comprehension of the nature of the treatment to enable him or her to make an understanding and enlightened decision; and
3. Be informed of the:
  - i. Nature, duration and purpose of the medical, dental or surgical procedure;
  - ii. Alternative, if any, to the procedure;
  - iii. All of the inconveniences and hazards that may occur; and
  - iv. Effects upon health or person which can be reasonably expected.

(d) Information regarding the medical, dental or surgical procedure shall be provided by the medical staff; that is, physician, dentist or registered nurse.

(e) If there is doubt as to the inmate's mental capacity to make an informed decision, he or she shall be examined by the psychiatrist of the correctional facility and the Special Assistant for Legal Affairs shall be notified.

##### 10A:16-5.2 Exception to adult inmate written consent requirement

(a) Written consent shall not be required in the case of adult inmates (18 years or older) in the following circumstances:

1. In a case certified by a licensed physician or dentist to be one of grave emergency which requires immediate surgical intervention or other treatment in order to prevent the death of, or serious consequences to such inmate; and
2. In any case in which a court of competent jurisdiction has determined that the inmate is incompetent to give informed consent on his or her own behalf, or is otherwise ordered to undergo treatment.

(b) In any case in which a court of competent jurisdiction has determined that the inmate is incompetent to give informed consent on his or her own behalf, or is otherwise ordered to undergo treatment.

##### 10A:16-5.3 Parent or guardian authorized consent for juvenile inmates

(a) A notice of required treatment shall be forwarded to a parent or guardian of a juvenile inmate by certified mail to the last known address along with a Form 306-I CONSENT FOR MEDICAL, DENTAL OR SURGICAL TREATMENT. The notice shall contain the following information:

1. Precise nature of illness;
2. Proposed treatment; and
3. Date treatment will be performed.

(b) The notice shall be sent at least 10 days in advance of the date recommended for such treatment unless the case is one certified to be emergent, in which case the parent or guardian shall be given the maximum advance notice possible under the circumstances.

(c) A parent or guardian of a juvenile inmate may authorize the provision of required treatment by completing Form 306-I CONSENT FOR MEDICAL, DENTAL OR SURGICAL TREATMENT upon receipt, and forwarding it to the correctional facility by certified mail.

#### 10A:16-5.4 Superintendent authorized consent for juvenile inmates

(a) The Superintendent of a State correctional facility is authorized to give consent for medical, psychiatric, surgical or dental treatment to inmates under the age of 18, under the following conditions:

1. Where a licensed physician, psychiatrist, surgeon or dentist certifies that the treatment to be performed is essential and beneficial to the general health and welfare of such inmate, or will improve the inmate's opportunity for recovery, or prolong or save the inmate's life;
2. Where, after reasonable inquiry, there is no parent or guardian known who is competent to give written consent for the treatment;
3. Where a parent or guardian (after reasonable notice of the proposed treatment and a request for consent, and prior to the date fixed in such notice for the rendering of such treatment) refuses or neglects to execute and submit to the Superintendent in writing either the grant or denial of such consent; or
4. Where a case is certified by a licensed physician, surgeon, psychiatrist or dentist to be one of grave emergency and immediate surgical intervention or other treatment is necessary to prevent the death of, or serious consequences, to such juvenile inmate.

(b) Under the circumstances described in this Subchapter, the Superintendent, granting such consent in the exercise of his or her discretion, upon the recommendation contained in the medical, psychiatric, surgical or dental certification, shall be exempt from personal liability in the performance of such public duty.

(c) In cases where a Superintendent's consent has been executed, complete records, including a signed physician's or dentist's certification of the need for and nature of treatment required and given, and a signed copy of the Superintendent's written authorization to the physician or dentist performing such treatment, shall be filed in the inmate's medical record.

#### 10A:16-5.5 Refusal by adult inmates

(a) In every case in which the adult inmate, after having been informed of his or her condition and the treatment prescribed, refuses treatment, this refusal shall be recorded on Form 306-I CONSENT FOR MEDICAL, DENTAL OR SURGICAL TREATMENT in the space provided. Medical staff shall advise the inmate of the possible medical/dental consequences of such refusal.

(b) In the event the medical staff believes that the inmate lacks sufficient mental capacity to make a reasonably informed decision regarding his or her own well-being, or that the condition requiring treatment may become life-threatening, the case shall be referred to the Special Assistant for Legal Affairs, Office of the Deputy Commissioner, for possible legal action.

#### 10A:16-5.6 Written procedures

(a) Written procedures consistent with this Subchapter shall be prepared and made part of the correctional facility's medical procedures.

(b) These procedures shall be submitted for legal review to the Special Assistant for Legal Affairs, Office of the Deputy Commissioner, on or before February 15 of each year.

### SUBCHAPTER 6. PREGNANT INMATES

#### 10A:16-6.1 Visits to the physician

When pregnancy is diagnosed, the health of the prospective mother shall be carefully monitored by regular visits to a physician.

#### 10A:16-6.2 Arrangements for obstetrical services

Arrangements for hospitalization for delivery shall be made by the correctional facility as far in advance as possible.

#### 10A:16-6.3 Father of the child

(a) The father, if not incarcerated, may attend the birth of his child in the delivery room.

(b) The father's presence in the delivery room is dependent upon the security risk of the mother and hospital policy.

#### 10A:16-6.4 Placement of infants

(a) Counseling and assistance shall be provided to pregnant inmates in keeping with their expressed desires in planning for their unborn children. Counseling and social services shall be available to assist pregnant inmates in making decisions such as whether to keep their child or give the child up for adoption. Counseling shall not advocate any particular alternative to the inmate.

(b) The Division of Youth and Family Services (D.Y.F.S.), Department of Human Services, shall be contacted by the correctional facility when adoption or foster home placement is being contemplated by the prospective mother.

(c) Plans for the placement of all anticipated infants shall be developed well in advance of delivery date.

#### 10A:16-6.5 Written procedures

Superintendents of correctional facilities housing female inmates shall be responsible for the development and implementation of written procedures consistent with the requirements of this Subchapter.

### SUBCHAPTER 7. CRITICAL ILLNESS OR DEATH OF INMATES

#### 10A:16-7.1 Notification of next of kin

(a) In the event of an inmate's critical illness or death, his or her next of kin shall be notified within 24 hours by the Superintendent or his or her designee.

(b) "Next of kin" shall be interpreted to mean:

1. Spouse;
2. Mother;
3. Father;
4. Guardian;
5. Persons connected by birth or marriage; or
6. Other persons indicated on official records.

(c) Initial contact with the next of kin shall be by telephone. In cases where the next of kin is without a phone, the local police or New Jersey State Police shall be contacted and requested to advise the next of kin to contact the correctional facility immediately.

(d) A letter confirming the telephone conversation shall be forwarded to the next of kin, and a copy of the letter shall be placed in the inmate's case folder.

(e) When the inmate recovers and is removed from the critical list, the next of kin shall again be informed as outlined in (a), (c), and (d) above.

(f) In the case of death, the Superintendent or his or her designee shall immediately notify the:

1. Appropriate Assistant Commissioner;
2. New Jersey State Police;
3. Office of Institutional Support Services (O.I.S.S.) Health Service Coordinator; and
4. County Medical Examiner's Office.

(g) If death is confirmed other than in a hospital, the body cannot be moved to a hospital without the approval of the County Medical Examiner.

(h) Prior to release of a body from the correctional facility or hospital, photographs and fingerprints shall be taken for the records.

(i) All reports shall be prepared in accordance with N.J.A.C. 10A:21 REPORTS.

(j) Autopsies shall be performed when regulations by the County Medical Examiner so require and/or when requested by the medical or surgical staff of the medical facility where the inmate expired.

#### 10A:16-7.2 Claiming bodies of deceased inmates

(a) Persons claiming the body of a deceased inmate must contact the hospital where the inmate expired or was taken in order to obtain the release of the body.

(b) Hospitals must obtain approval from the County Medical Examiner's Office for release of the body of a deceased inmate.

(c) The Department of Corrections shall not be responsible for the costs of burial or cremation for bodies of deceased inmates that are claimed.

#### 10A:16-7.3 Burial or cremation of unclaimed bodies

(a) The correctional facility shall arrange for the burial or cremation of unclaimed bodies of inmates. The County Medical Examiner's Office shall be contacted for assistance in such cases.

(b) An unclaimed body may be cremated where it is reasonably believed that it would not violate the intentions or religious tenets of the deceased inmate.

(c) The Social Security Administration, Veteran's Administration and Public Welfare shall be contacted by the correctional facility for any possible death benefits.

(d) Money remaining in the account of a deceased inmate may be used for burial or cremation expenses.

10A:16-7.4 Distribution of money and personal belongings of deceased inmates

(a) When an inmate dies, the Superintendent or his or her designee shall turn over all money and personal belongings to the Executor or Administrator of the inmate's estate in exchange for an itemized receipt.

(b) Before such assets or items are released, and pursuant to N.J.S.A. 3A:6 et seq., the claimant must present to the Superintendent or his or her designee a certified, filed copy of Letters Testamentary, Letters of Administration, or a filed Affidavit in which one is entitled to assets without administration.

(c) A correctional facility may not require a bank or other depository of inmate assets to release funds until presentation of a New Jersey Inheritance Tax Waiver.

(d) In the event an inmate dies without leaving a will, and there are no known relatives, the funds in the inmate's account, if any, shall be closed out and transferred to the Department of Treasury's Unclaimed Inmates and Patients Account, after deductions for burial or cremation.

10A:16-7.5 Written procedures

The Superintendent of each correctional facility shall be responsible for the development and implementation of written procedures consistent with the requirements of this Subchapter.

SUBCHAPTER 8. MEDICAL CLEMENCY

10A:16-8.1 Statutory authority

The statutory authority for this Subchapter is N.J.S.A. 2C:98-3.

10A:16-8.2 Eligibility requirements

(a) Application for Medical Clemency may be made in cases when the physician of the correctional facility has determined that an inmate's medical condition is such that:

1. The inmate has a terminal illness;
2. Death is imminent;
3. Adequate treatment is not available within the correctional facility;

or

4. The inmate has become so ill as to be without prospect of recovery under conditions of confinement.

(b) A confirming second opinion by a consulting physician must also be obtained by the Medical Department of the correctional facility.

(c) Upon receipt of the second opinion, the Medical Department shall immediately advise the Superintendent of the inmate's medical condition.

10A:16-8.3 Petition for medical clemency

(a) The petition for Medical Clemency may be initiated either by the inmate or the Superintendent of the correctional facility.

(b) The inmate who wishes to apply for Medical Clemency shall obtain and complete Form SPB-3A PETITION FOR EXECUTIVE CLEMENCY. The completed Form shall be forwarded to the Superintendent for submission to the State Parole Board.

(c) The Superintendent or his or her designee may complete Form SPB-3A on behalf of an inmate who is eligible for consideration.

10A:16-8.4 Role of the Superintendent

(a) Upon receipt of a completed Form SPB-3A, the Superintendent shall obtain from the Classification Office up-to-date classification material which shall include, but is not limited to:

1. Criminal history;
2. Psychological reports;
3. Presentence report; and
4. Progress reports.

(b) The Superintendent shall obtain from the Medical Department a copy of the following:

1. Charted records;
2. A letter from the physician of the correctional facility which includes his or her opinion on the inmate's medical condition and a description of the continuing care which will be required; and
3. A letter from the consulting physician confirming the opinion of the physician of the correctional facility.

(c) The Superintendent shall send the following to the Deputy Commissioner, Department of Corrections:

1. Three copies of the classification materials;
2. One copy of the medical material, which includes treatment and care required if Medical Clemency is granted;
3. Completed Form SPB-3 PETITION FOR EXECUTIVE CLEMENCY; and
4. A cover letter which includes the Superintendent's recommendation regarding the petition.

10A:16-8.5 Medical furlough

(a) The Superintendent shall also submit to the Deputy Commissioner, along with the material required in N.J.A.C. 10A:16-8.4(c), his or her recommendation as to whether an extended medical furlough should be granted pending the outcome of the petition.

(b) The petition for Executive Clemency shall not be construed as assurance that a medical furlough will be granted.

(c) The decisions on medical furloughs shall be based on the factors in each case.

10A:16-8.6 Role of the Deputy Commissioner

(a) The Deputy Commissioner, upon receipt of the material outlined in N.J.A.C. 10A:16-8.4(c), shall notify the Office of Institutional Support Services (O.I.S.S.) Health Service Coordinator and request that the O.I.S.S. Director of Medical Services review the inmate's medical status and submit a report of his or her findings and recommendations.

(b) The Department of Corrections may recommend to the State Parole Board special conditions that the inmate should be required to meet if granted Medical Clemency; for example, whether the inmate must receive cobalt treatments as prescribed by the treating physician.

10A:16-8.7 Role of the State Parole Board

(a) In those cases as the State Parole Board deems appropriate, the Department of Corrections' Bureau of Parole may be requested to conduct a confidential community investigation.

(b) Investigative emphasis shall be placed upon the medical condition(s) which the applicant is presenting as justification for seeking Medical Clemency.

(c) The Bureau of Parole procedural memorandum for conducting Executive Clemency investigations shall apply.

(d) If the community investigation is to be conducted in a state other than New Jersey, it shall be conducted under the auspices of the Office of Interstate Services, Division of Policy and Planning.

(e) The Bureau of Parole or the Office of Interstate Services shall submit a report in triplicate to the State Parole Board. The report shall include a statement regarding the applicant's community plans if the requested Medical Clemency is granted.

10A:16-8.8 Governor's decision

(a) The Governor's decision will be sent to the inmate by mail with a copy to the State Parole Board.

(b) The State Parole Board shall make a copy of the Governor's decision available to the correctional facility and the Deputy Commissioner.

SUBCHAPTER 9. BLOOD DONATION BY INMATES

10A:16-9.1 Blood donation

Donation of blood by inmates is prohibited. There shall be no exceptions to this prohibition.

SUBCHAPTER 10. LETHAL INJECTION

10A:16-10.1 Place for execution

(a) The Commissioner shall provide and maintain a suitable and efficient correctional facility enclosed from public view, within the confines of Trenton State Prison for the imposition of the punishment of death.

(b) Trenton State Prison shall contain the apparatus and equipment necessary for the carrying out of executions pursuant to N.J.S.A. 2C:11-3.

10A:16-10.2 Provision of services within 72 hours preceding execution

(a) During the 72 hour period immediately preceding execution of the condemned, the services listed below shall be provided in accordance with the following procedures.

1. Clergical:

i. The Trenton State Prison Chaplain or the inmate's private clergy shall, upon request of the condemned, make contact visits to the condemned on a daily basis to provide pastoral services. The time and duration of clergy visits shall be at the discretion of the Superintendent of Trenton State Prison;

ii. Clergy from the community must present appropriate clerical credentials to the Superintendent and pass a routine security check; and

iii. The Chaplain or private clergy may accompany the condemned to the execution chamber corridor if so requested by the condemned.

2. Food:

i. At least 24 hours in advance of the scheduled execution, the condemned may request the food of his or her choice to be served at the last regularly scheduled dinner, not less than eight hours prior to the execution. Such request shall be granted subject to reasonable availability and cost of the food desired; and

ii. Alcoholic beverages are prohibited.

## 3. Visits:

- i. Window visits by family members, up to a maximum of six hours per day and two persons at a time shall be permitted;
- ii. Contact visits by the authorized attorney of record shall be permitted daily, subject to security requirements of the Capital Sentence Unit (C.S.U.), including prior notice to the Superintendent;
- iii. All contact with family members and attorney(s) shall terminate three hours prior to the time scheduled for administration of the pre-execution sedative; and
- iv. During the last 72 hours there shall be no contact of any kind permitted between the condemned and any member of the news media.

## 4. Telephone calls:

- i. The condemned may place daily telephone calls to members of his or her family, subject to appropriate scheduling procedures and Trenton State Prison rules; and
- ii. The condemned may place collect telephone calls to his or her attorney-of-record when they are necessary.

## 5. Recreation:

- i. During the 72 hours preceding execution, recreation shall be permitted daily on an individual, isolated basis, if feasible.

## 6. Personal property:

- i. The condemned shall be required to fill out a form indicating disposition of his or her personal property and saving account(s), except for such funds as may be needed to provide for burial expenses.

## 10A:16-10.3 Time for execution

Upon receipt of the warrant appointing an execution date, the Commissioner shall schedule the time for implementation of the warrant and begin final arrangements including, but not limited to:

1. Designation of medical and custodial staff;
2. Selection of execution technicians;
3. Selection of witnesses; and
4. Purchase of necessary supplies.

## 10A:16-10.4 Witnesses

(a) The Commissioner shall select six adults and two alternates who have volunteered to witness the execution. The two alternates shall be selected to be present in the event any of the witnesses may be unavailable on the appointed execution date.

(b) The witnesses shall receive written notice of their selection by registered mail or personal service at least seven days prior to the scheduled execution.

(c) The witnesses shall assemble at least two hours prior to the time set for execution, at a place designated by the Commissioner. The Commissioner shall assign suitable custody or administrative staff to provide security, escort and transportation to Trenton State Prison.

(d) The names of the witnesses shall not be disclosed until after the execution.

(e) The Commissioner shall authorize and permit, upon written request of the condemned, two members of the clergy who are not related to the condemned, to be present at the execution. These persons shall be notified of their selection and shall assemble in the same manner as for the witnesses set forth in (c) above. An alternate may be designated in the event either of the two clergy is unavailable.

(f) The Commissioner shall permit eight representatives of the news media to be present at the execution for the purpose of giving their respective newspapers and associations accounts of the execution.

(g) The news media persons shall be from the following services:

1. Two representatives of major wire services;
2. Two representatives of television news services;
3. Two representatives of newspapers; and
4. Two representatives of radio news services.

(h) Trenton State Prison shall develop written post orders and procedures for providing:

1. Escort and security for all witnesses while in the Trenton State Prison;
2. Accommodations for witnesses; and
3. A room designated to be used for a press conference after the execution.

(i) Any person who is related by either blood or marriage to the sentenced person or to the victim shall not be authorized to be present at the execution.

(j) The Commissioner shall not authorize or permit any other person to be present, except those authorized by this Subchapter.

## 10A:16-10.5 Filming of execution

(a) No cameras or tape recorders are permitted to be brought into Trenton State Prison.

(b) There shall be no filming of the execution.

## 10A:16-10.6 Stay of proceedings

(a) Written Stay of Proceedings or other official Order shall be received by a supervisory officer at the Trenton State Prison main command post. Such document shall be delivered immediately to the Superintendent, who shall advise the Commissioner and provide him or her a copy of same as soon as possible. Appropriate steps shall be taken to confirm the authenticity of such Order or Stay.

(b) The Trenton State Prison Superintendent shall arrange for installation and maintenance of a special telephone line with confidential telephone number, to be available for the sole purpose of receiving incoming calls from the Governor, Chief Justice or other person authorized by law to Stay execution proceedings.

(c) In addition to the telephone bearing the main number, there shall be two additional telephones on the line, sequenced for the purpose of receiving incoming calls in the event the main line is already in use. These telephones shall be located in the Superintendent's office and witness room.

(d) Upon installation of the special telephone line, the confidential telephone number shall be hand delivered to the:

1. Governor;
2. Chief Justice; and
3. Commissioner.

(e) Twenty-four hours prior to the scheduled execution the Superintendent shall arrange to hand deliver to the Governor, Chief Justice and Commissioner a confidential code to be utilized in the event a communication is to be made via the special telephone line. This code shall be changed prior to each scheduled execution. No telephone call on this telephone line during the eight hours prior to the execution shall be deemed authentic unless accompanied by use of the designated code.

(f) During the eight hour period preceding the execution, the special telephone line shall be continuously monitored by a Trenton State Prison staff person assigned by the Superintendent for this sole purpose. All calls from the Governor, Chief Justice or other authorized person(s) shall be reported to the Superintendent and Commissioner immediately.

## 10A:16-10.7 Suspension of execution due to pregnancy

(a) If there is reasonable ground to believe that a female inmate, sentenced to death, is pregnant, the Trenton State Prison Superintendent shall impanel a committee of three licensed physicians to ascertain her medical condition. This committee shall consist of:

1. The Department's Medical Director;
2. A Trenton State Prison physician; and
3. A physician from the community, who shall be a specialist in Obstetrics and Gynecology.

(b) The physicians shall conduct such medical examination as is medically indicated to determine facts relative to pregnancy. The physicians shall provide a written report of their findings to the Superintendent, who shall sign the report and transmit it to the Commissioner.

(c) If the physicians find the inmate to be pregnant, the Superintendent shall suspend execution of the death warrant.

(d) Care and services for the pregnant inmate shall be provided in accordance with N.J.A.C. 10A:16-6 PREGNANT INMATES.

(e) When the inmate is no longer pregnant, the Commissioner shall reissue the death warrant, appointing a date and time to carry out the death sentence.

## 10A:16-10.8 Operational staff in attendance at an execution

(a) Two physicians shall be in attendance for an execution.

1. One physician shall be the Medical Director of the Department. In the absence of the Medical Director, an alternate shall be selected.

2. The second physician shall be selected from a list of volunteers from correctional facilities other than Trenton State Prison.

i. The second physician selected shall be notified in writing, at least five days prior to the scheduled execution, by the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator through the correctional facility Superintendent.

ii. In the event no facility physician volunteers, or is available to attend the execution, the O.I.S.S. Health Services Coordinator shall contract with physicians in the community to perform this service.

(b) One Registered Nurse (team nurse) from the same correctional facility as the selected physician, if feasible, shall be assigned by the O.I.S.S. Health Services Coordinator.

(c) One Certified Intravenous Therapist shall be hired on a consultant basis by the O.I.S.S. Health Services Coordinator. The therapist shall provide proper identification documents to the Trenton State Prison Superintendent at least 48 hours prior to the scheduled execution.

(d) Three persons who are qualified to administer injections shall be selected by the Commissioner as execution technicians. Procedures shall be designed to ensure that the identity of these persons shall be confidential and that these persons shall not be aware of who actually inflicted the lethal injection.

10A:16-10.9 Medical supplies and equipment

(a) The Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator and Medical Director of the Department shall prepare a list of medical supplies and equipment to be utilized at each execution. These items shall be purchased at least five working days prior to the scheduled execution and shall be set up under the supervision of the Medical Director.

(b) All medications to be utilized in the execution shall be stored in a securely locked box or container, which shall be stored within a securely locked cabinet or closet. The locked box or container shall only be used for the storage of medications to be used in the execution. There shall be only one set of keys to this storage area and this set shall be retained by the Commissioner or his or her designee.

10A:16-10.10 Preparation of the condemned inmate

Medical and custody preparation of the condemned for execution shall be initiated and completed in accordance with written operational procedures developed by the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator and the Trenton State Prison Superintendent or his or her designee.

10A:16-10.11 Staff training

(a) During the 48 hour period preceding an execution, the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator shall arrange for training all medical personnel in execution procedures.

(b) The Trenton State Prison Superintendent shall arrange for training in execution procedures for all correction officers who are designated to provide security during an execution.

10A:16-10.12 Execution suite

(a) The execution chamber shall be equipped with a cardiac monitor. The monitor shall be positioned to provide visual access to the team physicians, but to be obscured from vision by the witnesses.

(b) An emergency cart will be located at the exterior wall of the room. The emergency cart shall contain such equipment, supplies and medications as may be needed to revive the inmate in the event a last minute Stay of Execution is imposed.

(c) The executioner's room shall contain equipment, supplies and medications as are specified in N.J.A.C. 10A:16-10.9.

10A:16-10.13 Preparation of execution medications

(a) At least one hour prior to the time set for the execution, the Commissioner or his or her designee shall remove the medications to be used in the execution from the place of storage and give the medications to the team nurse.

(b) Upon receipt of the execution medications, the team nurse shall be escorted to the executioner's room to prepare the execution materials. At this time, a uniformed correction officer shall be posted at the outside entrance to the executioner's room. When the nurse has completed the preparatory procedures, he or she shall exit the room. The executioners shall then enter and take their assigned positions. The uniformed officer shall remain at his or her post throughout the execution procedures, or until ordered to leave by the Superintendent or his or her designee.

10A:16-10.14 Execution

(a) Upon arrival of the condemned at the execution chamber, assigned team members shall position the stretcher and connect necessary operating systems in accordance with operational procedures. Upon completion of these assigned tasks, the condemned shall be left alone in the execution chamber. The team physicians shall take their positions in the witness room to view the condemned and the cardiac monitor.

(b) The Commissioner or his or her designee shall, in the presence of the assembled witnesses and news media representatives, read the official death sentence Warrant.

(c) Upon order of the Commissioner or his or her designee, the executioners shall perform the duties and responsibilities conferred on them by law.

(d) Upon completion of the execution procedures, the team physicians shall enter the execution chamber, examine the deceased and confirm death. The witnesses shall then be escorted from the witness room and the TV monitor turned off. Pursuant to written operational procedures, the deceased shall be removed from the stretcher and transported to a waiting hearse. The executioners shall then depart.

10A:16-10.15 Stay of execution

If, during any stage of the execution, a Stay of Proceedings is ordered, execution procedures shall be halted and the witnesses shall be removed. Team physicians shall then immediately initiate life sustaining procedures. Where medically indicated, the inmate may be transferred to the St. Francis Medical Center for further treatment.

10A:16-10.16 Death certificates

(a) Immediately after the execution, the team physicians shall examine the deceased and shall prepare a written report stating the nature of the examination and occurrence of death.

(b) The Commissioner shall prepare and sign a separate certificate setting forth the time and place of the execution and stating that the execution was conducted in conformity to the sentence of the Court and provisions of N.J.S.A. 2C:11-3.

(c) The Commissioner's certificate shall be filed within 10 days in the Superior Court in the county in which the person executed was convicted.

10A:16-10.17 Disposition of the deceased

(a) Immediately after death has been certified, the deceased shall be transported to the county morgue, and the Commissioner or his/her designee shall consult with the County Medical Examiner to determine whether an autopsy is deemed necessary. The deceased shall be disposed of as follows:

1. If the deceased has a designated relative or bona fide friend willing and able to accept custody of the inmate's body, the body shall be available to the funeral director designated by the relative or bona fide friend within 72 hours after the execution or autopsy.

2. If the deceased is to be buried or cremated within 48 hours after death, embalming shall not be required. After 48 hours, the deceased shall be embalmed immediately. The Department shall pay a fee, not to exceed \$25.00, to the mortician for his or her embalming services.

3. In the event no bona fide friend or relative claims the deceased within 72 hours, the body shall be buried or cremated in accordance with N.J.A.C. 10:16-7 CRITICAL ILLNESS OR DEATH OF INMATES.

10A:16-10.18 Memorial or religious service for the deceased

(a) A memorial or religious service may be held at Trenton State Prison for the deceased upon written request by the relatives of the deceased.

(b) Only the relatives, the person conducting the service and prison staff may attend.

10A:16-10.19 Clean up procedures

(a) Upon removal of the deceased, the team nurse shall gather all used and unused medications and syringes. These items shall be maintained in a secure receptacle in an area designated by the Superintendent. The Superintendent shall assign an Internal Affairs Investigator to monitor these activities and provide security therefor.

(b) All stored materials shall be retained in a secure location for a period of ten working days. Thereafter, the Superintendent shall order them to be destroyed by the Trenton State Prison pharmacist in accordance with accepted pharmaceutical practices.

(c) All non-disposable equipment shall be cleaned and prepared for further use. This non-disposable equipment, except for the cardiac monitor and the emergency cart, including apparatus located in the execution suite, shall not be utilized for any purpose other than execution.

10A:16-10.20 Report of execution procedures

(a) The Superintendent shall assign a member of his or her staff to monitor the entire execution process and to keep a detailed written record of the proceedings.

(b) The written record shall be given to the Superintendent in its original form, within one hour after completion of the execution.

(c) The report shall not be considered a public record for any purpose other than as specified by the Superintendent or Commissioner.

10A:16-10.21 Operating procedures

(a) Trenton State Prison shall develop detailed written procedures and post orders consistent with this Subchapter. Each functional unit or team involved in the execution shall formulate and prepare detailed written procedures, governing their role which shall be consistent with the implementation of the Death Sentence Act and this Subchapter.

(b) Trenton State Prison's written procedures and post orders shall be submitted to the Chairperson of the Capital Sentence Unit Committee and the Deputy Commissioner for review.

SUBCHAPTER 11. MEDICAL UNIT ANNEX

10A:16-11.1 Admission criteria to Medical Unit Annex

(a) Inmates shall be assigned to the Medical Unit Annex when:

1. The chronic illness suffered does not require acute care hospitalization; and/or

2. The medical condition of the inmate precludes housing within any of the other correctional facilities of the Department of Corrections.

10A:16-11.2 Authority of the Inter-Institutional Classification Committee (I.I.C.C.)

Only the inmates that have been diagnosed and found to have chronic illnesses shall be assigned by the Inter-Institutional Classification Committee (I.I.C.C.) to the Medical Unit Annex.

10A:16-11.3 Annex Classification Committee (A.C.C.)

(a) The Annex Classification Committee (A.C.C.) shall be chaired by the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator and comprised of:

1. One representative from the O.I.S.S. professional services staff;
2. One representative from the Medical Unit Annex custody staff; and
3. One representative from the O.I.S.S. medical staff.

(b) The A.C.C. shall review the assignment of an inmate to the Annex to ensure that the assignment was made by the Inter-Institutional Classification Committee (I.I.C.C.) solely on the basis of the inmate's medical condition.

(c) In addition to classification duties, the A.C.C. is authorized to monitor an inmate's Annex program and conduct case and in-person reviews. The A.C.C. may permit or preclude an inmate's participation in programs dependent upon his ability to participate without posing a security or clinical threat to the Annex.

(d) A case review will be conducted at the completion of each inmate's orientation period and a case review will be conducted a minimum of every three months thereafter, or more frequently if deemed appropriate by any A.C.C. member.

(e) Whenever necessary for appropriate decision making, the inmate will be required to appear before the A.C.C. unless the inmate refuses to appear without the use of force.

(f) Written decisions on all case reviews shall be forwarded to the inmate unless security considerations preclude disclosures.

10A:16-11.4 Medical Unit Annex staff

(a) The Medical Unit Annex staff is comprised of the:

1. Annex Supervisor;
2. Correctional staff; and
3. Professional services staff (for example, social workers, psychologists, chaplains and medical staff).

(b) The Annex staff is responsible to the Annex Classification Committee (A.C.C.) for program development, implementation and assessment.

(c) The concerns of both the custody and the professional services staff members shall be given equal consideration in decision making regarding the development of programs and the management of the Annex.

10A:16-11.5 Orientation

(a) Upon assignment of an inmate to the Medical Unit Annex, the inmate shall serve a period of ten days under intense supervision. During this period the inmate shall be assessed to determine his:

1. Clinical condition;
2. Attitude;
3. Level of cooperation; and
4. Willingness to work and participate in program activities.

(b) The assessment shall be accomplished by:

1. The submission of daily progress reports by the correction officer to the Annex Supervisor;

2. The submission of a written evaluation of the inmate by the Annex social worker to the Annex Classification Committee (A.C.C.) at the completion of the orientation period; and

3. The submission of recommendations by other Annex staff members to the Annex Classification Committee (A.C.C.) at the completion of the orientation period.

(c) Within 24 hours of an inmate's placement, the Annex Supervisor shall familiarize the inmate with the rules of conduct within the Medical Unit Annex. The Annex Supervisor shall ascertain if any immediate difficulties exist which require referral to an appropriate component and the inmate will be provided with an Annex handbook.

(d) The Annex Supervisor shall notify the social worker of the placement of an inmate into the Annex and convey any special instructions regarding the inmate. The social worker, within 72 hours of the placement, shall review with the inmate his assignment to the Annex. Any unique problems referred by the Annex Supervisor shall be addressed at that time.

(e) The professional staff shall be advised by the A.C.C. that an inmate has been assigned to the Annex. A representative from each area will meet with the newly assigned inmate during orientation and advise him of the programs and services available.

(f) During orientation, the newly assigned inmate shall be permitted to engage in program activities as they are developed for him. At the completion of the orientation, the A.C.C. will review and approve or disapprove the continuation of the program developed for the inmate. Any limitations determined by the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services upon admission shall be considered during program assignment.

10A:16-11.6 Personal items

(a) During orientation all of the inmate's personal belongings shall be thoroughly searched and returned to him within 24 hours unless extenuating circumstances exist (for example, transfers from another correctional facility, major disturbances, etc.).

(b) All contraband, including razors and spoons, shall be removed.

(c) Other items not permitted for retention within the Medical Unit Annex shall be itemized and handled in accordance with N.J.A.C. 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT.

10A:16-11.7 Work opportunities

(a) Each inmate shall be afforded an opportunity to participate in a work program designed to respond to the needs of the Medical Unit Annex and inmate. The Annex Supervisor will review the responsibilities of the work program with the inmate during the initial orientation interview.

(b) The Annex staff may, at their discretion, devise other work opportunities in which the inmate may participate upon approval of the Annex Classification Committee (A.C.C.).

(c) The inmate shall receive the work assignment of cell sanitation upon initial assignment to the Annex. Each inmate shall be responsible for the cleanliness of his cell. Equipment shall be provided for him to clean his cell at least once per week.

(d) Pay and work credits shall be commensurate with the skill level and nature of work responsibilities involved and as outlined in N.J.A.C. 10A:13 INMATE WORK PROGRAMS.

(e) At the beginning of each month, every inmate assigned to the Annex shall be given the opportunity to confirm his continuation in the program via an in-person work review with the Annex Supervisor.

(f) Removal and lay-in action may be initiated by the Annex Supervisor or by the Annex officers. Removal and lay-in action shall be reviewed by the A.C.C. for appropriate confirmation.

10A:16-11.8 Disciplinary action within the Medical Unit Annex

(a) The Department of Corrections Inmate Discipline Program shall be in full force and effect in the Medical Unit Annex. Any restrictions of privileges placed upon an inmate in the Annex shall be in accordance with N.J.A.C. 10A:4 INMATE DISCIPLINE.

(b) Disciplinary action initiated by any staff member shall be referred to the Disciplinary Hearing Officer/Adjustment Committee and, where appropriate, to the A.C.C. for confirmation.

10A:16-11.9 Professional services

(a) Professional services shall be provided to the same extent as is available to the general inmate population.

(b) Professional service staff shall submit to the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator a monthly schedule of programs to be conducted within the Medical Unit Annex.

10A:16-11.10 Psychological and social work services

Crisis intervention, problem solving and short and long term counseling programs shall be provided within the Medical Unit Annex on an individual and/or congregate level.

10A:16-11.11 Medical services

(a) The Office of Institutional Support Services (O.I.S.S.) Health Services Unit shall provide appropriate services to the Medical Unit Annex.

1. A medical consultant shall provide medical examinations and treatment twice weekly.

2. Emergency medical support and medication dispensing shall be provided by the Medical Department at State Prison, Trenton.

3. The O.I.S.S. Health Services Unit Nursing Supervisor shall provide clinical support to the medical consultant and act as a liaison between the O.I.S.S. Health Services Unit and the Medical Department at State Prison, Trenton.

4. Psychiatric and dental services shall be provided by the use of contracted consultants.

10A:16-11.12 Religion

Spiritual programs and counseling shall be provided on an individual and congregate basis. These activities shall be coordinated by personnel from the Department of Corrections Chaplaincy Unit.

10A:16-11.13 Legal activities

(a) Each inmate shall have access to a law library and to legal assistance consistent with the program needs of the Medical Unit Annex.

(b) The social worker shall coordinate needs for materials with the Annex paralegal representative (if assigned). The inmate paralegal shall conduct interviews in an appropriately suited area determined by the Annex Supervisor.

(c) Attorneys and court related personnel shall be granted contact visits within the Annex. Such visits must be approved and pre-scheduled by the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator 24 hours in advance of the visit by calling his or her office Monday through Friday during regular working hours.

(d) Visits of attorneys and court related personnel shall be conducted either in the multi-purpose room or in a treatment room at the discretion of the Annex Supervisor. No staff member shall monitor the conversations between an inmate and the attorney.

10A:16-11.14 Recreation

(a) Each inmate shall be permitted a minimum of two hours of exercise and recreation daily. The maximum number of inmates permitted recreation during a single period is eight.

(b) When there is a need to keep certain inmates separate, the Annex Supervisor may schedule the yard recreation periods into one hour sessions.

(c) Selections with respect to the inmate members of a recreation group shall be the responsibility of the Annex Classification Committee (A.C.C.) based upon infection control guidelines established by the Office of Institutional Support Services (O.I.S.S.) Medical Director and attending physician.

10A:16-11.15 Correspondence, legal correspondence, publications and packages

All correspondence shall be handled in accordance with N.J.A.C. 10A:18 COMMUNICATION, MAIL AND VISITS.

10A:16-11.16 Visits

(a) The Medical Unit Annex provides for contact visits only.

(b) In the event that an inmate or visitor violates the rules and regulations pertaining to contact visits and N.J.A.C. 10A:18 COMMUNICATION, MAIL AND VISITS, the Annex Supervisor may discontinue the visit and initiate disciplinary measures. The Annex Classification Committee (A.C.C.) may approve, disapprove or restrict a visitor should either the inmate or the visitor fail to adhere to the rules of the visit program.

(c) Visits must be approved and pre-scheduled by the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator 24 hours in advance of the visit by calling his or her office Monday through Friday, during regular working hours.

10A:16-11.17 Telephone calls

Telephone calls shall be handled in accordance with N.J.A.C. 10A:18 COMMUNICATION, MAIL AND VISITS and written regulations developed by the Medical Unit Annex.

10A:16-11.18 Congregate activities

(a) Congregate activities shall be developed during the inmate's orientation process with specific consideration for physical disabilities and infection control guidelines.

(b) The Annex Classification Committee (A.C.C.) may, at its discretion, approve an inmate for participation in any one or all congregate activities.

(c) The A.C.C. may also rescind the inmate's participation in congregate activities should he fail to cooperate in the program or be temporarily restricted from participating due to physical illness.

10A:16-11.19 Food

(a) All meals served in the Medical Unit Annex shall be handled in accordance with the State Prison, Trenton, Food Service System as approved by the Office of Institutional Support Services (O.I.S.S.).

