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VOLUME 19 NUMBER 8

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(Includes adopted rules filed through March 30, 1987)

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 17, 1987.

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE WILL BE DATED MARCH 16, 1987.

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **May 20, 1987**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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Filing Deadlines

May 18 issue:		
Proposals	April 20	
Adoptions	April 27	
June 1 issue:		
Proposals	May 4	
Adoptions	May 8	
June 15 issue:		
Proposals	May 18	
Adoptions	May 22	
July 6 issue:		
Proposals	June 8	
Adoptions	June 12	

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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RULE PROPOSALS

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

(a)

Neighborhood Preservation Balanced Housing Program

Proposed Amendments: N.J.A.C. 5:14-1.1, 1.2, 1.3, 1.4, 2.1, 3.1 and 3.2

Proposed New Rules: 5:14-2.2, 2.3, 3.3 through 3.23, 4.1 through 4.6

Authorized By: Leonard S. Coleman, Jr., Commissioner,
Department of Community Affairs.

Authority: N.J.S.A. 52:27D-320.

Proposal Number: PRN 1987-122.

Submit comments by May 20, 1987 to:

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

The agency proposal follows:

Summary

This proposal contains new, more comprehensive rules for the Neighborhood Preservation Balanced Housing Program. The purpose of these rules is to establish the requirements that must be met by municipalities seeking funding from the Balanced Housing fund to develop housing that will be affordable to people of low and moderate income. The rules set forth both the obligations to be assumed by contracting municipalities and the affordability controls required to be enforced. It is intended that these rules be consistent with rules of the Council on Affordable Housing and the New Jersey Housing and Mortgage Finance Agency which deal with other aspects of development of affordable housing.

The previous Balanced Housing rules were based on a competitive application cycle in which municipalities were given funding priority for providing units below the required thresholds of 50 and 80 percent range of affordability. Although the Department is now entering a revolving funding cycle, it has sought to maintain incentives for providing units at lower ranges of affordability. As a result, the amount of funding for new construction, conversion and site specific rehabilitation projects will be determined, in part, by Tables II and III which provide for increasing the amount of subsidy as the purchase cost of rent is decreased.

The figures for Table III are based on an analysis of the subsidy requirements of those projects funded during the competitive cycle. Based on that analysis, the Department established base subsidies for units affordable to households at 65 percent range of affordability at \$7,875 for one bedroom and studio units, \$12,550 for two bedroom units, \$15,750 for three bedroom units and \$18,600 for four bedroom units. The Department calculated prices of one to four bedroom units affordable to households at 65 percent range of affordability in accordance with its definition of affordable. A table was created in which subsidy increased as sales price decreased and vice versa.

The amount of the increase or decrease was based on one-half of the change in sales price. Subsidies were capped at the low end of the table.

Recognizing that added incentive is needed for the creation of single room occupancy facilities, the subsidy for these units was set at one quarter the level provided to four bedroom units.

Table II is to be used by the State's most distressed cities, which are listed in Table I. It provides at each level an additional 20 percent subsidy.

Construction cost multipliers have been added to Tables II and III in order to account for the higher costs of construction in some regions. In lieu of actual residential construction cost data, the Department has used variations in Federal wage determinations for key building trades. Land costs are intentionally not accounted for, based on the assumption that actual land costs are so project specific that an accurate index would be impossible.

As required by the Affordable Housing Act of 1985, these rules contain provisions ensuring that units funded through the Balanced Housing program remain affordable to low and moderate income households for

up to 20 years. In order to be consistent with the Council on Affordable Housing, this period has been reduced to 10 years for the State's most distressed cities, listed in Table I.

The Department's approach to maintaining affordability will be to allow periodic changes in the allowable rent or sales price based on changes in the U.S. Department of Housing and Urban Development's Section 8 income limits, derived from the National Housing Act, 12 U.S.C. §1701 et seq. The Department invites comments on this approach and in particular seeks suggestions on how the legislative mandate could be met through a "shared equity" approach.

Social Impact

By establishing standards for the use of Balanced Housing funds, the rules will advance the goals of the program and will assist in the development of new housing which will be affordable to people of low and moderate income. "Low income" is defined as income not in excess of 50 percent of median income in the housing region; "moderate income" is defined as income that is greater than 50 percent and less than 80 percent of median income in the housing region.

Economic Impact

Use of Balanced Housing funds to develop affordable housing will increase the supply of such housing, to the economic benefit of those who require it, and will result in increased income for all involved in the actual construction of the new housing.

Regulatory Flexibility Statement

The Department of Community Affairs distributed Balanced Housing funds to municipalities, which contract with developers who, in a great many cases, are small businesses. Some property owners who enter into agreements to limit rentals in exchange for balanced housing financing may be small businesses. Since participation by a small business owner in the Balanced Housing Program is voluntary, the program cannot be said to "impose" any requirements upon small businesses. Developers or rental property owners who are small businesses, like any who are not small businesses, would be well advised to have professional legal and accounting assistance available to them. However, it is unlikely that they will find it necessary to hire any professionals whom they would not already have available to assist them for other purposes.

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

CHAPTER 14 NEIGHBORHOOD PRESERVATION BALANCED HOUSING PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

5:14-1.1 Purpose

The purpose of the Neighborhood Preservation Balanced Housing Program shall be to [deliver] **assist in the delivery of housing affordable to low and moderate income households in viable neighborhoods in fulfillment of Section 20 of the Fair Housing Act of 1985.** Consistent with the Act, a substantial percentage of Program awards shall be made to projects and programs in those municipalities receiving State aid pursuant to P.L. 1978, c.14 ([C.] N.J.S.A. 52:27D-178 et seq.). [The Department shall also target a percentage of Program awards to the special needs of "at-risk" groups, including the elderly, handicapped and single-parent families].]

5:14-1.2 Eligible applicants

(a) (No change in text.)

(b) **At any time prior to such deadline as may be established by the Council on Affordable Housing, any municipality may apply provided that the proposed project will meet all or part of the municipality's low and moderate income housing obligation. Thereafter, the Department shall accept applications only from municipalities which meet one or more of the following criteria:**

- 1. The municipality's housing element has received substantive certification from the Council on Affordable Housing; or**
- 2. The municipality is subject to a court-ordered builder's remedy; or**
- 3. The municipality has been designated as a receiving municipality as a result of a Regional Contribution Agreement which has been approved by the Council on Affordable Housing.**

5:14-1.3 Eligible activities

(a) [The Department shall award loans and/or grants for those activities listed below. For any eligible activities that does not specifically require 100 percent occupancy by low and moderate income households, the Department shall fund a project if it includes a substantial percentage of low and moderate income units. A substantial percentage shall generally be a percentage which is larger than 20 percent.] Eligible activities shall include those activities listed below.

1.-7. (No change.)

5:14-1.4 Definitions

["Housing Region" shall mean a geographic area of no fewer than two nor more than four contiguous whole counties, as defined in "Mount Laurel II Challenge and Delivery of Low-Cost Housing" published by the Rutgers' Center for Urban Policy Research.

"Low income household" shall mean a household whose gross annual earnings are less than 50 percent of the median income for the region.

"Moderate income household" shall mean a household whose gross annual earnings are no less than 50 or more than 80 percent of the median income for the region.]

"Affordable" means that the monthly rent on a rental unit, not including utilities, does not exceed 30 percent of an eligible household's income. Owner-occupied units are considered "affordable" if the monthly carrying costs, including principal, interest, taxes, insurance and condominium fees, do not exceed 28 percent of an eligible household's income and if the downpayment on the unit is no more than 10 percent.

"Neighborhood" means an areas which is recognized as a distinct entity by virtue of certain factors, such as: definite boundaries, natural or man-made; history; architecture; facilities which attract people within a certain radius; or a shared sense of identity or social cohesion. This definition is equally applicable to neighborhoods in urban, suburban, and rural communities.

"Eligible Neighborhood" means a neighborhood that will be viable and stable after the implementation of the proposed project.

"Low Income Household" means a household whose gross annual earnings are 50 percent or less than 50 percent of the median income as adjusted by geographic region and family size in accordance with Department of Housing and Urban Development (HUD) Section 8 standards.

"Moderate Income Household" means a household whose gross annual earnings are greater than 50 percent and less than 80 percent of the median income as adjusted by geographic region and family size in accordance with HUD Section 8 standards.

"Neighborhood Rehabilitation Project" means a project in which a municipality is funded for the purpose of identifying and rehabilitating standard units in one to four family structures within a specified eligible neighborhood.

"New Construction, Conversion and Site-Specified Rehabilitation Projects" means those projects in which a municipality is funded for the purpose of creating new, standard units at or within a pre-specified location or building.

"Standard" means a unit in which the local construction official has certified that health and safety code violations exist and if, in order to abate those violations, one or more of the following major systems must be replaced or extensively repaired: roof; electrical; plumbing; sanitary plumbing; heating; and load-bearing structural systems.

SUBCHAPTER 2. FUNDING

5:14-2.1 Funding [cycles and application procedures]

[(a) The Department shall establish a deadline for one competitive funding cycle per year. Notice of such deadline shall be published in the New Jersey Register. During the competitive funding cycle, the Department shall accept applications from each housing region. Fundable projects shall receive firm or conditional commitments.

(b) If there are unallocated funds, the Department shall accept additional applications and make funding commitments to projects on a first come first served basis subject to the priorities outlines in N.J.A.C. 5:14-1.1.

(c) A municipality may submit unlimited applications, except that only one application per year shall be for a project designed to rehabilitate individual structure scattered through a designated neighborhood.

(d) The maximum project award shall be \$350,000. The Department may waive this limitation for what it considers compelling reasons.

(e) Multi-year commitments shall be considered by the Department on a case-by-case basis.]

(a) The Department shall accept applications on a continuous basis. The Department shall notify each applicant as to whether the application is accepted, rejected or conditionally accepted.

(b) Projects shall be funded in the order in which they are ready to go to contract.

1. In the event that funds become limited, the Department may establish a priority system reflecting the Funding Goals and the Department's desire to favor projects which exceed the minimum affordability requirements, and those which can be completed quickly.

2. A project shall be considered ready to go to contract at such time as the Department has accepted an application or the applicant has fulfilled the conditions of a conditional acceptance.

(c) The maximum amount of awards shall be as follows:

1. For Neighborhood Rehabilitation Projects, the maximum award, including administrations, for any application shall be based on the need as documented in the application and the amount the administering agent is capable of implementing during the contract period but shall not exceed the lesser of \$350,000 or \$12,000 multiplied by the number of units to be rehabilitated.

2. For New Construction, Conversion and Site-Specific Rehabilitation Projects, the maximum award shall be the lesser of \$750,000 or the maximum subsidy as determined by Table II for those cities listed in Table I, or Table III for all other municipalities. The Department may deny project funding when the project is affordable to households with incomes under 80 percent of the region's median household income without Balanced Housing funds or award less than the maximum per unit subsidy when the project can be completed with a smaller total Balanced Housing grant.

i. The Department may use additional maximum funding charts if the existing chart(s) does not satisfactorily meet the funding needs of certain types of projects and if the proposed alternative chart(s) is based on conclusive economic analysis.

ii. The Department may waive the \$750,000 limit for compelling reasons.

iii. If a proposed project is to be undertaken by a for-profit developer, the Department may make funding conditional upon the proposed project containing more than 20 percent low and moderate income units. If this requirement is imposed, the Department's subsidy shall be based upon the number of units representing an increase above 20 percent and/or the subsidy required to make the units affordable to households with incomes below the thresholds of 50 and 80 percent of median income.

iv. The amount of the grant awarded to successful applicants will be based on the information provided in the application. If during construction there is a change in the financial structure of the project and/or if during occupancy there is a need to alter the targeted range of affordability based on the actual purchaser or renter profile, the Department will adjust the amount of the final subsidy provided to conform to the formula provided in Table II or III, whichever is applicable.

3. The Department may change and update the maximum subsidy chart(s) and awards from time to time in order to keep the program responsive to funding needs.

5:14-2.2 Funding goals

(a) The Department shall attempt to achieve the following funding goals:

1. At least 25 percent of the units funded annually shall be occupied by elderly, handicapped or single-parent households;

2. 75 percent of the units funded annually shall be in urban areas;

3. 15 percent of the units funded annually shall be in cities with designated Urban Enterprise Zones; and

4. In addition, the Department shall target funds to a region based on the region's percentage of low and moderate income housing need as determined by the Council on Affordable Housing.

5:14-2.3 Funding criteria

(a) All projects proposed for funding must be in an eligible neighborhood.

(b) Applicants to the Balanced Housing Program shall be required to demonstrate an ability to carry out the proposed project. Applicants for new construction, conversion and site-specific rehabilitation projects must demonstrate the financial feasibility of the project.

1. The Department will examine the qualifications of key participants including the sponsor/developer, consultant, administering agency and the municipality. Failure to perform by any of those participants in past contracts with the Department may be grounds for disqualifying an application.

(c) At least 50 percent of the low and moderate income units to be funded shall be affordable to low income households. However, projects located in municipalities listed in Table II shall be exempt from this requirement upon fulfillment of indigenous need.

(d) Applicants to the Balanced Housing Program must demonstrate that a proposed project will help meet an affordable housing need as defined by one or more of the following:

1. A housing element which has received substantive certification from the Council on Affordable Housing;

2. A builder's remedy as determined by a court having jurisdiction;

3. A Regional Contribution Agreement which has been approved by the Council on Affordable Housing; or

4. At any time prior to such deadline as may be established by the Council on Affordable Housing, that the municipality can demonstrate to the Department's satisfaction that it has a low and moderate income housing obligation and that the proposed project will help meet that obligation.

(e) Applicants for new construction, conversion and site-specific rehabilitation projects must control the project site, whether by holding title, by a sales contract, by an option to purchase or by any other means which the Department may approve.

(f) Any agent administering a Balanced Housing neighborhood rehabilitation project must complete 75 percent of the units to be rehabilitated before the municipality may submit an application on behalf of that agent for an additional neighborhood rehabilitation funding. Prior to the Department funding such an application, the agent must have obligated 100 percent of the original grant.

SUBCHAPTER 3. [FUNDING CRITERIA] GRANT AWARDS: TERMS AND CONDITIONS

5:14-3.1 [Threshold criteria]

[(a) In order to be eligible for funding, an applicant shall demonstrate that:

1. At least 50 percent of housing units in a project will be affordable to low income households;
2. There is a plan to ensure that the required percentage of the program's beneficiaries are low and moderate income;
3. There is a plan to ensure that units will remain affordable and occupied by low and moderate income households;
4. The applicant or development entity has control of the project site;
5. The municipality has declared its intent to submit its fair share housing plan to the Affordable Housing Council or has agreed to a court ordered settlement of its low and moderate income housing obligation;
6. There is sufficient need for the program and the resources committed to the project are commensurate to the need.]

Grant agreements

Successful applicants to the Neighborhood Preservation Balanced Housing Program will be invited to enter into a grant agreement with the Department. Such agreements shall be subject to the terms and conditions set forth in this subchapter.

5:14-3.2 [Competitive criteria]

[(a) Eligible applications shall be reviewed on the basis of project specific criteria and the Department's assessment of municipal need. In evaluating municipal need, the Department shall consider the municipality's ranking in the State Community Need Index and the municipality's low and moderate income housing obligations (as determined by the Department). The Department shall give priority to applications from municipalities receiving State aid pursuant to P.L. 1978 d.14 (C.52:27D-178 et seq.) Projects will be favored which:

1. Provide more than 50 percent of the housing units to low income households or provide housing units to a diversity of income groups within the low and moderate income ranges;
2. Use Neighborhood Preservation Balanced Housing funds and other subsidies most efficiently;
3. Are successful in containing total project costs;
4. Include a diversity of bedroom types of reasonable size;
5. Demonstrate progress in developing construction and administrative plans;
6. Demonstrate progress in receiving financial commitments to the proposed project;
7. Are most likely to result in a stable neighborhood by addressing the needs of its residents.]

Compliance with existing laws

(a) The municipality shall, in the performance of the contract, comply with all Federal, State and municipal laws, rules and regulations which are applicable to all persons undertaking similar activities or specifically applicable to municipalities or public entities.

(b) Failure to comply with such laws, rules or regulations when applicable shall be grounds for termination of the Agreement.

5:14-3.3 Municipal share

The Department shall require non-Balanced Housing funds which are included in the application to be formally committed to the proposed project and may also require them to be included in the contract budget. Failure of the municipality to expend such funds as specified shall be grounds for termination of the Balanced Housing Agreement.

5:14-3.4 Use of funds for program administration

Municipalities which are funded for neighborhood rehabilitation projects may use up to 16 percent of the grant amount for program administration. The use of program funds for administration is prohibited for other projects.

5:14-3.5 Affordability controls

(a) With the exception of rehabilitated owner-occupied units, the municipality shall provide contractual guarantees and procedures which will ensure that all units funded with Balanced Housing funds for low and moderate income households will remain affordable to such households for periods of time stated below, unless such period is modified by the Department:

1. 10 years for units located in those cities listed in Table I.
2. 20 years for units located in municipalities not listed in Table I.
3. For rental units created or rehabilitated with Balanced Housing funds, affordability control shall remain in effect until such time after the 10 or 20 years pursuant to (a)1 and 2 above that the unit become vacant.

5:14-3.6 Recapture

(a) The municipality shall provide contractual guarantees and procedures to ensure that, upon the expiration of affordability controls, the owner of any unit assisted with Balanced Housing funds provided through a new construction, conversion and site-specific rehabilitation contract with the Department shall repay to the Department the full amount of Balanced Housing assistance received plus any accrued interest. For the purpose of this section, the assistance assigned to a housing unit shall be defined as the total Balanced Housing grant divided by the number of units assisted. The interest rate will be set by the Department at the time of closing.

(b) For owner-occupied units, the repayment shall not become due until such time after the expiration of controls that the unit is sold or transferred. However, the owner may repay at the time of expiration. The repayment amount for owner-occupied units shall not exceed the sales price minus the outstanding mortgage amount, owner's equity and the cost of sale.

(c) Any owner may elect to continue affordability controls in lieu of repayment.

5:14-3.7 Low and moderate income split

No less than 50 percent of the units assisted with Balanced Housing funds shall be occupied by the low income households.

5:14-3.8 Certification of housing standards

Any structure repaired in whole or in part with Balanced Housing funds must, upon completion, be certified by the local construction official to be free of code violations according to HUD Section 8 Housing Quality Standards or the local housing code, whichever is more restrictive.

5:14-3.9 Condominiums and cooperatives

In cases where a cooperative or a condominium complex is assisted with Balanced Housing funds, and one or more of the units is not included in the project, the owners of the units which are not included will be assessed a proportionate share of the cost of common area and system-wide improvements.

5:14-3.10 Mortgages

(a) Funds advanced to a municipality under an Agreement for new construction, conversion and site-specific rehabilitation shall be evidenced by a note and secured by a mortgage to the Department.

(b) The note and a certified copy of the mortgage shall be given to the Department at closing and the original mortgage shall be duly recorded and delivered promptly to the Department.

5:14-3.11 Rehabilitation provision

(a) Any Neighborhood Preservation Balanced Housing Program grant assistance provided to an income qualified owner-occupied unit shall be in the form of a six year deferred payment loan. The municipality shall provide contractual guarantees to ensure the full repayment of such loan to the Department in the event that the owner-occupant transfers title or moves from the unit prior to the expiration of the loan agreement.

(b) Rehabilitation assistance provided with Neighborhood Preservation Balanced Housing funds provided through a neighborhood rehabilitation contract shall be limited to structures with one to four housing units inclusive.

(c) No Balanced Housing assistance shall be provided to occupied housing units unless the occupants have been certified as low or moderate income.

(d) No rehabilitation assistance shall be provided to an occupied rental unit unless the owner of that unit agrees to maintain the rent at a level which is affordable to the low or moderate income household which is currently occupying that unit.

(e) Rents for unoccupied units shall be established at a rate which is affordable to the first low or moderate income household to occupy that unit following rehabilitation.

(f) In order to be eligible for funding, a unit must be certified by the local construction official as substandard.

(g) Any structures repaired in whole or in part with Balanced Housing funds must, upon completion, be certified by the local construction official to be free of code violations according to HUD Section 8 Housing Quality Standards or the local housing code, whichever is more restrictive.

(h) In cases where a two to four unit structure is rehabilitated with Balanced Housing funds and one or more of the units is not assisted, the percentage of the cost of common area and system wide improvements equal to the percentage of unassisted units shall be paid by the owner.

(i) In neighborhood rehabilitation projects, the maximum Balanced Housing program assistance to any one unit shall not exceed the greater of \$15,000 or one-third of the estimated value of the unit after the rehabilitation is completed.

(j) Balanced housing funds may be used only for work and repairs required to make a unit standard or for any other work or repairs (including finishing and painting) which is directly related to the required activities. Luxury improvements, improvements which are strictly cosmetic and the purchase of free standing appliances with Balanced Housing funds shall be prohibited.

5:14-3.12 Assignability

Subject to approval by the Department, the municipality may assign its rights, duties and obligations under the Balanced Housing contract to non-profit or for-profit housing sponsors.

5:14-3.13 Third party administration

Any agreement between a municipality and consultant, non-profit or any other agent for the administration of the municipality's Balanced Housing Program, or any part thereof, shall be subject to the review and approval of the Department.

5:14-3.14 Other third party contracts

The Department shall have the right to review and approve, or disapprove, any contract for professional services whenever Balanced Housing Program funds will be used to pay for all or part of the services. In addition, the Department shall retain the rights to the products of any such services including but not limited to reports, plans and architectural drawings. Any such agreement shall be subject to this subchapter.

5:14-3.15 Financial management system

(a) The Chief Financial Officer of the municipality shall be responsible for maintaining an adequate financial management system which shall ensure compliance with the program. The Chief Financial Officer shall notify the Department immediately when the municipality cannot comply with this responsibility.

(b) Any payments received and expended by a municipality are subject to the Single Agency Audit. The Audit Management System developed by the Department's Division of Local Government Services, serving as the designated cognizant agency for funds provided for under this Agreement, shall be followed to meet the audit requirements pursuant to any applicable Federal or State laws.

(c) The Chief Financial Officer shall submit a Statement of Adequacy of Accounting as prescribed by the Department.

5:14-3.16 Identification

(a) The municipality shall be solely responsible for and shall keep, save, and hold the State of New Jersey harmless for all claims, loss, liability, expense, or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the municipality's services or to any other persons, or from any damage to any property sustained in connection with the delivery of the municipality's services which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from the municipality's failure to provide for the safety and protection of its employees, whether or not due to negligence, fault, or default of the municipality. The municipality liability under the Balanced Housing Agreement shall continue after the termination of the Agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

(b) Any and all agreements with developers entered into by the municipality shall protect and hold harmless the State of New Jersey in accordance with (a) above.

5:14-3.17 Insurance

The municipality shall procure and maintain sufficient liability insurance, as determined by the Department, and any other insurance which the Department may require, through the term of the Balanced Housing contract.

5:14-3.18 Access to records

(a) The municipality shall make available to the Department, or any duly authorized representative, such pertinent accounting records, books, documents, and/or papers as may be necessary to monitor compliance of the project.

(b) The Department shall have the right to make such visits and inspections as it deems necessary, whether or not prior notice is given.

(c) Financial records, supporting documents, statistical records, and all other records pertinent to the contract and funds expended thereunder shall be retained for a period of three years from the date appearing on the Certificate of Performance Completion with the following qualifications:

1. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigations, claims or audit findings involving the records have been resolved.

2. Records for nonexpendable property acquired with Department funds shall be retained for three years after its final disposition.

3. Records for neighborhood rehabilitation projects shall be retained for three years after the expiration of the deferred payment loan agreements and affordability controls.

5:14-3.19 Administrative requirements

(a) The municipality or the project sponsor shall certify that the Neighborhood Preservation Balanced Housing activities, goals and timetables are in compliance with all applicable Federal and State laws and regulations as they relate to the acceptance and use of funds for this program. The requirements include, but are not limited to, the following:

1. That it possess legal authority to accept the grant;

2. That it shall provide and maintain competent and adequate staff supervision and inspection at the construction site where applicable to ensure that the completed work conforms with the approved plans and specifications, and shall furnish progress reports and such other information as the Department may require;

3. That it shall establish safeguards to prohibit local officials and employees from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Any such occurrences must be disclosed to the Department in writing for remedial action; and

4. Should the Department wish to issue a report concerning the program, its results, the techniques involved, and the conclusions reached, the municipality shall cooperate fully by making available to the Department for publication or other use such information as the Department may request.

5:14-3.20 Drawdown of funds

(a) The rules for drawdown of funds for Neighborhood Rehabilitation Projects shall be as follows:

1. When the appropriate parties have sealed and executed the Balanced Housing contract and the Affordable Housing Administrative Agreement and any other document(s) which the Department may require are submitted, 20 percent of the administrative budget shall be released by the Department.

2. Within 90 days of contract execution, the municipality shall deliver to the Department an Administrative Plan/Procedural Manual and a Program Process Schedule. Upon Departmental approval of these documents, they shall become part of the contract and the municipality may secure the release of an additional 30 percent of the administrative budget.

i. Administrative Plan/Procedural Manual: The municipality shall submit a plan as prescribed by the Department that describes the staffing, the coordination of activities to complete the rehabilitation of units of housing and the processing procedures of the program from initial intake through the final inspection and payment.

ii. Program Progress Schedule: The municipality shall submit a schedule as formulated with the Department's designated project manager indicating the number of housing units to be completed monthly.

3. An additional 45 percent of the administrative budget shall be released in proportion to the number of units of housing rehabilitated as defined by signed housing rehabilitation contracts.

4. 95 percent of project costs shall be released in accordance with the dollar amount of signed rehabilitation contracts.

5. In order to secure the release of funds, the municipality shall submit to the State of New Jersey Invoice Form AR 50/54 and appropriate documentation. For funds listed under (a)3 and 4 above, appropriate documentation shall include an executed Unit Inventory Form, as required under the terms of the Affordable Housing Administrative Agreement, for each unit rehabilitated.

6. Beginning three months after the effective date of the contract, the municipality shall submit quarterly a Fiscal Monitoring Report and a Program Progress Report in a format which will be specified by the Department. These quarterly reports shall be submitted within five days of the close of each quarter.

7. The remaining five percent of the total contract amount shall be released upon Departmental approval of the final report in accordance with N.J.A.C. 5:14-3.23.

(b) The rules for drawdown of funds for New Construction, Conversion and Site Specific Rehabilitation Projects shall be as follows:

1. Prior to the release of Balanced Housing Program funds, the municipality shall provide the Department with the following:

i. Evidence of firm financial commitments for construction and permanent financing;

ii. Evidence that a certificate of occupancy has been issued by the local construction official. If Balanced Housing funds are needed during construction, the Department will accept security in the form of a letter of credit or a bond secured by a mortgage executed in favor of the Department and recorded in the appropriate county with a term not to exceed two years. The mortgage must be in an amount which does not exceed the appraised value of the property and be of sufficient value to secure all Balanced Housing Program funds to be advanced prior to the issuance of a certificate of occupancy. The Department will release the mortgage upon receipt of evidence of a certificate of occupancy.

iii. A completed source and application of funds form.

iv. Copies of contracts between the municipality and third party entities for which Balanced Housing Program funds will provide for the cost of services for the units to be developed under this Agreement, including but not limited to sponsor/developer, architectural, engineering, and legal services.

v. Signed construction agreement.

2. Up to 90 percent of the Balanced Housing Program funds may be released in accordance with the share of total expenditures as reported on the Source and Application of Funds Form.

3. A request for funds must be accompanied by the following:

i. A New Jersey State Invoice Form (AR-50/54); and

ii. A Source and Application of Funds Status Report Form.

4. Final payment equal to 10 percent of the Balanced Housing Program funds provided in the Agreement shall be released upon receipt of the following:

i. A Completed Unit Inventory Form for each unit receiving assistance.

ii. A Final Report pursuant to N.J.A.C. 5:14-3.23(f).

5. The Department may withhold any payments in whole or in part, if, in the opinion of the Department, the expenditure is not warranted, or if any necessary permits, approvals or registrations required to proceed with the project are not obtained.

6. The Department may alter the drawdown schedule if necessary to ensure project feasibility.

5:14-3.21 Scope of rights

(a) The execution of an Agreement between the Department and a municipality shall not create any rights against the Department in favor of third parties including, but not limited to, employees and contractors with the municipality.

(b) The possibility of continued operations through financial assistance furnished by the Department beyond the specified expiration date of the Balanced Housing Agreement shall be conditioned upon a written extension of the Agreement or upon refunding by the Department. Execution of a contract shall create no right to future additional funding.

5:14-3.22 Termination, suspension and amendments

(a) The following definitions shall apply for the purposes of this section:

1. Termination: The termination of a contract means the cancellation of financial assistance, in whole or in part, under a contract at any time prior to the date of completion.

2. Suspension: The suspension of a contract is an action by the Department which temporarily stops financial assistance under the contract pending corrective action by the municipality or pending a decision to terminate the contract by the Department.

3. Disallowed costs: Disallowed costs are those charges to a contract which the Department determines to be beyond the scope of the purpose of the contract, excessive, or otherwise unallowable.

(b) When a municipality has failed to comply with contract award stipulations, standards, or conditions, the Department may, upon 30 days notice to the municipality, suspend the contract and withhold further payments, prohibit the municipality from incurring additional obligations of contract funds pending corrective action by the municipality, or decide to terminate the contract. The Department shall allow all necessary and proper costs which the municipality could not reasonably avoid during the period of suspension.

(c) The Department may terminate a contract, in whole or in part, upon 30 days notice, whenever it determines that a municipality has failed to comply with the conditions of the contract. The Department shall promptly notify the municipality, in writing, of the determination and the reasons for the termination together with the effective date. Payments made to the municipality or recoveries by the Department under the contract terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(d) The Department may consider amendments to the original activities contained in its grant agreements if such amendments are necessitated by actions or conditions beyond the control of the municipality. Municipalities must request prior approval from the Department for any modifications to the originally executed grant agreement.

(e) Approval for modifications shall be at the discretion of the Department and shall be subject to:

1. A demonstration by the municipality that all reasonable attempts to implement the original activities have been made and that continued efforts in this regard would not, in all likelihood, result in the timely implementation of the activities in question;

2. A determination by the Department that program benefits to be attained by the modified activities will be comparable to those of the original activities;

3. The municipality having provided affected citizens an opportunity to comment on the requested modification(s) which will alter the scope, nature or location of the original activities; and

4. A determination by the Department that the modified activities can be completed in a timely manner.

5:14-3.23 Contract closeout

(a) The following definitions shall apply for the purpose of this section:

1. Contract closeout: The closeout of a contract is the process by which the Department determines that all applicable administrative actions and all required work of the contract have been completed by the municipality.

2. Date of completion: The date when all activities under the contract are completed or the ending date of the Agreement or any supplement or amendment thereto.

(b) The municipality shall refund to the Department any unexpended funds or unobligated (unencumbered) cash advanced except such sums that have been otherwise authorized, in writing, by the Department to be retained.

(c) Within the limits of the contract amount, the Department may make a settlement for any upward or downward adjustments of costs after the audit and final report are received.

(d) The Department may permit extensions when requested in writing by the municipality.

(e) In the event a final audit has not been performed prior to the closeout of the contract, the Department may recover any appropriate amount after fully considering the recommendations on questioned or disallowed costs resulting from the final audit.

(f) A final report shall be submitted to the Department within 60 days of the completion of the project. The content and format of the final report shall be as specified by the Department and shall include:

1. A comparison of budgeted amounts with actual expenditures substantiated with documentation;

2. Documentation of mortgages recorded including, but not limited to, book and page number of recordation for each property.

3. Any additional information that the Department may request.

SUBCHAPTER 4. AFFORDABILITY CONTROL PROCEDURES

5:14-4.1 General provisions

(a) If any part of this subchapter shall be held invalid, the holding shall not affect the validity of the remaining part of these rules. If a part of these rules is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

(b) The purpose of the affordability control procedures is to ensure that housing units provided for low and moderate income households through a grant or loan agreement funded by the Neighborhood Preservation Balanced Housing Program remain affordable to and occupied by income eligible households for 20 years from the date initial restrictions encumber the unit, unless a lesser or greater period of time has been approved by Division of Housing and Development, Department of Community Affairs.

(c) In order to receive approval for a grant or loan from the Department of Community Affairs, Neighborhood Preservation Balanced Housing Program, a municipality must provide a plan for assuring that units remain affordable to and occupied by low and moderate income-eligible households for the prescribed time period. A municipality may adopt its own program subject to Department review and approval or it may contract with the Department to assume this authority. These rules shall apply in all cases where the municipality has elected to contract with the Department to administer the affordability controls. These rules will be used as a standard for the review and approval of any affordability control program designed and administered by a municipality as it pertains to the Neighborhood Preservation Balanced Housing Program.

(d) These rules establish the means whereby municipalities receiving grants or loans through the Neighborhood Preservation Balanced Housing Program, pursuant to N.J.S.A. 52:27D-321, may contract with the Depart-

ment of Community Affairs to assume the municipality's responsibility to ensure that all low and moderate income housing assisted through the Neighborhood Preservation Balanced Housing Program will be occupied by low and moderate income households for the specified time period.

5:14-4.2 Definitions

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

"Adjusted rent" shall mean the base rent for a rental unit adjusted by the index.

"Affordable Housing Agreement" shall mean the written agreement between an owner of an affordable housing unit and the Department that imposes restrictions on units developed with funding from the Neighborhood Preservation Balanced Housing Program to ensure that those housing units remain affordable to households of low and moderate income for a specified period of time.

"Applicant household" shall mean a household that has submitted a Preliminary Application for an eligibility review.

"Base price" shall mean the initial sales price of a unit designated as owner-occupied affordable housing and restricted by affordability controls.

"Base rent" shall mean the charge for a rental unit at the time the unit is first restricted by affordability controls.

"Certified household" shall mean any eligible household whose total gross annual income has been verified, whose financial references have been approved and who has received certification as a low or moderate income-eligible household.

"Department" shall mean the Department of Community Affairs.

"Eligible household" shall mean a household whose preliminary application has been reviewed, whose unverified estimated total gross annual income is judged to be low or moderate income pursuant to application guidelines, and whose name has been placed on a waiting list for affordable housing.

"First purchase money mortgagee" shall mean the holder and/or assigns of the first purchase money mortgage and which must also be an institutional lender or inventor, licensed or regulated by a state or the Federal government or an agency thereof.

"Gross annual income" shall mean the total amount of a household's income from all sources including but not limited to salary, wages, interest, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on income reported to the Internal Revenue Service (IRS).

"Household" shall mean the person or persons occupying a housing unit.

"Index" shall mean the measured percentage of change in the median income established for a household of four by geographic region using the income guideline approved for use by the Department.

"Low income household" shall mean a household whose gross annual income is equal to 50 percent or less of the median gross income established by geographic region and household size using the income guideline approved for use by the Department.

"Moderate income household" shall mean a household whose gross annual income is equal to more than 50 percent but less than 80 percent of the median gross income established by geographic region and household size using the income guideline approved for use by the Department.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular affordable housing unit.

"Resale price" shall mean the base price as adjusted by the index. The resale price may also be adjusted to accommodate an approved home improvement.

5:14-4.3 Owner-occupied units

(a) At initial sale, base prices for owner-occupied units shall be determined in accordance with contractual agreements approved by the Department at levels that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approved median income guide for the municipality. At initial sale, an Affordable Housing Agreement shall be signed and recorded with the property deed. The purchaser shall forward a copy of the recorded deed and the Agreement to the Department.

(b) The base price will be indexed according to measured changes in the approved median income guide applicable to the municipality wherein the unit is located. An owner who wishes to sell an affordable housing unit shall forward written notice to the Department. A resale price will be calculated using the index and an estimated monthly mortgage payment will be determined. The approved resale price shall not be established at a level lower than the last recorded purchase price.

(c) Generally, a household's monthly mortgage payment, including principal, interest, taxes, insurance, and condominium or association fees, where applicable, shall not exceed 28 percent of gross monthly income. A minimum downpayment of five percent of the selling price shall be required. Mortgage approval is the responsibility of the household. Certified households whose gross annual income is compatible with the estimated monthly mortgage payment and whose family size meets occupancy criteria will be referred to the owner for contract negotiations within 60 days of receipt of the initial notice.

(d) A home improvement that renders the unit suitable for a larger household may be approved by the Department for a resale price adjustment. In no case, however, shall the adjusted resale price exceed the equivalent income to median income ratio as calculated for the new unit size. Additional allowances, unrelated to the maximum allowable resale price, for home improvements deemed necessary for maintaining the standard condition of an affordable housing unit may be approved by the Department.

(e) If no certified household has executed a contract to purchase within 90 days of the Department's notification to the owner of an approved resale price and referral of potential purchasers, the owner may request that the unit be sold to a household that exceeds the income eligibility criteria established for that unit by submitting a written request for a hardship waiver to the Department, and a copy to the municipal entity wherein the unit is located.

(f) For approval of a hardship waiver, an owner must demonstrate that there has been a good faith effort to sell the unit to a certified household for 90 days and no certified household has signed a contract to purchase the unit or that economic factors not related to household income, including but not limited to, interest rates, taxes, or insurance, inhibit the ability of an income-eligible household to obtain a mortgage commitment for the unit.

1. Upon receipt of a request for a hardship waiver, the municipality shall have first option to purchase the unit at the approved resale price and holding, renting or conveying it to a certified household. The municipality shall have 30 days in which to exercise this option.

(g) The Department shall approve or deny a hardship waiver in writing within 30 days of receipt of the request. A hardship waiver in recordable form shall be provided to the purchaser at the time of closing and filed with the deed and the Affordable Housing Agreement. The waiver of occupancy restrictions is only valid for the designated resale transaction and does not affect the resale price restriction. Future resales are subject to the deed restrictions and the indexed resale price.

1. If the Department denies a hardship waiver, an owner may file a written request to appeal within 15 days of receipt of the denial to the Hearing Coordinator, Division of Housing and Development, N.J. Department of Community Affairs. If a written request has not been received within 15 days after the owner's receipt of the denial, the order denial shall be final.

(h) The following title transactions shall be deemed "non-sales" and the Department shall provide the owner receiving title with written confirmation of the exemption to those restrictions that determine occupancy of the unit.

1. Transfer of ownership between husband and wife;
2. Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial decree of separation (but not including sales to third parties);
3. Transfer of ownership between family members by will or intestate succession;
4. Transfer of ownership through an executor's deed to any person;
5. Transfer of ownership by court order.

(i) An exempt transfer of ownership shall not terminate the resale restrictions or existing liens on the property. All liens must be satisfied in full prior to subsequent resale and all subsequent resale prices must be calculated using the resale price index in compliance with the terms of the Affordable Housing Agreement.

1. The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

(j) The owner shall notify the Department in writing of any proposed transaction that he or she wishes to qualify as an exempt transaction. The owner shall supply the Department with all necessary documentation to demonstrate that the transaction qualifies as an exemption as delineated. The Department may request additional documentation as it deems necessary. The Department shall approve or deny in writing a request for a Certificate of Exemption within 15 days of the receipt of the request.

1. If the Department denies the exemption, the owner may submit a written request to appeal within 15 days to the Hearing Coordinator, Division of Housing and Development, N.J. Department of Community Affairs. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the denial of the Certificate of Exemption shall be final.

2. A Certificate of Exemption shall be filed with the deed and the Affordable Housing Agreement at the time of title transfer.

(k) An income-eligible owner-occupant who is the beneficiary of a six year deferred payment loan agreement for rehabilitation of a substandard unit shall be subject to the following restrictions.

1. A mortgage to the Department of Community Affairs shall be recorded in the appropriate county to ensure the full repayment of such loan to the Department in the event that the owner-occupant transfers title or moves from the unit prior to the expiration of the loan agreement.

2. Owners who personally continue to occupy their rehabilitated units for a period of six years will no longer be required to repay the loan and the loan agreement shall expire.

5:14-4.4 Rental units

(a) Initial rents shall be determined in accordance with contractual agreements approved by the Department at ranges that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approval median income guide for the municipality.

1. The Department shall endeavor to refer households to units for which the monthly rental charge shall not exceed 30 percent of their gross monthly income.

2. At the time restrictions are initially placed on a rental unit, an Affordable Housing Agreement shall be signed and duly recorded. The owner shall forward copies of the recorded deed and the agreement to the Department for its files.

(b) The landlord shall notify the Department of any impending vacancy in any restricted rental unit not more than 60 or less than 30 days in advance of the unit's availability.

(c) The Department shall refer a list of certified households who meet income plus bedroom size criteria for a vacant unit to landlords for lease negotiations within 30 days of receipt of this notification. Landlords must select a certified household for occupancy of an affordable rental unit. Final tenant selection shall be the responsibility of the landlord. However, no referred household will be denied a lease for any reason that violates any applicable law.

(d) A written lease shall be required in all restricted rental units. Final lease agreements will be the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law.

(e) Rental charges may be adjusted at the annual anniversary date of the lease. Rent adjustments shall be determined by adjusting the base rent by the applicable index. The Department shall notify all landlords of changes in the index. The landlord will submit a written request for rent adjustment approval to the Department when a rent adjustment is to be made. The Department shall approve all rent adjustments.

(f) An owner of a restricted rental unit shall notify the Department in writing of an intent to transfer ownership of the property. A copy of the recorded deed shall be forwarded to the Department. The property shall be retained as affordable housing at resale subject to the Affordable Housing Agreement.

5:14-4.5 Procedures for guarantee of occupancy

(a) In order to be considered for an affordable housing unit, households shall submit a preliminary application to the Department. As completed preliminary applications are received, the Department shall review the applications for income eligibility and family size and in accordance with all applicable laws.

1. When the initial review indicates that an applicant household may be eligible, the name of the head of the household shall be placed on a waiting list. The Department will send a confirmation letter to the applicant.

(b) When the initial review indicates that an applicant household is income-ineligible, the applicant household shall be advised in writing and the preliminary application shall be denied. If an applicant household receives a determination of ineligibility, the applicant may submit a written request for a redetermination to the Department within 15 days of receipt of the denial. The request must set forth the basis for the claim of ineligibility. The applicant household shall be required to produce documentation to support the claim at the time of redetermination. Written notice of the redetermination shall be forwarded by the Department. If the applicant household receives a second notice of ineligibility, a written appeal may be filed with the Hearing Coordinator, Division of Housing and Development, N.J. Department of Community Affairs within 15 days of receipt of the notice of denial. If a written request has not been received within 15 days after the applicant household's receipt of this notice, the determination shall be final and the application considered denied.

(c) As units become available, the Department shall notify eligible households who satisfy the income criteria for an available unit and schedule them for a certification interview. At the certification interview, the household shall be requested to document all income. The certification process shall also include a credit background report. Every household member 18 years of age or older who will live in the affordable unit and who receives income shall be required to provide the following information where applicable:

1. A copy of IRS Form 1040 for each of the three years prior to the date of interview;

2. A letter from his or her employer stating present annual income figure or four consecutive paystubs dated within 120 days of the interview date;

3. A letter or appropriate reporting form verifying benefits, including but not limited to, social security and pension;

4. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant;

5. Reports that verify income from assets, to be submitted by banks or other financial institutions managing trust funds, money market accounts, stocks or bonds or the eligible household when it is directly held; and

6. Reports that verify assets that do not earn regular income such as real estate and savings with delayed earnings provisions.

(d) Eligible households who are denied certification shall be notified in writing of the denial. This notice shall state the specific reason for the denial. If the eligible household disagrees with this finding, a written request for redetermination can be forwarded to the Department within 15 days of receipt of the notice. Eligible households shall be required to produce documentation to support their claim.

1. Eligible households who are again denied certification may file a written appeal with the Hearing Coordinator, Division of Housing and Development, N.J. Department of Community Affairs within 15 days of receipt of the denial. If a written request has not been received within 15 days of the household's receipt of this notice, the determination shall be final and the application considered denied.

(e) Only households approved by the Department as certified households shall have an opportunity to be considered for low and moderate income housing.

(f) To the greatest extent possible, certified households shall be referred to available units using the following accepted standards for occupancy:

1. A maximum of two persons per bedroom;

2. Children of same sex in same bedroom;

3. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms; and

4. Children not in same bedroom with parents.

(g) In no case shall a household be referred to a unit that provides for more than one extra bedroom per family occupancy requirement.

5:14-4.6 Foreclosure and recapture

(a) A judgment of foreclosure on any restricted unit shall result in a termination of affordability controls except for the defaulting mortgagor who shall be forever subject to the restrictions with respect to the unit owned by him at the time of default.

(b) Upon notification of impending foreclosure, the municipality may exercise an option to purchase the unit at an approved price and holding, renting or conveying it to a certified household. The municipality shall have 60 days in which to exercise this option.

(c) In the event of a foreclosure sale by a first purchase money mortgagee, any surplus funds exceeding the maximum allowable resale price or the calculated restricted market value of a rental property as calculated by the approved index, the amount required to pay and satisfy the first purchase money mortgagee, including the costs of foreclosure and any second mortgages, shall be paid to the Department as reimbursement for Neighborhood Preservation Balanced Housing Program funding invested in the unit. Any remaining funds in excess of outstanding grants or loans shall be returned to the municipality.

5:14-4.7 Expiration of restrictions

(a) All resale and rent restrictions shall expire at the end of the 20th year from the date the initial restrictions encumbered the unit unless a lesser or greater period of time has been approved by the Department as contained in N.J.A.C. 5:14-3.

(b) For rental units created or rehabilitated with Balanced Housing funds, affordability controls will remain in effect until such time as the expiration date of the existing lease.

TABLE I

Cities listed below will use Table II to determine maximum per unit subsidy.

Units funded in these cities will be subject to 10 year affordability controls.

ATLANTIC	MERCER
None	Trenton City
BERGEN	MIDDLESEX
Lodi Borough	Carteret Borough
Garfield City	New Brunswick City
BURLINGTON	Perth Amboy City
Pemberton Township	MONMOUTH
CAMDEN	Asbury Park City
Camden City	Keansburg Borough
CAPE MAY	Long Branch City
None	Neptune Township
CUMBERLAND	MORRIS
Vineland City	None
Bridgeton City	OCEAN
ESSEX	Lakewood Township
Belleville Township	PASSAIC
Bloomfield Township	Passaic City
East Orange City	Paterson City
Irvington Township	SALEM
Montclair Township	None
Newark City	SOMERSET
Orange	None
GLOUCESTER	SUSSEX
Deptford Township	None
HUDSON	UNION
Bayonne City	Elizabeth City
Hoboken City	Hillside Township
Jersey City	Plainfield City
North Bergen Township	Roselle Borough
Union City	WARREN
Weehawken Township	Phillipsburg Town
West New York	
HUNTERDON	
None	

32,500	364	8,626	11,250	19,500	27,300	33,000
30,000	336	9,000	12,750	21,000	28,800	33,000
27,500	308	9,376	14,250	22,500	30,000	33,000
25,000	280	10,500	15,750	24,000	30,000	33,000
22,500	252	10,876	17,250	25,500	30,000	33,000
20,000	224	11,250	18,750	27,000	30,000	33,000
17,500	196	11,626	20,250	27,000	30,000	33,000
15,000	168	12,000	21,750	27,000	30,000	33,000
12,500 or less	126 or less	12,000	24,000	27,000	30,000	33,000

CONSTRUCTION COST MULTIPLIERS

County	Mult	County	Mult
Atlantic	1.02	Middlesex	1.01
Bergen	1.03	Monmouth	1.03
Burlington	1.03	Morris	1.04
Camden	1.02	Ocean	1.03
Cape May	1.02	Passaic	1.05
Cumberland	1.00	Salem	1.01
Essex	1.01	Somerset	1.06
Gloucester	1.02	Sussex	1.02
Hudson	1.01	Union	1.00
Hunterdon	1.02	Warren	1.02
Mercer	1.00		

- To use: 1. Determine the price or rent that will be charged for EACH eligible unit.
 2. Round price or rent to nearest figure provided on the chart.
 3. Depending on unit size, move to the appropriate column. This is the maximum allowable subsidy for that unit.
 4. After calculating the allowable subsidy for each unit, sum the results and multiply that number by the construction cost multiplier for your county. This is the maximum subsidy that the Department can provide to your project subject to the other limitations noted in N.J.A.C. 5:14-2.1(c)2.

Notes: ¹To receive ANY Balanced Housing Subsidy, the unit must be affordable at less than 80 percent of the median income.
²Price includes buyer's downpayment and mortgage.