(b) Medical Unit Annex inmates shall be served the normal correctional facility meals on the "Menu of the Day" or such special diet as shall be prescribed.

(c) Disposable utensils shall be used when necessary.

10A:16-11.20 Showers

Each inmate shall be permitted to shower once daily.

10A:16-11.21 Haircuts

(a) Each inmate shall be afforded an opportunity to have a haircut once monthly. All inmates desiring a haircut must place their name on the barber's list.

(b) All haircutting equipment must be secured when not in use and monitored while in use.

10A:16-11.22 Reading material

(a) Reading material shall be made available for inmates assigned to the Medical Unit Annex.

(b) Inmates may obtain reading material by submitting their requests to the social worker.

10A:16-11.23 Infection control procedures

(a) All staff and inmates shall receive instructions concerning infection control and isolation precautions which include:

1. Use of protective garments;
2. Personal hygiene; and
3. Accident reporting.

(b) This training shall be the responsibility of the Office of Institutional Support Services (O.I.S.S.) Medical Director and it shall be provided at least quarterly.

10A:16-11.24 Program assessment reports

(a) Medical Unit Annex staff and program supervisors must submit a progress report for each inmate assigned to the Annex.

1. Shift officers designated by the Annex Supervisor shall complete a progress report on each inmate:

- i. Daily during the orientation period; and
- ii. Weekly for the remaining time the inmate is assigned in the Annex.

2. The Annex Supervisor shall review the progress reports submitted by the correctional officers and summarize the findings in an overall individual inmate progress report, which shall be:

- i. Submitted to the Annex Classification Committee (A.C.C.) at the completion of the orientation period; and
- ii. Submitted to the A.C.C. for all scheduled routine reviews, which occur every three months thereafter.

3. Program supervisors shall complete and forward to the A.C.C. a progress report on each inmate:

- i. At the completion of the orientation period; and
- ii. Every three months thereafter for the scheduled inmate routine review.

10A:16-11.25 Procedures and post orders

(a) The Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator shall develop written procedures and post orders consistent with this Subchapter.

(b) The procedures and post orders shall be reviewed and updated annually.

## HUMAN SERVICES

The following proposals are authorized by Drew Altman, Ph.D., Commissioner, Department of Human Services.

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

##### Pharmaceutical Services Manual Elimination of Plastic Pharmacy Card

##### Proposed Amendments: N.J.A.C. 10:51-2.2 and 2.6 Proposed Repeal: N.J.A.C. 10:51-2.3

Authority: N.J.S.A. 30:4D-6b(6), 7, a, b, c.

Proposal Number: PRN 1986-334.

Submit comments by September 17, 1986 to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance  
and Health Services  
CN-712  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The proposed amendments are designed to eliminate plastic cards which are used by some pharmacies in completing pharmacy claims through the use of imprinter machines. Some County Welfare Agencies and/or Boards of Social Services issue a plastic identification card to a Medicaid patient. The patient then presents the card to the pharmacist who uses the imprinter machine to enter the Medicaid Identification Number on the claim form.

The Division believes the plastic card should be eliminated. The plastic card has never been used as a means of establishing eligibility. The only acceptable proof of patient eligibility is the MEI (Medicaid Eligibility Identification) Card which is issued monthly to all individuals (aged, blind, and disabled) determined by the Social Security Administration to be eligible for Supplemental Security Income (SSI), and monthly to all persons determined by the County Welfare Agencies and/or Boards of Social Service to be eligible for AFDC (Aid to Families with Dependent Children). The MEI card is issued quarterly for Medicaid-eligible children under the supervision of the Division of Youth and Family Services. In addition, more pharmaceutical providers are submitting claims electronically so that the plastic pharmacy card is being used less frequently.

**Social Impact**

Medicaid patients will still be able to obtain prescription drugs and drug products by presenting their MEI card to the pharmacist.

Pharmaceutical providers will be able to complete Medicaid claim forms by entering the information contained on the MEI card.

The proposed amendments do not impact on other Medicaid providers.

The amendments impact upon County Welfare Agencies and/or Boards of Social Services, who will no longer be required to issue the plastic cards.

**Economic Impact**

The economic impact on the Division should be minimal. There should be some savings of administrative expenses because the card will not be printed by Blue Cross and Blue Shield of New Jersey and will not have to be distributed to individual Medicaid patients by the respective County Welfare Agencies and/or Boards of Social Services.

Pharmaceutical providers will continue to be reimbursed for providing covered pharmaceutical services to eligible Medicaid patients, so long as they submit a properly completed claim form within the prescribed time frames.

Medicaid patients are not required to pay for pharmaceutical services.

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

10:51-2.2 Patient identification

The pharmacy shall verify that the patient is a covered person. This is done by checking the patient's validation form. (See N.J.A.C. 10:49-1.2, How to identify a covered person.) [The patient's plastic pharmacy card is for claims processing purposes only and is not evidence of eligibility.]

10:51-2.3 [Plastic pharmacy card] (Reserved)

[NEW JERSEY MEDICAID PHARMACY PROGRAM	NEW JERSEY HEALTH SERVICES PROGRAM
CASE NUMBER FOR BILLING PURPOSES ONLY	CASE NUMBER
AUTHORIZED SIGNATURE NEW CARD	AUTHORIZED SIGNATURE OLD CARD

(a) Pictured above left is the pharmacy program plastic card in use since 1977 and which is intended to replace the old card, pictured above right, which has been in existence since 1970. The replacement process is taking place by attrition; this means that the older cards will still be in existence and can be used. The new card, as well as the old card, is to be utilized exclusively by pharmacy providers with imprinter machines for billing transactions. The current card is provided to the recipient as a service to facilitate billing. You are reminded that the plastic card is not to be used for identification or proof that the recipient is eligible for the Medicaid Program.

For confirmation of individual recipients eligibility, check for the monthly validation stub or the quarterly validation card.]

10:51-2.6 Instructions for completion of form MC-6

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

[(c)] (d) [When completing the claim form enter the following information:] **Form MC-6 shall be completed exactly as indicated in EXHIBIT I.**

EXHIBIT I

1.-19. (No change.)

[20. The use of these fields is not required for the processing of the claim.

Note: When the plastic pharmacy card is available and the imprinter is used, fields identified as (1), (3) and (8) are automatically printed.]

[(d)] (c) [Mailing addresses for claims:] **Claims shall be mailed as follows.**

1.-3. (No change.)

**DIVISION OF PUBLIC WELFARE**

For proposals numbered PRN 1986-335 and 336, submit comments by September 17, 1986 to:

Audrey Harris, Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

**(a)**

**Public Assistance Manual  
Temporary Absence of Child from Home  
Proposed Amendment: N.J.A.C. 10:81-3.34**

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 233.10(a)(1)(iv) and 45 CFR 233.90(c)(1)(v)(B).

Proposal Number: PRN 1986-335.

The agency proposal follows:

**Summary**

The United States Department of Health and Human Services, Office of Family Assistance, had advised the Department's Division of Public Welfare that N.J.A.C. 10:81-3.34 is not in keeping with Federal rules at 45 CFR 233.20(a)(1)(iv) and 45 CFR 233.90(c)(1)(v)(B). Accordingly, the Department proposes to amend N.J.A.C. 10:81-3.34 to comport with the cited Federal regulations. The proposed amendment stipulates that when a parent or parent-person has lost (albeit without his or her consent) both physical custody and responsibility for day to day care of a child, the child is no longer eligible for public assistance as a member of that family.

**Social Impact**

The proposed amendment will not influence many cases. When a noncustodial parent fails to return a child at the end of a visit and the child's time away from home exceeds 30 days, the agency must reduce the grant. The same would apply in parental kidnapping situations. If the child is the only child in the case, the case must be closed and alternate means of self-support explored.

**Economic Impact**

The economic impact of the proposed amendment on the public treasury will be imperceptible. The adverse impact on certain families will vary on a case by case basis and the cost is not subject to calculation.

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

10:81-3.34 Absence for reasons other than institutional

(a) Children: Temporary absence of a child which has not lasted more than 30 consecutive days does not affect eligibility or level [or] of grant entitlement. **When the absence of a child lasts longer than 30 days or it appears that an absence will last longer than 30 days the CWA will review the situation. If it is found that the parent or parent person lacks or will lack both physical custody and responsibility for day to day care of the child, the child is no longer eligible for assistance.**

[1. It shall be presumed, subject to rebuttal, that a child who is absent from the home is absent with consent of the recipient parent or parent person or pursuant to legal process. In accordance with that presumption, if the child is known to be in the custody or control of a relative as specified in N.J.A.C. 10:81-3.11, the CWA shall delete the child from grant status, subject to adverse action notice requirements, after 30 days of absence from the home. Similarly, if the child is not known to be in the custody or control of such a relative, the CWA shall delete the child from grant status after 60 days of absence from the home.

2. When it comes to the attention of a case worker that a child or children have been taken from the recipient's custody without permission, or that a child or children have not been returned to the recipient's

custody within the agreed time, the Agency shall inform the recipient that he or she may file a complaint for Interference with custody in the Municipal Court in the town in which he or she lives pursuant to the provisions of N.J.S.A. 2C:13-4, that the recipient may institute proceedings for custody in the Superior Court, Chancery Division, Family Part in the county in which the recipient resides, and that the recipient may seek legal assistance in recovering physical custody of the child through the Legal Aid or Legal Service Office in the county in which the recipient resides.

3. Upon successful rebuttal of the presumption of continual or legal transfer in (a)1 above, the CWA shall not reduce or discontinue assistance because of the absence.

i. In such event, where absence will continue beyond 60 days, the CWA shall refer the matter to the State office for a determination of continued eligibility. The CWA shall not reduce or discontinue assistance by reason of the absence except upon the instruction of the State office.

4. The presumption of consensual transfer set forth in (a)1 above is successfully rebutted if all of the following exist.

- i. There is satisfactory evidence that the transfer was without the consent, express or implied, of the recipient parent or parent person; and
- ii. Legal action for the return of the child has been initiated; and
- iii. There is a reasonable prospect for the return of the child in the near future.

(1) If within 90 days the child's whereabouts are unknown, it is to be understood that there is no reasonable prospect for the return of the child in the near future.

(2) However, for unusual situations which will continue for longer than 90 days, the CWA shall obtain approval from the State office to continue a child in the grant.]

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

**(a)**

**Home Energy Assistance Handbook  
Eligibility Requirements; Emergency Energy  
Assistance**

**Proposed Amendments: N.J.A.C. 10:89-2.2, 2.3 and  
3.4**

Authority: N.J.S.A. 30:4B-2.

Proposal Number: PRN 1986-336.

The agency proposal follows:

**Summary**

The purpose of the Home Energy Assistance (HEA) program is to offset increasing costs of home heating fuels by providing assistance to low-income clients. In light of New Jersey's decreased allocation of Federal funding authorized for this program as a result of the Gramm-Rudman-Hollings legislation, the proposed amendments provide that the income eligibility guidelines shall be retained at 150 percent of the Federal poverty level but that the eligible household shall include all household members which share on main source of heat.

N.J.A.C. 10:89-2.3(g) retains income eligibility guidelines at 150 percent of the Federal poverty level, but adjusts for the cost of living increase. N.J.A.C. 10:89-2.2(a)1 specifies that where there is one main source of heat (e.g., furnace) there is one HEA household, except for apartment buildings, licensed or community recognized boarding homes and other verifiable business relationships. N.J.A.C. 10:89-2.2(a)4 updates the excludable illegal alien income amount with that of the revised Federal poverty guidelines. N.J.A.C. 10:89-3.4(e)4 revises the emergency temporary housing provision from a period of 60 days to two calendar months following the month in which the state of homelessness first becomes known to the county welfare agency. This revision establishes consistency with the Aid to Families with Dependent Children program emergency assistance provision. The balance of program changes proposed are nominal in nature and will neither affect the number of clients served nor the amount of benefits issued.

**Social Impact**

Approximately 185,000 households were assisted during the Fiscal Year (FY) 1986 Home Energy Assistance program and it is projected that 185,000 households will once again be served in FY 1987. The low income population will receive the most direct benefit since they are the house-

holds which will receive a supplement to assist them in meeting their heating costs. The proposed amendments ensure that the low income population will receive assistance promptly and efficiently.

**Economic Impact**

There will be no direct impact upon New Jersey taxpayers since the entire cost of assistance and administration is federally funded. There will be an indirect benefit to the public as a whole since there will be an influx of Federal dollars into the State's economy. The program's allocation for Federal Fiscal Year 1986 was \$80.2 million and we anticipate that funding may not exceed \$80.2 million in Fiscal Year 1987.

The direct beneficiaries of the program will be the approximately 185,000 households anticipated to receive assistance in Fiscal Year 1987. To ensure that the program benefits are used for the intended purpose, which is to offset the increasing cost of home heating fuels, applicant households which are directly responsible to a participating fuel supplier for payment of heating costs will receive their benefit in the form of a two-party check payable to the applicant and the fuel supplier.

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

**10:89-2.2 Eligibility requirements**

(a) The household members shall be residents of New Jersey.

1. Household defined: The term "household" means any individual or group of individuals who are living together as one economic unit for whom home energy is customarily provided in common or who make undesignated payments for energy in the form of rent. **Specifically:**

**i. If there is one central source of residential heating (for example, one furnace) there is one household, except that,**

**(1) If there is one central source of residential heating but the building contains multiple dwelling units or apartments, each apartment may be considered a separate household, except that,**

**(2) If the building is a licensed boarding home, Residential Health Care Facility or community recognized boarding facility, each resident may be considered a separate household.**

**(3) If a business only (roomer-boarder) relationship exists, where one person is paying for living space in the dwelling of another, the roomer-boarder may be considered a separate household. For such relationship to be established, the payments for room and board must be reasonable, considering the total shelter and heating cost for the person supplying the room and board. Further, the relationship must be one which would immediately terminate if the payment between the parties ceased (see N.J.A.C. 10:89-2.3(f)4 for limitations).**

2.-3. (No change.)

4. Illegal aliens are ineligible for Home Energy Assistance benefits. In cases where an illegal alien resides within an applicant household, the alien must be excluded from the HEA household size. If the illegal alien has monthly income in excess of [\$225.00] **\$235.00**, the amount in excess of [\$225.00] **\$235.00** shall be counted as income to the household, and must be added to all other household income in determining the household's gross monthly income.

(b)-(d) (No change.)

**10:89-.23 Income eligibility**

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

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limit	
	Current	Proposed
1	[\$ 656]	<b>670</b>
2	[ 881]	<b>905</b>
3	[ 1106]	<b>1140</b>
4	[ 1331]	<b>1375</b>
5	[ 1556]	<b>1610</b>
6	[ 1781]	<b>1845</b>
7	[ 2006]	<b>2080</b>
8	[ 2231]	<b>2315</b>
9	[ 2456]	<b>2550</b>
10	[ 2681]	<b>2785</b>
Each Additional Member	[+ 225]	<b>+ 235</b>

**10:89-3.4 Emergency energy assistance**

(a) Emergency energy assistance is available to [income] HEA eligible households and is subject to the following conditions:

1. An energy emergency shall exist when a household is without heat or is in danger of being without heat **and the household has insufficient funds on hand to purchase fuel.**

- 2.-6. (No change.)  
 (b) (No change.)  
 (c) Emergency purchase of fuel:  
 1. The CWA is authorized to issue [a one-time] **an** emergency payment for the purchase of fuel oil or other fuel used for residential heating.  
 2.-3. (No change.)  
 (d) (No change.)  
 (e) Emergency temporary rehousing:  
 1.-3. (No change.)  
 4. The CWA is responsible for evaluation of the situation and determination of appropriateness of the reimbursement from program funds. The Director of the Division of Public Welfare, upon consideration of the CWA's recommendation, may authorize the reimbursement for a specified temporary period not to exceed [60 days] **two calendar months** following the [date on] **month** in which the state of homelessness first becomes known to the county welfare agency.  
 5.-7. (No change.)  
 (f) (No change.)

## INSURANCE

### NEW JERSEY REAL ESTATE COMMISSION

The following proposals are authorized by Daryl G. Bell, Secretary-Director, New Jersey Real Estate Commission.

Submit comments by September 17, 1986 to:

Robert J. Melillo  
 Special Assistant to the Director  
 New Jersey Real Estate Commission  
 201 East State Street  
 CN 325  
 Trenton, New Jersey 08625

#### (a)

#### Contracts of Sale and Listing Agreements Obligations of Licensees to the Public and to Each Other

#### Proposed Amendments: N.J.A.C. 11:5-1.16, 11:5-1.23

Authority: N.J.S.A. 45:15-6.  
 Proposal Number: PRN 1986-326.  
 The agency proposal follows:

##### Summary

The proposed amendment to N.J.A.C. 11:5-1.16 and amendment to N.J.A.C. 11:5-1.23(d) are intended to address the uncertainty which exists within the real estate community with regard to the obligations of licensees to show and/or submit offers upon properties which are the subject of a contract under attorney review. Currently, as the result of a ruling by the New Jersey Supreme Court, certain contracts of sale and leases for certain residential premises must contain a provision providing for review of the agreement by the attorneys for the parties subsequent to the agreements having been signed.

The proposed amendment to N.J.A.C. 11:5-1.16, to be denoted as new subsection (g), recites the specific language which the New Jersey Supreme Court has ordered included in all agreements which are to contain attorney review clauses. Since the litigation which resulted in the Supreme Court order involved the New Jersey Association of Realtors as a party, members of that trade association have ready access to this required language. However, licensees who are not members of that association lack such a source of information. By reciting the attorney review language mandated by the Supreme Court in this regulation, and directing its inclusion in all broker prepared contracts for the sale or lease of residential properties falling within the Supreme Court's order, all licensees will have easy access to the required language.

The proposed amendment to N.J.A.C. 11:5-1.16, to be embodied in new subsection (h), imposes upon licensees the obligation of informing owners of property, at the time it is listed for sale or lease, of the restrictions to be imposed upon licensees with regard to such properties after a sale or lease agreement pertaining to the property which contains an attorney review provision has been signed. This proposed new subsection will require that certain language approved by the Commission which informs the owner of those restrictions be included on any written listing

agreement entered into between a licensee and owner. In the event that the listing agreement is not reduced to writing, the licensee is required to explain the limitations to the owner and obtain the signature of the owner on a writing containing the language approved by the Commission whereby the owner will acknowledge receipt of a copy of such a writing. In addition, the licensee will be required to retain the original of that writing in their files and to provide a copy of it to the listing owner.

The proposed amendment to N.J.A.C. 11:5-1.23(d) sets forth the restrictions which will apply to licensees with regard to a property which is under contract but pending attorney review. The restrictions which will apply are that during the attorney review period licensees will be precluded from informing the owner of the existence of any other offers to buy or lease the property, from showing the property which is the subject of the contract under attorney review to prospective purchasers or lessees, and from otherwise interfering with the contractual rights of the parties to the contract.

##### Social Impact

The proposed amendments will have a favorable impact upon the real estate selling public and upon real estate licensees.

The proposed amendments to N.J.A.C. 11:5-1.16 will provide additional information to both licensees and the public with regard to the attorney review procedure. The additional information will, it is anticipated, result in a decrease in the number of disputes which arise as a result of conflicting interpretations of the obligations of licensees and of parties to the contract during the attorney review process.

By precluding the submission of additional offers, the showing of a property and the interference with the contractual rights of the parties to the contract during the attorney review period, the potential for sellers or lessors to enter into contracts containing an attorney review provision in bad faith and with the sole intent of triggering an auction process with regard to their property will be greatly reduced by the proposed amendment to N.J.A.C. 11:5-1.23(d). Further, a certain degree of finality will be returned to the real estate contracting process as a result of the owners awareness that upon the execution of a contract which contains an attorney review clause, his or her agent will not be free to submit additional offers during the attorney review period.

##### Economic Impact

The proposed amendments will have a favorable economic impact. The informational and disclosure purposes served by the proposed additions to N.J.A.C. 11:5-1.16 will result in parties to real estate transactions and licensees being better informed of the procedures under which licensees must operate with regard to contracts which contain or are required to contain attorney review clauses. Consequently, disputes and disagreements with regard to such contracts will be reduced which will result in the avoidance of the costs and expenses of such disputes.

The restrictions imposed by the proposed amendment to N.J.A.C. 11:5-1.23(d) upon licensees will also have a favorable effect upon members of the public selling and leasing real estate. This is true because the opportunities to enter contracts which do not adequately serve all of their interests, but which only contain a price or rental amount which the owner may consider an attractive starting point for the commencement of an auction process with regard to the property will be limited. Further, by returning a degree of certainty and finality to the real estate contracting process, and by reducing the potential for entering into contracts with other than a good faith intention to fully perform on them, the economic interests of both buyers and sellers will be served.

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

11:5-1.16 Contracts of sale and listing agreements

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

(g) Licensees shall comply with the following provisions:

1. All contracts prepared by licensees for the sale of residential real estate containing one to four dwelling units and for the sale of vacant one-family lots in transactions in which the licensee has a commission or fee interest shall contain, at the top of the first page and in print larger than the predominant size print in the writing, the following language:

**THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.**

The contract shall also contain the following language within the text of every such contract.

**ATTORNEY REVIEW:**

1. Study by Attorney

The Buyer or the Seller may choose to have an attorney study this contract. If an attorney is consulted, the attorney must complete his or her review of the contract within a three-day period. This contract will be legally binding at the end of this three-day period unless an attorney for the Buyer or Seller reviews and disapproves of the contract.

2. Counting the Time

You count the three days from the date of delivery of the signed contract to the Buyer and the Seller. You do not count Saturdays, Sundays or legal holidays. The Buyer and the Seller may agree in writing to extend the three-day period for attorney review.

3. Notice of Disapproval

If an attorney for the Buyer or the Seller reviews and disapproves of this contract, the attorney must notify the Broker(s) and the other party named in this contract within the three-day period. Otherwise this contract will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the contract that would make it satisfactory.

2. All leases prepared by licensees for a term of one year or more for residential dwelling units in transactions in which they have a commission or fee interest shall, at the top of the first page and in print larger than the predominant size print of the writing, contain the following language:

**THIS IS A LEGALLY BINDING LEASE THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE LEASE. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.**

The lease shall also contain the following language within the text of every such lease.

**ATTORNEY REVIEW:**

1. Study by Attorney

The Tenant or the Landlord may choose to have an attorney study this lease. If an attorney is consulted, the attorney must complete his or her review of the lease within a three-day period. This lease will be legally binding at the end of this three-day period unless an attorney for the Tenant or the Landlord reviews and disapproves of the lease.

2. Counting the Time

You count the three days from the date of delivery of the signed lease to the Tenant and the Landlord. You do not count Saturdays, Sundays or legal holidays. The Tenant and the Landlord may agree in writing to extend the three-day period for attorney review.

3. Notice of Disapproval

If an attorney for the Tenant or the Landlord reviews and disapproves of this lease, the attorney must notify the Broker(s) and the other party named in the lease within the three-day period. Otherwise this lease will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the lease that would make it satisfactory.

3. The failure of any licensee to include such language in any such contract of sale or lease agreement prepared by the licensee shall be construed by the Commission as engaging in the unauthorized practice of law and shall be considered by the Commission as conduct which demonstrates the licensee's unworthiness and incompetency, thereby subjecting the licensee to sanctions pursuant to N.J.S.A. 45:15-17(e).

(h) All written listing agreements for the sale of vacant one-family lots, the sale of one to four dwelling unit residential real estate, and the rental of residential dwelling units for a term of one year or more, under the terms of which a licensee shall be entitled to the receipt of a fee or commission upon the occurrence of certain acts or events shall contain, in print larger than the predominant size print contained in the writing, the following language:

Pursuant to N.J.A.C. 11:5-1.23(d) with regard to any property which is the subject of a contract of sale or lease agreement containing a provision for attorney review, all real estate brokers and salespersons licensed by the New Jersey Real Estate Commission are precluded from informing the owner of the existence of any other offers to buy or lease the subject property (as the case may be), or to show the subject property

to prospective purchasers or lessees, or to otherwise interfere with the contractual rights of the parties to the contract or lease during the attorney review period.

In the event that such a listing agreement is not reduced to writing, at the time that the listing is taken the listing licensee shall:

1. Explain to the owner the limitations imposed upon licensees by N.J.A.C. 11:5-1.23(d) with regard to contracts or leases under attorney review and have the owner sign a writing, which shall contain the aforesaid language, whereby the owner will acknowledge receipt of a copy of the same; and

2. Retain the original of such writing in his or her files pursuant to the record keeping requirements of N.J.A.C. 11:5-1.12; and

3. Provide a copy thereof to the owner.

11:5-1.23 Obligations of licensees to the public and to each other

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

(c) (See proposed amendment in this issue of Register.)

(d) If an offer on any real property or interest therein is made orally, the licensee shall advise the offeror that he is not obligated to present to the owner or his authorized representative any offer unless the offer is in writing, and the licensee shall secure forthwith the offer in writing. The licensee shall transmit forthwith every written offer on any real property or interest therein to the owner or his authorized representative. **However, on contracts which contain attorney review clauses as described in N.J.A.C. 11:5-1.16(g), subsequent to the actual signing of such a contract by an offeror and owner, no licensee shall inform the owner of the existence of any other offers, or otherwise interfere with the contractual rights of the parties to the signed contract, until such contract shall be voided by the attorney for one of the said parties in accordance with the provisions of the attorney review clause contained in the said contract, or until the time period established for the attorney review by the parties and/or their attorneys shall have expired.** If any acceptance of an offer is given orally, the licensee shall secure forthwith the acceptance in writing.

(e)-(g) (No change.)

**(a)**

**Sales of Interstate Properties**

**Proposed Amendment: N.J.A.C. 11:5-1.25**

Authority: N.J.S.A. 45:15-6, specifically 45:15-16.19.

Proposal Number: PRN 1986-325.

The agency proposal follows:

**Summary**

N.J.A.C. 11:5-1.25(n) contains procedures and requirements applicable to applications for exemptions from the registration requirements contained in N.J.A.C. 45:15-16.3 et seq. At the present time, no fee is imposed with regard to such applications for exemptions, nor with regard to the granting of such an exemption.

Recently, the volume of such exemption applications has increased dramatically. Such applications require the expenditure of a substantial amount of time and effort by the staff of the Bureau of Subdivided Lands Sales Control in the Real Estate Commission. Further, where such exemptions are granted, they do not include an exemption from the advertisement review and approval requirements imposed upon advertisements for the sale of interstate lands, or interests therein. Consequently, additional efforts are required to process applications for advertisement approvals upon exempted projects. No fee is paid by the recipients of such advertisement approvals.

Pursuant to N.J.S.A. 45:15-16.6(c), the Commission may, pursuant to its rules and regulations, exempt from any of the provisions of the Land Sales Full Disclosure Act any subdivision or lots in a subdivision where it determines that such an exemption would not be contrary to the public interest. N.J.S.A. 45:15-16.8 imposes a minimum initial registration fee upon applicants for registration. The Commission is therefore authorized to exempt some projects from some of the statutorily imposed registration requirements, but not from the requirement regarding the payment of a minimum application fee. As a result of the substantial amount of work required to process exemption applications, as outlined above, the Commission has determined that applicants for such exemptions will be required to pay a minimum non-refundable registration fee of \$250.00. The imposition of that fee is effectuated through the proposed amendment to N.J.A.C. 11:5-1.25(n), by the addition of paragraph 8 thereto. Further, the additional paragraph 9 contained in the proposed amendment clarifies the fact that all exemptions granted from the Land Sales Full Disclosure

Act are limited in nature, and that, at a minimum, the recipients of such exemptions must still comply with the requirements recited under the proposed new paragraph 9.

The proposed amendment to N.J.A.C. 11:5-1.25(h) reflects the Commission's determination that it is advisable for all advertisement approval numbers to contain expiration dates. Under the current regulation, no provision is made for such an expiration date, which results in advertisement approval numbers of indefinite duration being assigned by the Bureau of Subdivided Land Sales Control.

The reasons why advertisement approval numbers are desirable are two-fold. First, rules and regulations change from time to time, which renders it impractical to issue advertisement approval numbers without an expiration date. The issuance of an advertisement approval number with an indefinite duration could result in an advertisement which is technically approved being utilized at a time period when, subsequent to a regulatory change, the content of the ad no longer complies with the currently applicable regulations. Secondly, registered projects are subject to renewal one year from the date of the issuance of a release by the Bureau of Subdivided Land Sales Control. Although most projects do renew, some do not. To avoid the possibility of a developer who had not renewed continuing to utilize a previously issued advertisement approval number, the assignment of an expiration date to such advertisement approval numbers is necessary.

The proposed amendment to this subsection also clarifies some confusion by removing references to "advertising" and "registration" numbers therein, and having all such references consistently utilize the terms "advertisement approval numbers".

#### Social Impact

The social impact of the proposed amendments will be favorable in that confusion as to advertising, registration, and advertisement approval numbers will be removed by having the regulation consistently utilize the same terminology. Further, by assigning expiration dates to advertisement approval numbers, developers will be prevented from utilizing obsolete advertisements.

The proposed amendments imposing an application fee upon applicants for exemptions, and identifying which requirements of the act an applicant will not be exempted from, will also have a favorable social impact because the efficiency of the processing of such applications will be enhanced as a result of the additional information being provided to applicants in the form of a published regulation. This increased efficiency in the processing of such matters will result in an increase in the number of such projects available to New Jersey residents.

#### Economic Impact

The economic impact of the proposed amendments will be favorable in that, most significantly, the State of New Jersey will be adequately compensated for the efforts of its employees with regard to Out of State projects as a result of the imposition of fees upon exemption applications. The nominal amount of the fee will not impose any undue financial burden upon such applicants.

The increased efficiency in the processing of exemption applications and request for advertisement approval numbers which will result from the clarifications provided by the proposed amendments will also result in an economic benefit to the people of New Jersey. Also, the proposed changes will result in the avoidance of disputes which might arise as a result of a developer's utilization of an obsolete advertisement.

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

11:5-1.25 Sales of [interest] **interstate** properties

(a)-(g) (No change.)

(h) Rules concerning advertising and sales promotions with respect to sales of interstate properties are as follows:

1.-2. (No change.)

3. Any advertising in newspapers or periodicals, whether to appear in New Jersey media or in interstate media which have a distribution in New Jersey, must be submitted to the Commission[,] for review, acceptance and assignment of an [advertising] **advertisement approval number as described below** before being used. Each such advertisement must contain the following legend:

A Statement of Record filed with the New Jersey Real Estate Commission permits this property to be offered to New Jersey residents, but **the New Jersey Real Estate Commission** does not pass on its merits or value. Obtain the New Jersey Public Offering Statement and **read it before signing anything.**

All advertisement approval numbers will expire one year from the date of issue unless a written request is received by the New Jersey Real Estate Commission, Bureau of Subdivided Land Sales Control for use of the advertisement for an additional year. The advertisement may be used for an additional year only with the express permission of the New Jersey Real Estate Commission, Bureau of Subdivided Land Sales Control.

Further, all advertisement approval numbers will contain a reference date.

4. Literature, circulars, fliers, cards, letters and other promotional items used in connection with the advertising or offering for sale must be submitted to the Commission for review, and if accepted will be assigned [a registration] **advertisement approval number** with the prefix "NJA." The above legend as set forth in paragraph 3 and the assigned NJA number must be shown in these materials in a place reasonably calculated to capture the attention of the public.

5.-8. (No change.)

(i)-(m) (No change.)

(n) Upon application the Commission may exempt a subdivision from registration if it determines that enforcement of the act and these rules is not necessary in the public interest or for the protection of purchasers.

1.-7. (No change.)

**8. A \$250.00 non-refundable fee shall be tendered with any application for an exemption from the registration requirements of the Land Sales Full Disclosure Act, N.J.S.A. 45:15-16.3, et seq.**

**9. All exemptions granted, pursuant to N.J.S.A. 45:15-16.6(c), are limited exemptions from the registration requirements of the Land Sales Full Disclosure Act. No exemption is permitted with regard to the following minimum requirements:**

- i. The filing of an exemption application affidavit questionnaire;
- ii. The filing of proof of title and a plat map, specifically identifying the lots to be exempted, with colored shading;
- iii. The filing of an escrow letter whereby the subdivider promises to escrow all New Jersey purchaser's deposits until a closing occurs;
- iv. The filing of satisfactory proof of surety and/or financial assurances for any promised improvements or amenities;
- v. The advertisement approval procedures established at (h) above; and
- vi. The filing of any other documents that the Commission may deem necessary.

(a)

### Advertising Rules

#### Proposed Amendment: N.J.A.C. 11:5-1.15

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

Proposal Number: PRN 1986-322.

The agency proposal follows:

#### Summary

N.J.A.C. 11:5-1.15(d) presently requires that all advertisements, including business cards of licensees, which contain a reference to a licensee's home telephone number must also contain additional limiting language such as "evenings", "Sundays", or "holidays", limiting the use of home telephone numbers to non-office hours. Since, in many cases licensees are at their places of employment on evenings, Sundays, or holidays, the Commission has determined that it is redundant and frequently inaccurate to require the business cards of licensees to indicate that the use of their home telephone numbers is limited to what in other professions are "non-office hours". Practically speaking, given the way in which the real estate profession is presently practiced, frequently it is more likely that a licensee can be reached at his home telephone number during what would otherwise be considered normal office hours, and be reached at his office phone number during evenings, weekends and holidays.

N.J.A.C. 11:5-1.15(e) presently requires that licensed real estate salespersons must indicate their licensed status on their business cards by use of the words salesperson or sales representative. In addition, licensed broker-salespersons must indicate their licensed status as such on their business cards by use of the words salesperson, sales representative or broker-salesperson.

The Commission recognizes the fact that many licensees are members of duly constituted real estate trade associations, and seek to have that fact reflected on their business cards. Under N.J.A.C. 11:5-1.15(e) references to a broker-licensee's membership in such a trade association on advertisements is permitted. However, under the current wording of subsection (e) of this regulation, members of such associations who are salespersons are required to identify themselves on their business cards

as either "salesperson" or "sales representative". In an effort to address this anomalous situation, the Commission has authorized for publication an amendment to N.J.A.C. 11:5-1.15(e) which will allow licensed salespersons to have their business cards indicate their licensed status by use of the words "salesperson", or "sales representative", or "sales-associate" or, where permitted by law "realtor-associate" or "realist-associate". Licensed broker-salespersons will also be allowed to utilize any of the above named designations on their business cards. By allowing licensed salespersons or broker salespersons to so identify themselves on their business cards, such individuals will be able to utilize their business cards to communicate the fact of their membership in a real estate trade association, and their status as licensed salespersons or broker salespersons will still be adequately reflected on their business cards.

#### Social Impact

The social impact of the proposed amendments will be substantial. The proposed amendment to subsection (d) removes a requirement that the business cards of licensees had to contain what was often inaccurate and misleading information. By removing this requirement, it is anticipated that more direct, complete, and efficient communication between the members of the public and licensees will result. Such enhanced communication will improve the level of service provided to the public by real estate licensees.

The proposed amendment to subsection (e) of the regulation will also enhance communication between members of the profession and the public in that associate members of duly established real estate trade associations will be able to communicate their membership in such associations to the public by including a reference thereto on their business cards. Consequently, members of the public who desire to engage the services of licensees who are members of such associations will be provided with a ready source of information on the question of whether or not a particular individual is a member of such an association.

#### Economic Impact

The economic impact of both of the proposed amendments to N.J.A.C. 11:5-1.15 will be substantial in that, by enhancing communication between licensees and the general public, it is felt that real estate transactions will be conducted in a more efficient manner, which will result in an increased level of satisfaction on the part of the public with regard to the services rendered by licensees, and an increase in the number of successfully closed transactions.

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

11:5-1.15 Advertising rules

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

(d) No advertising, **with the exception of business cards**, shall list home telephone numbers of any broker or salesperson, unless the advertising also contains language such as "evenings," "Sundays," or "holidays," limiting the use of the home telephone numbers to non-office hours. **Business cards may list home telephone numbers without also containing such additional language.**

(e) The business card of any licensed salesperson shall indicate that this licensee is a salesperson by the use of the words salesperson[s] or sales representative [.] , **or sales-associate, or, where permitted by law, realtor-associate or realist associate.** The business card of any licensed broker-salesperson shall indicate that this licensee is a broker-salesperson by use of any of the aforementioned words or by the use of the words broker-salesperson.

(f)-(m) (No change.)

### (a)

#### Obligations of Licensees to the Public and to Each Other

##### Proposed Amendment: N.J.A.C. 11:5-1.23

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

Proposal Number: PRN 1986-323.

The agency proposal follows:

#### Summary

This proposal amends the existing regulation N.J.A.C. 11:5-1.23(c) which requires every licensee to fully cooperate with any other New Jersey licensee and which further mandates that the obligation to cooperate shall

be a continuing one unless the broker obtains the signature of the seller-principal on a writing evidencing their informed consent to a waiver of the benefits of inter-broker cooperation.

The proposed amendment augments the requirement that the broker obtain a signed writing in order to be relieved of the obligation of cooperation by establishing the requirement that licensees utilize a written waiver form to be provided by the Real Estate Commission. The proposed amendment also provides that the waiver form must be attached to and become a part of the listing agreement to which it pertains, that copies of the writing and agreement must be provided to the client or principal, and that the original must be retained in the records of the licensee.

The official New Jersey Real Estate Commission waiver form will establish a specific time period during which the licensee's authorization not to cooperate will remain in effect, and will contain language confirming that the owner-principal has not been induced by the broker to sign the waiver form.

Finally, the proposed amendment makes clear that the waiver of broker cooperation may be a limited waiver whereby an owner directs a licensee who is a member of a Multiple Listing Service not to list their property with the Multiple Listing Service, but to cooperate with other brokers who wish to introduce prospective purchasers to the property, or may be a complete waiver directing the listing broker not to list the property in any multiple listing service in which they are a member and to refuse to cooperate with any other licensees who may wish to display the subject property to prospective purchasers and/or submit offers on it.

#### Social Impact

The proposed amendment will have a favorable impact upon the real estate selling public.

The mandated use of a specific form provided by the Commission for the waiver of broker cooperation will standardize the procedure whereby owners waive the benefits of non-cooperation.