TABLE III

NEIGHBORHOOD PRESERVATION
BALANCED HOUSING PROGRAM
MAXIMUM PER UNIT SUBSIDY
For Cities NOT Listed in Table I

IF THE HOUSING UNIT WILL HAVE: THEN THE MAXIMUM BALANCED HOUSING SUBSIDY¹ WILL BE:

a sales price of: ²	or a monthly rent of:	SRO (Per Bedroom)	Studio or 1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
\$80,000	\$896	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ 5,000
77,500	868	-0-	-0-	-0-	250	6,250
75,000	840	-0-	-0-	-0-	1,500	7,500
72,500	812	-0-	-0-	-0-	2,750	8,750
70,000	784	-0-	-0-	-0-	4,000	10,000
67,500	756	-0-	-0-	-0-	5,250	11,250
65,000	728	-0-	-0-	-0-	6,500	12,500
62,500	700	-0-	-0-	\$ 1,250	7,750	13,750
60,000	672	-0-	-0-	2,500	9,000	15,000
57,500	644	-0-	-0-	3,750	10,250	16,250
55,000	616	-0-	-0-	5,000	11,500	17,500
52,500	588	-0-	-0-	6,250	12,750	18,750
50,000	560	5,000	625	7,500	14,000	20,000
47,500	532	5,312	1,875	8,750	15,250	21,250
45,000	504	5,625	3,125	10,000	16,500	22,500
42,500	476	5,938	4,375	11,250	17,750	23,770
40,000	448	6,250	5,625	12,500	19,000	25,000
37,500	420	6,563	6,875	13,750	20,250	26,250
35,000	392	6,875	8,125	15,000	21,500	27,500
32,500	364	7,188	9,375	16,250	22,750	27,500
30,000	336	7,500	10,625	17,500	24,000	27,500
27,500	308	7,813	11,875	18,750	25,000	27,500
25,000	280	8,750	13,125	20,000	25,000	27,500
22,500	252	9,063	14,375	21,250	25,000	27,500
20,000	224	9,375	15,625	22,500	25,000	27,500
17,500	196	9,688	16,875	22,500	25,000	27,500
15,000	168	10,000	18,125	22,500	25,000	27,500
12,500 or less	126 or less	10,000	20,000	22,500	25,000	27,500

TABLE II

NEIGHBORHOOD PRESERVATION
BALANCED HOUSING PROGRAM
MAXIMUM PER UNIT SUBSIDY
For Cities Listed in Table I

IF THE HOUSING UNIT WILL HAVE:	THEN THE MAXIMUM BALANCED HOUSING SUBSIDY ¹ WILL BE:					
a sales price of: ²	or a monthly rent of:	SRO (Per Bedroom)	Studio or 1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
\$80,000	\$896	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ 6,000
77,500	868	-0-	-0-	-0-	300	7,500
75,000	840	-0-	-0-	-0-	1,800	9,000
72,500	812	-0-	-0-	-0-	3,300	10,500
70,000	784	-0-	-0-	-0-	4,800	12,000
67,500	756	-0-	-0-	-0-	6,300	13,500
65,000	728	-0-	-0-	-0-	7,800	15,000
62,500	700	-0-	-0-	\$ 1,500	9,300	16,500
60,000	672	-0-	-0-	3,000	10,800	18,000
57,500	644	-0-	-0-	4,500	12,300	19,500
55,000	616	-0-	-0-	6,000	13,800	21,000
52,500	588	-0-	-0-	3,000	10,800	18,000
50,000	560	6,000	750	9,000	16,800	24,000
47,500	532	6,374	2,250	10,500	18,300	25,500
45,000	504	6,750	3,750	12,000	19,800	27,000
42,500	476	7,125	5,250	13,500	21,300	28,500
40,000	448	7,500	6,750	15,000	22,800	30,000
37,500	420	7,876	8,250	16,500	24,300	31,500
35,000	392	8,250	9,750	18,000	25,800	33,000

CONSTRUCTION COST MULTIPLIERS

County	Mult	County	Mult
Atlantic	1.02	Middlesex	1.01
Bergen	1.03	Monmouth	1.03
Burlington	1.03	Morris	1.04
Camden	1.02	Ocean	1.03
Cape May	1.02	Passaic	1.05
Cumberland	1.00	Salem	1.01
Essex	1.01	Somerset	1.06
Gloucester	1.02	Sussex	1.02
Hudson	1.01	Union	1.00
Hunterdon	1.02	Warren	1.02
Mercer	1.00		

- To use: 1. Determine the price or rent that will be charged for EACH eligible unit.
 2. Round price or rent to nearest figure provided on the chart.
 3. Depending on unit size, move to the appropriate column. This is the maximum allowable subsidy for that unit.
 4. After calculating the allowable subsidy for each unit, sum the results and multiply that number by the construction cost multiplier for your county. This is the maximum subsidy that the Department can provide to your project subject to the other limitations noted in N.J.A.C. 5:14-2.1(c)2.

Notes: ¹To receive ANY Balanced Housing subsidy, the unit must be affordable at less than 80 percent of the median income.
²Price includes buyer's downpayment and mortgage.

(a)

Continuing Care Retirement Community Rules

Proposed New Rule: N.J.A.C. 5:19

Authorized By: Leonard S. Coleman, Jr., Commissioner,
 Department of Community Affairs.
 Authority: N.J.S.A. 52:27D-330 et seq., specifically 52:27D-358
 (P.L. 1986, c.103).
 Proposal Number: PRN 1987-123.

Submit comments by May 20, 1987 to:
 Michael L. Ticktin, Esq.
 Administrative Practice Officer
 Division of Housing and Development
 CN 804
 Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed new rules are intended to implement the provisions of the Continuing Care Retirement Community Regulation and Financial Disclosure Act by providing an administrative framework.

Consistent with the Act, the rules require that a continuing care provider provide each prospective resident with a copy of the certified Disclosure Statement prior to, or at the same time as, the entering into of a contract for continuing care between the parties. The Disclosure Statement is intended to provide the prospective resident with all relevant information regarding the services to be provided by the provider, with special emphasis on the financial aspects of the contract for the prospective resident. The Department has substantial powers in reviewing and certifying the Disclosure Statement and in determining and ensuring that the provider is financially responsible.

Economic Impact

The proposed rules require that a fairly lengthy and sophisticated Application for Certification of the Disclosure Statement be filed. This would generally be prepared by an attorney, with substantial input from accountants and other financial advisors, as well as other professional consultants. An application fee in the amount of \$4,000 plus \$40.00 per unit is required. The required annual statement must be accompanied by a fee in the amount of \$2,000 plus \$20.00 per unit.

With regard to prospective residents, the Disclosure Statement is intended to allow a prospective resident to make an informed decision as to whether the facility meets his needs as to medical, residential and social

services and amenities, as well as affordability. The Department's review is also intended to determine that the provider is initially able to provide the services contracted for and is likely to be able to continue to do so.

Social Impact

As a result of the safeguards established by the Act and by the proposed new rules, prospective residents will be less likely to find that they have committed a substantial portion of their assets to purchase continuing care only to have the provider prove unable to keep its contractual obligations.

Regulatory Flexibility Statement

A provider which meets the statutory definition of a "small business" will have to meet the same standards as any other provider. If a provider is too small to have the ability to readily comply with these rules, including hiring the necessary legal, accounting and other professional advisors, no waiver or special allowance can be made because the prospective purchasers would be entitled to the same protection as prospective purchasers from a larger provider.

Full text of the proposed new rules follows:

CHAPTER 19
 CONTINUING CARE RETIREMENT
 COMMUNITY RULES

SUBCHAPTER 1. GENERAL PROVISIONS

5:19-1.1 Purpose

The Continuing Care Retirement Community Regulation and Financial Disclosure Act (P.L. 1986, c.103, N.J.S.A. 52:27D-330 et seq.) became effective March 2, 1987. The rules contained in this chapter are intended to enable the Department of Community Affairs to implement the Act and to enable the owners of property affected to more easily and more fully comply with the requirements of the Act.

5:19-1.2 Affirmative determination

(a) The Department shall issue a certificate of authority upon its affirmative determination that all of the following requirements have been met:

1. The provider can fulfill its obligations under the continuing care agreement if the resident complies with the terms of the offer;
2. There is reasonable assurance that all proposed improvements can be completed as represented;
3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed in N.J.A.C. 5:19-5, and afford full and fair disclosure;
4. The provider, its officers and/or principals have not been convicted of a crime involving any aspect of the continuing care retirement community business in this State, the United States, or any other state or foreign country within the past 10 years;
5. The provider, its officers and/or principals have not been subject to any permanent injunction or final administrative order restraining a false or misleading plan involving a facility disposition, the seriousness of which, in the opinion of the Department, warrants the denial of certification; and
6. The disclosure statement requirements have been satisfied.

5:19-1.3 Definitions

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

"Act" means the Continuing Care Retirement Community Regulation and Financial Disclosure Act (P.L. 1986, Chapter 103, N.J.S.A. 52:27D-330 et seq.), together with any amendatory or supplementary acts.

"Advertising" means and includes the publication or causing to be published of any information offering for disposition or for the purpose of causing or inducing any other person to enter into a continuing care agreement in a continuing care retirement community, including the continuing care agreement to be used and any photographs or drawings or artist's representation of physical conditions or facilities on the property existing or to exist by means of any:

1. Newspaper or periodical;
2. Radio or television broadcast;
3. Written, printed or photographic matter;
4. Billboards or signs;
5. Display of model facilities or units;
6. Material used in connection with the disposition or offer of the facility by radio, television, telephone or any other electronic means; or
7. Material used by provider or their agents to induce prospective residents to visit the facility, particularly gift certificates which require the holders of such certificates to attend or submit to a sales presentation by providers or their agents.

The term "advertising" does not include stockholder communications, such as annual reports, interim financial reports, proxy materials, certification statements, securities prospectuses, applications for listing securities on stock exchanges, and the like, and any and all communications addressed and relating to the account of any person who has previously executed a continuing care agreement.

"Application fee" means the fee an individual is charged, in addition to an entrance fee or any other fee, to cover the provider's reasonable cost for processing the individual's application to become a resident at the facility.

"Blanket encumbrance" means a trust deed, mortgage, judgment or other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a continuing care retirement community of more than one unit or interest therein, but does not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

"Commissioner" means the Commissioner, Department of Community Affairs.

"Continuing care" means the provision of lodging and nursing, medical or other health related services at the same or another location to an individual pursuant to an agreement effective for the life of the individual or for a period greater than one year, including mutually terminable contracts, and in consideration of the payment of an entrance fee with or without other periodic charges. An individual who is provided continuing care is one who is not related by consanguinity or affinity to the person who provides the care.

"Department" means the Department of Community Affairs.

"Entrance fee" means a transfer to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified person as a resident in a facility, and includes a fee which is refundable upon the death, departure or option of the resident.

1. A fee which is less than the sum of the regular periodic charges for one year of residency is not considered an entrance fee for the purpose of the Act. A transfer of a sum of money or other property, by or on behalf of a resident, to a trust account which is managed by the facility or an independent trustee for the benefit of the resident is not considered an entrance fee for the purposes of the Act if the transfer is not a condition of admission or of continued stay and the principal amount and any interest thereon are the exclusive and sole property of the resident or the individual acting on behalf of the resident.

"Facility" means the place or places in which a person undertakes to provide continuing care to an individual.

"Interest" means any and all rights to use and enjoy any part of the facilities of the continuing care retirement community.

"Living unit" means a room, apartment, cottage or other area within a facility set aside for the exclusive use or control of one person or of persons constituting a household unit.

"Material change" means, but is not limited to, any significant change in the size or character of the facility or interest being offered or anything having a significant effect on the rights, duties or obligations of the provider or resident, including, but not limited to, matters relating to the operation of the building, budget matters and sales prices.

"Offer" means an inducement, solicitation, advertisement, or attempt to encourage a person to enter into a continuing care agreement.

"Operator or administrator" means a person who operates or manages a facility for the provider.

"Person" shall be defined as in N.J.S.A. 1:1-2.

"Provider" means a person who undertakes to provide continuing care in a facility.

"Resident" means a person entitled to receive continuing care in a facility.

"State" means the State of New Jersey.

SUBCHAPTER 2. CERTIFICATION

5:19-2.1 Certification required

A person shall not establish, operate or administer a continuing care facility in this State without obtaining and maintaining a certificate of authority pursuant to the Act. A certificate of authority granted pursuant to the Act is not transferable.

5:19-2.2 Nonapplicability

Unless the method of disposition is adopted for purposes of evasion, the provisions of these rules shall not apply to offers or disposition:

1. Pursuant to court order;
2. By the United States, by this State or any of its agencies or political subdivisions;
3. Of real property located outside of the State.

5:19-2.3 Request for Letter of Nonapplicability

(a) Any person who believes a continuing care retirement community is not subject to the provisions of the Act, or who is contemplating a continuing care retirement community which he believes may not be subject to the Act, may apply to the Department for a Letter of Nonapplicability. Such application shall be in writing and shall list the reasons why such continuing care retirement community or proposed continuing care retirement community may not be subject to the Act. An application for a Letter of Nonapplicability pursuant to this Subsection shall be accompanied by a fee of \$50.00.

(b) In the event the Department shall determine that such continuing care retirement community is not subject to the Act, it shall issue a Letter of Nonapplicability setting forth the facts upon which its determination is based.

(c) In the event the Department shall determine that such continuing care retirement community or proposed continuing care retirement community is subject to the provisions of the Act, it shall deny the request for the Letter of Nonapplicability setting forth the facts upon which its determination is based and shall notify the applicant of its findings.

(d) Any person who is aggrieved by the determination by the Department pursuant to (c) above, is entitled to a hearing on such determination provided said hearing is requested, in writing, no later than 20 days from the date of such determination. Hearing requests shall be addressed to the Hearing Coordinator, Division of Housing and Development, CN 84, Trenton, New Jersey 08625.

5:19-2.4 Application for certification; submission and fees

An application for a certificate of authority shall consist of a statement containing the items set forth in N.J.A.C. 5:19-3 and shall be submitted in the manner and form as provided therein, together with the filing fee in the amount of \$4,000 plus \$40.00 per living unit made payable to the Treasurer, State of New Jersey. In the event units or interests are added during certification, an additional fee of \$40.00 per unit or interest shall be paid. There will be no refunds for deletions.

5:19-2.5 Notice of filing

Upon receipt of an application for certification in proper form, accompanied by payment of the required filing fee, the Department shall, within 10 business days, issue a notice of filing to the applicant. The notice of filing shall not be construed as an approval of the application for certification or any portion thereof.

5:19-2.6 Order of certification

Within 90 days from the date of the notice of filing, or the notice of correction as provided below, the Department shall issue a certificate of authority if the Department affirmatively determines that the requirements of N.J.A.C. 5:19-1.2 and all applicable statutory requirements have been met.

5:19-2.7 Notice of correction

When the Department determines, upon inquiry and examination, that any of the requirements of N.J.A.C. 5:19-1.2 or any other requirements under the Act have not been met, the Department shall notify the applicant that the application for certification must be corrected in such particulars within 30 days.

5:19-2.8 Order of rejection

(a) In the event the requirements of the notice of correction are not met within the time allowed, the Department may enter an order rejecting the application for certification which shall include the findings of fact upon which the order is based.

(b) The order of rejection shall not take effect for a period of 20 days from the expiration of the 30 day period as set forth in N.J.A.C. 5:19-2.7.

5:19-2.9 Petition for reconsideration

(a) Upon the issuance of an order of rejection, the applicant shall have the right to file a petition for reconsideration with the Department and shall be entitled to a hearing pursuant to the Administrative Procedure Act, (P.L. 1968, c.410, N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Practice Rules N.J.A.C. 1:1-1 etd seq.), provided the petition for reconsideration shall be filed within 20 days of the applicant's receipt of the order of rejection.

(b) In the event a petition for reconsideration is filed by the applicant, as provided, the order of rejection shall not take effect until such time as the hearing has been held and a final decision rendered by the Commissioner.

5:19-2.10 Automatic certification

The continuing care retirement community shall be deemed to be certified pursuant to N.J.A.C. 5:19-1.2 if, within 90 days of the notice of filing or notice of correction, the Department has not issued a certificate of authority or order of rejection and the applicant has not consented to an extension of the time for review in writing.

5:19-2.11 Order of revocation

(a) The certificate of authority or temporary certificate of authority of a provider shall remain in effect until revoked, upon the Department's written finding of fact that the provider has:

1. Repeatedly failed to correct violations of the Act or these rules;
2. Failed to file an annual disclosure statement or resident agreement pursuant to the Act;
3. Failed to deliver to a prospective resident or their representative an annual disclosure statement or resident agreement pursuant to the Act;
4. Delivered to a prospective resident a disclosure statement which makes an untrue statement or omits a material fact and the provider at the time of the delivery of the disclosure statement had actual knowledge of the misstatement or omission;
5. Failed to comply with the terms of a cease and desist order; or
6. Committed serious violations of any other State or Federal law.

(b) The Department shall include in the findings of fact in support of revocation a concise and explicit statement of the underlying facts supporting the findings.

(c) If the Department has cause to believe that the provider is guilty of a violation for which revocation may be ordered, the Department may issue an order directing the provider or operator to cease and desist from engaging in any practice in violation of the Act.

(d) If the cease and desist order is not or may not be effective in remedying the violation, the Department may revoke the certificate of authority or temporary certificate of authority and order that it be surrendered to the Department.

(e) The Department may, as often as it reasonably deems necessary, conduct an investigation to determine whether any person has violated or is about to violate any provision of these rules or to aid in the enforcement of these rules or in the prescribing of rules and forms hereunder.

(f) For the purpose of any investigation or proceeding under these rules, the Department may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the Department deems relevant or material to the inquiry.

5:19-2.12 Cease and desist orders; injunctions

(a) The Department may issue an order requiring a person to cease and desist from an unlawful practice or an order requiring him to take such other affirmative action as in the judgment of the Department will carry out the purposes of the Act or these rules, upon the Department's determination that a provider has:

1. Violated any provision of the Act;
2. Directly or through an agent or employee knowingly engaged in false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of a unit;
3. Made any material change in the plan of disposition of the continuing care retirement community subsequent to the certificate of authority without obtaining prior approval from the Department.
4. Disposed of any unit or interest in a continuing care retirement community which has not been certified with the Department; or
5. Violated any lawful order or rule of the Department.

(b) Upon the determination of the Department in writing, based on a finding of fact that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order including therein a provision that, upon request, a hearing will be held within 10 days of such request to determine whether or not the temporary cease and desist order shall become permanent. A copy of any temporary cease and desist order shall be sent to the provider by certified mail.

(c) The Department may, if it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of the Act or a rule or order of the Department, bring an action in Superior Court to enjoin the acts or practices and to enforce compliance with the Act or rules herein, and may seek appointment of a receiver or conservator for the facility or its assets.

(d) Any person aggrieved by an order or determination of the Department shall be entitled to a hearing, pursuant to the Administrative Procedure Act, to contest such order or determination. An application for a hearing must be filed with the Hearing Coordinator of the Division of Housing and Development, within 20 days of the applicant's receipt of the order or determination complained of.

5:19-2.13 Annual report

Within 45 days after the anniversary date of the latest order of certification and while the provider retains any interest in the facility or retirement community, the provider shall file on a form designated by the Depart-

ment an annual report reflecting any material changes in information contained in the original application for certification. This shall not diminish the obligation of the provider to notify the Department of material changes as they occur.

5:19-2.14 Consolidated filing

A provider may register additional property pursuant to a common promotional plan as those previously certified by the Department by submitting another application providing such additional information as may be necessary to register the additional units or interests.

5:19-2.15 Cyclical inspections

The Department shall visit each facility offering continuing care in this State to examine its books and records at least once every four years.

SUBCHAPTER 3. APPLICATION FOR CERTIFICATION

5:19-3.1 Contents of application for certification

(a) The application for certification shall contain the following documents and information:

1. An irrevocable appointment of the Department to receive service of any lawful process in any noncriminal proceeding arising under the Act against the provider or his agents;

2. The States or other jurisdictions, including the Federal Government, in which an application for certification or similar documents have been or will be filed and any order, judgment or decree entered in connection therewith by the regulatory authorities in each of the jurisdictions or by any court or administrative body thereof;

3. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status and of any person performing similar management functions, and the extent and nature of his interest in the applicant or the facility as of a specified date within 30 days prior to the filing of the application for certification;

4. Copies of the articles of incorporation, with all amendments thereto, if the provider is a corporation; copies of all instruments by which the trust is created or declared, if the provider is a trust; copies of the articles of partnership or association and all other organization papers if the provider is organized under another form. In the event the provider is not the legal title holder to the property upon which the facility is or is to be constructed, the above documents shall be submitted for both the provider and the legal title holder;

5. A legal description by metes and bounds or other acceptable means of the lands to be certified, together with a map showing the proposed or actual facility and showing the dimensions of the living units as available, and the relation of such lands to existing streets, roads and other improvements. The aforesaid map shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;

6. Copies of the deed or other instrument establishing title of the provider and a title search, title report or title certificate or binder issued by a licensed title insurance company;

7. A statement concerning any litigation, orders, judgments or decrees which might affect the offering;

8. A statement that the continuing care agreements will be offered to the public and entered into without regard to marital status, sex, race, creed or national origin or, if not, any legally permissible restrictions on purchase that will apply;

9. A statement of the present conditions of access to the facility, and the existence of any adverse conditions that affect the facility, that are known, should be known or are readily ascertainable;

10. Copies of all contracts and agreements which the purchaser may be required to execute in connection with the offering;

11. In the event there is or will be a blanket encumbrance affecting the facility or a portion thereof, a copy of the document creating it and a statement of the consequences upon a resident of a failure of the person bound to fulfill the obligations under the instrument and the manner in which the interest of the resident is to be protected in the event of such eventuality;

12. One copy of the proposed disclosure statement;

13. A current financial statement of the provider and any predecessor, parent or subsidiary company, including but not limited to a current profit and loss statement and balance sheet audited by an independent public accountant;

14. A statement concerning any adjudication of bankruptcy during the last five years against the provider, its predecessor, parent or subsidiary company and any principal owning more than 10 percent of the interests in the facility at the time of the filing of the application for certification. This requirement shall not extend to limited partners or those whose interests are solely those of investors;

15. Copies of all easements and restrictions, whether of record or not;
16. A statement as to the status of compliance with all the requirements of all laws, ordinances and regulations of governmental agencies having jurisdiction over the premises, including but not limited to any permits required by the Department of Environmental Protection together with copies of all necessary Federal, State, county and municipal approvals;

17. A statement that neither the provider nor any of its officers or principals have ever been convicted of a crime involving any aspect of continuing care in this State or a foreign jurisdiction, and that the provider has never been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving continuing care facility disposition;

18. A projected annual budget for the facility for the next 20 years or such lesser time as the Department allows;

19. Copies of any market studies, proposed on the behalf of the provider, concerning the feasibility of the project;

20. An affidavit, signed by the provider, that the contents of the application are true and accurate; and

21. Such other additional information as the Department may require in individual cases after review of an application for certification to assure full and fair disclosure.

5:19-3.2 Form of the application for certification

(a) An application for certification shall be submitted in the following form:

1. Two sets of the information and documents required to be filed shall be submitted in separate binders, fastened at the top in such a manner as to permit the reading of each page without requiring removal. The two required copies of the disclosure statement shall be submitted in separate binders;

2. All information and documents shall be arranged in the order set forth in N.J.A.C. 5:19-3.1;

3. Each binder shall note the name and address of the provider and the name and address of the person responsible for the preparation of the application on the front cover;

4. The first page shall be a table of contents;

5. The right side of the first page of each section shall bear a tab numbered in conformity with the table of contents. Each tab shall be visible without the necessity of lifting any other tab;

6. If a section or document is omitted, a single sheet of paper, properly tabbed, shall be inserted containing a description of what is omitted and an explanation as to the reason for the omission;

7. With the exception of maps, drawings, surveys and the like, all documents shall be no smaller than 8-1/2 inches by 11 inches nor larger than 8-1/2 inches by 14 inches.

(b) Plats, maps or surveys which are too bulky to include in a binder may be submitted in a separate folder and a list of such shall be included in the binder.

5:19-3.3 Amendment of the application for certification

(a) The provider shall immediately report to the Department any changes in the information or documents contained in the application for certification, with a request for an amendment to the application for certification.

(b) No change in the substance or intent of the promotional plan or the plan of disposition or facility shall be made unless such change has been approved by the Department by way of amendment to the application for certification.

5:19-3.4 Review of requests for amendment

(a) The Department shall process and review requests for amendments of an application for certification in accordance with the standards and procedures established in this chapter for review of an application for certification.

(b) Requests for amendments shall be accompanied by a fee of \$250.00. This fee shall not be required for amendments concerned exclusively with price changes and/or advertising.

5:19-3.5 Public inspection of application for certification

The Department shall retain copies of all certified applications, together with all amendments thereto that have been approved, and shall make them reasonably available for public inspection during ordinary business hours at the Department's office.

5:19-3.6 Copies of the application for certification

(a) The Department shall comply with all reasonable requests for copies of an application for certification, together with all amendments thereto.

(b) The Department shall charge a fee for such copies as follows:

First page to tenth page: \$0.50 per page

Eleventh page to 20th page: \$0.25 per page

All pages over 20: \$0.10 per page

This fee shall be in addition to a charge for the cost of postage.

SUBCHAPTER 4. DISCLOSURE STATEMENT

5:19-4.1 Disclosure statement required

(a) No provider may dispose of any unit in a continuing care retirement community unless said provider delivers to the prospective resident a current disclosure statement on or before the contract date.

(b) The disclosure statement shall disclose fully and accurately the characteristics of the facility and the interests offered and shall make known to prospective residents all unusual and material circumstances and features affecting the facility.

(c) The disclosure statement shall be in plain English and in language understandable by a lay person and combine simplicity and accuracy in order to fully advise residents of their rights, privileges, obligations and restrictions.

(d) The Department may require the provider to alter or amend the proposed disclosure statement in order to assure full and fair disclosure to prospective residents and may require the revision of a disclosure statement which it finds to be unnecessarily complex, confusing or illegible.

(e) The provider shall provide a disclosure statement to a prospective resident of a continuing care facility or the person with whom the provider shall enter into a contract to provide continuing care, prior to the execution of the contract or at the time of or prior to the transfer of any money or other property to the provider by or on behalf of the prospective resident, whichever occurs first, at no charge to the prospective resident.

(f) A disclosure statement shall not be deemed current unless it contains all amendments approved by the Department.

5:19-4.2 Contents of disclosure statement

(a) The disclosure statement shall contain the following information unless the information is contained in the contract:

1. The name and business address of the provider and a statement of whether the provider is a partnership, corporation or other type of legal entity;

2. The names and business addresses of the officers, directors, trustees, managing or general partners and any person having a 10 percent or greater equity or beneficial interest in the provider and a description of that person's interest in or occupation with the provider;

3. With respect to the provider, any person named in response to (a)2 above and the proposed operator, if the facility is managed on a day-to-day basis by a person other than an individual directly employed by the provider:

i. A description of the person's business experience, if any, in the operation or management of similar facilities;

ii. The name and address of any professional service firm, association, trust, partnership or corporation in which the person has a 10 percent or greater interest and which may provide goods, leases or services to the facility of a value of \$500.00 or more, within any year;

iii. A description of the goods, leases or services provided pursuant to (1)3ii above and the probable or anticipated cost thereof to the facility or provider;

iv. A description of any matter in which the person has been convicted of a crime or pleaded nolo contendere to a criminal charge, or has been held liable or enjoined in a civil action which involved fraud, embezzlement, fraudulent conversion or misappropriation of property; and

v. A description of any matter in which the person is subject to a currently effective injunctive or restrictive court order or, within the past five years, had a state or Federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, which arose out of or related to business activity or health care, including actions affecting a license to operate a residential health care facility, rooming or boarding house, nursing home, retirement home, home for the aged or facility certified under the Act or a similar act in another state.

4. A statement whether the provider is or ever has been affiliated with a religious, charitable or other non-profit organization, the nature of the affiliation, if any, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the provider, and the provision of the Federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax;

5. The location and description of the physical property of the facility, both existing and proposed, and, with respect to proposed property, the estimated completion date, the date construction began or shall begin and the contingencies subject to which construction may be deferred.

6. A statement of what standards apply to the operation and maintenance of the facility and which public agencies have jurisdiction over the facility;

7. The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care and other services are furnished under the basic contract and which other care or services are available at or by the facility at extra charge;

8. A description of all fees required of residents, including the application fee, entrance fee and periodic charges, if any, the manner by which the provider may adjust periodic charges or other recurring fees and the limitation on the adjustments, if any, and, if the facility is already in operation or if the provider or operator operates one or more similar facilities within this State, tables showing the frequency and average dollar amount of each increase in periodic rates at each facility for the previous five years or as many years as the facility has been operated by the provider or operator, whichever is less;

9. The provisions that have been made or will be made, if any, to provide reserve funding or security which will enable the provider to fully perform its obligations under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts or reserve funds, the manner in which the funds shall be invested and the names and experience of persons who will make the investment decisions;

10. Certified financial statements of the provider which include balance sheets and income statements for the two most recent completed fiscal years or for as long as the provider has been in existence, whichever is less;

11. If the operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

i. An estimate of the cost of purchasing or construction and equipping the facility which includes related costs such as financing expenses, legal expenses, land costs, marketing and development costs and other similar costs the provider expects to incur or become obligation for prior to the commencement of operations;

ii. A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility and the anticipated terms and costs of the financing;

iii. An estimate of the total amount of entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility;

iv. An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care;

v. A projection of estimated income from fees and charges other than entrance fees, a description of individual rates anticipated to be charged, the assumptions used in calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies, if any, for health care services provided pursuant to the contracts for continuing care;

vi. A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, the replacement of equipment and furnishings and any anticipated major structural repairs or additions.

vii. Identification of assets pledged as collateral for any purpose; and

viii. An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

12. Other material information concerning the facility or the provider as required by the Department or as the provider wishes to include.

5:19-4.3 Form of disclosure statement

(a) The disclosure statement shall be in the following form:

1. A front cover shall contain the name and address of the provider, the name and location of the continuing care retirement community, the effective date of the disclosure statement which shall be the date of certification by the Department and shall contain the following statement in 10-point bold face type:

NOTICE TO PURCHASERS

THIS DISCLOSURE STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY. PURCHASERS SHOULD ASCERTAIN FOR THEMSELVES THAT THE UNIT OFFERED MEETS THEIR PERSONAL REQUIREMENTS. THE NEW JERSEY

DEPARTMENT OF COMMUNITY AFFAIRS HAS NEITHER APPROVED NOR DISAPPROVED THE MERITS OF THIS DISCLOSURE STATEMENT. BE SURE TO READ CAREFULLY ALL DOCUMENTS BEFORE YOU SIGN THEM.

2. The disclosure statement and the contract shall each state on the cover or top of the first page in bold print the following:

THIS MATTER INVOLVES A SUBSTANTIAL FINANCIAL INVESTMENT AND A LEGALLY BINDING CONTRACT. IN EVALUATING THE DISCLOSURE STATEMENT AND THE CONTRACT PRIOR TO ANY COMMITMENT, IT IS RECOMMENDED THAT YOU CONSULT WITH AN ATTORNEY AND FINANCIAL ADVISOR OF YOUR CHOICE, IF YOU SO ELECT, WHO CAN REVIEW THESE DOCUMENTS WITH YOU.

3. A reasonably detailed table of contents showing the subject matter of the various sections, subsections or documents contained in the disclosure statement and the page number on which each appears shall be added at the foot of disclosure statement;

4. The provider shall attach a copy of the standard form of contract for continuing care used by the provider as an exhibit to each disclosure statement;

5. The disclosure statement shall be printed on good quality unglazed white paper no smaller than 8-1/2 inches by 11 inches nor larger than 8-1/2 inches by 14 inches. The cover may be of a different color provided the printed material contained thereon shall be legible;

6. No portion of the disclosure statement shall be underscored, italicized, or printed in larger, heavier or different color type than the remainder of the statement unless required or permitted by the Department.

5:19-4.4 Filing of disclosure statement

Two copies of the proposed disclosure statement shall be filed with the application for certification and, if the Department requires revisions to the proposed disclosure statement, two copies of the revised disclosure statements shall be filed.

5:19-4.5 Amendment of the disclosure statement

(a) A provider shall amend its currently filed annual disclosure statement at any time if, in the opinion of the provider or the Department, an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or omission to state a material fact as required pursuant to the Act. The provider shall file an amendment or amended disclosure statement with the Department before the provider provides it to a resident or prospective resident.

(b) Amendments and corrections to the disclosure statement shall be by replacement of the amended or corrected material by paste-over or other permanent means.

5:19-4.6 Review of request for amendments

The Department shall process and review requests for amendments of a disclosure statement in accordance with the standards and procedures established in this chapter for review of a disclosure statement.

5:19-4.7 Use of the disclosure statement

(a) The disclosure statement shall not be used for any promotional purposes before certification of the facility and thereafter may only be used in its entirety.

(b) No person shall represent or imply that the Department approves or recommends the continuing care retirement community.

5:19-4.8 Assistance by provider

The provider shall designate and make knowledgeable personnel available to prospective residents to answer questions about any information contained in the disclosure statement or contract. The provider shall also advise prospective residents to seek the independent advice of an attorney or financial advisor of their choice concerning the disclosure statement or contract.

5:19-4.9 Annual disclosure statement

(a) The provider shall file an annual disclosure statement with the Department which contains the information required for the initial disclosure statement pursuant to N.J.A.C. 5:19-4. The annual disclosure statement also shall include a narrative describing any material differences between the pro forma income statement filed pursuant to these rules either as part of the initial application for a certificate of authority or the most recent annual disclosure statement and the actual results of operations during the fiscal year. The statement also shall contain a revised pro forma income statement for the next fiscal year. The Department may request additional income statements if necessary.

(b) The provider shall file the annual disclosure statement within six months following the end of the provider's fiscal year.

(c) Prior to the provider's acceptance of part or all of any application or entrance fee or the execution of the continuing care agreement by the resident, whichever occurs first, the provider shall deliver the most current annual disclosure statement to the current or prospective resident and to any other person with whom the continuing care agreement is or may be entered into.

(d) The annual disclosure statement, when filed with the Department, shall be accompanied by a fee of \$2,000 plus \$20.00 per certified unit.

SUBCHAPTER 5. ADVERTISING

5:19-5.1 General standards

(a) All advertising which is used by or on behalf of the provider to promote a continuing care retirement community shall be accurate, provable, truthful and not misleading so as to fully inform the public and foster their understanding and trust.

(b) No provider or person acting on behalf of the provider shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement of any sort containing an assertion, representation or statement which is untrue, deceptive or misleading.

(c) No provider or person acting on behalf of the provider shall file with the Department or make, publish, disseminate, circulate or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or delivered to any person, or placed before the public, any disclosure statement, financial statement or continuing care agreement that contains an assertion, representation, or statement which is untrue, deceptive or misleading.

5:19-5.2 Specific standards

(a) Without limiting the general standards of advertising in this chapter, all advertising, except billboards, shall substantially conform to the following specific standards.

1. Advertising that refers to the entrance fee shall state the full entrance fee and shall include any additional assessments or cost to the purchaser;
2. In order to eliminate fictitious pricing or illusory discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria;
3. Advertising shall not refer to any facility that does not then exist unless that fact is prominently stated in the advertising and the proposed date of completion is contained therein;
4. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the fact of the assessment and the amount of the assessment;
5. Advertising shall not state that items or services are free when the cost thereof is included in the monthly maintenance fee.
6. Advertising shall not contain photographs, sketches or artist's conceptions of proposed facilities unless the fact that the photographs, sketches or artist's conceptions are of proposed facilities is stated immediately adjacent to them.
7. No sketch or artist's conception may be used in advertising unless it is clearly stated immediately adjacent to such sketch or artist's conception that it is in fact a sketch or artist's conception.
8. Advertising shall not refer in wording, photograph, sketch or artist's conception to any recreational, medical, social, shopping or other facility that is not located within the continuing care retirement community unless so stated and the approximate distance therefrom in miles is set forth;
9. Advertising shall not refer to a price increase unless the amount and date of the increase are indicated;
10. Advertising in the form of vacation certificates or other promotions intended to induce prospective residents to visit the continuing care retirement community that requires the holders thereof to attend or submit to a sales promotion shall clearly and conspicuously state the necessity of attendance at or submission to the sales promotion and the approximate length of time required to be spent by the prospective resident at such sales promotion;
11. Any model unit that is used as a part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract.

SUBCHAPTER 6. CONTRACTS

5:19-6.1 General standards

All contracts or agreements for continuing care in a continuing care retirement community shall be fair and reasonable and shall not impose undue restrictions or hardships upon the resident.

5:19-6.2 Rescission

(a) Any contract or agreement for continuing care in a continuing care retirement community may be cancelled without cause, by the purchaser, by sending or delivering written notice of cancellation within 30 days following the date on which such contract or agreement was executed, or the initial deposit was made, whichever is later.

1. A resident shall not be required to move into the facility designated in the agreement before the expiration of this 30 day period.

5:19-6.3 Notice of rescission

Every contract or agreement shall contain the following notice in 10-point bold face type or larger, directly above the space provided for the signature of the resident.

NOTICE TO THE RESIDENT: YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT OR AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF CANCELLATION TO THE PROVIDER BY MIDNIGHT OF THE 30TH CALENDAR DAY FOLLOWING THE DAY ON WHICH IT WAS EXECUTED, OR AN INITIAL DEPOSIT WAS MADE. SUCH CANCELLATION IS WITHOUT PENALTY, AND ALL DEPOSITS MADE BY YOU SHALL BE PROMPTLY REFUNDED.

5:19-6.4 Deposits

All deposits, downpayments, or other funds paid to a provider by a purchaser shall be held in a separate trust account in a banking or similar institution located within this State or deposited with an attorney licensed to practice law in this State, until closing or termination of the contract or until a bond or other guarantee acceptable to the Department is provided. In no event shall the escrow be released before the expiration of the 30 day rescission period.

5:19-6.5 Provisions required

(a) A continuing care agreement executed on or after March 2, 1987 shall be written in plain English, and in language understandable by a lay person, and shall include, but not be limited to, the following:

1. A provision for the continuing care of one resident, or two or more residents occupying space designed for multiple occupancy under appropriate procedures established by the provider, and a statement showing the value of all property transferred, including donations, subscriptions, fees and any other amounts payable by, or on behalf of, the resident;
2. A statement on a form provided by the Department specifying all services which are to be provided to the resident by the provider including, in detail, all items which the resident will receive such as food, shelter, nursing care, pharmaceuticals and burial and whether the items will be provided for a designated period of time or for life;
3. A description of the health and financial conditions upon which the provider may have the resident relinquish his space in the designated facility;
4. A description of the health and financial conditions required for a person to continue as a resident;
5. A description of the circumstances under which the resident shall be permitted to remain in the facility in the event of financial difficulties of the resident. The stated policy may not be less than the terms stated in N.J.A.C. 5:19-6.6;
6. A statement of the fees that will be charged if the resident marries a person who is not a resident of the facility, the terms concerning the entry of a spouse into the facility and the consequences if the spouse does not meet the requirements for entry;
7. A statement providing that the agreement may be cancelled upon giving at least 60 days' notice by the provider or the resident, except that if an agreement is cancelled by the provider because there has been a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others, only notice that is reasonable under the circumstances is required;
8. A statement providing in clear and understandable language, in print no smaller than the largest type used in the body of the agreement, the terms governing the refund of any portion of the entrance fee;

9. A statement of the terms under which an agreement is cancelled by the death of the resident, which statement may contain a provision stating that upon the death of the resident the moneys paid for the continuing care of the resident shall be considered earned and become the property of the provider; and

10. A statement providing for at least 30 days advance notice to the resident before any change in fees or changes in the scope of care or services are effective, except for changes required by State or Federal assistance programs.

5:19-6.6 Rescission and removal

(a) A resident has the right to rescind a continuing care agreement without penalty or forfeiture, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement, within 30 days after making an initial deposit or executing the agreement. A resident shall not be required to move into the facility designated in the agreement before the expiration of the 30 day period.

(b) If a resident dies before the occupancy date, or through illness, injury or incapacity is precluded from becoming a resident under the terms of the continuing care agreement, the agreement shall be automatically rescinded and the resident or the resident's legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement.

(c) No agreement for care shall permit dismissal or discharge of the resident from the facility prior to the expiration of the agreement without just cause for the removal. For the purposes of the Act, "just cause" means but is not limited to a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others while remaining in the facility. The written determination shall state:

1. That the determination is made in good faith;
2. The reasons supporting the determination that the resident is a danger to himself or others;
3. The basis for the conclusion that there is no less restrictive alternative to dismissal, discharge or cancellation, as the case may be, for abating the dangerousness of the resident; and
4. The basis for the conclusion that the danger is such that a notice period of less than 60 days is appropriate.

(d) If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of his unearned entrance fee, if any, in the same manner as provided in (f) below.

(e) A resident may request a hearing to contest a facility's decision to dismiss or discharge the resident. The hearing shall be held pursuant to the Administrative Procedure Act (P.L. 1968, c.410, N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Practice Rules, N.J.A.C. 1:1-1 et seq.

(f) It shall not be deemed just cause if the resident is unable to pay monthly maintenance fees until the entire unearned entrance fee plus, where applicable, any third-party insurance benefits received, are earned by the facility. For the purpose of this subsection, the unearned portion shall be the difference between the entrance fee paid by, or on behalf of, the resident and the cost of caring for the resident based upon the per capita cost to the facility. In lieu of calculating the actual per capita cost of caring for a resident, a facility may provide, in the agreement for continuing care, that the per capita cost of caring for the resident shall be calculated as follows:

1. No more than two percent of the entrance fee for each month the resident occupies, or is entitled to occupy, a bed in the residential unit of the facility;
2. No more than four percent of the entrance fee for each month the resident occupies, or is entitled to occupy, a bed in the nursing unit of the facility; and
3. No more than 10 percent of the entrance fee as a one-time charge for processing and refurbishment.

(g) If the entrance fees as set forth in (f) above are exhausted within 90 days of the date of failure to pay, the facility may not require the resident to leave before 90 days from the date of failure to pay, during which time the resident shall continue to pay the facility a reduced fee based upon the resident's current income.

(h) No act, agreement or statement of a resident or of an individual purchasing care for a resident under any agreement to furnish care to the resident shall constitute a valid waiver of any provision of the Act intended for the benefit or protection of the resident or the individual purchasing care for the resident.

(i) An agreement entered into prior to March 2, 1987 or prior to the issuance of a certificate of authority to the provider is valid and binding upon both parties in accordance with the terms of the agreement.

SUBCHAPTER 7. FINANCIAL RESPONSIBILITY

5:19-7.1 Liquid reserves

(a) Each provider shall establish and maintain liquid reserves in an amount equal to or exceeding the greater of:

1. The total of all principal and interest payments due during the next 12 months on account of any mortgage loan or other long term financing of the facility; or

2. 15 percent of the projected annual operating expenses of the facility, exclusive of depreciation.

(b) A provider shall notify the Department in writing at least 10 days prior to reducing the amount of funds available to satisfy the applicable liquid reserve requirement. A provider may not expend more than one-twelfth of the required balance each calendar month.

(c) In a facility where some residents are not under continuing care agreements, the reserve shall be computed only on the proportional share of financing or operating expenses that is applicable to residents under continuing care agreements at the end of the provider's most recent fiscal year.

(d) A provider may use funds in an endowment fund or escrow account, including an escrow account established by or pursuant to a mortgage loan, bond indenture or other long-term financing, to satisfy the reserve requirements of this section if the funds are available to make payments when operating funds are insufficient for these purposes.

(e) In the case of a provider who has offered continuing care agreements to existing or prospective residents in a facility established prior to March 2, 1987 and which has one or more residents living there pursuant to agreements entered into prior to March 2, 1987, if the provider is unable to comply with this section of these rules within the time required, the Department may, upon the written request of the provider, issue a temporary certificate of authority to the provider. The provider may then enter into continuing care agreements which are in compliance with all other applicable provisions of the Act until the permanent certificate is issued.

(f) The temporary certificates shall be issued only to those existing providers who shall be able to comply with the provisions of this section within a period of time determined by the Department but which does not exceed two years. If a provider is not in compliance on or before the expiration date of the temporary certificate, the provider may request an extension from the Department. The Department may grant an extension of up to three years to a provider who shall be able to comply with this section in that time period.

5:19-7.2 Financial responsibility

(a) The Department may require a provider to establish and maintain in escrow, on a current basis with a bank, trust company or other escrow agent approved by the Department, a portion of all entrance fees received by the provider in an aggregate amount not to exceed the total of all principal and interest payments due during the next 12 months on account of any first mortgage loan or other long-term financing of the facility. The provider may invest the funds in the escrow account, with the earnings thereon payable to the provider. If the provider so requests in writing, the escrow agent shall release up to one-twelfth of the original principal balance of the escrow account. The escrow agent shall not so release funds more than once during any calendar month, and then only after the escrow agent has given written notice to the Department at least 10 days prior to release. The amount of this escrow fund shall be included in satisfying the reserves required pursuant to N.J.A.C. 5:19-7.1.

(b) This section shall be applicable only when the Department has cause to believe that additional protection is necessary to secure the provider's performance of the terms of all resident agreements.

5:19-7.3 Department's lien

(a) Prior to the issuance of a certificate of authority pursuant to these rules, or at any other time the Department determines it is in the best interest of residents of a facility, the Department may file a lien on the real and personal property of the provider or facility to secure the obligations of the provider pursuant to existing and future contracts for continuing care. A lien filed under this section is effective for a period of 10 days following its filing and may be extended by the Department if the Department finds that the extension is advisable for the protection of residents of the facility.

(b) The Department may foreclose on the lien upon the liquidation of the facility or the insolvency or bankruptcy of the provider. In this event, the Department shall use the proceeds thereof for full or partial satisfaction of obligations of the provider pursuant to contracts for continuing care in effect at that time.

(c) The lien provided for in this section is subordinate to the lien of any first mortgage on the real property of the facility, and if the Department determines and so states in writing that it is advisable for the efficient operation of the facility, the lien may be subordinated to the claims of other persons.

5:19-7.4 Escrow requirements

(a) The provider shall establish an interest bearing escrow account with a bank, trust company or other escrow agent authorized to do business in the State of New Jersey, as a condition of the issuing a certificate of authority. The provider shall place in the escrow account any entrance fees or payments in excess of five percent of the then existing entrance fee for the living unit that are received by the provider prior to the date the resident is permitted to occupy the living unit in the facility. The fees or payments are subject to release from the escrow account in the following manner:

1. If the entrance fee gives the resident the right to occupy a living unit which has been previously occupied, the entrance fee and any interest earned thereon shall be released to the provider when the living unit becomes available for occupancy by the new resident.

2. If the entrance fee applies to a living unit which has not been previously occupied, the entrance fee and any interest earned thereon shall be released to the provider when the Department is satisfied that:

i. Aggregate entrance fees received or receivable by the provider pursuant to executed continuing care agreements equal at least 50 percent of the sum of the entrance fees due at full occupancy of the portion of the facility under construction, except that entrance fees receivable pursuant to an agreement shall be counted only if the facility has received a deposit of 35 percent or more of the entrance fee due from the individual signing the contract;

ii. The aggregate entrance fees received or receivable pursuant to the preceding paragraphs plus anticipated proceeds of any first mortgage loan or other long-term financing commitment and funds from other sources in the actual possession of the provider are equal to at least 50 percent of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus at least 50 percent of the funds necessary to fund start-up losses as estimated by the provider in the statement of anticipated source and application of funds submitted pursuant to N.J.A.C. 5:19-4.2(a)11; and

iii. The provider has received a preliminary commitment for any permanent mortgage loan or other long-term financing described pursuant to N.J.A.C. 5:19-4.2(a)11 and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the facility, are substantially satisfied.

3. If the funds in the escrow account established pursuant to this section and any interest earned thereon are not released within 36 months, or a greater time if so specified by the provider with the consent of the Department, the escrow agent shall return the funds to the individuals who made payments to the provider.

4. Nothing in this section shall require the provider to place any non-refundable application fees charged to prospective residents in escrow.

5. In lieu of any escrow required pursuant to this section, a provider is entitled to post a letter of credit from a financial institution, negotiable securities or a bond by a surety authorized to do business in this State, in a form approved by the Department and in an amount not to exceed the amount required by (a)2 above. The provider shall execute the letter of credit, negotiable securities or bond in favor of the Department on behalf of individuals who are entitled to a refund of entrance fees from the provider.

6. A provider may apply to the Department for a waiver of the applicable escrow requirements of this section when a provider constructs additional living units in an amount that does not exceed 10 percent of the facility's existing living units for continuing care residents. The provider shall apply for the waiver in writing to the Department. The Department may grant the waiver which may be effective for a period of one year or longer, at the discretion of the Department, if the construction of additional units meets the requirements of this subsection.

7. Upon receipt of a notice from the provider that an individual is entitled to a refund of an entrance fee, the escrow agent shall return the funds held in the escrow account to the individual.

5:19-7.5 Provider's collateral

A provider shall pledge only the unencumbered assets of a continuing care facility as collateral for the purpose of securing loans for other continuing care facilities, whether proposed or existing.

5:19-7.6 Bankruptcy or insolvency of provider

(a) The Department may apply to a court of competent jurisdiction or to the Federal bankruptcy court, if that court had previously taken jurisdiction over the provider or facility, for an order authorizing the Department to appoint a trustee to rehabilitate or to liquidate the facility if the Department determines that:

1. A portion of a provider's reserve fund escrow as required pursuant to the Act has been or is proposed to be released;

2. A provider is or will be unable to meet the pro forma income or cash flow projections filed pursuant to N.J.S.A. 52:27D-336, except in a manner that may endanger the ability of the provider to fully meet its continuing care contract obligations.

3. A provider has failed to maintain the reserves required under the Act; or

4. A provider is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent.

(b) An order to rehabilitate a facility shall direct the Department or trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of managers or agents that the Department or trustee deems necessary and to take those steps the court directs toward removal of the causes and conditions which have made rehabilitation necessary.

(c) If the Department determines that further efforts to rehabilitate the provider would be useless, the Department may apply to the court for an order of liquidation.

(d) In applying for an order to rehabilitate or liquidate a facility, the Department shall give due consideration in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served. In furtherance of this objective, the proceeds of any lien obtained by the Department pursuant to the Act may be:

1. Used in full or partial payment of entrance fees;

2. Used on behalf of residents of a facility that is being liquidated; or

3. Paid, on behalf of those persons, to other facilities operated by providers who hold a certificate of authority issued pursuant to the Act.

(e) The Department shall attempt to keep resident of the community informed about its actions to rehabilitate or liquidate the facility and, when appropriate, the Department shall meet with residents of the facility.

SUBCHAPTER 8. ADMINISTRATION

5:19-8.1 Enforcing agency designated

The Division of Housing and Development in the Department of Community Affairs shall administer and enforce these rules. Within the Division, responsibilities for administration and enforcement of these rules shall be vested in the Bureau of Construction Code Enforcement. All powers and responsibilities vested in the Commissioner shall be executed by the Chief, Bureau of Construction Code Enforcement, with the exception of the power to promulgate rules and the power to issue final decisions in administrative hearings.

5:19-8.2 Complaints and investigations

Any person may, at any time, file a complaint with the Department concerning any matter subject to the Act or these rules. Said complaint may be written or oral. Nothing contained herein shall prevent the Department from instituting an investigation on its own initiative.

5:19-8.3 Rights to a hearing

Any applicant aggrieved by an order of the Department issued under these rules shall be entitled to a hearing as provided by law, provided a written request for such hearing is filed within the time provided by these rules or as provided by law.

5:19-8.4 Conduct of hearing

All hearings pursuant to the Act shall be conducted in accordance with the Administrative Procedure Act, (P.L. 1968, c.410, N.J.S.A. 52:14B-1 et seq.) and the amendments thereto and the Uniform Administrative Practice Rules, N.J.A.C. 1:1-1 et seq.

5:19-8.5 Consent orders

The Department may, in its discretion, enter into any consent order, stipulation or settlement in any matter.

5:19-8.6 Applicability

(a) These rules shall be applicable as follows:

1. A provider who is offering but not providing continuing care on March 2, 1987 may be given a reasonable time, not to exceed one year from the date of promulgation of these rules, within which to comply with the requirements of the Act and obtain a certificate of authority.

2. A facility which has not entered into any agreements for continuing care pursuant to the Act since 1965, is not subject to the provisions of the Act; but this exclusion shall not apply if that facility enters into one or more agreements for continuing care on or after March 2, 1987.

3. A facility which has fewer than 50 residents who are under continuing care agreements on the date of enactment of the Act is not subject to the provisions of the Act; but this exclusion shall not apply if that facility increases the number of its residents under continuing care agreements to 50 or more, after the date of enactment of the Act.

5:19-8.7 Construction

These rules shall be construed liberally to effectuate the purposes of the Act and of these rules.

5:19-8.8 Waiver

The Department may grant exemptions to these rules or any part thereof when, in its opinion, the enforcement thereof is unduly burdensome or impractical.

5:19-8.9 Severability

If any provision of these rules or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of these rules which can be given effect and to this end the provisions of these rules are severable.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Graduate Medical Education

Cost Per Case; Adjustments; Appeal and Review

Proposed Amendments: N.J.A.C. 8:31B-3.22, 3.31, and 3.51.

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

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18(d).

Proposal Number: PRN 1987-140.

Submit comments by May 20, 1987 to:
Pamela Dickson, Director
Hospital Reimbursement
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows.

Summary

The proposed amendment to N.J.A.C. 8:31B-3.31 requires that the number of Graduate Medical Education (GME) positions, that is, residents and interns, to be approved for funding pursuant to any hospital's 1987 and subsequent years' Schedule of Rates shall not exceed the Commission approved number of FTE residents for July 1, 1985 through June 30, 1986 (FY 86) for that hospital plus any Commission approved transfer residency positions. In addition the Department proposes each hospital's Schedule of Rates for 1987 and subsequent years be adjusted to exclude the indirect costs associated with residents in excess of 1986 levels plus any Commission approved transfers.

The Department also proposes that the Schedule of Rates for 1987 and subsequent years exclude any costs associated with GME positions filled by residents in programs which are subject to an accreditation process and which have not maintained accreditation from the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the American Dental Association. Moreover, each hospital's Schedule of Rates for 1987 and subsequent years will be adjusted to exclude the indirect costs of residents in residency programs which have lost accreditation.

The Department also proposes that the Schedule of Rates for 1987 and subsequent years exclude any costs associated with first-year residents (PGY1) employed by any hospital subsequent to June 30, 1987 and not meeting either criteria 1 and 2 or criteria 1 and 3 listed below.

1. Meet all the minimum criteria established by the New Jersey Board of Medical Examiners required for a New Jersey medical license, with the exception of a specific requirement for graduate medical education.

2. Graduation from a medical, osteopathic or dental school accredited by the Liaison Committee on Graduate Medical Education, the American Osteopathic Association, or the American Dental Association.

3. Graduation from a foreign medical school, and passage of the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) within three attempts.

The Department also proposes that the Schedule of Rates for 1987 and subsequent years be adjusted to exclude any costs associated with first-year residents employed by the hospital subsequent to June 30, 1987, not meeting these requirements and to exclude any costs associated with approved residency positions which remain unfilled due to the inability of a hospital to recruit residents meeting these minimum criteria.

The Department also proposes that first-year residents employed by hospitals subsequent to June 30, 1987, but not meeting the above requirements, residents in programs which have not maintained accreditation, and previously approved but now vacant residency positions which are unfilled as a result of these requirements, not be considered in determining a hospital's teaching category under N.J.A.C. 8:31B-3.22. Any change in teaching category would occur as of January 1988 and subsequent years.

Finally, the Department acknowledges that under some limited circumstances, exclusion of GME costs may threaten needed patient care services. The proposed amendment to N.J.A.C. 8:31B-3.51 allows hospitals which experience a decline in the number of approved residency positions and which can document an irremedial loss of patient care services to appeal under the Conditionally Accept option for costs to sustain needed services which would be negatively impacted by such a decline. The amount of revenue appealable cannot exceed the GME costs excluded.

Social Impact

The proposed continuation of a statewide freeze on graduate medical education positions is not expected to have any negative social impact on the public. This recommendation is consistent with a recommendation first made by the New Jersey State Department of Higher Education's Advisory Graduate Medical Education Council (AGMEC) in August, 1984. AGMEC's report, *A Policy Prospective for Graduate Medical Education in New Jersey*, concluded that the number of residency positions existing in the State in 1982 was more than sufficient to serve the State's interest. Further, in a November 1986 report, *Quality Medicine: The Next Generation* AGMEC recommended continuation of the freeze as an interim measure and suggested a planned decrease in the number of residency positions in New Jersey over the next five years. The Department is not prepared to recommend regulations which implement an explicit decrease at this time. The Department, however, will proceed with discussions with AGMEC, the New Jersey State Department of Human Services and the Division of Consumer Affairs regarding planned reductions which would take into account the geographic location of residents and the State's need for various specialty physicians.

The proposed requirements for maintaining accreditation and minimum educational standards for residents will protect the public from inadequately qualified residents and residency programs. These recommendations are also consistent with the conclusions in *Quality Medicine: The Next Generation*. This report recommended no reimbursement for first-year residents employed after July 1, 1987 not meeting minimum New Jersey medical licensure requirements, and foreign medical school graduates failing to pass the Foreign Medical Graduate Examination in the Medical Sciences within three attempts. AGMEC recommends that these requirements be extended to all residents beginning on July 1, 1990.

The Department's provision of appeal rights to hospitals which experience significant declines in needed services protects the public from experiencing service cutbacks.

Economic Impact

The continuation of the statewide freeze on the number of approved residency positions protects consumers from paying for the costs of additional residents which have been found to be unnecessary to AGMEC and the Department in several studies since 1982. The exact financial impact of disallowing reimbursement for residency programs and residents not meeting minimum requirements is not known and is dependent on the continued accreditation of New Jersey residency programs and

the number of residency candidates meeting minimum qualifications. AGMEC reports that all New Jersey residency programs are either currently accredited or awaiting accreditation as new programs. The accreditation proposal, therefore, should have minimal or no financial impact but simply assure a continuation of quality. The economic impact of the requirement that first-year residents meet minimum standards is harder to assess and would depend on the number of inadequately qualified candidates New Jersey hospitals would have to accept in order to produce a first-year class equal in size to last year's. The limitation of the appealable amount of revenue to the amount of excluded residency costs does insure some savings to the consumer in cases where residency positions are lost.

Regulatory Flexibility Statement

The proposed rules apply only to the 89 hospitals that have rates established by the Hospital Rate Setting Commission. With one exception, each of these hospitals employs more than 100 full-time employees and, therefore, do not fall into the category of small business as defined in Section 2 of the New Jersey Regulatory Flexibility Act (P.L. 1986, c. 169). The one hospital which has less than 100 employees, employs no residents and, therefore, is not affected by the proposed amendments.

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

8:31B-3.22 Standard costs per case

(a) (No change.)

(b) Classification of Teaching (Major, Minor) and Non-Teaching Hospitals.

1.-5. (No change.)

6. All residents initially employed as first year residents (PGY 1) by hospitals on July 1, 1987 or later must meet either criteria i. and ii., or criteria i. and iii. listed below, in order to be included among those residents used to determine teaching categories described in 1 and 2 above:

i. Meet all the minimum criteria established by the New Jersey State Board of Medical Examiners required for a New Jersey medical license, with the exception of specific requirements for graduate medical education.

ii. Graduation from a medical or osteopathic school accredited by the LCGME or the AOA.

iii. Graduation from a foreign medical school and passage of the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) within three attempts.

7. For all Graduate Medical Education programs which are subject to accreditation by the LCGME, or AOA or, in the case of dental residents, the American Dental Association, accreditation must be maintained for residents in these programs to be used in determining the teaching categories described in 1 and 2 above.

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

8:31B-3.31 Commission adjustments and approvals

(a) (No change.)

(b) The Commission shall approve adjustments to hospitals' Schedules of Rates for 1986 and subsequent [years'] years [mark-up factor] as necessary to subtract approved indirect costs associated with residents in excess of the number of residents approved by the Commission for reimbursement for the twelve-month period beginning July 1, 1985. [This adjustment shall be effective July 1, 1986] The Commission shall also approve adjustments to hospitals' Schedules of Rates for 1987 and subsequent years as necessary to subtract approved costs associated with residents not meeting the minimum requirements as defined in N.J.A.C. 8:31B-3.22(b)6 and for any costs associated with residents in programs which have lost accreditation as defined in N.J.A.C. 8:31B-3.22(b)7 and for any costs associated with previously approved but now vacant residency positions which are unfilled as a result of a hospital's inability to recruit residents meeting these minimum standards. This adjustment will be effective July 1, 1987. These costs shall include, but not be limited to, resident salaries and fringes, faculty salaries, malpractice and supplies.

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

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1. (No change.)

2. Conditionally accept the Certified Revenue Base: Conditional acceptance is contingent upon approval by the Commission of the Schedule of Rates. Subject to approval, conditional acceptance waives the right

of the hospital to appeals set forth under N.J.A.C. 8:31B-3.53 through 3.54. Following Commission approval, rates conditionally accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. A hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to conditionally accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. Rates conditionally accepted shall not include the additional one percent of all direct patient care costs. **In evaluating appeals brought under this section the Commission shall consider the relative efficiency of the hospital in the Current Cost Base year, and the degree to which cost increases between the Current Cost Base and rate years in excess of the Economic Factor can reasonably be attributed to the expansion of teaching activities, considering the specific teaching programs involved and the cost centers they affect. The Commission shall also give consideration to the special needs of hospitals operated by medical schools.** Hospitals may appeal the following items:

i. Changes in Scope of Teaching which is defined as:

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

(3) An increase in the number of LCGME or AOA accredited residencies with at least five FTE residents participating in each additional program [;] or

[Note: In evaluating appeals brought under (b)2i above, the Commission shall consider the relative efficiency of the hospital in the Current Cost Base year, and the degree to which cost increases between the Current Cost Base and rate years in excess of the Economic Factor can reasonably be attributed to the expansion of teaching activities, considering the specific teaching programs involved and the cost centers they affect. The Commission shall also give consideration to the special needs of hospitals operated by medical schools.]

(4) The case where a hospital has had its number of approved residency positions reduced as a result of its inability to hire residents meeting the criteria specified in N.J.A.C. 8:31B-3.22(b)6 and the hospital can demonstrate that a decline in the services needed by the area population will occur as the result of such reductions. In this case the hospital must present a plan to sustain the needed services and may appeal for the revenue necessary to implement the plan. In no case may the amount of revenue appealed for or the amount of revenue approved by the Hospital Rate Setting Commission exceed the amount of excluded costs due to a decrease in the number of approved residency positions.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Cardiac Facilities Cardiac Diagnostic Facilities

Proposed Readoption with Amendments: N.J.A.C. 8:33E-1

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health.

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

Proposal Number: PRN 1987-142.

Submit comments by May 20, 1987 to:

John A. Calabria, Chief
New Jersey Department of Health
Health Systems Review
Room 604, CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 8:33E-1 applies to the provision of cardiac diagnostic services in settings where cardiac surgery is not also offered. A companion subchapter, N.J.A.C. 8:33E-2, establishes rules for the provision of cardiac services in cardiac surgical centers, which, by definition, offer both cardiac diagnostic and surgical services.

The rules proposed for readoption have been reviewed by the Department of Health, in light of the final report of the Cardiac Services Task Force discussed below, and found to be adequate, reasonable and necessary for their intended purpose. However, because the field of cardiac care is one of the most rapidly changing areas of medicine, by readopting

these rules and amending certain sections, the rules, once adopted, may be kept in step with the state of the cardiac care field well into the next decade through the amendment process alone, without requiring re-adoption to remain valid.

The current rules require periodic updating based on changes in clinical practice and Statewide utilization of existing cardiac service resources. In view of the significant technological changes that have taken place in the treatment of cardiovascular disease in the past decade, the Commissioner of Health convened a Cardiac Services Task Force to review the impact of these changes and to offer recommendations for changes in existing State policies regarding quality, cost and access for the planning and certificate of need review for cardiac care services. Following an eight month review process, the Cardiac Services Task Force issued its final report on January 15, 1987. This proposal includes the retention of Department of Health policy, standards and criteria, as reflected in the existing rules, with the following proposed changes which are consistent with the recommendations of the Cardiac Services Task Force:

1. Amendments to N.J.A.C. 8:33E-1.1 which eliminate references to the existing State inventory of cardiac diagnostic services which are referenced instead in the Social Economic Impact statements.
2. Amendments to N.J.A.C. 8:33E-1.1 which propose that cardiac catheterization be provided only in a hospital-based facility, as recommended by the Cardiac Services Task Force, the American College of Cardiology, and the American Heart Association.
3. Amendments to N.J.A.C. 8:33E-1.2(b) which delete separate minimum utilization levels for shared invasive cardiac diagnostic laboratories.
4. Amendments to N.J.A.C. 8:33E-1.2(b) which require that existing providers adhere to minimum utilization volumes contained herein within one year following adoption of the subchapter or be subject to reimbursement or licensing penalties. New programs would have three years to achieve minimum volume levels or be required to submit a certificate of need to close the service.
5. Amendments to N.J.A.C. 8:33E-1.2(c) which establish standards that must be satisfied before existing providers will be permitted to expand their invasive cardiac diagnostic laboratory capacity.
6. Amendments to N.J.A.C. 8:33E-1.2(d) which recommend performance standards for catheterizing physicians.
7. Amendments to N.J.A.C. 8:33E-1.3 which reduce the minimum personnel requirements and refine the minimum certification and training requirements for invasive cardiac diagnostic facility personnel.
8. Amendments to N.J.A.C. 8:33E-1.5 which redefine the charge for an ongoing cardiac services committee.
9. Amendments to N.J.A.C. 8:33E-1.11(c) which add additional factors which will be included in future reviews of the need for additional invasive cardiac diagnostic services in the State.
10. New subsections at N.J.A.C. 8:33E-1.2(g) and 1.3(d) are being reserved for Electrophysiology criteria and standards.

Social Impact

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

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, speciality services, and expensive equipment as important factors contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered and for achieving cost efficiencies in the delivery of expensive and highly sophisticated health care services.

The regionalization of invasive cardiac diagnostic services is essential in generating caseloads of sufficient volume to maintain professional skills, thereby reducing unnecessary risks to patients and promoting the efficient and effective delivery of this specialized service.

Historically, overall Statewide utilization of invasive cardiac diagnostic services has increased approximately 15 percent per year since 1979. As a result of this increased demand for services, two new services have been added in the State together with the expansion of six existing programs. These approvals represent a 36 percent increase in the number of cardiac

catheterization laboratories in New Jersey, expanding the capacity of these programs by approximately 9,000 cardiac catheterization procedures. It is estimated that the existing and approved cardiac diagnostic programs in the State have the capacity to perform 33,000 catheterization procedures annually. During 1985, slightly over 21,000 cardiac catheterization procedures were performed in New Jersey (62 percent of Statewide technical capacity). During 1985, only four of the State's 20 existing adult invasive cardiac diagnostic programs (inclusive of the Veteran's Administration Hospital) experienced utilization levels that failed to achieve the minimum volume level of 500 cases annually proposed in this subchapter.

This Cardiac Services Task Force report states that, "all evidence indicates that both quality of care, as reflected in mortality, and cost, as reflected in length-of-stay and physicians fees, are influenced by the volume of procedures done by and the skill of the physician". The proposed readopted rules and amendments are important, therefore, for quality and cost reasons. They promote sufficient utilization at each invasive cardiac diagnostic facility to maintain professional skills, thereby protecting patients from unnecessary risks. In addition, they inhibit the unrestricted growth of this service Statewide, thereby promoting appropriate utilization levels and insuring that the service is provided in a cost-efficient manner.

Economic Impact

A major finding of the Cardiac Services Task Force report is that total costs for cardiac services, particularly with respect to physician fees, are higher in New Jersey than in surrounding states. The provision of cardiac care services is becoming increasingly competitive, emphasizing the need to promote efficiencies in their delivery. These proposed rules reduce staffing requirements and promote efficient volume levels. Since the cost of providing invasive cardiac diagnostic services is largely determined by the spreading of fixed costs over the number of cases performed, an invasive cardiac diagnostic facility lacking sufficient patient volumes represents a less than efficient use of a costly resource.

In the absence of these rules, the growth of new services would be unrestricted. To allow this to occur would be to encourage a reduction in the utilization of existing facilities, offending quality of care considerations, and promoting significant cost inefficiencies in the provision of this important service.

Regulatory Flexibility Statement

Since only large hospitals, having, by nature, well over 100 employees, would be capable of qualifying for a certificate of need for a cardiac diagnostic facility, no recordkeeping, reporting or other compliance requirements are placed upon small businesses by the proposed rules.

Full text of the proposed re-adoption with amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

SUBCHAPTER 1. CARDIAC DIAGNOSTIC FACILITIES

8:33E-1.1 Scope

(a) The cardiac diagnostic facility specializes in the detection and diagnosis of cardiac disorders. Unlike the cardiac surgery center in which both diagnostic and therapeutic services are collocated, the cardiac diagnostic facility does not provide cardiac surgery but rather on the basis of diagnostic studies refers patients, where appropriate, to facilities offering cardiac surgery and other advanced cardiac diagnostic and treatment modalities, such as percutaneous transluminal coronary angioplasty (PTCA) and electrophysiology studies (EPS).

1. For the purposes of this subchapter, the following definitions shall apply:

i. "Percutaneous transluminal coronary angioplasty" (PTCA) means the passage of a balloon-tipped catheter (thin tube) to the site of narrowing in an artery and the inflation of the balloon to reduce the obstruction.

ii. "Electrophysiology study" (EPS) means the use of standard cardiac catheterization techniques to place electrode catheters at different sites in the heart. Variations in heart rhythm (arrhythmia) are then introduced and the effects of different therapeutic agents are examined.

(b) In the cardiac diagnostic facility the primary diagnostic services are provided by cardiac catheterization, coronary angiographic and non-invasive laboratories. The cardiac catheterization and coronary angiographic laboratories are devoted to achieving optimal quality physiological and angiographic studies. The non-invasive laboratory includes at a minimum ECG and VCG instruments, exercise stress testing, phono/pulse tracing/echo equipment and Holter type monitoring and nuclear cardiology (often in a separate department) facilities.

[(c) The existing inventory of cardiac services located within the State includes 12 "free standing" diagnostic facilities which perform cardiac catheterizations but do not offer cardiac surgery and an additional 10 facilities which perform both diagnostic and surgical functions. The total of 22 sites offering invasive cardiac diagnostic services are distributed throughout the State and serve each of the five health systems agencies.]

[(d) Given the increase in utilization levels experienced by New Jersey's invasive cardiac diagnostic facilities during the last five years and the statewide reduction in the number of providers of this service during this period, the Department of Health will process certificate of need applications for a limited number of new cardiac diagnostic facilities in accordance with N.J.A.C. 8:33E-1.12.]

[(e) The cardiac diagnostic facility must be regionally based in an effort to achieve improved quality at manageable costs. Data indicate that the larger the volume of diagnostic procedures, the lower the risk factor. Of the 22 existing invasive cardiac diagnostic programs in the State for which the department has comparable data 4 or 31 percent currently are operating below minimum State utilization requirements.]

[(f) (c) The Inter-Society Commission for Heart Disease Resources (I.C.H.D.) and the New Jersey Cardiac Services Task Force support[s] the position that the safety and efficacy of laboratory performance requires a caseload of adequate size to maintain the skills and efficiency of the staff. Death or serious nonfatal complications of myocardial infarction and/or cerebral embolus occurs in 1.5 percent of the population examined by invasive techniques. Such problems occur ten times more often in institutions performing fewer than 100 examinations per year than in those performing 400 examinations annually. In the interest of patient care, then, it is important that health planning move to encourage maximum utilization of the State's existing diagnostic resources. It is also essential that in view of the invasive nature of the cardiac catheterization procedure and the extent of possible complications associated with these procedures, cardiac surgery services should be accessible promptly, either in-house or by immediate transfer, in the event of an emergency or complication. In addition, outpatient catheterization must be performed in a laboratory that is physically part of a hospital-based facility offering inpatient support services.

[(g) (d) The standards and criteria defined [herein (N.J.A.C. 8:33E-1.1 et seq.)] in this subchapter shall apply to the efficient delivery of quality invasive cardiac diagnostic services within the setting of the ["free-standing"] cardiac catheterization laboratory. In addition to meeting these minimal requirements, the invasive cardiac diagnostic facility is expected to operate a well established non-invasive cardiac diagnostic laboratory. Additional policy [has been proposed] for the more comprehensive cardiac surgery center [and] is identified within N.J.A.C. 8:33E-2.1 et seq. 8:33E-1.2 Utilization of invasive cardiac diagnostic facilities

(a) Utilization standards are based on the number of patients upon whom invasive cardiac diagnostic procedures (cardiac catheterization) are performed. Cardiac catheterization is characterized as the insertion of a thin, flexible tube (catheter) into a vein or artery and guiding it into the heart for purposes of diagnosis or limited treatment, such as the introduction of thrombolytic (clot dissolving) agents.

(b) Volume of patients diagnosed is not the only determinant or indicator of quality. The provision of invasive cardiac procedures requires appropriate institutional infrastructure, including specialized nursing services, sophisticated laboratory technology, and in some cases well-developed non-cardiac specialty expertise (see N.J.A.C. 8:33E-1.3 and 1.4). However, some minimum volume is required to maintain the skills of the diagnostic team and to minimize costs per patient. The minimum acceptable number of adult cardiac catheterization patients per cardiac laboratory [which is shared with other specialized radiographic procedures is 250 per year while the minimum number for a fully dedicated adult cardiac catheterization laboratory] is 500 per year in order to maintain the [efficiency and the] skills of the catheterization team and the efficiency and effectiveness of the invasive cardiac diagnostic service. [Of the 250, 150 must be coronary arteriographic patients in a shared laboratory.] New services must attain this minimum utilization level within three years of operation. Failure to achieve the minimum level by the end of the second year of operation will result in notification of the Department of Health's intention to rescind certificate of need approval and move for licensing sanction. The inability to achieve minimum utilization levels during the third or any subsequent year of operation will result in loss of license for the service. Existing services must achieve minimum utilization levels within one year of the effective date of this subchapter or be subject to reimbursement or licensing sanctions. These sanctions may include closure of the service or that portion of the service that will result in compliance within minimum state standards.

[1. In order to be considered a "shared" laboratory, specific time each week must be scheduled for laboratory use by other departments within the hospital. Adequate "shared" use will be determined by the Commissioner's Cardiac Advisory Committee (CCAC) based on the number of non-cardiac special procedures reported to the Department each year.]

(c) Applicants seeking to expand existing invasive cardiac diagnostic laboratory services must indicate conformance with all standards and criteria contained in this subchapter and document a minimum volume of 1,000 cardiac catheterization procedures in the existing laboratory (or in each existing laboratory).

[(c) The optimal utilization level for a laboratory dedicated to cardiac catheterization/coronary angiographic examinations is 500 adult patients per year, including 400 coronary arteriographic patients, in order to maximize quality of care and minimize unit cost per examination (250 adult patients per year is considered optimal utilization for a shared laboratory). All cardiac diagnostic laboratories will be evaluated in light of this optimal level by the commissioner's cardiac advisory committee.]

(d) Each invasive cardiac diagnostic facility should establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. The [cardiac advisory committee] Commissioner's Cardiac Task Force recommends that each physician should perform [a minimum of] 50 cases [each year] a year with a minimum of 100 cases over a two year period [or be under the supervision of a physician who has performed this minimum number of cases]. (This minimum case load may be accomplished at more than one laboratory.)

(e) Acutely ill (cardiac) infants should be definitively examined only in centers with active pediatric cardiac surgical programs.

(f) Cardiac catheterization procedures must be performed in a hospital-based facility where inpatient support services are available on site.

(g) (Reserved.)

8:33E-1.3 Facility personnel; requirements and responsibilities

(a) Each invasive cardiac diagnostic facility shall be minimally staffed by the following full-time personnel:

1. One physician;
2. One registered nurse;
3. [Three] One technician[s].

(b) While the following functions shall be performed within each facility, more than one function may be executed by a single individual appropriately cross-trained to perform the required functions:

1. Laboratory director (physician in charge): The chief diagnostician within the unit, certified by the Sub-Specialty Board of Pediatric Cardiology of the American Board of Pediatrics or the Cardiovascular Sub-Specialty Board of the American Board of Internal Medicine. In addition to Board certification, the [D]irector must have broad experience and training in invasive cardiac diagnostic procedures including but not limited to a minimum of 12 months in a cardiac catheterization training program and the performance of 200 cardiac catheterization procedures, with 100 of these procedures performed as the primary operator.

2. Associate physicians may be assigned to the laboratory and must meet the identical training and certification requirements for laboratory director contained in (b)1 above. In addition, all catheterizing physicians must adhere to the minimum physician volume standards established by each laboratory in accordance with N.J.A.C. 8:33E-1.2(d).

i. Exceptions for incumbent directors and associate physicians to [this requirement for board certification] these minimum training and certification requirements may be granted by the Commissioner after consultation with the Commissioner's cardiac services committee (CCSC) and upon application by an institution providing proper documentation as to the physician's qualifications.

[2. Associate physicians will be assigned. One of the physicians will be trained in cardiovascular catheterization.]

3. Registered nurse: To assist with administration of medications and the preparation and observation of the patient. The nurse should have intensive care cardiac unit (ICCU) experience, competence in advanced cardiac life support (ALS), and must have knowledge of cardiovascular medications and experience with catheterization.

4. Cardiac catheterization technician: To handle blood samples and assist in the performance tests. The technician will help in the maintenance of equipment and supplies and should be trained to aid in patient observation and acute cardiac care.

5. Monitoring and recording technician: Responsible for constant monitoring of physiologic data, including the electrocardiogram and recording this information. This function can best be handled by a second cardiac catheterization technician or radiologic technician.

6. Radiologic technician: Skilled in conventional radiography and has special training and skills in angiographic techniques. This technician must be competent in magnification radiography, subtraction photography, cine recording, television presentations and the use of video tape and be responsible for the care and maintenance of all radiologic equipment.

7. Electronic and radiological repair technician: Highly trained and available for consultations regarding the operation and maintenance of all radiographic and physiologic measuring and recording instruments in the laboratory. This person must be immediately available to carry out repairs in the event of equipment failures during the course of the procedure.

8. Hospitals providing invasive cardiac diagnostic services should, to the extent possible, have native speaking clinical personnel available who can overcome language barriers and know and understand cultural differences among patients.

9. Hospitals providing invasive cardiac diagnostic services should develop cardiology outreach mechanisms and referral services (for example, physician education, public information, primary care clinical services).

(c) One physician trained and experienced in cardiac catheterization shall be present in the room during all catheterization and angiographic procedures. An appropriately trained and experienced registered nurse and technician shall also be present during all procedures.

(d) (Reserved.)

8:33E-1.4 Peer review

(a) Quality control is essential for the consistent high quality level of performance required of any medical service. As one means of quality control, appropriate mechanisms for peer review shall be described in each application for designation as a cardiac diagnostic facility. Such mechanisms should include, but not be limited to, the delineation of criteria for the evaluation of:

1. Overall case selection for study ([e.g.] for example, rate of normal studies, rate of surgical referral);

2. Laboratory and physician performance as recommended by the Cardiac Services Task Force including the physician performance guidelines ([e.g.] for example, case volume, mortality and complication rates per physician);

3. Quality of studies ([e.g.] for example, number of incomplete studies, diagnostic adequacy of films, number of restudies performed elsewhere);

(b) In all cases, criteria selection should be based on sound medical practice and consistency with the literature.

[(b)](c) Each peer review team shall include at least one cardiovascular surgeon from the surgical center to which surgical candidates are commonly referred.

8:33E-1.5 Commissioner's cardiac [advisory] services committee

[(a)] A cardiac advisory committee has been established under the authority of the Commissioner of Health to review on a regular basis the performance of all cardiac institutions in the state to insure high quality patient care.]

[(b)] In addition to practicing specialists, the cardiac advisory committee will be comprised of representatives from third party payors, a consumer member who is involved in the New Jersey health planning process, and the administration of institutions providing the service.]

[(c)] Mortality rate, utilization of facilities and medical practices of each cardiac diagnostic facility will be reviewed regularly by the commissioner's cardiac advisory committee to insure quality control and accurate data reporting.]

[(d)] To the greatest degree possible, other inspection programs of cardiac services will be integrated with those of the advisory committee, to minimize the number of official visits to these services.]

[(e)] The Commissioner's Cardiac Advisory Committee will review certificate of need applications for new invasive cardiac diagnostic facilities and make recommendations to the Statewide Health Coordinating Council and Commissioner of Health.]

(a) A cardiac services committee will be established under the authority of the Commissioner of Health to review on a regular basis the performance of all cardiac institutions in the State (including the analysis of mortality, morbidity and patient risk factor data). This committee will also:

1. Review cardiac service technological developments and the degree to which these developments have achieved clinical acceptance within the medical community;

2. Review State standards and criteria for cardiac services at regular intervals (at least annually);

3. Respond to Statewide issues regarding cardiac care as requested by the Commissioner of Health;

4. Assist in the development and implementation of a Statewide cardiac registry.

8:33E-1.6 Association with cardiac surgical services

(a) Applicants providing cardiac diagnostic services without a surgery program must have written agreements with institutions providing open heart surgery and catheterization, specifying a mechanism for insuring quality control, rapid referral for surgery, emergency back-up procedures and regular communication between the cardiologists performing catheterization and the surgeons to whom patients are referred. At least one of the referral agreements must be written with a New Jersey cardiac center. In addition, one of the referral agreements must be with a cardiac surgical center which is within one hour over the road travel time from the diagnostic facility to insure prompt referral in the event of an emergency.

(b) To insure that costs are not unnecessarily increased by duplication of procedures, written assurance must be included within the referral agreement stating that to the greatest extent possible the receiving facility will accept the results of the diagnostic facility's examinations. Departures from this practice must be linked to an established peer review mechanism at the receiving center.

[8:33E-1.7 Long-range planning]

[The applicant must show evidence that the proposed application for designation is consistent with the hospital's approved long-range plan, submitted to the Department under the requirements of N.J.A.C. 8:31-16.1, and with the health systems plan and annual implementation plan of the health systems area in which the applicant is located.]

8:33E-1.[8]7 Documentation of purchase and operational cost

The applicant will provide full written documentation of the projected implementation and operational costs of the proposed program. This documentation will include direct and indirect costs, that is, construction, equipment, supplies, personnel, maintenance, overhead costs, as well as projected costs of remodeling or renovation necessary to accommodate the program. Projections of anticipated revenues must be supplied for at least the first three years.

8:33E-1.[9]8 Statistical data required

At the request of the Commissioner, [T]the facility will maintain and provide basic statistical data on the operation of the program and report that data to the Department of Health on a quarterly basis and on a standardized form prepared by the [d]Department. Copies of the full text of the required quarterly reporting forms may be obtained upon written request to the New Jersey State Department of Health, [Health Data Services.] Room 405, CN 360, Trenton, New Jersey 08625.

8:33E-1.[10]9 Certification of nondiscriminatory practices

Each applicant must approve written certification of compliance with all Federal and State laws in regard to nondiscriminatory practices to the effect that no patient shall be refused treatment on the basis of race, religion, sex, age or ability to pay.

8:33E-1.[11]10 Compliance

Facilities, which [on the effective date of this subchapter] are providing cardiac diagnostic services without cardiac surgery, must meet the minimal criteria and standards outlined [herein] in this subchapter within one year following the effective date of this subchapter and each year thereafter or be subjected to [disallowance for the service under the State's rate setting program] reimbursement or licensing sanctions. These sanctions may include closure of the service or that portion of the service that will result in compliance with minimum State standards.

8:33E-1.[12]11 New facilities

(a) The Department of Health will process certificate of need applications for new invasive cardiac diagnostic facilities only from health services areas, designated pursuant to P.L. 93-641 and amendments thereto, where all existing invasive cardiac diagnostic facilities meet [optimal] minimum levels of utilization as specified at N.J.A.C. 8:33E-1.2[(c)](b).

(b) No more than one new invasive cardiac diagnostic facility may be approved in each health service area, designated pursuant to P.L. 93-641 and amendments thereto, where all existing invasive cardiac diagnostic facilities are operating at [optimal] minimum levels of utilization as specified of N.J.A.C. 8:33E-1.2[(c)](b). Additional new facilities, beyond the first approved pursuant to this subchapter, will be considered only when both existing and approved facilities in a given health service are operating at [optimal] minimum levels of utilization as specified at N.J.A.C. 8:33E-1.2[(c)](b).

(c) Competing applications for new invasive cardiac diagnostic facilities in a health services area will be evaluated on the basis of their ability to meet the standards established in this subchapter. In addition, [such factors as the applicant's case-mix, physician staffing, and the utilization of its non-invasive cardiac services will be considered in the review process.] **the following factors will also be considered in the review process:**

1. **Demonstration of institutional and provider competence in delivering the proposed service;**
2. **Capacity to perform the proposed service at the recommended minimum level within the stated period of time;**
3. **Commitment from the hospital's board to establish the proposed service program;**
4. **Examination of the capacity of existing facilities in the referral area;**
5. **Evidence that the new or expanded service will capture referrals currently made to out-of-state facilities;**
6. **Evidence that essential support services in the hospital (for example, renal and pulmonary) are capable of coping with an increase in caseload;**
7. **Evidence that the project would be financially feasible;**
8. **Evidence that demographic statistics support service growth;**
9. **Evidence that the proposed service is compatible with overall health planning goals for the State and for the service area; and**
10. **Evidence that barriers to access to care do not exist, including access to primary care services, and that if no barriers exist, that access to care will either remain constant or improve for individuals in the service area.**

(d) All certificate of need applications for new invasive cardiac diagnostic facilities must document the ability of the applicant to meet the minimum standards and criteria contained in this subchapter within three years from the initiation of the service. **Failure to achieve the minimum level by the end of the second year of operation will result in notification of Department of Health intention to rescind certificate of need approval and move for licensing sanctions. The inability to achieve minimum utilization levels during the third year of operation or thereafter will result in loss of license for the service.**

8:33E-1.[13]12 Subchapter review

This subchapter will be reviewed and evaluated [at least every three years by the commissioner's cardiac advisory committee at regular intervals] **at least annually by the Commissioner's cardiac services committee.**

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Cardiac Facilities Cardiac Surgery Centers

Proposed Readoption with Amendments: N.J.A.C. 8:33E-2

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health.

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

Proposal Number: PRN 1987-143.

Submit comments by May 20, 1987 to:

John A. Calabria, Chief
New Jersey Department of Health
Health Systems Review
Room 604, CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Cardiac surgical center rules apply to the provision of open heart cardiac surgical services in settings that also include the provision of invasive and non-invasive cardiac diagnostic and therapeutic services. A companion subchapter, N.J.A.C. 8:33E-1, establishes rules for the provision of invasive cardiac diagnostic services where cardiac surgery is not offered.

The rules proposed for re-adoption have been reviewed by the Department of Health, in light of the final report of the Cardiac Services Task Force discussed below, and found to be adequate, reasonable and necessary for their intended purpose. However, because the field of cardiac care is one of the most rapidly changing areas of medicine, by re-adopting these rules and amending certain sections, the rules, once adopted, may be kept in step with the state of the cardiac care field well into the next decade through the amendment process alone, without requiring re-adoption to remain valid.

The current rules require periodic updating based on changes in clinical practice and Statewide utilization of existing cardiac service resources. In view of technological changes that have taken place in the treatment of cardiovascular disease in the past decade, the Commissioner of Health convened a Cardiac Services Task Force to review the impact of these changes and to offer recommendations for changes in existing State policies regarding quality, cost and access for the planning and certificate of need review for cardiac care services. Following an eight month review process, the Cardiac Services Task Force issued its final report on January 15, 1987. This proposal includes the retention of Department of Health policy, standards and criteria, as reflected in the existing rules, with the following proposed changes which are consistent with the recommendations of the Cardiac Services Task Force:

1. Deletion of N.J.A.C. 8:33E-2.13(b) at the request of the Health Care Administration Board. The Commissioner wishes to call particular notice to this deletion and to invite public comment on it because of the potential impact upon the quality of care at existing cardiac surgery centers.

2. The addition of a new section at N.J.A.C. 8:33E-2.2 that provides definitions for the cardiac services that are addressed within the cardiac surgery center rule.

3. Amendments at N.J.A.C. 8:33E-2.3(a) which raise the minimum annual open heart surgery volume from 200 to 250 per operating room.

4. Amendments at N.J.A.C. 8:33E-2.3(b) which establish distinct invasive cardiac diagnostic and cardiac surgery volume requirements for pediatric patients.

5. Amendments at N.J.A.C. 8:33E-2.3(c) which eliminates the existing lower volume standard for a shared invasive cardiac diagnostic laboratory (250 cases annually) and retains the existing standard (500 cases annually) for dedicated laboratories which will be applied to all such invasive cardiac diagnostic laboratories in the future.

6. Amendments at N.J.A.C. 8:33E-2.3(a) which require new adult surgical programs to document use of two operating rooms within three years (that is, 350 cases annually) and existing programs to achieve 350 cases per operating room, per year in order to expand.

7. The addition of a new subsection at N.J.A.C. 8:33E-2.2(d) in order to establish utilization standards regarding percutaneous transluminal coronary angioplasty (PTCA).

8. Amendments at N.J.A.C. 8:33E-2.4 which refine and, in some instances, reduce personnel requirements for cardiac services in an effort to maintain the quality and increase the efficiency of cardiac surgery centers statewide.

9. Amendments at N.J.A.C. 8:33E-2.6 which establishes an ongoing cardiac services committee and defines its charge.

10. Amendments at N.J.A.C. 8:33E-2.13 which adds factors that will be considered in evaluating the need for additional cardiac surgery services in the future.

11. The addition of a new section at N.J.A.C. 8:33E-2.15 requiring existing surgical centers to adhere to minimum utilization volumes within one year following adoption of the subchapter or be subject to reimbursement or licensure penalties or closure of the service. New cardiac surgery programs would have three years to achieve compliance or be required to submit a certificate of need to close the service.

12. New subsections at N.J.A.C. 8:33E-2.3(e) and 2.4(f) are being reserved for Electrophysiology Study (EPS) criteria and standards.

Social Impact

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

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as important factors contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered and for achieving cost efficiencies in the delivery of expensive and highly sophisticated health care services.

The regionalization of cardiac surgery services is essential in generating caseloads of sufficient volume to maintain professional skills, thereby reducing unnecessary risks to patients and promoting the efficient and effective delivery of this specialized service.

Utilization of the State's 10 existing cardiac surgery centers has increased approximately 20 percent annually since 1979, although this growth trend has diminished since 1983 (only a 6 percent average increase during 1984 and 1985). During this seven year period two new adult cardiac surgery programs have been granted certificate of need approval together with an expansion of an existing cardiac surgery center. These approvals represent a 24 percent increase in the number of cardiac surgery operating rooms in the State, expanding the capacity of the State's programs by 2000 surgical procedures annually. It is estimated that the existing and approved cardiac surgery centers in New Jersey have the capacity to perform approximately 8500 surgical procedures annually. During 1985, a total of 4,711 adult and pediatric open heart procedures were performed in the State's cardiac surgery centers (representing 55 percent of Statewide technical capacity). During 1985 only two of the State's 10 cardiac surgery centers experienced utilization levels that failed to achieve the minimum volume level of 250 open heart surgery cases proposed in this subchapter. Both of these centers, however, have experienced growth during 1986 which should result in compliance with the proposed volume standards with the submission of the final quarterly report for the calendar year.

As identified in the January 15, 1987 Cardiac Services Task Force report, New Jersey's 10 adult and pediatric cardiac surgery centers are located in six of the State's 21 counties, but these counties (Bergen, Burlington, Camden, Essex, Middlesex and Passaic) represent one-half of the State's population. The Cardiac Services Task Force report also states that "all evidence indicates that both quality of care, as reflected in mortality, and cost, as reflected in length-of-stay and physicians fees, are influenced by the volume of procedures done by and the skill of the physician". The proposed readopted rules and amendments are important, therefore, for quality and cost reasons. They promote sufficient utilization at each cardiac surgery center to maintain professional skills, thereby protecting patients from unnecessary risks. In addition, they inhibit the unrestricted growth of this service Statewide, thereby promoting appropriate utilization levels and insuring that the service is provided in a cost-efficient manner.

Economic Impact

A major finding of the Cardiac Services Task Force report is that total costs for cardiac services, particularly with respect to physician fees, are higher in New Jersey than in surrounding states. The provision of cardiac care services is becoming increasingly competitive, emphasizing the need to promote efficiencies in their delivery. These proposed rules reduce staffing requirements and promote efficient volume levels. Since the cost of providing cardiac surgery services is largely determined by the spreading of fixed costs over the number of cases performed, a cardiac surgery center lacking sufficient patient volumes represents a less than efficient use of a costly resource.

The Cardiac Services Task Force also emphasized the need to enhance quality and reduce long-term costs for cardiac services through the efficient regionalization of services, since most of these procedures are currently performed on a non-emergency basis.

In the absence of these rules, the growth of new cardiac surgery services would be unrestricted. To allow this to occur would be to encourage a reduction in the utilization of existing surgical centers, offending quality of care considerations, and promoting significant cost inefficiencies in the provision of this important service.

Regulatory Flexibility Statement

Since only large hospitals, having, by nature, well over 100 employees, would be capable of qualifying for a certificate of need for a cardiac surgery center, no recordkeeping, reporting or other compliance requirements are placed upon small businesses by the proposed rules.

Full text of the proposed readoption with amendments follows (additions indicated in boldface thus; deletions noted in brackets [thus]).

8:33E-2.1 Scope

(a) The purpose of this subchapter is to establish standards and general criteria for the planning of a regional cardiac surgical center and for the preparation of an application for a certificate of need for such a facility. A regional approach to the provision of cardiac services is necessary to provide safe, complete patient care, efficiently and effectively, at [the lowest] reasonable cost to the consumer.

(b) A regional cardiac surgical center is defined as a [medical] health care facility which specializes in most aspects of cardiac service, including at a minimum, cardiovascular surgical services as well as diagnostic services.

(c) In the regional cardiac surgical center, the primary diagnostic services are provided by a cardiac catheterization and coronary angiographic laboratory and a non-invasive laboratory. A cardiac catheterization/coronary angiographic laboratory is one which provides a service devoted to achieving physiological and angiographic studies of optimal quality.

(d) At a minimum, the non-invasive laboratory should include the following facilities:

1. ECG and VCG instruments;
2. Exercise stress testing;
3. Phono/pluse tracing/echo equipment;
4. Holter type monitoring;
5. Nuclear cardiology.

(e) Before heart surgery is performed, every patient must undergo diagnosis through a recognized diagnostic service, except in an extreme emergency as in the case of open wounds to the heart.

(f) The cardiovascular surgical services include open heart, closed heart and coronary artery surgery as well as surgery of the great vessels and also cardiac assist devices such as the intra-aortic balloon pump. The facilities, personnel and equipment required by this [regulation] rule for open heart surgery are minimal for all cardiovascular surgical procedures. [For the purpose of this regulation open heart surgery is herein defined as a procedure which uses a heart-lung by-pass machine to perform the functions of circulation during surgery.]

8:33E-2.2 Definitions

(a) For the purposes of this subchapter, the following definitions shall apply:

"Open heart surgery" refers to a procedure using a heart-lung by-pass machine to perform the functions of circulation during surgery.

"Percutaneous transluminal coronary angioplasty" (PTCA) means the passage of a balloon-tipped catheter (thin tube) to the site of narrowing in an artery and the inflation of the balloon to reduce the obstruction.

"Electrophysiology study" (EPS) means the use of standard cardiac catheterization techniques to place electrode catheters at different sites in the heart. Variations in heart rhythm (arrhythmia) are then introduced and the effects of different therapeutic agents are examined.

"Cardiac catheterization" means the insertion of a thin, flexible tube (catheter) into a vein or artery and guiding it into the heart for purposes of diagnosis or limited treatment, such as the introduction of thrombolytic (clot dissolving) agents.

"Pediatric" cardiac patients are those patients below the age of 16.

8:33E-2.[2]3 Utilization of cardiac surgical centers

(a) The following shall apply to adult cardiovascular surgical units:

1. An applicant for a certificate of need as a regional adult cardiac surgical center must provide written documentation that the center will perform [75 surgical procedures in the first year and 200] at least a total of 350 adult open heart surgical procedures by the end of the third year [for each operating room utilized for open heart surgery procedures.] of operation thereby justifying the need for a second operating room for adult open heart surgery. No new adult cardiac surgical center will be approved unless the proposed new center can project that two cardiac surgical operating rooms will be needed within three years of the date of initial operation of the cardiac surgery center. By the end of the fourth year of operation the surgical program must meet the minimum utilization level of 250 cardiac surgical procedures per year per operating room or be subject to compliance sanctions in N.J.A.C. 8:33E-2.15.

2. The regional adult cardiac surgical center shall continue to perform at least [200] 250 open heart surgical procedures per year per operating room to insure the competency of the surgical services team and to provide for efficient and economical operation.

3. Failure to achieve an average minimum utilization level, as defined in 1 and 2 above, during 36 consecutive months for cardiac surgery programs obtaining Certificate of Need approval after December, 1984 and during 24 consecutive months for cardiac surgery programs in existence prior to December, 1984, may result in a recommendation for denial of reimbursement for the service by the department to the Hospital Rate-setting Commission and/or the loss of licensure for the service.]

3. Adult cardiac surgery centers must document a volume of 350 open heart surgical procedures per year per operating room in order to be considered for an expansion of its operating room capacity.

4. Existing adult cardiac surgery centers that are in compliance with all minimum standards and criteria contained in this subchapter, including the minimum volume requirements for percutaneous transluminal coronary angioplasty (PTCA) at (d) below, may utilize a separate operating room for PTCA backup. This backup operating room shall not be utilized for routine cardiac surgery and shall not be considered a cardiac operating room for purposes of this rule.

[4.]5. Each cardiac surgical center should establish a minimum caseload per physician and team in order to ensure a consistent level of proficiency within the surgical program. The Commissioner's [Cardiac Advisory Committee (CCAC)] **Cardiac Services Task Force (CSTF)** has recommended that a minimum of [50] **100 cases per year** is adequate to maintain the professional skills of a **supervising cardiac surgeon, which shall refer to the physician in charge of the specific case.** [and team. It is recommended that cardiac surgeons and teams not performing this minimum caseload should work under the direct supervision of a physician who has achieved this minimum volume consistently.]

(b) **The following shall apply to pediatric cardiac diagnostic and surgical services:**

1. **An applicant for a certificate of need as a regional pediatric cardiac surgical center must provide written documentation that the proposed center will perform at least 150 pediatric open and closed heart surgery procedures per year for each operating room utilized for pediatric open heart surgery by the end of the third year of operation and each year thereafter.**

2. **A regional pediatric cardiac surgical center shall continue to perform at least 150 pediatric open and closed heart surgery procedures per year per operating room to insure the competency of the pediatric surgical services team and to provide for an efficient and economical operation. Existing pediatric cardiac surgical centers shall achieve this utilization standard within one year of the effective date of this subchapter and maintain the standard on an annual basis thereafter.**

3. **The minimum acceptable number of pediatric cardiac catheterization patients per invasive pediatric cardiac diagnostic laboratory is 150 per year. New pediatric surgical centers shall achieve this minimum level of utilization in their invasive pediatric cardiac diagnostic laboratory within three years from the initiation of the service. As cited at N.J.A.C. 8:33E-1.2(e), acutely ill (cardiac) infants should be definitively examined only in centers with active pediatric cardiac surgical programs.**

[(b)](c) **The following shall apply to adult cardiac diagnostic services located within the cardiac surgery center:**

1. Utilization standards for the diagnostic services are based on the number of patients upon whom invasive cardiac diagnostic procedures are performed. The minimum acceptable number of adult cardiac catheterization patients per laboratory is [250 per year in a laboratory which is shared with other specialized radiographic procedures, while the number for a fully dedicated laboratory is] 500 per year in order to maintain the efficiency and the skills of the catheterization team. [Of this number, 150 must be coronary arteriographic patients in a shared laboratory.]

[i. The optimal utilization level for a laboratory dedicated to cardiac catheterization/coronary angiographic examinations is 500 adult patients per year, including 400 coronary arteriographic patients, in order to maximize quality of care and minimize unit cost per examination (250 adult patients per year is to be considered optimal utilization for a shared laboratory). All diagnostic facilities will be evaluated in light of this optimal level by the CCAC.]

[ii.]i. Each **invasive cardiac diagnostic [facility] service** should establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. The [CCAC] **Cardiac Services Task Force** recommends that each physician should perform [a minimum of] 50 cases [each year] **a year with a minimum of 100 cases over a two year period.** [or be under the supervision of a physician who has performed this minimum number of cases.]

[2. If a pediatric surgical program is being considered, the minimum acceptable number of pediatric cardiac catheterization patients per laboratory is 150 per year.]

2. **Surgical centers seeking to expand existing invasive cardiac diagnostic laboratory services must indicate conformance with all standards and criteria contained in this subchapter and document a minimum volume of 1,000 cardiac catheterization procedures or 1,000 cardiac catheterization equivalents (CEs) in the existing laboratory (or in each existing laboratory). A CE is considered to equal the average time required to perform a cardiac catheterization procedure. A percutaneous transluminal coronary angioplasty procedure will be considered as 2.5 CEs. An initial electrophysiology study will be 3.0 CEs and a repeat electrophysiology study will be 1.5 CEs.**

3. **The laboratory must be prepared to perform pre- and postoperative examinations on a scheduled basis and emergency examinations at all times.**

4. **As a planning guideline the accepted ratio of examinations to cardiac operations shall be at least two examinations to one operation.**

5. **Cardiac catheterization procedures must be performed in a hospital-based facility where inpatient support services are available on site.**

(d) **The following shall apply to adult cardiac surgery centers providing or seeking to provide percutaneous transluminal coronary angioplasty (PTCA) services:**

1. **An applicant for a certificate of need as a regional adult cardiac surgery center that also seeks to provide PTCA services in its invasive cardiac diagnostic laboratory must provide written documentation that the center will perform a minimum of 200 PTCA procedures per year by the third year of operation.**

2. **A regional adult cardiac surgery center shall continue to perform a minimum of 200 PTCA procedures annually in order to assure acceptable institutional quality. Existing cardiac surgery centers providing PTCA must comply with this utilization standard within this one year of the effective date of this subchapter and maintain this standard on an annual basis thereafter.**

3. **PTCA procedures must be performed in a hospital-based facility where cardiac surgery services are immediately available on site.**

4. **Each PTCA facility should establish a minimum number of PTCA procedures for each physician with PTCA laboratory privileges. The Commissioner's Cardiac Task Force recommends that each physician seeking to continue to perform PTCA procedures as the primary operator should perform a minimum of 75 procedures a year, 150 procedures a year over a two year period (excluding the physician's first year of clinical practice following completion of training), with 50 per year as primary physician.**

(e) (Reserved.)