Full cooperation among brokers is in the best interest of the public and use of the written form as proposed will ensure that the client or principal has been properly and fully advised of the option to have their broker cooperate with other licensees. The use of such a writing is also important in that the client or principal will receive full knowledge of all the benefits associated with inter-broker cooperation and/or multiple listing prior to making any decision to waive such benefits. Furthermore, such a writing advises the client or principal that any waiver of broker cooperation should be completely voluntary and not the result of the owner having been induced or subjected to undue influence by the licensee obtaining the listing.

#### Economic Impact

The proposed amendment will have a favorable economic impact upon the public. By insuring that owners are fully informed of the benefits of broker cooperation and that any decision to forego those benefits must be one which is totally voluntary on their part, it is anticipated that instances of uninformed decisions to waive broker cooperation will be reduced. Similarly, the number of instances wherein unscrupulous brokers induce owners to execute broker cooperation waiver forms will also decrease. As a result, more members of the public will list their properties for sale or rent in a way which will maximize the exposure of the properties, which will result in the submission of more offers and consequently, quicker sales or rentals at higher prices.

By reducing the number of instances wherein owners waive broker cooperation as the result of uninformed or non-voluntary decisions, the proposed amendment will also have a favorable economic impact upon the great majority of real estate licensees who will have the opportunity to offer their services as a cooperating broker or salesperson in a larger number of transactions, which will create the potential for increased earnings.

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

11:5-1.23 Obligations of licensees to the public and to each other

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

(c) Every licensee shall fully cooperate with any other New Jersey licensee, utilizing his customary cooperation arrangements which shall protect and promote and interest of the licensee's client or principal and which shall not constitute unreasonable practices within the real estate brokerage business. This obligation shall be a continuing one unless the client or principal, with full knowledge of all relevant facts, expressly relieves his agent from all or any portion of this responsibility. Should the client or principal direct the licensee not to cooperate with other

licensees, [evidence of] this intent shall be [in] evidenced by a writing as set forth below and signed by the client or principal. Copies of the said writing and of the listing agreement to which it relates should be provided to the client or principal by the Broker at the time of the signing of the same, and shall be made available for inspection by other brokers upon request. However, no direction or inducement from the client or principal shall relieve the licensee of his responsibility of dealing fairly and exercising integrity in his business relations.

1. Whenever a licensee is directed by their principal not to cooperate with other licensees, he or she shall obtain the signature of the principal upon a written form to be provided by the Real Estate Commission to licensees which shall be attached to and become a part of the listing agreement to which it pertains, and which shall contain the following language:

WAIVER OF BROKER COOPERATION

AS THE OWNER, I HAVE BEEN ADVISED THAT I HAVE THE OPTION OF HAVING MY PROPERTY LISTED IN SUCH A WAY AS TO REQUIRE MY BROKER TO COOPERATE WITH OTHER BROKERS IN HIS OR HER EFFORTS TO MARKET MY PROPERTY. I UNDERSTAND THAT SUCH COOPERATION BETWEEN BROKERS AFFORDS WIDER EXPOSURE OF MY PROPERTY TO PROSPECTIVE PURCHASERS AND MAY RESULT IN THE PROPERTY BEING SOLD OR LEASED SOONER AND AT A HIGHER PRICE THAT WOULD BE THE CASE WERE MY BROKER NOT TO COOPERATE WITH OTHER BROKERS. I FURTHER UNDERSTAND THAT BY HAVING MY BROKER COOPERATE WITH OTHER BROKERS, I CAN STILL HAVE ALL APPOINTMENTS FOR THE SHOWING OF THE PROPERTY AND ALL NEGOTIATIONS WITH ME OR MY ATTORNEY MADE ONLY THROUGH MY LISTING BROKER'S OFFICE, SHOULD I SO DESIRE.

HAVING BEEN ADVISED OF THESE FACTORS AND FULLY UNDERSTANDING THEM, I AM NEVERTHELESS AUTHORIZING MY BROKER NOT TO COOPERATE WITH OTHER BROKERS IN THE MARKETING OF MY PROPERTY FOR THE PERIOD OF TIME FROM \_\_\_\_\_, 19\_\_ to \_\_\_\_\_, 19\_\_ IN THE MANNER INDICATED BELOW. BY SIGNING BELOW, I FURTHER CONFIRM THAT I HAVE NOT BEEN INDUCED OR SUBJECTED TO UNDUE INFLUENCE BY MY BROKER WITH REGARD TO MY DIRECTING HIM OR HER NOT TO COOPERATE, BUT THAT I HAVE DONE SO VOLUNTARILY AND OF MY OWN VOLITION, AND THAT I HAVE RECEIVED A COPY OF THE LISTING AGREEMENT I HAVE ENTERED INTO WITH MY BROKER AND A COPY OF THIS WAIVER FORM.

CHECK ONE:

TOTAL WAIVER OF BROKER COOPERATION

I/WE AUTHORIZE THE LISTING BROKER NAMED HEREIN TO WITHHOLD MY LISTING FROM ANY MULTIPLE LISTING SERVICE TO WHICH HE/SHE BELONGS FOR THE TIME INDICATED ABOVE AND DO NOT WISH ANY OTHER AGENCY TO SHOW MY HOME AND/OR SUBMIT OFFERS TO ME/US THROUGH THE LISTING BROKER.

WAIVER OF BROKER COOPERATION

I/WE AUTHORIZE THE LISTING BROKER NAMED HEREIN TO WITHHOLD MY LISTING FROM ANY MULTIPLE LISTING SERVICE TO WHICH HE/SHE BELONGS FOR THE TIME INDICATED ABOVE; HOWEVER, I DO WISH OTHER AGENCIES AND AGENTS TO SHOW MY HOME AND/OR SUBMIT OFFERS TO ME/US THROUGH THE LISTING BROKER.

Owner
Owner
Broker

DATE

2. The Broker obtaining the signature of an owner to a written statement as set forth above shall retain the original of such statement with the listing agreement signed by the said owner in his files, in accordance with the requirements of N.J.A.C. 11:5-1.12.

- (d) (See proposed amendment in this issue of Register.)
(e)-(g) (No change.)

(a)

Approved Schools; Requirements
Proposed Amendment: N.J.A.C. 11:5-1.28

Authority: N.J.S.A. 45:15-10.1 and 45:15-6.
Proposal Number: PRN 1986-324.

The agency proposal follows:

Summary

The proposed amendments effect changes in the criteria which are required to be fulfilled in order for an applicant to receive the certification of the Commission as an approved real estate education instructor, and also address the situation where, under current rules, the presence of two approved instructors in the same classroom is under certain circumstances required.

N.J.A.C. 11:5-1.28(k) established various basis upon which an applicant could be deemed to qualify as an approved real estate education instructor. Under the existing regulation, no explicit reference was made to the authority of the Commission to take into consideration an applicant's age, general character, and the absence of any history of criminal convictions when assessing their qualifications for designation as an approved instructor.

The proposed amendment explicitly provides that each applicant shall be at least eighteen years of age and have a background of good moral character including the absence of any conviction for certain crimes, as specified in N.J.S.A. 45:15-12.1, in order to qualify as an approved instructor.

In addition, the proposed amendment would enact changes with regard to the established criteria applicable to candidates for approval by the Commission as real estate education instructors.

The proposed amendment to paragraph 1. of the regulation imposes the requirement that a person seeking to be qualified as an approved instructor on the basis of their membership on the faculty of a college or university must be a member of the faculty of an accredited institution of higher learning and further must possess the competency necessary to effectively perform the functions of a real estate instructor. Under the paragraph as it presently exists, the fact that a member of the faculty had qualified as an instructor or professor in subjects dealing with or related to real estate formed a sufficient basis for the conferring upon them of the status of an approved instructor. The proposed change thus imposes upon the applicant the obligation of convincing the Commission, rather than his or her employing college or university, that they possess the necessary competency to effectively act as a real estate instructor.

The proposed amendment to paragraph 2. of the regulation reduces from five to three years the period of time during which an actively practicing attorney must have been engaged in the practice of law in order to qualify as an approved instructor. The proposed amendment also clarifies that only actively practicing attorneys of the state of New Jersey fall within this criteria. The proposed amendment also directs that the period of time during which the attorney has practiced must be the three years immediately preceding his or her application for approval as an instructor, and that their law practice must have included substantial experience in real estate. Under the current paragraph no reference is made to the quantity of experience that an attorney was required to have in order to fulfill this criteria.

The proposed amendment to paragraph 3 of this regulation makes clear that a person seeking to obtain approval as an instructor on the basis of their having obtained a degree in the real estate field from an accredited college or university must have obtained a bachelor's degree with a major in real estate. Under the present paragraph the word degree appeared without qualification, which resulted in some applicants concluding that an associate's or two year degree in real estate would be sufficient to fulfill this criteria.

The proposed amendment to paragraph 4. of this regulation establishes the requirement that a person who is seeking to obtain the approval of the Commission as a real estate instructor on the basis of their having a college degree with a major in subjects unrelated to the real estate field plus further study in the areas of study he or she proposes to teach and two years of teaching experience, must also hold a bachelor's and not an associate's degree. The amendment further provides that the post-graduate study in real estate related fields may have either been obtained at an accredited college or university and thus measured in classroom hours. The number of classroom hours established in the present regulation of 200 has been raised to 225 in order to assure a thorough knowledge of the real estate related topics the individual intends to teach

and to maintain consistency with the requirements regarding credit hours, since one credit hour is generally the equivalent of fifteen classroom hours.

Paragraph 5. of the proposed amendment removes the requirement that a licensed New Jersey real estate broker have a minimum of five years experience in the areas of study he or she proposes to teach in order to qualify as a real estate instructor, and instead imposes a requirement that such a licensee shall have had five years of experience as a New Jersey licensee in order to qualify as an approved instructor. This revision is proposed on the basis of the Commission's conclusion that a combination of five years of experience as a New Jersey licensee plus the individual's successful completion of a real estate broker's education course and his or her passage of the New Jersey broker's examination are indicative of the fact that that individual has obtained sufficient knowledge in the real estate field in general to qualify as an approved real estate instructor.

Paragraph 6. of the proposed amendment establishes a new criteria which does not currently exist under the present regulation. This general criteria establishes the Commission's discretion to assess the competency of an individual who does not fall squarely within any of the five specific categories established in paragraphs 1. through 5. of the regulation but who may, nevertheless, on the basis of his or her particular experience and/or educational background be qualified for designation as an approved instructor.

An additional paragraph 7 is provided to this regulation which directs that any individual who receives Commission approval as an instructor and who then fails to teach a minimum of one complete course during any two year period shall automatically have his or her status as an approved instructor terminated and shall be required to reapply to the Commission for reapproval. The new paragraph goes on to define "complete course" as a minimum of 75 percent of a single program of instruction.

The Commission discerned a need for such a provision in light of the fact that at the present time many individuals who are certified as approved instructors are remaining inactive, and, when such inactivity persists over an extended period of time, their abilities to effectively conduct real estate education courses are called into question. Consequently, it was deemed desirable to have the said individuals reapply for approval to the Commission so that their qualifications might be reassessed in light of their recent inactivity as real estate instructors.

The proposed amendment to subsection (j) of the regulation corrects an anomalous situation wherein, under the wording of the present subsection, the primary approved instructor of a particular course was required to remain present in the classroom during sessions wherein the class was being conducted by a guest lecturer who was also an approved instructor. The proposed amendment removes this requirement and provides that at any one time only one approved instructor need be present at all sessions of a real estate education course.

#### Social Impact

The proposed amendments will have a favorable social impact in that by toughening the criteria by which individuals may receive approval as real estate instructors, the overall quality of real estate education at real estate schools approved by the New Jersey Real Estate Commission will be enhanced. Further, by imposing a requirement that approved instructors who have remained inactive for two or more consecutive years must be reevaluated by the Commission, the risk of a course being conducted by individuals who have not kept abreast with the latest trends and developments in the real estate field will be lessened. By increasing the quality of real estate education in New Jersey, the students at such courses will benefit by being better prepared to engage as professionals in the real estate field, and the public at large will benefit as a result of more knowledgeable and better prepared individuals entering the real estate field as licensees.

#### Economic Impact

The economic impact of the proposal will be substantial in that, by having better educated licensees practicing the real estate profession, errors in real estate transactions may be avoided, which, consequently, will result in the avoidance of transactions which do not close and of potential litigation. With regard to the amendment to subsection (j), the economic impact will be substantial in that the operators of approved real estate schools will no longer have to pay for two approved instructors to cover one classroom session whenever it is desired to have a guest instructor conduct a particular class. Consequently, the incidents of having specialists in particular fields conduct real estate education classes on those particular topics will increase, which, again, will result in an improvement in the overall quality of real estate education in New Jersey.

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

11:5-1.28 Approved schools: requirements

(a)-(i) (No change.)

(j) The maximum teaching load per teacher or instructor shall not exceed the ratio of one teacher or instructor to 60 students per class. Each course of instruction herein provided shall be under the supervision of an instructor qualified as provided for herein. **A qualified instructor [who] shall be present in the classroom at all sessions. Additional instructors or guest speakers may be utilized for instruction with respect to given subjects provided that not more than twenty-five percent of the prescribed respective instruction is done by persons other than the instructor in whom overall responsibility is vested.**

(k) [Each staff member shall:] **Each applicant for approval as a real estate instructor shall be at least eighteen years of age with a background of good moral character, including the absence of any conviction for the certain crimes, or other like offense or offenses, specified under the provisions of N.J.S.A. 45:15-12.1 and shall, in order to qualify for approval by the Commission as a real estate instructor:**

1. In the case of a **member of the faculty of [a] an accredited college or university, [have qualified as an instructor or professor in subjects dealing with, or related to, real estate and such other required subjects as are to be taught] possess the competency necessary to effectively act as an instructor or professor qualified to teach real estate subjects;** or

2. Have actively practiced as an attorney at law **of the State of New Jersey for a minimum of [five] three years [in the areas of study he proposed to teach] immediately preceding his or her application for approval as a real estate instructor with substantial experience in real estate;** or

3. Hold a **bachelor's** degree as evidence of having majored in real estate from an accredited college or university; or

4. Hold a **bachelor's** degree from an accredited college or university [with at least two years of teaching experience] and possess a minimum of [200] **225** classroom hours or **fifteen credit hours from an accredited college or university** in the areas of study he or she proposes to teach and **have at least two years of teaching experience;** or

5. Be a licensed real estate broker in the State of New Jersey with a minimum of five years experience [in the area of study he proposes to teach] **as a New Jersey licensee[.]; or**

**6. Otherwise possesses the competency to effectively teach real estate subjects.**

NOTE: The above requirements shall not apply to any guest speaker as heretofore provided. Individuals qualifying within requirements (k)1 to [5]6 above shall file Form "E", together with evidence of past experience in the area of study proposed to be taught.

(l) **In the event that an approved instructor fails to teach a minimum of one complete salesperson or one complete broker course during any two year period, his or her approval shall automatically terminate and he or she shall be required to re-apply for approval. As used herein "complete course" means a minimum of 75 percent of a single program of instruction.**

Redesignate existing (l)-(v) as (m)-(w) (No change in text.)

## LABOR

### DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

The following proposals are authorized by George M. Krause, Acting Commissioner, Department of Labor.

Submit comments by September 17, 1986 to:

Frederick C. Kniesler, Assistant Commissioner  
Income Security  
Labor Building, Room 602  
John Fitch Plaza  
Trenton, New Jersey 08625

(a)

#### Employer's Account Charged; Notice

#### Proposed Amendment: N.J.A.C. 12:16-19.1.

Authority: N.J.S.A. 43:21-1, et seq., specifically 43:21-11.

Proposal Number: PRN 1986-320.

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 12:16-19.1 provides for the entering and charging of benefits to the appropriate employer's account when the unemployment benefit payment is made, and for the quarterly notification to the employer against whose account the benefits are charged.

**Social Impact**

Under the current rule the entering and charging of unemployment benefits is required "promptly". With the implementation of the Wage Record System on July 6, 1986, benefit charges will be reported to employers on a quarterly basis. The notification on a quarterly basis will result in a reduction in administrative expense and paperwork for employers and provide employers with a more efficient quarterly accounting system.

**Economic Impact**

The adoption of the proposed amendment would have minor economic impact, however, it would result in reduced administrative costs for the Department.

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

12:16-19.1 Employer's account charged; notice

Benefits paid shall be entered and charged against the account of the employer to who such determination relates, and when the benefit payment is made, [some form of notification shall be promptly send] **the Division shall send notification** to the employer against whose account the benefits are to be charged **on a quarterly basis**.

**(a)****Work Relief and Work Training Programs  
Exempt Employment****Proposed New Rule: N.J.A.C. 12:16-20.1.**

Authority: N.J.S.A. 43:21-1, et. seq., specifically 43:21-11.

Proposal Number: PRN 1986-321.

The agency proposal follows:

**Summary**

N.J.S.A. 43:21-19(i)(1)(D)(v) provides in pertinent part that the following services are exempt from coverage under the Unemployment Compensation Law. "... by an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program assisted in whole or in part by any Federal Agency or an agency of a state or political subdivision thereof; ..." Over the years there have been various interpretations on what constitutes a valid work-relief or work-training program that would qualify for the exemption provided under the Unemployment Compensation Law.

The proposed new rule specifies the various criteria a work-relief or work-training program must meet to qualify as exempt employment under the Unemployment Compensation Law. The rule reflects recommendations made by the Employment and Training Administration of the United States Department of Labor in Unemployment Insurance Program Letter No. 15-86.

**Social Impact**

Since this rule identifies what constitutes a work-relief or work-training program, it should have a positive social impact in terms of establishing clear guidelines for those nonprofit organizations and state and local government entities that utilize such programs.

**Economic Impact**

The adoption of the proposed Amendment will have little or no economic impact.

**Full text** of the proposed new rule follows.

**SUBCHAPTER 20. WORK RELIEF AND WORK TRAINING PROGRAMS**

12:16-20.1 Work relief and work training programs: exempt employment

(a) In order to qualify for the exemption provided by N.J.S.A. 43:21-19(i)(1)(D)(v), an unemployment work-relief or work-training program that is financed or assisted in whole or in part by any Federal agency or an agency of a state or political subdivision of a State, must have as a minimum the following characteristics:

1. The employer-employee relationship is based more on the participants' and communities' needs than normal economic considerations such as increased demand or the filling of a bonafide job vacancy;

2. Qualifications for the jobs take into account as indispensable factors the economic status, that is, the standing conferred by income and assets, of the applicants;

3. The products or services are secondary to providing financial assistance, training, or work-experience to individuals to relieve them of their unemployment or poverty or to reduce their dependence upon various measures of relief, even though the work may be meaningful or serve a useful public purpose.

(b) In order to qualify as an exempt unemployment work-relief or work-training program, it must also have one or more of the following characteristics:

1. The wages, hours, and conditions of work are not commensurate with those prevailing in the locality for similar work;

2. The jobs did not, or rarely did, exist before the program began (other than under similar programs) and there is little likelihood they will be continued when the program is discontinued;

3. The services furnished, if any, are in the public interest and are not otherwise provided by the employer or its contractors;

4. The jobs do not displace regularly employed workers or impair existing contracts for services.

**(b)****Registration for Work and Claims for Benefits****Proposed New Rule: N.J.A.C. 12:17-2.2.****Proposed Amendments: N.J.A.C. 12:17-2.4.**

Authority: N.J.S.A. 43:21-4, 43:21-6, 43:21-11.

Proposal Number: PRN 1986-319.

The agency proposal follows:

**Summary**

The proposed new rule N.J.A.C. 12:17-2.2 establishes guidelines requiring unemployment insurance claimants to provide verification of Social Security Account Numbers. Final rules at 20 CFR 603 published in the Federal Register on February 28, 1986 require that State Employment Security Agencies obtain Social Security Account Numbers from claimants and use the numbers, as identifiers, in maintaining records. If the claimant is unable to present a valid Social Security Card for verification, or if departmental records indicate a discrepancy with such number presented, the Division will require the cooperation of the claimant in obtaining verification of the account number. If the individual refuses or fails to cooperate with the Division to verify the validity of the Social Security Account Number, he or she may be, after being given the opportunity for a hearing, held ineligible for benefits from the date of claim and liable to refund any benefits previously paid.

The proposed amendments to N.J.A.C. 12:17-2.4 provides for technical corrections so that it conforms with N.J.A.C. 12:17-2.1, which deals with claimant reporting requirements to the Employment Service office.

**Social Impact**

Under the current rules there is no provision which requires an individual claiming unemployment benefits to produce verification of Social Security Account Numbers. There is a growing need for such verification in light of implementation of the Wage Record System effective July 6, 1986. As of that date all unemployment insurance claims will be processed utilizing the Department's Wage Record data base which is based on Social Security Account Numbers reported by employers. Accurate Social Security Account Numbers are imperative to protect the integrity of the Wage Record System and to prevent improper payments.

**Economic Impact**

The adoption of the proposed amendment would have little or no economic impact since its purpose is to codify the Division's policy with respect to reporting requirements under the Unemployment Compensation Law.

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

12:17-2.2 Claimant identification

(a) The Division shall require each claimant to present proper identification, including a valid Social Security Card and other documentation showing his or her legal name and address in order to file a claim for benefits.

1. In the event a claimant is unable to present his or her Social Security Card for verification or if departmental records indicate any discrepancies with the Social Security Account Number presented, the Division will require the claimant to obtain a duplicate Social Security Card and/or to resolve any discrepancies.

2. Any person who refuses or fails to cooperate with the Division in any effort to verify the validity of a Social Security Account Number, may, after being given the opportunity for a hearing, be held ineligible for benefits from the date of claim and liable to refund any benefits previously paid.

12:17-2.4 Forms prescribed for recording claims for benefits for unemployment [and registration for work]

(a) Claims for benefits for unemployment shall be made on the forms prescribed by the Director, setting forth:

1. That the individual claims benefits; and such other information as is required.

[2. That he registers for work; and

3. Such other information as is required thereby.]

(b) The claim for benefits for unemployment shall constitute [both] the individual's [registration for work and his] claim for benefits or waiting period credit.

(c) Continued claims for benefits for unemployment shall be made on the forms prescribed by the Director, setting forth:

1. That the individual continues his claim for benefits;

2. That he is unemployed;

[3. That he registers for work;]

[4.] 3. That since the last day for which he claimed unemployment insurance benefits, he has performed no services and earned no wages except as indicated; and

[5.] 4. Such other information as is required [thereby].

[(b)] (d) The continued claim for benefits for unemployment shall constitute both the individual's [registration for work and his] claim for benefits or waiting period credit.

(e) In isolated areas, in cases of mass separation, or unemployment due to a labor dispute, continued claims for benefits for unemployment may be filed by mail on forms prescribed by the Director if the Division finds that the reporting or filing of continued claims in person is impracticable.

(a)

**Employer Records and Evidence Concerning Partial Unemployment**

**Proposed Amendments: N.J.A.C. 12:17-3.1, 4.1 and 4.2.**

Authority: N.J.S.A. 43:21-4, 43:21-6, 43:21-11.

Proposal Number: PRN 1986-318.

The agency proposal follows:

**Summary**

The proposed amendments to N.J.A.C. 12:17-3.1, 12:17-4.1 and 4.2 clarify the definition of "partial unemployment" to mean a week in which an individual is employed for a total of 80 percent or less than the hours normally worked in the individual's occupation, profession, trade, or industry due to lack of work and earns remuneration which does not exceed his weekly benefit rate plus 20 percent. The amendments are proposed as a result of a recent court holding in *Borromeo v. Board of Review et al*, 196 *NJ Super*. 576 (App. Div. 1984), which recognized the absence of legal clarification in the issue of defining "partial unemployment", and recommended the adoption of legislative or regulatory remedies. The amended regulation would define "partial unemployment" in terms of earnings, as well as the reduction of the number of hours worked by the individual due to lack of work. The rule is also amended for technical reasons in that the \$5.00 partial weekly benefit rate alternative is no longer applicable.

**Social Impact**

Under the existing rules there has been some confusion as to an individual's eligibility for benefits in situations where he or she is "partially

unemployed". The proposed amendments will serve to clarify the Department's definition of "partial unemployment" in terms of earnings received and reduced hours worked due to lack of work.

**Economic Impact**

The adoption of the proposed amendments would have little or no economic impact since its purpose is to clarify the Division's policy with respect to benefit eligibility of those "partially unemployed" under the Unemployment Compensation Law.

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

12:17-3.1 Weeks with reference to unemployment defined

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

"Week of partial unemployment" means a calendar week ending at midnight Saturday in which an individual [performs some services] is employed not more than 80 percent of the hours normally worked in that individual's occupation, profession, trade or industry; due to lack of work; and [/or] earns remuneration which does not exceed his weekly benefit rate plus 20 percent of such rate [or \$5.00, whichever is the greater (fractional parts of a dollar omitted)].

"Week of total unemployment" means a calendar week ending at midnight Saturday in which an individual performs no services and with respect to which he receives no remuneration.

12:17-4.1 Regular employee records

(a) In addition to the requirements set forth in N.J.A.C. 12:16-5.1 and 5.2, each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine with respect to each regular employee in his employ who may be eligible for partial benefits:

1. Remuneration for each calendar week ending at midnight Saturday.

2. Whether any such period was a week of less than full-time work[;], as determined according to the norm or custom associated with the individual's occupation, profession, trade, or industry.

3. Time lost, if any, during such week when work was available.

12:17-4.2 Evidence of weekly partial unemployment

(a) In cases of less than full-time work, due to lack of work, when the remuneration payable by an employer to an individual in his employ does not exceed 120 percent of the maximum weekly benefit rate, the employer not later than the time when such remuneration is payable shall issue to the individual in writing a statement (in the form of a pay envelope, pay check stub, copy of pay check, or similar pay voucher) with respect to such calendar week ending at midnight Saturday which shall show the following information:

1.-5. (No change.)

(b) The number of hours which constitutes less than full-time work shall be construed to mean not more than 80 percent of the hours worked according to the norm or custom associated with the individual's occupation, profession, trade, or industry.

**LAW AND PUBLIC SAFETY**

(b)

**STATE BOARD OF PHYSICAL THERAPY  
Electromyographic Testing**

**Reproposal: N.J.A.C. 13:39A-2.2(a), 3.3(a)(1)  
Public Hearing**

Take notice that the State Board of Physical Therapy announces a public hearing and public forum to be held for the review and discussion of repropoed rules N.J.A.C. 13:39A-2.2(a) and 3.3(a)1., which appeared in the New Jersey Register on June 2, 1986, at 18 N.J.R. 1177 and 1178 concerning the authorized practice by a licensed Physical Therapist to conduct electromyographic testing. The Board received a request for such public hearing by the State Board of Medical Examiners subsequent to the publication of the repropoed rules pursuant to N.J.S.A. 52:14B-4(a)(3).

The hearing will be held on Tuesday, October 14, 1986, at 9:00 A.M. at:

P.U.C. Meeting Room No. 1  
Second Floor  
1100 Raymond Boulevard  
Newark, New Jersey 07102

Any persons who wish to make presentations to the State Board of Physical Therapy at the hearing must submit in writing such request no later than September 15, 1986, to:

Patricia E. Stuart  
Executive Secretary  
State Board of Physical Therapy  
1100 Raymond Boulevard, Room 513  
Newark, New Jersey 07102

A copy of the agenda for the hearing will be available after that date. Any persons wishing to submit additional written comments with respect to electromyographic testing by licensed Physical Therapists may do so also until September 15, 1986.

## TRANSPORTATION

### (a)

#### NEW JERSEY TRANSIT CORPORATION

#### Background Checks for Non-Criminal Matters

#### Proposed New Rules: N.J.A.C. 16:79

Authorized By: New Jersey Transit Corporation, Jerome C. Premo, Executive Director.

Authority: N.J.S.A. 27:25-5(e) and 5(f); N.J.S.A. 27:25-15.

Proposal Number: PRN 1986-333.

Submit comments by September 17, 1986 to:

Albert R. Hasbrouck, III  
Assistant Executive Director  
New Jersey Transit Corporation  
(NJ TRANSIT)  
P.O. Box 10009  
Newark, New Jersey 07101

The agency proposal follows:

##### Summary

The New Jersey Transit Corporation (NJ TRANSIT) and its subsidiaries are responsible for the provision of rail and bus services in the State of New Jersey. In providing these services, it is necessary to employ personnel in positions of trust such as bus drivers, conductors, ticket sellers and numerous other financial positions which are financial in nature or require contact with the riding public. In order to ensure that only the appropriate persons are hired for these positions, NJ TRANSIT feels it may be appropriate to request from the State of New Jersey's Bureau of Investigations a criminal history name search ID check prior to hiring such individuals. N.J. TRANSIT therefore proposes new rules, N.J.A.C. 16:79, which shall govern the use of criminal history name searches by the State Police on behalf of N.J. TRANSIT.

##### Social Impact

Prospective NJ TRANSIT employees may be required to complete an employment application in which they are asked to state whether they have ever been convicted of a criminal offense. The proposed new rules will allow management to ensure that an employee's response to this request is accurate prior to hiring the individual. This is especially important where the individual is being considered for a financial position or one which requires contact with the public.

##### Economic Impact

The proposed new rule will allow NJ TRANSIT to ensure that employees in sensitive positions have not been convicted of a crime or if they have such a conviction have been truthful on their employment application. The proposed rule, of course, will have a negative economic impact on a prospective employee who fails to complete his employment application truthfully as it is expected that such an applicant will not be hired. Employees who were hired and were not truthful on the employment application will also experience a negative economic impact when they are terminated from their job.

Full text of the proposed new rule follows:

## CHAPTER 79 BACKGROUND CHECKS FOR NON-CRIMINAL MATTERS

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 16:79-1.1 Purpose

The New Jersey Transit Corporation (NJ TRANSIT) and its subsidiaries are responsible for the provision of rail and bus services in the State of New Jersey. In providing these services, it is necessary to employ personnel in positions of trust such as bus drivers, conductors, ticket sellers and numerous other positions which are financial in nature or require contact with the riding public. In order to ensure that only the appropriate persons are hired for these positions, NJ TRANSIT feels it may be appropriate to request from the State of New Jersey's Bureau of Investigations a criminal history name search ID check prior to hiring such individuals.

#### 16:79-1.2 Definitions

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

"Executive Director" means the Executive Director of NJ TRANSIT or the President of any NJ TRANSIT subsidiary or their designees.

"Fee" means that price established by law for processing all record requests for a licensing and/or employment purpose for authorized agencies.

"NJ TRANSIT" means the New Jersey Transit Corporation or any of its subsidiaries.

"Processing criminal history record background checks" means the process whereby the State Bureau of Identification compares a set of classifiable fingerprints or conducts a name search request to determine if a New Jersey criminal history record exists for the person identified by the request.

"State Bureau of Identification (S.B.I.)" means the State Bureau of Identification as created by L.1930, c.65 as a bureau within the Division of State Police.

### SUBCHAPTER 2. PROCEDURES

#### 16:79-2.1 Employment applications

(a) NJ TRANSIT may require as a condition of employment that its prospective employees complete an employment application in which they are asked to state whether they have ever been convicted of a criminal offense.

(b) In order to ensure that only appropriate persons are employed at NJ TRANSIT, it is imperative that NJ TRANSIT be able to confirm that prospective employees are truthful on their employment applications when responding to an inquiry of any past criminal record.

(c) Applicants who falsify their employment application will not be hired by NJ TRANSIT or if hired prior to such determination will be subject to dismissal.

#### 16:79-2.2 Request for criminal history record background checks for non-criminal matters

(a) The Executive Director shall, when appropriate, request a criminal history record background check in conjunction with the prospective employment of an applicant at NJ TRANSIT.

(b) The Executive Director shall file with the State Bureau of Identification the appropriate forms and fees all in accordance with N.J.A.C. 13:59-1.

## TREASURY-GENERAL

(a)

### DIVISION OF PENSIONS

#### Administration

#### Administrative Expense Proration

#### Proposed Amendment: N.J.A.C. 17:1-1.17

Authorized By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1986-329.

Submit comments by September 17, 1986 to:

Peter J. Gorman, Esq.  
Administrative Practice Officer  
Division of Pensions  
20 West Front Street  
CN 295  
Trenton, New Jersey 08625

#### Summary

The proposed amendment attempts to clarify the current method of prorating the portions of the administrative expenses of the Division of Investment concerning the services it renders to the various retirement systems. The current text of N.J.A.C. 17:1-1.17 (a) 6. incorrectly indicates that the method of proration is based upon the respective memberships of the retirement systems. Actually, the current method of such proration is based upon the number of transactions processed by the Division of Investment for the various systems. The proposed amendment reflects the current practice.

#### Social Impact

The proposed amendment will not have any significant, adverse effect upon the members of the various retirement systems or the public since the proposed amendment will simply reflect the current method of proration.

#### Economic Impact

The proposed amendment will not have any adverse effects upon the systems' members or the taxpaying public.

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

17:1-1.17 Administrative expenses; proration among systems

(a) Not later than 60 days after receipt of the expenditures by account the [Chief of Administrative Services of the] Division of Pensions will prepare a complete fiscal statement indicating the administrative expenses incurred by the Division within its State appropriation for the previous fiscal year, the year ending the prior June 30.

1.-5. (No change.)

6. Included in the administrative expenses incurred by the division shall be those of the State Division of Investment as the expenses of that division pertain to the investment of monies appropriate to each retirement system or fund calculated [on a pro rate basis determined by the respective membership of each system] **on the number of transactions processed for the respective systems.**

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

## TREASURY-TAXATION

(b)

### DIVISION OF TAXATION

#### Corporation Business Tax

#### Returns Filed by S Corporations

#### Proposed Amendment: N.J.A.C. 18:7-11.16.

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1986-315.

Submit comments by September 17, 1986 to:

Nicholas Catalano  
Assistant Chief Tax Counselor  
Division of Taxation  
50 Barrack Street, CN 269  
Trenton, New Jersey 08646

The agency proposal follows:

#### Summary

The proposed amendment relates to the New Jersey Corporation Business Tax Act, N.J.S.A. 54:10A-1, et seq., and particularly N.J.S.A. 54:10A-27 and N.J.A.C. 18:7-11.16. The Director, pursuant to his rulemaking authority, requires a New Jersey corporation which elects to report as an S Corporation for Federal income tax purposes to file its return (now CBT-100, particularly Schedule A) as though no Federal S Corporation election (I.R.C. Section 1361 et seq., particularly Section 1362) was made. The effect of the Federal election is to allow a corporation to act as a conduit, not being subject to corporate income tax for Federal income tax purposes, rather than as a separate taxpaying entity paying corporate income tax at corporate rates. Under the Federal election no tax is paid at the corporate level but instead the separate items of income are classified similar to partnership income, and the tax paid when required by the shareholders (treated as partners for Federal income tax purposes) at their individual applicable Federal rate of tax. New Jersey has no similar S Corporation statutory or regulatory provision granting this type of election, and in contrast the New Jersey taxing statute clearly applies the corporation business tax to each and every corporation (N.J.S.A. 54:10A-2. N.J.A.C. 18:7-1.6(a)) including small and closely held business corporations in the regular way by completing Schedule A, Form CBT-100, except for corporations expressly exempt under the New Jersey Corporation Business (Franchise) Tax Act, or in any other New Jersey statutory law. New Jersey's treatment of S Corporations, DISC corporations and corporations included in a Federal Consolidated Income Tax Return requires each such corporation to file its own particular ("separate") return in the same way as ordinary or regular corporations, thus departing from Federal treatment in these instances.

#### Social Impact

Adoption of the proposed amendment should make clear to the taxpayers what the Division of Taxation's policy is and has been thereby avoiding unnecessary audit discrepancies, differences of opinion as to the law or the facts and any other state taxation administrative problem.

#### Economic Impact

There is minimal economic impact caused by this proposed amendment. The proposed amendment will avoid unnecessary communication between tax preparers and audit personnel and accelerate audits of returns and issuances of tax clearance certificates (and tax lien search certificates for transferring property, borrowing of money, etc.), when needed for dissolution, surrender, merger or withdrawal of authority to do business in New Jersey. The proposal is consistent with the intent of the law that every corporation be required to pay a corporation business (franchise) tax unless it is expressly exempt by statute. This proposed amendment would prevent some loss of state revenue.

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

18:7-11.16 Return[s] to be filed by ["tax-option" Subchapter] **an S Corporation[s]**

(a) [A "tax-option" Subchapter] **An S corporation**, that is, one which has made an election under Section [1372] **1361 et seq.** of the Internal Revenue Code of 1954 as amended and supplemented, must complete its New Jersey Corporation Business Tax Return on its own separate basis as though no election had been made under the Federal statute.

(b) In preparing its Corporation Business Tax Return the taxpayer cannot assume that ordinary income or loss (Federal taxable income) is equal to Federal taxable income before net operating loss deduction and special deductions for New Jersey Corporation Business Tax purposes, when the taxpayer has elected Federal S Corporation treatment. Certain amounts not necessarily limited to I.R.C. Section 179 expenses, and 1120-S dividends that qualify for the dividend exclusion are not included as part of the S Corporation's ordinary income (loss) computation, but rather are passed directly through to the shareholder on the Federal Form K-1 Schedule. For Corporation Business Tax purposes these amounts are included in the computation of entire net income, as if the corporation were a C Corporation and no Federal S Corporation election were made.

Example 1: S Corporation has 1985 taxable income for Federal tax purposes of \$100,000. However, not included in computation of such amount is a \$5,000 Federal I.R.C. Section 179 expense and \$10,000 of S Corporation dividends received from a different corporation which qualify for the Federal dividend exclusion. Barring any other difference between Federal taxable income and New Jersey taxable income per Schedule A, Form CBT-100, New Jersey taxable income before net operating loss deduction (NOL) and special deductions is computed as such:

\$100,000	Federal Taxable Income
( 5,000)	I.R.C. Section 179 Expense
10,000	Qualifying S Corporation Dividends
\$105,000	New Jersey Taxable Income Before NOL and Special Deductions

Example 2: S Corporation is liquidating under I.R.C. Section 337. When disposing of its real property during the twelve month distribution period, the corporation recaptures for Federal tax purposes \$5,000 of I.R.C. Section 291 expenses which an S Corporation does not include as part of Federal taxable income if it were an S Corporation for the three preceding years before the Federal I.R.C. Section 337 election and the I.R.C. Section 1363(b) election. Since the S Corporation is treated as a C Corporation for state tax purposes, the I.R.C. Section 291 recapture is part of taxable income before net operating loss and special deductions on Schedule A, Form CBT-100.

## OTHER AGENCIES

### CASINO CONTROL COMMISSION

The following proposals are authorized by the Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Submit comments by September 17, 1986 to:

David C. Missimer  
Senior Assistant Counsel  
Casino Control Commission  
3131 Princeton Pike Office Park  
Building No. 5, CN-208  
Trenton, New Jersey 08625

(a)

#### Application Fees Casino Hotel Alcoholic Beverage Licenses Proposed Amendment: N.J.A.C. 19:41-9.7.

Authority: N.J.S.A. 5:12-69 and 5:12-103.

Proposal Number: PRN 1986-313.

The agency proposal follows:

##### Summary

N.J.A.C. 19:41-9.7 establishes the fee which is charged by the Casino Control Commission for the issuance or annual renewal of a Casino Hotel Alcoholic Beverage License. The rule provides that this fee shall be \$5,000.00 for each location within the casino hotel facility which is approved by the Commission for any or all of the activities listed in N.J.S.A. 5:12-103. The rule currently includes an exception, however, for approved alcoholic beverage storage areas; all such areas within the casino hotel are deemed to be a single licensable location for purposes of N.J.A.C. 19:41-9.7. The proposed amendment would recognize and codify the Commission's current practice of applying this exception to the calculation of fees for casino hotel alcoholic beverage licenses with multiple approved room service locations as well. The Commission is also proposing amendments which are intended to correct typographical errors in the current text of the rule as contained in the New Jersey Administrative Code.

##### Social Impact

The proposed amendment is not anticipated to have any significant social impact since it will not affect the type or location of alcoholic beverage service which is available in casino hotel facilities.

##### Economic Impact

The proposed amendment will not have any significant economic impact since it merely codifies the fee structure as currently interpreted and enforced by the Commission.

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

19:41-9.7 Casino hotel [and] alcoholic beverage licenses

Under Section 103 of the Act, no business may expose for sale, solicit or promote the sale of, possess with intent to sell, give, dispense, or otherwise transfer or dispose of alcoholic beverages in, on or about any portion of the premises of a casino hotel unless said business possesses an appropriate Casino Hotel Alcoholic Beverage License. Such licenses shall be issued for one year and are renewable annually. The fee for the issuance or annual renewal [of a Casino Hotel Alcoholic Beverage or annual renewal] of a Casino Hotel Alcoholic Beverage License shall be \$5,000.00 for each location within the casino hotel approved by the Commission for any or all of the activities listed in section 103 of the Act. All storage areas within a facility shall be deemed a single licensable location **and all room service locations within a facility shall be deemed a single licensable location** for the purposes of this [subsection] section. If a Casino Hotel Alcoholic Beverage License is amended to add additional locations after the issuance or annual renewal of that license, the fee for each such additional location approved by the Commission for any or all of the activities listed in section 103 of the Act shall be \$5,000.00 reduced on a pro rata basis in accordance with the number of full calendar months which have expired during the term of the license to which the additional location is added.

(b)

### Entertainment General Provisions

#### Proposed Readoption with Amendments: N.J.A.C. 19:52

Authority: N.J.S.A. 5:12-69 and 5:12-70(p).

Proposal Number: PRN 1986-317.

The agency proposal follows:

##### Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66 (1978), the Casino Control Commission proposes to re-adopt N.J.A.C. 19:52 concerning entertainment presented by casino licensees within casino hotel complexes. The rules are scheduled to expire October 8, 1986 pursuant to the Executive Order.

This chapter was promulgated by the Commission in furtherance of its obligation under subsection 70(p) of the Casino Control Act, N.J.S.A. 5:12-70(p), to adopt regulations "governing entertainment presented by casino licensees in accordance with the prevailing community standards as determined by the commission." The chapter was previously amended in 1981 to eliminate the requirement that casino licensees provide nightly entertainment of a cabaret and pub style, thus allowing each casino licensee to use its own discretion in determining the type and frequency of entertainment provided within its casino hotel complex. The 1981 amendments also imposed quarterly and annual reporting obligations on casino licensees concerning entertainment actually provided so that the Commission could monitor whether industry entertainment practices under this voluntary system conformed with the public policy goals of the Act. (See 13 N.J.R. 343(a) and 13 N.J.R. 709(c)). N.J.A.C. 19:52-1.4 was further amended in 1983 to permit casino licensees, with the prior approval of the Commission, to present entertainment within the casino room itself. (See 15 N.J.R. 139(a) and 15 N.J.R. 628(a)).

Experience to date has demonstrated that the rules contained in N.J.A.C. 19:52, as amended, working in conjunction with competitive market forces, have led casino licensees to provide a wide variety of entertainment opportunities to casino patrons and the general public. The rules concerning prohibited entertainment have effectively prevented the presentation of entertainment inappropriate for a family oriented hospitality facility. Finally, the 1983 amendment concerning casino room enter-

tainment has allowed casino licensees to offer casino patrons more entertainment opportunities without jeopardizing the efficiency or security of casino operations.

An amendment is being proposed to N.J.A.C. 19:52-1.4(a) to clarify that this subsection prohibits the exhibition of motion pictures which would be considered obscene under the definition contained in the State's criminal code regardless of whether such exhibition would constitute a criminal act. Subsection (c) of N.J.A.C. 19:52-1.3 is also being amended to eliminate the annual report on entertainment programs and activities. As indicated previously, five years of experience under a voluntary entertainment policy has demonstrated that casino licensees will offer a wide variety of entertainment programs and activities without State supervision. Accordingly, the annual report on frequency and type of entertainment presently required by N.J.A.C. 19:52-1.3 is no longer considered necessary. The quarterly report required by subsection (c) is being retained because the information it provides is utilized by the Commission in evaluating casino licensee compliance with the equal employment opportunity goals of the Act.

#### Social Impact

The readoption of N.J.A.C. 19:52 will enable the Commission to meet its statutory obligation to assure that entertainment is provided by casino licensees which is consistent with community standards. As noted above, the Commission's prohibited entertainment rules have precluded the presentation of entertainment which would be regarded as obscene under the criminal code of this State. The continued existence of these rules is necessary to the maintenance of the family oriented character of that segment of the hospitality industry in Atlantic City represented by the casino industry.

The Commission has previously determined, however, that the exact type and frequency of entertainment to be provided within the boundaries established by the rules is a matter for management discretion and the demands of the marketplace. The proposed amendment to N.J.A.C. 19:52-1.3(c) once again affirms this determination and should have minimal, if any, social impact on the public, casino licensees and the regulatory agencies.

#### Economic Impact

The economic impact of N.J.A.C. 19:52, as amended, has been minimal since each casino licensee is permitted to provide the type and quantity of entertainment which management deems appropriate or necessary to respond to competitive market forces. The proposed amendment eliminating the annual report presently required by N.J.A.C. 19:52-1.3(c) should have a positive, but relatively insignificant, beneficial effect for casino licensees and the Commission.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:52.

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

19:52-1.3 General requirements concerning entertainment

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

(c) [Every casino hotel shall submit to the Commission an annual report of its entertainment programs and activities, which report shall summarize frequency of entertainment programs and activities by categories, attendance, and operating cost and revenue attributed to such programs and activities. In addition, every] **Each** casino hotel shall file a quarterly report of all disbursements made for entertainment programs and activities identifying the recipient of the disbursement and the amount involved.

(d)-(f) (No change.)

19:52-1.4 Prohibited entertainment activities

(a) No motion picture[s] shall be exhibited within any casino hotel complex either by direct projection or by closed circuit television [in violation of the obscenity statutes of this State] **which would be classified as obscene material pursuant to the definition contained in N.J.S.A. 2C:34-2.**

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

(a)

## ATLANTIC COUNTY TRANSPORTATION AUTHORITY

### Rules of Operation

### Bus Management Regulation Booklet

### Proposed Amendments: N.J.A.C. 19:75-1.1, 2.1, 2.2, 2.3, 3.1, 5.4, 6.1, 6.2, 7.1, 7.2, 7.4, 9.2, 9.4

Authorized By: Atlantic County Transportation Authority,

Helen Walsh, Executive Director.

Authority: N.J.S.A. 40:35B-15(h).

Proposal Number: PRN 1986-327.

A public hearing concerning this proposal will be held on September 4, 1986, from 3:00 P.M. to 6:00 P.M., at:

City Council Chambers

City Hall

Tennessee Avenue and Bacharach Boulevard

Atlantic City, New Jersey 08401

Submit comments by September 17, 1986 to:

Helen Walsh, Executive Director

Atlantic County Transportation Authority

19-21 South New York Avenue

Atlantic City, New Jersey 08401

The agency proposal follows:

#### Summary

On December 23, 1983 the Atlantic County Transportation Authority, pursuant to N.J.S.A. 40:35B-15, adopted a comprehensive Bus Management Program (CBMP), see N.J.A.C. 19:75, designed to alleviate the traffic congestion and related problems in Atlantic City and Atlantic County resulting from the increased motorized traffic caused by the advent of casino gambling. Notwithstanding the implementation of that comprehensive Bus Management Program, it is necessary to amend the regulations, N.J.A.C. 19:75, in order to provide for a continuing increase in motorized traffic and a significant increase in the amount of activity centers as defined by N.J.A.C. 19:75-1.1.

The original Bus Management Rules of Operation were designed in 1983 to meet the level of bus activity projected for nine casinos. Since the adoption of the Bus Management Rules, additional hotel rooms have been constructed and additional activity centers have been approved. Additional bus traffic will result from the increased capacity of the hotels and activity centers and amendments to the rules are required to accommodate the additional traffic. Specifically, additional definitions have been added to 19:75-1.1 (Definitions); additional approved routes have been added to 19:75-2.1 (Routes of Travel: generally); additional casino routes of travel have been added to 19:75-2.3 (Routes of Travel To and From Casino Hotels); comment has been deleted from 19:75-3.1 (Conditions Requiring Intercept); an additional statute has been added to Subchapter 5 (Bus Operations); an additional facility has been added to 19:75-6.1 (Approved Parking Lots); additional comment has been added to 19:75-6.2 (Bus Parking Lot Approvals) and 19:75-7.1 (Mandatory Payment of Fees; additional facilities and comment have been added to 19:75-7.2 (Modes of Payment), additional comment has been added to 19:75-7.4 (Activity Center Manifest), and a revision of 19:75-9.4 has been added.

Also enclosed are Atlantic County (Diagram A) and Atlantic County (Diagram B) maps, which are also proposed. The maps are available at the Office of Administrative Law, Rules and Publications, 9 Quakerbridge Plaza, Trenton, New Jersey 08625, and at the Atlantic County Transportation Authority, 19-21 South New York Avenue, Atlantic City, New Jersey 08401.

#### Social Impact

The proposed amendments will affect Atlantic City and Atlantic County residents, businesses and visitors. The proposed amendments will improve the management and operation of the Comprehensive Bus Management Plan in Atlantic County. The proposed amendments will continue to reduce traffic congestion, improve levels of air and noise pollution, increase traffic safety, improve emergency and overall accessibility for visitors and local residents. These amendments are necessary to improve the Comprehensive Bus Management Plan and to mitigate the negative social impacts arising from traffic congestion, pollution and other effects of increased vehicular traffic, and to continue to provide accessibility to the growing recreational industry in Atlantic County.

**Economic Impact**

The proposed amendments will continue to provide a bus management fee of \$1.00 per vehicle per entry into Atlantic County charged to the owner or operator, to meet the costs of the Comprehensive Bus Management Plan. These amendments will continue to allow for ACTA's acceptance of and application for any voluntary private and/or public aid, donation or contribution to the program's implementing the Comprehensive Bus Management Plan. These amendments are necessary to maintain the reduced travel time in Atlantic City. Improving casino bus management allows casinos to handle the increasing number of people arriving by bus and also benefits the bus operators and related businesses. More centralized bus parking facilities will further reduce congestion and bus related problems.

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

19:75-1.1 Definitions

"Bus" means all multi-passenger vehicles including but not limited to vehicles commonly known as vans and mini buses engaged in motorbus regular route service and motor bus charter service as defined by N.J.S.A. 40:35B-3(h) and (j) respectively.

"Manifest" means a record of daily bus arrivals by activity center, to include at a minimum bus company, bus number, arrival and departure times [,] , and presence of ACTA permit.

"Permit" means a receipt issued by ACTA confirming proof of payment of the Bus Management fee.

19:75-2.1 Routes of travel: generally

(a) (No change.)  
(b) Except for Atlantic City, bus routes in Atlantic County are US Route 30, US Route 40/322 and the Atlantic City Expressway. All other routes are considered to be feeder routes to these major access roadways. The major access roadway is designed to enable the bus to enter the city in the zone where its destination is located.

1.-2. (No change.)  
3. All other county roadway networks approved for bus travel are for local feeder purposes and are described as follows:

- i.-vi. (No change.)
- vii. Route 52 McArthur Boulevard/Laurel Drive from the Atlantic County boundary to the Garden State Parkway at Interchange (30N) [,] and Mays Landing-Somers Point Road between U.S. Route 9 and Shore Road and U.S. Route 9 between Mays Landing-Somers Point Road and Garden State Parkway at Interchange 29S.
- viii. New York Avenue from Route 30/Absecon Boulevard to Huron Avenue.
- ix. Chelsea Avenue from the Atlantic City Boardwalk to Atlantic Avenue.
- x. Huron Avenue from Route 30/Absecon Boulevard to its eastward termination.
- xi. Egg Harbor Road from Route 54 to Route 30.
- xii. Pacific Avenue from Kentucky Avenue to South Carolina Avenue.

19:75-2.2 Atlantic City access routes

(a) (No change.)  
(b) All buses entering or exiting Atlantic City shall do so only on routes prescribed for the zone in which is located the destination or point of departure of such buses, as the case may be, as set forth below:

ZONES	ENTRY/EXIT ROUTE
Zone 1	Route 40
Zone 2	Atlantic City Expressway
Zone 3	Route 30[*] †
Zone 4	Route 30

†[\*]Buses entering or leaving Zone 3 may use Atlantic City Expressway via Atlantic Avenue.

(c) (No change.)

19:75-2.3 Routes of travel to and from casino hotels

(a)-(b) (No change.)  
(c) [Playboy] Atlantis:  
1. Arrival: via Atlantic Avenue to Missouri Avenue to Pacific Avenue to the [Playboy] Atlantis site or Convention Hall. In the event that, due to the severity of traffic conditions, inbound Missouri Avenue and Pacific Avenue are unavailable for [Playboy] Atlantis, the alternate route will be Albany Avenue to Atlantic Avenue to Iowa Avenue to Pacific Avenue to Florida Avenue to Casino. This alternate route will only be available to [Playboy] Atlantis buses when, in the opinion of ACTA and ap-

propriate representatives of the Atlantic City Police Department, exists a traffic condition on the primary route that constitutes an imminent threat to public safety.

(d) (No change.)

[(e)] (f) (No change in text.)

(e) Harrah's Trump Hotel Casino:

1. Arrival: via Atlantic City Expressway to Missouri Avenue to Casino bus lot.

2. Departure: from the casino via Mississippi Avenue to Atlantic Avenue to Arkansas Avenue to Atlantic City Expressway.

[(f)] (g) Resorts:

1. Arrival: [via Absecon Boulevard to Virginia Avenue and south to the Casino, and as an exception via the Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Virginia Avenue.] Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue to New Jersey Avenue for intercept to Atlantic Avenue to Pennsylvania Avenue.

2. Departure: [Virginia Avenue to Atlantic Avenue to Pennsylvania Avenue to Absecon Boulevard and alternately as an exception down Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.] U-turn Pennsylvania Avenue to Absecon Boulevard (Route 30). When constructed: Pennsylvania Avenue into tunnel to New Roadway to Atlantic Avenue to Pennsylvania Avenue to Route 30; alternate to Atlantic Avenue to Arkansas Avenue to Atlantic City Expressway.

[(g)] (h) Harrah's:

1. (No change.)

2. Departure: From the casino via Brigantine Boulevard to Huron Avenue to Absecon Boulevard.

(i) Trump Castle:

1. Arrival: via Absecon Boulevard to Huron Avenue to Casino.

2. Departure: from the Casino via Huron Avenue to Absecon Boulevard.

19:75-3.1 Conditions requiring intercept

[Those b] Buses traveling to activity centers [whose bus volume at any time shall exceed their on-site bus capacity] shall be subject to intercept.

19:75-5.4 Dumping of waste

Buses shall dump waste only at locations and into receptacles approved by ACTA.

19:75-6.1 Approved parking lots; exceptions

(a) The following bus parking lots have been and are hereby approved for the parking of buses:

1. Authority lots located at:

i.-ii. (No change.)

iii. Huron Avenue in the City of Atlantic City.

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

(d) A list of Authority operated and approved bus parking lots is available from the Authority upon request.

19:75-6.2 Bus parking lot approvals and renewals

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

(g) All approvals granted by the Authority pursuant to this subchapter shall be for a period of one year. [unless:] Any renewal or extension of any approval shall only be granted pursuant to the provisions of (h) below. Such approval may be earlier terminated by the Authority in the event that:

1. The use of the property as a bus parking lot is terminated within such one year period; or

2. The approval by the Authority is withdrawn pursuant to (f) above [of this subchapter].

(h) Renewals: 120 days prior to the expiration of the approval period provided for herein, the owner of a bus parking lot shall file with the Authority a written request for a one year renewal of the approval. Such written request shall contain certification by the owner that the bus parking lot complies with all the terms and conditions set forth in this subchapter governing the granting of bus parking lot approval, including any amendments to this subchapter taking effect prior to the expiration of the term of the original approval. The request for renewal shall be processed by the Authority pursuant to the provision of 19:75-9.4. Failure to apply for renewal of a bus parking lot approval within the time provided for herein shall result in the expiration of such approval at the end of one year from the date of issuance. The owner whose bus parking lot approval has expired may file a new application for approval pursuant to the provisions of (a) through (g) above at any time.

(i) The Authority is specifically empowered to consider the application of any amendment to this subchapter which will take effect prior to the expiration date of a bus parking lot approval in determining to grant or deny renewal thereof.

19:75-7.2 Modes of payment

(a) Bus operators or owners required to pay the fee provided for in this subchapter shall do so in accordance with the following:

1. (No change.)
2. Payment of the fee [may] shall be made [prior to the discharge of any passengers] at the following Authority locations:
  - i. Albany Avenue (Two Guys) bus parking and intercept lot;
  - ii. (No change.)
  - iii. Huron Avenue bus parking and intercept lot and such other locations as the Authority shall designate.

19:75-7.4 Activity center [manifest] and licensed parking lot manifests

The Authority will require each activity center to maintain a daily bus activity manifest, [per Diagram "C"] such manifest to be completed and made available to the Authority on a weekly basis.

19:75-9.2 Application for minor variance; determination by Executive Director; appeal to board

- (a) (No change.)
- (b) All applications must be filed in duplicate with the Executive Director of the Authority and an additional copy with the police department of the municipality or municipalities effected by the variance, no later than [five] three business days prior to the date for which the variance is requested. Proof of service of the application on the police department or police departments affected must be filed with the Authority by way of affidavit or certified mail return receipt prior to a determination on the application.

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

19:75-9.4 Hearing procedure for major variances, bus parking lot approvals, additional activity center on-site approvals, and other hearings

(a) All applications for major variances (N.J.A.C. 19:75-9.1(b) and 9.3), bus parking lot approvals (N.J.A.C. 19:75-6.2), and additional site approvals (N.J.A.C. 19:75-4.3) shall be reviewed by the [appropriate] Development Division of the Authority.

1. Within 30 days following receipt of application, the Authority through the [appropriate] Development Division, shall notify the applicant in writing by certified mail regarding its completeness for filing. The Authority may declare the application to be complete for filing or shall notify the applicant of specific deficiencies. The Authority, within 15 days following the receipt of additional information to correct the deficiencies shall notify the applicant of the completeness for filing of the amended applications, or shall specify the unaddressed deficiencies. The application shall not be considered to be filed until it has been declared complete for filing by the Authority.

2. [The appropriate division of the Authority shall recommend approval or disapproval of all completed applications, which recommendation shall be provided to the applicant prior to Authority determination.] **The Development Division of the Authority shall recommend approval or disapproval of all completed applications to the Executive Director who shall grant or deny the application within 15 days of the recommendation of the Development Division. The determination to the Executive Director, setting forth the reasons for the grant or denial of the application, shall be forthwith forwarded to the applicant by certified mail, return receipt requested.**

3. [Except in the case of major variances under N.J.A.C. 19:75-9.3 the Authority shall approve or disapprove all completed applications by a vote of the majority of the Board, pursuant to Authority bylaws, at the next Board meeting following the release of the recommendation by the appropriate division. In the case of major variances approval shall require an affirmative vote of five members of the Board of the Authority. The applicant shall be notified in writing of the date of such meeting, and may appear in person through legal counsel and present testimony or other evidence on behalf of the application. The Chairman or the Vice Chairman in his absence, shall preside at all proceedings for application approval or disapproval. The New Jersey Rules of Evidence shall not apply in such proceedings, but the presiding official shall limit all evidence presented to that which is material and relevant to the application. At the close of the presentation of all evidence, the Board of the Authority shall vote on the application. Any applicant who fails to obtain Authority approval may resubmit a revised application at any time.] **In the event of an adverse determination by the Executive Director, the applicant may request a hearing within 10 days of receipt of determination which request shall be in writing to the Executive Director sent registered mail, return receipt requested. Such hearing shall be held within 45 days of the receipt of the request therefor and notice of the hearing shall be mailed to the applicant.**

4. The hearing shall be conducted by a hearing officer appointed by Chairperson of the Board of the Authority. The applicant may appear in person, with or without counsel, and may present testimony or other evidence in support of the application. The Authority shall appear through the Executive Director or his designee. The New Jersey Rules of Evidence shall not apply at such hearing, but the hearing officer shall limit all evidence to that which is material and relevant to the application. The hearing shall be recorded and the tapes of each hearing shall be retained by the Authority for a period of one year following the hearing.

5. After the conclusion of any hearing held pursuant to this subchapter, the hearing officer shall render a written decision setting forth in detail all findings of fact and conclusions of law as shall be necessary to support the decision. The hearing officer's decision shall be filed with the applicant and the Secretary of the Board of the Authority within 30 days of the conclusion of the hearing. The applicant may file a written comment to the hearing officer's decision within 10 days of the date of such decision.

6. The Board of the Authority shall affirm, reverse or modify the hearing officer's decision no later than the second regularly scheduled Board meeting following the date of the hearing officer's decision. The applicant shall be notified in writing of the date, time and place of the Board meeting at which the Board shall act upon the decision of the hearing officer. Except in the case of major variances under N.J.A.C. 19:75-9.3 the Authority shall affirm, reverse or modify the decision of the hearing officer by a vote of the majority of the Board pursuant to the By-Laws of the Authority. In the case of major variances approval shall require an affirmative vote of five members of the Board of the Authority.

7. Any applicant who fails to obtain Authority approval may resubmit a revised application at any time.

(b) (No change.)

(c) All police departments affected by the application determined pursuant to the procedure set forth in this subchapter shall receive prior written notice of any [Board meeting] hearing at which such applications shall be heard. Representatives of such police departments may appear and give testimony pertinent to the applications. All police departments will be notified immediately in writing of the decision of the hearing officer and Board of the Authority.

AGENCY NOTE: Two maps identifying the proposed amendments for the new approved routes of travel accompany this proposal. The maps for the existing routes of travel are on file at:

Office of Administrative Law  
Rules and Publications  
9 Quakerbridge Plaza  
Trenton, N.J. 08625; and  
Atlantic County Transportation Authority  
19-21 South New York Avenue  
Atlantic City, New Jersey 08401

## HEALTH

### (a)

#### **PUBLIC HEALTH COUNCIL LOCAL HEALTH DEVELOPMENT SERVICES Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey**

#### **Proposed New Rule: N.J.A.C. 8:52 Proposed Repeal: N.J.A.C. 8:51-1 through 8:51-6**

Authorized By: Evelyn Geddes, Chairperson, Public Health Council.

Authority: N.J.S.A. 26:A-15

Proposal Number: PRN 1986-328.

Submit comments by September 17, 1986 to:

Dennis P. McDonough, Chief  
Health Aid Services Program  
CN 364  
Trenton, NJ 08625

The agency proposal follows:

#### **Summary**

Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey, at N.J.A.C. 8:51-1

through 6, have been prescribed since 1961 in accordance with N.J.S.A. 26:1A-15 and later N.J.S.A. 26:3A2-1. The standards mandate those public health services that must be provided by all local boards of health in order to prevent and control communicable diseases; improve health and welfare of infants, children and pregnant women; identify chronic conditions such as hypertension, diabetes and certain cancers where early identification and adherence to medical regimens can improve health outcome by minimizing and/or preventing related medical complications; and educating the public to identify and alter those aspects of their personal lifestyles and/or behaviors such as smoking, alcohol or drug abuse, poor dietary habits etc. which dramatically increase the risk of serious injury, illness and death. (N.J.A.C. 8:51-7, Childhood Lead Poisoning, is not part of this proposal.)

The program activities listed in Minimum Standards represent those which are most commonly conducted by local health agencies and/or those which have been identified by the Department of Health as important in New Jersey's efforts towards meeting the 1990 Objectives for the Nation, in "Promoting Health/Preventing Disease: 1990 Objectives for the Nation" (U.S. Department of Health and Human Services publication). The listing does not attempt to be a comprehensive list of all public health activities. Activities not listed in the proposal may well be needed and appropriate based on demographics and other factors affecting health needs in a local jurisdiction.

The committee of state and local health officials revising these standards gave careful consideration to reviewing the activities of local health agencies and identifying gaps in services. As a result, two new activities, Improved Pregnancy Outcome, and Health Services for the Older Adult, have been added to the list of Core activities. These activities are intended to provide services aimed toward improving the infant mortality rate and the health status of older adults. In addition, occupational health will be phased in as a mandated activity effective January 1, 1989.

These revised standards represent a compromise between what the Committee would ideally like to see provided by local health agencies and what is reasonable in view of the limited resources available to support local health programs. It is hoped that the waiver process, which will utilize information contained in the Community Health Profiles, will be used to direct scarce health resources to the areas of greatest public health need. Local Health Service Plans will promote improved health planning at the local and state levels by looking at Minimum Standards, the Community Health Profile, local public health needs, and resources available to address those needs, including other health providers within the local health jurisdiction.

In conclusion, the proposed rules are designed not only to require local health agencies to provide certain basic public health services, but to promote improved health planning, coordination among local health agencies and other health care providers, and the provision of cost effective, quality health services to the citizens of New Jersey.

#### **Social Impact**

The content of the proposed revision of Minimum Standards reflects the recommendations of the State Commissioner of Health and the Public Health Council for those public health activities considered crucial to minimize and prevent the spread of communicable diseases and to address the leading causes of illness and death in the State of New Jersey. As the front line of public health efforts, it is imperative that local health department conduct as comprehensive a program as possible to improve the health of New Jersey's citizens. Failure to adopt the proposed revisions would mean that several major public health concerns, namely improving the infant mortality rate, providing health services to the elderly, and involving local health departments in protecting the health of workers, will continue to be not uniformly addressed by local health departments. Adoption of the proposed revisions will serve to provide additional screening and/or education in the fight against chronic illnesses such as diabetes, cardiovascular disease, and cancer, as well as alcohol and drug abuse.

The adoption of the revised Minimum Standards represents a continuing step forward in the Department of Health's efforts to maintain, improve and promote the health of New Jersey's citizens.

#### **Economic Impact**

Adoption of the proposed revision of Minimum Standards will require many local health departments to initiate or expand services for the newly mandated activities, Improved Pregnancy Outcome and Health Services for Older Adults. These activities are directed at reducing the infant mortality rate and preventing unnecessary hospitalizations due to uncontrolled conditions in older adults such as diabetes and hypertension. The Department of Health has requested an increase in Public Health Priority

Funding to local health departments to provide assistance in funding these new activities. The standards also encourage interagency cooperation between local health departments and other health care providers to promote effective resource allocation of limited health dollars. In recognition of the limited resources available to support public health services and in order not to place an unreasonable burden on local resources, a third activity, Occupational Health, will not be mandated until 1989. Nevertheless, additional local resources may be necessary to maintain existing programs and comply with the newly mandated activities. However, the cost of failing to provide these additional preventive health services in terms of preventable hospitalizations, treatment, illness and premature death would be considerably greater.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:51-1 through 8:51-6.

Full text of the proposed new rule follows.

### **CHAPTER 52 RECOGNIZED PUBLIC HEALTH ACTIVITIES AND MINIMUM STANDARDS OF PERFORMANCE FOR LOCAL BOARDS OF HEALTH IN NEW JERSEY**

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

##### **8:52-1.1 Purpose**

The purpose of this chapter is to establish minimum standards of performance for recognized public health activities and to designate those public health activities to be provided by all local boards of health in order to protect and improve the health of New Jersey residents.

##### **8:52-1.2 Scope**

Each local board of health is required to establish and maintain a program to meet the minimum standards of performance for each activity designated as core as defined in this chapter. No such minimum standard shall be construed as authorizing a lesser standard than that prescribed by statute or regulation or as empowering or requiring a local health agency to act in matters solely under the jurisdiction of a State, county or municipal agency.

##### **8:52-1.3 Compliance**

A local board of health that is determined by the Department to be deficient in meeting "Minimum Standards of Performance . . ." for mandated public health activities shall submit a plan of correction to the Department as directed. Failure to implement the provisions of the approved plan of correction shall result in action by the Department of Health in accordance with N.J.S.A. 26:3A2-11.

##### **8:52-1.4 Definitions**

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

"Community Health Profile" means health planning document which examines the health status as well as the social, economic and demographic risk factors of the community to determine public health problems and needs within a local health jurisdiction.

"Department of Health" means the New Jersey Department of Health.

"Full-time health officer" means a holder of a license as a health officer issued by the State Department of Health who is employed by a local board of health to function during all the working hours of the regularly scheduled work week of the governmental unit to which the local health agency is attached and not regularly employed during the working hours of that scheduled work week in other activities for which he receives remuneration.

"Local board of health", as defined in N.J.S.A. 26:1A-1 and N.J.S.A. 26:3-1, shall be the enforcement, policy and rule making body with respect to Local Health Services provided by local health agencies under N.J.S.A. 26:3A2-1 et seq.

"Local health agency" means a municipal, county, regional or other governmental agency conducting a public health program pursuant to law.

"Local Health Service Plan" means a multi year public plan prepared by a local health agency which identifies specific program goals and objectives to address the public health problems and needs identified in the community health profile and the activities mandated by N.J.A.C. 8:52.

"Recognized public health activities" are those activities which either have been provided by local boards of health or which are reasonable activities to be provided by local boards of health to meet the public health needs of the local health jurisdiction. Recognized public health activities are classified as either Core or Elective as defined in these rules.

"Core activities" means those recognized public health activities which are mandatory for local boards of health in all municipalities. The activities designated as Core represent those which are considered necessary for the provision of basic public health services.

"Elective activities" means those recognized public health activities which the local board of health may choose to provide based on special health needs identified within the jurisdiction of the local health agency and available resources.

#### 8:52-1.5 Contractual services

A core or elective recognized public health activity meeting the standards prescribed in N.J.A.C. 8:52 may be planned and offered directly by the local board of health or by a person or agency under contract to the board, provided that the contract specifies that services provided shall be in accordance with N.J.A.C. 8:52 and shall not violate State statute or regulation.

#### 8:52-1.6 Modification or waiver of program standard

(a) A local health agency may apply in writing to the Department of Health, Health Aid Services Program to obtain a modification or waiver of a program standard when:

1. The Community Health Profile indicates that the local health jurisdiction does not contain a high risk population sufficient to warrant the provision of a particular program services; or

2. The local health agency can demonstrate that the public health needs with respect to a given activity are being adequately met by other health care providers serving the local health jurisdiction; or

3. The local health agency can demonstrate to the satisfaction of the Department of Health that an alternative method exists to providing services in a manner which meets the intent of N.J.A.C. 8:52 and is appropriate to the public health needs of the local health jurisdiction; or

4. The local health agency can demonstrate that a significant unmet health need exists within the local health jurisdiction and resources are not available to adequately address all mandated public health needs.

(b) The Department of Health may allow a local health agency to provide certain mandated activities at a lesser level of service than is required by these standards in order to focus additional resources on critical health issues.

(c) Authorization to provide mandated activities at a lesser level of service shall be granted for a period of one year and shall be thoroughly reevaluated if documented requests are received for an extension of the authorization.

(d) The decision of the Department of Health regarding the request for a modification or waiver of standard shall be rendered in writing within 45 days of receipt and shall outline the conditions upon which the request is approved or denied.

#### 8:52-1.7 Environmental Health Plan

The County Health Department and/or other Certified Health Agency listed in the Environmental Health Plan shall retain the responsibility to provide the following public health activities under direction of the Department of Environmental Protection: air pollution, water pollution, noise pollution, and solid waste. The Standards for these activities will be promulgated by the Department of Environmental Protection as prescribed by the County Environmental Health Act (N.J.S.A. 26:3A2-21) and will no longer appear in N.J.A.C. 8:52.

#### 8:52-1.8 Personnel

(a) A Health Educator shall have completed the following:

1. A degree of Master of Public Health in health education or Master of Arts or Master of Science in health education from a program accredited by the Council on Education for Public Health; or

2. A Master's degree in a related field which includes or is supplemented by the successful completion of course work in four of the six following areas: health education theory, education program planning and evaluation, educational processes, social and behavioral sciences, research methodology, and public health administration; or

3. A Bachelor's degree which includes or is supplemented by the successful completion of course work in four of the six following areas: health education theory, education program planning and evaluation, educational processes, social and behavioral sciences, research methodology, and public health administration and completed three years of local health department experience in health education under the guidance of a qualified Master's person as specified in (a) 1 or 2 above; or

4. A Bachelor's degree who receives consultation and guidance from a qualified Master's person as specified in (a) 1 or 2 above.

(b) A public health nurse director shall be a registered professional nurse currently licensed in New Jersey who has completed a Master's Degree program accredited by the National League for Nursing with a nursing major in supervision, teaching, consultation or administration and advanced study in a clinical specialty; or has completed a Master's program in public health in an institution accredited by the American Public Health Association, and five years of experience in public health nursing, one year of which shall have been a supervisory experience.

(c) A public health nurse supervisor shall be a registered professional nurse currently licensed in New Jersey who has completed a baccalaureate degree program approved by the National League for Nursing for public health nursing preparation and three years of experience in public health nursing under qualified nursing supervision.

## SUBCHAPTER 2. ADMINISTRATION: CORE ACTIVITIES

### 8:52-2.1 Administrative services

(a) Administrative mechanisms shall be established to manage the activities of the local health agency.

(b) The general structure and organization of the board of health or authority shall be in accordance with the following:

1. The local health department shall have a board of health or an authority as prescribed in N.J.S.A. Title 26:3-1 related to the chosen organizational structure of the local health department and appropriate to the existing form of local government; and

2. Shall have legal responsibility for the local health department, shall be the policy making body for the agency, shall assure that efficient and effective administration of the agency is provided; and

3. Shall hold meetings as prescribed in N.J.S.A. Title 26:3-12 and provide documentation of such meeting through minutes; and

4. Shall notify the commissioner of any changes in health officer coverage, or of public health activities 30 days prior to the change.

(c) The health officer shall function as the chief administrative officer to the board or authority, and shall be accountable to that board or authority.

(d) The health officer, as authorized by the board of health or authority, shall be the responsible agent for all public health services and activities of the local health agency and shall:

1. Direct and supervise all employees of the local health department inclusive of those employees providing contractual services;

2. Plan, manage and implement the programmatic components of the local health agency and prepare the budget;

3. Develop and maintain a system of evaluation for all public health services and activities of the local health department;

4. Maintain administrative relationships and communication with support services and community resources such as hospitals, emergency medical services providers, government agencies, voluntary organizations and other health care providers to promote inter-agency cooperation and effective allocation of health resources;

5. Enforce all public health laws, regulations and ordinances and ensure appropriate disposition of all enforcement action;

6. Provide for open lines of communication within the organization;

7. Develop a referral directory and implement a referral log or file for health services provided by other agencies to community residents;

8. Oversee the completion of the Community Health Profile and the implementation of the Local Health Service Plan as requested by the Department of Health;

9. Determine and define the health needs and priorities of the community based upon analyses and interpretation of health statistics and other pertinent information; and

10. Maintain proper records in accordance with the local health agency records retention schedule as promulgated by the New Jersey State Department of Education, Bureau of Archives and History, Records Committee. (See N.J.A.C. 15:3-3.8.)

(e) Public health services and activities of the local health department shall include, but not be limited to, programs in the following functional areas:

1. Administrative Services;

2. Environmental Health;

3. Communicable Disease;

4. Maternal and Child Health; and

5. Adult Health Services.

(f) All Public Health Services and activities of the Local Health Agency shall be carried out in compliance with the following:

1. Public Health services and activities of the local health department shall be provided on an ongoing scheduled basis to meet the needs of residents within the jurisdiction of the local health department.

2. Public health services and activities of the local health department shall comply with all applicable state and local laws and regulations.

3. The local health department shall be so organized that clear lines of responsibility, authority and accountability are present and functioning to assure an integrated continuum of public health services and activities.

4. All professional personnel of the local health department shall be licensed, certified or authorized as required to provide recognized public health services and activities.

5. A written report of the entire public health program approved by the board or authority of the local health department shall be submitted to the Commissioner annually according to format established by the Department of Health.

6. The local health department shall have a written contractual agreement for services and activities listed in these standards which are not provided directly by the local health department. This contractual service agreement shall be entered into only with a licensed, certified or otherwise approved facility, individual or service organization.

(g) A policy and procedure manual shall be developed, and approved by the board or authority, as a guide for the organization and operation of the local health agency and shall be accessible to all employees of the Agency.

(h) Individual medical and/or health records in the possession of local health department shall be kept in confidence and not be revealed or disclosed in any manner except to the individual or his authorized representative, the Department of Health, or as otherwise authorized by law.