8:33E-2.[3]4 **Cardiac surgery center personnel**

(a) **The following shall apply to cardiovascular surgical units:**

1. **Cardiac surgery is most successful when performed by a smoothly functioning team. Based on [200] 250 open heart procedures the basic team of the regional cardiac surgical center for each operation [will] shall consist of the following permanently assigned staff:**

i. **One physician in charge, board-certified by the American Board of Thoracic and Cardiovascular Surgery as a cardiovascular surgeon who directs the team or the surgical unit[;]. The Commissioner's Cardiac Task Force recommends that this physician in charge perform a minimum of 100 procedures annually;**

(1) **Exceptions for incumbent directors to this requirement for board certification may be granted by the Commissioner after consultation with the CCSC and upon application by an institution providing proper documentation as to the physician's qualifications;**

ii. **One assistant to the physician in charge who will be a board [eligible cardiovascular] qualified surgeon. [(a third assistant may be a Thoracic Surgical Resident or fellow)] A cardiothoracic surgery resident or fellow may serve as an assistant. There shall be two surgeons in the operating room;**

iii. **[One anesthesiologist, certified by the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology, and assisted by one other qualified person, that is, resident or nurse anesthetist or board-certified anesthesiologist. "Qualified" implies special training and experience with cardiac surgical problems in addition to normal certification] A board certified anesthesiologist with additional training and experience in cardiac surgery problems shall be responsible for the anesthetic management of cardiac surgery patients. This anesthesiologist may be assisted by another board certified or board eligible anesthesiologist, an anesthesia resident, an anesthesia technician, or a nurse anesthetist with special training and experience with cardiac surgery patients;**

iv. **[There will be at least three trained operating room technicians or trained nurses in each operating room. One of the three must be a registered nurse] There shall be at least two operating room nurses (at least one of whom must be a registered nurse) trained and experienced in cardiac surgery and advanced cardiac life support in each operating room;**

v. **[Two perfusionists will be available, for each operation, one of whom will be certified and one qualified.] One certified perfusionist shall operate the perfusion pump. A second qualified perfusionist should be available to assist this perfusionist as the need arises (a trained and qualified perfusionist who is currently part of a cardiac surgery team may be included);**

vi. **Cardiovascular nurse specialists (one for every 100 open heart procedures) may be used to supplement the cardiovascular surgical team.**

vii. **A board certified cardiologist shall be available to assist in the management of problems relating to unstable hemodynamic status and complex arrhythmias, if necessary.**

2. **The operating cardiac surgeon in conjunction with the attending cardiologist is responsible for overseeing and integrating all details of pre-operative evaluation and preparation of the operation procedures and of post[-]operative care.**

(b) The intensive care cardiac recovery room (or Surgical Critical Care Unit, (SCCU)) is the area where cardiac patients are held for post-operative care. At a minimum, patient coverage in this area shall be on a one specially trained cardiac nurse to one patient basis for the first 24 hours after surgery or in accordance with the diagnosis. During this period, the operating surgeon and team or qualified alternate shall be on call. After a full 24 hours following the operative day, and in accordance with patient diagnosis, nursing coverage may be reduced to a maximum of three patients to two nurses during the second and third days following the operative day.

(c) The following shall apply to cardiac diagnostic facilities located in a cardiac surgery center:

1. Each diagnostic facility shall be minimally staffed by the following full-time personnel:

- i. One physician;
- ii. One registered nurse;
- iii. [Three] One technician[s].

2. While the following functions shall be performed within each facility, more than one function may be executed by a single individual appropriately cross-trained to perform the required functions:

i. Laboratory director (physician in charge): The chief diagnostician within the unit, certified in cardiology by the Sub-Specialty Board of Pediatric Cardiology of the American Board of Pediatrics or the Cardiovascular Sub-Specialty Board of the American Board of Internal Medicine. In addition to board certification the director must have broad experience and training in invasive cardiac diagnostic procedures including but not limited to a minimum of 12 months in a cardiac catheterization training program and the performance of 200 cardiac catheterization procedures with 100 of these procedures performed as the primary operator.

ii. Associate physicians may be assigned to the laboratory and must meet the identical training and certification requirements for laboratory director contained in (c)2i above. In addition, all catheterizing physicians must adhere to the minimum physician volume standards established by each laboratory in accordance with N.J.A.C. 8:33E-2.3(c).

(1) Exceptions for incumbent directors and associate physicians to [this requirement for board certification] these minimum training and certification requirements may be granted by the Commissioner after consultation with the CCSC and upon application by an institution providing proper documentation as to the physician's qualifications;

[ii. Associate physician: Assigned to assist the laboratory director. One of these physicians will be trained in cardiovascular catheterization;]

iii. Registered nurse: To assist with administration of medications and the preparation and observation of the patient. The nurse should have Intensive Care Cardiac Unit (ICCU) experience, competence in advanced cardiac life support (ALS), and must have knowledge of cardiovascular medications and experience with catheterization;

iv. Cardiac catheterization technician: To handle blood samples and assist in the performance tests. The technicians will help in the maintenance of equipment and supplies.

v. Monitoring and recording technician: Responsible for constant monitoring of physiologic data, including the electrocardiogram and recording this information. This job can best be handled by a second cardiac catheterization technician or radiologic technician;

vi. Radiologic technician: Skilled in conventional radiography and has special training and skills in angiographic techniques. This technician must be competent in magnification radiography, subtraction photography, cine recording, television presentations and the use of video tape and be responsible for the care and maintenance of all radiologic equipment;

vii. Electronic and radiological repair technician: Highly trained and available for consultations regarding the operation and maintenance of all radiographic and physiologic measuring and recording instruments in the laboratory. This person must be immediately available to carry out repairs in the event of equipment failures during the course of the procedure.

viii. Hospitals providing invasive cardiac diagnostic and cardiac surgery services should, to the extent possible, have native speaking clinical personnel available who can overcome language barriers and know and understand cultural differences among patients.

ix. Hospitals providing invasive cardiac diagnostic and cardiac surgery services should develop cardiology outreach mechanisms and referral services (for example, physician education, public information, primary care clinical services).

3. One physician trained and experienced in cardiac catheterization shall be present in the room during all catheterization and angiographic procedures. An appropriately trained and experienced registered nurse and technician shall also be present during all procedures.

(d) Outlined in (c) above are only the special personnel required by a cardiac diagnostic center established within an existing hospital. Appropriate supporting staff or personnel shall be available in existing departments within the hospital.

(e) The following shall apply to invasive cardiac diagnostic facilities located in cardiac surgery centers that seek to perform percutaneous transluminal coronary angioplasty (PTCA):

1. Each invasive diagnostic facility must be minimally staffed by the following personnel during a PTCA procedure:

i. The physician directing the procedure must be a board certified cardiologist with well-recognized excellence in the management of routine cardiac catheterization and who has participated in a minimum of 100 PTCA procedures (with at least 50 as primary operator).

ii. An assisting physician may be a board eligible cardiologist or a cardiology fellow.

iii. A registered nurse trained and experienced in advanced life support, cardiac drugs, and cardiac catheterization/PTCA shall be available to assist with PTCA procedures.

iv. A technician trained and experienced in cardiac catheterization/PTCA shall be available to assist with PTCA procedures.

(f) (Reserved.)

8:33E-2.[4]5 Use of inpatient facilities

(a) In a center performing [200] 250 open heart surgical procedures annually the following inpatient facilities are required:

1. Because of the nature of care to be provided, cardiac surgical patients shall be grouped at the intermediate or acute care level for proper observation and treatment. During the preoperative stage when diagnostic work-ups are to be performed, [four] six beds in a general medical/surgical unit shall be available for patients having an average length of stay of three to four days.

2. An intermediate intensive care/cardiac care unit will be available for [post operative] postoperative care. It [will] shall include [three or] four beds for patients having an average length of stay of three to four additional days following discharge from the SCCU or surgical recovery room. These beds may be located in a cardiovascular step-down unit with telemetry monitoring but reduced nursing coverage with a maximum ratio of four patients to one nurse in accordance with patient diagnosis. Suitably equipped beds will be available for the rest of the patient's stay. At a minimum the intensive care/cardiac care unit will have the following capabilities:

- i. Facilities for hemodynamic ECG monitoring;
- ii. Temporary pacemaker insertion;
- iii. C.P.R. equipment;
- iv. Arrhythmia detection equipment;
- v. Resuscitative equipment[.]; and
- vi. Cardiovascular support devices (intra-aortic balloon pump, etc.).

8:33E-2.[5]6 Commissioner's cardiac [advisory committee (CCAC)] services committee (CCSC)

[(a) A cardiac advisory committee has been established under the authority of the Commissioner of Health to review on a regular basis the performance of all cardiac institutions.

(b) In addition to practicing specialists, the cardiac advisory committee will be comprises of representatives from third-party payors, a consumer member who is involved in the New Jersey health planning process and the administration of institutions providing the service.

(c) Mortality rate, utilization and medical practices of each regional cardiac surgical center will be reviewed regularly by the CCAC to insure quality control and accurate data reporting.

(d) To the greatest degree possible other inspection programs of cardiac services will be integrated with those of the advisory committee to minimize the number of official visits to those services.

(e) The CCAC will review certificate of need applications for new cardiac surgical centers and make recommendations to the Statewide Health Coordinating Council and Commissioner of Health.]

(a) A cardiac services committee will be established under the authority of the Commissioner of Health to review on a regular basis the performance of all cardiac institutions in the State (including the analysis of mortality, morbidity and patient risk factor data). This committee will also:

1. Review cardiac service technological developments and the degree to which these developments have achieved clinical acceptance within the medical community;

2. Review State standards and criteria for cardiac services at regular intervals (at least annually);

3. Respond to Statewide issues regarding cardiac care as requested by the Commissioner of Health; and

4. Assist in the development and implementation of a Statewide cardiac registry.

8:33E-2.[6]7 Referral

(a) Each applicant for a certificate of need as a regional cardiac center must agree to send out a mailing to all appropriate institutions and physicians stating that the services of the center are available. Following certificate of need approval, the center will provide written documentation that this mailing has occurred.

(b) Each applicant must provide written documentation in the form of an institutional policy statement that the center will accept referrals from physicians not ordinarily having access to the applicant's facilities.

(c) Each center will have written transfer agreements to receive appropriate patients from the ["free standing"] invasive cardiac diagnostic facilities in its service area or health services area, whichever is larger.

8:33E-2.[7]8 Population base

An applicant for designation as a regional cardiac surgical center must document need in its service area. At a minimum, the regional service area for an adult surgical program must include a population of one million adjusted for accessibility. For a regional pediatric cardiac surgical center, a population base of three million, adjusted for accessibility, must be documented. The applicability of these minimum population bases to the specific New Jersey cardiac services environment should be closely scrutinized by the [CCAC] **Commissioner's cardiac services committee (CCSC)** based on the utilization of cardiac surgical resources reported to the department on a quarterly basis.

[8:33E-2.8 Long-range planning]

[The applicant must show evidence that the proposed certificate of need request is consistent with the hospital's approved long-range plan, submitted to the department under the requirements of N.J.A.C. 8:31-16.1, and with the health systems plan and annual implementation plan of the health systems area in which the applicant is located.]

8:33E-2.9 Documentation of purchase and operational cost

The applicant will provide full written documentation of the projected implementation and operational costs of the proposed regional center. This documentation will include direct and indirect costs, that is, construction, equipment, supplies, personnel, maintenance, overhead costs, as well as projected costs of remodeling or renovation necessary to accommodate the center. Projections of anticipated revenues must be supplied for at least the first three years.

8:33E-2.10 Statistical data required

At the request of the Commissioner the center will maintain and provide basic statistical data on its operations and report that data to the Department of Health on a quarterly basis and on a standardized form prepared by the [d]Department. Copies of the full text of the required quarterly reporting form may be obtained upon written request to the New Jersey State Department of Health, [Health Data Services,] **Center for Health Statistics**, Room 405, CN 360, Trenton, New Jersey 08625.

8:33E-2.11 Certification on nondiscriminatory practices

Each applicant must provide written certification of compliance with all Federal and State laws in regard to nondiscriminatory practices to the effect that no patient shall be refused treatment on the basis of race, religion, sex, age or ability to pay.

8:33E-2.12 Peer review

(a) Quality control is essential for the consistent high level of performance required of any cardiac surgical service. As one means of quality control, appropriate mechanisms for peer review shall be described in each certificate of need for a regional cardiac surgical center, which shall include, but is not limited to the following:

1. Overall case selection for study (for example, rate of normal studies, rate of surgical referral);
2. Laboratory and physician performance (for example, case volume, mortality and complication rates per physician);
3. Quality of studies (for example, number of incomplete studies, diagnostic adequacy of films, number of restudies performed elsewhere).

(b) In all cases, criteria selection should be based on sound medical practice and consistency with the literature. Cardiac surgical centers with marginal utilization (10 percent above or below minimum utilization standards) will be reviewed by the local Utilization Review Organization and the [CCAC] CCSC, based on protocols established by the Department in conjunction with these review entities, to assure appropriate case selection has occurred.

8:33E-2.13 New facilities

(a) All certificate of need applications for a new adult or pediatric cardiac surgical centers must meet the minimum standards and criteria contained in this subchapter. **In addition, the following factors will also be considered in the review process:**

1. **Demonstration of institutional and provider competence in delivering the proposed service;**
2. **Capacity to perform the proposed service at the recommended minimum level within the stated period of time;**
3. **Commitment from the hospital's board to establish the proposed service program;**
4. **Examination of the capacity of existing facilities in the referral area;**
5. **Evidence that the new or expanded service will capture referrals currently made to out-of-state facilities;**
6. **Evidence that essential support services in the hospital (for example, renal and pulmonary) are capable of coping with an increase in caseload;**
7. **Evidence that the project would be financially feasible;**
8. **Evidence that demographic statistics support service growth;**
9. **Evidence that the proposed service is compatible with overall health planning goals for the State and for the service area; and**
10. **Evidence that barriers to access to care do not exist, including access to primary care services and that if no barriers exist, that access to care will either remain constant or improve for individuals in the service area.**

[(b) Certificate of need applications for new cardiac surgical centers will not be approved in health service areas that include cardiac surgical centers that are not in full compliance with the minimum utilization requirements contained herein.]

8:33E-2.14 Review

This subchapter will be reviewed and evaluated [within three years by the CCAC] **at least annually by the Commissioner's cardiac services committee (CCSC).**

8:33E-2.15 Compliance

(a) Existing pediatric and adult cardiac surgery centers annually must meet the minimum criteria and standards contained in this subchapter. Existing providers failing to achieve minimum utilization standards specified in this subchapter within one year following the effective date of this subchapter and each year thereafter will be subject to reimbursement or licensing sanctions. These sanctions may include closure of the service or that portion of the service that will result in compliance with minimum state standards.

(b) All certificate of need applications for new pediatric and adult cardiac surgery centers must document the ability of the applicant to meet the minimum standards and criteria contained in this subchapter within three years from the initiation of the service. Failure to achieve the minimum level by the end of the second year of operation will result in notification of Department of Health intention to rescind certificate of need approval and more for licensing sanctions. The inability to achieve minimum utilization levels during the third year of operation or thereafter will result in loss of license for the service.

(a)

THE COMMISSIONER

Certificate of Need: Review of Long-Term Care Facilities and Services Policy Manual

Proposed Amendment: N.J.A.C. 8:33H-3.11

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

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

Proposal Number: PRN 1987-141.

Submit comments by May 20, 1987 to:

John A. Calabria, Chief
New Jersey Department of Health
Health Systems Review
CN 360, Room 604
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The provisions of N.J.A.C. 8:33H require periodic updating to address current activities in the expanding long-term care field. The proposed amendments reflect the ongoing, shared concern of the Department of Health and the Department of Human Services, Division of Mental Health, regarding accessibility to long-term care beds for those persons residing in a State or county psychiatric hospital pending an appropriate placement in a long-term care facility.

N.J.A.C. 8:33H-3.3(a)5 currently requires that long-term care facilities receiving Certificate of Need approval to add beds to an existing facility or construct a new facility must set aside a specified percentage of such new beds for former psychiatric hospital patients needing long-term care. This percentage is determined annually by the Department of Health in consultation with the Department of Human Services.

In 1984, in response to a critical need of the Division of Mental Health to decrease census at State hospitals and to quickly provide a more appropriate level of care, the Department added N.J.A.C. 8:33H-3.11 to provide a non-Certificate of Need process and criteria for facilities to temporarily expand their long-term care bed complement to care for these patients. This provision expired at the end of 1984. The Division of Mental Health again has a need to approximately reduce census. It requested that N.J.A.C. 8:33H-3.11 be amended to reestablish the process and criteria by which a long-term care facility may apply to temporarily expand capacity to serve former psychiatric hospital patients needing long-term care, and also to delete specific dates for acceptance of applications from facilities.

Further, the amendments specify that permission to temporarily exceed licensed capacity shall not extend beyond three years from the date the facility is approved by the Department of Health for such expansion, but allow a facility to reapply for one additional three year period.

It must be noted that less than 100 long-term care beds were added since 1984 as a result of facilities taking advantage of the provisions of N.J.A.C. 8:33H-3.11. Both the Department of Health and the Division of Mental Health believe that the small number of additional beds that will be added as a result of the proposed amendments, coupled with the provisions of N.J.A.C. 8:33H-3.3(a)5 will be sufficient to meet the appropriate long-term care needs of persons residing in psychiatric hospitals, but discharged pending placement in a long-term care facility, and will also fulfill the Division of Mental Health's desire to decrease census.

Social Impact

The proposed amendment will enable a number of long-term care patients to move more quickly from care in a State or county psychiatric hospital to a more appropriate, and less expensive, setting in a long-term care facility. The Division of Mental Health will also be better able to quickly implement their program of placing former psychiatric patients in the most appropriate and least restrictive care setting.

Economic Impact

The proposed amendment simply describes a non-Certificate of Need process by which long-term care facilities can voluntarily request permission to temporarily add to bed capacity to appropriately serve former psychiatric patients. The amendment does not impose new or additional economic burdens on existing or future long-term care facility operators or any agency of State Government. It is anticipated that the Division of Medical Assistance and Health Services (Medicaid) of the Department of Human Services will realize a financial benefit, since it is less expensive, as well as more appropriate to care for former psychiatric patients in a long-term care facility as opposed to a State or county psychiatric hospital.

Regulatory Flexibility Statement

The proposed amendment will have a positive impact on operators of long-term care facilities considered small businesses, by allowing such facilities to voluntarily request permission to temporarily exceed licensed capacity. Although the proposed amendment reestablishes compliance requirements for such requests, this process allows application for temporary expansion outside of the more protracted Certificates of Need process and thus reduces the compliance burden.

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

8:33H-3.11 Temporary expansion of long-term care bed supply for former psychiatric patients

(a) Standards for determining temporary expansion of long-term care bed supply for former psychiatric patients are as follows:

1. Standard XI-01: The process for requesting permission to temporarily exceed licensed bed capacity shall be as follows:

- i. The Department of Health shall accept written requests to temporarily exceed licensed bed capacity. [beginning on the effective date of these rules (July 2, 1984) and extending through December 31, 1984.]
- ii-vi. (No change.)

2. Standard XI-02: Expiration of permission to temporarily exceed licensed bed capacity shall be treated as follows:

i. Permission to exceed licensed bed capacity shall not extend beyond a three [years from the effective date of these rules.] year period from the date the facility is approved by the Department of Health to temporarily expand the facility's bed supply for former psychiatric patients.

ii. (No change.)

iii. A facility which desires to continue temporary maintenance of beds obtained through the process defined in (a)1 above after the expiration date of initial approval shall be eligible to reapply, according to the criteria described in this rule for such continuance for only one additional three year period.

iii.iv. A facility which desires to permanently maintain beds obtained through the process defined in Standard XI-01 after the expiration date shall be required to request the addition of such beds through the Certificate of Need process and will be subject to the rules and regulations governing that process.

iv.v. The facility shall agree to retain the patients placed in the additional beds through their orderly transfer to licensed and approved Medicaid beds by the end of the three year period specified in (a)2.i above or by the end of the second three year period specified at (a)2iii above, whichever is applicable.

3. (No change.)

(b) (No change.)

(a)

**DRUG UTILIZATION REVIEW COUNCIL
Interchangeable Drug Products
Proposed Amendments: N.J.A.C. 8:71**

Authorized By: Drug Utilization Review Council, Sanford Luger, Chairman.

Authority: N.J.S.A. 24:6E-6.

Proposal Number: PRN 1987-132.

A public hearing concerning this proposal will be held on May 12, 1987, at 3:00 P.M. at:

Conference Room 103, First Floor
Department of Health
Health-Agriculture Bldg.
Trenton, N.J. 08625-0360

Submit comments by May 20, 1987 to:
Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council
New Jersey Department of Health
Room 801, CN 360
Trenton, N.J. 08625-0360
609-984-1304

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed meclizemate capsules could then be used as a less expensive substitute for Meclomen, a branded prescription medicine. Similarly, the proposed nitroglycerin transdermal patches could be substituted for the more costly branded product, Nitro-Dur.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency", any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of this proposal would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options. Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendment will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by this proposal accrue to the State through the Medicaid Pharmaceutical Assistance to the Aged and Disabled Program, and the prescription plan for State employees. This savings also cannot be totalled accurately.

Regulatory Flexibility Statement

The proposed amendments impact many small businesses: specifically, over 1,500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or record-keeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports and no additional ongoing reporting or record-keeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposal follows:

The following products are proposed for **addition** to the List of Interchangeable Drug Products.

Acetohexamide tabs 250, 500 mg	PharmBasics
Allopurinol tabs 100, 300 mg	Mutual
Amitriptyline/perphenzne 2/10, 2/25, 4/10, 4/25	Barr
Amitriptyline tabs 10, 25, 50, 75, 100 150 mg	Mutual
Amitriptyline/perphenzne 2/10, 2/25, 4/25	Cord
Betamethasone diprop. crm & oint 0.05%	NMC
Betamethasone diprop. lotion 0.05%	NMC
Bethanechol tabs 5, 50 mg	Sidmak
Butalbital, APAP, caffeine tabs	Graham
Butalbital, aspirin, and caffeine tabs	Halsey
Carbamazepine tabs 200 mg	W-C
Cephalexin caps 250, 500 mg	Biocraft
Cephalexin caps 250, 500 mg	Nuovo
Cephalexin for susp. 125/5, 250/5 ml	Biocraft
Cephadrine for susp. 125/5, 250/5 ml	Biocraft
Chlordiazepoxide/amitrip. tabs 5/12.5/10/25	Mylan
Chlorothiazide tabs 500 mg	Mylan
Chlorpromazine tabs 10, 25, 50, 100, 200 mg	PharmBasics
Clonidine 0.1, 0.2, 0.3/chlorthalidone tabs	Mylan
Clonidine tablets 0.1, 0.2, 0.3 mg	Bolar
Clorazepate dipot. caps 3.75, 7.5, 15 mg	Par
Clorazepate dipot. caps 3.75, 7.5, 15 mg	PharmBasics
Clorazepate dipot. caps 3.75, 7.5, 15 mg	Amer. Ther.
Clorazepate dipot. caps 3.75, 7.5, 15 mg	Chelsea
Clorazepate dipot. caps 3.75, 7.5, 15 mg	Duramed
Diazepam tabs 2, 5, 10 mg	Danbury
Diphenhydramine caps 25, 50 mg	Mutual
Dipopyramide caps 100 mg	Superpharm
Doxepin caps 10, 25, 50, 75, 100 mg	Cord
Doxepin caps 10, 75 mg	Chelsea
Doxepin caps 150 mg	Chelsea
Doxycycline hyclate tabs 100 mg	Pharbita
Flurazepam caps 15, 30 mg	Duramed
Glutethimide tabs 250, 500 mg	Halsey
Haloperidol tabs 0.5, 1, 2, 5 mg	Mylan
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Haloperidol tabs 10, 20 mg	Cord
Hydralazine tabs 10, 100 mg	Sidmak
Hydralazine/HCTZ caps 25/25, 50/50	Superpharm
Hydrocortisone cream 2.5%	Fougera/Altana
Hydrocortisone cream 2.5%	Pharmaderm/Altana
Hydroxyzine pamoate caps 25, 50, 100 mg	Superpharm
Ibuprofen tabs 300, 400, 600 mg	PFI
Ibuprofen tabs 800 mg	Chelsea

Indomethacin capsules 25, 50 mg	Mutual
Isosorbide dinitrate S.L. tabs 2.5, 5 mg	West-Ward
Isosorbide dinitrate oral tabs 20, 30 mg	Par
Isosorbide dinitrate oral tabs 5, 10, 20 mg	West-Ward
Lithium carbonate caps & tabs 300 mg	Roxane
Lithium carbonate tabs 300 mg	Bolar
Lithium citrate syrup 8 mEq/5ml	My-K
Lorazepam tabs 0.5, 1 mg	Bolar
Lorazepam tabs 0.5, 1, 2 mg	Cord
Lorazepam tabs 0.5, 1, 2 mg	Superpharm
Lorazepam tabs 2 mg	Bolar
Meclofenamate sod. caps 50, 100 mg	Amer. Ther.
Meclofenamate sod. caps 50, 100 mg	Quantum
Meclofenamate sod. caps 50, 100 mg	Bolar
Medroxyprogesterone tabs 2.5, 5, 10 mg	Duramed
Methyldopa/HCTZ 500/30, 500/50 mg	Par
Methyldopa/HCTZ 250/15, 250/25 mg	Par
Methyldopa/HCTZ tabs 250/15, 250/25	Chelsea
Metoclopramide tabs 10 mg	Bolar
Metoclopramide tabs 10 mg	Halsey
Metoclopramide tabs 10 mg	Schering
Minoxidil tabs 2.5, 10 mg	Danbury
Minoxidil tabs 10 mg	Quantum
Multiple vitamins/fluoride drops 0.25 mg	Barre-Nation
Multivit/C 500/Folic acid tabs	Copley
Nitrofurantoin macrocrys. caps 50, 100 mg	Bolar
Nitroglycerin E.R. caps 2.5, 6.5, 9 mg	Vitarine
Nitroglycerin transdermal patch 10 mg	Hercon
Nitroglycerin transdermal patch 15 mg	Hercon
Nitroglycerin transdermal patch 5 mg	Hercon
Norethindrone 0.5 mg/ethinyl estr. 35 mcg	Corona
Norethindrone 1 mg/ethinyl estr. 35 mcg	Corona
Nystatin oint	NMC
Nystatin/triamcinolone oint	NMC
Ortho-Novum formula 1/35, 1/50	Syntex
Oxazepam tabs 15 mg	W-C
Perphenazine tabs 8 mg	Chelsea
Perphenazine/amitriptyline tabs 4/50	Bolar
Phenytoin sod. extended caps 100 mg	Sidmak
Pramoxine 1%/HC 1% rectal foam	Copley
Prazosin caps 1, 2, 5 mg	Zenith
Prednisone tabs 5, 10, 20 mg	Amer. Ther.
Prenatal vitamins 1+1 with zinc	Copley
Procainamide E.R. tabs 1000 mg	Bolar
Propoxyphene naps./APAP 100/650	Superpharm
Propranolol tabs 10, 20, 40, 60, 80 mg	Bolar
Propranolol/HCTZ tabs 40/25, 80/25	Cord
Pyrimamine/Chlorpheniramine/PE tannates susp	Copley
Pyrimamine/Chlorpheniramine/PE tannates tabs	Copley
Quinidine gluconate E.R. tabs 324 mg	Mutual
SMZ/TMP Susp. 200 mg+40 mg/5 ml	Naska
SMZ/TMP oral suspension	My-K
Salsalate tabs 500, 750 mg	Copley
Spiroolactone tabs 25 mg	Superpharm
Temazepam caps 15, 30 mg	Bolar
Temazepam caps 15, 30 mg	Cord
Temazepam caps 15, 30 mg	Duramed
Thiothixene caps 1, 2, 5, 10 mg	Cord
Tolbutamide tabs 250, 500 mg	Bolar
Tolbutamide tabs 500 mg	Danbury
Tolbutamide tabs 500 mg	Purepac
Trazodone HCl tabs 50, 100 mg	Bolar
Trazodone HCl tabs 50, 100 mg	PharmBasics
Triamcinolone acetonide dental paste 0.1%	K-Line
Trifluoperazine tabs 5 mg	Bolar
Valproic acid syrup 250 mg/5 ml	My-K
Verapamil tabs 80, 120 mg	Bolar
Verapamil tabs 80, 120 mg	Cord

HUMAN SERVICES

The following proposals are authorized by Drew Altman, Ph.D., Commissioner, Department of Human Services.

(a)

OFFICE OF THE COMMISSIONER State-Funded Personal Needs Allowance Proposed New Rules: N.J.A.C. 10:8

Authority: N.J.S.A. 30:1-2 and 30:4-68.2.

Proposal Number: PRN 1987-144.

Submit comments by May 20, 1987 to:

E. John Walzer, Esq.
Regulatory Officer
Department of Human Services
222 South Warren Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of the proposed new rules is to set forth policies and procedures for the payment of a \$35.00 monthly personal needs allowance (PNA) to all residents of State and county institutions who are not eligible for Medicaid or Supplemental Security Income assistance (SSI), but who are indigent. The Federal government, since 1974, has provided that SSI recipients residing in nursing facilities and long-term care State and county institutions are eligible for a monthly \$25.00 personal needs allowance. The State has since maintained a policy of equity for non-SSI recipients residing in these facilities, and set the personal needs allowance at \$25.00 per month.

Given the rise in the cost of living over the past decade, the New Jersey Legislature in 1985 approved a \$10.00 per month personal needs allowance increase for all residents of State and county institutions.

Social Impact

The proposed new rules will affect some 3,500 indigent persons who reside in State and county institutions who do not qualify for Medicaid or SSI. The personal needs allowance is intended to meet the individual's needs which are not otherwise furnished by the institution as a part of the care and treatment furnished to its patients.

Examples of such needs would be: deodorant, cosmetics, special soaps, tobacco, articles of clothing, long distance telephone calls, bedspreads, etc.

Economic Impact

The total program cost will be approximately \$1,470,000. Since these persons do not qualify for Federal assistance, Federal financial matching is not available. The State will pay 50 percent of the costs incurred by the county for PNA payments to indigent individuals with legal county settlement and 100 percent for the costs incurred for individuals with no legal settlement in a county.

Regulatory Flexibility Statement

The proposed new rules do not affect small businesses as they do not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed rules primarily affect State and county institutions.

Full text of the proposed new rules follows:

CHAPTER 8

POLICIES AND PROCEDURES FOR THE PROVISION OF A MONTHLY PERSONAL NEEDS ALLOWANCE TO INDIGENT INDIVIDUALS RESIDING IN A STATE OR COUNTY INSTITUTION

SUBCHAPTER 1. GENERAL PROVISIONS

10:8-1.1 Scope

The rules in this chapter affect persons residing in State or county institutions who are not eligible for Medicaid or Supplemental Security Income (SSI), but are indigent.

10:8-1.2 Purpose

These rules set forth policies and procedures for the provision of a monthly personal needs allowance to residents of State and county institutions with no available income to provide for their day-to-day personal needs.

10:8-1.3 Definitions

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

"Indigent individual" means a person who, upon admission to a State or county institution, does not have identifiable or adequate income to provide for a \$35.00 monthly personal needs allowance.

"Institution" means any State or county institution for the care and treatment of the mentally ill or developmentally disabled in this State.

"Patient or resident" means any person classified as developmentally disabled or mentally ill who resides in a State or county institution for the care and treatment of such class of persons for at least 24 hours.

"Personal needs allowance" (PNA) means a monthly amount of money intended to meet the individual's personal needs which are not furnished by the institution as part of the care and treatment furnished to its patients. PNA funds are not intended to be used to purchase durable medical equipment such as standard wheelchairs, which are considered routinely used equipment essential to furnish the services offered by the institution, but are intended to be used for the purchase of personal needs items such as those found in Appendix A.

10:8-1.4 Severability

(a) If any provision of these rules or application thereof to any person or circumstances is held invalid, the invalidity shall not effect other provisions or applications of the rules which can be given effect, and to this end the provisions of the rules are severable.

(b) Any situation, condition or terminology not specifically addressed or defined by the policies and procedures set forth in these rules shall be guided by the provisions of N.J.S.A. 30:4-23 et seq.

SUBCHAPTER 2. POLICIES FOR THE PROVISION OF A PERSONAL NEEDS ALLOWANCE

10:8-2.1 Provision of a personal needs allowance

(a) The \$35.00 monthly PNA shall first be provided from available income or resources of the individual, including but not limited to personal income, Federal benefits (Supplemental Security Income (SSI), Social Security, Veterans', Railroad Retirement, etc.), trusts, and inheritances.

(b) Those individuals with inadequate or no monthly income are considered indigent and the State and county institutions shall provide a monthly \$35.00 personal needs allowance as soon as possible after admission to the institution.

10:8-2.2 Cost sharing

The State will share in the costs incurred by the county institutions for providing necessary PNA funds to indigent individuals residing in county institutions. Consistent with the cost sharing arrangements established by N.J.S.A. 30:4-78, the State shall pay 50 percent of the costs incurred by the county for PNA payments to indigent individuals with legal county settlement (as defined by N.J.S.A. 30:4-49) and 100 percent for the costs incurred for indigent individuals with no legal settlement in a county.

10:8-2.3 Recovery of payments advanced

If, after providing the individual with a payment of funds for personal needs, it is found or determined that the individual was not indigent, then the institution shall immediately stop the advance of PNA funds.

10:8-2.4 Accumulation of payments

Monthly PNA payments shall be accumulated and maintained by the individual upon his or her discharge.

SUBCHAPTER 3. PROCEDURES FOR THE PROVISIONS OF A MONTHLY PERSONAL NEEDS ALLOWANCE

10:8-3.1 Initial assessment

(a) The institution shall make an initial assessment, using its best judgment, to determine if the individual admitted to the institution has available income and resources to satisfy the monthly PNA requirements.

(b) If, from the initial determination, it reasonably appears that the individual is indigent then the institution shall provide a monthly allowance of \$35.00.

10:8-3.2 Schedule of payments

(a) An indigent individual admitted to a State or county institution shall be provided a \$35.00 PNA as soon as possible, as follows:

1. If admitted from the first up to and including the 25th day of the month, the PNA shall be considered applicable to the month of admission.

2. If the admission is after the 25th day of the month, the PNA shall be applicable to the following month.

(b) PNA advances after the initial monthly payment shall be made each month.

10:8-3.3 Adjustments to payments

If there is a change in the financial status of an individual residing in a State or county institution which would enable the individual to begin funding all or part of the monthly PNA, or to increase the portion of the PNA previously funded by the individual, then the institution shall immediately adjust or discontinue the amount of its advance funding for PNA accordingly.

APPENDIX A

The following list, which is not all inclusive, provides some examples of personal needs items and shall be used by institutional staff in counseling patients in the proper utilization of their PNA funds:

Small Purchases: Deodorant, cosmetics, electric shavers, hair spray, lotions, powders, special soaps, hair or clothes brushes, tobacco, candies, ice cream.

Personal Items: Articles of clothing, jewelry, watches, accessories, hair-cuts, beauty parlor, newspaper and magazines.

Contacts with the Community: Home visiting, luggage for a home visit, trips to special events or places of interest, long distance telephone calls, personal stationery, postage stamps, gifts for the family.

Personalization of Living Areas: Clients may wish to make their living area more "home-like" with a colorful bedspread, rug, picture, personally owned chair, chest, or other item of a type not furnished by the facility.

Recreation and Hobbies: Games, photographic materials, aquariums, plants, radios, recorders, television sets.

DIVISION OF PUBLIC WELFARE

For proposals numbered PRN 1987-133, 134, 136 and 137, submit comments by May 20, 1987 to:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

(a)

**Public Assistance Manual
Eligibility Factors Other Than Need
Age Requirements**

Proposed Amendments: N.J.A.C. 10:81-2.6 and 3.13

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1987-133.

The agency proposal follows:

Summary

The proposed amendments clarify the term "complete the program" in the Aid to Families with Dependent Children (AFDC) program, with respect to full-time students, to conform with policy clarification from the United States Department of Health and Human Services, Family Support Administration. N.J.A.C. 10:81-2.6(b) and 3.13(a) provide that to be eligible, a child in AFDC must be under age 18, or under age 19 and a full-time student in a secondary school, or in the equivalent level of vocational or technical training and reasonably expected to complete the program before reaching age 19.

The proposed amendments to N.J.A.C. 10:81-2.6(b) and 3.13(a) further define program completion as the day of ceremonial graduation from the program.

Social Impact

The proposed amendments will benefit clients and because they will ensure uniform understanding of the policies concerning the completion of an educational program.

Economic Impact

Little or no economic impact is expected from the proposed amendments other than a slight reduction in erroneous assistance payments due to clearer eligibility guidelines with regard to age requirements.

Regulatory Flexibility Statement

The proposed amendments impose no compliance requirements on small businesses, as the AFDC program is administered by county welfare agencies; therefore, a regulatory flexibility analysis pursuant to P.L. 1986 c.169 is not required.

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

10:81-2.6 Eligibility factors other than need

(a) (No change.)

(b) **Age:** The IM worker shall explain to the applicant that children up to the age of 18 and children up to the age of 19 if they are full-time students in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19, are eligible for AFDC. **Program completion is defined as the day of ceremonial graduation.**

(c) (No change.)

10:81-3.13 Age requirements

(a) To be considered of eligible age, a child in AFDC must be under age 18, or under age 19 and a full-time student in a secondary school, or in the equivalent level of vocational or technical training and is reasonably expected to complete the program before reaching age 19. **Program completion is defined as the day of ceremonial graduation.** See: N.J.A.C. 10:82-1.9 for definitions regarding school attendance.

1. When any school or course of training involves attendance during an academic year, a child shall be considered eligible during the summer months when [he/she] **he or she** has been accepted for admission in the fall. [He/she] **He or she** shall be considered eligible during regular vacation periods unless the educational program has been completed or unless there is verification that the child does not attend or is not acceptable to reenter the program.

(b)-(e) (No change.)

(b)

**Public Assistance Manual
Liquidation of Non-exempt Real Property, Suits and
Claims and Transfer of Resources**

Proposed Amendment: N.J.A.C. 10:81-3.38.

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1987-134.

The agency proposal follows:

Summary

The proposed amendment is in response to inquiries on eligibility status of an applicant who circumvents public policy by having the courts vacate a child support order in order to qualify for public assistance in the Aid to Families with Dependent Children (AFDC) program. N.J.A.C. 10:81-3.38 provides that the voluntary transfer or assignment of real or personal property for the purpose of qualifying for public assistance is forbidden. The proposed amendment to N.J.A.C. 10:81-3.38 establishes that applicants cannot request that support orders be vacated without good cause for the express purpose of qualifying for public assistance.

Social Impact

The proposed amendment maintains program integrity of AFDC and Child Support and Paternity (CSP) and reinforces the belief that fathers should be responsible for their children.

Economic Impact

Economic impact is minimal other than a slight decrease in assistance payments and a slight reduction of costs in administering court ordered support payments.

Regulatory Flexibility Statement

The proposed amendment imposes no compliance requirements on small businesses, as the AFDC program is administered by county welfare agencies; therefore, a regulatory flexibility analysis pursuant to P.L. 1986, c.169 is not required.

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

10:81-3.38 Liquidation of non-exempt real property, suits and claims and transfer of resources

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

(c) **Assignment or transfer of property:** Applicants for AFDC must not have made a voluntary assignment or transfer of property within 24 months prior to the time of initial application for the purpose of qualifying for assistance.

1.-5. (No change.)

6. Child support payments: Applicants for AFDC must not forego legal right to child support for purposes of qualifying for assistance without good cause (see N.J.A.C. 10:81-11.5 for the definition of good cause).

(a)

**Public Assistance Manual
Social Security Numbers****Proposed Amendment: N.J.A.C. 10:81-11.3**

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1987-137.

The agency proposal follows:

Summary

Recent amendments to N.J.A.C. 10:81-11.3 provide that for a newborn child the completion time for Form SS-5, Application for Social Security Number, is the last day of the second month after the birth of the child. However, the United States Department of Health and Human Services, advised that the amendment was not consistent with Federal Aid to Families with Dependent Children (AFDC) Quality Control (QC) practices, which require the completion time for an SS-5 form for a newborn child to be the first day of the second month following the birth of a child.

The proposed amendment conforms to the Federal practice and provides that for a newborn child the completion time for the SS-5 form will be the first day of the second month after the birth of the child.

Social Impact

The proposed amendment comports with Federal quality control practices. It may impose slight hardship on those few AFDC recipients unable to obtain the verification required for the Form SS-5 by the first day of the second month following the child's birth.

Economic Impact

Little or no economic impact is expected from the proposed amendment, other than avoidance of potential erroneous assistance payments.

Regulatory Flexibility Statement

The proposed amendment imposes no compliance requirements on small businesses, as the AFDC program is administered by county welfare agencies, therefore, a regulatory flexibility analysis pursuant to P.L. 1986, c.169 is not required.

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

10:81-11.3 Social Security numbers

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

(c) Obtaining a Social Security number: The CWA shall obtain a supply of Social Security Form SS-5, sufficient to accommodate all AFDC applicants and eligible individuals who do not already have Social Security numbers. Upon application the applicant shall be required to sign as many SS-5 forms as needed for the eligible unit. The IM worker shall complete Form SS-5 on the basis of information provided by the applicant. Completed forms shall be forwarded to the Social Security Administration, Enumeration Branch, 38 Courtwright Street, Wilkes-Barre, Pennsylvania 18705. A copy of the SS-5 form shall be retained in the case record, and a copy given to the client if so requested.

1. (No change.)

2. Failure to obtain Social Security number: If any applicant refuses to provide or apply for the appropriate Social Security number(s), the CWA shall declare such person ineligible. The needs of that individual shall be deleted in accordance with N.J.A.C. 10:82-2.4.

i. For a ["new born"] "**newborn**" child, whose birth certificate may not be readily available, the completion time for the SS-5 is extended to the [last] **first** day of the second month after the birth of the child.

ii. (No change.)

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

(b)

**General Assistance Manual
Personal Needs Allowances****Proposed Amendment: N.J.A.C. 10:85-5.3**

Authority: N.J.S.A. 44:8-111(d).

Proposal Number: PRN 1987-136.

The agency proposal follows:

Summary

Assembly Bill No. 1049, now Chapter 286, Laws of 1985, increased the Personal Needs Allowance (PNA) for Medicaid patients in nursing homes and intermediate care facilities from \$25.00 to \$35.00 monthly. The bill, however, did not mention General Assistance (GA) recipients in the same types of institutions. The New Jersey Department of the Treasury, Office of Management and Budget has concurred with the view of this Department that the omission of GA recipients from Assembly Bill No. 1049 was inadvertent and that it was not the legislative intent to deprive this group of recipients of the \$10.00 monthly increase. Thus, the proposed amendment at N.J.A.C. 10:85-5.3(e)2 increases the PNA for GA patients also. Included is a technical amendment which deletes reference to public medical institutions. This is a "housekeeping" change and will have no identifiable impact because payments for services by public medical institutions are covered elsewhere.

Social Impact

This proposed amendment will provide an additional \$10.00 monthly to those GA recipients in nursing homes and intermediate care facilities to allow them to purchase personal incidentals. The use of the funds is entirely discretionary with each patient.

Economic Impact

This proposed amendment will have a small but important beneficial economic impact on each GA recipient who is a patient in a nursing home or intermediate care facility. The cost to the public treasury is estimated at \$42,000 annually of which 75 percent or \$31,500 will come from State funds and the responsibility for the remaining \$10,500 will be shared among the various municipalities in proportion to their share of the affected caseload.

Regulatory Flexibility Statement

The proposed amendment imposes no compliance requirements on small businesses, since the General Assistance program is administered by county welfare agencies; therefore, a regulatory flexibility analysis pursuant to P.L. 1986, c.169 is not required.

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

10:85-5.3 Other medical payments

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

(e) Care for the chronically ill: The director of welfare shall authorize payments for patient care and a personal incidental allowance in a skilled nursing home[,] or intermediate care facility [or public medical institution] when a physician certifies that a client has a defect, disease, or impairment (other than psychosis) which necessitates such care, the client is not eligible for Medicaid, and there is no person available who will provide such care without cost to the client.

1. (No change.)

2. Maximum fees: Payment to the facility shall not exceed the rates for such facility as established by Medicaid or, for non-Medicaid facilities by DPW/BMA. The MWD may contact the DPW/BMA to obtain the per diem rate for room, board and nursing care. A personal incidental allowance of [\$25.00] **\$35.00** per month shall be allowed to the patient.

i.-ii. (No change.)

(f)-(i) (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Administration, Organization and Management Functions of Agency; Rule Petition Procedure; Public Information

Proposed New Rules: N.J.A.C. 10A:1

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 52:14B-3 and 4.

Proposal Number: PRN 1987-139.

Submit comments by May 20, 1987 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules describe the functions of the Department of Corrections, and procedures for petitioning for a rule and requesting public information. The new rules are proposed in compliance with N.J.S.A. 52:14B-3, 52:14B-4 and N.J.A.C. 1:30-3.6

Social Impact

The proposed new rules will provide information concerning the procedures whereby interested persons may petition for the promulgation, amendment or repeal of any rule of the Department of Corrections. The proposed new rules also provide procedures whereby interested persons may obtain general information from the Department of Corrections.

Economic Impact

The proposed new rules will have no new or additional economic impact on the public or correctional facilities because no additional costs are necessary to implement or maintain these new rules.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements that impact upon small businesses. A regulatory flexibility analysis of this proposal is inapplicable.

Full text of the proposed new rules follows:

CHAPTER 1

ADMINISTRATION, ORGANIZATION AND MANAGEMENT

SUBCHAPTER 1. OPERATION AND PROCEDURES OF THE DEPARTMENT OF CORRECTIONS

10A:1-1.1 Functions of the agency

(a) The Department of Corrections (D.O.C.) created by statute in 1976, is a principal Department in the Executive Branch of New Jersey State Government. The functions of the D.O.C. are to:

1. Protect the public and provide for the custody, care, discipline, training and treatment of persons committed to State correctional institutions or released on parole;
2. Supervise and assist in the treatment and training of persons in local correctional and detention facilities, so that such persons may be prepared for release and reintegration into the community;
3. Cooperate with other law enforcement agencies of the State to encourage a more unified system of criminal justice;
4. Provide maximum security confinement for offenders whose demonstrated propensity to acts of violence requires that these offenders be separated from the community;
5. Develop alternatives to conventional incarceration for offenders who can be dealt with more effectively in less restrictive community based facilities and programs;
6. Separate juvenile offenders from the adult offender population and develop programs and services for juvenile offenders which recognize the juvenile offenders' special needs;
7. Provide an environment for incarcerated persons which encourages rehabilitation and reintegration into the community; and
8. Protect the incarcerated offender from victimization within the correctional facilities of the D.O.C.

10A:1-1.2 Procedure to petition for a rule

(a) An interested person may apply to petition for the promulgation, amendment or repeal of any rule of the Department of Corrections. A petition shall:

1. Be in writing;
2. Be legible and intelligible; and
3. Be signed by the petitioner.

(b) Each petition shall contain the following information:

1. The full name and address of the petitioner;
2. Citation of the rule for which the proposal is made, using N.J.A.C. references, where applicable;
3. A clear and concise statement summarizing the substance of the rule sought or change to be suggested;
4. A specific statement explaining why the suggestion is being offered and summary of reasons therefor; and
5. A citation of statutory authority under which the Department of Corrections is authorized to act.

(c) The petition shall be sent to the Commissioner, Department of Corrections, and to the Special Assistant for Legal Affairs, Office of the Deputy Commissioner, at CN 863, Trenton, New Jersey 08625.

(d) When the Commissioner and/or the Special Assistant for Legal Affairs accept the petition which satisfies the requirements of (a) and (b) above, the Department of Corrections shall forthwith file the document for publication as a notice of petition for a rule in the New Jersey Register pursuant to N.J.A.C. 1:30-3.6(a).

(e) No later than 30 days after acceptance of a petition, the Department of Corrections, Standard Development Unit shall mail to the petitioner and file for publication in the New Jersey Register a notice of action on the petition which shall contain the information prescribed by (b) above. The notice of action shall include either:

1. A statement denying the petition;
2. A notice of proposed rule or a notice of pre-proposal for a rule for publication in the New Jersey Register; or
3. A statement that the matter is being referred for further deliberations, the nature of which shall be specified and which shall conclude upon a certain date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted for publication in the New Jersey Register.

10A:1-1.3 Public information requests

(a) Members of the public, other than inmates, may obtain general information from the Department of Corrections by writing to or telephoning the Public Information Officer, Department of Corrections, CN 863, Trenton, New Jersey 08625, (609) 292-9340.

(b) Inmates requesting information or services are directed to contact the Department of Corrections, Office of the Ombudsman, CN 863, Trenton, New Jersey 08625, (609) 292-8020, either by mail or by collect telephone call. The Ombudsman is the only office authorized to accept collect calls from inmates.

(c) The cost for copies of documents to a member(s) of the public is:

1. First page to 10th page: \$0.50 per page;
2. Eleventh page to 20th page: \$0.25 per page; and
3. All pages over 20: \$0.10 per page.

(d) Government agencies are exempt from cost for copies of documents.

LAW AND PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES

The following proposals are authorized by Glenn R. Paulsen, Director, Division of Motor Vehicles.

Submit comments by May 20, 1987 to:
Glenn R. Paulsen, Director
Division of Motor Vehicles
Department of Law and Public Safety
25 South Montgomery Street
Trenton, New Jersey 08666

(a)

Driver Control Service Designation of State Official

Proposed New Rule: N.J.A.C. 13:19-9

Authority: N.J.S.A. 39:2-3, 39:3-10, 39:5-30 and Pub. L. 99-570.
Proposal Number: PRN 1987-146.

The agency proposal follows:

Summary

Effective July 1, 1987, the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, requires a driver of specified commercial vehicles to notify a State official in his state of licensure of the driver's convictions for violations of any law relating to motor vehicle traffic control in any other state. Notification of the out-of-state conviction(s) is required to be submitted within 30 days of the conviction(s). The proposed new rule implements Pub. L. 99-570 by designating the Chief, Bureau of Violation Records as the State official who is to be notified of out-of-state convictions.

Social Impact

The proposed new rule brings New Jersey into compliance with Section 12003(a)(1) of Pub. L. 99-570 by designating a State official who is to be notified of out-of-state motor vehicle convictions incurred by New Jersey licensed drivers of commercial vehicles. A state's noncompliance with the Federal law may result in the loss of Federal-aid highway funds to which it may otherwise be entitled.