(i) A coordinated program shall be provided for staff education and development which should include attendance at seminars, workshops, conferences, inservice programs, and/or formal courses to improve employees' skills and knowledge in accordance with their professional needs.

(j) Laboratory services shall be provided by facilities licensed under P.L. 1975, Clinical Laboratory Improvement Act (N.J.A.C. 8:45) as needed to comply with individual activity standards.

(k) A coordinated vital records and statistics program shall be conducted as required by law.

(l) The following support services shall be provided:

1. Physical facilities in compliance with applicable State and local regulations pertaining to:

- i. Building;
- ii. Zoning;
- iii. Fire; and
- iv. Safety;

2. Space adequate for offices and clinics to operate efficiently.

3. Office equipment that enables personnel to function competently and efficiently.

4. Transportation for field personnel as needed.

#### 8:52-2.2 Health promotion

(a) A structured program shall be provided by the Health Educator, in accordance with community health education needs, which shall include health components for Alcohol Abuse Control, Drug Abuse Control, Smoking Prevention and Cessation, Nutrition, Accident Prevention, and Physical Fitness and Exercise and shall include the following:

1. An assessment of health education needs and identification of target populations based on information from the New Jersey Department of Health Community Health Profile and other relevant health related data;

2. Written health education program plans with measurable objectives for the six components in (a) above, based on the Health Promotion Guidelines, and other identified health education needs.

3. Identification and involvement of local leadership in the planning, implementation, and maintenance of needed health education services and programs to include collaboration with other agencies serving the community where such opportunities exist, and consultation with content specialists in the six required components in (a) above; and other areas as needed.

4. Application of appropriate health education interventions to provide for the effective implementation of health education programs (i.e., community development, skill development, simulation, peer group discussion, behavior modification, lecture, media awareness, programmed learning, individual instruction, etc.);

5. Integration of a health education component into health department programs and services, covering the six required health promotion topics in (a) above;

6. Consultation and training in the application of health education techniques for the professional staff of the health department; and,

7. Evaluation and report of the degree of success in achieving predetermined health education objectives.

8. The health educator shall serve as a community health information resource.

#### 8:52-2.3 Public health nursing services

(a) Provision of public health nursing services shall include the following:

1. The services of a public health nurse director or supervisor to assess, plan, implement and evaluate public health nursing services in accordance with community health needs;

2. Up-to-date written objectives, policies and procedures developed in cooperation with the health officer, for each activity in which there is nursing participation which relate to the overall goals of the local health agency;

3. The maintenance and use of individual, family and other service records according to current professional standards;

4. Orientation inservice and continuing education programs for nursing staff;

5. Quarterly and annual reports of services rendered which include pertinent statistics and descriptive narrative as related to objectives;

6. Integration, in conjunction with the health educator, of the relevant components of the health promotion program into all activities involving public health nursing services.

(b) All recognized public health nursing activities must meet the minimum standards of performance outlined in N.J.A.C. 8:52 for those activities.

### SUBCHAPTER 3. ENVIRONMENTAL HEALTH—CORE ACTIVITIES

#### 8:52-3.1 Recreational bathing

(a) The local board of health shall:

1. Conduct a sanitation and safety program at public bathing places (that is, swimming pools, lakes, rivers and ocean bathing places), based upon the current "Recreational Bathing" regulations contained in the State Sanitary Code (see N.J.A.C. 8:26);

2. Inspect, using an inspection form designed by the Department of Health, each public bathing place at least twice during the operating season, make follow-up inspections when deficiencies are found, and take necessary enforcement actions;

3. Assure sanitary surveys of natural bathing areas as indicated by bacterial counts and/or epidemiological evidence;

4. Inspect public spas and/or whirlpools at least yearly in accordance with the provisions of the Recreational Bathing regulations (N.J.A.C. 8:26);

5. Conduct investigation within 24 hours of all deaths and serious injuries and report such occurrences as outlined in the Recreational Bathing Regulations (N.J.A.C. 8:26) on a form developed by the Department of Health.

#### 8:52-3.2 Campgrounds

(a) The local board of health shall:

1. Conduct a sanitation and safety program for campgrounds based upon State law and Chapter II of the State Sanitary Code (N.J.A.C. 8:22-1).

2. Inspect each campground at least annually to insure compliance; conduct follow-up inspections and initiate enforcement action as necessary.

#### 8:52-3.3 Youth camps

(a) The local board of health shall conduct a youth camp sanitation and safety program (N.J.A.C. 8:25) and shall:

1. Inspect each youth camp once prior to opening;

2. Perform necessary follow-up inspections at the request of Environmental Health Services; and,

3. Submit copies of each inspection to Environmental Health Services, Department of Health.

#### 8:52-3.4 Food surveillance

(a) The local board of health shall maintain surveillance of retail food establishments, food and beverage vending machines and shall:

1. Conduct a retail food establishment program based upon State laws and regulations, including Chapter 12 of the State Sanitary Code and local ordinances, if applicable (N.J.A.C. 8:24);

2. Inspect retail food establishments using forms approved by the Department of Health at least once a year, inspect vending machines dispensing potentially hazardous foods at least once a year and those dispensing non-potentially hazardous foods on a complaint basis or as required by local ordinance;

3. Initiate appropriate enforcement action to secure compliance with State law and local ordinance; collect and prepare evidence for legal action; follow a protocol for taking appropriate enforcement actions to secure compliance (such as abatement letters, administrative hearing, summons, court actions and condemnations);

4. Maintain food establishment and vending machines files at the local health agency office containing inspection reports, food sample reports, and reports of enforcement actions taken and other pertinent data associated with the program;

5. Provide for, or conduct training courses for food service supervisors using curricula approved by the Department of Health such as the Food Manager's Certification Program;

6. Collect samples and provide for laboratory analyses of any food suspected of being associated with a foodborne illness or, as necessary, any food suspected of being adulterated, misbranded or unwholesome;

7. Embargo all food known or suspected of being adulterated, misbranded, unwholesome or associated with foodborne illness within the meaning of local ordinance or State law.

8. Assist the Department of Health in instituting recalls of foods, contaminated, adulterated or misbranded, and assist in conducting recall effectiveness checks; and,

9. Condemn and supervise the destruction or otherwise dispose of food which is adulterated, misbranded, unwholesome or associated with foodborne illness within the provisions of local ordinance or State law.

#### 8:52-3.5 Occupational health (Operative January 1, 1989)

(a) The local board of health shall conduct an occupational health program operative January 1, 1989, and shall:

1. Maintain a comprehensive profile of all employers in each designated four digit Standard Industrial Classification (SIC) operating in local jurisdiction. This profile should utilize Department of Labor and Right to Know data filed (see N.J.A.C. 8:59) and include for each employer:

Name of company, SIC Code,  
Address of company,  
Number of employees,  
Major product or service,  
Right to Know Data—DEP/DOH,  
History of emergency calls,  
History of complaints;

2. Maintain a list of all information and/or agency occupational health resources and make appropriate referrals in response to requests for information or complaints;

3. Train or obtain at least one staff person in Occupational Health and Industrial Hygiene.

4. Conduct initial and follow-up interviews, utilizing standardized procedures and forms developed by the Department of Health, upon receipt of reports of occupational disease cases (N.J.A.C. 8:57-1.13); and

5. Conduct preliminary surveys in response to reported occupational diseases or referrals from the Department of Health, using standardized forms provided by the Department of Health to record observations and collect information. (These standardized forms shall be forwarded to the Department of Health Occupational Health Program for follow-up).

(b) Although this core activity does not become operative until January 1, 1989, the local boards of health shall consider it an elective activity, upon the promulgation of these rules.

#### 8:52-3.6 Public health nuisances

(a) The local board of health shall conduct a public health nuisance program to include the following:

1. Investigations of public health nuisances including but not limited to noxious weeds, solid waste and insects and rodents, which shall be conducted in accordance with applicable State laws and local ordinances, which are at least equivalent to the "Weed Control Code of New Jersey", the "Solid Waste Code of New Jersey", and the "Public Health Nuisance Code of New Jersey" (which are model codes available from the Department of Health);

2. Conduct complaint investigations and surveys to identify nuisances, and through appropriate follow-up, ensure abatement in accordance with State law and local ordinances;

3. Maintain and make available educational information on the prevention and abatement of public health nuisances; and,

4. Maintain current files on all public health nuisances which shall include the investigation, follow-up, abatement and enforcement action taken in each instance.

### SUBCHAPTER 4. COMMUNICABLE DISEASES: CORE ACTIVITIES

#### 8:52-4.1 Reportable diseases

(a) The local board of health shall conduct a program for the surveillance, investigation and control of reportable diseases and shall:

1. Document episodes of reportable diseases including occupational diseases and/or incidents and transmit the information to the State and other agencies as required by Chapter Two, Reportable Diseases (N.J.A.C. 8:57-1) of the State Sanitary Code and N.J.S.A. 26:4;

2. Conduct prompt investigations of reportable illnesses as well as unusual manifestations of disease not listed as reportable in Chapter 2 of the State Sanitary Code (N.J.A.C. 8:57-1) and institute appropriate control measures, and promptly report all findings to the Department of Health.

3. Disseminate and exchange information relative to outbreaks of disease with physicians, hospitals, boards of education, and other responsible health agencies as appropriate; and,

4. Analyze reported data to provide a basis upon which to plan and evaluate an effective program for the prevention and control of infectious diseases.

#### 8:52-4.2 Immunization

(a) The local board of health shall promote and provide immunizations for protection against childhood vaccine-preventable diseases and shall:

1. Promote and provide primary and booster immunizations to preschool and school age children for protection against diseases in accordance with current recommendations of the Department of Health;

2. Assist all schools, with an emphasis on preschool facilities, in implementing and enforcing the immunization requirements contained in Chapter 14, of the State Sanitary code (N.J.A.C. 8:57-4) by providing immunization services and conducting periodic surveys and representative record audits every three years;

3. Secure prompt reporting of vaccine-preventable disease as required by Chapter Two of the State Sanitary Code (N.J.A.C. 8:57-1.2); and,

4. Maintain important information forms (consent forms) for individuals receiving State-issued vaccines according to State directives.

#### 8:52-4.3 Rabies and zoonosis control

(a) The local board of health shall conduct a program for the control of rabies and other zoonoses and shall:

1. Require rabies vaccination of dogs to comply with current rabies statutory requirements and encourage the vaccination of cats, and provide for rabies vaccination clinics at least once a year;

2. Ensure that a report of an annual canvass of all dogs owned, kept, or harbored within the limits of the respective municipality is received by the local board of health by September 1st of each year;

3. Inspect, kennels, pets shops, shelters and pounds, to ensure compliance with the State laws and regulations prescribed by the Department of Health, and ensure that licenses issued to these facilities are in compliance with existing laws;

4. Report and investigate animal bites, ensure that persons bitten are advised to see a physician, quarantine biting animals as indicated and report immediately to the Department of Health clinically suspicious cases of rabies in animals as determined by a veterinarian, ensure availability of impounding facility where biting animals may be appropriately quarantined and observed for rabies;

5. Ensure that heads of animals that have died within 10 days after biting a person are delivered immediately to the Department of Health Laboratory for examination (Unwanted dogs or cats or any other animal which has bitten a human may be sacrificed immediately and the head promptly delivered to the New Jersey Department of Health Laboratory for examination);

6. Provide an organized program for control of stray dogs and other animals;

7. Inspect annually, or more often if necessary, records of dealers in psittacine birds as required by Chapter Three of the State Sanitary Code (N.J.A.C. 8:23); and,

8. Initiate appropriate enforcement actions to secure compliance with the State rabies statutes, collect and prepare evidence for legal action.

#### 8:52-4.4 Tuberculosis control

(a) The local board of health shall control the spread of tuberculosis and shall:

1. Ensure that all of the tuberculosis control services or services elements listed in the "Guidelines for Ambulatory or Outpatient Tuberculosis Control" (available at the New Jersey Department of Health) are available and accessible to all persons living within the jurisdiction of the local agency;

2. Secure prompt reporting of tuberculosis and transmit reports as required by the State Sanitary Code (N.J.A.C. 8:57-1.2) and encourage the reporting of suspects;

3. Ensure effective treatment and continuing medical supervision of suspect and diagnosed cases of tuberculosis;

4. Ensure that contacts are identified and brought to examination, diagnostic conclusion, and treatment in accordance with the policy of the Department of Health;

5. Ensure the provision of preventive therapy in accordance with current recommendations of the Department of Health;

6. Ensure reporting of the current status of diagnosed cases of tuberculosis in accordance with the policy of the Department of Health using forms provided by the State;

7. Provide for the discharge from tuberculosis supervision of patients whose treatment has been completed in accordance with current recommendations by the Department of Health;

8. Provide for testing using currently approved intradermal tuberculin tests, of pupils, teachers, employees, and volunteers in the non-public schools, and for follow-up of those in both the public and non-public schools as recommended in the current edition of "School Tuberculin Testing in New Jersey", published by the Department of Health; and,

9. Analyze reported data to provide a basis upon which to plan and evaluate an effective program for the prevention and control of tuberculosis.

#### 8:52-4.5 Sexually transmitted diseases

(a) The local board of health shall control sexually transmitted diseases and shall:

1. Provide for medical services for all persons seeking medical care for Sexually Transmitted Disease (STD);

2. Secure prompt reporting of any case of STD and forward reports immediately to the Department of Health, Communicable Disease Field Program, as required by Chapter Two of the State Sanitary Code (N.J.A.C. 8:57-1.2);

3. Provide interview and investigation services to priority STD cases and report results of these services on appropriate forms provided by the Department of Health;

4. Provide counselling to all patients infected with STDs and treated and public health department STD clinics, to include, but not be limited to, disease prevention, sex partner referral, need for follow-up testing, and appropriate action to take when symptoms appear;

5. Provide public education services to the community or target population; and,

6. Analyze reported data and provide a basis upon which to plan and evaluate an effective program for the prevention and control of sexually transmitted diseases.

### SUBCHAPTER 5. MATERNAL AND CHILD HEALTH—CORE ACTIVITIES

#### 8:52-5.1 Infants and preschool children

(a) The local board of health shall provide health supervision for infants and preschool children and shall:

1. Provide child health conferences for comprehensive preventive health care of infants and preschool children, with particular emphasis on the medically indigent, based upon the current Department of Health publication, "Guidelines For the Child Health Conference";

2. Prepare a Child Health Service Report (MCH20) for each session, and submit promptly on at least a monthly basis to the Maternal and Child Health Program in the New Jersey Department of Health;

3. Maintain an informational and outreach service to encourage physicians, hospitals and social agencies to refer families to the child health conference, women, infants and children supplemental Food Program (WIC) and the public health nursing agency; and,

4. Provide for information and guidance on physical, emotional, nutritional, and cognitive development of infants and preschool children through child health conferences and home nursing visits.

#### 8:52-5.2 Childhood lead poisoning

(a) The local board of health shall provide for the prevention and control of lead poisoning in young children and shall:

1. Conduct a program, the major components of which shall include:

- i. Case identification,
- ii. Medical management,
- iii. Environmental surveillance, and

iv. education in conformance with N.J.S.A. 24:14A-1 et seq. and Chapter XIII of the State Sanitary Code (N.J.A.C. 8:51-7.7);

(Also, a current issue of "Preventing Lead Poisoning in Children, a statement by the Centers for Disease Control" and findings of the New Jersey Physician Task Force on Lead Poisoning shall be used as guidelines for program delivery as appropriate.)

2. Develop a program plan based on elements in 1. above and on the degree of risk in the community as identified through the "Community Health Profile" and "Community Hazard Score for Lead Poisoning in Children" issued by the Department of Health;

3. Conduct case finding efforts among children one through five years of age by annual blood testing in accordance with approved collection techniques in such settings as child health conferences, WIC clinics, day care centers, nursery schools and door-to-door in high risk neighborhoods, with testing priority given to children at highest risk including:

- i. Those one through three years of age;
- ii. Those residing in or frequenting housing units or other sites where lead-based paint may be present;
- iii. Those whose parents or other household members may be occupationally or otherwise exposed to lead sources;
- iv. Those at increased risk of exposure to lead sources for whatever reason;

v. Those with a history of pica or increased lead absorption; and

vi. Those who are siblings of a child with increased lead absorption;

4. Assure that a confirmed positive test result based on current risk classification standards is immediately referred to medical supervision and that a child so referred shall receive on-going, medical management as appropriate;

5. Conduct environmental surveillance among patient cases identified and

i. Provide staff capable of conducting environmental investigations;

ii. Assure that, simultaneous with referral for medical attention, an environmental investigation will be initiated to identify the probable source(s) of lead exposure and to ensure the expedient and safe removal of the lead hazard(s);

iii. Assure that along with the owner of the property wherein the child resides, the parent or guardian of the child shall be notified in writing and kept abreast as to the findings of the environmental investigation and subsequent surveillance;

iv. Ensure that during periods when actual renovation work is underway, the affected child or children are removed from the premises; and

6. Provide a program of education directed toward parents, the general public, physicians and other health personnel regarding lead intoxication, sources of lead in the environment and control measures and

i. Assure the provision of appropriate counseling and instruction to parents of lead intoxicated children and to parents of children at risk by trained professional personnel; and

ii. Assure the provision of adequate in-service training and continuing education of program personnel.

#### 8:52-5.3 Improved pregnancy outcome

(a) The local board of health shall reduce infant mortality by improving access to prenatal care and related services and shall:

1. Maintain an information and referral system for those requesting family planning, or prenatal and WIC services, to include:

- i. A file of all providers of such services in the jurisdiction; and
- ii. An active referral file;
2. Maintain a liaison with prenatal clinic services, family planning clinics, WIC school nurses, school health educators, and others;

3. Provide public health nursing services as requested by agencies for prenatal follow-up to high risk women who are determined to be medically indigent, to include, at a minimum:

- i. Pregnancy counseling,
- ii. Prenatal information,
- iii. Follow-up of all referred positive pregnancy tests to promote initiation of prenatal care in the first trimester as requested by agencies,
- iv. Nursing support and education through prenatal and postpartum home nursing visits as needed, and
- v. Referrals as appropriate to WIC or other nutrition services, social services, and family planning services;

4. Establish and maintain a community outreach and education program targeting high risk women including adolescents to encourage and facilitate early entrance into prenatal care; and,

5. Cooperate with the Department of Health, Newborn Biochemical Screening Program to locate and secure repeat specimens from infants when the sample cannot be obtained through the normal channels of a hospital and/or physician.

## SUBCHAPTER 6. ADULT HEALTH SERVICES: CORE ACTIVITIES

### 8:52-6.1 Cancer services

(a) The local board of health shall provide cancer prevention for populations at high risk according to criteria outlined in the Department of Health publication "Adult Health Services Guidelines" and as identified through the Community Health Profile and shall:

1. Provide screening personnel to meet the criteria for staffing as specified in the "Adult Health Services Guidelines";
2. Establish a coordinated plan for counseling, referral and follow-up of all persons with non-negative screening results;
3. Provide screening services yearly for three percent of women ages 15 to 34 and the three percent women of ages 35 to 64 who are at high risk for cervical cancer.
4. Provide education services yearly for five percent of women ages 15 to 34 and five percent of women 35 and older to receive instruction in these particular areas:
  - i. The risk factors for cervical cancer and breast cancer;
  - ii. The importance of the Pap Smear in the early detection of cervical cancer (in accordance with the American Cancer Society Guidelines on cervical cancer screening);
  - iii. The importance of comprehensive breast cancer screening which includes mammography at intervals specified by the American Cancer Society Guidelines and a physical breast examination by a health care professional;
  - iv. Breast self examination as one component in a total health care awareness program; and
  - v. Dietary and lifestyle modification to reduce the risks of breast and cervical cancer;
5. Provide yearly instruction to three percent of individuals over age 40 in these particular areas:
  - i. The risk factors for colon/rectal cancer;
  - ii. The importance of compliance with the guidelines on colon/rectal cancer prescribed in Department of Health Adult Health Services Guidelines; and
  - iii. Dietary and lifestyle modification to reduce the risk of colon/rectal cancer.
6. Provide annual reports to the State on the demographic characteristics of populations receiving screening and/or educational services and the results of these screening programs.
7. Serve as a community resource to disseminate information available from the State on types of screening services available.
8. Provide for cancer-related continuing education for nursing and other program personnel at least once every three years. Include current cancer-related information in the orientation of all newly-hired cancer program staff to be involved in Cancer Services.
9. Offer smoking prevention and cessation programs as defined in the "Adult Health Services Guidelines" (N.J.A.C. 8:52-6).

### 8:52-6.2 Diabetes services

- (a) The local board of health shall provide for diabetes education services per the Department of Health "Adult Health Services Guidelines" and shall:
1. Conduct public education related to diabetes and its risk factors such as age, obesity, and family history;
  2. Conduct diabetes risk assessment on all adult clients who utilize clinical or hypertension or cancer screening services, and counsel, refer, and follow-up clients where appropriate;
  3. Educate or appropriately refer known diabetics to available diabetes-related education and other community resources (such as ophthalmologist, podiatrist, etc.); and,
  4. Provide for diabetes-related continuing education for nursing and other program staff at least once every three years, and include current diabetes-related information in the orientation of all newly-hired staff to be involved in Diabetes Services.

### 8:52-6.3 Cardiovascular disease services

- (a) The local board of health shall provide cardiovascular disease control services according to the Department of Health "Adult Health Services Guidelines" and shall:
1. Provide hypertension screening services yearly to five percent of the high risk population;
  2. Provide cardiovascular risk factor assessment and counseling on all individuals screened for hypertension and include the following areas:
    - i. Family history of cardiovascular disease;
    - ii. Smoking;
    - iii. Excessive cholesterol intake;

- iv. Obesity;
- v. Diabetes; and
- vi. Exercise, and counsel, refer and follow-up clients where appropriate;

3. Provide cardiovascular health education programs for the general public;

4. Provide cardiovascular health education programs for hypertensive individuals;

5. Provide for cardiovascular-related continuing education for nursing and other program staff at least once every three years, and include current cardiovascular-related information in the orientation of all newly-hired staff to be involved in cardiovascular disease services.

### 8:52-6.4 Health services for older adults

(a) The local board of health shall provide for a health program at locations selected by the health department which identifies the health needs of adults age 65 and older, and shall:

1. Provide a health needs assessment yearly on three percent of the non-institutionalized elderly in accordance with "Guidelines for Health Services for Older Adults" (available at the New Jersey Department of Health);
2. Provide education on alcohol abuse and medication management;
3. Follow-up and make referrals as appropriate for abnormal screening results or for needs identified in the individual's history and/or intake;
4. Assure participation at service sites through advance notification (for example; publicity);
5. Provide for gerontology related continuing education for staff at least once every three years, and include current gerontology related information in the orientation program for all new staff providing these services; and
6. Provide immunizations (for example; influenza and pneumococcal vaccines) at the discretion of the local health agency in accordance with the Immunization Practices Advisory Committee of the U.S. Public Health Service.

## SUBCHAPTER 7. ELECTIVE ACTIVITIES

### 8:52-7.1 Provision of elective activities

(a) The Department of Health strongly recommends that the local boards of health meet the standards outlined in this subchapter for any elective activity undertaken.

(b) If all elements of an elective activity are not provided, the local board shall be able to demonstrate to the satisfaction of the Department of Health that the elements which are provided are in accordance with good public health practice and, if applicable, recognized medical procedures.

### 8:52-7.2 Emergency medical services

(a) The local board of health shall participate in the provision of emergency health services and shall:

1. Evaluate the existing emergency health care system with regard to communication services, staffing patterns, training of emergency personnel, record keeping, and equipment, including vehicles;
2. Encourage training of volunteer emergency workers and inspection of equipment in accordance with current state recommendations and guidelines;
3. Work with appropriate agencies, groups and individuals involved in the emergency health care system to improve problem areas identified by the system evaluation; and,
4. Work with volunteer services to inform the general public of emergency phone numbers and practical first aid tips for first responders to be practiced until more knowledgeable personnel arrive.

### 8:52-7.3 Institutional sanitation

(a) The local board of health shall conduct a general sanitation program in institutions and shall:

1. Assure the provision of a program of general sanitation in institutions, including but not limited to, hospitals, nursing homes, extended care facilities, boarding homes for sheltered care and schools, based upon State laws and regulations and local ordinance;
2. Assure that at least annually inspections are conducted either through the appropriate State agency(s), with local staff or through joint, State/local cooperation, and ensure that the necessary follow-up, surveillance and enforcement actions are taken; and
3. Provide periodic educational programs as appropriate to the staff of institutions concerning sanitation, safety and hygiene in the institutional environment.

### 8:52-7.4 Ambulatory health care for children

(a) The local board of health shall provide comprehensive ambulatory health care for medically indigent children and shall:

1. Provide for expanding the role of the child health conference beyond the care of healthy children of infant and preschool age in conformance with the current Department of Health "Standards for Licensure of Ambulatory Care Facilities" (N.J.A.C. 8:43A), to include the care of these children as well as older children, in illness and in health;

2. Provide, through agreement with a community health facility, that is, hospital or health center, for 24 hour emergency coverage for patients registered with the Ambulatory Health Care program for children.

3. Provide for examination, immunization, laboratory services, diagnosis, treatment and follow-up for all infants and children receiving these services;

4. Provide for consultation with and/or referral to a nutritionist, (WIC), health educator, social worker or other ancillary medical personnel, as indicated;

5. Provide for home visits by public health nurses and community health aides; and,

6. Establish a referral system from school health programs to the ambulatory health care facility to ensure proper medical follow-up for students without a known health provider, as needed.

#### 8:52-7.5 Dental health; children

(a) The local board of health prevent and correct dental disease in children and shall:

1. Promote a flouride mouthrinse program for elementary schools in cooperation with the Dental Program of the Department of Health;

2. Provide preventive dental health education including the health hazards of smoking and smokeless tobacco;

3. Provide dental health services for dentally indigent children within the limits of available resources which may include but is not limited to,

i. Examination;

ii. Oral and radiographic diagnosis;

iii. Dental prophylaxis, scaling, and flouride treatment;

iv. Periodontal evaluation; and

v. Complete restorations, endodontic therapy, extractions, and prosthetic appliances necessary for proper dental and speech functions; and

4. Promote flouridation of public water supply.

#### 8:52-7.6 Family planning

(a) The local board of health shall provide family planning information and services to those who voluntarily participate in a program and shall:

1. Provide family planning services based upon the current Department of Health publication, "New Jersey Standards for Family Planning Services, Personnel and Program Standards";

2. Provide family planning services in keeping with good medical practice and ethical concepts of the individual patient;

3. Provide education and information on family planning to those who desire it.

4. Provide in-service training programs for health personnel;

5. Provide services and/or referral for problems in childlessness and other health problems;

6. Provide each program participant receiving family planning services with adequate medical supervision by a licensed physician; and,

7. Establish and maintain an adolescent pregnancy prevention program to target this high risk population working through schools, prenatal clinics, WIC, and community agencies.

#### 8:52-7.7 Obstetrics

(a) The local board of health shall provide public health obstetrical services and shall:

1. Provide a prenatal-postpartum service with a formal affiliation to a designated maternity service hospital in cooperation, where possible, with a health center or other appropriate health care facility, based upon the current Department of Health publication, "Standards for Licensure of Ambulatory Care Facilities" and "MCH Program Prenatal Care Guidelines";

2. Provide all necessary support services to insure proper prenatal care and to insure safe and properly supervised delivery of patients;

3. Maintain informational and outreach services to encourage private physicians, hospitals and social agencies to refer appropriate cases to the prenatal clinic and WIC services;

4. Provide information and guidance on physical and emotional aspects of pregnancy through:

i. Home nursing visits;

ii. Nursing conferences;

iii. Expectant parent's classes; or

iv. Other educational and psychological counselling efforts as needed.

5. Investigate registered births not attended by a physician or a midwife, and provide public health nursing follow-up of these births; and,

6. Provide and maintain procedures for proper referral of high risk patients to appropriate levels of medical care as well as other agencies to meet their needs.

#### 8:52-7.8 School health

(a) The local board of health shall provide school health services to children and shall:

1. Ensure that the school provides the services of a school physician who is licensed by the Board of Medical Examiners;

2. Provide school health services within the financial resources of the local health agency, based upon written health policies which are reviewed annually and signed by the school physician, which will, at a minimum, include:

i. Maintenance of a cumulative health record for each pupil, utilizing form NJDE 915-2, including a comprehensive health appraisal completed prior to school entrance into any grade level;

ii. Performance of a medical examination including dental screening by the family physician or school physician at least every three years and record the findings on the pupil's cumulative health record (form NJD 915-2);

iii. Review by the public health nurse of all reports of examinations performed by private physicians and recording of the pertinent findings on the pupil's cumulative health record (form NJDE 915-2);

iv. Follow-up of deficiencies found in the health appraisal and screening procedures;

v. Formal vision screening performed at school entry, annually on all pupils K-12, and any new pupils as specified in School Health: A Guide for Health Professionals, 1981, American Academy of Pediatrics;

vi. Formal hearing screening performed at school entry, on all pupils in grades K, 1, 3, 6, 9, 12, and any new pupils as specified in School Health: A Guide for Health Professionals, 1981, American Academy of Pediatrics;

vii. Scoliosis screening performed annually on all pupils 10 through 18 years of age unless the parent or guardian requests in writing that the student be excused from examination;

viii. Tuberculin testing of pupils, employees, and volunteers and follow-up as recommended by the current edition of "School Tuberculin Testing in New Jersey" and/or directives published by the Department of Health. Parental consent is required for tuberculin testing; and

ix. Medical policies covering first aid treatment and emergency orders.

3. Ensure that the school provide adequate physical facilities, materials and equipment for the health program which shall include, but not be limited to,

i. Adequate heat, lighting, ventilation, and quiet for screenings and exams;

ii. Easy access to toilet and sink facilities;

iii. A telephone;

iv. Vision acuity screening materials (Snellen E., titmus, etc.);

v. Audiometer; and

vi. First aid supplies.

4. Provide sanitary inspection of the school's toilets, washrooms, cafeterias, food vending machines, water supply and sewage disposal systems in accordance with local and State regulations; and,

5. Promote a flouride mouthrinse program for elementary schools in cooperation with the Dental Program of the Department of Health.

#### 8:52-7.9 Alcoholism control

(a) The local board of health shall provide a planned alcoholism control program and shall:

1. Identify the alcoholism problem in the community, establish objectives and priorities for treatment activities, and evaluate efforts consistent with the "County Comprehensive Alcoholism Plan";

2. Involve local leadership in community action through:

i. Development of local interest and support to address the problems of alcoholism control;

ii. Preparation of a local plan for comprehensive alcoholism services, providing for the allocation of resources and personnel, the coordination of existing services, and the initiation of needed services;

iii. Maintenance of linkages with alcoholism service providers, especially The Division of Alcoholism, the local councils on alcoholism, mental health and health care professionals, and other local agencies.

3. Provide information and referral services for alcoholics and their families;

4. Promote and support prevention and treatment activities approved by the Department of Health; and,

5. Promote the efforts of service agencies to meet the standards for alcoholism programs established by the Joint Commission on Accreditation of Hospitals.

8:52-7.10 Ambulatory medical care

(a) The local board of health shall provide comprehensive health care services to the medically indigent population and shall:

1. Provide comprehensive health services which shall include but not be limited to: screening, examination, treatment, laboratory diagnosis, and health education for all eligible patients, in conformance with the current "Department of Health Standards for Licensure of Ambulatory Care Facilities";

2. Provide, through agreement with a hospital or another appropriate health provider, emergency coverage on a 24 hours basis for all patients registered with the program;

3. Provide for a medical referral system, public health nursing follow-up, and/or consultation services such as a nutritionist, patient health educator, social worker or other ancillary medical personnel, as needed; and,

4. Provide for outreach services through the agency resources as well as those available in the community.

8:52-7.11 Drug abuse control

(a) The local board of health shall provide a planned drug abuse control program and shall:

1. Identify the drug abuse problem in the community, establish objectives and priorities for the educational and treatment activities and evaluate efforts;

2. Involve local leadership in community action through:

i. Development of local interest and support to address the problems of drug abuse;

ii. Preparation of a local plan for comprehensive drug abuse services, providing for the allocation of resources and personnel, the coordination of existing services, and the initiation of needed services;

iii. Maintenance of linkages with drug abuse service providers, especially, the Division of Alcoholism, Division of Narcotic and Drug Abuse Control, local prevention and treatment agencies, and other health and mental health professionals;

3. Provide information and referral services for drug abusers and their families;

4. Promote and support prevention and treatment activities approved by the Department of Health; and,

5. Promote the efforts of local service agencies to meet minimum standards for drug abuse programs established by federal and State agencies.

8:52-7.12 Nutrition

(a) The local board of health shall administer a planned community nutrition program and shall:

1. Identify and evaluate needs with the health educator, and shall establish priorities for community nutrition programs;

2. Work cooperatively with existing community agencies such as WIC to coordinate, integrate, and develop nutritional services and educational programs;

3. Conduct or participate in in-service education and consultation with professional staff within the local board of health as well as other related community and voluntary organizations;

4. Provide diet information or counseling service to individuals with dietary problems; and

5. Work with the health educator and with illness prevention programs to promote desirable eating habits and to achieve good nutritional status.

8:52-7.13 Dental health; adults

(a) The local board of health shall prevent and correct dental disease in adults and shall:

1. Provide appropriate preventive dental health education including the health hazards of smoking and smokeless tobacco; and,

2. Provide services for dentally indigent adults within the limits of available resources, which may include but is not limited to:

i. Examination;

ii. Oral and radiographic diagnosis;

iii. Formation of treatment plan;

iv. Dental prophylaxis, scaling and fluoride treatment;

v. Periodontal evaluation; and,

vi. Complete restorations, endodontic therapy, extractions and prosthetic appliances necessary for proper dental and speech functions.

8:52-7.14 Vision, hearing and speech

(a) The local board of health shall provide for vision screening, and/or hearing and speech screening services and shall:

1. Provide eye health screening as follows:

i. Screening for early glaucoma in people 35 years of age and over;

ii. Vision acuity screening (other than school population) by a method approved by the Department of Health;

iii. Follow-up of all abnormal screening results with a written referral outlining any abnormal screening results to the family physician or other source of eye health care designated by the patient.

2. Provide hearing screening and/or services:

i. Audiometric screening;

ii. Follow up of all abnormal screening results, a written referral outlining any abnormal screening results to the family physician, or other source of health care designated by the patient;

iii. Provide public health nursing follow up as needed.

iv. Provide diagnostic testing by licensed personnel as required by law for suspected hearing defects in a hospital, health department, health center or other approved setting; and,

3. Provide speech services as follows:

i. Speech screening;

ii. Referral of individuals with positive findings to the family physician or other source of health care designated by the patient, or, provision of therapy for speech disorders;

iii. Public health nursing follow up as needed;

iv. Diagnostic testing by licensed personnel as required by law for suspected speech defects in a hospital, health department, health center or other approved setting.

8:52-7.15 Home health care

(a) The local board of health shall provide home health care with public health nursing services as needed for individuals with acute or chronic diseases and/or disability and shall:

1. Provide home health care services based upon the current Department of Health publication "Standards for Licensure of Home Health Agencies" (N.J.A.C. 8:42-1);

2. Provide public health nursing guidance, therapeutic, and rehabilitation services in the home to individuals referred by physicians, hospitals, case registers and various community agencies;

3. Provide homemaker-home health aide services as needed, either directly or through contract with a licensed home health agency or home care service agency; and

4. Make appropriate referrals to community agencies.

# RULE ADOPTIONS

## ADMINISTRATIVE LAW

### (a)

#### Uniform Administrative Procedure Rules Conduct of Lawyers, Judges and Agency Personnel Adopted Amendment: N.J.A.C. 1:1-3.8

Proposed: January 6, 1986 at 18 N.J.R. 2(a).

Adopted: July 22, 1986 by Ronald I. Parker, Acting Director,  
Office of Administrative Law.

Filed: July 23, 1986 as R.1986 d.340, **without change**.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: August 18, 1986.

Expiration Date: May 15, 1990.

#### Summary of Public Comments and Agency Responses:

The Office of Administrative Law received no public comments in response to its proposal, which appeared in the January 6, 1986 issue of the New Jersey Register. The rule could have been adopted after February 5, at the end of the 30-day comment period, but the OAL was aware that the New Jersey Supreme Court would be hearing a case that related directly to the substance of the proposed rule. Because the rule deals with the practice of law and matters of professional ethics—areas over which the Supreme Court has jurisdiction—the OAL delayed adoption of proposed N.J.A.C. 1:1-3.8(d).

On July 21, 1986, the Supreme Court issued its opinion in *In Re Onorevole* (A-173/174), a case that involved a motion to disqualify an attorney representing a party in a matter before the OAL. The court concluded that the OAL has "the authority and competence . . . to determine issues relating to the possible disqualification on ethics grounds of attorneys appearing before administrative law judges in contested cases." (p. 10). In light of the court's approval of the attorney disqualification process, the OAL is now adopting N.J.A.C. 1:1-3.8 as proposed.

As explained in the proposal statement, the rule expressly allows administrative law judges to rule on whether an attorney may continue to provide representation when the appearance raises questions of ethical or professional conduct. The rule permits a judge to disqualify an attorney, but provides that no disciplinary action may be taken against the attorney except by an appropriate disciplinary panel.

Full text of the adoption follows.

1:1-3.8 Conduct of lawyers, judges and agency personnel

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

(d) In any case where the issue of an attorney's ethical or professional conduct is raised, the judge before whom the issue has been presented shall consider the merits of the issue raised and make a ruling as to whether the attorney may appear or continue representation in the matter. The judge may disqualify an attorney from participating in a particular case when disqualification is required by the Rules of Professional Conduct or the New Jersey Conflict of Interest Law. If disciplinary action against the attorney is indicated, the matter shall be referred to the appropriate disciplinary body.

### (b)

#### Rules of Special Applicability Education Budget Hearing Rules

#### Adopted New Rules: N.J.A.C. 1:6

Proposed: May 19, 1986 at 18 N.J.R. 1020(b).

Adopted: July 17, 1987 by Ronald I. Parker, Acting Director,  
Office of Administrative Law.

Filed: July 24, 1986 as R.1986 d.342, **without change**.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: August 18, 1986.

Expiration Date: August 18, 1991.

#### Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

#### CHAPTER 6 DEPARTMENT OF EDUCATION BUDGET HEARING RULES

#### SUBCHAPTER 1. APPLICABILITY

##### 1:6-1.1 Applicability

These rules of special applicability shall apply to any hearings concerning appeals by district boards of education of a governing body's decision to reduce a school budget, pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24-7.1 et seq.

#### SUBCHAPTER 2. THROUGH SUCHAPTER 4. (RESERVED)

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

##### 1:6-5.1 Transmission of cases; material to be submitted

When a case is transmitted to the Office of Administrative Law, as provided by N.J.A.C. 6:24-7.7(b), the Commissioner of Education shall forward along with the transmittal form any material submitted by the district board of education or board of school estimate or any decisions by the Commissioner relating to any request for a cap waiver by the district board.

#### SUBCHAPTER 6. THROUGH SUBCHAPTER 10. (RESERVED)

#### SUBCHAPTER 11. DISCOVERY

##### 1:6-11.1 Discovery; exchange of documents

(a) Within 10 days of receipt of the notice of hearing, the governing body shall forward to the judge assigned to hear the case a copy of the information which was given to the district board of education when the reduction was made, including the following documents:

1. If changes were made to the operating budget, a copy of the line item budget detailing the specific reductions that were effectuated by the governing body; a copy of the statement of supporting reasons for each of these reductions; and a certification stating the date on which these documents were originally given to the district board of education;

2. If changes were made to the capital budget, a copy of the capital budget; a copy of the statement of supporting reasons for each change; and a certification stating the date on which such documents were originally given to the board of education.

(b) Within 20 days of receipt of the notice of hearing, the district board of education shall forward a copy to the governing body and two copies to the judge of each of the following:

1. A complete line item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the next school year (as submitted to the voters), amount reduced by the governing body and revised budgeted amount for the next school year. This budget should be accompanied by written testimony, approved by the district board of education, as to why each of the amounts in dispute is necessary to provide a "thorough and efficient" system of education;

2. Staff, numbers of professional and nonprofessional, during the current school year and projected staff for the next school year, with reasons for increase or decrease;

3. Pupil enrollment by grade for the district as of June 30, preceding; September 30 preceding; and that projected for September of the next school year;

4. Salary schedules for all employees;

5. Number of schools and classrooms in each;

6. Costs for non-aided transportation for the previous school year and projected for the current school year and the next school year;

7. Tuition received or paid during the previous school year and anticipated for the current school year and the next school year;

8. Advertised budget for the next school year;

9. If a capital budget is in dispute, a substantiation for each proposed capital project.

- (c) The governing body and the district board shall submit their statements of supporting reasons in the form of written testimony, verified by each and accompanied by a certified copy of each official document.
- (d) All other discovery shall be on motion for good cause shown.

## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF COASTAL RESOURCES

##### Wetlands Maps in Atlantic County

##### Adopted Amendments: N.J.A.C. 7:7-2.2

Proposed: May 19, 1986 at 18 N.J.R. 1026(a).  
 Adopted: July 28, 1986 by Richard T. Dewling, Commissioner,  
 Department of Environmental Protection.  
 Filed: July 29, 1986 as R.1986 d.349, **without change**.  
 Authority: N.J.S.A. 13:9A-1 et seq. and 13:1D-1 et seq.  
 Effective Date: August 18, 1986.  
 Expiration Date: May 7, 1989.  
 DEP Docket No. 019-86-04.

##### Summary of Public Comments and Agency Responses:

The Department held a public hearing concerning the proposal on June 11, 1986 at the New Court Room located in the Police Building at 17 North First Street, Pleasantville, New Jersey. The comment period for this proposal ended on June 27, 1986. Oral comments were received by many of the approximately 50 people who attended the hearing. These oral comments, as well as follow-up letters, came from the Atlantic County Department of Administration, Assemblywoman Dolores Cooper, the Southern New Jersey Development Council, the Greater Mainland Chamber of Commerce, Norma Lombardi of West Atlantic City, Charles Huer of Absecon, Assemblyman Kline, Ole Hanson and Sons, Inc., the American Littoral Society, CAPE, the Atlantic County Board of Freeholders and Environmental Concern, Inc. Most testimony and correspondence was in support of the proposal and the development opportunities it represents. General questions were raised, however, regarding the resource value of the area to be redesignated a "non-wetland" status, the technical basis for the Department's proposal to amend the subject maps and the presence or absence of riparian lands in the area which was redesignated. Lastly, one letter of objection to the amendments was received. The concern expressed related to a potential use of the area as a bus parking facility.

The Department's responses to the questions and objections are as follows:

1. Any future use of the redesignated area will be the subject of regulatory review by the Division of Coastal Resources and will likely require a Coastal Area Facility Review Act Permit, a Wetlands Permit, Waterfront Development Permit, and a conveyance of a riparian interest. The acceptability of any proposed use will be evaluated using the Department's Rules on Coastal Resources and Development and the process will involve a separate public hearing. The permit review process will involve a thorough review of the coastal resources of the site, including but not limited to wetlands impacts, water quality impacts, and wildlife habitat value.

2. The technical determination of the limits of wetlands on-site was based on a detailed evaluation concerning site elevations, tidal inundation, soil composition and vegetative composition. This data was verified by Department staff in the field and evaluated in accordance with the specific language of the Wetlands Act of 1970 (see N.J.S.A. 13:9A-1 et seq.). Since the area to be de-listed is higher than one foot above local extreme high water it cannot, by definition, be classified as a wetland.

Certain portions of the site will continue to be classified as wetlands. These areas are at an elevation of less than one foot above local extreme high water and are capable of supporting wetland vegetation.

**Full text** of the adoption follows (all maps listed below will be physically altered).

##### 7:7-2.2 Wetlands

- (a)-(b) (No change.)
- (c) The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any amendments thereto, and these rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the following wetlands maps:

- 1.-4. (No change.)
- 5. Atlantic County:  
 ...  
 196-2040  
 196-2046  
 ...  
 203-2040  
 203-2046  
 ...  
 6.-11. (No change.)

### (b)

#### DIVISION OF WATER RESOURCES

##### Flood Hazard Area Delineations

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

##### Adopted Amendments: N.J.A.C. 7:13-7.1

Proposed: September 16, 1985 at 17 N.J.R. 2186(a).  
 Adopted: July 25, 1986 by Richard T. Dewling, Commissioner,  
 Department of Environmental Protection.  
 Filed: July 28, 1986 as R.1986 d.346, **without change**.  
 Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.  
 Effective Date: August 18, 1986.  
 Expiration Date: May 4, 1989.  
 DEP Docket No. 051-85-08.

##### Summary of Public Comments and Agency Responses:

The Department of Environmental Protection held a public hearing on the proposal on October 15, 1985 and written comments were solicited until October 19, 1985. **No comments** were received.

**Full text** of the adoption follows.

##### 7:13-7.1 Delineated floodways

- (a)-(b) (No change.)
- (c) A list of delineated streams in the Delaware Basin follows:  
 1.-28. (No change.)

29. ... Maurice River from the downstream corporate limit of Millville upstream to Weymouth Road and Willow Grove Lake Dam in Vineland; Manantico Creek from Manantico Lake Dam upstream to its confluence with Cedar Branch; Scotland Run from approximately 2,000 feet downstream of Malaga Lake Dam to Washington Avenue in Franklin Township, Gloucester County; Cedar Branch from its confluence with Manantico Creek to Maple Avenue in Vineland; Blackwater Branch from its confluence with the Maurice River upstream to the Franklin-Vineland municipality boundary; Petticoat Stream from its confluence with the Maurice River upstream to Tenth Street, northwesterly of Hance Bridge Road; Piney Branch from its confluence with Blackwater Branch upstream 7,500 to North Vale Road in Vineland; Long Branch from its confluence with Blackwater Branch upstream 1,940 feet to the Vineland-Franklin municipality boundary; Still Run for its entire length within Franklin Township, from its downstream corporate limit upstream to approximately 190 feet upstream of Little Mill Road; Little Ease Run from its confluence with Still Run upstream to the Franklin-Clayton municipal boundary; White Marsh Run from its confluence with the Maurice River upstream to Reick Avenue in Millville; and the Manumuskin River for its entire reach within Vineland, from its downstream corporate limit in Vineland to a point 1,900 feet upstream of Daughtry's Tavern Road.

- 30-31. (No change.)
- (d)-(g) (No change.)

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

## (a)

**DIVISION OF WASTE MANAGEMENT  
Hazardous Waste Management  
Waste Exchange and Other Amendments to  
Exemptions from Rules****Adopted Amendments: N.J.A.C. 7:26-1.4, 7.4, 9.1,  
9.4, 12.1, 12.8**

Proposed: November 18, 1985 at 17 N.J.R. 2716(a).

Adopted: July 24, 1986, by Richard T. Dewling, Commissioner,  
Department of Environmental Protection.Filed: July 28, 1986 as R.1986 d.347, with **substantive and technical  
changes** not requiring additional public notice and comment  
(see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-6.

Effective Date: August 18, 1986.

Expiration Date: November 4, 1990.

DEP Docket No. 061-85-10.

**Summary of Public Comments and Agency Responses:**

The New Jersey Department of Environmental Protection ("Department") received written comments concerning the proposed amendments which are summarized as follows:

1. COMMENT: The commenter expressed concern that the proposed amendment may create a loophole which might be exploited by facilities which fraudulently "masquerade" as manufacturing facilities. Specifically, the Department was urged to require waste exchange facilities to submit a description of the manufacturing process in which the waste is to be used and a description of the product which will be manufactured.

RESPONSE: As stated in the proposal, the Department intends to encourage hazardous waste reuse as an alternative to disposal. Consequently, the Department proposed a partial exemption from full permitting requirements for waste exchange facilities. Facilities that wish to qualify as waste exchange facilities would still be required to submit certain information for Departmental review. The Department intended to develop a regulatory scheme which would encourage hazardous waste reuse but which would not create new opportunities for adverse environmental impacts. It is important to note that certain operating conditions were proposed for "waste exchange facilities" and that these facilities would be subject to Departmental inspections.

After reconsideration, the Department agrees that it is appropriate for prospective waste exchange facilities to submit a brief process description and a brief product description for the relevant waste reuse process. The descriptions may be presented in general terminology, so as not to jeopardize the confidentiality of a company's industrial process. It is the Department's position that this additional information should help prevent fraudulent "masquerading" and at the same time should not act as a disincentive to reusing hazardous waste. Changes have accordingly been made at N.J.A.C. 7:26-12.1(b)11 to include the additional requirements.

2. COMMENT: The term "waste exchange facility" is misleading and may cause misinterpretation. The definition of the term "waste exchange facility" is acceptable as presented; however, the term itself evokes images of a "brokerage" or "clearinghouse".

RESPONSE: The Department never intended to exempt "clearing houses" or "brokerage" situations, and it is appropriate to use a more specific term to describe the partially exempted facilities in the regulation. Thus, the proposed definition of "waste exchange facility" has been changed to "waste reuse facility" to more accurately reflect Departmental intent. This change has been made to N.J.A.C. 7:26-1.4 and throughout the text of the amendment.

3. COMMENT: The definition of "hazardous waste reuse" is too limited, because it precludes the following:

- a. The storage of waste for more than 90 days;
- b. The treatment or blending of waste prior to use as a raw material; and

c. The application of the exemption at facilities where recycling occurs.  
RESPONSE: The Department believes that the definition of "hazardous waste reuse" and consequently the partial permit exemption, as proposed, is necessarily limited as explained below:

a. The partial permit exemption for "hazardous waste reuse" means that "waste exchange facilities" (or "waste reuse facilities") will not be subject to the same rigorous engineering submittal and review process

as that required for other facilities regulated in accordance with the Resource Conservation and Recovery Act, ("RCRA", 42 U.S.C.A. §6921 et seq.). These facilities will, in effect, be "permitted" after receiving a "waste reuse facility identification number" and complying with certain operating conditions. The Department believes these operating controls (including the 90 day storage limit) are necessary requirements in lieu of the RCRA permit review process.

b. The Department is providing the partial exemption for "hazardous waste reuse" because it involves materials which are legally considered waste, but which technically can be used safely as raw materials. In these limited situations, the wastes are much like a product or raw material. However, if a waste must be "treated" prior to reuse, it is definitely more waste-like and less like a raw material. In the latter situations, the Department believes that the treatment process should be fully regulated as a hazardous waste activity. It should be noted that treatment that involves reclamation prior to reuse is a Federally regulated activity.

c. The Department agrees that item 6 under the proposed definition of "hazardous waste reuse" (see N.J.A.C. 7:26-1.4) may appear vague, especially with respect to the term "undertaken as a commercial venture". Practically all facilities which might wish to utilize this partial exemption would fall into the definition at N.J.A.C. 7:26-1.4. For this reason the Department has modified its definition of hazardous waste reuse, and instead states in the definition of Waste Reuse Facilities that any hazardous waste use or reuse process that is located at a *commercial* hazardous waste treatment, storage, or disposal facility does not constitute use or reuse. This eliminates the ambiguous restrictions in the proposal.

4. COMMENT: By requiring that residue from "hazardous waste reuse" be disposed of in accordance with the rules in N.J.A.C. 7:26, the Department will actively discourage recycling. Requiring all residues to be managed as hazardous wastes, even if they are non-hazardous, will not promote "hazardous waste reuse".

RESPONSE: The commenter misinterpreted the proposed requirement at N.J.A.C. 7:26-9.1(c)13viii, which merely requires that residues shall be disposed of in accordance with the rules in N.J.A.C. 7:26-1 et seq., which governs disposal of both hazardous and non-hazardous waste. See N.J.A.C. 7:26-8.5 for standards which determine whether or not a waste is hazardous.

5. COMMENT: The partial permit exemption is not applicable to a facility which must obtain a hazardous waste permit elsewhere at the same plant. Why prohibit the exemption for reuse in this situation?

RESPONSE: The Department originally intended to exclude the applicability of the proposed permit exemption at commercial waste storage treatment or disposal (TSD) facilities. The exclusions at N.J.A.C. 7:26-9.1(c)13xi and 12.1(b)11xi were not intended to apply to non-commercial transfer, storage, and disposal (TSD) facilities. The latter facilities should be afforded the opportunity to incorporate this exempted reuse activity within their facility operations. Consequently the above sections, and N.J.A.C. 7:26-12.8(b)8, have been modified to clarify this point.

6. COMMENT: The proposed regulations at N.J.A.C. 7:26-12.1(b)11vi and vii imply that the reuse exemption is only applicable to recyclers who use waste as a substitute for "virgin material". Hazardous waste may be an effective substitute for the processing of secondary as well as primary materials.

RESPONSE: In light of the intent of the proposed regulations, the Department believes that it is appropriate to change the language, from "virgin material" to "raw material". For Departmental purposes, the definition of "raw material" will include primary as well as secondary materials. This is consistent with the definition of "hazardous waste use or reuse" which refers to substituting wastes for ingredients in an industrial process.

7. COMMENT: Although the proposed amendments did not appear to affect precious metals reclamation and refining operations, the Department is urged to develop final rules that specifically, fully exempt spent materials containing recoverable amounts of precious metals from all NJDEP hazardous waste rules.

RESPONSE: The Department agrees that precious metals reclamation does not constitute "hazardous waste reuse" as defined in this regulation. Separate regulations are currently being developed by the Department which will delineate the extent to which precious metals recycling will be regulated and be in conformance with the Federal program.

**Agency Note:**

1. The proposal contained an incorrect citation at 17 N.J.R. 2718. N.J.A.C. 7:26-9.1(c)13vii referred to section 7.4(i)1, which has been corrected to section 7.4(j)1. This reference pertains to the procedure whereby generators are registered with the Department's waste reuse program. The above change does not affect the scope or intent of the regulation.

2. The Department has been developing separate regulations regarding the definition of solid waste concurrently with the development of the regulations which are the subject of the present adoption. This is being done in response to related rule changes made by the United States Environmental Protection Agency ("USEPA"), in the January 4, 1985 Federal Register, (see 50 FR 614). Because the two rule proposals are intrinsically related, the development of one affects the other. Consequently, the Department has substituted the term "use or reuse", which is used by EPA to describe the activities New Jersey is seeking to regulate under this proposal for "hazardous waste reuse" in N.J.A.C. 7:26-1.4, in order to achieve greater consistency with the January 4, 1985 USEPA regulations and the definition of solid waste rules which the Department is developing. The purpose and intent of the regulations which are the subject of the present adoption remain the same. The definitions themselves remain virtually unchanged. Certain exclusions under the proposed definition of "hazardous waste reuse" have necessarily been moved to N.J.A.C. 7:26-9.1 and N.J.A.C. 7:26-12.1. in the text of the adoption.

3. N.J.A.C. 7:26-9.4(a)3, which appears in the "General facility standards" section, has been added upon adoption. It provides that, "Before accepting an off-site waste stream for waste reuse, the owner/operator shall notify the Department and comply with the requirements of N.J.A.C. 7:26-9.1(c)13." This language has been added in order to clarify the regulation. The new language refers the reader to N.J.A.C. 7:29-9.1(c)13, which contains the requirements for a waste reuse facility.

**Full text** of the adoption follows (additions to the proposal shown in boldface with asterisks \*thus\*, deletions from the proposal contained within brackets with asterisks \*[thus]\*).

#### 7:26-1.4 Definitions

\*["Hazardous waste reuse" means the process whereby hazardous waste is employed directly as an ingredient (including use as an intermediate) in an industrial process to make a product, or employed in a particular function or application as an effective substitute for a commercial product. The following activities are not considered hazardous waste reuse for the purpose of these regulations:

1. Applying hazardous waste or products derived from hazardous waste directly to the land;
2. Burning hazardous waste or fuels produced from hazardous waste for energy recovery;
3. Storage of hazardous waste for longer than 90 days;
4. The reuse of any hazardous waste, if the waste was subjected to treatment or processing prior to reuse.
5. Any method, technique or process that allows for an unauthorized release, discharge, or escape of the material reused or to be reused or its by-products into the air, water, or land of the State; or
6. Activities such as collection, separation, storage, processing, modification, conversion, reclamation or treatment of wastes undertaken as a commercial venture;]\*

\*"Use or reuse" means the recycling procedure whereby a material is:

1. **Employed directly as an ingredient in an industrial process other than the one in which it was formed, to make a product (for example, distillation bottoms from one process used as feedstocks in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal containing secondary materials); or**

2. **Employed directly in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorus precipitant and sludge conditioner in wastewater treatment.)\***

\*["Waste exchange facility"]\* \*\*\*Waste reuse facility\*\* means a facility which receives hazardous waste for \*[hazardous waste reuse]\* \*use or reuse in a manufacturing process\*, complies with the requirements of N.J.A.C. 7:26-12.1(b)11, has received a waste \*[exchange]\* \*reuse\* facility identification number from the Department and which meets the standards and conditions set forth in N.J.A.C. 7:26-9.1(c)13. \*The following activities are not considered hazardous waste use or reuse for the purposes of these regulations:

1. Applying hazardous waste or products derived from hazardous waste directly to the land;
2. Burning hazardous waste or fuels produced from hazardous waste for energy recovery;
3. Storage of hazardous waste for longer than 90 days;
4. The reuse of any hazardous waste, if the waste was subjected to treatment or processing prior to reuse;

5. Any method, technique or process that allows for any unauthorized release, discharge, or escape of the material reused or to be reused or its by-products into the air, water, or land of the State;

6. Any hazardous waste use or reuse process that is located at commercial hazardous waste treatment, storage, or disposal facility; or

7. The use or reuse of wastes with the following hazardous waste numbers: F020, F021, F022, F023, F026, F028.\*

"Waste \*[exchange]\* \*reuse\* facility identification number" means the identification number issued by the Department to a waste \*[exchange]\* \*reuse\* facility. The receipt of the waste \*[exchange]\* \*reuse\* identification number allows the operator of the waste \*[exchange]\* \*reuse\* facility to accept certain specified types and volumes of hazardous waste(s) via manifest or \*[hazardous waste reuse]\* \*use or reuse.\* Identification number shall be issued for a specific site and once issued are not transferable.

#### 7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8.1 et seq. are as follows:

1.-2. (No change.)

3. A generator who transports, or offers for transportation, hazardous waste for offsite \*[hazardous waste reuse]\* \*use or reuse\*, treatment, storage, or disposal must prepare a manifest before transporting the waste offsite.

4. A generator must provide the following information on the manifest form:

i.-viii. (No change.)

ix. When shipping hazardous waste to a waste \*[exchange]\* \*reuse\* facility, the generator shall enter the waste \*[exchange]\* \*reuse\* facility identification number in section G of the \*[u]\*\*U\*niform \*[m]\*\*M\*anifest.

5.-9. (No change.)

(b)-(d) (No change.)

(e) It shall be considered a violation of these regulations for a hazardous waste generator to:

1.-2. (No change.)

3. Designate on the manifest form a hazardous waste facility which is not an authorized facility (see N.J.A.C. 7:26-1.4) or a waste \*[exchange]\* \*reuse\* facility which has not received a waste \*[exchange]\* \*reuse\* facility identification number from the Department; or

4. Ship or permit the shipment of hazardous waste to any site which is not an authorized hazardous waste facility or a waste \*[exchange]\* \*reuse\* facility which has not received a waste \*[exchange]\* \*reuse\* facility identification number from the Department.

(f) (No change.)

(g) Annual reporting requirements are as follows:

1. (No change.)

i.-x. (No change.)

xi. Waste \*[exchange]\* \*reuse\* facility \*[NJDEP]\* identification number, name, and address.

2. (No change.)

3. The hazardous waste generator shall include all waste shipped to a waste \*[exchange]\* \*reuse\* facility in the report of facility activities as required in (g)1.

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

(j) A generator shall not offer hazardous waste to a waste \*[exchange]\* \*reuse\* facility for \*[hazardous waste reuse]\* \*use or reuse\* unless:

1. The generator has registered with the Department's waste \*[exchange]\* \*reuse\* facility program. To register, a generator shall submit the following information to \*[the Department]\* \* : New Jersey Department of Environmental Protection, Division of Waste Management, Bureau Chief, Bureau of Hazardous Waste Engineering, CN 028, Trenton, N.J. 08625.\*

i. Generator's name, mailing address, site address and telephone number;

ii. Generator's EPA identification number;

iii. A description of the process which generated the waste;

iv. A physical and chemical analysis, of the waste(s) to be reused;

v. An estimate of the volume of waste (which is intended for reuse) generated per year;

vi. Updates of any information submitted under this subsection where changes occur in the process generating the waste, the analysis of the waste or the volume of the waste.

vii. Any other information as requested by the Department.

2. The generator has complied with all applicable requirements for managing containers of hazardous waste at N.J.A.C. 7:26-7.2 and all storage requirements under N.J.A.C. 7:26-9.3(a)2.

3. The generator has completed a **\*[hazardous waste Manifest]\* \*Uniform Manifest\*** and has included the waste **\*[exchange]\* \*reuse\*** facility's identification number in Section G of the manifest, which must accompany the waste when shipped to the waste **\*[exchange]\* \*reuse\*** facility.

4. The waste transporter is registered as a hazardous waste transporter with the Department.

5. The designated waste **\*[exchange]\* \*reuse\*** facility has qualified, for a permit-by-rule under N.J.A.C. 7:26-12.1(b)11 to receive the generator's waste and has received a waste **\*[exchange]\* \*reuse\*** facility identification number from the Department pursuant to N.J.A.C. 7:26-12.1(b)11.

7:26-9.1 Scope and applicability

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

(c) The standards and requirements of this subchapter do not apply to:

1.-12. (No change.)

13. The owner/operator of a waste **\*[exchange]\* \*reuse\*** facility, provided the following conditions are met:

i. The owner and operator of the waste **\*[exchange]\* \*reuse\*** facility has qualified for the permit exemption under N.J.A.C. 7:26-12.1(b)11;

ii. A waste **\*[exchange]\* \*reuse\*** facility identification number has been received from the Department prior to accepting hazardous waste for **\*use or reuse\***.

iii. Wastes intended for **\*[hazardous waste]\* \*use or reuse\*** are stored no longer than 90 days;

iv. Wastes are stored and managed in conformance with relevant requirements of N.J.A.C. 7:26-7.2(e), 7:26-9.4(d) and (e), 7:26-10.4 and 7:26-10.5;

v. The owner/operator of the waste **\*[exchange]\* \*reuse\*** facility maintains a written operating record at the facility in accordance with the applicable provisions of N.J.A.C. 7:26-9.4(i);

vi. Wastes accepted for **\*[hazardous waste reuse]\* \*use or reuse\*** are accompanied by a properly completed manifest which the owner/operator handles in accordance with the requirements of N.J.A.C. 7:26-7.6(b);

vii. Wastes accepted for **\*[hazardous waste reuse]\* \*use or reuse\*** originated from generators that are registered with the Department's waste **\*[exchange]\* \*reuse\*** program pursuant to N.J.A.C. 7:26-7.4 **\*[(i)]\* \*[(j)]\*** 1. (Out-of-state generators must also register with the Department's waste **\*[exchange]\* \*reuse\*** program);

viii. Residues resulting from **\*[hazardous waste reuse]\* \*use or reuse\*** are disposed of in accordance with the rules **\*[in this Chapter]\* \*contained in N.J.A.C. 7:26-1 et seq.\***

ix. Information regarding all **\*[hazardous waste reuse]\* \*use or reuse\*** activities at the site is included in an annual report, submitted to the Department by March 1 of the following calendar year. The annual report shall include the following information:

(1) Waste **\*[exchange]\* \*reuse\*** facility name, mailing address, site address and telephone number;

(2) Waste **\*[exchange]\* \*reuse\*** facility identification number;

(3) A list (by manifest number) of all manifests received in the last calendar year, generator's names and addresses, types and volumes of wastes received, and methods of **\*[hazardous waste reuse]\* \*use or reuse\***; and

x. If the owner/operator of the waste **\*[exchange]\* \*reuse\*** facility ceases the process which reuses the waste, the owner/operator shall:

(1) Accept no additional waste through the waste **\*[exchange]\* \*reuse\*** facility authorization\*;

(2) Remove all waste being stored on-site within 90 days of its receipt; and

(3) Dispose of any remaining waste as a hazardous waste in accordance with the rules **\*[in this Chapter]\* \*in N.J.A.C. 7:26-1 et seq.\***

**\*[xi. This exemption shall not apply to a person who is otherwise required to obtain a Hazardous Waste Management Facility Permit for an activity at the same plant locations as the waste exchange facility. Under such circumstances the application for a permit for a waste exchange facility shall be considered a modification of the existing hazardous waste facility permit, under N.J.A.C. 7:26-12.6 and 12.8]\***

**\*xi. This exemption shall not apply to commercial treatment, storage or disposal facilities.\***

(d) (No change.)

7:26-9.4 General facility standards

(a) The owner or operator of a facility shall comply with the notice requirements of this subsection.

1.-2. (No change.)

**\*3. Before accepting an off-site waste stream for waste reuse, the owner/operator shall notify the Department and comply with the requirements of N.J.A.C. 7:26-9.1(c)13.\***

7:26-12.1 Scope and applicability

(a) (No change.)

(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities:

1.-10. (No change.)

11. The owner/operator of a waste **\*[exchange]\* \*reuse\*** facility, provided all conditions and requirements of N.J.A.C. 7:26-9.1(c)13 are met, and the owner/operator submits the following information and documentation to the Department:

i. Waste **\*[exchange]\* \*reuse\*** facility name, mailing address, site address, and telephone number;

ii. The **\*[F]\*\*\*** facility EPA identification number. (All facilities that intend to operate as a waste **\*[exchange]\* \*reuse\*** facility shall apply for and receive an EPA I.D. number from the United States Environmental Protection Agency. When applying to EPA, attach a letter to the notification form explaining that although not regulated by EPA, **\*[hazardous waste reuse is a]\* \*certain methods of use or reuse are\*** regulated **\*[activity]\* \*activities\*** in New Jersey);

iii. Description of the wastes to be reused **\***, **products to be produced, and a brief description of the waste reuse process\***;

iv. Name, mailing address, site address, and telephone number of generator(s) that will supply waste to the waste **\*[exchange]\* \*reuse\*** facility;

v. Description of the volume of wastes to be reused;

vi. Description of the volume of **\*[virgin]\* \*raw\*** material(s) used in the past 12 months for which the waste will be substituted, or other suitable time period as determined by the Department, verified by written documentation such as invoices, purchase orders, etc.;

vii. Statement of all potential environmental hazards of using the waste in lieu of a **\*[virgin]\* \*raw\*** material and measures to be taken to mitigate potential hazards to the extent possible;

viii. The following certification, signed by the owner/operator of the waste **\*[exchange]\* \*reuse\*** facility, or an authorized representative:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print name and title)

\_\_\_\_\_  
(signature)

ix. For waste **\*[exchange]\* \*reuse\*** facilities that intend to store waste in containers prior to reuse, all information required pursuant to N.J.A.C. 7:26-12.2(f)1; and

x. For waste **\*[exchange]\* \*reuse\*** facilities that intend to store waste in tanks prior to reuse, all information required pursuant to N.J.A.C. 7:26-12.2(f)2.

**\*[xi. This exemption shall not apply to a person who is otherwise required to obtain a Hazardous Waste Management Facility Permit for an activity at the same plant location as the waste exchange facility. Under such circumstances the application for a permit for a waste exchange facility shall be considered a modification of the existing hazardous waste facility permit, under N.J.A.C. 7:26-12.6 and 12.8.]\***

**\*xi. This exemption shall not apply to commercial treatment, storage, or disposal facilities.\***

7:26-12.8 Minor modifications of permits

(a) (No change.)

(b) Minor modifications may only:

1.-7. (No change.)

**\*[8. Authorize the operation of waste reuse at a facility (see N.J.A.C. 7:26-9.1(c)13 and 7:26-12.1(b)11).]\***

## HIGHER EDUCATION

### (a)

#### Educational Opportunity Fund Administrative Policies and Procedures Financial Eligibility for Undergraduate Grants

##### Adopted Amendment: N.J.A.C. 9:11-1.5

Proposed: May 5, 1986 at 18 N.J.R. 926(a).  
Adopted: July 28, 1986 by Chancellor T. Edward Hollander,  
Chairman, Educational Opportunity Fund Board.  
Filed: July 28, 1986 as R.1986 d.344, **without change**.  
Authority: N.J.S.A. 18A:71-33 through 18A:71-36.  
Effective Date: August 18, 1986.  
Expiration Date: January 17, 1989.

##### Summary of Public Comments and Agency Responses:

COMMENT: The Department of Higher Education received a comment from Rutgers, The State University of New Jersey requesting a change in language to 9:11-1.5(e) which would clarify that campus Educational Opportunity Fund Directors are only authorized to admit under the waiver 20 percent of their college's EOF Freshmen rather than their college's entire "annual freshman class."

RESPONSE: The Department's Educational Opportunity Fund regulations clearly apply only to EOF students. Therefore, it is assumed that 9:11-1.5(e) will authorize campus EOF Directors to admit 20 percent of their college's EOF Freshmen. It is also understood that students entering under the 20 percent provision will not be admitted without the prior approval of the campus EOF Director.

Full text of the adoption follows.

9:11-1.5 Financial eligibility for undergraduate grants

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

(e) Where there is evidence that strict adherences to the maximum income eligibility cut-offs will not serve the purpose of the E.O.F. Program, the campus E.O.F. director may admit up to a maximum of 20 percent of the annual freshman class under a waiver pursuant to the provisions of this section. Students admitted under this provision must meet one of the following criteria:

1. The student attends(ed) a District Factor Group A or B school district as certified by the New Jersey Department of Education;
2. The student resides in a municipality defined as a "high distress" area;
3. The student has a sibling who was, or is currently, enrolled in an E.O.F. Program;
4. The student (or family) is eligible for federal government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs; free and reduced breakfast/lunch programs, food stamps) and is a first-generation college student.
5. The student's record must contain sufficient documentation for verification of the above criteria. All efforts should be made to give priority to those students whose incomes are within the limits of these guidelines.

(f) (No change.)

### (b)

#### Administrative Policies and Procedures Grant Amounts

##### Adopted Amendment: N.J.A.C. 9:11-1.7

Proposed: May 5, 1986 at 18 N.J.R. 926(b).  
Adopted: July 28, 1986 by Chancellor T. Edward Hollander,  
Chairman, Educational Opportunity Fund Board.  
Filed: July 28, 1986 at R.1986 d.343, **without change**.  
Authority: N.J.S.A. 18A:71-33 through 18A:71-36.  
Effective Date: August 18, 1986.  
Expiration Date: January 17, 1989.

##### Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:11-1.7 Grant amount

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

(d) The E.O.F. Board of Directors shall annually review the state grant amounts E.O.F. students and make adjustments if necessary. The minimum and maximum awards for Graduate and Undergraduate E.O.F. grants for each type of institution follows:

	Minimum	Maximum
Undergraduate		
2-Year Public Colleges	\$200	550
4-Year Public Colleges		
Commuter	200	550
Residential	200	800
Rutgers, NJIT		
Commuter	200	550
Residential	200	800
Independent Colleges	200	1,700
Graduate	Minimum	Maximum
4-Year Public Colleges	\$200	\$1,500
4-Year Independent Colleges	200	2,500
Rutgers, NJIT	200	2,500
UMDNJ/FDU Dental School	200	4,000

(e)-(f) (No change.)

## HUMAN SERVICES

### (c)

#### DIVISION OF MENTAL HEALTH AND HOSPITALS

##### State Psychiatric Hospitals Levels of Supervision System

##### Adopted New Rule: 10:36-1

Proposed: November 4, 1985 at 17 N.J.R. 2593(a).  
Adopted: July 14, 1986 by Drew Altman, Ph.D., Commissioner,  
Department of Human Services.  
Filed: July 14, 1986, as R.1986 d.331, **with substantive changes**  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12.

Effective Date: August 18, 1986.

Expiration Date: August 18, 1991.

##### Summary of Public Comments and Agency Responses:

The Division of Mental Health and Hospitals received written comments on the proposed new rule from eight individuals. Those presenting written comments included: a representative of the Public Advocate; five individuals from the Mercer County Alliance for the Mentally Ill; a representative of the American Civil Liberties Union and an attorney from the Division of Youth and Family Services.

Following publication of notice in the Public Register, a public hearing was held on January 27, 1986, at which eight individuals representing organizations outside the Division testified. Those presenting oral comments included a representative of the Public Advocate's office; two representatives of the American Civil Liberties Union of New Jersey; three representatives of the Mercer County Chapter of the Alliance for the Mentally Ill; one representative of the Mercer County Mental Health Board; and one representative of the New Jersey Alliance for the Mentally Ill. Additionally, five representatives from the Division also testified. The written comments, hearing transcript and hearing officer's report are available at the Office of Institutional Services, Division of Mental Health and Hospitals.

Several commentators, both oral and written, endorsed the need for and intention of the proposed rule. The oral and written comments essentially made the same suggestions.

The Division of Mental Health and Hospitals has carefully reviewed and considered all testimony both oral and written. Several of the suggestions were accepted and, accordingly, revisions have been made, where indicated.

The concerns and suggestions for modifications to the rule follow:

COMMENT: The patient's right to placement in the least restrictive alternative necessary to achieve the purpose of treatment is impinged, rather than operationalized, by the rules.

RESPONSE: The section on the purpose of the system has been expanded to emphasize further the treatment objective of the rule. (See N.J.A.C. 10:36-1.1)

COMMENT: An initial presumption by the treatment teams that patients can function at the highest level should be operationalized.

COMMENT: The higher supervision levels should contain minimum specified periods of unescorted grounds privileges.

RESPONSE: The treatment team's ability to assign a supervision level dictated by the patient's clinical condition has been clarified further. (See N.J.A.C. 10:36-1.1(a) and 1.2(d))

COMMENT: There are no guarantees in the rule that patients will necessarily experience greater liberty at higher levels.

RESPONSE: There are no guarantees; however, it is anticipated that the person at a Level III or Level IV will experience a greater degree of autonomy.

COMMENT: The special situation represented by Discharged Pending Placement patients is not addressed by the rule.

RESPONSE: An additional provision requiring a treatment team note which documents the clinical considerations which justify a level of supervision below Level IV for all Discharged Pending Placement patients has been added. (See N.J.A.C. 10:36-1.3(f))

COMMENT: No administrative appeal mechanism exists for patients.

RESPONSE: An administrative appeal mechanism for patients has been enunciated. (See N.J.A.C. 10:36-1.2(f))

COMMENT: The question of whether the rule applies to all Division facilities is unclear.

RESPONSE: The Division facilities to whom the rule applies have been listed. (See N.J.A.C. 10:36-1.2(g))

COMMENT: The mental criteria for the higher levels should contain an assessment that the patient does not present a threat of imminent harm.

RESPONSE: All of the criteria which the rules establish, and which address areas appropriate to a determination regarding degrees of autonomy, will be utilized by the treatment team in their evaluation of the patient.

COMMENT: Too much discretion is vested in treatment teams without better defining their function and composition.

RESPONSE: The treatment team function is enunciated in the rule. The composition of the team varies, but generally includes professionals from the areas of nursing, medicine, and social work, with additional staff as indicated by patient needs, such as a vocational rehabilitation counselor.

COMMENT: Opportunities for patient participation in level setting are inadequate.

RESPONSE: A minimum schedule for treatment plan reviews, which will include a level of supervision evaluation, has been articulated. (See N.J.A.C. 10:36-1.3(c)) Additionally, patient participation is a fundamental part of the development of a treatment plan and is strongly encouraged.

COMMENT: The lower levels of supervision violate specific statutory patient rights.

RESPONSE: This is not correct. Patient rights are not violated by the implementation of the Levels of Supervision System as articulated in these rules.

COMMENT: Additional escort opportunities should be provided to patients. Division facilities currently lack sufficient staff to carry out adequately the intent of the proposed rule.

RESPONSE: A monitoring system to identify and address problems has been provided in N.J.A.C. 10:36-1.2(h). The Quality Assurance Department addresses issues, such as staffing, which relate to the implementation of the treatment plan.

COMMENT: The rights of patients with physical disabilities and without family members are unduly restricted.

RESPONSE: This is not correct. These issues are addressed by the treatment team in the development of the plan for the individual patient. In addition, the Division of Mental Health and Hospitals invites such patients or interested parties, to bring their specific concerns to Division staff attention for investigation and/or correction.

COMMENT: There is a lack of specificity and clarity within certain definitions and criteria.

RESPONSE: Language within the specific level definitions, criteria and program structures has been modified, principally to clarify that the focus of staff work is to evaluate, rather than monitor, patient progress. Additionally, the General Provisions and Procedures sections have been amended to clarify these areas.

These revisions do not substantially alter the rule as proposed. Other than those modifications set forth above, changes suggested in the foregoing summary of public comments have not been adopted for use at this time.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

## CHAPTER 36 PATIENT SUPERVISION AT STATE PSYCHIATRIC HOSPITALS

### SUBCHAPTER 1. LEVEL OF SUPERVISION SYSTEM

#### 10:36-1.1 Introduction and purpose

(a) The Levels System is designed to provide a uniform process which affords each patient the structure and intensity of supervision appropriate to his or her condition during the course of hospitalization. Level determination is based primarily upon the clinical condition of the patient and related behaviors. The Levels System is not a treatment modality. It is a mechanism to be utilized in determining the degree of structure and supervision necessary for each patient to successfully participate in treatment and rehabilitation programs while maintaining a safe and secure therapeutic milieu for patients and staff alike **\*through clinical determination of the degree of structure and supervision necessary for each patient. Appropriate structure and supervision will also facilitate each patient's successful participation in treatment and rehabilitation programs which are designed to improve functioning and promote positive social adjustment while hospitalized and after discharge in the community\*.**

(b) The Levels System will be interpreted and implemented in a manner that facilitates the effective treatment of each patient while maintaining the least restrictive setting necessary to accomplish individual goals identified in the treatment plan. Under no circumstances will this policy be interpreted and implemented in any manner that abridges liberties specified in the "Patients Bill of Rights" (N.J.S.A. 30:4-24.1 et seq.).

(c) The Interdisciplinary Treatment Team will assign the appropriate level for each patient upon admission with periodic review of the assigned level during the course of hospitalization. Level determinations will be made in accordance with guidelines set forth herein. Treatment teams should utilize these guidelines to promote increased responsibility, accountability and independence on the part of the patient while decreasing structure and intensity of supervision provided by the staff. Incremental steps taken towards this goal should be viewed as part of a continuum that progresses through each level of the system.

(d) The purpose of the system is:

1. To establish clear guidelines which define parameters of structure and supervision necessary to maintain a safe and secure environment during patient movement to and from programming and related patient treatment services.

2. To ensure that all patients receive such considerations in an equitable, consistent and justifiable fashion based on individual clinical considerations.

3. To establish a system which maximizes continuity of care for patients whenever transfer from ward to ward, or hospital section to hospital section becomes appropriate and necessary.

4. To facilitate patient groupings which are optimal for positive social interaction and support progress towards discharge.

#### 10:36-1.2 General provisions

(a) A copy of the Levels System will be posted on all wards and will be communicated to patients.

(b) All "Not Guilty by Reason of Insanity and Incompetent to Stand Trial" status patients and others identified as appropriate for special treatment review procedures must have administrative and/or court approval prior to implementation of an increase in level recommended by the treatment team.

(c) A patient may be discharged from any level, when documented as clinically appropriate.

(d) A patient does not have to go through each level in sequence. **\*The treatment team may increase or decrease the assigned level as warranted in consideration of a significant change in the patient's clinical condition.\***

(e) A current list of all patients and their individual privilege level must be posted on each ward.

**\*f) Patients who disagree with the treatment team regarding their assigned level of supervision may appeal through hospital patient grievance procedures, or to the Department of Human Services Client Advocate**

assigned to each institution. The Client Advocate will involve hospital administrative and/or clinical staff as indicated in the resolution of the disagreement.

(g) The Levels System applies to the four digit adult regional State Psychiatric Hospitals (Trenton, Ancora, Marlboro, Greystone Park).

(h) The Levels System will be monitored by the Quality Assurance Department at each hospital to insure that any staffing, programmatic, clinical or other problems are identified and addressed.\*

#### 10:36-1.3 Procedures

(a) Upon admission patients will be placed on Level I of the Levels System until evaluation by the treatment team (within 72 hours) who will assign the level that is most appropriate to the clinical condition and treatment needs of the patient.

(b) Guidelines that reflect the nature of the individual hospital program and specific environment are to be used for determining a patient's level. Examples of criteria in concert with the definitions are defined in this policy. Additional guidelines may be considered by treatment teams in determining the clinically appropriate level.

(c) Each patient's level will be evaluated minimally in accordance with the treatment plan review schedule or sooner if clinically indicated or requested by the patient. **\*The treatment plan review schedule is 72 hours from the date of admission, 30 days afterward, 60 days, 90 days, and at 90-day intervals thereafter.\***

(d) Minimum time spent at each privilege level will be determined by the treatment team based upon the individual patient's clinical needs and treatment goals.

(e) In crisis or emergency situations constituting a significant change in the patient's behavior or clinical condition, temporary limitations on activities may be authorized by clinical staff in charge to maintain a safe and secure environment. The rationale for temporary limitations must be documented in the patient's clinical record and the treatment team must review the rationale by the next working day and document their findings in the clinical record.

(f) All patients ordered "Discharged Pending Placement" by the court will be considered to be on LEVEL IV unless there is documentation in the clinical record to show that the responsible treatment team has identified clinical considerations which require and justify that the patient be placed at a level which provides the necessary structure and supervision. **\*In such instances, a treatment team note shall be entered into the clinical record which documents the clinical considerations which justify the level determined necessary by the treatment team.\***

#### 10:36-1.4 Level I definition, criteria and program structure

(a) All programming is provided on-ward except for those essential services which can not be provided on the ward. Determination of what off-ward services are essential is the responsibility of the treatment team and will be documented in the patient's clinical record. These services include but are not limited to access to the outdoors along with special medical and clinical services. All attendance at off-ward services must be staff escorted. Brief home visits are not permitted at level I.

(b) Mental condition criteria include:

1. Suicidal/homicidal ideation or behavior (High Suicide Risk).
2. Severe impulse control problems.
3. Imminent arson risk.
4. So severely confused or disoriented as to be unable to adjust to unfamiliar surroundings.
5. So grossly psychotic or mood disordered that an imminent risk of harm to self or others is present.
6. High elopement/walkaway risk as indicated by verbal intent and/or recent history.

(c) Physical condition criteria include:

1. Bed rest due to physical deterioration.
  2. Acute medical problems.
- (d) Programming for patients on Level I will require highly supportive and structured activities to facilitate the beginning of successful participation by the client in the treatment regimen. Provision of an environment which is highly organized and supervised maximizes the opportunity for successful experiences in treatment for individuals who exhibit Level I criteria. In general, on-ward individual or small group sessions provide excellent opportunities to introduce and reinforce processes that elicit information about the patient's needs, problems, and priorities of treatment as well as introduction of expectations regarding the patient's responsibility and ability to influence the course of treatment while hospitalized.

#### 10:36-1.5 Level II definition, criteria and program structure

(a) Programming is provided both on-ward and off-ward. Attendance and appropriate participation in on-ward activities becomes the responsi-

bility of the patient (i.e. There is less need for staff support and direct supervision). Staff escort is required for all off-ward activities. Brief home visits are permitted at this level if clinically indicated and the family is capable and willing to provide direct supervision for the duration of the visit.

(b) Mental condition criteria include:

1. No longer high suicide, elopement/walkaway, medical or assault risk.
2. Follows general directions and generally attends on-ward therapies and programs on a regular basis.
3. Psychotic symptoms or mood disturbances may be present but does not act in response to them in such a way as to create an imminent risk of harm.
4. Mildly confused and disoriented but able to adapt to unfamiliar surroundings.
5. Able to control impulses except when severely stressed.

(c) Physical condition criteria include:

1. Non or partially ambulatory patients at risk of accidental self-harm (e.g. by falling).
2. Patients with medical problems requiring constant **\*[monitoring]\* \*evaluation\***.

(d) The patient's demonstrated ability to participate in treatment activities on the ward by virtue of a greater degree of self-initiated responsible participation should result in involvement and assignment to more off-ward activities and programs. To maximize the probability of success in the change in the treatment regimen these off-ward activities need to be structured and supportive with staff escort at all times. On-ward therapies and activities, however, should utilize the patient's developing sense of responsibility and initiative by providing less direct supervision and structure while continuing to **\*[monitor]\* \*evaluate\* progress \* [closely]\* \*frequently\***.

#### 10:36-1.6 Level III definition, criteria, and program structure

(a) Programming is provided both on-ward and off-ward with an increasing emphasis upon off-ward programming. The frequency, duration and types of unescorted off-ward activities is determined by the treatment team. The resident's participation in each scheduled off-ward program will be defined by time accountability and the clinical relevance of the program. Participation in unescorted off-ward activities can and should be implemented incrementally. Brief home visits are permitted at this level if the family is capable and willing to provide the level of supervision considered necessary by the treatment team in consideration of the clinical needs of the patient.

(b) Mental condition criteria include:

1. Absence of psychotic or mood disordered symptoms or, if chronic residual symptoms are still present, does not act in response to them.
2. Oriented and aware of surroundings.
3. Cooperative with established plan and schedule of activities.
4. Appropriate on and off-ward behavior resulting in no precautions for a certain number of day/weeks (to be set by treatment team).
5. Minimal elopement/walkaway risk.
6. Able to control impulses except when severely stressed.
7. If recent behavior indicates substance abuse risk, is willing to agree to search upon return if team determines necessary and documents in master treatment plan.

(c) Physical condition criteria include:

1. Ambulatory patients and non-ambulatory patients who have demonstrated an ability to utilize their adaptive equipment safely.
2. Medical problems requiring only intermittent **\*[monitoring]\* \*evaluation\*** by ward staff.

(d) The patient's responsible and cooperative participation in both on-ward and escorted off-ward activities should result in the team encouraging more independent activity by gradually increasing the number of unescorted off-ward programs. These programs and activities generally include centralized (off-ward) social and rehabilitative programs and activities. Level III patients will generally require **\*[close monitoring]\* \*periodic observation\*** by staff to ensure program participation.

#### 10:36-1.7 Level IV definition, criteria, and program structure

(a) Attendance and appropriate participation at any approved activity on-ward, off-ward, or off-grounds is expected through the self-initiated behavior of the patient, and is without staff escort. Determination of recommended programs and activities is the responsibility of the treatment team.

(b) Mental condition criteria include:

1. No recent instances of substance abuse.
2. Oriented to and capable of utilizing community or transportation services.

3. Resident exhibits sound judgement under reasonable conditions.
4. Resident exhibits accountability and responsibility through adherence to treatment plan program schedule.

(c) Physical condition criteria include:

1. No physical/medical contraindications.

(d) Programming and activities at this level would be the least structured. While staff will \*[monitor]\* **\*evaluate\*** the patient's behavior **\*[closely]\* \*for compliance with the schedule\***, direct supervision will be decreased. Most often, community-based programs and activities (transitional programs, community day programs, community trips), as well as larger group activities, will be part of the individual's overall program at Level IV.

## (a)

### DIVISION OF DEVELOPMENTAL DISABILITIES

#### Emergency Mechanical Restraints

#### Adopted New Rules: N.J.A.C. 10:42

Proposed: August 5, 1985 at 17 N.J.R. 1832(a).

Adopted: July 22, 1986 by Drew Altman, Ph.D., Commissioner,  
Department of Human Services.

Filed: July 23, 1986 as R.1986 d.341, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12; 30:1-15.1; 30:4-1 et seq. and 30:6D-5.

Effective Date: August 18, 1986.

Operative Date: January 1, 1987.

Expiration Date: August 18, 1991.

#### Summary of Public Comments and Agency Responses:

The Department received comments from the Public Advocate. The comments incorporated into this adoption serve to clarify several rules which were questioned.

**COMMENT:** The Public Advocate expressed concern that clients who receive psychotropic medication and are placed in mechanical restraints are at increased risk. They suggested that such clients be under continual observation while in restraints by staff trained to recognize signs of physical distress. They did not consider present direct care staff to be adequately trained to recognize such signs.

**RESPONSE:** The Division recognizes that some forms of mechanical restraints are more intrusive than others. Under N.J.A.C. 10:42-1.3., Definitions, a definition of highly restrictive mechanical restraints has been added. The use of such restraints requires continual observation by staff. N.J.A.C. 10:42-3.1(b)5 requires that staff be trained in the recognition of obvious signs of distress. N.J.A.C. 10:42-3.2(a)7 and 10:42-3.3(b)7. require continual observation by staff trained in the recognition of obvious signs of distress when highly restrictive mechanical restraints are used.

In order for the necessary training programs to be developed and implemented, the operative date for the rules is established as January 1, 1987.

**COMMENT:** The second comment of the Public Advocate was that although certain job titles may meet the definition of Qualified Mental Retardation Profession, there may be the individuals who have no experience in the use of mechanical restraints.

**RESPONSE:** N.J.A.C. 10:42-3.2(a)2. requires that the Chief Administrator identify those QMRPs who are responsible to authorize the use of restraints.

**COMMENT:** Finally, the Public Advocate felt that requiring monthly reviews of restraints usage by the Regional Human Rights Committee for clients in the community, without a similar requirement for institutions, established a double standard.

**RESPONSE:** The agency disagrees. The institutions are, in fact, subject to frequent review by outside agencies, independent of the institution itself. These agencies specifically review the practices around the use of restraint. Such frequent review does not occur within the community. The requirement of review by the Regional Human Rights Committee was to provide additional safeguards to community clients.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from the proposal indicated in brackets with asterisks **\*[thus]\***).

## CHAPTER 42 EMERGENCY MECHANICAL RESTRAINT

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 10:42-1.1 General

The Division of Developmental Disabilities recognizes that acceptable behavior in developmentally disabled children and adults is fostered and maintained by a stimulating environment, participation in activities that encourage development of new skills and support from the people with whom they come into contact. The Division is committed to providing a supportive environment to the developmentally disabled clients it serves. However, the Division also recognizes that, even in a supportive environment, some of its clients will exhibit aggressive, destructive or self-injurious behaviors. When such behaviors present a danger to the client him or herself or to other clients or staff, action must be taken to help the client control him or herself, or, if that is not possible, to control the client. If the client exhibits these problem behaviors on a regular basis, a professionally designed program (such as medical intervention or behavior modification) shall be applied to change these behaviors. When the client exhibits a dangerous behavior that has not been previously observed or reported, emergency measures must be available to staff to assist them in protecting the client him or herself, other clients or staff. Among the emergency measures that are used in such situations are mechanical restraints. Some of the devices used as mechanical restraints may also be used to help a client achieve functional body alignment or to protect the client from harm. In some instances, only the intended use of the device will determine whether it is a mechanical restraint or a piece of safeguarding equipment.

#### 10:42-1.2 Purpose

The purpose of this rule is to detail the policies and procedures for the utilization of safeguarding equipment and emergency mechanical restraints by the various components of the Division of Developmental Disabilities as well as for the service providers who contract with or are regulated by the Division.

#### 10:42-1.3 Definitions

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

"Client" means any person receiving services from the Division of Developmental Disabilities in a program operated by the Division or by service providers who contract with or are regulated by the Division.

**"Highly restrictive mechanical restraint" means restraints whose use is considered to be highly intrusive. Such restraints include, but are not limited to, camisoles, wrist and ankle restraints. Continual observation shall be required when such restraints are used.\***

"Human Rights Committee" means a group of individuals who function as an advisory body to the facility, agency or region's chief administrator on issues directly impacting on clients' rights.

"Interdisciplinary Team" means a treatment team composed of professionals and para-professionals representing different fields of expertise (e.g., Social Worker, Psychologist, Nurse) who are charged with a responsibility for client evaluation and the development and/or implementation of individualized habilitation for clients.

"Mechanical restraint" means a device (excluding safeguarding equipment), applied to the body of an individual, which restricts freedom of movement either partially or totally. These devices include, but are not limited to: camisole, wristlets, ankle cuffs, restraint sheet, and body harness.

"Qualified Mental Retardation Professional (QMRP)" means a person who has specialized training or 1 year of experience in treating or working with the mentally retarded and is one of the following:

1. A psychologist with a master's degree from an accredited program.
2. A licensed doctor of medicine or osteopathy.
3. An educator with a degree in education from an accredited program.
4. A social worker with a bachelor's degree in:
  - i. Social work from an accredited program, or
  - ii. A field other than social work and at least 3 years of social work experience under the supervision of a qualified social worker.
5. A physical or occupational therapist as defined in the Code of Federal Regulation (CFR) 405.1101(m) or (q) of Title 42, Chapter IV.
6. A speech pathologist or audiologist as defined in CFR 450.1105(t) of Title 42, Chapter IV.
7. A registered nurse.
8. A therapeutic recreation specialist who:
  - i. Is a graduate of an accredited program; and
  - ii. If the State has a licensing or registration procedure, is licensed or registered in the State.

9. A rehabilitation counselor who is certified by the Committee on Rehabilitation Counselor Certification.

"Regional Administrator" means the chief executive officer of a Division of Developmental Disabilities Community Services region.

"Safeguarding equipment" means devices used to provide support for the achievement of functional body position or proper balance and devices used for specific medical and surgical (as distinguished from behavioral) treatment.

## SUBCHAPTER 2. SAFEGUARDING EQUIPMENT AND MECHANICAL RESTRAINTS

### 10:42-2.1 Safeguarding equipment

(a) Safeguarding equipment shall only be applied by those staff trained in the use and application of the device.

(b) The need for the particular safeguarding device shall be documented in the Individual Habilitation Plan and reevaluated as part of the routine review.

(c) The utilization of an approved form of body protection, such as a helmet to prevent accidental self-injury and permit a client's placement in a normal group setting is not considered mechanical restraint. However, the use of a helmet or other device for behavioral reasons, i.e., to keep the client from ingesting inedible objects or banging his head, is considered a mechanical restraint.

### 10:42-2.2 Mechanical restraints

(a) Mechanical restraints shall be utilized only:

1. As an emergency measure to control a client in order to protect him or her or others from harm.

2. As part of an approved behavior modification program utilizing aversive techniques to attempt to change a targeted behavior.

(b) No facility or service provider may implement a program of mechanical restraint without specific authorization of the Director, Division of Developmental Disabilities.

(c) Mechanical restraints shall not be used as punishment, for the convenience of staff, or as a substitute for programming.

(d) The client must be placed in the least restrictive form of mechanical restraint appropriate to control the dangerous behavior exhibited.

(e) The client shall immediately be released from restraint when he/she ceases to present an imminent danger to himself/herself or others, or if the client appears to be in acute physical distress.

(f) Only personnel who have successfully completed a training program approved by the Division of Developmental Disabilities shall be permitted to apply mechanical restraints.

(g) Whenever a client exhibits a consistent pattern of serious assaultive, self-injurious, or destructive behavior, controllable only by use of mechanical restraint, a behavior modification plan shall be developed and applied with intent to change the maladaptive behavior.

## SUBCHAPTER 3. APPLICATION AND IMPLEMENTATION

### 10:42-3.1 Application to use emergency mechanical restraints

(a) Each facility or service provider requesting approval to utilize emergency mechanical restraints must submit to the Director, Division of Developmental Disabilities written procedures governing the use of restraint at the facility. Once the facility's restraint policies/procedures have been approved by the Director, Division of Developmental Disabilities subsequent Division prior approval for each use of mechanical restraint is not required.

(b) The policies/procedures submitted shall include the following:

1. A statement specifically identifying the forms of mechanical restraint to be used and the minimum number of trained staff that shall be available to implement the program;

2. General criteria for use of mechanical restraint;

3. Specific criteria for use of each type of restraint at the facility;

4. A procedure utilized to ensure each use of mechanical restraint is appropriate to the individual client, including certification by a physician that the use of restraint is not medically contra-indicated for the individual;

5. A program for training staff that shall include, but not be limited to, training in the proper use and application of each form of mechanical restraint to be employed **\*as well as the recognition of obvious general signs of distress\***.

### 10:42-3.2 Implementation standards: Developmental Centers and private residential facilities under contract with the Division of Developmental Disabilities Bureau of Special Residential Services

(a) Following approval by the Director, Division of Developmental Disabilities of the facility's application to use emergency mechanical restraints, the following standards shall apply:

1. Prior to the initial restraint authorization, a physician must certify that the technique to be employed is not medically contra-indicated for the individual client.

2. In an emergency situation, the Chief Administrator or his or her designee shall be responsible for authorizing the use of restraint. The authorizing agent must be a Qualified Mental Retardation Professional (QMRP). **\*The Chief Administrator shall identify those QMRPs who are responsible to authorize the use of restraint.\***

3. As soon as possible, but in less than 24 hours, a physician must review and countersign the emergency restraint order.

4. Restraint orders shall be effective for not more than 12 consecutive hours. The renewal of restraint for more than 12 hours shall require a review by the administrator or his/her designee.

5. Restraint orders shall include documentation of the type of mechanical restraint authorized, the length of time to be applied, the reason for restraint, and any special instructions.

6. Each restraint order must be signed and dated by the authorized agent.

**\*7. Clients placed in highly restrictive forms of mechanical restraints (including but not limited to camisoles and a wrist/ankle restraints shall be continually observed by staff trained to recognize obvious signs of physical distress.\***

**\*[7.]\* \*8.\*** While the client is in mechanical restraint **\*other than the conditions stipulated for highly restrictive mechanical restraints,\*** he shall be checked by a staff member every 15 minutes and such checks shall be recorded in his record. The check **\*[should]\* \*shall\*** address the following:

i. Whether the continued use of the restraint is necessary;

ii. Whether the restraint is applied in accordance with principles of good body alignment, a concern for circulation and allowance for change of position.

**\*[8.]\* \*9.\*** The client shall be released from restraint for a period of not less than 10 continuous minutes during each hour of restraint.

**\*[9.]\* \*10.\*** The client's personal hygiene and nutritional needs shall be met while he/she is in restraint.

**\*[10.]\* \*11.\*** A special meeting of the interdisciplinary team shall be held to review programming and programming alternatives for any client requiring restraint for more than four occasions during a 30 day period. The purpose of the meetings shall be to develop a targeted behavior program in an attempt to change the maladaptive behavior.

### 10:42-3.3 Implementation standards: community programs for the developmentally disabled

(a) In community programs, the utilization of emergency mechanical restraints will only be considered for those special programs adequately staffed by trained professional personnel and serving clients who present a danger to themselves and others.

(b) Following approval of an emergency mechanical restraint program by the Director, Division of Developmental Disabilities the following standards shall apply:

1. Only a licensed psychologist or physician may authorize each use of mechanical restraint.

2. Prior to or at the time of the initial authorization, a physician must certify that the technique to be employed is not medically contra-indicated for the individual client.

3. Whenever possible, the restraint order shall be immediately signed by the person authorizing its use. However, the use of mechanical restraint may be authorized over the telephone by the qualified authorizing agent in accordance with the following:

i. Such approval is strictly temporary and the restraint order shall be reviewed and signed by the authorizing agent as soon as possible, but at least within 12 hours of its application.

ii. The specific circumstances necessitating approval over the telephone shall be part of the client's record and include the name of the party requesting the restraint.

4. Restraint orders shall be effective for not more than 12 consecutive hours.

5. Restraint orders shall include documentation of the type of mechanical restraint authorized, the length of time to be applied, the reason for restraint, and any special instruction for utilizing the restraint.

6. Each restraint order must be signed and dated by the authorizing agent.

**\*7. Clients placed in highly restrictive forms of mechanical restraints (including but not limited to camisoles and wrist/ankle restraints) shall be continually observed by staff trained to recognize obvious signs of physical distress.\***

**\*[7.]\* \*8.\*** While the client is in mechanical restraint **\*other than the conditions stipulated for highly restrictive mechanical restraints\* he shall**

be checked by a staff member every 15 minutes and such checks shall be recorded in his record. The check shall address the following:

- i. Whether the continued use of the restraint is necessary;
- ii. Whether the restraint is applied in accordance with principles of good body alignment, a concern for circulation and allowance for change of position.

\*[8.]\* \*9.\* The client shall be released from restraint for a period of not less than 10 continuous minutes during each hour of restraint.

\*[9.]\* \*10.\* The client's personal hygiene and nutritional needs shall be met while he is in restraint.

\*[10.]\* \*11.\* The service provider must notify the Regional Administrator or his/her designee prior to application when possible, but not later than 12 hours after the application of the mechanical restraint.

\*[11.]\* \*12.\* The Division of Developmental Disabilities may require a service provider to terminate restraint usage for an individual client if any requirements of this regulation are violated.

\*[12.]\* \*13.\* A special meeting of the interdisciplinary team must be held to review programming alternatives for any client requiring restraint for more than four occasions during a 30 day period.

i. The purpose of the meetings shall be to develop a targeted behavior program in an attempt to change the maladaptive behavior.

ii. The Interdisciplinary Team shall forward the results of their review to the Regional Human Rights Committee within 15 working days.

\*[13.]\* \*14.\* The Regional Human Rights Committee shall review the pertinent circumstances surrounding the utilization of each application of emergency mechanical restraint on a monthly basis. The results of this review shall be forwarded to the Deputy Director of Community Services, the appropriate Regional Administrator, and the \*[Bureau of Operations]\* \*Office of Licensing and Inspection\*.

## CORRECTIONS

### (a)

#### THE COMMISSIONER

#### Inmate Prohibited Acts

#### Notice of Correction: N.J.A.C. 10A:4-4.1

Take notice that errors appear in the July 21, 1986 issue of the New Jersey Register at 18 N.J.R. 1467 concerning Prohibited acts, N.J.A.C. 10A:4-4.1. The corrected text of N.J.A.C. 10A:4-4.1 appears below:

10A:4-4.1 Prohibited acts

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

... \*207 possession of money or currency (in excess of \$50) unless specifically authorized

... (b) (No change in text.)

## TRANSPORTATION

### TRANSPORTATION OPERATIONS

#### (b)

#### Restricted Parking and Stopping

Routes 10 in Essex County, 23 in Morris County, 31 in Mercer County, 70 in Camden County

Adopted Amendments: N.J.A.C. 16:28A-1.8, 1.15, 1.22 and 1.37.

Proposed: June 16, 1986 at 18 N.J.R. 1252(b).

Adopted: July 17, 1986 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: July 21, 1986 as R.1986 d.335, without change.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139, 39:4-199.

Effective Date: August 18, 1986.

Expiration Date: November 7, 1988.

#### Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.8 Route 10

(a) The certain parts of State highway Route 10 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. (No change.)

2. No stopping or standing in Livingston Township, Essex County:

i. Along the eastbound side:

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

(3) From the easterly curb line of Sherbrooke Parkway to the westerly curb line of Shrewsbury Drive.

ii. (No change.)

3. No stopping or standing between the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M. in Livingston Township, Essex County:

i. (No change.)

4.-7. (No change.)

(b) (No change.)

16:28A-1.15 Route 23 (Temporary)

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

(c) The certain parts of State highway Route 23 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.i.-iv.(1) (No change.)

(2) Along Service Road—Beginning at the southerly curb line of Fairfield Road and extending 140 feet southerly therefrom.

(3) Greenwood Avenue—Beginning at the southerly curb line of Greenwood Avenue and extending 100 feet southerly therefrom.

2.-7. (No change.)

8. Along the southbound (westerly) side in the Borough of Butler, Morris County:

i. Mid-block bus stop:

(1) Kinnelon Road and Cross Street—Beginning 265 feet south of the southerly curb line of Kinnelon Road and extending 135 feet southerly therefrom.

16:28A-1.22 Route 31

(a) The certain parts of State highway Route 31 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.-5. (No change.)

6. No stopping or standing in Pennington Borough, Mercer County:

i. Along both sides:

(1) For the entire corporate limits within Pennington Borough.

16:28A-1.37 Route 70

(a) The certain parts of State highway Route 70 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 Cherry Hill Township, Camden County.

i. Along the northerly (westbound) side:

(1) From Connecticut Avenue to Virginia Avenue;

(2) From the easterly curb line of Georgia Avenue to a point 150 feet easterly therefrom.

ii. Along the southerly (eastbound) side:

(1) From the easterly curb line of Edison Avenue to a point 80 feet easterly therefrom.

(2) From Cooper Avenue to Main Avenue.

iii. Along both sides:

(1) From Lexington Avenue Extension—Cuthbert Boulevard to Haddonfield—Stoys Landing Road.

(2) From Main Avenue to the Cherry Hill Township—Evesham Township corporate line.

7. (No change.)

(b) The certain parts of State highway Route 70 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provision of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the southerly (eastbound) side in Pennsauken Township, Camden County:
  - i. (No change.)
2. Along the northerly (westbound) side in Pennsauken Township, Camden County:
  - i. Far side bus stop:
    - (1) McClellan Avenue—Beginning at the prolongation of the westerly curb line of McClellan Avenue and extending 100 feet westerly therefrom.
  3. Along the westbound (northerly) side in Cherry Hill Township, Camden County:
    - i.-ii. (No change.)

**(a)**

**Restricted Parking and Stopping  
Route 67 in Bergen County**

**Adopted Amendment: N.J.A.C. 16:28A-1.71**

Proposed: June 16, 1986 at 18 N.J.R. 1253(a).  
Adopted: July 17, 1986 by John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.  
Filed: July 21, 1986 as R.1986 d.337, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-199.  
Effective Date: August 18, 1986.  
Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.**

**16:28A-1.71 Route 67**

(a) The certain parts of State highway Route 67 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the 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 westerly (southbound) side in Fort Lee Borough, Bergen County:
  - i. (No change.)
  2. (No change.)
3. Along the easterly (northbound) side in Fort Lee Borough, Bergen County:
  - i. Far side bus stop:
  - ii. (No change.)
- (b) (No change.)

**(b)**

**No Passing Zones  
Routes 27 in Somerset and Middlesex Counties and  
28 in Union County**

**Adopted Amendments: N.J.A.C. 16:29-1.21 and 1.57**

Proposed: June 16, 1986 at 18 N.J.R. 1254(a).  
Adopted: July 17, 1986 by John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.  
Filed: July 21, 1986 as R.1986 d.336, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.  
Effective Date: August 18, 1986.  
Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.**

**16:29-1.21 Route 27**

(a) The following certain parts of State highway Route 27 described in this section shall be designated and established as "no passing" zones:

1. That part in the Township and Borough of Princeton, Mercer County and described in drawing number HPNZ-046 dated July 16, 1979.
2. That part in Franklin Township, Somerset County and the Townships of South Brunswick, North Brunswick, Edison, Woodbridge and the Boroughs of Highland Park and Metuchen, Middlesex County and described in drawing number HPNZ-095 dated February 13, 1986.

**16:29-1.57 Route 28**

(a) The following certain parts of State highway Route 28 described in this section shall be designated and established as "no passing" zones:

- 1.-2. (No change.)
3. That part within Fanwood Borough, Scotch Plains Township, the Town of Westfield, Garwood Borough, and Elizabeth City, Union County and described in drawing number HPNZ-094 dated December 2, 1985.

**(c)**

**Miscellaneous Traffic Rules  
Through Streets, Stop and Yield Intersections  
Route U.S. 130 in Gloucester County**

**Adopted Amendment: N.J.A.C. 16:30-2.9**

Proposed: June 16, 1986 at 18 N.J.R. 1254(b).  
Adopted: July 17, 1986 by John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.  
Filed: July 21, 1986 as R.1986 d.338, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-140.  
Effective Date: August 18, 1986.  
Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.**

**16:30-2.9 Route U.S. 130**

(a) The certain parts of Route U.S. 130 described in this section shall be designated as a Yield Intersection.

1. In the Township of North Brunswick, Middlesex County:
  - i. Center median at Franklin Road.
    - (1) YIELD signs shall be installed in the center median facing east and west movements at Franklin Road.
  - ii. Route U.S. 130 and Huff Road:
    - (1) YIELD signs shall be installed in the center median facing northbound traffic at Huff Road.
2. In Westville Borough, Gloucester County:
  - i. Route U.S. 130 northbound:
    - (1) A YIELD sign shall be installed on Route 45 facing northbound traffic at the intersection of Route U.S. 130 northbound.

**(d)**

**Miscellaneous Traffic Rules  
Lane Usage  
Route I-95**

**Adopted Amendment: N.J.A.C. 16:30-3.5**

Proposed: April 7, 1986 at 18 N.J.R. 624(a).  
Adopted: July 17, 1986 by John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Road Design.  
Filed: July 21, 1986 as R.1986 d.339, **without change**.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:7-21(i),  
39:4-6 and 39:4-88.

Effective Date: August 18, 1986.

Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**

Comments were received from Jerome C. Premo, Executive Director, New Jersey Transit Corporation, Mc Carter Highway & Market Street, P.O. Box 10009, Newark, New Jersey 07101, regarding the proposed rule. Comments and responses are as follows:

**COMMENT:** The current regulations, N.J.A.C. 16:30-3.5(b), provides that the reserved lane shall be in effect between the hours of 7:00 A.M. to 9:30 A.M. The proposed amendment would reduce the time frame by thirty minutes or 7:00 A.M. to 9:00 A.M. In view of the traffic volume and the resulting congestion, N.J. TRANSIT believes that the extra half-hour is of significant importance to relieving the bottlenecking which occurs at the Route I-95 approach to the George Washington Bridge. Therefore, the 7:00 A.M. to 9:30 A.M. time frame should be retained.

**RESPONSE:** The Bureau of Traffic Engineering and Safety Programs had been advised that the lane hours would be 7:00 A.M. to 9:00 A.M. Appropriate signs were designed and are being installed accordingly. Changes to the signs would be expensive to implement, especially to the changeable message (drum) signs.

According to local newspapers, bus usage of the George Washington Bridge Bus Terminal in New York is at an all time low. This condition is listed as one of the reasons why the Exclusive Bus Lane (XBL) at the Lincoln Tunnel is overloaded.

**COMMENT:** The current regulations, N.J.A.C. 16:30-3.5(c), define high occupancy vehicles (H.O.V.) as one which contains at least three persons. The proposed regulations which designates a reserved lane for high occupancy vehicles provides for the inclusion of motorcycles. Such vehicles should not be permitted to use the reserved lane. The regulations should restrict the use of the lane to buses and vehicles containing at least three persons. Moreover, motorcycles should be excluded from the provisions of the regulations because they tend to "dart" in and out of traffic which impedes the flow of traffic and threatens safety on the roadway. The reserved lane should expedite the movement of the greatest number of people. In order to achieve and sustain such a goal, N.J. TRANSIT strongly believes that motorcycles should be prohibited from utilizing the reserved lane.

**RESPONSE:** The DOT agrees with NJ TRANSIT that motorcycles (per se) should be prohibited from the lane. Besides the reason expressed, allowing motorcycles would require the word "motorcycles" to be added to the signs; with the resulting expense as noted above.

If the regulation is understood correctly, a motorcycle with three passengers (two seater motorcycle with a sidecar) could still use the lane as it would qualify as a vehicle with three occupants; just as a truck with three occupants would qualify.

**Full text** of the adoption follows.

16:30-3.5 Route I-95

(a) A bus and carpool lane is hereby established on the Route 95 approach to the George Washington Bridge including the median lane from Milepost 72.4 on the lower level approach roadway to the ramp to the upper level approach roadway, the ramp from the lower level approach roadway to the upper level approach roadway at Milepost 72.5, the right-hand shoulder from the base of the expressway entrance from Route 4 on the Route 95 approach to the upper level of the George Washington Bridge to the bus stop ramp under LeMoine Avenue, and the right-hand lane on the upper level approach roadway from the ramp to the bus stop under LeMoine Avenue to a point approximately 150 feet beyond the LeMoine Avenue Bridge, Borough of Fort Lee, Bergen County.

(b) This regulation shall be in effect between the hours of 7:00 A.M. and 9:00 A.M. on weekdays or as otherwise posted.

(c) For the purpose of this regulation a bus and carpool lane means a lane reserved for buses, motorcycles, and vehicles that contain at least three persons.

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# EMERGENCY ADOPTIONS

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF COASTAL RESOURCES

#### Boat Regulation Commission

#### Boating Regulations

#### Diving and Swimming

#### Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 7:6-1.42

Emergency Amendment Adopted: July 14, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): July 14, 1986.  
Emergency Amendment Filed: July 28, 1986 as R.1986 d.345.

Authority: N.J.S.A. 13:1D-1 et seq., 12:7-34.1 et seq., specifically 12:7-34.49 and 12:7-44.

Emergency Amendment Effective Date: July 28, 1986.

Emergency Amendment Expiration Date: September 26, 1986.

The concurrent proposal is known as PRN 1986-339.

Submit comments by September 17, 1986 to:

Michael P. Marotta  
Office of Regulatory Services  
N.J. Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of the emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The agency emergency adoption and concurrent proposal follows.

#### Summary

The Barnegat Inlet Channel, which is one of the access corridors to and from the Inland Waterway and is heavily traveled by all types of vessels, has shifted so that it is now situated along the south side of the north jetty. The existing regulation allows skin diving in this channel and thereby places divers in danger of serious injury as a result of collisions with power and other vessels. The rule amendments will prohibit skin diving in this channel and will, therefore, protect divers from such accidents.

The amendment will provide further protection to divers generally by providing for enhanced visibility of the diving flag and by requiring that divers surface no further than 25 feet from the diver flag. Since boats are required to remain beyond 50 feet from the flag, this requirement will provide for a "buffer zone" to minimize the potential for accidents resulting from errors in the judgment of distances.

This amendment is part of a proposal which was published in the New Jersey Register on May 5, 1986 (see 18 N.J.R. 876(a)). In accordance with the terms of the New Jersey Boat Act (N.J.S.A. 12:7-34.1 et seq.), no rule, except those concerning the numbering system, may become effective during the period between May 1 and September 30 of any year unless the Boat Regulation Commission determines pursuant to the Administrative Procedure Act that an emergency rule is necessary. (see N.J.S.A. 12:7-34.40 and 12:7-34.50). The Boat Regulation Commission has made such a determination and the relevant section is being repropose concurrently with the emergency adoption.

#### Social Impact

The amendments will result in a greater degree of safety for skin diving generally and will help to prevent injury in those areas which have been determined to be higher risk areas because of boat traffic, currents and other factors.