Economic Impact

The economic impact is limited to drivers of commercial vehicles who must notify the State official of out-of-state motor vehicle convictions. Notification may result in the suspension of a driver's license and/or imposition of an insurance surcharge depending on the seriousness of the out-of-state violation(s). There is no economic impact on the general public. There is an economic impact on the Division in administering the notification procedure.

Regulatory Flexibility Statement

The proposed new rule does not require a regulatory flexibility analysis as it does not impose any requirements on small businesses. The proposed new rule merely designates the State official who is to be notified of out-of-state motor vehicle convictions pursuant to Federal law.

Full text of the proposed new rule follows:

SUBCHAPTER 9. DESIGNATION OF STATE OFFICIAL TO BE NOTIFIED BY DRIVERS OF COMMERCIAL MOTOR VEHICLES CONCERNING OUT-OF-STATE MOTOR VEHICLE CONVICTIONS

13:19-9.1 Designation of State official; notification

(a) The Chief, Bureau of Violation Records, is designated as the State official to be notified, pursuant to the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, concerning out-of-state motor vehicle convictions.

(b) A driver of a commercial motor vehicle, as defined in the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, shall submit within 30 days of conviction a notice concerning an out-of-state conviction(s) for a violation(s) of any law relating to motor vehicle traffic control to the following address:

Chief, Bureau of Violation Records
Division of Motor Vehicles
137 East State Street
Trenton, New Jersey 08666

(b)

Licensing Service Suspension Until Restoration

Proposed New Rule: N.J.A.C. 13:21-9.4

Authority: N.J.S.A. 39:3-10, 39:3-10a, 39:5-30 and 39:5-32.
Proposal Number: PRN 1987-145.

The agency proposal follows:

Summary

The proposed new rule supplements N.J.S.A. 39:3-10, 39:3-10a, 39:5-30 and 39:5-32 by providing that a suspension of driving privilege, including a suspension for a fixed term, shall remain in effect until the Director restores the driving privilege upon the driver's application therefor and payment of a restoration fee.

Social Impact

The proposed new rule fosters highway safety in that it requires suspended drivers to qualify for restoration by application and payment of a restoration fee. The Director may deny restoration if he determines that the driver is incapable of operating motor vehicles safely.

Economic Impact

The economic impact is limited to drivers who will be required to pay a restoration fee as a precondition to restoration. The restoration fee will defray administrative costs incurred by the Division in processing applications for restoration.

Regulatory Flexibility Statement

Pursuant to section 4, P.L. 1986, c.169, the Division of Motor Vehicles finds that the proposed new rule will not impose reporting, recordkeeping or other compliance requirements on small businesses, since it merely imposes restoration requirements on suspended drivers.

Full text of the proposed new rule follows:

13:21-9.4 Suspension continues until restoration; application for restoration

(a) Every suspension of driving privileges in this State pursuant to Title 39 of the Revised Statutes, as amended or supplemented, or any other law of this State providing for the suspension of driving privileges in this State, shall continue and remain in force and effect until those driving privileges are granted or restored by the Director.

(b) In the case of suspensions of driving privileges in this State for a fixed period, the person so suspended shall, as a condition precedent to restoration, make application to the Director in such form as the Director may prescribe and pay any restoration fee required by law or regulation. The Director may, upon due notice and opportunity for a hearing, deny any application for restoration on any reasonable grounds, including but not limited to grounds relating to physical fitness or driving record of the applicant or failure of the applicant to provide proof of satisfaction of other statutory requirements.

(c) For purposes of this section the term "suspension of driving privilege" includes every suspension, revocation, prohibition or refusal of any privilege to operate a motor vehicle in this State.

(d) Nothing in this section shall be construed as requiring the Director to restore driving privileges prior to the expiration of a fixed period of suspension or to restore driving privileges otherwise suspended or to restore driving privileges contrary to any provision of law.

TRANSPORTATION

LOCAL AID

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

Submit comments by May 20, 1987 to:

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

(a)

1984 New Jersey Transportation Trust Fund Authority Act Federal Aid Urban System Substitution Program: County and Municipal Aid Audits

Proposed Amendments: N.J.A.C. 16:20A-2.4, 4.1 and 4.2

Proposed New Rule: N.J.A.C. 16:20A-5.1

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1B-1 et seq., 27:7-13,
7-47, and 7:13-1 et seq.

Proposal Number: PRN 1987-131.

The agency proposal follows:

Summary

The proposed amendments and new subchapter will establish new procedural guidelines concerning audits to be undertaken by counties and municipalities which are the recipients of State grants and aid programs and Federal pass-through funds. These guidelines were established by the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget (OMB), and the Single Audit Act of 1984 (Federal OMB Circular A-128).

The State Audit Policy requires that a Single Audit be performed annually by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards beginning with the fiscal year ended December 31, 1986. The audits for 1986 will pertain to any local government which received \$25,000 of total State aid or grants.

Any agreements governed by N.J.A.C. 16:20A shall be subjected to audit compliance tests in accordance with the requirements delineated in the OMB publication "New Jersey Grants Management Information System Manual."

Expenditures made prior to January 1, 1986 under the terms of any agreements with the Department and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986. Audit costs incurred by the local government to comply with these requirements shall not be reimbursable.

The Department is therefore proposing changes to the applicable rules concerning State aid to local government to comply with the requirements of the Single Audit Policy.

Social Impact

The proposed amendments and new subchapter will establish new guidelines to be followed by local governments which have received State grants and aid programs from the Department. The Department is mandated under the single Audit Policy to require annual audit reports, which will include auditor's comments on the recipients' compliance with the materials, terms and conditions of the State grant agreements. These audits must be performed by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards, and are applicable to local governments receiving \$25,000 or more in Federal and/or State financial assistance. The Single Audit Policy provides the necessary checks and balances in seeing the funds received are being used for the purpose they were given.

Economic Impact

The local government will incur direct and indirect costs in having complete audits conducted by an independent auditor or public accountant, who meets the independence standards specified in generally accepted government auditing standards, to meet the requirements of the State Single Audit Policy.

Additionally, costs incurred to comply with these requirements will not be reimbursed by the State. However, should the Department request additional audit requirements above minimum Federal and State requirements, the Department would be responsible for the additional audit work performed.

Regulatory Flexibility Statement

There are no compliance requirements on small businesses, because the rules do not affect or require compliance by any small business. Therefore, a regulatory flexibility analysis pursuant to P.L. 1986, c.169 is not required.

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

16:20A-2.4 Standards

(a) The proposed road and bridge improvements shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publications listed below. Any exceptions to these design criteria must be justified by the local engineer to be in the public interest.

1. (No change.)
 2. A policy on Geometric Design of [Rural] Highways and Streets, 1984;
 3. A policy on Arterial Highways in Urban Areas;
 4. Geometric Design Guide for Local Roads and Streets;
 5. 3. Standard Specifications for Highways Bridges;
 6. 4. Guide for the Development of New Bicycle Facilities 1981.
- (b)-(c) (No change.)

SUBCHAPTER 4. CONTRACTS

16:20A-4.1 Award of contract

- (a) (No change.)
- (b) **Prior to and no later than the advertisement for construction bids, the local government shall submit the following to the Local Aid District Office:**
1. **Two copies of the contract plans and specifications; and**
 2. **Two copies of the Engineer's Estimate of costs.**
- [(b)](c) Within 10 days, or such longer period as the Local Aid District Office will approve, following the receipt of construction bids, the local government shall submit the following to the Local Aid District Office:
1. Two copies of the contract plans and specifications;
 2. Two copies of the engineer's estimate of cost;
 3. 1. Two copies of the summary of construction bids; and
 4. 2. A resolution awarding the contract to the lowest responsible bidder, subject to the approval of the Department.
- [(c)](d) (No change in text.)

16:20A-4.2 Contract completion and payment

- (a) (No change.)
- (b) When all the work has been completed satisfactorily, the local government will prepare and submit to the Local Aid District Office the following:
1. (No change.)
 2. A certification by the county/municipal [auditor] **chief financial officer** that [the project's records have been examined and] all expenditures are supported by valid documentation **and conform with the terms of the State's agreement;** and
 3. (No change.)
- (c) After a final inspection of the completed work by the State [and a determination has been made by audit that all documents are in proper order.], action shall be taken to reimburse the county/municipality.
- (d) (No change.)

SUBCHAPTER 5. AUDIT

16:20A-5.1 General provisions

(a) **The county/municipality shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).**

(b) A Single Audit of the county/municipality shall be performed annually beginning with the fiscal year ended December 31, 1986 by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with the State Audit Policy.

(c) Department of Transportation agreements governed by N.J.A.C. 16:20A shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual."

(d) Expenditures prior to January 1, 1986 made under the terms of the county/municipality agreements with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.

(e) Audit costs incurred by the county/municipality to comply with the subchapter shall not be reimbursable.

(a)

1984 New Jersey Transportation Trust Fund Authorities Act: Municipal Aid Audits

Proposed Amendments: N.J.A.C. 16:20B-1.2, 3.1 and 3.2

Proposed New Rule: N.J.A.C. 16:20B-5.1.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1B-1 et seq., 27:7-13,
27:7-47 and 27:7-13 et seq.

Proposal Number: PRN 1987-130.

The agency proposal follows:

Summary

The proposed amendments and new subchapter will establish new procedural guidelines concerning audits to be undertaken by counties and municipalities which are the recipients of State grants and aid programs and Federal pass-through funds. These guidelines were established by the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget (OMB), and the Single Audit Act of 1984 (Federal OMB Circular A-128).

The State Audit Policy requires that a Single Audit be performed annually by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards beginning with the fiscal year ended December 31, 1986. The audits for 1986 will pertain to any local government which received \$25,000 of total State aid or grants.

Any agreements governed by N.J.A.C. 16:20B shall be subjected to audit compliance tests in accordance with the requirements delineated in the OMB publication "New Jersey Grants Management Information System Manual."

Expenditures made prior to January 1, 1986 under the terms of any agreements with the Department and not previously audited by an independent auditor or public accountant, who meets the independence standards specified in generally accepted government auditing standards, may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986. Audit costs incurred by the local government to comply with these requirements shall not be reimbursable.

The Department is therefore proposing changes to the applicable rules concerning State aid to local government to comply with the requirements of the Single Audit Policy.

Social Impact

The proposed amendments and new subchapter will establish new guidelines to be followed by local governments which have received State grants and aid programs from the Department. The Department is mandated under the Single Audit Policy to require annual audit reports, which will include auditor's comments on the recipients' compliance with the materials, terms and conditions of State grant agreements. These audits must be performed by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards, and are applicable to local governments receiving \$25,000 or more in Federal and/or State financial assistance. The Single Audit Policy provides the necessary checks and balances in seeing the funds received are being used for the purpose they were given.

Economic Impact

The local government will incur direct and indirect costs in having complete audits conducted by an independent auditor or public accountant, who meets the independence standards specified in generally accepted government auditing standards, to meet the requirements of the State Single Audit Policy.

Additionally, costs incurred to comply with these requirements will not be reimbursed by the State. However, should the Department request additional audit requirements above minimum Federal and State requirements, the Department would be responsible for the additional audit work performed.

Regulatory Flexibility Statement

There are no compliance requirements on small businesses, because the rules do not affect or require compliance by any small business. Therefore, a regulatory flexibility analysis pursuant to P.L. 1986, c.169, is not required.

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

16:20B-1.2 Standards

(a) The proposed road and bridge improvement projects shall conform to the design criteria of the appropriate American Association of State Highway and Transportation officials publications listed below:

1. (No change.)
2. A Policy on Geometric Design of [Rural] Highways and Streets, 1984;
- [3. A Policy on Arterial Highways in Urban Areas;]
- [4. Geometric Design Guide for Local Roads and Streets;]
- [5.]3. Standard Specifications for Highway Bridges.
- (b)-(c) (No change.)

SUBCHAPTER 3. CONTRACTS

16:20B-3.1 Awards of contract

- (a) (No change.)
- (b) **Prior to and no later than the advertisement for construction bids, the municipality shall submit the following to the Local Aid District Office:**
1. **Two copies of the contract plans and specifications; and**
 2. **Two copies of the engineer's estimate of costs.**
- [(b)](c) Within 10 days, or such longer time as the Local Aid District Office will approve, following the receipt of construction bids, the municipality shall submit the following to the Local Aid District Office:
- [1. Two copies of the contract plans and specifications;]
 - [2. Two copies of the engineer's estimate of cost;]
 - [3.]1. **Two copies of the summary of construction bids; and**
 - [4.]2. **A resolution awarding the contract to the lowest responsible bidder, subject to the approval of the Department.**
- [(c)](d) (No change in text.)

16:20B-3.2 Contract completion and payment

- (a) (No change.)
- (b) When all work has been completed satisfactorily, the municipality will prepare and submit to the Local Aid District Office the following:
1. (No change.)
 2. A certification by the municipal [auditor] **chief financial officer** that [the projects records have been examined and] all expenditures are supported by valid documentation **and conform with the terms of the State's agreements; and**
 3. (No change.)
- (c) After a final inspection of the completed work by the State [and a determination has been made by audit that all documents are in proper order], action shall be taken to reimburse the municipality.
- (d) (No change.)

SUBCHAPTER 5. AUDIT

16:20B-5.1 General provisions

(a) **The municipality shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).**

(b) **A Single Audit of the municipality shall be performed annually beginning with the fiscal year ended December 31, 1986 by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State Audit Policy.**

(c) Department of Transportation agreements governed by N.J.A.C. 16:20B shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".

(d) Expenditures prior to January 1, 1986 made under the terms of the county/municipality agreement(s) with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.

(e) Audit costs incurred by the municipality to comply with this subchapter shall not be reimbursable.

(a)

State Aid to Counties and Municipalities Audits

Proposed Amendment: N.J.A.C. 16:21-3.2

Proposed New Rule: N.J.A.C. 16:21-5.1

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 27:8-1 to 9.

Proposal Number: PRN 1987-129.

The agency proposal follows:

Summary

The proposed amendment and new subchapter will establish new procedural guidelines concerning audits to be undertaken by counties and municipalities which are the recipients of State grants and aid programs and Federal pass-through funds. These guidelines were established by the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget (OMB), and the Single Audit Act of 1984 (Federal OMB Circular A-128).

The State Audit Policy requires that a Single Audit be performed annually by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards, beginning with the fiscal year ended December 31, 1986. The audits for 1986 will pertain to any local government which received \$25,000 of total State aid or grants.

Any agreements governed by N.J.A.C. 16:21 shall be subjected to audit compliance tests in accordance with the requirements delineated in the OMB publication "New Jersey Grants Management Information System Manual."

Expenditures made prior to January 1, 1986 under the terms of any agreements with the Department and not previously audited by an independent auditor or public accountant, who meets the independence standards specified in generally accepted government auditing standards, may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986. Audit costs incurred by the local government to comply with these requirements shall not be reimbursable.

The Department is therefore proposing changes to the applicable rules concerning State aid to local government to comply with the requirements of the Single Audit Policy.

Social Impact

The proposed amendment and new subchapter will establish new guidelines to be followed by local governments which have received State grants and aid programs from the Department. The Department is mandated under the Single Audit Policy to require annual audit reports, which will include auditor's comments on the recipients' compliance with the materials, terms and conditions of State grant agreements. These audits must be performed by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards, and are applicable to local governments receiving \$25,000 or more in Federal and/or State financial assistance. The Single Audit Policy provides the necessary checks and balances in seeing the funds received are being used for the purpose they were given.

Economic Impact

The local government will incur direct and indirect costs in having complete audits conducted by an independent auditor or public accountant, who meets the independence standards specified in generally accepted government auditing standards, to meet the requirements of the State Single Audit Policy.

Additionally, costs incurred to comply with these requirements will not be reimbursed by the State. However, should the Department request additional audit requirements above minimum Federal and State require-

ments, the Department would be responsible for the additional audit work performed.

Regulatory Flexibility Statement

There are no compliance requirements on small businesses, because the rules do not affect or require compliance by any small business. Therefore, a regulatory flexibility analysis pursuant to P.L. 1986, c.169 is not required.

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

16:21-3.2 Contract completion and payment

(a) When all work has been completed satisfactorily, the local government will prepare and submit to the Local Aid [d]District [o]Office[, Bureau of Local Aid,] the following:

1. A statement of the work performed, certified by the [M]municipal/[C]county [E]engineer, for acceptance and approval of the completed work[.];

2. A certification by the [C]county/[M]municipal [Auditor] chief financial officer that [the project's records have been examined and] all expenditures are supported by valid documentation[.] and conform with the terms of the State's agreement; and

3. (No change.)

(b) After a final inspection of the completed work by the State [and a determination has been made by audit that all documents are in proper order], action shall be taken to reimburse the county/municipality.

SUBCHAPTER 5. AUDIT

16:21-5.1 General provisions

(a) The municipality shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).

(b) A Single Audit of the municipality shall be performed annually beginning with the fiscal year ended December 31, 1986 by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State Audit Policy.

(c) Department of Transportation agreements governed by N.J.A.C. 16:21 shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".

(d) Expenditures prior to January 1, 1986 made under the terms of the county/municipality agreement(s) with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.

(e) Audit costs incurred by the municipality to comply with this subchapter shall not be reimbursable.

(b)

New Jersey Bridge Rehabilitation and Improvement Fund: State Aid to Counties and Municipalities Audits

Proposed Amendment: N.J.A.C. 16:21A-3.2

Proposed New Rule: N.J.A.C. 16:21A-5.1

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 7-47, 27:13-1 et

seq. and the New Jersey Bridge Rehabilitation and

Improvement Bond Act of 1978, P.L. 1983, c.363.

Proposal Number: PRN 1987-128.

The agency proposal follows:

Summary

The proposed amendment and new subchapter will establish new procedural guidelines concerning audits to be undertaken by counties and municipalities which are the recipients of State grants and aid programs and Federal pass-through funds. These guidelines were established by the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget (OMB), and the Single Audit Act of 1984 (Federal OMB Circular A-128).

The State Audit Policy requires that a Single Audit be performed annually by an independent auditor or who meets the independence standards specified in generally accepted government auditing standards, beginning with the fiscal year ended December 31, 1986. The audits for 1986 will pertain to any local government which received \$25,000 of total State aid or grants.

Any agreements governed by N.J.A.C. 16:21A shall be subjected to audit compliance tests in accordance with the requirements delineated in the OMB publication "New Jersey Grants Management Information System Manual."

Expenditures made prior to January 1, 1986 under the terms of any agreements with the Department and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards, may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986. Audit costs incurred by the local government to comply with these requirements shall not be reimbursable.

The Department is therefore proposing changes to the applicable rules concerning State aid to local government to comply with the requirements of the Single Audit Policy.

Social Impact

The proposed amendment and new subchapter will establish new guidelines to be followed by local governments which have received State grants and aid programs for the Department. The Department is mandated under the Single Audit Policy to require annual audit reports, which will include auditor's comments on the recipients' compliance with the materials, terms and conditions of State grant agreements. These audits must be performed by an independent auditor or public accountant, who meets the independence standards specified in generally accepted government auditing standards, and applicable to local governments receiving \$25,000 or more in Federal and/or State financial assistance. The Single Audit Policy provides the necessary checks and balances in seeing the funds received are being used for the purpose they were given.

Economic Impact

The local government will incur direct and indirect costs in having complete audits conducted by an independent auditor or public accountant, who meets the independence standards specified in generally accepted government auditing standards, to meet the requirements of the State Single Audit Policy.

Additionally, costs incurred to comply with these requirements will not be reimbursed by the State. However, should the Department request additional audit requirements above minimum Federal and State requirements, the Department would be responsible for the additional audit work performed.

Regulatory Flexibility Statement

There are no compliance requirements on small businesses, because the rules do not affect or require compliance by any small business. Therefore, a regulatory flexibility analysis pursuant to P.L. 1986, c.169 is not required.

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

16:21A-3.2 Contract compliance and payment

(a) When all work has been completed satisfactorily, the local government will prepare and submit to the Local Aid [d]District [o]Office, the following:

1. A statement of the work performed, certified by the municipal/county engineer, for acceptance and approval of the completed work[.];

2. A certification by the county/municipal [auditor] chief financial officer that [the projects records have been examined and] all expenditures are supported by valid documentation [.] and conform with the terms of the State's agreement; and

3. (No change.)

(b) After a final inspection of the completed work by the State [and a determination has been made by audit that all documents are in proper order], action shall be taken to reimburse the county/municipality.

(c) (No change.)

SUBCHAPTER 5. AUDIT

16:21A-5.1 General provisions

(a) The municipality shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal) OMB Circular A-128).

(b) A Single Audit of the municipality shall be performed annually beginning with the fiscal year ended December 31, 1986 by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State audit policy.

(c) Department of Transportation agreements governed by N.J.A.C. 16:21A shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".

(d) Expenditures prior to January 1, 1986 made under the terms of the county/municipality agreement(s) with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.

(e) Audit costs incurred by the municipality to comply with this subchapter shall not be reimbursable.

(a)

Urban Revitalization, Special Demonstration and Emergency Project Rules Audits

Proposed Amendment: N.J.A.C. 16:22-3.2

Proposed New Rule: N.J.A.C. 16:22-5.1

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 27:8-1 to 9.

Proposal Number: PRN 1987-127.

The agency proposal follows:

Summary

The proposed amendment and new subchapter will establish new procedural guidelines concerning audits to be undertaken by counties and municipalities which are the recipients of State grants and aid programs and Federal pass-through funds. These guidelines were established by the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget (OMB), and the Single Audit Act of 1984 (Federal OMB Circular A-128).

The State Audit Policy requires that a Single Audit be performed annually by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards, beginning with the fiscal year ended December 31, 1986. The audits for 1986 will pertain to any local government which received \$25,000 of total State aid or grants.

Any agreements governed by N.J.A.C. 16:22 shall be subjected to audit compliance tests in accordance with the requirements delineated in the OMB publication "New Jersey Grants Management Information System Manual."

Expenditures made prior to January 1, 1986 under the terms of any agreements with the Department and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards, may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986. Audit costs incurred by the local government to comply with these requirements shall not be reimbursable.

The Department is therefore proposing changes to the applicable rules concerning State aid to local government to comply with the requirements of the Single Audit Policy.

Social Impact

The proposed amendment and new subchapter will establish new guidelines to be followed by local governments which have received State grants and aid programs from the Department. The Department is mandated under the Single Audit Policy to require annual audit reports, which will include auditor's comments on the recipients' compliance with the materials, terms and conditions of State grant agreements. These audits must be performed by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards, and are applicable to local governments receiving \$25,000 or more in Federal and/or State financial assistance. The Single Audit Policy provides the necessary checks and balances in seeing the funds received are being used for the purpose they were given.

Economic Impact

The local government will incur direct and indirect costs in having complete audits conducted by an independent auditor or public accountant, who meets the independence standards specified in generally accepted government auditing standards, to meet the requirements of the State Single Audit Policy.

Additionally, costs incurred to comply with these requirements will not be reimbursed by the State. However, should the Department request additional Audit requirements above minimum Federal and State requirements, the Department would be responsible for the additional audit work performed.

Regulatory Flexibility Statement

There are no compliance requirements on small businesses, because the rules do not affect or require compliance by any small business. Therefore, a regulatory flexibility analysis pursuant to P.L. 1986, c.169 is not required.

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

16:22-3.2 Contract completion and payment

(a) When all work has been completed satisfactorily, the local government will prepare and submit to the **Local Aid [d]District [o]Office [l, Bureau of Local Aid,]** the following:

1. (No change.)
 2. A certification by the county/municipal [auditor] **chief financial officer** that [the project's records have been examined and] all expenditures are supported by valid documentation **and conform with the terms of the State's agreement; and**
 3. (No change.)
- (b) After a final inspection of the completed work by the State [and a determination has been made by audit that all documents are in proper order], action shall be taken to reimburse the county/municipality.
- (c) (No change.)

SUBCHAPTER 5. AUDIT

16:22-5.1 General provisions

(a) **The municipality shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).**

(b) **A Single Audit of the municipality shall be performed annually beginning with the fiscal year ended December 31, 1986 by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State audit policy.**

(c) **Department of Transportation agreements governed by N.J.A.C. 16:22 shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".**

(d) **Expenditures prior to January 1, 1986 made under the terms of the county/municipality agreement(s) with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.**

(e) **Audit costs incurred by the municipality to comply with this subchapter shall not be reimbursable.**

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Administration

Delinquent Enrollment; Employer Liability

Proposed New Rule: N.J.A.C. 17:1-12.8

Authorized by: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1987-135.

Submit comments by May 20, 1987 to:

Peter J. Gorman
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule, N.J.A.C. 17:1-12.8, covers situations where employees who are required to be members of the Public Employees' Retirement System (PERS), the Teachers' Pension and Annuity Fund (TPAF), or the Police and Firemen's Retirement System (P&FRS) are not enrolled in or transferred to the retirement systems in a timely manner by their employers. There are provisions in the laws governing each retirement system which require an employer to pay one-half of an employee's cost for the compulsory purchase of previous service in these situations if the enrollment or transfer application is filed more than one year after the date of compulsory enrollment or transfer. The obvious intent of these provisions is that the employer bear an additional obligation because of its delinquency in not enrolling or transferring an employee in a timely manner. However, the statutes do not provide specific procedures for determining the employer's regular liability in these situations. Had the employee been enrolled timely, the employer would have made annual normal contributions based on the employee's annual salary and the normal contribution rate certified by the retirement system.

In the past, the Division of Pensions has arranged through the actuaries to the retirement systems to assess additional accrued liability costs to employers with significant numbers of delinquent enrollments or when the period of delay was substantial. In individual, isolated cases of delayed enrollment, only the liability for one-half of the employee's compulsory purchase was assessed.

The purpose of the proposed new rule is to provide for assessment of normal employer costs in all cases of delinquent enrollment. The amount of the employer's normal contribution in these cases would be the employee's current salary multiplied by the current normal contribution rate for the retirement system for each year of delay in enrollment or transfer. The assessment would only be made where an employer failed to enroll or transfer an employee for more than one year after the date the enrollment or transfer was required. The proposed new rule will provide for uniform treatment of all employers in situations involving delayed enrollments. It will eliminate any incentive for employers to fail to enroll or transfer employees in State retirement system in a timely manner.

Social Impact

The proposed new rule should have a beneficial effect upon public employees required to participate in PERS, TPAF and P&FRS. The rule should provide additional incentive for employers to enroll employees in a timely manner. The rule should also help to reduce the incidence of delinquent enrollments and the compulsory purchases of previous service which would be required.

Economic Impact

The proposed new rule will generally require increased contributions from employers who fail to enroll or transfer employees in a timely manner.

Regulatory Flexibility Statement

The proposed new rule will not have any affect upon small businesses in New Jersey because only public employers and employees are affected by the rule, therefore, a regulatory flexibility analysis pursuant to P.L. 1986 c.169 is not required.

Full text of the proposed new rule follows:

17:1-12.8 Delinquent enrollment; employer liability

(a) An employer participating in the Public Employees' Retirement System, the Teachers' Pension and Annuity Fund, or the Police and Firemen's Retirement System, who fails to file an enrollment or transfer application for an employee required to be a member of the retirement system within one year of the effective date of compulsory enrollment or transfer, shall contribute to the retirement system the amount prescribed by (b) below. This amount is in lieu of the normal contributions which the employer would have paid to the retirement system had the employee been enrolled in a timely manner, and in addition to the amount prescribed by N.J.S.A. 43:15A-7.1, N.J.S.A. 18A:66-6.1, or N.J.S.A. 43:16A-15.1.

(b) The amount of the contribution required by (a) above shall be the employee's current base salary subject to the retirement system multiplied by the current normal contributions rate by the number of years of previous service during which the employee was required to be a member.

(c) The retirement system shall certify the amount of the contribution to the employer who shall include the amount of the next budget subsequent to the certification. The contribution shall be payable to the fund for employer contributions under the retirement system and shall be paid even if the employee is no longer employed by the employer by the date the contribution is to be paid.

(a)**DIVISION OF BUILDING AND CONSTRUCTION****Architect/Engineer Selection Procedures****Proposed New Rules: N.J.A.C. 17:19-10.1 through 10.10**

Authorized By: James G. Ton, Director, Division of Building and Construction, General Services Administration, Department of Treasury.

Authority: N.J.S.A. 52:18A-30 and 52:18A-151 et seq.

Proposal Number: PRN 1987-138.

Submit comments by May 20, 1987 to:

James G. Ton, Director
Division of Building and Construction
CN 235
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The administrative rules for the selection of architects and engineers have been in effect for many years. These rules expired on March 3, 1985. In proposing the new rules, opportunity has been taken to refine certain features which, through experience in 10 years of operations, will make the process more efficient and expedite the time required to select the consultant. Parts of the previous text have been edited for better wording; however, the following major changes have been made to the original procedures:

(1) *Project assignment procedures:* (N.J.A.C. 17:19-10.7) Intermediate projects are now defined as those being in the range of \$350,000 to \$650,000 for construction cost estimate. However, for intermediate projects, the Architect/Engineer Selection Board shall now have full authority to waive formal advertising where appropriate. This adjustment is made to facilitate the consultant assignment process in order to provide prompt attention to a using agency's design needs. In the absence of such public notification, the Secretary of the Architect/Engineer Selection Board shall, in consultation with the Board Chairperson, develop a list of currently prequalified firms in sufficient number to ensure competition on technical and cost basis. The list will be based upon relevant factors such as the location, size and nature of the project. Due consideration will be given to assignment of work to minority-owned and women-owned businesses. Screening and solicitation of cost proposals shall, thereafter, follow procedures as described under major project.

(2) *Facility consultants:* A new category entitled "facility consultants" is introduced under N.J.A.C. 17:19-10.7(d). The Director may delegate to a department or institution, as may be warranted, the authority to issue work orders for architect/engineer professional service assignments to architectural and engineering firms selected by the Board and contracted with the Division of Building and Construction (DBC) under procedures prescribed herein. Prequalification and selection of firms interested in providing facility consultant services will be similar to those prescribed for the Miscellaneous Panels in N.J.A.C. 17:19-10.7(c). Facility consultant contracts will be issued on a fiscal year basis (1 July-30 June of ensuing years). Contracts may be modified, cancelled or extended by request of the department or institution and in accordance with the facility consultant procedures.

(3) *Selection Board composition:* (N.J.A.C. 17:19-10.9) The composition of the Board has been changed to include members from the General Services Administration along with members from the Division of Building and Construction and the using agency. Due consideration will be given to minority and/or female participation on the Board. Appointments to the Board will be made by the Administrator, General Services Administration. The Board shall be constituted as follows:

(a) Division of Building and Construction

(1) A chairperson, who shall be an architect or engineer on the staff of the Division;

(2) Two members, who shall be staff architects or engineers; and

(3) One member, who need not be an architect or engineer.

(b) General Services Administration

(1) One member from Administrative office staff.

(c) Using agency

When requested, two voting participants shall be included from the using agency.

(4) *Initial screening committee:* This ad-hoc committee shall be appointed by the individual Architect/Engineer Selection Board members to perform initial screening of firms prior to screening by the Board. Each permanent Board member shall be responsible for the selection of the initial screener for each project. The screening committee will individually rank the qualified firm. The Architect/Engineer Selection Board staff will then list the five top firms as rated by the screening committee. Added to that list will be an additional firm which shall be selected at random from those firms remaining on the original list of prequalified firms. The permanent Board member will then rank the six firms.

Social Impact

The proposed new rules emphasize impartial selection of the most qualified architects and engineers by the Architect/Engineer Selection Board to provide professional services for the State of New Jersey. The system provides equal opportunity for architects and engineers in seeking and being selected for State work. Eligible architect/engineer firms are prequalified as to discipline and size of project for which they may contend by an Architect/Engineer Prequalification Committee consisting of professionals appointed by the Chairman of the Architect/Engineer Selection Board. Certain assignments will be made under the provisions of the State's Small Business Set-Aside Act.

Economic Impact

The procedures set forth in the new rules provide that the most qualified firms are selected to carry out the State's building design programs at reasonable costs. Cost competitive aspects of the process will be retained. The resultant process will provide an appropriate balance of competitive costs and professional qualifications resulting in the most cost-effective product for the State of New Jersey.

Regulatory Flexibility Statement

The proposed new rules set forth the procedures for the awarding of State contracts to architects and engineers. The vast majority of architects and engineers affected by these rules are small businesses as defined by the Regulatory Flexibility Act, P.L. 1986, c.169.

Since the proposed rules address the Division's procedures for architect and engineer selection, the only compliance requirements placed upon small businesses, as upon businesses in general, involve the filing and updating of Information and Experience Questionnaires (DBC Form 48A) (N.J.A.C. 17:19-10.4); the filing of Specific Project Questionnaires (DBC Form 48B) when a firm wishes to be considered for a certain project (N.J.A.C. 17:19-10.5); and the preparation and presentation of cost proposals or interview presentations for those firms approved through the screening process (N.J.A.C. 17:19-10.7).

The information provided by these requirements is the minimum necessary for the Division to make proper and realistic evaluations for the awarding of architect and engineer contracts. Reducing these require-

ments for small businesses would defeat the objective of these rules by denying the Division a complete informational foundation upon which to base its selection decisions.

Full text of the expired rules may be found in the New Jersey Administrative Code at N.J.A.C. 17:19.

Full text of the proposed new rules follows.

SUBCHAPTER 10. ARCHITECT/ENGINEER SELECTION PROCEDURES

17:19-10.1 Purpose

The architect/engineer selection procedures are established to allow qualified design firms an open opportunity for selection for State design assignments on the basis of demonstrated competence and experience. The selection of architects and engineers based upon a combination of technical qualifications and competitive cost proposals enables the public interest to be best served.

17:19-10.2 Scope

(a) The principal elements of the architect/engineer selection procedures provide for:

1. Verification of the professional qualifications of firms interested in providing design services to the State;
2. Advertisement of project;
3. Selection Board competition;
4. Screening of all interested and qualified firms by the Initial Screening Committee and Selection Board in order to establish those firms to be interviewed; and
5. Veto authority of the Board's recommendations by the Director, Division of Building and Construction (DBC).

17:19-10.3 Definitions

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

"Architect/engineer" means an architect, engineer or other design professional so recognized by the appropriate State professional licensing board.

"Architect/Engineer Selection Board" (Board) means the body appointed by the Administrator, General Services Administration to review and evaluate architectural and engineering firms competing for selection for Division design projects.

"Architect/Engineer Contracting Group" means a body within the Division responsible for the architect/engineer contracting process.

"Architect/Engineer Selection Group" means a body within the Division responsible for the selection of architects and engineers.

"Chairperson" means the principal member of the Architect/Engineer Selection Board so appointed by the Administrator, General Services Administration, who will be responsible for the management and operations of the Board.

"Competitive cost proposal" means a specific fee proposal covering compensation for services as specified. Each shall be submitted in response to a uniform request for proposal and scope of work for the specific project.

"Construction cost estimate" for the purpose of these procedures means the estimated construction cost of the specific project developed and approved jointly by the using agency and the Division.

"Director" means the Director of the Division of Building and Construction or his duly authorized representative.

"Division" means the Division of Building and Construction in the Department of the Treasury, General Services Administration.

"Exempt assignment" means an assignment which, due to its nature or circumstances, is awarded outside of the normal selection procedures.

"Initial Screening Committee" (Committee) means the body appointed by the Board to perform initial screening.

"Intermediate project" means a project which has a construction cost estimate between \$350,000 and \$650,000 where advertising is not required.

"Major project" means a project which as a construction cost estimate of \$650,000 or more where advertising is appropriate.

"Member" means an individual appointed by the Administrator, General Services Administration, to serve on the Architect/Engineer Selection Board.

"Minor project" means a project which has a construction cost estimate between \$25,000 and \$350,000 where advertising is not required.

"Miscellaneous panel" means a list of professional architects and engineers, and other professional consultants, eligible for the assignment to projects with a construction cost estimate less than \$350,000 or an anticipated architect/engineer fee less than \$35,000.

"Multiple of actual salary cost" means a design fee based upon an established multiple or factor times direct salary cost. Direct salary is the gross salary paid an individual exclusive of taxes, fringe benefits, etc.

"Percentage fee" means a fee for architectural and engineering services based upon a percentage of the construction cost estimate.

"Prequalification" means a process of reviewing the information and experience questionnaire (DBA Form 48A) to determine the classification level and professional disciplines of architect/engineer firms.

"Program fee" means a separate fee, usually based upon a multiple of actual salary costs, covering the cost of program development and construction cost estimate.

"Screening" or "ranking" means the process of evaluation utilized by the Committee and Board to determine those firms to be given final consideration from among the total applicants for a specific project.

"Secretary" means the full time administrator of the day-to-day Board operations and procedures who is responsible for overseeing classification records, advertising of projects, scheduling of meetings, preparing agendas, recording board scores, preparing minutes of Board meetings and similar administrative activities.

"Technical scoring" means the process of developing numerical ratings for architects and engineers by individual Board members in their evaluation of those firms seeking assignments.

"Using agency" means that Department or other element of State government for which the Division procures or provides design and/or construction services.

17:19-10.4 Classification of design firms

(a) Architectural, engineering and other consulting firms desiring to be considered for consultant work with the Division must first submit an Information and Experience Questionnaire (DBC Form 48A) to the Division. The questionnaire provides comprehensive information on the management of the firm, its financial history, the type and value of past design work and other related information. This information is used by the Board members to assist in the evaluation of firms for Division work and by the Architect/Engineer Selection Group staff to establish the maximum construction cost estimate dollar level and professional disciplines for which the firm is qualified.

(b) Review of the questionnaire by the Division for prequalification purposes shall be completed within 30 days of receipt of the questionnaire and a notification of results shall be mailed to the firm within the same time period.

(c) If a classification is denied the firm will be notified in writing of the reasons for denial. Measures that the firm may take in order to become qualified will be identified by the Supervisor of the Architect/Engineer Selection Group.

(d) If a firm does not agree with its classification as assigned by the Division, it may appeal to the Supervisor, Architect/Engineer Selection Group for reconsideration. If resolution is not achieved, the Supervisor, Architect Engineer Selection Group shall request the Board's evaluation of the firm's qualifications. The Board will review the records and consider a reclassification. Results of this review will be made known to the firm in writing by the Secretary of the Board. If the firm still does not agree with its classification, it may appeal in writing to the Director whose decision will then be final.

(e) It is the responsibility of each firm to update its Information and Experience Questionnaire (DBC Form 48A) with the Division on an annual basis. Major changes occurring in the firm's status during the course of a year should be brought to the attention of the Division in order that the prequalification record is always current.

(f) Any firm seeking classification must have at least one principal on its staff who has been engaged in active private practice with full financial responsibility for a period of two years immediately preceding its request for classification.

(g) An architectural or engineering firm wishing to introduce its capabilities and experience to the Board is encouraged to request an appearance before the Board. This appearance is not associated with a specific project but is solely for the purpose of familiarizing the Board with the firm's background and design accomplishments. Such appearances are of benefit to Board members in their subsequent evaluations for specific projects.

(h) Firms also are encouraged to submit brochures, pamphlets, photos and other literature for inclusion in their prequalification files which will be reviewed during the selection process.

(i) The classification rating assigned does not necessarily reflect the level on which an architect/engineer has performed for other clients. The Board endeavors to assign a rating which is justified by applicable overall experience, length of time in business, prior Division experience, staffing, and management depth.

- (j) Classification levels include the following categories:
1. \$350,000: Architect/Engineers with this rating may be considered for State project workload up to \$350,000;
 2. \$650,000: Architect/Engineers with this rating may be considered for State project workload up to \$650,000;
 3. \$1,000,000: Architect/Engineers with this rating may be considered for State project workload up to \$1,000,000;
 4. \$2,500,000: Architect/Engineers with this rating may be considered for State project workload up to \$2,500,000;
 5. \$5,000,000: Architect/Engineers with this rating may be considered for State project workload up to \$5,000,000;
 6. \$10,000,000: Architect/Engineers with this rating may be considered for State project workload up to \$10,000,000;
 7. \$25,000,000: Architect/Engineers with this rating may be considered for State project workload up to \$25,000,000;
 8. Unlimited: Total workload is above \$25,000 with no top limit.
 9. Not Applicable: Special category wherein construction cost estimates are not applicable (such as soils engineering acoustics; landscaping; energy conservation, etc.).

(k) State project workload shall be determined by deducting the proportionate value of incomplete work on other State projects from the assigned classification level. The Board shall not make assignments which exceed the amount of maximum State project workload of a given firm without the written approval of the Director.

(l) Firms may increase eligibility for a specific project by a joint-venturing with other firms. To be approved as a joint-venture firm, the venture must be prequalified as an entity. In addition, each individual firm of the joint-venture shall have been prequalified.

(m) Firms may apply for a specific project on a joint-venture basis without prior preclassification as a joint-venture team by simultaneous submissions of DBC 48A and 48B (Specific Project Questionnaire).

17:19-10.5 Public notification

(a) The Chairperson of the Architect/Engineer Selection Board may solicit the interest of prequalified Architect/Engineer firms for projects in the major and intermediate project classifications. The chairperson will direct the secretary to advertise these projects:

1. In design and construction publications and trade journals covering the construction industry in New Jersey and contiguous areas;
2. In local newspapers;
3. By written notice to New Jersey professional societies; and
4. By use of direct mailings to prequalified firms.

(b) Public notification shall include instructions to the effect that any firm seeking to provide services for the projects so advertised must submit a Specific Project Questionnaire (DBC Form 48B) no later than the date and time specified in the advertisement. Failure to respond within the time limits noted in the advertisement shall be cause for rejection of a firm's application.

1. The DBC Form 48B shall identify the firm's capabilities and qualifications as these may relate to the specific project advertised. It shall include its consultants in order to provide the total team effort. This questionnaire supplements the information contained in the Information and Experience Questionnaire (DBC Form 48A) submitted for prior prequalification and classification purposes. Special expertise in relation to the project at hand is one of the factors considered by the Board in evaluating firms during the screening process.

(c) The Division will not acknowledge receipt of Specific Project Questionnaires (DBC Form 48B). These documents will be made a part of the Board's records and shall be retained for a period of one year after selection has been completed.

17:19-10.6 Project initiation

(a) The selection procedure will be initiated upon the receipt by the Division of a written request and encumbrance of funds from a State client using agency. The written request shall include a description of the scope of work of the project, the time period in which the design and construction is to be completed and a current working cost estimated of the proposed project for both the design and the construction of the project.

(b) The Chairperson or his appointed representative shall evaluate the agency request and determine whether the scope of work and availability of funds are adequate. The Chairperson shall authorize the consideration of a project by the Board.

(c) When required, the Chairperson will ensure that all major projects are advertised as expeditiously as possible.

(d) The Director may authorize the initiation of specific projects without first receiving the necessary funding.

17:19-10.7 Project assignment procedures

(a) Major projects are those with a construction cost estimate of \$650,000 and higher. Major projects shall be subject to the following procedures:

1. The consideration of the assignment of an architect/engineer for a major project by the Board shall commence as expeditiously as possible after the close of the advertisement period.

2. The Secretary shall tabulate a list of all firms which have submitted a DBC Form 48B for the project being considered, upon verification that each firm is prequalified in reference to the construction cost estimate for the project and within the limit of total State work for which it is classified. The Secretary shall distribute said list to all members of the Committee in addition to making available the files and other submissions of each of the firms for evaluation.

3. The Committee will evaluate and rate the firms on the basis of a predetermined rating system. The secretary will tabulate the results and list the final five firms and one selected at random in alphabetical order. The Board may adjust the number of final firms as projects warrant.

4. Prior to the scheduled meeting of the Board, each member shall have the responsibility to review the files and other submissions of the final listed firms in order that they may evaluate and rank each firm. The evaluations of each member shall be submitted to the Secretary who will tabulate the individual and total and the number of place preference votes scores for all of the firms being considered.

i. Any member of the Committee or Board whose score indicates below average performance or capabilities of a firm, must attach an explanation to their screening sheet prior to submission to the Secretary.

5. The Chairperson shall then convene a meeting of the Board for the purpose of reviewing the results of the screening process. The Board shall, after full review and evaluation of all the firms, select firms to be interviewed by the Board. The Board has the responsibility when pre-interview and/or interview conferences are not held to furnish those firms preparing interview presentations or cost proposals a complete description of the project and scope of work and also arrange for the time and access to the project site. If it is determined that the interview procedure would not be beneficial, the Board may exercise its authority to waive the interviewing process and select firms to submit cost proposals.

6. The Chairperson or his designee shall conduct a pre-interview conference on all major projects where it is deemed appropriate. The purpose of the pre-interview conference is to allow all of the firms to be interviewed an opportunity to review the scope of work for the project and to question the Board, Division design staff and agency representatives on the particulars of the project.

7. At a pre-interview conference, attendance by at least one principal of the firm is mandatory. Non-attendance by a principal may result in disqualification of the firm from further consideration on the project. The order and time of appearance of the firms for the selection interviews will be determined by lottery at the end of the pre-interview conference. The Chairperson or his designee will attempt to establish a date for the selection interviews acceptable to all parties.

8. The interview will take place during a regularly scheduled meeting of the Board. Upon completion of the interviews, the firms shall be rated individually by each member based on a predetermined standard list of criteria.

9. The Secretary shall tabulate the scores and after open discussion a vote will be taken to determine the firms to be invited to submit cost proposals.

10. The Chairperson or his designee shall call for and conduct a preproposal conference if it is deemed necessary. The purpose of the preproposal conference is to assure that the firms submitting cost proposals have a clear and equal understanding of both the scope of work and the contractual agreement. Attendance of representatives of the completing firms, the using agency and project management is required.

11. Sealed cost proposals will be accepted on a pre-determined day and time by the Supervisor of the Architect/Engineer Contracting Group who, in the presence of the Secretary, shall open and read aloud the competitive cost proposals. The Secretary shall record the proposals received and prepare a tabulation for distribution to the Board members. The opening shall be conducted in public, and any representatives of the competing firms may be in attendance.

12. The Board shall then convene at a time and date determined by the Chairperson and shall review the technical scores of the firms in conjunction with the cost proposals and other pertinent data. The Board will deliberate for another vote in making its final selection and recommendation. The Board shall have the responsibility of determining which selection will be most advantageous to the State, technical qualifications, cost and other factors considered.

(b) Intermediate projects are those with a construction cost estimate of \$350,000 to \$650,000.

1. The Board shall have full authority to waive advertising. Based upon such relevant factors as the location, size and nature of the project, and under the guidance of the Chairperson, the Board Secretary shall develop a list of prequalified firms in sufficient number to insure adequate competition. Due consideration will be given to assignments of work to small, minority-owned and women-owned businesses.

2. Screening and solicitation of cost proposals shall, thereafter, follow procedures as described under major projects.

(c) Minor projects are those with a construction cost estimate less than \$350,000. Minor projects will be assigned through the use of miscellaneous panels as follows:

1. Annually, the Board shall advertise on a Statewide basis for those firms that may be interested in being placed on miscellaneous panels. The purpose of the list shall be to assign minor and exempt projects on an expeditious basis directly from a pre-established list.

2. Following the advertisement and receipt of DBC Form 48B, the Board shall determine the composition of miscellaneous panels and publish the list.

3. The Board shall select the firms to be placed on the miscellaneous panels from among those firms submitting a completed DBC Form 48B. The Board shall also have authority to delete firms from the list for reasons of poor performance and to add others during the year as may be required to provide the capabilities necessary to support the Division's workload.

4. The list shall be published in a format clearly indicating a separation on a regional or Statewide basis and then by professional discipline. The list, once published, shall become a public document and available upon written request to all.

5. Assignments from the lists of miscellaneous panels will be made by the Supervisor, Architect/Engineer Contracting Group. In addition to making assignments, the Group will maintain appropriate records and will report to the assignments made. Selections from the miscellaneous panels shall reflect a fair equitable distribution of work, proximity of the firm to the location of the project and consideration of appropriate disciplines and specialties of the firm.

6. The Board will establish procedures to comply with NJ Small Business Set-Aside Act requirements.

(d) Facility consultants are those consultants which the Director may delegate to a department and/or institution the authority to issue work orders for professional assignment to architect/engineers as selected by the Board and contracted by the Division to include:

1. Prequalification and classification of firms interested in providing facility consultant services shall be similar to those prescribed under N.J.A.C. 17:19-10.4.

2. Facility consultant contracts will be issued on a fiscal year basis by the Division. Contracts may be modified, cancelled or extended by request of the department and/or institution and/or the Division, with concurrence of the Architect/Engineer Selection Board and upon approval of the Director.

(e) Exempt assignments are those which are of an urgent, critical or special nature, as may be identified and substantiated in writing by Departmental Commissioners and approved by the Director. The Board shall have the authority and responsibility to recommend to the Director that the selection procedures described above may be waived. With the Director's written approval and the Treasurer's written concurrence, by means of a waiver of advertising, the Board may make project assignments in the following categories:

1. Emergency projects: Such projects are of an emergency or critical nature, normally involving life-safety considerations, loss of property, or disruption of a vital State program (for example, storm or fire damage, equipment and/or systems failures in occupied facilities, jeopardized funding of a project, potential loss of an agency's program funding, etc.).

2. Contiguous projects: Where the nature of a project is closely related to another ongoing project, or where a new project at the same facility is minor in nature as related to an ongoing project, it may be in the State's best interest to continue with an architect/engineer already working on an existing contiguous assignment.

3. Repetitive projects: Where an architect/engineer has designed a project which the State wishes to have repeated at the same site or adapted to another site, utilizing in a general manner the same basic documents, the substantial reduction in time required and in design costs for site adaptation may make assignment to the same architect/engineer advantageous to the State.

4. Special services: Where the nature of the project or the service is such that it does not fall within one of the categories listed elsewhere herein, the assignment may be considered a special service. Assignments in this category may include, but are not limited to, surveying, soils engineering, construction management, photogrammetry, and interior design. These services normally complement basic architect/engineer services on an ongoing project and may seriously affect and/or delay the ongoing project if immediate and expeditious selection is not made.

17:19-10.8 Final selection approval

(a) All selections and recommendations of the Board shall be approved by the Director, as well as all percentage or negotiated fees for any given project. The Director's approval shall be obtained by means of his/her signature on the minutes and recommendations of the Board as submitted by the Chairperson.

(b) The Director may, for substantial and justifiable reasons, reject the recommendations of the Board and request reconsideration. The Director's rejection must be made in writing to the Board. The Board will deliberate and reconsider the matter and resubmit its recommendations. In the event of disagreement, the decision of the Director is final provided it is approved by the Administrator, General Services Administration, in writing.

(c) Although the selection procedure may include the elements of advertisement, technical evaluation and cost competition, all selections and assignments imposed by the statutes must be approved by the Treasurer through a waiver of advertising pursuant to N.J.S.A. 52:34-8.

17:19-10.9 Selection Board composition

(a) The Administrator of the General Services Administration has full authority and responsibility to appoint and replace General Services Administration personnel serving as permanent members or alternates on the Architect/Engineer Selection Board. The permanent five-member Board shall be constituted as follows:

1. Chairperson, who shall be an architect or engineer employed by the Division.

2. Two other Division members, who shall be staff architects or engineers.

3. One other Division member who need not be a staff architect or engineer.

4. One member from the General Services Administration's administrative office staff who need not be an architect or engineer.

(b) Of the five members identified above, due consideration will be given to minority and/or female participation on the Board.

(c) Board participation by members is paramount. Every effort will be made to consider Board participation to assigned duties within the other activities of the General Services Administration.

(d) The Administrator of the General Services Administration shall also have the authority and the responsibility to appoint alternate members from the respective Director's staff. An alternate need not match the professional qualifications of the member he/she replaces.

(e) When the Board is considering project selections, composition of the Board shall be increased to include one voting representative of the sponsoring department or agency.

(f) Either the agency or the institution may send more than one representative to the Board sessions; however, the multiple representation shall be limited to a combined vote of one.

(g) In certain instances where a project is extremely complex, or is unusual in nature, or involves special considerations that require expert advice and assistance, the Administrator of the General Services Administration may add other voting participants to the board. However, the total number of voting participants on the Board shall never exceed nine.

(h) The Board shall proceed in their deliberations even if the agency or institution representatives fail to appear, providing the record indicates they were given proper notice.

(i) Representatives of using projects will be notified of those Board meetings where their projects will be considered in order that they may participate in the selection process.

17:19-10.10 Board rules of order

(a) On questions of parliamentary procedure not covered within these rules, the Board shall be governed according to the provisions of the latest edition of "Roberts Rules of Order." Those rules shall govern the parliamentary conduct of the Board in all cases to which they are applicable and in which they are not inconsistent with these rules and regulations. On matters of procedure of a minor nature, which are covered neither in the rules nor in "Roberts Rules of Order," the Board, by two-thirds majority vote, may adopt its own rules of conduct. If agreement cannot be reached, the dispute shall be referred to the Director for his decision, which will be final.

(b) The minimum number of Board members including the Chairperson required to conduct business is four.

(b) The Board shall establish procedures to comply with the requirements of P.L. 1983, c. 482 and P.L. 1985, c. 384, the Minority Business Enterprise, Women's Business Enterprise and Small Business Enterprise set-aside programs.

(c) All meetings and deliberations of the Board shall be conducted in full accordance with the New Jersey Open Public Meeting Act, P.L. 1975, c. 231. The Board shall conduct regular meetings on each and every Wednesday, commencing at 9:00 A.M. and continuing until completion of business. Other special meetings of the Board may be conducted with the approval of the Director.

(d) Although all of the meetings and deliberations of the Board are open to the public, the Board may request that representatives of firms having completed their presentations or waiting to make them, not sit in on the interviews of their competitors.

(e) The Board shall have authority, when it deems it is in the best interest of the State, to restrict a firm to a single assignment when several projects are being considered at the same time, providing all firms in-

involved are so advised at the time of final interview or prior to the submission of cost proposals.

(f) The Board shall have the authority to restrict a firm receiving their first assignment(s) from receiving any subsequent assignment prior to substantial completion of its initial assignment(s).

(h) The Chairperson shall appoint a Vice Chairperson from among the permanent members, providing there is a ratification of the appointment by a majority of the Board. The Vice Chairperson shall assume the authority and responsibility of the Chairperson in his/her temporary absence or until a permanent replacement is appointed by the Administrator.

(i) The Secretary shall report to the Chairperson and shall have the responsibility under the Chairperson's supervision for the maintenance of records for architect/engineer classification and the Board's deliberations. The Chairperson shall have the responsibility to insure that the minutes of the deliberations of the Board and a record of its decisions and recommendations are retained for a period of no less than two years following the completion of construction of any project or the completion design of those projects which are abandoned.

RULE ADOPTIONS

BANKING

(a)

DIVISION OF BANKING

Statement of Interest Definitions

Adopted Amendment: N.J.A.C. 3:7-5.1

Proposed: February 17, 1987 at 19 N.J.R. 327(a).

Adopted: March 24, 1987 by Roger F. Wagner, Acting
Commissioner, Department of Banking.

Filed: March 27, 1987 as R.1987 d.192, **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:9A-256, 17:9A-260 and 17:1-8.1.

Effective Date: April 20, 1987.

Expiration Date: September 16, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

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

3:7-5.1 Definitions

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

- ...
"Bank holding company" is a company which controls a bank.
"Business enterprise" means a corporation, association, business trust, partnership, joint venture, pool, syndicate, sole proprietorship or any other form of business not specifically listed herein, whether or not such enterprise has engaged in transactions with the designated bank. The term "business enterprise" also includes any personal or family trust and any local governmental unit if, and only if, such enterprise has engaged in any transaction with the designated bank during the last year. The term "business enterprise" excludes:
- 1.-3. (No change.)
 4. A bank holding company whose control of the designated bank is registered with or approved by the Board of Governors of the Federal Reserve System, pursuant to sections 3 or 5 of the Bank Holding Company Act, 12 U.S.C. 1842 or 1844, or any of such holding company's subsidiaries the control of which has been registered with or approved by the Board of Governors of the Federal Reserve pursuant to section*s* 3, 4, *[and]* *or* 5 of the Bank Holding Company Act, 12 U.S.C. 1842, 1843 or 1844.
 5. Any other bank holding company and any company controlled by a bank holding company.

...
"Control" and "company" have the meanings set forth in N.J.S.A. 17:9A-373(e) and (f).

...
"Subsidiary" means a company controlled by a bank holding company.

EDUCATION

STATE BOARD OF EDUCATION

(b)

Thorough and Efficient System of Free Public Schools

Promotion and High School Graduation Requirements and Procedures

Adopted Amendment: N.J.A.C. 6:8-7.1

Proposed: January 5, 1987 at 19 N.J.R. 4(a).

Adopted: March 16, 1987 by State Board of Education,
Saul Cooperman, Secretary.

Filed: March 20, 1987 as R.1987 d.185, **without change.**

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

Effective Date: April 20, 1987.

Expiration Date: January 5, 1992.

Summary of Public Comments and Agency Responses:

The Department of Education received only one letter of comment. The commenter suggested that:

1. The need for career education can be met in a variety of ways, but continuing it as a mandated program, either through a separate course or the infusion method, seems to attach more importance to the topic than it deserves at this time.
2. Increased State requirements, coupled with the need to reserve time for High School Proficiency Test (HSPT) preparation/remediation, leaves little room in many individual schedules for electives.
3. Eliminating the career education requirement would help alleviate this problem.

RESPONSE: The decision to establish a special curriculum for career education is within the discretion of the local school district. The HSPT is not a separate course of instruction but rather is recognized and addressed within traditional instruction in reading, writing, and mathematics. It is unnecessary for HSPT preparation to intrude on individual schedules for elective course work among the general student population.

Full text of the adoption follows.

6:8-7.1 Promotion, remediation and graduation procedures

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

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

1. District boards of education providing high school diplomas, in cooperation with any sending district(s), shall adopt policies and procedures for defining minimum high school curriculum requirements and locally determined proficiencies therein, pursuant to law and rule, which shall include but not be limited to:
 - i. Requiring the successful completion of a program of study in grades nine through 12, effective with the September, 1987 grade nine class, which shall include but not be limited to:
 - (1) One credit year of English for each year of enrollment, up to four credit years;
 - (2) Two credit years of mathematics effective through August, 1990; three credit years of mathematics effective with the September, 1990 grade nine class;
 - (3) Two credit years of social studies/United States history as required by N.J.S.A. 18A:35-1 through August 1988, and one additional credit year of world history/cultures effective with the September, 1988 grade nine class;
 - (4) One credit year of natural or physical science through August, 1989; two credit years of natural or physical science effective with the September, 1989 grade nine class;
 - (5) One credit year of physical education, health and safety for each year of enrollment as required by N.J.S.A. 18A:35-7.
 - (6) One credit year of fine, practical, and/or performing arts until August, 1988; and

(7) One-half credit year of career education. This requirement may be satisfied through the alternative methods of infusion into existing courses, course equivalents or a career education course. For credit to be awarded, career education shall be offered as a course as specified in (c)lii below or in (d) below.

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

2. Pupil proficiencies in (c) above shall be developed as follows:

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

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

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

(a)

**Thorough and Efficient System of Free Public Schools
Promotion and High School Graduation
Requirements and Procedures**

Adopted Amendment: N.J.A.C. 6:8-7.1

Proposed: January 5, 1987 at 19 N.J.R. 4(b).

Adopted: March 16, 1987 by State Board of Education,
Saul Cooperman, Secretary.

Filed: March 20, 1987 as R.1987 d.186, **without change.**

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

Effective Date: April 20, 1987.

Expiration Date: January 5, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

6:8-7.1 Promotion, remediation and graduation procedures

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

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

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

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

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

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

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

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

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

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

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

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

2. Pupil proficiencies in (c) above shall be developed as follows:

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

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

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

(b)

**Pupil Transportation
Inspection**

Adopted New Rule: N.J.A.C. 6:21-18

Proposed: January 5, 1987 at 19 N.J.R. 5(a).

Adopted: March 16, 1987 by State Board of Education,
Saul Cooperman, Secretary.

Filed: March 20, 1987 as R.1987 d.184, **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:39-1, 18A:39-20.1,
18A:39-21, 18A:39-8.1, 48:4-1, 18A:4-2.1a, N.J.A.C. 13:20-30
and 16:53-3.23.

Effective Date: April 20, 1987.

Expiration Date: August 9, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

The Board has deleted the erroneous citation to N.J.S.A. 18A:39-20.1 in N.J.A.C. 6:21-18.3(a) as proposed.

Full text of the adoption follows (deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 18. INSPECTION

6:21-18.1 Applicability

(a) The provisions of this subchapter shall be applicable to all vehicles which are registered in this State, owned or leased by a district board of education, school bus contractor or individual under contract with a board of education and used for transportation of pupils to and from school and/or to and from related school activities.

(b) All vehicles shall be systematically inspected twice within the year to ensure that such vehicles and accessories are in safe and proper operating condition. Time and location of inspection shall be established by the Director, Division of Motor Vehicles or the Commissioner, Department of Transportation, whichever is the appropriate agency. Nothing contained herein shall limit the Department of Education's authority to require more frequent inspection of such vehicles when, in the Department's determination, the safety of pupils so requires.

6:21-18.2 Division of Motor Vehicles inspection

(a) No school vehicle registered with the Division of Motor Vehicles which is owned by or under contract with a district board of education shall be used for transportation of pupils to and from school and/or to and from related school activities, as defined in N.J.S.A. 18A:39-1, unless such school vehicle is issued a school bus inspection sticker by the Division of Motor Vehicles. School vehicles shall be inspected or re-inspected at Motor Vehicle Inspection Stations.

(b) The Division of Motor Vehicles is responsible for the school vehicle inspection of the following vehicle registrations:

- 1. S1 (School Vehicle Type I);
- 2. S2 (School Vehicle Type II);
- 3. Livery; and
- 4. Handicapped.

(c) Owners and operators of buses shall submit evidence of inspection by the Division of Motor Vehicles to the county superintendent of schools at such time as he or she may deem necessary.

6:21-18.3 Department of Transportation inspection

(a) No autobus under jurisdiction of the Department of Transportation and under contract with a district board of education shall be used for transportation of pupils to and from school and/or to and from school related activities, as defined in N.J.S.A. 18A:39-1 *[and 18A:39-20.1]*, unless such autobus is authorized for school use on the certificate of inspection issued by the Department of Transportation.

(b) The Department of Transportation is responsible for the inspection and certification for school use of the omnibus vehicle registration.

(c) Owners or operators of buses approved for school use by the Department of Transportation shall submit evidence of such approval to the county superintendent of schools at such time as he or she may deem necessary.

6:21-18.4 Responsibility for reports and records

(a) School bus owners shall retain all records of inspection and quarterly maintenance reports for the life of the vehicle. Such records shall be available for review by the Division of Motor Vehicles, Department of Transportation and the Department of Education.

(b) Inspection records must include:

1. A daily vehicle condition report by a driver. These reports must be retained for not less than 13 months;
2. A record of vehicle inspection;
3. A systematic inspection and quarterly maintenance record signed by the person making repairs and inspection which shall be maintained for each vehicle;
4. For leased or otherwise contracted vehicles, an identification of the lessor or contractor furnishing the school bus shall also be included.

(a)

State Library Assistance Programs Municipal Branch Library Services

Adopted New Rules: N.J.A.C. 6:68-7

Proposed: January 5, 1987 at 19 N.J.R. 6(a).

Adopted: March 16, 1987 by State Board of Education,
Saul Cooperman, Secretary.

Filed: March 20, 1987 as R.1987 d.183, with technical changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:74-3.2.

Effective Date: April 20, 1987.

Expiration Date: April 12, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

In N.J.A.C. 6:68-7.3(b)2, the word "development" was added to the end of the paragraph to clarify the meaning of the paragraph. The subchapter title, omitted in the proposal, was also added.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*).

SUBCHAPTER 7. MUNICIPAL BRANCH LIBRARY SERVICES

6:68-7.1 Scope and purpose

The rules in this subchapter provide funds to any municipal library which receives State aid pursuant to N.J.S.A. 52:27D-178 et seq. and maintains one or more branch libraries to assist in maintaining, operating and improving branch libraries, pursuant to the provisions of the Library Development Aid Law, (Chapter 297, Laws of 1985), N.J.S.A. 18A:74-3.2(a).

6:68-7.2 Definitions

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

"Expanded programs of library services" means new services, changes in or expansion of services already offered.

"Municipal branch library" means an auxiliary public library which has all of the following but is administered from a central unit:

1. Separate quarters;
2. A permanent basic collection of library materials;
3. A permanent paid staff;
4. A regular schedule for opening to the public.

"Operational/developmental grants" means funds provided for a municipal branch library program, services and materials or for expanding/changing services to meet community needs.

"Planning grants" means funds for the preparation or updating of a plan which outlines the future development and services of a municipal branch library.

6:68-7.3 Eligible projects

(a) A planning grant of up to \$10,000 will be provided to a municipal library to fund the preparation or updating of a plan outlining the future development and services of a municipal branch library.

1. The plan must include a five year population projection, services to be provided by each branch library, a description of the target population to be served by the branch and a description of other existing library and information resources in the community.

2. At the end of the funding period, the project may be terminated without further obligation. A copy of the plan for municipal branch library development will be submitted with a report of expenditures to the State Librarian.

(b) An operational/developmental grant of up to \$25,000 will be provided to a municipal library for branch program, services and materials. Funds may also be used to develop expanded programs of branch library services. These services may be provided through cooperation with other types of libraries. To be eligible for an operational/developmental grant, a library must submit to the State Librarian a copy of the plan for municipal branch library development which was funded under (a) above or an acceptable master plan for municipal branch library development which was completed within the previous five years.

1. At the end of the funding period, the library will submit to the State Librarian a report of expenditures and a report describing the relationship of the activities undertaken with the municipal branch library plan.

2. A municipal library may apply for two additional years of funding. Renewal will be based on an evaluation of the previous year's activities and expenditures and the relationship of these factors to the plan for municipal branch library *development*.

6:68-7.4 Grant application procedures

(a) Application forms for assistance programs may be obtained from the New Jersey State Library, Library Development Bureau, Grants/Contracts Unit, 185 West State Street, Trenton, New Jersey 08625-0520.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.

6:68-7.5 Criteria for approval

(a) Applications will be evaluated on the basis of the following criteria:

1. All initial applications shall be ranked in terms of the municipalities' ability to pay with priority given to applicants demonstrating the least financial resources. The ratio of equalized valuation (as listed in the "Certification of Table of Equalized Valuations", promulgated annually on October 1st by the New Jersey Division of Taxation) of the year preceding the date of application to the population estimate (as promulgated by the New Jersey Department of Labor) of the municipality for the year preceding the date of application shall be used as the criterion in determining financial ability. When applications for funds exceed the amount available, preference will be given to projects which have already been initiated under the Municipal Branch Library Services Program;

2. Description of the potential impact of the service on the population to be served;

3. Evidence of interest, need or demand for the proposed service;

4. Clearly defined goals and objectives for the program;

5. Adequacy and realism of budget and cost estimates;

6. Proposed method of measurement and evaluation.

6:68-7.6 Application of funds to library services

(a) Funds received pursuant to these rules shall not be applied to any other purpose than the development of branch library services.

(b) Funds received pursuant to these rules shall not be used for capital expenditures.

6:68-7.7 Reports and audits

Grant recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-7.8 Appeal procedures

(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity for an informal fair hearing before the State Librarian.

(b) In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 et seq.).

(a)**State Library Assistance Programs
Collection, Evaluation and Development****Adopted New Rules: N.J.A.C. 6:68-8**

Proposed: January 5, 1987 at 19 N.J.R. 7(a).

Adopted: March 16, 1987 by the State Board of Education,
Saul Cooperman, Secretary.Filed: March 20, 1987 as R.1987 d.182, with technical changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:74-3.2.

Effective Date: April 20, 1987.

Expiration Date: April 12, 1990.

Summary of Public Comments and Agency Responses:**No comments received.**

The Board, in order to clarify the meaning of N.J.A.C. 6:68-8.3(c), has deleted the word "budget" from the subsection as proposed and added the word "collections" to the adopted text.

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

**SUBCHAPTER 8. COLLECTION EVALUATION AND
DEVELOPMENT****6:68-8.1 Scope and purpose**

The rules in this subchapter provide for assistance to any public library for the evaluation and development of collections, pursuant to the Library Development Aid Law, (Chapter 292, Laws of 1985), N.J.S.A. 18A:74-3.2.

6:68-8.2 Definitions

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

"Collection development" means activities relating to the development of a library collection, including the determination and coordination of selection policies, assessment of needs of users and potential users, collection use studies, collection evaluation, identification of collection needs, selection of materials, planning for resource sharing, collection maintenance and weeding and purchase of library books, periodicals and serials.

"Collection evaluation" means the process of assessing a library collection in terms of specific objectives or in terms of the needs of the patrons of the particular collection.

"Collections" means books, periodicals and serials in any format.

"Coordinated collection development plan" means an agreement among a group of libraries to take responsibility for building and maintaining collections in specific subject areas to increase the resource sharing capabilities of the libraries.

"Public library" means a municipal, county, association or joint library which receives public funding.

"User studies" means a method of determining the information needs of current library patrons or potential library patrons.

6:68-8.3 Eligible projects

(a) Grants will be available for the following activities which may be provided locally, regionally or statewide:

1. Collection evaluation and/or user studies;
2. Development of a written coordinated collection development plan among a group of public libraries.

(b) Grants will be available to a group of public libraries to purchase materials for their collections in accordance with their written coordinated collection development plan. The implementation of the coordinated collection development plan must increase the resource sharing capabilities of the libraries involved.

(c) Subject specialty development grants will be available to a public library(ies) to develop and/or to strengthen specific *[budget]* *collections* subject through the purchase of materials.

6:68-8.4 Funding allocation

The State Librarian shall determine annually percentages of the total funding to be assigned to each eligible project area.

6:68-8.5 Grant application procedures

(a) Application forms for assistance programs may be obtained from the New Jersey State Library, Library Development Bureau, Grants/Contracts Unit, 185 West State Street, Trenton, New Jersey 08625-0520.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.

6:68-8.6 Criteria for approval

(a) Applications will be evaluated on the basis of the following criteria:

1. The library must meet all State Library Aid criteria as specified in N.J.S.A. 6:68-1 et seq.;

2. The anticipated contribution of the program to the overall development of library resources in New Jersey;

3. The resource sharing potential of the project to a local public library and to the members of the New Jersey Library Network;

4. Assurance that the library will make provision for the bibliographic access to these materials to facilitate interlibrary loan;

5. Assurance that the library budget for collections will not be reduced below the amount the library received in the year preceding receipt of the grant for at least two years after the grant program is completed;

6. Evidence of need or demand for the proposed resources;

7. Adequacy and realism of budget and cost estimates;

8. Documentation to the effect that the proposed project could not be undertaken solely with local funds;

9. Anticipated contribution to the library programs and services of the applicant library; and

10. Such additional criteria and documentation as the State Librarian may establish on an annual basis.

6:68-8.7 Reports and audits

Grant recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-8.8 Appeal procedures

(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity for an informal fair hearing before the State Librarian.

(b) In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 et seq.).

(b)**State Library Assistance Programs
Maintenance of Library Collections****Adopted New Rules: N.J.A.C. 6:68-9**

Proposed: January 5, 1987 at 19 N.J.R. 8(a).

Adopted: March 16, 1987 by State Board of Education,
Saul Cooperman, Secretary.Filed: March 20, 1987 as R.1987 d.181, with a technical change
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:74-3.2.

Effective Date: April 20, 1987.

Expiration Date: April 12, 1990.

Summary of Public Comments and Agency Responses:**No comments received.**

The subchapter title, omitted from the proposal, has been added.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*).

***SUBCHAPTER 9. MAINTENANCE OF LIBRARY
COLLECTIONS*****6:68-9.1 Scope and purpose**

The rules in this subchapter provide for assistance to libraries to be used for housing, protection, preservation, repair, restoration and maintenance of collections of historical or special interest, pursuant to the provisions of the Library Development Aid Law (Chapter 297, Laws of 1985), N.J.S.A. 18A:74-3.2(c).

6:68-9.2 Definitions

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

"Accessibility" means availability of materials for borrowing, consultation, in-house use or reproduction, depending on the nature and condition of the materials and the collections.

"Collection maintenance" means activities to preserve the materials in a collection, including care and handling, binding, mending, repairing, marking and shelving.

"Collection of historical or special interest" means all or part of a group of materials with permanent significance to New Jersey's documentary heritage or with general research value and uniqueness.

"Comprehensive preservation program" means the organization and operation of all activities associated with maintaining library materials for use.

"Comprehensive preservation program development" means the initial steps taken by a library in planning for the establishment of a comprehensive program for preservation of its materials, including consultant visits, reports, and self-studies.

"Condition survey" means a systematic study of a library collection to ascertain its physical state.

"Conservation treatment" means the direct use of chemical and physical procedures to ensure the preservation of library materials.

"Cooperative preservation planning and programs" means planning or programs carried out by a group of libraries concerned with the care, protection and salvage of their collections.

"Disaster recovery" means supplies, equipment and services needed to restore a disaster-damaged collection to usefulness.

"Emergency planning" means the development of written instructions on how to deal effectively with emergency situations which can jeopardize the existence of a collection.

"Housing" means to provide equipment, products, supplies and appropriate environmental conditions or their creation and maintenance for the long term storage and maintenance of a collection.

"Identification/inventory" means a descriptive list of items in a collection, giving as a minimum the title, dates, quantity, arrangement, description of significant subject content and estimate of uniqueness, in a format meeting appropriate bibliographic standards.

"Library" means an organized collection of accessible print and/or nonprint materials with appropriate staff to maintain such materials and to provide reference, research and other services to the public.

"Maintenance" means the preservation of the physical and organizational integrity of the collection.

"Materials" means physical entities of any substance that serve as carriers of information.

"Materials conversion" means the process of converting library materials from one format to another for the purpose of preservation.

"Organization" means the systematic arrangement of the collection to facilitate access.

"Preservation" means the activities and organization associated with maintaining library and archival materials for use, either in their original physical form or in some other usable way.

"Privately supported library" means a library whose parent agency receives less than 50 percent of its annual funding support from governmental sources.

"Protection" means any of the various activities, containers and materials which shield library materials from the harmful effects of storage, environmental conditions and use.

"Publicly supported library" means a library whose agency receives 50 percent or more of its regular annual funding support from governmental sources.

"Repair" means the partial rehabilitation of a worn item using high quality, long lasting materials and supplies and accepted, conservationally sound methods.

"Restoration" means any of various processes whereby a deteriorated book or paper document or other library material is returned as nearly as possible to its original condition.

6:68-9.3 Eligible projects

(a) Grants will be made to libraries to increase accessibility to historical or special interest collections through projects including identification/inventory, organization and preservation, condition survey, collection maintenance, comprehensive preservation program development, emergency planning, disaster recovery, protection, collection maintenance, housing, materials conversion, repair, conservation treatment and restoration.

(b) Grants will be available for cooperative preservation planning and programs.

6:68-9.4 Funding allocation

(a) No less than 75 percent of program funding will be used each year for grant awards to publicly supported libraries.

(b) No more than 25 percent of program funding will be used each year for grant awards to privately supported libraries.

(c) Libraries with projects dealing with cooperative preservation planning or programs are encouraged to apply.

6:68-9.5 Grant application procedures

(a) Application forms for assistance programs may be obtained from the New Jersey State Library, Library Development Bureau, Grants/Contracts Unit, 185 West State Street, Trenton, New Jersey 08625-0520.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.

6:68-9.6 Criteria for approval

(a) Applications will be evaluated on the basis of the following criteria:

1. Historical or special nature of the collection and its value or uniqueness within New Jersey's documentary heritage;

2. Contribution of the project to resource sharing within the State and the New Jersey Library Network;

3. Evidence of prior preservation interest or development;

4. Evidence that the project fits into an ongoing, comprehensive preservation plan or that the project will initiate such a comprehensive preservation plan;

5. Provision of adequate staff and staff training;

6. Provision of consultants who meet the following requirements:

i. At least three years of appropriate library experience or an equivalent combination of training and experience;

ii. Familiarity with preservation and conservation in library applications;

iii. Demonstrated successful experience in preservation and conservation planning, implementation and consultation.

7. Evidence of the need for the project;

8. Clearly defined goals and objectives for the project;

9. Adequacy and realism of budget and cost estimates;

10. Documentation to the effect that the proposed project should not be undertaken solely with local funds;

11. Anticipated contribution to the library programs and services of the applicant library; and

12. Such additional criteria and documentation that the State Librarian may establish on an annual basis.

6:68-9.7 Report and audits

Grants recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-9.8 Appeal procedures

(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity for an informal fair hearing before the State Librarian.

(b) In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 et seq.).

ENVIRONMENTAL PROTECTION**(a)****OFFICE OF SCIENCE AND RESEARCH****Industrial Survey Project Rules****Adopted New Rules: N.J.A.C. 7:1F-1 and 7:1F-2**

Proposed: January 5, 1987 at 19 N.J.R. 11(a).

Adopted: March 27, 1987, by Richard T. Dewling,
Commissioner, Department of Environmental Protection.
Filed: March 30, 1987, as R.1987 d.193, **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. 13:1D-9 and 58:10A-1 et seq.

DEP Docket No. 058-86-12.

Effective Date: April 20, 1987.

Expiration Date: April 20, 1992.

Summary of Public Comments and Agency Responses:

Two divisions of one corporation filed written comments on or before the February 4, 1987 comment deadline.

COMMENT: An industrial establishment which has submitted an Environmental Survey as required by the New Jersey Right-to-Know Regulations (N.J.A.C. 7:1G-3.1 et seq.) should not be required to submit an Industrial Survey. Requiring the completion of both surveys would be an unnecessary duplication of effort as both surveys contain similar information.

RESPONSE: The Department will allow a respondent facility to substitute a complete and up-to-date "Environmental Survey—Part II (Long Form)" for the Industrial Survey "Selected Substance Report" in any case where a duplicate reporting requirement may exist. New text has been added to clarify this policy.

COMMENT: For the sake of consistency, the list of Selected Substances (Table 1, Appendix A of N.J.A.C. 7:1F) should be revised to conform with the Environmental Hazardous Substance List contained in N.J.A.C. 7:1G-2.1.

RESPONSE: The Department does not intend to modify the Selected Substance List at this time. One of the important uses of the Selected Substance Report is to obtain data on the industrial use and environmental release trends of the same set of substances over a period of time. Therefore, making major modifications to the list may restrict the utility of the project. However, in the future, the Department may amend the list on the basis of new information.

It is noteworthy that the Federal Superfund Amendments and Reauthorization Act, P.L. 99-499, incorporated the existing list of Selected Substances into the "List of Toxic Chemicals" subject to the provisions of Section 313 of the Emergency Planning and Community Right to Know Act of 1986.

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*).

7:1F-1.1 to 1.5 (No change.)

7:1F-1.6 Response to questionnaires

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

(g) To satisfy the requirements of (b) and (c) above, respondents may submit Part II of the Environmental Survey required by N.J.A.C. 7:1G where the information required by Part II of the Environmental Survey is the same as is required by the questionnaire.

7:1F-1.7 (No change.)

7:1F-2 (No change.)

DIVISION OF COASTAL RESOURCES**(b)****Boat Regulations****Boating and Water-Skiing****Adopted Amendments: N.J.A.C. 7:6-1.37 and 3.2****Adopted Repeals and New Rules: N.J.A.C. 7:6-1.26, 3.5 and 4.5****Adopted New Rules: N.J.A.C. 7:6-3.10, 3.11, 3.12 and 4.7.**

Proposed: March 2, 1987 at 19 N.J.R. 396(a).

Adopted: April 2, 1987 by Kenneth L. Husted, Chairman,
New Jersey Boat Regulation Commission and approved by
Richard T. Dewling, Commissioner, Department of
Environmental Protection.

Filed: April 2, 1987 as R.1987 d.194, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-1 et seq., 12:6-1(e), 12:7-34.1 et seq.,
specifically 12:7-34.49 and 12:7-44.

DEP Docket No. 002-87-02.

Effective Date: April 20, 1987.

Expiration Date: December 19, 1988.

Summary of Public Comments and Agency Responses:

The comment period for the proposal ended April 1, 1987. During that period, two people submitted comments.

COMMENT: At N.J.A.C. 7:6-1.26, the proposed rule should retain from the original regulation the phrase, "sufficient to prevent excessive or unusual noise." Also, this section should be cross-referenced to N.J.A.C. 7:6-6.1 et seq., so that, at a minimum, muffling systems of vessels operated on the waters of this State meet the noise limitation standard to N.J.A.C. 7:6-6.3(a).

RESPONSE: The Department does not believe that the phrase, "sufficient to prevent excessive noise" is necessary to accomplish the goal of this provision. The provision, as it is being adopted, provides that if a vessel does not have a noise muffling system that is in good working order, then it is in violation of the regulation. Compliance with this requirement can be determined by observation by enforcement personnel and so will be easier to enforce. Muffling systems, if in good working order, are expected to prevent excessive and unusual noise.

As this comment points out, noise level standards are found at N.J.A.C. 7:6-6.3. These standards apply to all vessels operating on the waters of New Jersey. There is, therefore, no need to provide a cross-reference to these standards at N.J.A.C. 7:6-1.26.

COMMENT: At N.J.A.C. 7:6-4.5(c), the proposed rule could be strengthened with a cross-reference to N.J.A.C. 7:6-1.31 to emphasize that, even when operating at a speed of five miles per hour or less, a vessel must be operated "so as to avoid danger of injury . . . by the effect of the wash or wave raised by such power vessel. . ."

RESPONSE: The provisions of N.J.A.C. 7:6-1.31 apply to all power vessels operating on the waters of the State. There is no need to refer to these provisions at N.J.A.C. 7:6-4.5.

COMMENT: At N.J.A.C. 7:6-4.5(d), the second sentence of the proposed rule would be strengthened and made clearer by being rewritten as follows:

Operation of the vessel in such a manner shall constitute, without further proof, careless operation within the meaning of N.J.S.A. 12:7-34.22.

RESPONSE: The Department agrees and has modified this provision accordingly.

COMMENT: Inasmuch as the statute (at N.J.S.A. 12:7-34.22 and 47) speaks of "reckless or careless" operation, perhaps N.J.A.C. 7:6-1.29 should be amended for the sake of consistency therein "careless" for "negligent."

RESPONSE: No changes to N.J.A.C. 7:6-1.29 were proposed. Therefore, this comment cannot be considered as part of this rule-making action. The suggestion was presented to the March 17, 1987 meeting of the New Jersey Boat Regulation Commission and is being considered.

COMMENT: Does N.J.A.C. 7:6 apply to the Delaware River?

RESPONSE: The general provisions of N.J.A.C. 7:6 apply to all waters within the jurisdiction of the State. Additionally, that portion of the Delaware River north of the Route 95 overpass at Scudder Falls is defined as non-tidal waters and as such, is subject to the provisions of N.J.A.C. 7:6-4. That subchapter imposes requirements for vessel operation and operators upon non-tidal waters.

Other than the general requirements addressing water-skiing at N.J.A.C. 7:6-1.37, there are no standards relating to this type of activity upon the Delaware River. This issue will be reviewed by the Boat Regulation Commission.

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

7:26-1.26 Muffling device

Every outboard motor, inboard motor or inboard/outboard motor in use or attached to a vessel operating on the waters of this State shall be equipped with a muffling system as supplied by the manufacturer or installed by the owner. The muffling system shall be maintained in good working order at all times. An exception to this requirement will be allowed for operation during authorized races sanctioned by the United States Coast Guard, New Jersey State Police, or other operation with a race test permit issued by the State Police.

7:6-1.37 Water-skiing

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

(d) Tow lines shall not be less than 50 feet nor more than 75 feet in length.

(e) (No change.)

(f) The ski boat shall contain at least one throwable personal flotation device (PFD's).

(g) All skiers shall wear a United States Coast Guard Approved Type I, II, III or Type V Hybrid Personal Flotation Device.

(h) The term "water-skiing" shall be defined as anything with a rider, being towed behind a power vessel by means of a tow rope or line, except another vessel.

(i) (No change in text.)

7:6-3.2 Deal lake, Monmouth County

(a) Water-skiing is permitted east of the Main Street bridge only, in accordance with N.J.A.C. 7:6-1.37 (Water-skiing) except as otherwise provided herein.

(b)-(e) (No change.)

7:6-3.5 Paulinskill Lake, Sussex County

(a) Water-skiing shall be permitted on Paulinskill Lake only within the designated ski course as described below:

1. The skiing course shall commence at a point approximately 2,000 feet northeast of Beach No. 2 and run in a northeasterly direction on a line established in the center of the lake, to a point at the northeastern end of the Paulinskill Lake Association tract (said point is also known and designated as the southwestern end of the Lennington or campground tract); thence turn 180 degrees and run in a southwesterly direction along the center of the lake to the finish point which shall be at approximately the same point as the starting area designated as 2,000 feet northeast of Beach No. 2.

2. The ski course described in (a)1 above, including the start, stop and turning areas, will be identified by marker buoys.

(b) Skiing hours are designated as follows:

Weekdays—10:00 A.M. to sunset

Saturdays, Sundays and Holidays—12:00 noon to sunset

(c) Skiers shall begin the course at the designated start area and continue on the right hand side of the center line in a counterclockwise direction.

(d) Turning shall be permitted only in the designated areas except when retrieving a fallen skier.

(e) A boat with a skier just starting the course shall yield the right of way to a boat and skier turning to repeat the course.

(f) A boat with a skier may continue around the ski course as many times as desired, turning in the designated areas.

(g) When more than one boat is on the ski course at the same time, each boat shall maintain a distance of at least 1,000 feet between itself and the boat in front of it.

(h) No boat shall pass a boat with a fallen skier unless signaled to do so by an occupant of that boat.

(i) A slalom course is established and located directly in front of the parallel to Beach No. 2. The starting area shall be a point 250 feet northeast of Beach No. 1. Turning areas shall be located approximately 250 feet northeast of Beach No. 1 and 1,000 feet northeast of Beach No. 2.

1. Slalom hours shall be as follows:

Weekdays—6:00 P.M. to sunset

Weekends and Holidays—8:00 A.M. to 12:00 noon

(j) Skiers shall comply with N.J.A.C. 7:6-1.37 and with all other applicable boating regulations.

7:6-3.10 Lake Hopatcong, Sussex and Morris County

(a) From May 15 through September 15 of each calendar year, no person shall ski on Saturdays, Sundays or holidays between the hours of 11:00 A.M. and 5:00 P.M. in the following areas:

1. Byram Cove;

2. Between Raccoon Island and Prospect Point;

3. Between Prospect Point and Halsey Island;

5. Woodport Cove.

(b) For the purposes of this section, the term "water-skier" or "skier" shall mean all persons pulled behind a power vessel, and attached to a power vessel by means of a line, whether said person is using water skis, an aquaplane, raft or tube, inflatable or otherwise.

(c) No boat shall pull more than two skiers at any one time on Saturdays, Sundays or holidays from May 15 through September 15 of any year except when participating in an exhibition or race sanctioned by the United States Coast Guard or State Police.

(d) Every ski boat shall have a crew of at least two persons; one of which shall be a licensed operator and the other an observer who shall not be less than 13 years of age.

(e) The ski boat shall not be loaded beyond the manufacturer's recommended capacity. For purposes of this subsection, the skier, or skiers, shall be included when determining the number of passengers in the boat.

(f) While towing a skier, the operator of the vessel shall maintain a distance from any shore, structure, buoy, person in the water, vessel or other object, that is not less than the length of the tow line plus 100 feet.

(g) All ski boats shall carry a signal flag, which shall extend four feet above the highest structure, and shall be orange in color and triangular in shape and not less than 12 inches on any dimension. Said pennant shall be displayed while pulling or retrieving skiers, while a skier is in the water or while the tow line is in the water.

(h) The ski boat operator shall, when a skier has fallen, or has otherwise become disconnected from the tow line, reduce speed and return to the skier in a safe and reasonable manner.

(i) The dropping of skis for the purpose of barefoot or slalom skiing is prohibited, unless the ski is immediately retrieved by a following vessel.

7:6-3.11 Cranberry Lake, Sussex County

Water-skiing on Cranberry Lake shall be conducted in a counterclockwise direction only.

7:6-3.12 Compliance with other regulations

In addition to the specific requirements set forth in this section, skiers shall comply with N.J.A.C. 7:6-1.37 and with all other applicable boating regulations.

7:6-4.5 Operation on Lake Hopatcong

(a) No vessel shall be operated upon Lake Hopatcong between the hours of sunset and sunrise at a speed in excess of 10 miles per hour.

(b) No vessel shall be operated upon Lake Hopatcong on Saturdays, Sundays or legal holidays between May 15 and September 15 at a speed in excess of 30 miles per hour.

(c) No vessel shall be operated at a speed in excess of five miles per hour within 100 feet of shore, any wharf, pier, bridge, dock structure, buoy or person in the water or designated bathing area which is marked by buoys.

(d) No vessel shall be operated at such a speed that shall cause 100 percent of the hull to come out of the water. *[Failing to maintain control]* *Operation* of the vessel in such a manner shall constitute, without further proof, careless operation. An exception to this requirement will be allowed for operation during authorized races sanctioned by the United States Coast Guard, New Jersey State Police, or with a race test permit issued by the State Police.

(e) When the water level reaches the Extreme High Water Level (Elevation 924.20 feet) or when the staff at the dam in Hopatcong State Park reads 9.5, a "Slow Speed—No Wake" condition shall exist.

7:6-4.7 Operation on Cranberry Lake

(a) Subject to the restrictions imposed by (b) below, vessels operating on Cranberry Lake shall not exceed a speed of 35 miles per hour.

(b) No person shall operate a vessel at a speed in excess of five miles per hour between sunset or sunrise or at any time in the following areas:

1. In front of the clubhouse and extending north of the bridge into Laurel Cove;

2. Between Rose's Beach and Rock Island;

3. In Weaver House Cove.

4. Within 100 feet of any shore, any wharf, pier, bridge, dock structure, buoy or person in the water or designated bathing area which is marked by buoys.

(c) Any person swimming or using a raft, tube or other flotation device shall be accompanied by a boat escort unless such person is not more than 75 feet from the shore or is in an area in which vessel speed is limited to five miles per hour.

(a)

**Flood Hazard Area Delineation
Redelineation of Holland Brook in the Raritan Basin
in Branchburg Township, Somerset County
Adopted Amendment: N.J.A.C. 7:13-7.1(d) (Plate No.
HB-1)**

Proposed: September 22, 1986 at 18 N.J.R. 1866(a).
Adopted: March 24, 1987 by Richard T. Dewling, Commissioner,
Department of Environmental Protection.
Filed: March 30, 1987 as R.1987 d.197, **without change**.
Authority: N.J.S.A. 58:16A-50 et seq. and 13:1D-1 et seq.
DEP Docket No. 040-86-08.
Effective Date: April 20, 1987.
Expiration Date: May 4, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

7:13-7.1(d) Delineated floodways

No change in the text of N.J.A.C. 7:13-7.1(d) is required.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey, and at the Department of Environmental Protection, Bureau of Flood Plain Delineation, 1911 Princeton Avenue, Lawrenceville, New Jersey.

The revised floodway is identified on the plate specifically identified:

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
DELINEATION OF FLOODWAY
AND FLOOD HAZARD AREA
HOLLAND BROOK PLATE HB-1

(b)

**Flood Hazard Area Delineation
Redelineation of Henderson Brook in the Passaic
River**

Adopted Amendment: N.J.A.C. 7:13-7.1(e)

Proposed: November 3, 1986 at 18 N.J.R. 2169(a).
Adopted: March 27, 1987 by Richard T. Dewling, Commissioner,
Department of Environmental Protection.
Filed: March 30, 1987 as R.1987 d.195, **without change**.
Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.
DEP Docket No. 046-86-10.
Effective Date: April 20, 1987.
Expiration Date: May 4, 1989.

Summary of Public Comments and Agency Responses:

Notice of the proposed amendment was published on November 3, 1986 in the New Jersey Register at 18 N.J.R. 2169(a). The notice also advised that a public hearing has been scheduled for November 19, 1986 at 1:00 P.M. at the Fair Lawn Municipal Building, Fair Lawn Avenue, Fair Lawn, New Jersey, to afford the public an opportunity to be heard on the proposed action by the Department. In addition, the Department issued a notice of public hearing on October 6, 1986 which was published in The Record, Hackensack. Both notices invited written comments to

be submitted on or before December 3, 1986. Six people were in attendance at the hearing. One letter was received during the comment period.

COMMENT: Additional newly paved areas may result in increased stormwater run-off and possible flooding.

RESPONSE: Additional paved areas will not result in significant run-off because the project site is small in relation to the overall drainage basin of the stream.

COMMENT: Stormwater retention basins should be used to alleviate flooding.

RESPONSE: Stormwater retention basins collect water from the immediate site and release it after the peak flow has passed the site. Stormwater retention basins would not be effective for this project because of the size of the project and its proximity to the mouth of the river. Stormwater retention basins are not required by State regulation.

COMMENT: If the delineations are found to be in error and damage to property occurs as a result of this error, what recourse would homeowners have against State and local officials?

RESPONSE: The Department cannot provide legal advice on such matters. Any issues of legal recourse against State and local officials should be discussed with an attorney. The liability of the State, if any, is determined pursuant to the Tort Claims Act, N.J.S.A. 59:1-1 et seq.

COMMENT: The Flood Hazard regulations limit the amount of fill within the flood fringe area to 20 percent of the total volume of flood storage between the natural ground surface of the applicant's property and the level of the flood hazard design elevation. It appears that illegal fill has been placed in the portion of Henderson Brook that is the subject of this redelineation. Therefore, the proposed revision permitting additional fill is inconsistent with the Department's regulations.

RESPONSE: The modeling used by the Department reflects, as far as possible, natural stream conditions. Any information concerning illegal filling should be addressed to the Department of Environmental Protection, Bureau of Flood Plain Management, Stream Encroachment Section. If it is determined that fill has been illegally placed, the violator may be required to restore the land to its natural state through removal of the fill and/or through obtaining a stream encroachment permit for placement of the fill.

Full text of the adoption follows.

7:13-7.1(e) Delineated floodways

No change in the text of N.J.A.C. 7:13-7.1(e) is required.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey, and at the Department of Environmental Protection, Bureau of Flood Plain Delineation, 1911 Princeton Avenue, Lawrenceville, New Jersey.

(c)

**Flood Hazard Area Delineation
Redelineation of the North Branch Raritan River in
the Raritan Basin in the Township of Branchburg,
Somerset County**

**Adopted Amendment: N.J.A.C. 7:13-7.1(d) (Plate
NB-2)**

Proposed: September 22, 1986 at 18 N.J.R. 1866(b).
Adopted: March 24, 1987 by Richard T. Dewling, Commissioner,
Department of Environmental Protection.
Filed: March 30, 1987 as R.1987 d.196, **without change**.
Authority: N.J.S.A. 58:16A-50 et seq. and 13:1D-1 et seq.
DEP Docket No. 041-86-08.
Effective Date: April 20, 1987.
Expiration Date: May 4, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

7:13-7.1(d) Delineated floodways

No change in the text of N.J.A.C. 7:13-7.1(d) is required.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law,

Quakerbridge Plaza, Building 9, Trenton, New Jersey, and at the Department of Environmental Protection, Bureau of Flood Plain Delineation, 1911 Princeton Avenue, Lawrenceville, New Jersey.

The revised floodway and profiles are identified on the plate specifically identified:

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION
AND ECONOMIC DEVELOPMENT
DIVISION OF WATER POLICY AND SUPPLY
DELINEATION OF FLOODWAY
AND FLOOD HAZARD AREA
NORTH BRANCH RARITAN RIVER PLATE NB-2

HEALTH

DRUG UTILIZATION REVIEW COUNCIL

(a)

Interchangeable Drug Products

Adopted: Amendment: N.J.A.C. 8:71

Proposed: June 2, 1986 at 18 N.J.R. 1167(a).

Adopted: March 20, 1987 by the Drug Utilization Review Council, Robert Kowalski, Secretary.

Filed: March 26, 1987 as R.1987 d.189 with portions of the proposal **not adopted** and portions **not adopted** but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: April 20, 1987.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their respective manufacturers were **ADOPTED**:

Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Purepac
Propoxyphene naps/APAP tabs 100/650	Purepac
Propranolol HCl tabs 10, 20, 40 mg	Purepac

The following products were **not adopted** but are still pending:

Cholestyramine for susp 4 g/packet	Pharm. Basics
Clonidine tablets 0.1, 0.2, 0.3 mg	Bolar
Dexchlorpheniramine maleate tabs 2 mg	Sidmak
Estropipate tabs 1.5, 3.0 mg	Pharm. Basics
Furosemide tabs 80 mg	Roxane
Haloperidol tabs 10 mg	Purepac
Hydromorphone tabs 2 mg, 4 mg	Roxane
Indomethacin caps 25, 50 mg	Purepac
Lactulose syrup 10 g/15 ml	Alra
Lithium carbonate caps 300 mg	Bolar
Lorazepam tabs 0.5, 1.0, 2.0 mg	Duramed
Lorazepam tabs 1 mg, 2 mg	Pharm. Basics
Lorazepam tabs 2 mg	Bolar
Lorazepam tabs 2 mg	Purepac
Methyldopa tabs 250, 500 mg	Duramed
Metoclopramide tabs 10 mg	Bolar
Metoclopramide tabs 10 mg	Watson
Metronidazole tabs 250, 500 mg	Watson
Nitrofurantoin macrocrys. caps 50, 100 mg	Bolar
Potassium Cl extend. rel. tabs 8, 10 mEq	Alra
Potassium Cl extend. rel. tabs 8 mEq	Copley
Potassium Cl powder 20 mEq/packet	Alra
Potassium bicarb efferves tab 25 mEq	Alra
Potassium bicarb. effervescent tab 25mEq	Altargon
Propranolol tabs 10, 20, 40, 60, 80 mg	Bolar
Sucralfate tabs 1.0 g	Pharm. Basics
Temazepam caps 15, 30 mg	Bolar
Tolazamide tabs 250, 500 mg	Cord

Tolbutamide tabs 250, 500 mg	Bolar
Trifluoperazine tabs 5 mg	Bolar
Valproic acid syrup 250 mg/5 ml	Alra
Verapamil tabs 80, 120 mg	Bolar

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption may be found at 18 N.J.R. 1955(a), 2208(b), and 19 N.J.R. 116(b) and 216(c).

(b)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: September 8, 1986 at 18 N.J.R. 1775(a).

Adopted: March 20, 1987, by the Drug Utilization Review Council, Robert Kowalski, Secretary.