#### Economic Impact

It is anticipated that the changes to the safety standards will not result in a significant impact. However, inasmuch as the proposed new standards will provide for greater safety, the amendments could result in a reduction of the number of accidents and, therefore, a reduction in the occurrence of personal injury and property damage.

#### Environmental Impact

The proposed amendments will not have an environmental impact upon the State of New Jersey.

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

7:6-1.42 Diving and swimming

(a) General provisions with respect to diving and swimming are [that:] as follows:

1. (No change.)
2. Any person while diving shall mark his **or her** position with a buoyed flag approved by the New Jersey Boat Regulation Commission[.].
  - i. Such flag [should] **shall** be displayed from a buoy, float, boat or other floating object;
  - ii. Such flag shall be a minimum of [18 inches by 18 inches] **14 inches by 16 inches, shall be rigid to enhance visibility** and shall be a red background with a white diagonal stripe running from one corner to the other.
3. No person [may] **shall** operate a [power] vessel within 50 feet of the buoyed flag.
4. (No change.)
5. No person [may] **shall** swim or dive in a narrow, confined or improved channel or in a marked fairway, under a bridge, or impede, obstruct or interfere with the passage of watercraft therein.

**6. No diver shall surface more than 25 feet from the buoyed flag except in an emergency.**

(b) Provisions for the Manasquan Inlet are as follows:

- 1.-2. (No change.)
- [3. No diver shall surface more than 25 feet from his buoyed flag except in an emergency.]

(c) Provisions for the Barnegat Inlet are as follows:

1. (No change.)
- [2. No person shall dive on the north side of the south jetty.]
- 2. No person shall dive in any of the waters of the Barnegat Inlet channel.**
- [3. Diving shall be permitted along the north jetty.]
- 3. No person shall dive in any of the waters between the south side of the north jetty and the Barnegat Inlet channel.**
- 4. Underwater diving is permitted over the top of that portion of the north jetty which is submerged and in all waters on the north side along the entire length of the north jetty.**

[4.] **5. [Diver must] A diver shall mark his or her position with a float and skin diver's flag.**

[5.] **6. Only "buddy diving" [will] shall be permitted in [this] the Barnegat [i]nlet.**

(d) Provisions for the Shark River Inlet are as follows:

1. (No change.)
2. Divers [must] **shall** stay within 25 feet of the jetties and bulkheads in the area described.
3. [Diver must] **A diver shall mark his or her position with a float and skin diver's flag.**
4. No diver shall surface more than 15 feet from [his] **the** buoyed flag except in an emergency.
5. (No change.)

# HIGHER EDUCATION

## (a)

### STUDENT ASSISTANCE BOARD

#### Tuition Aid Grant Program 1986-87 Award Table

#### Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 9:7-3.1

Emergency Amendment Adopted: July 28, 1986 by Student Assistance Board, Joseph Streit, Chairman.  
 Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): July 28, 1986.  
 Emergency Amendment Filed: July 29, 1986 as R.1986 d.348.  
 Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.  
 Emergency Amendment Effective Date: July 29, 1986.  
 Emergency Amendment Expiration Date: September 27, 1986.  
 Concurrent Proposal Number: PRN 1986-347.

Submit comments by September 17, 1986 to:

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

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of this emergency amendment are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The agency emergency adoption and concurrent proposal follows:

#### Summary

The Tuition Aid Grant Program provides awards based on financial need to enable students to obtain an undergraduate degree from both public and private colleges in New Jersey. The emergency amendment and concurrent proposal establishes an increased award table, especially in the low to middle income categories, for the Tuition Aid Grant Program for the 1986-87 academic year. Approximate increases are as follows: County Colleges—\$215.00; State Colleges—\$250.00; Independent Institutions—\$150.00; Rutgers University—\$260.00; NJIT—\$340.00.

#### Social Impact

The increased awards will provide for full tuition benefits for students attending public sector institutions. In addition, the new award amounts will compensate for reduced Pell and other federal aid for many New Jersey students in both public and independent institutions. Emergency adoption of this amendment may be expected to allow prompt notification

to students and families of increased awards, thereby allowing many who could not otherwise financially afford to attend college to enroll for the 1986-87 academic year. Other students and their families who anticipated borrowing money to finance their collegiate education will, upon receiving an increased award, not be required to borrow as much money as originally planned.

#### Economic Impact

The proposed award table is consistent with the fiscal year 1987 Appropriations Act for the Department of Higher Education and provides increased awards over the existing table, reflecting increased tuition rates and compensation for reduced federal student financial aid. Emergency adoption of this amendment will allow the increased awards to be made commencing with the fall semester of the 1986-87 academic year.

Full text of the emergency adoption and concurrent proposal follows (new text shown in boldface **thus**).

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

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

- (No change.)
- TUITION AID GRANT (TAG) AWARD TABLE FOR 1986-87 APPROXIMATE TUITION AID GRANT VALUES NEW JERSEY COLLEGES AND UNIVERSITIES**

(Delete the existing table in the New Jersey Administrative Code and replace with the following table.)

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ <sup>1</sup>	NJ Inst. of Tech.
A	B	C	D	E	F
<b>Under 950</b>	<b>\$890</b>	<b>\$1280</b>	<b>\$2650</b>	<b>\$1852</b>	<b>\$2132</b>
950-1349	890	1280	2650	1852	2312
1350-1749	840	1230	2500	1800	2040
1750-2149	740	1130	2350	1700	1920
2150-2549	640	1030	2200	1600	1800
2550-2949	540	930	2050	1500	1680
2950-3349	290	680	1750	1250	1410
3350-3749	200	580	1600	1150	1290
3750-4149	0	480	1450	1050	1170
4150-4549		380	1300	950	1050
4550-4949		280	1150	850	930
4950-5349		200	1000	750	830
5350-5749		0	850	650	730
5750-6149			700	550	630
6150-6549			550	200	530
6550-6949			400	0	200
6950-7349			250		0
7350-7749			200		
<b>Over 7749</b>			<b>0</b>		

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

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

(a)

**DIVISION OF FISH, GAME AND WILDLIFE**  
**Bureau of Shellfisheries**  
**Notice Permitting Oyster Harvest**  
**Authority: N.J.S.A. 50:3-11.**

Take notice that pursuant to N.J.S.A. 50:3-11, I, Richard T. Dewling, Commissioner of Environmental Protection, hereby grant permission for the dredging, catching or taking of oysters by lessees or their authorized agents from any lot specifically leased thereto, if a part of that lot is located south of a line described by False Egg Island Point and the wreck buoy BR "WR", during the month of August 1986 upon personal application to the Bureau of Shellfisheries Office on River Road at Bivalve, effective immediately.

(b)

**DIVISION OF ENVIRONMENTAL QUALITY**  
**Air Test Method 4, Testing Procedures for Motor**  
**Vehicles—Plumbtesmo Test, N.J.A.C.**  
**7:27B-4.6(a)2**

**Public Notice**

On June 5, 1985 the Department adopted N.J.A.C. 7:27B-4, "Testing Procedures for Motor Vehicles". N.J.A.C. 7:27B-4.6(a)2 was reserved to allow for further study of the proposed Plumbtesmo test procedure. The Department has completed its study and, based upon the results, has decided not to adopt the Plumbtesmo test procedure proposed at N.J.A.C. 7:27B-4.6(a)2.

The Plumbtesmo test is one of several tests frequently referred to as anti-tampering/anti-misfueling tests. These procedures determine compliance of motor vehicles with regard to the proper operation and functioning of their emission control devices. The Department adopted anti-tampering/anti-misfueling test procedures requiring visual inspection for the presence of a catalytic converter and the presence and proper functioning of a fuel-filler-neck inlet restrictor. These procedures became operative on December 2, 1985. The Plumbtesmo test checks the tailpipe for the presence of lead which, when detected in a vehicle originally equipped with a catalytic converter, is an indication of the vehicle's having been misfueled with leaded gasoline. Such misfueling can adversely affect the emission control performance of the catalytic converter.

In the Summary of Public Comments and Agency responses for the adoption, the Department stated that it would study the Plumbtesmo test to determine if the procedure proposed is technically valid and if the test is required to further reduce emissions. Considerations by the Department to further study the Plumbtesmo test procedure were the possibility for unleaded fuel to become contaminated during gasoline distribution prior to purchase by the motorist, which could result in an inspection rejection not caused by the motorist; and the gradual phase down of the lead content in leaded fuel which may eventually eliminate the damage potential of lead on the catalyst. It has been hypothesized that even if lower levels of lead would affect catalyst efficiency, these lead concentrations may be below the detection limit of the Plumbtesmo test and cause the test to be inconclusive. Finally, conflicting statements in the public record regarding the validity of the Plumbtesmo test procedure also indicated that additional study was prudent.

The study, conducted during January and February 1986, consisted of three parts. In the first part, the Department sampled unleaded fuel in tanks at 50 service stations throughout New Jersey. These samples were analyzed to determine their lead content relative to levels allowable under EPA rules. In part two, with the cooperation of the Division of Motor Vehicles (DMV), 1,120 vehicles were sampled using the Plumbtesmo test. In this part the goal was to confirm information regarding the dependency of the test upon tailpipe temperature and to evaluate the effectiveness of the test in New Jersey's centralized motor vehicle inspection system. In part three, the Department conducted extensive studies to evaluate the technical validity of the Plumbtesmo test. These were accomplished using

a single vehicle under laboratory conditions. Based on this study, the Department concluded the following:

(a) A survey conducted by the Department, of fifty gasoline stations located throughout New Jersey indicated that the sale of contaminated unleaded fuel seems not to be a significant problem in New Jersey. All but one sample were well below the EPA standard. EPA rules prohibit the sale of gasoline represented to be unleaded if it contains in excess of 0.05 grams per gallon (gms/gal). The Department concludes that the potential for inadvertent misfueling is low.

(b) Even the new leaded fuels with low (phased-down) lead contents adversely affect hydrocarbon and carbon monoxide emissions. However, tests conducted on a habitually misfueled, catalyst-equipped vehicle, using low-lead fuel (0.1 gms/gal.) indicated that only trace amounts of lead were present in the tailpipe after 100 gallons of fuel were consumed. The Plumbtesmo test was able to detect this lead under tailpipe temperatures of less than 60°F. Tailpipe temperatures above 80°F appeared to significantly limit the effectiveness of the test in detecting trace amounts of lead. Tailpipe temperatures at the inspection lanes usually exceed 100°F. The Department, therefore, believes that the Plumbtesmo test in the current inspection environment would be invalid.

(c) Data from the Department's centralized survey and from previous EPA surveys indicate that the Plumbtesmo test consistently yields a significant percentage of erroneous passing results. This is supported by the relatively high percentage of vehicles that failed either the catalyst or filler neck examination, or both, while passing the Plumbtesmo test.

(d) The overall tampering/misfueling rate for post-1974 vehicles for failure of any of the three New Jersey proposed anti-tampering/anti-misfueling test procedures (inspections for catalytic converter and fuel-filler-neck inlet restrictor, and the Plumbtesmo test procedure) was considerably lower than the rate reported in the 1984 EPA survey conducted, in part, in New Jersey. The difference in the reported rates is unexplained. However, the Department's centralized survey suggests that the rate of misfueling in New Jersey is significantly below that in other regions of the nation and of the national average. The Department believes the Department of Labor rule prohibiting the self-service of gasoline by the motorist coupled with the annual vehicle emission Inspection/Maintenance (I/M) program acts as a strong deterrent to vehicle misfueling.

The findings of these studies are summarized in a Department report entitled "An Evaluation of the Use of Lead Sensitive Test Paper for Detecting Vehicle Misfueling in a Centralized Inspection/Maintenance Program". It may be obtained by writing to David West, Principal Environmental Specialist, New Jersey Department of Environmental Protection, Bureau of Mobile Source Control and Enforcement Data Management, CN411, Trenton, New Jersey, 08625.

Because the Department has decided not to adopt the Plumbtesmo test procedure and because the Department concludes that projected emission reductions attributed to the Plumbtesmo test procedure in New Jersey have been overestimated, New Jersey will submit to the EPA a revision of the State Implementation Plan to seek approval for not including the Plumbtesmo test as part of the state's strategy for attaining the National Ambient Air Quality Standards for ozone and carbon monoxide.

(c)

**DIVISION OF WASTE MANAGEMENT**  
**Draft ECRA Sampling Plan Guide**  
**Public Notice**

Take notice that Richard T. Dewling, Commissioner of the Department of Environmental Protection, pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. ("ECRA"), announces that the Department will be soliciting public comments on the draft ECRA Sampling Plan Guide developed by the Bureau of Industrial Site Evaluation for use by industrial establishments during the ECRA compliance process. The draft ECRA Sampling Plan Guide, upon final implementation, will provide needed guidance for industrial establishments and their consultants concerning submission of the detailed sampling plan required by N.J.A.C. 7:1-3.7(d)14 as part of the Site Evaluation Submission (commonly known as the "SES" or "ECRA II Form"). Please note that, upon final implementation, the ECRA Sampling Plan Guide will only serve as a general guide. All sampling activities for a particular ECRA case

would have to be fully justified to the Department's satisfaction relating to site-specific consideration.

Copies of the draft ECRA Sampling Plan Guide are available upon request from the address set forth below:

Bureau of Industrial Site Evaluation  
Division of Waste Management  
New Jersey Department of Environmental Protection  
428 East State Street  
Trenton, New Jersey 08060

ATTENTION: Request for Draft ECRA Sampling Plan Guide  
Interested parties are invited to review and comment on the draft ECRA Sampling Plan Guide. All comments on the draft ECRA Sampling Plan Guide should be submitted to the Department at the address listed above by September 17, 1986.

(a)

**DIVISION OF WATER RESOURCES**

**Amendment to Sussex County Water Quality Management Plan**

**Public Notice**

Take notice that on April 25, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan to provide for the construction and operation of a new wastewater treatment plant to service the Annandale High Point Correctional Facility located in High Point State Park, was adopted by the Department. The new treatment plant will be owned and operated by the Department of Corrections.

**HEALTH**

(b)

**LOCAL AND COMMUNITY HEALTH SERVICES**

**Order to Remove from Sale and Recall Foods, Drugs, Cosmetics and Devices**

Take notice the the public comment period will be extended from August 6, 1986 to **September 6, 1986** for the receipt of written comments relevant to proposed rule dealing with Order to Remove from Sale and Recall Foods, Drugs, Cosmetics and Devices (See N.J.A.C. 8:21-5 at 18 N.J.R. 1361(b)). Submission of comments and inquiries about the proposed regulations should be addressed to:

Kenneth Kolano, Chief  
Food and Milk Program  
Environmental Health Services  
Division of Local and Community Health Services  
New Jersey Department of Health  
CN364  
Trenton, N.J. 08625

**LAW AND PUBLIC SAFETY**

(c)

**BOARD OF DENTISTRY**

**Petition for Rulemaking**

**Dental Hygienist Rules N.J.A.C. 13:30-2.10, 2.14, 2.18, 2.9, 6.2 and 6.9**

Petitioners: New Jersey Dental Hygienists Association.

Authority: N.J.S.A. 52:14B-4(f).

Take notice that on July 2, 1986 petitioners filed a petition with The Board of Dentistry requesting amendments to N.J.A.C. 13:30-2.10, 2.14, 2.18, 2.9, 6.2, 6.9, concerning dental hygienists and dental assistants.

The petition requests modification of existing regulations in the following areas: (A) Eliminate the requirement in N.J.A.C. 13:30-2.10(a) that dental hygienists perform under the "direct" supervision of a licensed dentist in a dentist's office; (B) Eliminate the distinction between traditional and expanded functions by placing the functions currently listed under N.J.A.C. 13:30-2.10(c) under revised section 2.10(a); (C) Add local infiltration anesthesia to the duties of a licensed dental hygienist under N.J.A.C. 13:30-2.10(a); (D) Add a new section N.J.A.C. 13:30-2.9(i) to create an inactive status for dental hygienists; (E) Amend N.J.A.C. 13:30-6.2(a) to allow a director or dean of a school of oral hygiene to be either a licensed dental hygienist or a licensed dentist; (F) Eliminate N.J.A.C. 13:30-6.9(a) to permit entrance of a candidate to a school of oral hygiene regardless of sex.

**Board of Dentistry Response:**

The Board of Dentistry at its meeting of July 9, 1986 voted to form a committee consisting of five Board members to study the petition filed by the New Jersey Dental Hygienists Association. The Board is not prepared to initiate rulemaking on this issue at this time. Further study and discussions by the Board remain necessary prior to such formal regulatory action. The committee will report its findings and recommendations to the full Board at its meeting of November 12, 1986. After consideration of the committee's report, the Board shall address this issue pursuant to The Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Pursuant to this notice, the Board solicits comments or other pertinent information on the petitioner's proposed amendments and the general issue prompting the petition for rulemaking. Interested persons may submit written comments on the petition for rulemaking until October 15, 1986. Address comments to:

William Gutman, Executive Secretary  
N.J. State Board of Dentistry  
1100 Raymond Boulevard  
Room 321  
Newark, New Jersey 07102

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the July 7, 1986 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1986 d.100 means the one hundredth rule adopted in 1986.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: JUNE 16, 1986.**

**NEXT UPDATE WILL BE DATED JULY 21, 1986.**

**Note:** If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

## N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
17 N.J.R. 1819 and 1954	August 5, 1985	18 N.J.R. 377 and 446	February 18, 1986
17 N.J.R. 1955 and 2070	August 19, 1985	18 N.J.R. 447 and 506	March 3, 1986
17 N.J.R. 2071 and 2170	September 3, 1985	18 N.J.R. 507 and 582	March 17, 1986
17 N.J.R. 2171 and 2318	September 16, 1985	18 N.J.R. 583 and 726	April 7, 1986
17 N.J.R. 2319 and 2484	October 7, 1985	18 N.J.R. 727 and 868	April 21, 1986
17 N.J.R. 2485 and 2584	October 21, 1985	18 N.J.R. 869 and 1018	May 5, 1986
17 N.J.R. 2585 and 2710	November 4, 1985	18 N.J.R. 1019 and 1122	May 19, 1986
17 N.J.R. 2711 and 2814	November 18, 1985	18 N.J.R. 1123 and 1222	June 2, 1986
17 N.J.R. 2815 and 2934	December 2, 1985	18 N.J.R. 1223 and 1326	June 16, 1986
17 N.J.R. 2935 and 3032	December 16, 1985	18 N.J.R. 1327 and 1432	July 7, 1986
18 N.J.R. 1 and 128	January 6, 1986	18 N.J.R. 1433 and 1504	July 21, 1986
18 N.J.R. 129 and 234	January 21, 1986	18 N.J.R. 1505 and 1640	August 4, 1986
18 N.J.R. 235 and 376	February 3, 1986	18 N.J.R. 1641 and 1726	August 18, 1986

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, 1:2-1:21	Pre-proposal: Administrative hearings	18 N.J.R. 728(a)	
1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)	R.1986 d.340
1:1-15.10	Prior transcribed testimony	18 N.J.R. 1020(a)	18 N.J.R. 1699(a)
1:5	Council on Affordable Housing hearings	18 N.J.R. 1506(a)	
1:6	Education budget hearings	18 N.J.R. 1020(b)	R.1986 d.342
1:10B	Medicaid and Medically Needy hearings	18 N.J.R. 1507(a)	18 N.J.R. 1699(b)

(TRANSMITTAL 22, dated June 16, 1986)

<b>AGRICULTURE—TITLE 2</b>			
2:7-1.2, 1.3, 1.4	Pullorum and fowl typhoid control	18 N.J.R. 1508(a)	
2:9-1.1, 1.2	Avian influenza and infected poultry flocks	18 N.J.R. 870(a)	R.1986 d.250
2:76-6.2, 6.15	Sale of development easements: deed restrictions	18 N.J.R. 1328(a)	18 N.J.R. 1370(a)
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(a)	
2:90-1.5, 1.14	Soil conservation plan certifications; minor subdivisions	17 N.J.R. 2172(a)	
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)	

(TRANSMITTAL 41, dated June 16, 1986)

<b>BANKING—TITLE 3</b>			
3:1-2.24	Modification of Commissioner's Order restricting stock transfers	17 N.J.R. 2487(a)	R.1986 d.293
3:11-11	Leeway investments	18 N.J.R. 132(a)	R.1986 d.245
3:11-11.13	Leeway investments: confidentiality of approval process	18 N.J.R. 1224(a)	18 N.J.R. 1370(b)
3:13-1	Registration of bank holding companies	18 N.J.R. 1434(a)	
3:17	Small loan rules	18 N.J.R. 1021(a)	R.1986 d.277
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)	18 N.J.R. 1453(b)

(TRANSMITTAL 33, dated April 21, 1986)

<b>CIVIL SERVICE—TITLE 4</b>			
4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals	18 N.J.R. 450(a)	
4:1-8.4	Promotional examinations	18 N.J.R. 591(a)	
4:1-15	Assignments and transfers	18 N.J.R. 592(a)	
4:2-15.1	Assignments and transfers	18 N.J.R. 592(a)	
4:2-16	Separations and demotions	18 N.J.R. 450(a)	
4:3-16	Separations and demotions	18 N.J.R. 450(a)	

(TRANSMITTAL 31, dated June 16, 1986)

<b>COMMUNITY AFFAIRS—TITLE 5</b>			
5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)	
5:12-2.4, 2.5	Homelessness Prevention Program: eligibility and priorities	17 N.J.R. 2939(a)	R.1986 d.296
			18 N.J.R. 1453(c)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)		
5:23-3.2	Subcode exceptions	18 N.J.R. 757(a)		
5:23-3.4, 3.14, 3.17, 3.20	Building, Fire Protection, and Mechanical Subcodes	18 N.J.R. 1235(a)		
5:23-3.11	Uniform Construction Code: correction to Administrative Code	_____	_____	18 N.J.R. 1621(a)
5:23-5.5, 5.7	Construction subcode licensure: transferability of experience	18 N.J.R. 594(a)	R.1986 d.255	18 N.J.R. 1373(a)
5:23-7	Barrier Free Subcode: access for physically handicapped and aged	18 N.J.R. 757(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 490(a)		
5:29	Housing and Development: petitions for rules	18 N.J.R. 871(a)	R.1986 d.274	18 N.J.R. 1454(a)
5:30-17	Local public contracts: cooperative pricing and joint purchasing systems	18 N.J.R. 1022(a)	R.1986 d.315	18 N.J.R. 1524(a)
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)	R.1986 d.258	18 N.J.R. 1373(b)
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		
5:80-20	HMFA housing projects: applicant and tenant income certification	18 N.J.R. 523(a)	R.1986 d.303	18 N.J.R. 1454(b)
5:92	Council on Affordable Housing: substantive rules	18 N.J.R. 1124(b)	R.1986 d.333	18 N.J.R. 1527(a)

(TRANSMITTAL 42, dated June 16, 1986)

## DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

## EDUCATION—TITLE 6

6:11-2.2	Duties of State Board of Examiners	18 N.J.R. 595(a)	R.1986 d.279	18 N.J.R. 1457(a)
6:20-4.4	Tuition for private schools for handicapped	18 N.J.R. 1237(a)		
6:22-1.6, 1.7, 2.4, 3.1	School facility planning; substandard facilities	18 N.J.R. 526(a)	R.1986 d.281	18 N.J.R. 1457(b)
6:29-4.4	Children with HIV infection and school attendance	18 N.J.R. 1509(a)		
6:29-9	Policies and procedures concerning pupil use of drugs and alcohol	18 N.J.R. 1237(b)		
6:30	Adult and community education	18 N.J.R. 871(b)	R.1986 d.310	18 N.J.R. 1561(a)
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		
6:68-5	Audio-visual public library services	18 N.J.R. 595(b)	R.1986 d.278	18 N.J.R. 1459(a)
6:68-6	Institutional library services	18 N.J.R. 597(a)	R.1986 d.280	18 N.J.R. 1460(a)
6:69-2	Library services to the disadvantaged	18 N.J.R. 599(a)	R.1986 d.282	18 N.J.R. 1461(a)

(TRANSMITTAL 41, dated June 16, 1986)

## ENVIRONMENTAL PROTECTION—TITLE 7

7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:6-1.4, 1.12, 1.14, 1.15	Boating rules	18 N.J.R. 876(a)	R.1986 d.304	18 N.J.R. 1461(b)
7:6-1.37	Waiver of maximum tow line length for parasailing operation	_____	_____	18 N.J.R. 1412(c)
7:6-1.42	Boating rules: diving and swimming	Emergency	R.1986 d.345	18 N.J.R. 1712(a)
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)	R.1986 d.262	18 N.J.R. 1374(a)
7:7-2.2	Wetlands management in Atlantic County	18 N.J.R. 1026(a)	R.1986 d.349	18 N.J.R. 1700(a)
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)		
7:13-7.1	Floodway delineations along East Branch of Stony Brook, South Branch of Rockaway Creek, and Whale Pond Brook	18 N.J.R. 1239(a)		
7:13-7.1	Floodway delineations in Montgomery Township and Rocky Hill	18 N.J.R. 1334(a)		
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)	R.1986 d.346	18 N.J.R. 1700(b)
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:14A-4.4, 4.7	Dioxin-containing waste	18 N.J.R. 879(a)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:18	Laboratory certification and standards of performance	18 N.J.R. 1239(b)		
7:19-3	Water allocation permit fees	18 N.J.R. 789(a)	R.1986 d.263	18 N.J.R. 1376(a)
7:19-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:22	Wastewater treatment facilities: construction grants and loans	18 N.J.R. 243(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:25-2.20	Higbee Beach Wildlife Management Area	18 N.J.R. 1511(b)		
7:25-19	Atlantic Coast harvest season	17 N.J.R. 2494(a)	R.1986 d.273	18 N.J.R. 1378(a)
7:25A-1.9	Closure of oyster seed beds in Delaware Bay			18 N.J.R. 1411(b)
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)		
7:26-1.4, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)	R.1986 d.347	18 N.J.R. 1701(a)
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 924(a)		
7:26-2.9	Closure and post-closure care of sanitary landfills: escrow agreements	18 N.J.R. 1036(a)	R.1986 d.305	18 N.J.R. 1462(a)
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.8	Land disposal of hazardous waste: correction			18 N.J.R. 1379(a)
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:26-8.3, 8.4, 8.13, 8.15, 10.5-10.8, 11.1, 11.5, 11.6, 12.2	Dioxin-containing waste	18 N.J.R. 879(a)		
7:26-8.14, 8.15, 8.16	Hazardous waste criteria, identification and listing	18 N.J.R. 1037(a)		
7:26-8.16	Waste code numbers for hazardous constituents	18 N.J.R. 792(a)		
7:26-8.17	Hazardous waste delisting procedure	18 N.J.R. 1335(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)		
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		
7:45-1, 2, 3	Delineation of Review Zone within Delaware and Raritan Canal State Park: reopening of comment period	18 N.J.R. 457(a)		

## (TRANSMITTAL 43, dated June 16, 1986)

**HEALTH—TITLE 8**

8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:22-1	Campgrounds sanitation	18 N.J.R. 1038(a)	R.1986 d.329	18 N.J.R. 1576(a)
8:26	Recreational bathing	18 N.J.R. 1040(a)	R.1986 d.328	18 N.J.R. 1576(b)
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
8:31B-3.31	Hospital reimbursement: transfer of residency positions	18 N.J.R. 795(b)	R.1986 d.260	18 N.J.R. 1379(c)
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:33-1.5	Home health care services: batching cycle change			18 N.J.R. 1414(a)
8:33B-1.3, 1.12	Extracorporeal shock wave lithotripsy services	18 N.J.R. 798(a)	R.1986 d.259	18 N.J.R. 1379(b)
8:33F-1.2	Continuous ambulatory peritoneal dialysis	18 N.J.R. 1241(a)		
8:33I	Megavoltage radiation oncology services	18 N.J.R. 1436(a)		
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:39-3.11	Availability of information at long-term care facilities	18 N.J.R. 1241(b)		
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:42A	Alcoholism treatment facilities	18 N.J.R. 796(a)	R.1986 d.257	18 N.J.R. 1380(a)
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:43G	Hospital capital policy	18 N.J.R. 1242(a)		
8:44-2.10	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)	R.1986 d.332	18 N.J.R. 1591(a)
8:57-1.14	Reporting of AIDS and AID Related Complex	18 N.J.R. 1245(a)		
8:59-1.3, 1.5, 2.1, 3.13, 5.1, 5.5, 6.2, 7.1, 7.2, 8.1, 8.2, 8.5-8.12, 10.3	Worker and Community Right to Know Act	18 N.J.R. 1363(a)		
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:61-1.1	Children and adults with HIV infection and school attendance	18 N.J.R. 1512(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
8:65-10.1	Controlled dangerous substances: Parafluorofentanyl	18 N.J.R. 603(a)	R.1986 d.326	18 N.J.R. 1591(b)
8:65-10.2	Removal of Nalmefene from Schedule II of controlled substances	18 N.J.R. 536(a)	R.1986 d.327	18 N.J.R. 1592(a)
8:65-10.4	Controlled substances: Quazepam and Midazolam	18 N.J.R. 1166(b)		
8:65-11	Narcotic treatment programs	18 N.J.R. 924(b)	R.1986 d.330	18 N.J.R. 1592(b)
8:71	Generic drug list additions (see 17 N.J.R. 2557(a), 2769(b), 18 N.J.R. 183(a), 418(a), 985(a))	17 N.J.R. 1733(a)	R.1986 d.251	18 N.J.R. 1380(b)
8:71	Generic drug list additions (see 18 N.J.R. 417(a), 984(b), 1102(b), 1382(a))	17 N.J.R. 2842(a)	R.1986 d.275	18 N.J.R. 1463(a)
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a))	18 N.J.R. 537(a)	R.1986 d.276	18 N.J.R. 1463(b)
8:71	Generic drug list additions	18 N.J.R. 1167(a)		

(TRANSMITTAL 40, dated June 16, 1986)

**HIGHER EDUCATION—TITLE 9**

9:2-5	Management of computerized information	18 N.J.R. 799(a)		
9:4	Policies and procedures for community colleges	18 N.J.R. 1439(a)		
9:7-2.2	Residency and student assistance	18 N.J.R. 801(a)	R.1986 d.322	18 N.J.R. 1592(c)
9:7-2.3	Status of foreign nationals	18 N.J.R. 19(a)	R.1986 d.254	18 N.J.R. 1382(b)
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)	R.1986 d.323	18 N.J.R. 1593(a)
9:7-3.1	Tuition Aid Grant Program: 1986-87 Award Table	Emergency	R.1986 d.348	18 N.J.R. 1713(a)
9:11-1.2	Educational Opportunity Fund: student residency	18 N.J.R. 925(a)		
9:11-1.5	EOF: undergraduate grants	18 N.J.R. 926(a)	R.1986 d.344	18 N.J.R. 1704(a)
9:11-1.7	EOF: grant amounts	18 N.J.R. 926(b)	R.1986 d.343	18 N.J.R. 1704(b)
9:12-1.5, 2.3	Educational Opportunity Fund Program	17 N.J.R. 2214(b)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

(TRANSMITTAL 31, dated April 21, 1986)

**HUMAN SERVICES—TITLE 10**

10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(a)	R.1986 d.331	18 N.J.R. 1704(c)
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)		
10:38	Interim assistance procedures for discharged clients of State hospitals	18 N.J.R. 802(a)	R.1986 d.239	18 N.J.R. 1383(a)
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)	R.1986 d.341	18 N.J.R. 1707(a)
10:45-1.3	Guardianship services: correction to Administrative Code	_____	_____	18 N.J.R. 1493(e)
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:54-4	Physician's Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)	R.1986 d.320	18 N.J.R. 1593(b)
10:56	Dental Services manual	18 N.J.R. 1337(a)		
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)		
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-3	Independent Clinic Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)	R.1986 d.320	18 N.J.R. 1593(b)
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1053(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:68	Chiropractic services and billing procedures	18 N.J.R. 1053(b)	R.1986 d.309	18 N.J.R. 1594(a)
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:69A-5.3	Renewal applications for PAAD beneficiaries	18 N.J.R. 1054(a)	R.1986 d.321	18 N.J.R. 1594(b)
10:81-3.17, 3.18, 5.9, 5.10	PAM: AFDC eligibility, WIN status, LLR reevaluation	18 N.J.R. 1513(a)		
10:81-3.38	PAM: transfer of resources	18 N.J.R. 1168(a)		
10:81-3.40, 3.41	PAM: repayment agreements and child injury awards	18 N.J.R. 1055(a)	R.1986 d.317	18 N.J.R. 1594(c)
10:81-6.3	PAM: transportation of client to fair hearing	18 N.J.R. 927(b)	R.1986 d.300	18 N.J.R. 1463(c)
10:81-7.21—7.29	PAM: funeral and burial payments	18 N.J.R. 1168(b)		
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:81-11.3, 11.9	PAM: Social Security numbers: restriction of information	17 N.J.R. 2516(b)	R.1986 d.243	18 N.J.R. 1383(b)
10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, 5.10	ASH: conformity with Federal regulations	18 N.J.R. 260(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:82-2.3, 2.4, 4.3	ASH: AFDC eligibility requirements	18 N.J.R. 928(a)		
10:82-4.2	ASH: income from tips	18 N.J.R. 1056(a)	R.1986 d.318	18 N.J.R. 1595(a)
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)		
10:85-3.3	GAM: assistance allowance standards	18 N.J.R. 928(b)	R.1986 d.299	18 N.J.R. 1464(a)
10:85-3.3	GAM: income from tips	18 N.J.R. 1056(b)	R.1986 d.319	18 N.J.R. 1595(b)
10:85-4.6	GAM: emergency assistance	18 N.J.R. 1343(a)		
10:85-4.8	GAM: funeral and burial payments	18 N.J.R. 1170(a)		
10:85-6.4	GAM: fiscal and statistical reporting	18 N.J.R. 1056(c)	R.1986 d.316	18 N.J.R. 1595(c)
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:85-9.6	Reevaluation of LRRs: correction			18 N.J.R. 1414(b)
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)		
10:87-4.13, 5.10, 12.1	Food Stamp Program: income deductions and resource limits	18 N.J.R. 1108(a)	R.1986 d.301	18 N.J.R. 1464(b)
10:87-5.4	Earned income: correction			18 N.J.R. 1414(b)
10:87-5.4, 5.5, 12.3, 12.4, 12.7	Food Stamp Program: maximum income limits	Emergency	R.1986 d.297	18 N.J.R. 1490(a)
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)	R.1986 d.307	18 N.J.R. 1596(a)
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)		
10:100-3.6, 3.7	Special Payments Handbook: funeral and burial payments	18 N.J.R. 1171(a)		
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:121A	Adoption agency standards	18 N.J.R. 1057(a)	R.1986 d.324	18 N.J.R. 1609(a)

(TRANSMITTAL 41, dated June 16, 1986)

**CORRECTIONS—TITLE 10A**

10A:3	Security and control	18 N.J.R. 1057(b)		
10A:4	Inmate discipline	18 N.J.R. 27(a)	R.1986 d.283	18 N.J.R. 1465(a)
10A:4-4.1	Inmate prohibited acts: correction			18 N.J.R. 1709(a)
10A:5	Close custody units	18 N.J.R. 1067(a)		
10A:31-3.12, 3.15	Adult county facilities: medical screening of new inmates	17 N.J.R. 2343(a)	R.1986 d.241	18 N.J.R. 1384(a)
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		
10A:31-6	Work Release Program	18 N.J.R. 604(a)	R.1986 d.261	18 N.J.R. 1386(a)
10A:71-2.2, 3.3, 3.4, 3.22, 3.27, 3.28, 3.31, 4.2, 4.3	Parole Board process and procedure	18 N.J.R. 929(a)	R.1986 d.306	18 N.J.R. 1610(a)

(TRANSMITTAL 11, dated May 19, 1986)

**INSURANCE—TITLE 11**

11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20, 22	Commercial policies: cancellation and nonrenewal	18 N.J.R. 457(b)	R.1986 d.272	18 N.J.R. 1388(a)
11:1-20.1, 20.2, 20.3, 22.1	Cancellation and nonrenewal of commercial policies	18 N.J.R. 1445(a)		
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:3-8	Nonrenewal of automobile policies	18 N.J.R. 1079(a)		
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:3-17	Rating organizations: private passenger automobile filings	18 N.J.R. 1171(b)		
11:3-22	Automobile coverage option survey	18 N.J.R. 1344(b)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-21	Limited death benefit policies	18 N.J.R. 1085(a)		
11:5-1.3	Licensing of real estate brokers and salespeople	17 N.J.R. 2350(a)		
11:5-1.3	Licensing of real estate broker and broker-salesperson	18 N.J.R. 1088(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

(TRANSMITTAL 39, dated June 16, 1986)

**LABOR—TITLE 12**

12:17-2.1	Reporting requirement for unemployment benefits claimant	18 N.J.R. 811(a)	R.1986 d.286	18 N.J.R. 1478(a)
12:17-7.1, 7.2	Unemployment compensation and temporary disability: disclosure of information	18 N.J.R. 1447(a)		
12:20-4.8	Temporary appointment to Unemployment Compensation Board of Review	18 N.J.R. 544(b)	R.1986 d.312	18 N.J.R. 1611(a)
12:51	Vocational rehabilitation services	18 N.J.R. 1088(b)	R.1986 d.298	18 N.J.R. 1479(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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12:100-2.1, 4.2, 7, 12	Public employee exposure to asbestos	18 N.J.R. 811(b)	R.1986 d.285	18 N.J.R. 1479(b)

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12A:100-1	Commission on Science and Technology: Innovation Partnership Grant Program	18 N.J.R. 1175(a)		

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**(TRANSMITTAL 18, dated February 18, 1986)**

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15:3-2.15	Microfilm standards: correction to Administrative Code			18 N.J.R. 1623(b)

(TRANSMITTAL 16, dated February 18, 1986)

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16:29-1.60	No passing zones along Route 54 in Atlantic County	18 N.J.R. 1449(b)		
16:29-1.61-1.64	No passing zones along Routes 17, 24, 45 and 48	18 N.J.R. 1450(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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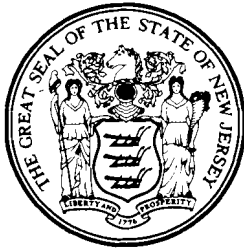
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## NOTES



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