Filed: March 26, 1987 as R.1987 d.190, with portions of the proposal **not adopted** but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: April 20, 1987.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their respective manufacturers were **ADOPTED**:

Amitriptyline/perphenazine 10/2, 25/2 tab	Chelsea
Amitriptyline/perphenazine 10/4, 25/4 tab	Chelsea
Propoxyphene naps/APAP 50/325, 100/650	Chelsea
Propranolol HCl tabs 60 mg	Chelsea

The following products and their manufacturers were **NOT ADOPTED**:

Chlorthalidone tabs 25, 50 mg	Danbury
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The following products were **not adopted** but are still pending:

Acetaminophen/codeine elix 120/12	Naska
Allopurinol tabs 300 mg	Cord
Amiloride/HCTZ 5 mg/50 mg tabs	Chelsea
Aminophylline tabs 100, 200 mg	West-Ward
Amitriptyline tabs 10, 25, 50, 75, 100 mg	Zenith
Amitriptyline/perphenazine 50/4 tabs	Chelsea
Carbamazepine tabs 200 mg	Teva
Cephadroxil caps 500 mg	Zenith
Cephadroxil tabs 1 g	Zenith
Cephalexin caps 250, 500 mg	Zenith
Cephadrine caps 250, 500 mg	Zenith
Chlorpheniramine 12/PPA 75 mg ER caps	Chelsea
Clofibrate caps 0.5 g	Chelsea
Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Watson
Clonidine HCl tabs 0.1, 0.2 mg	Cord
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Clonidine tabs 0.1, 0.2, 0.3 mg	Zenith
Cyproheptadine syrup 2 mg/5 ml	Naska
Disopyramide phosphate caps 100, 150 mg	Chelsea
Ergoloid mesylates oral tabs 1 mg	Sandoz
Erythromycin ethylsuccinate susp 400/5 ml	Naska
Erythromycin ethylsuccinate 200 mg/5 ml	Naska
Flurazepam caps 15, 30 mg	Zenith
Furosemide tabs 80 mg	Zenith
Haloperidol tabs 0.5, 1, 2, 5, 10 mg	Searle
Haloperidol tabs 0.5, 1, 2, 5, 10 mg	Zenith
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Duramed
Hydrocodone/homatropine 5/1.5 mg/5 ml	Naska
Hydroxyzine HCl syrup 10 mg/5 ml	Naska
Ibuprofen tabs 200, 300, 400, 600 mg	Zenith
Indomethacin sustained rel caps 75 mg	Zenith
Isosorbide dinitrate tabs 20, 30 mg	Chelsea
Lidocaine viscous liquid 2%	Naska
Lithium carbonate caps 300 mg	Reid-Rowell
Lorazepam tabs 0.5, 1.0, 2.0 mg	Watson
Lorazepam tabs 0.5, 1.0, 2.0 mg	Zenith

Meclofenamate caps 50, 100 mg
 Methyldopa/HCTZ 250/15, 250/25
 Methyldopa/HCTZ 500/30, 500/50 tabs
 Metoclopramide tabs 10 mg
 Oxazepam caps 10, 15, 30 mg
 Perphenazine tabs 2, 4, 8, 16 mg
 Potassium Cl mod rel 8 mEq and 10 mEq
 Prednisolone tabs 5 mg
 Prednisone tabs 5, 10, 20, 50 mg
 Procainamide HCl ER tabs 250, 500, 750 mg
 Procainamide caps 250, 375, 500 mg
 Prochlorperazine maleate tabs 5, 10, 25 mg
 Promethazine VC syrup 6.25/5 per 5 ml
 Promethazine VC/cod syrup 6.25/5/10/5 ml
 Promethazine syrups 6.25mg/25mg/5ml
 Promethazine/DM syrup 6.25/15 per 5 ml
 Promethazine/codeine syrup 6.25/10/5 ml
 Propranolol HCl tabs 20, 40 mg
 Propranolol tabs 10, 20, 40, 60, 80 mg
 Propranolol tabs 10, 20, 40, 80 mg
 Propranolol/HCTZ tabs 40/25
 Propranolol/HCTZ tabs 40/25, 80/25
 Theophylline elixir 80 mg/15 ml
 Thioridazine 10, 15, 25, 50, 100, 150, 200 mg
 Thioridazine conc. 30 mg/ml, 100 mg/ml
 Thiothixene caps 2, 5, 10 mg
 Tolbutamide tabs 500 mg
 Triamtereme/HCTZ caps 50/25
 Triamterene/HCTZ tabs 75/50
 Valproic acid caps 250 mg
 Verapamil tabs 80, 120 mg
 Verapamil tabs 80, 120 mg

Chelsea
 Zenith
 Zenith
 Chelsea
 Zenith
 Zenith
 Upsher-Smith
 PFI
 Chelsea
 Cord
 Cord
 Duramed
 Naska
 Naska
 Naska
 Naska
 Naska
 Lemmon
 Cord
 Zenith
 Zenith
 Duramed
 Naska
 Sandoz
 Sandoz
 Chelsea
 Danbury
 Zenith
 Zenith
 Chelsea
 BASF
 Zenith

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption may be found at 19 N.J.R. 116(c) and 217(a).

(a)

Interchangeable Drug Products**Adopted Amendment: N.J.A.C. 8:71**

Proposed: January 5, 1987 at 19 N.J.R. 13(a).

Adopted: March 20, 1987 by the Drug Utilization Review Council, Robert Kowalski, Secretary.

Filed: March 26, 1987 as R.1987 d.191, **with portions of the proposal not adopted and portions not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: April 20, 1987.

Operative Date: April 20, 1987; April 22, 1987 for Cephalexin caps, 250, 500 mg.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:**1. Regarding Extended Release Procainamide**

COMMENT: Danbury Pharmacal submitted extensive comments in support of their company's re-proposed procainamide extended release tablets.

Danbury resubmitted dissolution data which they purpose to show no differences in dissolution between their 250 mg, 500 mg, and 750 mg procainamides and Parke-Davis's. Danbury also submitted statistical evaluation of their bioequivalency study using confidence intervals and presented plots of individual subject's serum concentration-time curves, all of which Danbury alleged support the bioequivalency of their 250 mg and 750 mg procainamide extended release products to the innovator's products.

RESPONSE: The Council concluded that the evidence of equivalency of Danbury's 250 mg and 750 mg extended release procainamides was still not adequate to demonstrate equivalency, especially in that the two proposed strengths were not compared on a "head-to-head" basis to the branded products, and therefore subsequently rejected these products for the second time.

2. Regarding Diazepam by Superpharm

COMMENT: Superpharm supported their applications through additional dissolution data and a dose-proportionality statement.

RESPONSE: The Council accepted these comments and this product.

3. Regarding Thioridazine Tablets by Barr

COMMENT: Dr. Edward Feldmann, representing Barr, gave his expert review of Barr's bioequivalency data on their low strength thioridazine tablets. Dr. Feldmann pointed out that the Barr data are acceptable to him, and were previously rejected by the Council based largely on Dr. Colaizzi's concerns about the metabolite (sulfidazine and mesoridazine) data. Dr. Feldmann also pointed out that the Council later accepted other companies thioridazines that had "... significantly less value (i.e., lower "power")."

RESPONSE: The Council accepted these arguments and this product.

4. Regarding Ibuprofen, Propranolol, and Temazepam products by Par
 COMMENT: Par submitted dissolution data on their 300 mg and 800 mg ibuprofens as compared to Motrin, both 300 and 800 mg. Par also gave similar data on each of their propranolol strengths as compared to Inderal, as well as on temazepam capsules as compared to Restoril.

RESPONSE: The arguments for ibuprofen were accepted, as was that product, but the latter two drugs were deferred for additional analysis.

5. Regarding Metronidazole Tablets 500 mg by Halsey

COMMENT: Halsey submitted a statement that this strength is formulation proportional to their previously-approved 250 mg product.

RESPONSE: The Council accepted this data and this product.

6. Regarding Doxycycline Hyclate Capsules, 50 mg by Lemmon

COMMENT: Lemmon submitted a statement that this strength is formulation proportional to Lemmon's previously accepted 100 mg strength and is comparable in dissolution to Vibramycin capsules. Lemmon recapitulated the dissolution comparison in a second letter dated January 29, 1986.

RESPONSE: The Council adopted this data and the product.

7. Regarding Propanolol Tablets by Danbury

COMMENT: Danbury submitted dissolution data comparing their 60 mg and 90 mg strengths to Inderal in the same strengths, and stated that the formulations of both strengths are proportional to their 10 mg and 80 mg strengths.

RESPONSE: The Council accepted this data and the product.

8. Regarding Colyte (a substitute for Golytely)

COMMENT: Reed and Carnrick submitted a statement that Colyte costs approximately 50% less than Golytely, and stated that sales of such colon electrolyte lavage products will exceed \$10 million (nationally?) in 1986. Reed and Carnrick compared the annual sales of such products to annual sales for Kwell-type products, which the Council has added to the Formulary. Promotional materials for Colyte were also submitted.

RESPONSE: The Council accepted this data and the product.

9. Regarding Chlorthalidone Tablets by Mutual

COMMENT: Mutual submitted a supplement to their bioequivalency study which includes vital signs data from the subjects. This submission stated that there were no clinically significant changes in blood pressure attributable to the test formulation.

RESPONSE: The Council deferred final action pending additional statistical analysis.

10. Regarding Haloperidol Tablets, 20 mg, by Searle

COMMENT: Searle stated that this 20 mg strength is proportional to their previously submitted 10 mg haloperidol. McNeil submitted objections to the proposed 20 mg Searle haloperidol (as well as continuing to object to the 10 mg Searle haloperidols, not subject to this public hearing). McNeil alleged that the Searle study did not have sufficient statistical power to detect a difference between the Searle 10 mg haloperidol and McNeil's 10 mg Haldol. (The Searle 20 mg product apparently was approved based on the 10 mg study. McNeil also stated that the AUCs of 38% of the Searle subjects were more than 125% of those for Haldol, which McNeil translated into an unintended 25% increase in dose in at least 30% of patients who would receive the Searle generic. McNeil asked that the Searle 20 mg (and 10 mg) haloperidols not be added to the Formulary, and suggested that a multiple-dose, steady state study is needed to properly evaluate haloperidol substitutes.

RESPONSE: The Council deferred final action pending additional statistical analysis.

11. Regarding Cefadroxil Products

COMMENT: Bristol-Myers objected to the proposed Biocraft products, stating that no such products have been approved by the FDA. They asked that such products be rejected.

RESPONSE: The Council agreed and deferred action.

12. Regarding Amiloride/Hydrochlorothiazide

COMMENT: Merck Sharp & Dohme objected to Barr's proposed product, stating that the only FDA approved product is MSD's Moduretic.

RESPONSE: The Council agreed and deferred action.

13. Regarding Vitarine's Cephalaxins

COMMENT: Eli Lilly and Company objected to these proposed products based on Lilly's contention that Vitarine is the successor to Premo (and Federal), and thus was enjoined in a 1981 court ruling from marketing such products until the Lilly patent(s) expire. Lilly pointed out that it has asked the New Jersey District Court to compel Vitarine to withdraw its Formulary applications for cephalaxin products. Lilly further questioned the appropriateness of Vitarine using 8-year old (Premo) data in support of Vitarine's submission, without assurance that the same manufacturing processes, facilities, and sources are being used.

RESPONSE: The Council has been advised by the Attorney General that patent issues are not pertinent to Council decisions unless the contested patent issue has been subject to final action by the courts. This patent issue has not yet been subject to final action. Based on the acceptable bio-equivalency data, the Council accepted this product into the Formulary, but delayed the implementation date, as requested by the applicant, until after April 21, 1987 to acknowledge Lilly's patent which expires April 21, 1987.

The following products and their manufacturers were **ADOPTED** and are effective **April 20, 1987**:

Acetic acid 2%/Hydrocor. otic soln 1%	Barre-National
Acetic acid otic soln 2%	Barre-National
Amanatadine HCl caps 100 mg	Scherer
Amitriptyline tabs 150 mg	Barr
Amitriptyline/chlordiazep 5/12.5, 10/25	Mylan
Antipyrine/Benzocaine otic soln	Barre-National
Atropine SO4 ophth soln 1%	Carter-Glogau
Belladonna alks/phenobarb elixir	Life
Betamethasone valerate cream 0.1%	Clay-Park
Chloramphenicol ophth soln 0.5%	Carter-Glogau
Chlordiazepoxide/amitrip. 5/12.5, 10/25	Barr
Chlorpromazine HCl conc. 100 mg/ml	NPC
Cyproheptadine syrup 2 mg/5 ml	Halsey
Cyproheptadine tabs 4 mg	Halsey
Dexamethasone sod PO4 ophth. soln 0.1%	Carter-Glogau
Diazepam tabs 2, 5, 10 mg	Halsey
Diazepam tabs 2, 5, 10 mg	Superpharm
Dicyclomine tabs 20 mg	Pioneer
Diphenhydramine caps 25, 50 mg	Pioneer
Diphenhydramine caps 50 mg	Halsey
Diphenhydramine syrup 12.5 mg/5 ml	Halsey
Diphenhydramine syrup 12.5 mg/5 ml	Life
Dipyrindamole tabs 25, 50, 75 mg	Mutual
Disopyramide phosphate caps 100, 150 mg	Barr
Doxycycline caps 50 mg	Lemmon
Doxycycline hyclate caps 50, 100 mg	PFI
Erythromycin 2% topical soln	Barre-National
Furosemide tabs 80 mg	Mylan
Gentamicin ophth soln 3 mg/ml	Carter-Glogau
Golytely formula	Reed-Carnrick
Haloperidol tabs 0.5, 1, 2 mg	Barr
Hydralazine tabs 10 mg	Mutual
Hydrocodone/Homatrop MBR 5+1.5/5 ml	Halsey
Hydrocortisone cream 1%	Life
Ibuprofen tabs 300, 400, 600 mg	Mutual
Ibuprofen tabs 300, 800 mg	Par
Indomethacin caps 25, 50 mg	Pioneer
Indomethacin caps 25, 50 mg	Superpharm
Methyldopa tabs 125, 250, 500 mg	Barr
Metronidazole tabs 250, 500 mg	Mutual
Metronidazole tabs 500 mg	Halsey
Neomycin/dexamethasone sod PO4 ophth soln	Carter-Glogau
Neomycin/polymyxin/HC otic soln	Carter-Glogau
Neomycin/polymyxin/HC otic susp	Carter-Glogau
Nystatin oral tabs 500,000 U	PharmBasics
Potassium Cl liquid 10%, 20%	Life
Prenatal 1+1/Zn (Stuartnatal 1+1 new)	Amide
Promethazine cough syrup 6.25 mg/5 ml	Life
Propranolol tabs 10, 20, 40, 60, 80 mg	P-D
Propranolol tabs 60 mg	Barr
Propranolol tabs 60, 90 mg	Danbury
Propranolol tabs 80 mg	Barr
Propranolol/HCTZ 40/25, 80/25	Barr
Spironolactone tabs 25 mg	Mutual

Temazepam caps 15, 30 mg	Barr
Tetracycline HCl caps 250, 500 mg	PFI
Theophylline elixir 80 mg/15 ml	Life
Thioridazine HCl tabs 10, 15, 25, 50 mg	Barr
Trazodone tabs 50, 100 mg	Amer. Ther.
Triprol/pseudoephed/cod cough syrup	Life
Verapamil tabs 80, 120 mg	Barr
Vitamin B Cmplx Plus (Berocca Plus Formula)	Amide
Vitamin B complex (Berocca Formula)	Amide

The following product and its manufacturer was **ADOPTED** and is effective **April 22, 1987**:

Cephalaxin caps 250, 500 mg	Vitarine
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The following product and its manufacturer was **NOT ADOPTED**:

Procainamide E.R. tabs 250, 750 mg	Danbury
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The following products were **not adopted** but are **still pending**:

Allopurinol tabs 100, 300 mg	Mylan
Allopurinol tabs 100, 300 mg	Superpharm
Amanatadine HCl caps 100 mg	Chase
Amiloride/HCTZ tabs 5/50	Barr
Cefradroxil for susp 125, 250, 500/5 ml	Biocraft
Cefadroxil caps 500 mg	Biocraft
Cephadrine caps 250, 500 mg	Biocraft
Clorthalidone tabs 25, 50 mg	Mutual
Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Interpharm
Clonidine tabs 0.1, 0.2, 0.3 mg	Mylan
Clonidine tabs 0.3 mg	Cord
Codeine/phenyleph/chlorphen/KI ("Pediacof")	Life
Decongestant caps (Entex cap. formula)	Amide
Doxepin caps 10, 25, 50, 75, 100 mg	Quantum
Ergoloid mesylates SL tabs 0.5, 1 mg	Superpharm
Flurazepam caps 15, 30 mg	Barr
Haloperidol tabs 0.5, 1, 2 mg	Barr
Haloperidol tabs 0.5, 1, 2, 5 mg	Quantum
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Par
Haloperidol tabs 20 mg	Searle
Indomethacin caps 25, 50 mg	Barr
Lorazepam tabs 0.5, 1, 2 mg	Danbury
Meclofenamate caps 50, 100 mg	Mylan
Methyldopa tabs 125, 250, 500 mg	Roxane
Metoclopramide tabs 10 mg	Barr
Metoclopramide tabs 10 mg	Interpharm
Promethazine/cod, VC PL, VC/cod syrups	Cenci
Propranolol tabs 10, 20, 40, 60, 80 mg	Par
Propranolol tabs 90 mg	Par
Propranolol/HCTZ tabs 40/25 mg	Mylan
Quinidine gluconate E.R. tabs 234 mg	Superpharm
Quinidine sulfate tabs 200 mg	Cord
SMZ/TMP tabs 400/80, 800/160	Mutual
Spironolactone/HCTZ tabs 25/25	Superpharm
Sulfanilamide 15% vag crm (Vagitrol for)	Lemmon
Temazepam caps 15, 30 mg	Par
Temazepam caps 15, 30 mg	Sandoz
Tetracycline HCl caps 250, 500 mg	Superpharm
Thioridazine tabs 10, 25, 50 mg	Mutual
Tolazamide tabs 250, 500 mg	Interpharm
Tolazamide tabs 250, 500 mg	Superpharm
Trazodone tabs 50, 100 mg	Barr
Trazodone tabs 50, 100 mg	Quantum
Verapamil tablets 80, 120 mg	P-D

OFFICE OF ADMINISTRATIVE LAW NOTE: In the proposal at 19 N.J.R. 14(a), the Quinidine gluconate listing was printed incorrectly and should have appeared as:

Quinidine gluconate E.R. tabs 324 mg	Superpharm
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HUMAN SERVICES**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****(a)****Administration Manual; Long Term Care Services Manual****Retention of Records****Adopted Amendments: N.J.A.C. 10:49-1.5 and 10:63-1.14**

Proposed: December 15, 1986 at 18 N.J.R. 2411(c).

Adopted: March 17, 1987 by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: March 17, 1987 as R.1987 d.180, **without change.**

Authority: N.J.S.A. 30:4D-7a, b, c, h; N.J.S.A. 30:4D-12; 42 CFR 447.253(e).

Effective Date: April 20, 1987.

Expiration Date: August 12, 1990 for N.J.A.C. 10:49; November 29, 1989 for N.J.A.C. 10:63.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:49-1.5 General exclusions

(a) The items listed in this section are general exclusions from New Jersey Medicaid coverage. There are certain additional specific exclusions and limitations which are detailed in the appropriate provider manual sections. Payment is not made for:

1.-13. (No change.)

14. Services or items reimbursed based upon submission of a cost study when there are no acceptable records or other evidence to substantiate either the costs allegedly incurred or patient income available to offset those costs. In the absence of financial records, a provider may substantiate costs or available income by means of other evidence acceptable to the Division. If upon audit, financial records or other acceptable evidence are unavailable for these purposes:

i. All reported costs for which financial records or other acceptable evidence are unavailable for review upon audit are deemed to be non-allowable; and/or

ii. Patient income will be presumed to equal the maximum income allowable for a Medicaid eligible patient for those patients whose records relating to income are completely unavailable.

iii. The Division will seek recovery of any resulting overpayments.

10:63-1.14 Records

(a) As a condition for participation in the New Jersey Medicaid Program it is required that LTCFs maintain medical, nursing, social, patient activities and billing records on all long term care Medicaid patients in accordance with accepted professional standards and practices. Financial and other records used to establish per diem rates must be maintained substantiating any and all costs for which Medicaid reimbursement is sought. In addition, all records relating to patient income, including patients' personal needs allowance accounts, must be maintained.

(b)-(e) (No change.)

(f) Billing and financial records rules are as follows:

1. (No change.)

2. The facility must establish and maintain appropriate and accurate records and accounts of all receipts and disbursements of resident funds, which shall be subject to review and fiscal audit by the State of New Jersey as may be required. It shall be presumed that a patient is entitled to be credited with the maximum amount of personal needs allowance funds authorized by Federal or State law for each month that such records or accounts are unavailable.

3. Any and all financial and other records relating to patients' personal needs allowance accounts, patients' income, cost studies, and billings to the Medicaid Program must be maintained and retained in accordance with professional standards and practices for the longest of the following periods of time:

i. At least one year after the resolution of audit findings or the conclusion of recovery proceedings arising out of those audit findings (whichever is later) for the records that are audited;

ii. One year after the conclusion of all hearings, appeals and/or other litigation with respect to audits of such records;

iii. Seven years.

4. The records described in (f)3 above must be made available for audit upon the request of appropriate State and/or Federal personnel or their agents.

5. (No change in text.)

(b)**Home Health Care Services Manual
Personal Care Assistant Services****Adopted Amendments: N.J.A.C. 10:60-2.2, 2.3, 3.1**

Proposed: December 1, 1986 at 18 N.J.R. 2365(b).

Adopted: March 17, 1987 by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: March 17, 1987 as R.1987 d.179, **without change.**

Authority: N.J.S.A. 30:4D-6b(2)(16), 7, 7a, b, c; 42 CFR 440.70, 440.170(f).

Effective Date: April 20, 1987.

Expiration Date: August 27, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:60-2.2 Personal Care Assistant Services

(a) (No change.)

(b) Personal care assistant services are health related tasks performed by a qualified individual in a recipient's home, under the provision of a registered professional nurse, as certified by a physician in accordance with a written plan of care and prior authorized by the State Agency. These services are available from a home health agency or a homemaker agency.

1.-2. (No change.)

3. Medicaid reimbursement will not be made for personal care assistant service provided to Medicaid eligible recipients in:

i.-iv. (No change.)

v. Intermediate care facility.

4. (No change.)

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

(f) Reimbursement

1. The following are all inclusive maximum rates for personal care assistant services, the initial nursing assessment visit and the personal care assistant nursing reassessment visit. No direct or indirect cost over and above these established rates will be considered for reimbursement. A provider may not charge the New Jersey Medicaid Program in excess of present charges for other payors. For reimbursement purposes a weekend means a Saturday or Sunday; a holiday means an observed agency holiday which is also recognized as a federal or state holiday.

i. Personal care assistant services are limited to a maximum of 25 hours per week at a reimbursement rate up to \$8.30 per hour weekday for individual patient. Code No. Z1600; and

ii. Up to \$4.15 per half-hour weekday for individual patient. Code Z1611; and

iii. Up to \$6.24 per hour weekday for a group rate (two or more patients, with a maximum of eight patients in the same residential setting at the same time). Code No. Z1605; and

iv. Up to \$3.12 per half-hour weekday for a group rate (two or more patients in the same residential setting at the same time). Code No. Z1612; and

v. Up to \$9.30 per hour weekend, holiday for individual patient, Code No. Z1614; and

vi. Up to \$4.65 per half-hour weekend, holiday for individual patient. Code No. Z1615; and

vii. Up to \$7.24 per hour weekend, holiday for a group rate (two or more patients, with a maximum of eight patients in the same residential setting, at the same time). Code No. Z1616; and

viii. Up to \$3.62 per half-hour weekend, holiday for a group rate (two or more patients, with a maximum of eight patients in the same residential setting, at the same time). Code No. Z1617; and

ix. (No change in text.)

x. (No change in text.)

10:60-2.3 Requirements for provisions of services and procedures for authorization of covered services

(a) This section outlines requirements governing the provisions of Home Care Services, (b) and (c) below, as well as the procedures to follow when requesting authorization to provide services, (d) below.

(b) Home Health Care Services: Requirements for provision of Home Health Care Services are outlined as follows:

1. Certification by attending physician: To qualify for payment of home health care benefits by the New Jersey Medicaid Program, the patient's need for services must be certified, in writing, to the Home Health Agency at least once every 60 days by the attending physician who must be licensed. The certifications must be kept in the Home Health Agency's file for appropriate review.

2. Plan of care: The plan of care shall be developed by the attending physician in cooperation with agency personnel. It shall include, but not be limited to medical, nursing, and social care information. The following shall be part of the plan of care:

i.-xi. (No change.)

xii. Discharge planning in all areas of care (coordinated with short and long-term goals);

(1) As a significant part of the plan of care, a patient's potential for improvement shall be periodically reviewed and appropriately revised. These revisions should reflect changes in the medical, nursing, social and emotional needs of the patient, with attention to the economic factors when considering alternative methods of meeting these needs.

(2) Discharge planning shall take the patient's preferences into account when changing the intensity of care in his residence, arranging services with other community agencies, transferring to or from home health providers. Discharge planning also provides for the transfer of appropriate information about the patient by the referring home health agency to the new providers to ensure continuity of health care.

xiii. (No change.)

3. Medical Care:

i. Home health services shall be performed pursuant to a licensed physician's orders and in accordance with a plan of care.

ii.-iv. (No change.)

4.-5. (No change.)

(c) Personal Care Assistant Services: Requirements for provision of personal care assistant services are outlined as follows:

1.-3. (No change.)

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

10:60-3.1 Home care services billing procedures

(a)-(e) (No change.)

(f) Procedure Codes for personal care assistant services:

Code	Description
1. Z1610	Initial Nursing Visit
2. Z1600	Personal Care Assistant Service (Individual)—per hour weekday.
3. Z1605	Personal Care Assistant Service (Group)—per hour, per patient weekday. Care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time.
4. Z1611	Personal Care Assistant Service (Individual)—one half-hour weekday.
5. Z1612	Personal Care Assistant Service (Group)—one half-hour, per patient weekday. Care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time.
6. Z1613	Nursing Reassessment Visit.
7. Z1614	Personal Care Assistant Service (Individual)—per hour weekend, holidays.
8. Z1615	Personal Care Assistant Service (Individual)—per half-hour weekend, holidays.
9. Z1616	Personal Care Assistant Service (Group)—per patient, per hour weekend, holidays. Care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time.
10. Z1617	Personal Care Assistant Service (Group)—per patient, per half-hour weekend, holidays. Care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time.

(g) (No change.)

(a)

**Public Assistance Manual
Temporary Absence of Child from Home
Adopted Amendment: N.J.A.C. 10:81-3.34**

Proposed: August 18, 1986 at 18 N.J.R. 1675(a).

Adopted: March 17, 1987 by Drew Altman, Ph.D.,
Commissioner, Department of Human Services.

Filed: March 17, 1987 as R.1987 d.175, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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).

Effective Date: April 20, 1987.

Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:

Three comments were received by the Department, one from a county welfare agency director in support of the proposed rule, and two expressions of opposition from representatives of Legal Services. Primarily, the objections raised were concerned with the 30-day time limit for continuation of assistance when a child is considered temporarily absent from the home, and this Department's interpretation of Federal rules regarding continued eligibility in such situations.

The proposed regulatory material was initiated as a result of correspondence received from the United States Department of Health and Human Services (USDHHS), Office of Family Assistance (OFA) indicating that the Department's regulations concerning temporary absence of a child from the home were not in compliance with Federal requirements. Thus, the proposed amendments were promulgated to resolve inconsistencies between the Department's regulations and Federal rules. However, subsequent communication from OFA has resulted in a somewhat more liberal interpretation, but one which still requires slight amendment. Therefore, the proposed amendment is revised to include provisions of continued eligibility for up to 90 days when there is reasonable expectation that a child will return home within the 90-day period. Provision is also included to the effect that for unusual circumstances involving particular hardship, the county welfare agency may consult with the Division of Public Welfare.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[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 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. 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 and the situation is likely to continue for more than 90 days, the child is no longer eligible for assistance. In situations in which the whereabouts of the child is unknown, or the parent or parent-person is precluded from contact, or the time period is otherwise indefinite, the child is no longer eligible for assistance.

2. If it is found that there is reasonable expectation that the child will return to the home within 90 days, the child remains eligible.

3. The child remains eligible during the time that the above review is in process, but not longer than 90 days.

4. In unusual situations involving particular hardship, the CWA may consult with the State office.*

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

(a)**Assistance Standards Handbook
Nonrecurring Lump Sum Income****Adopted Amendment: N.J.A.C. 10:82-4.15**

Proposed: January 5, 1987 at 19 N.J.R. 32(a).

Adopted: March 17, 1987 by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: March 17, 1987 as R.1987 d.178, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3; 42 CFR 435.10 and 42 CFR 435.115.

Effective Date: April 20, 1987.

Expiration Date: October 29, 1989.

Summary of Public Comments and Agency Responses:**No comments received.**

Full text of the adoption follows.

10:82-4.15 Nonrecurring earned or unearned lump sum income

(a) (No change.)

(b) For the AFDC and Medicaid programs, lump sum income and the resulting period of ineligibility shall be treated in accordance with the following provisions:

1. AFDC program: Only those individuals actually receiving AFDC cash assistance or deemed to be receiving AFDC are considered to be AFDC recipients. An individual receiving Medicaid Only or Medicaid Special is not considered an AFDC recipient. Therefore, a period of ineligibility imposed on a recipient of Medicaid Only or Medicaid Special benefits due to the receipt of lump sum income cannot be carried over into the AFDC program, and cannot cause ineligibility for either AFDC or associated Medicaid benefits, if such individual applies and is determined eligible for AFDC cash assistance.

2. Medicaid program: Eligibility for Medicaid Only and Medicaid Special benefits, with respect to the receipt of lump sum income and application of a period of ineligibility, is determined in accordance with AFDC regulations. Thus, an AFDC recipient determined ineligible for AFDC and Medicaid for a certain number of months due to the receipt of lump sum income shall continue to be ineligible if he or she applies for Medicaid Only or Medicaid Special benefits during the period of ineligibility. However, an individual receiving Medicaid Only or Medicaid Special benefits, who is ineligible for such benefits due to the receipt of lump sum income, shall not be required to complete the period of ineligibility if subsequently determined eligible for AFDC.

i. Example: An employed woman applies for AFDC for herself and her two children. Upon learning that the family is eligible for only a \$12.00 AFDC grant, she elects to forego the AFDC grant and to receive Medicaid Only. The next month, a family member receives a \$2,500 lump sum payment, causing ineligibility for Medicaid benefits for a period of eight months. Five months later the woman loses her job; the family applies for AFDC and is determined eligible. The family will not be required to complete the remaining three months of ineligibility for Medicaid caused by the receipt of lump sum income, because a period of ineligibility imposed on a recipient of Medicaid Only cannot be carried over into the AFDC program.

ii. Example: A pregnant woman applies for Medicaid Special benefits on behalf of her unborn child. Three months before the child is born, she receives a \$1,900 lump sum payment, causing ineligibility for Medicaid benefits for a period of six months. Within four months, she has given birth to her child. She applies for AFDC for herself and her child and is determined eligible. The mother and child will be eligible for Medicaid effective with the date of eligibility for AFDC. The mother will not be required to complete the remaining two months of ineligibility for Medicaid caused by the receipt of lump sum income, because a period of ineligibility imposed on a recipient of Medicaid Special cannot be carried over into the AFDC program.

(c) (No change in text.)

(b)**General Assistance Manual
Agent Orange Payments****Adopted Amendments: N.J.A.C. 10:85-3.3 and 3.4**

Proposed: January 5, 1987 at 19 N.J.R. 32(b).

Adopted: March 17, 1987 by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: March 17, 1987 as R.1987 d.177, **without change.**

Authority: N.J.S.A. 44:8-111(d) and 44:8-125; N.J.S.A. 30:1-12.

Effective Date: April 20, 1987.

Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:**No comments received.**

Full text of the adoption follows.

10:85-3.3 Financial eligibility

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

(e) Rules concerning unearned income are:

1.-4. (No change.)

5. Income exclusions: The following shall not be counted when determining financial eligibility:

i.-xii. (No change.)

xiii. Agent Orange payments: Money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange."

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

10:85-3.4 Resources

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

(c) Exempt resources: Exempt resources are not subject to any requirement for liquidation and are not considered in determining the assistance grant. Any resource which is not or is no longer exempt shall be considered as either available income or a potential resource, according to its nature. The exempt resources are:

1.-9. (No change.)

10. Agent Orange payments: Money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange."

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

(f) The following are not subject to repayment to the MWD: retroactive Social Security (RSDI) payments, Veteran's benefits, workers' compensation, temporary disability benefits, and SSI payments not repayable to the DPW/MWD in accordance with a valid Form GA-30. However, when such monies are received, they shall be recognized as countable income and the client's eligibility shall immediately be re-determined.

1. No repayment shall be sought from money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange."

(g) (No change.)

(a)

**General Assistance Manual
Medical Insurance Payments**

Adopted Amendment: N.J.A.C. 10:85-5.3

Proposed: January 5, 1987 at 19 N.J.R. 33(a).
Adopted: March 17, 1987 by Drew Altman, Ph.D.,
Commissioner, Department of Human Services.
Filed: March 17, 1987 as R.1987 d.176, **without change**.
Authority: N.J.S.A. 44:8-111(d); 44:8-122 and 124; 30:1-12.
Effective Date: April 20, 1987.
Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:85-5.3 Other medical payments

(a) The director of welfare shall authorize payment for medical care and professional practitioner services if such care and services are deemed necessary and appropriate.

1. The director of welfare may authorize payment of Blue Shield or other medical insurance premiums.

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

(b)

**Medicaid Only
New Eligibility Computation Amounts**

Redoption of Concurrent Proposed: N.J.A.C.

10:94-5.4, 5.5, 5.6 and 5.7

Proposed: January 20, 1987 at 19 N.J.R. 245(a).
Adopted: March 17, 1987 by Drew Altman, Ph.D.,
Commissioner, Department of Human Services.
Filed: March 17, 1987 as R.1987 d.174, **without change**.
Authority: N.J.S.A. 44:7-87 and Section 1902(a) of the Social Security Act.
Effective Date: April 20, 1987.
Expiration Date: January 6, 1991.

Summary of public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:94-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:94-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1.-11. (No change.)

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or at a reduced value. Persons determined to be "living in household of another" in accordance with N.J.A.C. 10:94-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in household of another" who receive in-kind support and maintenance shall be considered to have unearned income in the amount of:

\$133.33 for an individual

\$190.00 for a couple

i. (No change.)

13. (No change.)

(b) (No change.)

10:94-5.5 Deeming of income

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

(g) A table for deeming computation amounts follows:

TABLE A
Deeming Computation Amounts

1. Living allowance for each ineligible child	\$170.00	
2. Remaining income amount	Head of Household \$170.00	Receiving Support and Maintenance \$ 113.34
3. Spouse to Spouse Deeming—Eligibility Levels		
a. Residential Health Care Facility	\$660.05	
b. Eligible individual living alone with ineligible spouse	\$705.36	
c. Living alone or with others	\$541.25	
d. Living in household of another	\$384.31	
4. Parental Allowance—Deeming to Child(ren)		Parent & Spouse of Parent
Remaining income is:	One Parent	
a. Earned only	\$680.00	\$1,020.00
b. Unearned only	\$340.00	\$ 510.00
c. Both earned and unearned	\$340.00	\$ 510.00
10:94-5.6 Income eligibility standards		
(a)-(b) (No change.)		
(c) Non-institutional living arrangements:		
1.-4. (No change.)		
5. Table B follows:		

TABLE B

Variations in Living Arrangements	Individual	Medicaid Eligibility Income Standards Couple
I. Residential Health Care Facility	\$ 490.05	\$961.36
II. Living Alone or With Others	\$ 371.25	\$535.36
III. Living Alone with Ineligible Spouse	\$ 535.36	
IV. Living in Household of Another	\$ 270.98	\$433.09
V. Title XIX Approved Facility: Includes persons in acute general hospitals, skilled nursing facilities, intermediate care facilities (level A, B, and ICFMR) and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.	\$1,020.00†	

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap".

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

10:94-5.7 Deeming from sponsor to alien

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

(e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:

1. (No change.)

2. Subtract \$340.00 for the sponsor, \$510.00 for the sponsor if living with his or her spouse, \$680.00 for the sponsor if his or her spouse is a co-sponsor.

3. Subtract \$170.00 for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.

4. (No change.)

(f) (No change.)

INSURANCE**(a)****DIVISION OF THE NEW JERSEY REAL ESTATE
COMMISSION****Sale of Interstate Properties****Adopted Amendment: N.J.A.C. 11:5-1.25**

Proposed: December 15, 1986 at 18 N.J.R. 2416(a).

Adopted: March 24, 1987 by the New Jersey Real Estate Commission, Daryl G. Bell, Director.

Filed: March 31, 1987 as R.1987 d.199, **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. 45:15-6 and 45:15-18.3 et seq., specifically 45:15-16.19.

Effective Date: April 20, 1987.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

COMMENT: Several individuals submitted comments to the Real Estate Commission regarding an ambiguity in the language of the proposed amendment to subsection (h)3i. Their concern was that while it was the intention of the Commission that advertisement approval numbers could receive an unlimited number of one-year extensions, the wording of the proposal as initially published was susceptible to a construction that only one such extension would be granted.

RESPONSE: The Real Estate Commission recognized the validity of the concerns of the persons making the above comments. Accordingly, the Commission directed that additional language be added to this portion of the rule to clarify the ambiguity noted above.

COMMENT: One person submitted a comment to the Commission wherein they expressed concern that the language of new subsection (n)9 could be interpreted as modifying and lowering the standards for the issuance of partial exemptions from the registration requirements of the Land Sales Full Disclosure Act.

RESPONSE: The listing of the minimum components of an application for such an exemption within subsection (n)9 as proposed was not intended to be read as in any way modifying the standards governing the issuance of such exemptions. However, the Commission recognized the concern raised by the person submitting the above comment and determined to address that concern by including additional language in the text of subsection (n)9. In this additional text, reference is made to the fact that the standards established for the issuance of such exemptions which are set forth at N.J.A.C. 11:5-1.25(n)3 and 4 remain in effect. When the Commission proposed addressing this concern in this manner at its public meeting on March 17, 1987 where this comment was verbally submitted, the individual submitting this comment indicated that he was satisfied that by doing to his concerns would be addressed.

COMMENT: The Commission received a comment from the representatives of one developer which has a substantial number of registrations on file with the Bureau of Subdivided Land Sales Control regarding the proposal amending subsection (h)3 so as to require the expiration of advertisement approval numbers one year from their date of issuance. These individuals indicated that the amendment would create a significant administrative burden for larger developers who utilize a substantial number of advertisements and who, in order to comply with the amended rule would have to track the expiration dates of all their advertisements and to correspond with the Commission with regard to the renewal of each advertisement approval number on a yearly basis.

RESPONSE: The Commission considered the concerns raised by the individuals making the above comment. However, the Commission determined that the public interest in an annual review of the advertisements of developers who register projects with the Bureau of Subdivided Land Sales Control, in order to assure that such advertisements and the projects to which they relate comply with the requirements of the Land Sales Full Disclosure Act and the Commission's rules, outweighed concerns with regard to the administrative burden which might be created as a result of instituting such an annual review process. Furthermore, it would appear that only the larger developers would find such a reporting requirement burdensome and it is just those entities which are best able to afford hiring additional staff and/or equipment in order to comply

with the reporting requirements of this amendment. Consequently, the Commission determined to proceed to adopt the amendment as initially proposed, and not to make any adjustment to the one year expiration period for advertisement approval numbers.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*).

11:5-1.25 Sales of 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 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."

i. 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. ***All such extensions granted shall be for a period of one year. There shall be no limitation upon the number of applications for such extensions which may be submitted, nor upon the number of such extensions which may be granted so long as the advertisement in question continues to qualify for approval. Where an extension is granted, the advertisement shall retain the same advertisement approval number originally assigned to it.***

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 an 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.-3. (No change.)

4. An exemption may be granted by reason of the limited character of the offering when the nature of the property or the prospective purchasers to whom the property will be offered is such that it is likely they will have advice concerning the purchase independent of that supplied by the subdivider or his agents. An application for exemption for this reason shall include a copy of any prospectus, offering statement or other such solicitation. An exemption granted for this reason shall be limited to the group of offerees specified in the application.

5. Upon the submission for approval of an advertisement or advertisements by the recipient of an exemption granted hereunder, the Commission shall assign an "N.J.E." (New Jersey Exemption) number beginning with the prefix "N.J.E." to each advertisement so submitted and approved, which shall thereafter appear on all publications or broadcasts of that advertisement directed to citizens of this State, or national advertising circulated within this State.

6. Any exemption granted shall remain in effect, unless revoked as described below, until title to all of the lots, parcels, units or interests identified to the Commission as part of the exempted project is transferred by the holder of the exemption. At the time that title to the last remaining exempted lot, parcel, unit or interest is so transferred, the holder of the exemption shall inform the Commission in writing of such transfer of title.

7. Any exemption granted shall permit the subdivider to offer the property to New Jersey residents without obtaining an Order of Registration. An exemption shall not deprive the Commission of jurisdiction to enforce any other provision of the act or these rules, or to revoke the exemption after notice and an opportunity to be heard.

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) *and (n)3 and 4 above*, are limited exemptions from the registration requirements of the Land Sales Full Disclosure Act. No application shall be exempt from 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 purchasers' 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 standards and procedures established at (h) above; and
- vi. The filing of any other documents that the Commission may deem necessary.

10. No exemption granted hereunder shall be effective until a Letter of Exemption is issued by the Commission to the applicant for the exemption.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund Compulsory Retirement

Adopted Repeal: N.J.A.C. 17:3-6.15

Proposed: January 20, 1987, at 19 N.J.R. 195(a).

Adopted: March 12, 1987, by the Board of Trustees, Teachers' Pension and Annuity Fund, Anthony Ferrazza, Secretary.

Filed: March 23, 1987 as R.1987 d.187, **without change**.

Authority: N.J.S.A. 18A:66-56.

Effective Date: April 20, 1987.

Expiration Date: (Not applicable).

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:3-6.15 (Reserved)

OTHER AGENCIES

CASINO CONTROL COMMISSION

(b)

Gaming Schools

Advertising: Record Keeping

Adopted Amendment: N.J.A.C. 19:44-17.11

Proposed: December 15, 1986 at 18 N.J.R. 2439(a).

Adopted: March 25, 1987 by the Casino Control Commission,
Walter N. Read, Chairman.

Filed: March 26, 1987 as R.1987 d.188, **without change**.

Authority: N.J.S.A. 5:12-63(c) and 5:12-69(a).

Effective Date: April 20, 1987.

Expiration Date: October 13, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

19:44-17.11 Record keeping

(a) Each gaming school licensee shall maintain a record of all its advertisements which shall include, at a minimum, the following:

1. A description of the advertisement; and
2. The date and method of broadcast or publication.

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Program

Employment and Training Requirements

Adopted Emergency Amendment and Concurrent

Proposal: N.J.A.C. 10:87-2.3, 2.6, 2.19, 3.15, 3.16, 3.17, 3.18, 3.19, 3.20, and 3.21

Adopted Emergency New Rule and Concurrent

Proposal: N.J.A.C. 10:87-3.13 and 3.14

Emergency Amendment Adopted: March 25, 1987 by

Drew Altman, Ph.D., Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): April 3, 1987.

Emergency Adoption Filed: April 3, 1987 as R.1987 d.202.

Authority: N.J.S.A. 30:4B-2, the Food Security Act of 1985 (P.L. 99-198), and 51 FR 47378.

Emergency Amendment Effective Date: April 3, 1987.

Emergency Amendment Expiration Date: June 2, 1987.

Address comments and inquiries to:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

These amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent agency proposal is known as PRN 1987-151.

The agency emergency adoption and concurrent proposal follows:

Summary

The Food Security Act of 1985 (P.L. 99-198), enacted December 23, 1985, requires extensive changes in the work requirements of the Food Stamp Program. The Act mandates that all states implement new employment and training programs, designed by the State and approved by the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), effective April 1, 1987. The intent of the new requirements is to ensure that able-bodied food stamp recipients are involved in a meaningful work-related activity that will lead to paid employment and a decreased dependency on assistance programs. This emergency rule and concurrent proposal is based on the Food Security Act of 1985 (P.L. 99-198) and final Federal regulations published in the December 31, 1986 issue of the Federal Register at 51 FR 47378.

Those final regulations required the Department to submit an Interim Plan of Operations for the Food Stamp Employment and Training Program (FSETP) by March 2, 1987 to USDA/FNS, for approval by the Secretary of Agriculture by April 1, 1987. Due to the short timeframe allowed for program development and implementation, the Interim Plan allows the Department to offer job search activities such as those currently offered by the Department's existing Food Stamp Job Search Project during the period of April 1, 1987 through September 30, 1987, thereby allowing additional time for the development of other employment and training program components. Therefore, independent job search will be the primary employment and training component during the initial six months of operation. Other program components will include job search training as well as voluntary vocational training through referral to a local Job Training Partnership Act (JTPA) classroom training course where available. While the primary focus of the program is the State's nonpublic assistance population, voluntary participation by all food stamp recipients will be permitted.

The new rule at N.J.A.C. 10:87-3.13 sets forth general information and requirements pertaining to the State Plan for Food Stamp Employment and Training (E&T) Program. The Department of Human Services, Division of Public Welfare, is responsible for designing the State Plan, which must be approved by USDA/FNS, and supervising operation of employment and training programs funded through a 100 percent Federal grant. The State Plan will be available for public inspection at the Division of Public Welfare after April 1, 1987. Also included in the new rule at 10:87-3.14 is information regarding performance standards, counting placements, counting the base of eligibles, and performance data collection.

This rulemaking requires major changes in the content, structure and administration of the work requirements of the Food Stamp Program. There are currently two primary components to work requirements. First, all county welfare agencies (CWAs) are responsible for registering nonexempt household members for work at least once every 12 months. That requirement remains unchanged. The second component is job search where work registrants deemed to be job ready are assigned to perform a job search. Job search has been administered since September 1981 through contractual agreements between FNS and the State, and between the State and individual CWAs. Before September 1981, both work registration and job search were operated jointly by USDA and the Department of Labor (DOL). Portions of current food stamp regulations read as though DOL, namely the New Jersey State Employment Service (NJSES) is still involved in the process. Since that agreement with NJSES no longer exists, all references to NJSES are being deleted by the amendments. The Food Stamp Employment and Training Program (FSETP) will be administered by the Department's Division of Public Welfare and locally operated by CWA FSETP offices or their designees in all 21 counties.

The amendment at N.J.A.C. 10:87-2.6(b) revises the definition of "head of household" to specify that, for purposes of applying disqualifications for failure to comply with work registration, work and training requirements, and voluntary quit provisions, the head of household shall be considered to be the principal wage earner. The regulations focus the interpretation of head of household on the individual who provides the most earned income to the household. In most instances this effectuates the primary purpose behind the sanctions for work related violations, to discourage the economic head of household from obtaining or increasing food stamp benefits by voluntarily foregoing income. If the head of household fails to comply with work requirements or voluntarily quits a job, the entire household is disqualified. However, amendments at N.J.A.C. 10:87-3.20 provide that if another household member fails to comply with employment and training requirements, only that person is subject to disqualifications. In addition, the amended rule specifies that the sanction follows the individual in situations where the household member who committed the violation leaves that household.

As a condition of eligibility for participation in the Food Stamp Program, N.J.A.C. 10:87-3.15 is amended to specify that each household member who is not exempt shall be registered for employment by the CWA at the time of application and at least once every 12 months after initial registration. The work registration form may be completed by the applicant or the household's authorized representative for each household member required to register inasmuch as it is not mandatory that the work registration form be completed by the member required to register.

N.J.A.C. 10:87-3.16 is amended to define appropriate Food Stamp Employment and Training Program (FSETP) Office as that FSETP or its designee having jurisdiction for purposes of employment and training requirements, in the area in which a registrant resides.

Amendments at N.J.A.C. 10:87-3.17 set forth the work registration procedures to be followed by CWAs. A specific amendment requires that the CWA explain to the applicant, as well as provide a written statement of, the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The written statement shall be provided to all household members registered for work. If a person is not exempt from employment and training requirements, the FSETP office or designee shall be responsible for assessing that person, referring him or her to an employment and training component within 10 days of the initial assessment.

Under current regulations only persons between the ages of 18 and 60 are subject to work registration requirements. The amendment at N.J.A.C. 10:87-3.18(b) subjects heads of households who are ages 16

and 17 and not attending school half-time or more, nor participating in an employment training program, to work requirements. Further, N.J.A.C. 10:87-3.18(c) requires that persons losing exempt status due to a change in circumstances shall register for employment consistent with existing regulations. However, regulations are being amended to specify that participants are responsible for returning the completed work registration form to the CWA within 10 calendar days from the date the form was handed to the member reporting the change in person, or the date the CWA mailed the form. If the household fails to timely return the work registration form, the CWA is required to issue a notice of adverse action stating that the household is being terminated from the Food Stamp Program and why, but that termination can be avoided by returning the completed work registration form.

Amendments to N.J.A.C. 10:87-3.19(a), (b), and (c) detail revised work registrant requirement. For purposes of retaining eligibility for the Food Stamp Program, work registrants must comply with the employment and training provisions of N.J.A.C. 10:87-3. Specifically, registrants are required to report to an assessment interview and/or employment and training program component; participate in an employment and training program, if assigned; respond to a request for supplemental information regarding employment status or availability of work; report to an employer to whom referred; and accept a bona fide offer of suitable employment. Employment and training programs include, but are not limited to, job search, training, employment activity, on-the-job training, on-site work experience, or other activity that will lead to gainful employment. Time spent in an employment and training component, as well as the number of successive components in which a participant will be placed, is determined by the FSETP office. The minimum level of effort for any component equals 12 hours of activity per month per participant for two months or approximately 24 hours. Participation by members of a household collectively in a work experience component cannot exceed the number of hours equal to the household's allotment divided by the applicable minimum wage. Total hours of participation for any household member, together with hours worked for compensation, cannot exceed 120 hours in any month. Individuals may elect to voluntarily participate in available work and training programs. Participants shall be reimbursed by the CWA for the actual costs of transportation or other actual costs directly related to participation up to \$25.00 per month per participant.

Voluntary quit regulations are amended to substitute the revised head of household definition, in lieu of primary wage earner, for purposes of determining voluntary quit disqualifications. Voluntary quit disqualification provisions are not applicable when another household member, other than the head of household, quits a job. Currently, there is no action a household may take to end a disqualification for voluntary quit. The disqualification period must expire before the household can reapply for food stamps. The amendments at N.J.A.C. 10:87-3.19(d)6 provide that if the head of household secures new employment which is comparable in salary or hours to the job he or she quit, the disqualification period may be ended. Additionally, if the head of household becomes exempt from work and training requirements, other than for participation in Title IV of the Social Security Act, Aid to Families with Dependent Children (AFDC) program work requirements, including the Work Incentive (WIN) program, or Unemployment Insurance Benefits (UIB) work programs, the disqualification period may be ended. With respect to regaining eligibility because the member has become exempt, USDA does not believe that a household should be able to terminate the disqualification period simply because its head of household has begun to participate in a work program of another assistance program. Adding those provisions is consistent with the intent of the Act which is to deter individuals from quitting their jobs and diminishing their income while receiving food stamp benefits. At the same time, those provisions provide workers with the flexibility of changing jobs without being penalized.

Current regulations do not address situations in which the head of household, who caused a disqualification for voluntary quit, leaves the household. The amendment provides that the sanction shall follow the member who caused the disqualification. If that individual joins another household as head of household, the new household shall be ineligible for the balance of the disqualification period unless the person who caused the disqualification ends it as described above.

The amendments at N.J.A.C. 10:87-3.19(f) describe the requirements of the independent job search activity component included in the State Plan. The requirements are similar to those of existing job search requirements.

The current sanction for noncompliance with work registration and job search requirements is a two-month period of ineligibility for food stamp benefits and applies to the entire household. The amended rule specifies

that the sanction shall apply to the individual who commits the violation rather than the entire household, unless the individual committing the violation is the head of household, in which case, the entire household will be sanctioned. This rulemaking amends N.J.A.C. 10:87-3.20 to revise rules regarding failure to comply. Because the Food Security Act differentiates between the penalties for household heads and other household members with respect to work and training program noncompliance, it is crucial that the definition of "head of household" be uniformly applied. This rule extends the head of household definition to the provisions of failure to comply in applying sanctions for noncompliance with work registration, or employment and training requirements as reflected in the amendment to N.J.A.C. 10:87-3.20(c) which refers to head of household as defined in N.J.A.C. 10:87-2.6(b). The amendment provides that if the CWA determines that the head of household, or if none exists, the person considered head of household immediately prior to the noncompliance, has refused or failed to comply with work requirements, the entire household is ineligible to participate. If the CWA determines that an individual other than the head of household has refused or failed to comply, that individual shall be disqualified. The period of eligibility continues until the member causing the disqualification complies with the requirement, leaves the household or becomes exempt, or the two-month disqualification period expires, whichever occurs first. Under present regulation, if the individual who caused the violation leaves the household during the disqualification period, the household may reestablish eligibility, but any new household which the violating member joins is ineligible for participation for the balance of the disqualification period. The Food Security Act provides that the original household may still retain eligibility if the violating member leaves the household, but the new household is ineligible for the balance of the disqualification period if the violating member joins the new household as head of household. If the individual joins a new household and is determined not to be the head of household, the individual shall remain ineligible for the remainder of the disqualification period or until the member complies with the requirement that caused the failure to comply as specified at N.J.A.C. 10:87-3.21(b).

Social Impact

The Food Security Act of 1985 requires major changes in the content, structure and administration of the work requirements of the Food Stamp Program. The intent of the Act is to provide states with maximum flexibility in designing work and training programs that will assist food stamp recipients in gaining skills, training or experience that will increase their ability to obtain employment and decrease dependency on assistance programs. The State Plan requirements and regulatory amendments required by USDA impose an administrative burden on the Department which is responsible for the design and operation of the work and training programs as well as on CWAs administering the Food Stamp Program.

It is anticipated that recipients will be affected to the extent that they will have to fulfill the work and training requirements established by the Department. For the State Fiscal Year 1985, approximately 11,200 individuals were work registered. Of the 11,200 work registrants, 6,200 participants completed a two-month job search. Dependent upon the requirement of the components approved by USDA under the state plan, components may require a greater level of effort on the part of registrants participating in the program.

The amendment subjecting heads of households age 16 and 17 to work requirements is in keeping with similar requirements in the AFDC program. It is anticipated that this amendment will affect an insignificant number of individuals. Further amendments regarding work registration do not impose any significant burden on work registrants. However, the work registration and E&T requirements with which work registrants must comply in order to retain eligibility for the Food Stamp Program, are somewhat more stringent than current employment and training requirements which may result in more disqualifications for failure to comply.

The regulatory changes clarifying use of head of household, voluntary quit and failure to comply provisions will facilitate administration of the program. However, development of the new work and training programs in the short timeframe allowed, coupled with the reporting and recordkeeping requirements, impose an administrative burden on both the Department and CWAs.

Economic Impact

The regulatory changes pertaining to work registration, voluntary quit and failure to comply provisions will not have a significant adverse economic impact on the Department or CWAs. The employment and training programs operated by the Department will be funded by a 100

percent Federal grant. However, due to the limited timeframe allowed for implementation, the Department's ability to develop additional employment and training components has been restricted. Additionally, due to the extensive State Plan data requirements and the ongoing reporting requirements, the Department may be required to expend portions of the grant on administrative expenses such as development of a new and possibly complex computerized data gathering and reporting system. Expending funds to develop such systems would mean portions of the grant would be unavailable for providing additional employment and training components to food stamp recipients, which in turn could make it difficult to meet performance standards in the future.

The provision that participants be reimbursed for actual costs incurred related to participation in work and training programs, up to \$25.00 per month, per participant may have some adverse economic impact on CWAs since these reimbursements are only subject to a 50 percent Federal match. Local agency budgets may be insufficient to provide the allowable reimbursement for all participants. Based on 6,200 participants who completed a two-month job search for Fiscal Year 1986, and assuming a \$25.00 reimbursement rate per participant for two months, statewide work registrant reimbursements would total \$310,000, of which \$155,000 would be the local government share.

For those food stamp participants who enter employment through the employment and training programs, the revised rules will have a positive economic impact. As such individuals become economically self-sufficient through gainful employment, there will be a decreased dependency on assistance programs.

Regulatory Flexibility Statement

This rulemaking has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. This action imposes no compliance requirements on small businesses, as the Food Stamp Program is administered by county welfare agencies (CWAs).

The Department of Human Services, Division of Public Welfare, is responsible for designing and supervising operation of employment and training programs funded through a 100 percent Federal grant. The Food Stamp Employment and Training Program (FSETP) will be administered by the Department's Division of Public Welfare and locally operated by CWA FSETP offices or their designees in all 21 counties.

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

10:87-2.3 Nonhousehold members, boarders and excluded household members

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

(c) Excluded household members: The following individuals residing with a household shall be excluded from the household when determining the household's size for the purposes of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. However, the income and resources of an excluded household member shall be considered available to the remaining household members in accordance with N.J.A.C. 10:87-7.14. Excluded household members may not participate in the program as separate households.

1.-4. (No change.)

5. **Disqualification for noncompliance with work requirements: Individuals disqualified for noncompliance with the work registration, work and training requirements or voluntary quit provisions (see N.J.A.C. 10:87-3.15 through 3.21 regarding work requirements).**

10:87-2.6 Head of household

(a) The household shall designate an adult member to be head of household, except that for purposes of failure to comply with work registration, work and training requirements and voluntary quit provisions, the head of household shall be determined in accordance with (b) below.

(b) For purposes of failure to comply with work registration, work and training requirements, and voluntary quit provisions, the head of household shall be considered to be the principal wage earner.

1. **Principal wage earner:** The principal wage earner shall be the household member (including excluded members, see N.J.A.C. 10:87-2.3(c)) who has the greatest source of earned income in the two months prior to the month of the work or training requirement violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours.

i. **No person of any age living with a parent, or person fulfilling the role of parent (substitute parent), shall be considered head of household if such parent or substitute parent is registered for work or exempt from work registration requirements because such parent or substitute parent is subject to and participating in any work requirements under Title IV of the Social Security Act; or is in receipt of unemployment compensation (or has registered for work as part of the unemployment compensation application process); or is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours.**

ii. **If there is no principal source of earned income in the household, the CWA shall determine who is the designated head of household as specified in (a) above.**

10:87-2.19 Interview process

(a) All interviews for food stamp benefits shall meet the requirements below.

1. (No change.)

2. **Responsibilities of interviewer:** The interviewer shall not simply review the information which appears on the application but shall explore and resolve with the household, any unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including an explanation of the processing standards and the household's responsibility to report changes.

i. The interviewer shall explain to the applicant the consequences of the household's [primary] principal wage earner quitting his or her job without good cause (see N.J.A.C. [10:87-3.19(a)3] 10:87-3.19(d)).

3.-7. (No change.)

10:87-3.13 [Reserved] State Plan for Food Stamp Employment and Training Programs

(a) **The Department of Human Services, Division of Public Welfare is responsible for designing and operating food stamp employment and training (E&T) programs effective April 1, 1987, which may consist of one or more or a combination of employment, training, education, and/or job search components.**

1. **Employment and training component defined:** Employment and training component is defined as a work experience, work training or job search program designed to help food stamp recipients move promptly into unsubsidized employment.

2. **The State shall receive an employment and training program grant for each fiscal year or portion of the fiscal year in which the State operates an approved employment and training program. The grant is 100 percent federally funded. The E&T grant shall require no State or county matching.**

i. **E&T program grants shall be used to fund the administrative costs of planning, implementing and operating employment and training programs in accordance with the approved State Plan. E&T grants shall not be used for the process of determining whether or not a participant shall be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity which takes place after the operator of an E&T component has reported noncompliance without good cause. For purposes of this paragraph, the certification process shall be considered to have ended when an individual is referred to an E&T component for assessment or participation.**

ii. **E&T grants shall not be used to subsidize the wages of participants, or to reimburse participants under the provisions of N.J.A.C. 10:87-3.19(c)6.**

iii. **E&T funds shall not supplant State or local funds devoted to basic education programs. Education expenses are approvable to the extent that E&T component costs exceed the normal cost of services provided to persons not participating in an employment and training program.**

3. **If the State fails, without good cause, to comply with Federal work requirements, including an approved State plan and specific performance standards established for the State by the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), USDA/FNS may withhold funding for the employment and training programs. Non-receipt of an E&T grant does not release the State from performance requirements or sanctions for insufficient performance.**

(b) **The State Plan for Food Stamp Employment and Training Programs must be approved by USDA/FNS. The State Plan shall detail the following:**

1. **The nature of the employment and training components of the State plans to offer and reasons for such components, including cost information and an estimated operating budget;**

2. **The categories and types of mandatory work registrants exempt from E&T participation;**

3. **The characteristics of the work registrant population that the State intends to place;**

4. The geographic areas covered by the plan and why, and the type and location of services to be offered;

5. The method the State will use to count all work registrants the first month of each Federal fiscal year;

6. The organizational relationship between the units responsible for certification and the units operating E&T components and between the State agency and other agencies it plans to coordinate with for the provision of services.

(c) The State Plan for Food Stamp Employment and Training Programs shall be available for public inspection after April 1, 1987, at the Division of Public Welfare, 6 Quakerbridge Plaza, Trenton, New Jersey.

(d) Quarterly reporting requirements: The Division of Public Welfare shall submit quarterly reports to FNS no later than 45 days after the end of each Federal fiscal quarter containing monthly figure for the number of:

1. Participants newly work registered;
2. Work registrants exempted by the State Plan from participation in an E&T program, separated by the reason for exemption;
3. Participants who volunteer for and commence participation in an approved E&T component;
4. E&T mandatory participants, including Food Stamp Program applicants, who commence an approved E&T component;
5. Work registrants sent a notice of adverse action for failure to comply with E&T requirements, and the number of applicants who were denied food stamp certification or recertification for failure to comply with an E&T component;
6. The number of persons disqualified from the Food Stamp Program for failure to comply with an E&T requirement; and
7. The number of E&T participants who became employed.

(e) Annual reporting requirements: The Division of Public Welfare (DPW) shall submit annually, on their first quarterly report, the number of work registered persons in the State as in October of the new Federal fiscal year. DPW shall submit annually, on their final quarterly report the following information:

1. The number of Food Stamp Program work registrants who were exempted as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.
2. The number of food stamp participants (E&T mandatory and volunteers) placed in each E&T component offered by the State Plan.

10:87-3.14 [Reserved] Employment and training program performance standards

(a) Performance standards: USDA/FNS establishes annual performance standards for the minimum number of eligible persons that must be placed in E&T programs. Mandatory performance standards will begin with Federal fiscal year 1989.

1. Definition of placed: A person may be considered placed in a E&T program, for purposes of performance standards, if the person commences an employment and training component, or fails to comply with E&T requirements and is denied certification or is sent a notice of adverse action for the noncompliance. Notices of adverse action sent for noncompliance with work registration or voluntary quit provisions shall not count as placements. Persons assigned to a component who have good cause for non-compliance shall not be counted as placed.
2. Performance formula: To determine the level of performance at the end of each fiscal year, FNS will divide the number of E&T mandatory participants plus volunteers the State has "placed" in an E&T component over the course of the year (the numerator) by the number of E&T mandatory participants who were eligible to have been placed in the program over the course of the year plus volunteers (the denominator). The denominator is herein referred to as the "base of eligibles."

3. Counting placements in an E&T program: DPW shall count a person as placed in an E&T program, for purposes of performance standards, in accordance with the following:

- i. If the person commences an employment and training component, or fails to comply with an E&T requirements and is denied certification or is sent a notice of adverse action for the noncompliance, that person may be counted as placed.

(1) If an E&T mandatory participant does not comply with E&T requirements, and a notice of adverse action is sent, the person is counted as placed in the month the notice of adverse action is mailed.

(2) Notices of adverse action sent for noncompliance with work registration or voluntary quit shall not count as placements.

(3) Persons assigned to a component who have good cause for non-compliance shall not be counted as placed. If good cause for noncompliance is temporary (less than 60 days) the person shall be referred again to a

component as soon as practicable. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt.

ii. If a participant reports to a component which involves several months, that individual would be counted as placed in the initial month only.

iii. Each time a participant is placed in a different component after having completed a prior component, that individual may be counted as placed.

iv. If participation in one type of E&T component is not continuous, the participant may be counted as having been placed more than once in the same component.

4. Counting the "base of eligibles": The base of persons eligible to participate in an E&T program (the denominator) consists of all work registrants in the month of October plus newly work registered food stamp recipients who have not been exempted by the State Plan from participation in an E&T program. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. The State (DPW) need not count any individual in the base of eligibles (mandatory work registrants and volunteers) more than once in a fiscal year.

5. Accounting for short-term participants: A number of work registrants considered E&T mandatory participants who are counted in the base of eligibles (denominator) but who remain on the Food Stamp Program for such a short period of time that it is not possible to place them in an E&T component. These short term recipients inflate the base of eligibles. To counteract the effects of short-term participants, DPW shall decrease the base of eligibles in accordance with the approved State Plan procedures.

6. Performance data collection: To determine the annual total in the base of eligibles (denominator) DPW shall count the actual number of work registered individuals in the first month of the Federal fiscal year. Each subsequent month the DPW shall add to that figure the number of E&T mandatory participants, and volunteers who were placed in an E&T component that month. The method of measuring the number of persons "placed" (the numerator) shall be the same.

i. Separate counts shall be maintained for the mandatory participants, including applicants, and volunteers.

ii. A count of persons placed each month of the fiscal year shall be added cumulatively.

iii. A cumulative total shall be kept monthly for the base of eligibles and the number of persons placed, and the monthly totals shall be reported to FNS no later than 45 days after the end of each quarter.

7. Percentage of persons to be placed: USDA/FNS shall establish an annual performance standard for the minimum number of eligible persons that must be placed in E&T programs.

8. Variations in performance standards: USDA/FNS may adjust the performance standard for an individual state, if the state can show prospectively that the components it plans to offer, or the type of participant it plans to serve, will require a significantly higher level of effort required.

i. In determining whether an adjustment of the performance standard is warranted, and the level of the adjustment, FNS will consider the number of persons who will be placed, the intensity and effectiveness of the components and the cost.

ii. Only in extraordinary circumstances will USDA/FNS approve a performance standard which is lower than 40 percent of the nationwide standard.

10:87-3.15 Work registration

(a) [All members of an eligible household shall register for work, comply with the job search requirements, and accept suitable employment, if offered, unless exempt under any of the provisions of N.J.A.C. 10:87-3.18. Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the CWA shall explain to the applicant the work registration and job search requirements, his or her rights and responsibilities, and the consequences of failure to comply.] Each household member who is not exempt in accordance with the provisions of N.J.A.C. 10:87-3.18 shall be registered for employment by the CWA at time of application, and at least once every 12 months after initial registration, as a condition of eligibility for participation in the Food Stamp Program.

(b) Registrants who move out of an area shall reregister at their new location.

(c) The registration form need not be completed by the member required to register.

[(b)](d) The CWA shall provide work registration forms to the applicant or the household's authorized representative for each household member required to register for employment and permit the applicant or

authorized representative to complete the form. Household members are considered to have registered when a completed work registration form is submitted to the CWA.

[(c)](e) The [work registration and job search functions of NJSES] **employment and training components to which participants will be referred** may be limited by the availability of administrative funds provided by USDA.

10:87-3.16 Appropriate [NJSES office] **Food Stamp Employment and Training Program (FSETP)** defined

For the purposes of [N.J.A.C. 10:87-3.17] **Food Stamp Program work registration and work and training requirements**, the "appropriate" [NJSES office] **Food Stamp Employment and Training Program Office (FSETP)** shall be defined as that [office] FSETP or its designee having jurisdiction in the area in which a registrant resides.

10:87-3.17 Registration procedure

(a) The CWA shall register for work each household member not exempt by the provisions of N.J.A.C. 10:87-3.18, regardless of whether or not the geographic area where the member resides will be covered by an employment and/or training component. In addition, exempt food stamp participants who voluntarily elect to participate in E&T programs shall be work registered as a volunteer.

(b) Upon reaching a determination that an applicant or a household member of the applicant's household is required to register, the CWA shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply.

1. The CWA shall also provide, either by mail or in person, to each work registrant in the household, a written statement of the pertinent work requirements, rights and responsibilities of work registered household members, and consequences of failure to comply. A notice shall also be provided when a previously exempt member or new household member becomes subject to a work requirement, and at time of recertification.

(c) The CWA shall permit an applicant or the household's authorized representative to complete a work registration form for each household member required to register for employment in accordance with (a) above.

(d) Household members are considered to have registered when an identifiable work registration form is submitted to the CWA.

[(a)](e) Registration shall be accomplished through the execution of a work registration form. The certification worker shall review the registration form for completeness, retain a copy in the case record, and forward the original to the appropriate [NJSES] FSETP office in accordance with DPW instructions. [The certification worker shall check "No" under the "job search" block on the work registration form for migrant or seasonal farm workers away from their usual place of residence, and following the work stream. Additionally, if] If the certification worker is aware that any registrant is exempt from the [job search] E&T requirements, including migrant or seasonal farm workers away from their usual place of residence, and following the work stream, it shall be reflected [in the "job search" block] on the work registration form. The CWA shall [not] forward work registration forms to [NJSES] the FSETP office [until the household is certified, but in no event,] not later than five days after the date of certification.

[(b)](f) Frequency of registration: Each nonexempt person shall be required to register at the time of application and at least once every 12 months thereafter. [Re-registration] Reregistration shall be accomplished by the return of a completed [information report] work registration form to the [appropriate NJSES office] CWA which shall retain a copy in the case record and forward the original to the FSETP in accordance with (e) above.

[(c)](g) Changes to be reported to [NJSES] FSETP: The CWA shall be responsible for notifying the appropriate [NJSES] FSETP office via an information report form of those work registrants who become exempt from the work registration requirements subsequent to registration, are no longer certified for participation in the program, or move from the area. Such notification shall be provided to the appropriate [NJSES] FSETP office within a reasonable time period but not to exceed 30 days from the date the change becomes known to the CWA.

[(d)](h) Determination of work registration in case of [agency] FSETP/CEA disagreement: In the event that [NJSES] FSETP disagrees with the CWA determination that [an] the individual is required to register for work, [NJSES] FSETP may request a reconsideration of the individual's nonexempt status. The CWA must respond to the reconsideration request within 30 days and [NJSES] FSETP must accept the response as final. If, however, the CWA fails to respond within 30 days, [NJSES] FSETP shall deregister the household member.

10:87-3.18 Exemptions from the work registration requirement

(a) (No change.)

(b) The following persons shall be exempt from the work registration requirement:

1. Persons under [18] 16 and over 60: Program participants or applicants who are under [18] 16 years of age or aged 60 years or over shall be exempt. If a child has its [18th] 16th birthday within a certification period, the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption. A person age 16 or 17 who is not the head of household or who is attending school, or enrolled in an employment training program on at least a half-time basis, is exempt.

2.-4. (No change.)

5. Employed persons: Persons who are employed or self-employed at least 30 hours per week or receiving weekly earnings equal to the [f]Federal minimum wage multiplied by 30 hours shall be exempt. This shall include migrant and seasonal farm workers who are under contract or similar written agreement with an employer or crew chief to begin employment within 30 days, although this shall not prevent individuals from seeking additional services from [NJSES] FSETP.

i. (No change.)

6.-7. (No change.)

8. Recipients of unemployment compensation: Persons in receipt of unemployment compensation and persons who have applied for, but have not yet begun receiving unemployment compensation shall be exempt.

i. Failure to comply: Persons failing to comply with an unemployment compensation requirement comparable to a food stamp work registration or [job search] employment and training requirement shall be treated as though they had failed to comply with the corresponding food stamp requirement.

9. (No change.)

10. [WIN] Title IV (AFDC) work registrant: A household member subject to and [participating in WIN shall be exempt] complying with any work or training requirement under Title IV (AFDC) of the Social Security Act, including WIN registration and participation, shall be exempt.

i. Failure to comply: Persons failing to comply with a [WIN] Title IV requirement comparable to a food stamp work registration or [job search] employment and training requirement shall be treated as though they have failed to comply with the corresponding food stamp requirement.

(c) Persons losing exempt status: Persons losing exempt status due to any change in circumstance that is subject to the reporting requirements of N.J.A.C. 10:87-9.7(a)li (such as loss of employment that also results in a loss of income of more than \$25.00 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported according to the following procedures:

[1. If the change is reported in person by the household member required to register, the person shall complete a work registration form at the time the change is reported, unless this is not possible, in which case the household member shall return the work registration form to the CWA within 10 days.

2. If the change is reported in person by a household member other than the member required to register, the person reporting the change may complete the work registration form at the time the change is being reported or deliver the work registration form to the household member.

3. If the change is reported by phone or through the mail, the CWA shall be responsible for providing the participant with a work registration form.

4. Participants shall be responsible for returning the work registration form to the CWA within 10 calendar days from either the date the form was handed to the household member reporting the change in person, or the date the CWA mailed the form.

5. Persons who lose their exempt status due to a change in circumstances that is not the subject to the reporting requirements of N.J.A.C. 10:87-9.7(a)li shall register for employment at the household's next recertification.]

1. The CWA shall be responsible for providing the participant with the work registration form when the change is reported.

2. Participants shall be responsible for returning the work registration form to the CWA within 10 calendar days from the date the work registration form was handed to the household member reporting the change in person, or the date the CWA mailed the work registration form.

3. If the household fails to return the work registration form, the CWA shall issue a notice of adverse action stating that the household is being terminated and why, but that the household can avoid termination by returning the work registration form.

10:87-3.19 [Additional registration] **Work registrant requirements**

(a) For the purposes of retaining eligibility for Food Stamp benefits, a nonexempt member of the household who is registered for work shall be required to comply with the following provisions:

1. NJSES interview: The registrant shall, upon reasonable request, report to the appropriate NJSES office for a personal interview. NJSES shall send the registrant a letter informing him or her about the interview. If the registrant fails to appear for the interview and has not contacted NJSES in advance to reschedule the interview, the NJSES office shall send a second letter scheduling another interview. If the registrant does not respond to the second interview request, the NJSES shall notify the CWA within five working days of the date the registrant failed to comply with the second interview request. The CWA shall take the appropriate action in accordance with the provisions of N.J.A.C. 10:87-3.20.

2. Response to request by NJSES for additional information: The registrant shall be required to respond, in a timely fashion, to any request by the appropriate NJSES office for supplemental information regarding past work experience or skills.]

(a) **Work registrant requirements:** For the purposes of retaining eligibility for the Food Stamp Program, a work registrant shall be required to comply with the provisions of this subchapter and the requirements of the State Plan for Employment and Training Programs.

1. If a person is not exempt from employment and training requirements, the FSETP worker shall be responsible for screening (assessing) that person and, if appropriate, referring him or her to an employment and training component within 10 days of the initial assessment. Upon entry into each component, the registrant participant or volunteer shall be told, wither orally or in writing, the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. The CWA food stamp office shall take appropriate sanction action within 10 working days after learning of noncompliance.

i. **Assessment defined:** Assessment is defined as an in-depth evaluation of employability skills coupled with counseling on how and where to search for employment. If combined with work experience, employment search or training, an assessment of this nature could constitute part of an employment and training component.

(b) **Work registrants shall:**

1. Report, at the direction of the Food Stamp Employment and Training Program Office (FSETP), to an assessment interview and/or to an employment and training program component under the approved State Plan for Food Stamp Employment and Training Programs;

2. Participate in an employment and training program, if assigned;

3. Respond to a request from the FSETP or its designee for supplemental information regarding employment status or availability for work;

4. Report to an employer to whom referred by the FSETP or designee if the potential employment meets the suitability requirements described in (d)8 below.

5. Accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage.

(c) **Employment and training programs are as follows:**

1. Persons required to register for work and not exempted by the State Plan for Employment and Training Programs from placement in a job component shall be subject to the employment and training requirements imposed by the State Plan for that individual. Such individuals are referred to as E&T mandatory participants.

2. Employment and training programs may include, but are not limited to, approved:

i. Job search activity (see (f) below);

ii. Training activity;

iii. Employment activity;

iv. On-the-job training;

v. On-site work experience; or

vi. Other activity that will lead to gainful employment.

3. Requirements may vary among participants.

4. Failure to comply without good cause with the employment and training requirements shall result in disqualification of the individual, or in the case of noncompliance of the head of household, the entire household shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-3.20.

5. **Time spent in an employment and training program:** The number of months a participant spends in an employment and training component shall be determined by the FSETP. The FSETP shall also determine the number of successive components in which a participant may be placed.

i. The minimum level of effort of any work or training component shall provide that compliance by the work registrant shall entail an average of 12 hours of activity per month per participant for two months (or less in

a work experience component if the household's benefit divided by the minimum wage is less than this amount).

ii. The time spent by the members of a household collectively each month in an employment and training program work experience component shall not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage.

iii. The total hours of participation in an E&T non-work component for any household member individually in any month, together with any hours worked for compensation, shall not exceed 120.

6. **Participant reimbursement:** Participants in an employment and training program, including volunteers, shall be reimbursed by the CWA for the actual costs of transportation, or other actual costs that are reasonably necessary and directly related to participation in the employment and training programs up to \$25.00 per month for any participant.

i. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining benefits.

7. **Voluntary participation:** Individuals may elect to voluntarily participate in available work and training programs.

i. The FSETP office shall permit, to the extent practicable, persons exempt from work registration or employment and training requirements, or those not exempt who have complied or are complying with the requirements, to participate in any employment and training program offered.

ii. Voluntary participants in an employment and training component shall not be disqualified for failure to comply with work and training requirements.

iii. The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants as specified in (c)5 above.

[3.](d) **Voluntary quit:** No household whose [primary wage earner] head of household voluntarily quits his or her most recent job without good cause shall be eligible for participation in the Food Stamp [p]P program except as provided in [(a)3ii] 3 below. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self-employment enterprise or resigning from a job at the demand of the employer shall not be considered as a voluntary quit. An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike shall be considered to have voluntarily quit his or her job without good cause (see [(a)7] (e) below concerning strikers).

[i.]1. **Determining whether a voluntary quit occurred:** When a household files an application for participation, or when a participating household reports the loss of a source of income, the CWA shall determine if any currently unemployed (that is, employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for full-time work has voluntarily quit his or her most recent job (that is, employment involving 20 hours or more per week or having received weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) without good cause. For applicant households, the CWA shall determine if a voluntary quit occurred within the last 60 days. If the CWA learns that a household has lost a source of income after the date of application but before the household is certified, the CWA shall determine whether a voluntary quit occurred. For participating households, the CWA shall determine whether any household member voluntarily quit his or her job while participating in the program.

[(1)]j. [Primary wage earner] **Head of household:** If a determination of voluntary quit is established, the CWA shall then determine if [that household] the member who quit is the [household's primary wage earner] head of household in accordance with N.J.A.C. 10:87-2.6. [The primary wage earner shall be that household member 18 years of age or over who was acquiring the greatest amount of earned financial support for the household at the time of the quit. The primary wage earner is determined by comparing the projected earnings of the member who quit employment in the month the voluntary quit occurred as if he/she had not ceased employment with the actual or, if not available, the projected earnings of the remaining household members.]

[(2)]2. **CWA Action:** The CWA shall take the appropriate action, as outlined in [(A) or (B)] i through iv below, upon a determination that the [primary wage earner] head of household voluntarily quit employment.

[(A)]i. **Denial of application:** Upon a determination that the [primary wage earner] head of household voluntarily quit employment, the CWA shall determine if the voluntary quit was with good cause as defined below. If the voluntary quit was not for good cause, the household's application for participation shall be denied for a period of 90 days beginning with the date of [application] quit. The household shall be

advised of the reason for the denial and of its rights to reapply at the end of the 90 days period, the circumstances under which a voluntary quit disqualification may be ended, and of its right to request a fair hearing.

[(B)]ii. Disqualification of participating households: If the CWA determines that the [primary wage earner] head of household of a participating household voluntarily quit his or her job while participating in the Food Stamp Program, the CWA shall provide the household with a notice of adverse action within 10 days of the date the determination of voluntary quit was made. The notice shall specify the period of the disqualification, the circumstances under which a voluntary quit disqualification may be ended, the household's right to a fair hearing and that the household may reapply at the end of the disqualification period. The household shall be disqualified for three months beginning with the first month after normal adverse action procedures have been taken. If the household leaves the program before the sanction can be levied, the sanction shall not be imposed until the household returns to the program. If a household requests a fair hearing and the CWA determination is upheld, the disqualification period shall begin the first of next month after the hearing decision is rendered.

(1) Fair hearings: Each household has a right to a fair hearing to appeal a reduction, termination, or denial of benefits due to a determination that the household's head of household voluntarily quit his or her job without good cause. If the participating household requests a fair hearing and the CWA determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered.

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

[ii.]3. [Exceptions] Exemptions from voluntary quit provisions: Persons exempt from the work registration provisions as stated in N.J.A.C. 10:87-3.18 are exempt from the voluntary quit provisions.

[iii.]4. Good cause: Good cause for leaving employment includes the good cause provisions found in N.J.A.C. 10:87-3.20[d](e) and resigning from a job that does not meet the suitability criteria specified in [(a)5] (d)8 below.

(1) through (9) recodified as i. through ix. (No change in text.)

[iv.]5. Verification: To the extent that the information given by the household is questionable as defined in N.J.A.C. 10:87-2.21(a)[4i]8i, the CWA shall request verification of the household's statements.

(1) through (5) recodified as i. through v. (No change in text.)

6. Rules on ending a voluntary quit disqualification are as follows:

i. Following the end of the disqualification period a household may begin participation in the program if it applies again and is determined eligible.

ii. Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit.

iii. Eligibility may also be reestablished if the violator becomes exempt from work registration requirements in accordance with N.J.A.C. 10:87-3.18(b), other than the exemptions at N.J.A.C. 10:87-3.18(b)8 (exemption due to receipt of UIB), and 3.18(b)10 (exemption due to Title IV (AFDC) work or training participation requirements).

7. Persons who have been disqualified for quitting a job as head of household of one household shall carry their sanction with them if they join a new household as its head. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it in accordance with (d)6 above.

4. Reporting for job interview: The registrant shall be required to report to any employer to whom he/she has been referred by the appropriate NJSES office if the potential employment meets the suitability requirements in paragraph 5 of this subsection.]

[5.]8. Accepting suitable employment: The registrant shall be required to accept any bona fide offer of suitable employment to which he or she has been referred by the appropriate [NJSES] FSETP office.

i.-ii. (No change in text.)

[6.]9. Continuance of suitable employment: The registrant shall be required to continue suitable employment to which [he/she] he or she was referred, unless termination from such employment is due to circumstances beyond [his/her] his or her control, the employment is no longer considered suitable in accordance with [(a)5] 8 above, or the registrant becomes exempt from the work registration requirement (see N.J.A.C. 10:87-3.18).

[7.](e) (No change in text.)

i. through v. recodified as 1. through 5. (No change in text.)

(1) through (3) recodified as i. through iii. (No change in text.)

[(b)](f) Job search activity: Persons required to register for work shall also be subject to an independent job search or other appropriate employment and training (E&T) activity.

1. Job search assignment: During the initial assignment interview, [NJSES] the FSETP worker shall determine the job search [category] requirements of each work registrant[. NJSES] and shall provide each registrant with written notification regarding his or her job search requirements, procedures to be followed and the consequences of failure to comply. Based on the capabilities and characteristics of the registrant, [NJSES] the FSETP worker shall [place each work registrant into one of the following categories:] determine the extent of appropriate E&T activity for each work registrant.

i. [Category I—] Job Ready:

(1) Those registrants that have no apparent substantial barriers to employment shall be [placed in Category I—Job Ready] considered job ready.

ii. [Category II—] Non-Job Ready:

[(1) Those registrants with substantial barriers to employment such as, but not limited to, medical, transportation, language or family problems, that alone or in conjunction with adverse labor market conditions would make them difficult to place shall be placed in Category II—Non-Job Ready.]

[(2)](1) Persons on temporary layoff or expecting to return to work within 60 days, shall be [placed in Category II—Non-Job Ready] considered non-job ready for 60 days from the date of initial registration. At the end of the 60 day period, such persons[, if still unemployed, may be recategorized as appropriate] shall be contacted to redetermine appropriateness for participation in job search.

iii. [Category III—] Exempt:

(1) The [NJSES] FSETP determination of exempt status shall be made at the time the work registration form is received from the CWA to preclude the need of such registrants to travel to the [NJSES] FSETP office for an interview, unless it is impossible for the [NJSES] FSETP office to determine exempt status from the information on the work registration form.

(2) Those work registrants for whom a job search is determined to be impractical, specifically including registrants residing an unreasonable distance from the [appropriate NJSES office] E&T location or [potential employers shall be placed in Category III—Exempt] considered to be unsuitable for participation in any efforts toward employment due to a permanent condition of unemployability shall be considered exempt. Such exemption shall be subject to reevaluation at the time of the individual's next recertification.

(A) (No change.)

(3) Migrant and seasonal farmworkers away from their usual place of residence and following the work stream shall also be [placed in Category III—Exempt] considered exempt.

(4) Those registrants with substantial barriers to employment such as, but not limited to, medical or social problems documented in writing, language or other serious problems, that alone or in conjunction with adverse labor market conditions would make them difficult to place shall be considered exempt. Such exemption shall be subject to reevaluation at the time of the individual's next recertification.

2. Job search requirements: Persons [classified as Category I—Job Ready] determined to be job ready or persons losing exempt status or reentering the Food Stamp Program after a period of absence shall be subject to and must comply with a job search for a [period] minimum of eight weeks each 12 months. The [NJSES] FSETP office may require that the eight week period be one continuous period, or that it be divided into two separate job search periods which total eight weeks.

i. Job contact: Registrants shall contact, as required by [NJSES] FSETP, up to a minimum of 24 prospective employers during the eight week period. If the job search period is shortened, the number of required job contacts shall be reduced on a pro rata basis, to the maximum extent practicable.

(1) A referral [by NJSES] to an employer shall be considered a job contact provided the registrant presents himself or herself to the employer as available for employment.

(2) To be considered a job contact initiated by the registrant, the registrant must present himself or herself to the employer as available for work and the employer must ordinarily employ persons in areas of work that the registrant is reasonably qualified for by means of experience, training or ability and is not considered unsuitable employment in accordance with N.J.A.C. [10:87-3.19(a)5] 10:87-3.19(d)8.

(3) Depending upon the position being sought, the job contact requirements may be fulfilled by either a personal visit to the prospective employer or another method of application which is considered by the [NJSES] FSETP office to be generally accepted practice.

(4) (No change.)

ii. Reporting job contacts to [NJSES] the FSETP office.

(1) Twice during the eight week job search period the work registrant shall report at a prescheduled time to [NJSES] the FSETP worker, the result of all job search contacts. If the eight week job search activity is divided into two separate periods, [NJSES] the FSETP worker may require the registrant to report once during each period of job search activity.

(2) Job contacts shall be reported in writing in a manner prescribed by [NJSES] FSETP. At the time of the initial interview with [NJSES] the FSETP worker, the work registrant shall be informed about the manner of reporting. While such reporting will not require the employer's written confirmation of the job contact, the registrant shall be required to sign written documentation to attest to its validity. The written report shall be submitted to the FSETP worker at the work registrant's follow-up interview. The registrant shall be responsible for providing [NJSES] FSETP, upon reasonable request, any additional information regarding job contacts.

3. [NJSES] FSETP review of job contacts: [NJSES] The FSETP worker shall determine if the work registrant has completed the assigned number of job contacts.

i. (No change.)

ii. If the registrant was assigned a single continuous eight week job search period, no additional time shall be allowed unless [NJSES] the FSETP worker fails to accept, for reasons such as suitability or manner of contact, a job contact(s) reported by the registrant. In such instances, the work registrant shall be allowed an additional two weeks to make up the disallowed contact(s).

iii. (No change.)

iv. If a registrant believes that a [NJSES] FSETP determination is improper, review of the determination may be obtained from a designated [NJSES] FSETP official not involved in the original determination. For example, if the registrant believes [he/she] he or she has been improperly assigned to a job search category or assigned an improper number of job search contacts, or that an action which should have been counted as a contact was not, a review may be obtained. This also applies to an [NJSES] FSETP determination that noncompliance was not for good cause.

4. FSETP case records: A complete file on each work registrant shall be maintained by the FSETP office.

10:87-3.20 Failure to comply

(a) If the registrant fails to comply with any of the work registration or [job search] work and training requirement provisions in this subchapter, without good cause, the appropriate [NJSES] FSETP office shall notify the county welfare agency in writing within five working days of the date such information becomes known to the [NJSES] FSETP, citing specific facts and circumstances, by means of an information report form.

(b) CWA responsibilities: Within 10 days after [NJSES] the FSETP provides notification of failure to comply, the CWA shall provide the household with notice of adverse action and begin the disqualification period [with the first month following the expiration of the adverse notice period unless a fair hearing is requested] in accordance with the provisions of (c) below.

1. Fair hearing: Each household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status or a [NJSES] CWA/FSETP determination of failure to comply with the work registration and/or [job search] work and training requirements of this subchapter.

i. The household can appeal [NJSES] FSETP actions such as the job search category assigned, the number of job search contacts required, [NJSES] FSETP refusal to accept an action as a job search contact, or [NJSES] FSETP refusal to make a finding of good cause.

ii. A fair hearing shall be scheduled in accordance with N.J.A.C. 10:87-8.6(a)4 and the [NJSES] FSETP office shall be provided with sufficient advance notice to either permit the attendance of an [NJSES] FSETP representative or insure that an [NJSES] FSETP representative will be available for questioning over the phone during the hearing.

(1) [NJSES] FSETP representative attendance at hearing: If the Administrative Law Judge determines that the [NJSES] FSETP representative should be present at the hearing because of the nature and importance of the evidence to be given, the hearing shall be adjourned and rescheduled for a time at which the [NJSES] representative is able to attend. In such an event, the time frames prescribed by N.J.A.C. 10:87-8.19 for rendering a fair hearing decision shall be extended for as many days as elapse between the original fair hearing and the rescheduled fair hearing.

(c) Penalty for noncompliance: If the CWA determines that an individual other than the head of household as defined in N.J.A.C. 10:87-2.6(b) has refused or failed to comply with the requirements imposed by this subchapter and the State Plan for Employment and Training, that individual shall be ineligible to participate in the Food Stamp Program for two months and is treated as an ineligible household member in accordance with N.J.A.C. 10:87-7.14. If the head of household fails to comply, the entire household is ineligible to participate. The CWA shall take appropriate action as follows:

1. The period of ineligibility shall continue in both cases either until the member who caused the violation complies with the requirement as specified in N.J.A.C. 10:87-3.21, leaves the household, becomes exempt from work registration through the provisions of N.J.A.C. 10:87-3.18 other than the exemptions at 3.18(b)8 (exemption due to receipt of UIB) or 3.18(a)10 (exemption due to compliance with a Title IV (AFDC) work or training requirement), or for two months, whichever occurs earlier.

2. Change in household composition: Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household shall be ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he or she is not head of household, the individual shall be considered an ineligible household member in accordance with N.J.A.C. 10:87-7.14.

3. The CWA shall determine whether good cause for noncompliance exists in accordance with (d) below.

4. The CWA shall provide the individual or household with a notice of adverse action within 10 days of determining that the noncompliance was without good cause. Such notification shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included with the notice on the action which can be taken to end or avoid the sanction and procedures and requirements for reestablishment of eligibility.

5. The disqualification period shall begin with the first month following the expiration of the adverse action notice period, unless a fair hearing is requested.

6. Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a determination of failure to comply with the work registration or work and training requirements of this subchapter.

i. Individuals or households may appeal CWA or FSETP actions such as exemption status, a type of requirement imposed, or CWA or FSETP refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decision on these matters.

ii. The results of the fair hearing shall be binding on the CWA and the FSETP.

[(c)](d) Good cause for noncompliance: The CWA shall be responsible for determining good cause in those instances where the work registrant fails to comply with the work registration, [job search] work and training requirements or voluntary quit requirements of this subchapter. The county welfare agency shall take into consideration all of the facts and circumstances which existed at the time of the registrant's alleged failure to comply including information submitted by the employer and the household member involved. Good cause shall include circumstances beyond the control of the registrant.

i. If the good cause for noncompliance is temporary (less than 60 days) the person shall be referred again to a component as soon as practicable.

ii. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt.

[(d)](e) Good cause circumstances: Good cause for noncompliance shall include circumstances such as, but not be limited to, the illness of the registrant, or another household member, unavailability of transportation, an unanticipated emergency, and/or the lack of adequate care for children who have reached age six but are under age 12. Problems caused by inability of the registrant to speak or write English may constitute good cause. For example, a registrant who cannot read English would have good cause for not appearing for an [NJSES] FSETP interview if the appointment notice was written only in English.

i. (No change.)

(e) Penalty for noncompliance: If the CWA is informed by the NJSES Office that a household member has refused or failed, without good cause, to comply with any of the work registration/job search requirements of

this subchapter or the CWA determines that a registrant voluntarily quit a job without good cause, the appropriate penalty in (e)1 or (e)2 below shall apply:

1. Disqualification for failure to comply with work registration/job search requirements: The entire household shall become ineligible for a period of two months or until such member becomes exempt, or complies with the provisions for reestablishment of eligibility (see N.J.A.C. 10:87-3.21) whichever is earlier.

2. Disqualification for voluntary quit: The entire household shall be ineligible for a period of 90 days in cases of applicant households and three months in situations of participating households in accordance with (e)2i or (e)2ii below, as appropriate:

i. Applicant households: In the case of applicant households, the household's application shall be denied and a sanction imposed for 90 days starting from the date of application.

ii. Participating households: In the case of a participating household, the household shall be disqualified for three months beginning with the first month after all normal procedures for taking adverse action have been followed.]

10:87-3.21 [Reestablishment of eligibility] **Ending disqualification**

(a) [A household which has become ineligible for program benefits because of noncompliance with the work registration and/or job search requirements may have eligibility, regarding work registration and/or job search requirements restored upon satisfaction of one of the following provisions:] **Following the end of the two month disqualification period for noncompliance with the work registration or employment and training requirements, participation may resume if a disqualified individual or household applies again and is determined eligible.**

[1. Expiration of the suspension period: The household shall not retain its status of ineligibility regarding work registration and/or job search requirements for a period greater than two months.]

[i.]1. New two month period: If the two month period should elapse and, upon reapplication, the household member again refuses to comply with the work registration and/or [job search] **work and training** requirements, the member is subject to disqualification pursuant to provisions of this [section] **subchapter.**

[2. Achievement of exempt status: If the household member should achieve exempt status, as defined in N.J.A.C. 10:87-3.18, prior to the expiration of the two month suspension period, then he/she shall no longer be considered ineligible on the basis of noncompliance with work registration and/or job search requirements.

3. Nonhousehold member: If the household member who caused the disqualification is no longer a member of the household, the remaining members of the household may resume participation in the program if the household reapplies and is determined eligible. Any new household containing the disqualified person shall be subject to disqualification for the remainder of the disqualification period.

4. Compliance at a later date: If, prior to the expiration of the two month suspension period, the household member who caused the disqualification complies with the provisions of N.J.A.C. 10:87-3.15 which he or she failed to meet initially, then he or she shall no longer be considered ineligible on the basis of noncompliance with the work registration and/or job search requirements.

i. Accepting suitable employment: If the registrant refused to accept a bona fide offer of suitable employment to which he or she was referred by NJSES, acceptance of the employment offer, if still available to the participant, or securing of any other employment which yields earnings per week equivalent to the refused job, or acceptance of any other employment of at least 30 hours per week or any employment of less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours, shall be considered as compliance with the work registration/job search requirements.

ii. Return to suitable employment: If the registrant refused to continue suitable employment to which he or she was referred by NJSES, if still available to the participant, or securing of any other employment of at least 30 hours per week or less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours, shall be regarded as compliance with the work registration/job search requirements.

iii. Reporting to NJSES: If the registrant initially failed to comply with the job search requirements, the assessment interview, follow-up interview, and/or job contacts, without good cause, and such failure results in disqualification, the disqualification of the household can only be ended if the person who caused the disqualification becomes exempt from the work registration requirement or is no longer a member of the household.]

(b) **Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification becomes exempt from the work requirement, is no longer a member of the household, or the member complies as follows:**

1. **Refusal to register: Registration by the household member who refused to register;**

2. **Refusal to respond to request for additional information: Compliance with the request from the CWA, or the FSETP office or its designee, to provide supplemental information regarding employment status or availability for work;**

3. **Refusal to report to an employer: Reporting to that employer to whom referred by the FSETP office or its designee if work is still available or to another employer to whom referred.**

4. **Refusal to accept suitable employment: Acceptance of a bona fide offer of suitable employment to which referred by the FSETP office or its designee, if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing employment of at least 30 hours per week with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.**

MISCELLANEOUS NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code State-Sponsored Model Code Changes

Notice of Public Hearing

Take notice that a public hearing to receive proposals for State-sponsored changes to any of the model codes adopted by the State will be held at 9:30 A.M. on Friday, May 15, 1987 at the offices of the Bureau of Construction Code Enforcement, 1333 Brunswick Circle, Trenton, New Jersey. The Bureau requests that any specific code language changes or recommendations be made available in writing at the hearing or be mailed to the Bureau of Construction Code Enforcement at CN 805, Trenton, New Jersey 08625 (Attention: Mrs. Amy Fenwick Frank) prior to the hearing date.

June 9, 1987 from 4:00 to 6:00 P.M.
New Jersey State Library—Archives Room
185 West State Street
Trenton, New Jersey
(609) 292-6200

June 10, 1987 from 4:00 to 6:00 P.M.
East Orange School District
715 Park Avenue
East Orange, New Jersey
(201) 266-5760

June 11, 1987 from 4:00 to 6:00 P.M.
Regional Day School at Morristown
West Hanover Avenue
Morristown, New Jersey
(201) 539-9630

EDUCATION

(b)

STATE BOARD OF EDUCATION

Availability of Grant Funds

Public Notice

Take notice that pursuant to Chapter 7, Public Laws of 1987, which supplement Title 52 of the Revised Statutes, the Department of Education has available for the general public the 1987 edition of **Directory of Federal and State Programs** which gives information regarding the availability of Federal and State grant funds. A copy of this directory has been distributed to each local education agency and county office of education. Copies may be obtained by writing to:

New Jersey Department of Education
Bureau of Grants and Contracts
CN 500
Trenton, New Jersey 08625

(c)

THE COMMISSIONER

State Plan for the Education of all Handicapped Children

Notice of Public Hearings

Take notice that the Department of Education will conduct public hearings on proposed amendments to the State Plan for Special Education. These amendments were prepared as a result of the 1986 amendments to the United States Education for the Handicapped Act (EHA). The amendments cover interagency agreements, personnel standards, nonsupplanting of funds, use of discretionary funds, non-reduction of other assistance and responsibility of other State agencies.

The public comment period is May 20, 1987 to June 22, 1987. Copies of the proposed amendments are available from any office of the county superintendent of schools or from Dr. Mari Molenaar, Division of Special Education, Box CN 500, 225 West State Street, Trenton, New Jersey 08625.

The public hearings are scheduled for:

June 8, 1987 from 4:00 to 6:00 P.M.
Regional Day School at Winslow
198 Coopers Folly Road
Atco, New Jersey
(609) 767-0997

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

(d)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that the K & K Developers, Inc. has requested an amendment to the Northeast Water Quality Management (WQM) Plan. This amendment proposes to fill 2.85 acres of wetlands for a road located in Bernards Township, Somerset County. The road is to connect two existing road endpoints in which there is no other alternative alignment available. The applicant will provide mitigation by creating 2.85 acres of wetlands on site and by preserving approximately 100 acres of wetland and upland areas.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(e)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that the Rahway Valley Sewerage Authority has requested an amendment to the Northeast Water Quality Management (WQM) Plan. This amendment would allow the expansion of the plant from 35 million gallons per day (mgd) to 40 mgd. The plant expansion would be contingent on the facility meeting the appropriate State permit requirements.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located

at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(a)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would incorporate the New Hanover Wastewater Management Plan into the Tri-County WQM Plan. This amendment would allow for a new on-site subsurface disposal system to serve the new Best Western Hotel, and would also allow for a new off-site subsurface disposal system to serve 37 existing homes. New Hanover Township or the Oakford Lakes Regional Sewerage Authority will act as co-permittee of this facility.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would designate the Burlington County Board of Chosen Freeholders as the Sludge Management and Planning Agency for all sludge generated within Burlington County.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted

within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow a new industrial treatment facility known as Chatsworth Receiving Station (Ocean Spray Cranberries) located in Woodland Township, Burlington County. This facility is part of a fruit processing plant. Wastewater generated by fruit processing operations will be pre-processed, stored, and released for land application by spray irrigation. This project will avoid any encroachment in wetlands.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(d)

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that the Atlantic County Department of Regional Planning and Development has requested an amendment to the Atlantic County Water Quality Management (WQM) Plan to include the Farley Service Plaza into the Atlantic County Utilities Authority's (ACUA) sewer service area.

Farley Service Plaza is a rest stop located on the Atlantic City Expressway in Hamilton Township. Currently, the service plaza is serviced by an on-site wastewater treatment plant (NJPDES #0026531) which discharges inadequately treated effluent into a tributary of Makepeace Lake. To correct this water pollution problem, the Expressway Authority is proposing to construct a pump station and force main to convey sanitary sewage from Farley Service Plaza to the ACUA's City Island Sewage Treatment Plant for treatment and disposal.

Because the service plaza is located within an area designated as a Pinelands Forest Area by the Pinelands Commission, capacities in the proposed pumping station and force main will be dedicated to Farley Service Plaza to eliminate additional hook-ups to these facilities. In addition, to avoid impacts to environmentally sensitive areas, the proposed force main will be constructed entirely within the Expressway Right-of-Way to the ACUA's McKee Avenue pumping station.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is

located at the Department of Regional Planning and Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401, and the New Jersey Department of Environmental Protection, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to James M. Rutala, the Director of County Planning at the County Office Building address cited above; and Mr. George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered. The Atlantic County Planning Advisory Board shall issue a recommendation on the WQM Plan Amendment to the County Executive and the Chairman of the Board of Chosen Freeholders within 45 days from the date of this notice. Adoption of the amendment shall be by ordinance by the Atlantic County Board of Chosen Freeholders. The NJDEP thereafter may approve and adopt this amendment without further notice.

(a)

Amendment to the Statewide Water Quality Management Program Plan

Public Notice

Take notice that on March 27, 1987, 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 Statewide Water Quality Management Program Plan (Statewide WQM Plan) was adopted by the Department. This amendment added the following paragraph at the end of Chapter I.D (page I-6):

9. "The New Jersey Continuing Planning Process for Water Quality Management—Descriptions of Selected Management Processes" (March 1987). This document provides descriptive information and outlines suggested future actions concerning priority water bodies, water quality limited segments, total maximum daily loads and wasteload allocations, water quality standards, water quality monitoring, the construction grant priority list, consistency of discharge permits and construction grants with WQM Plans, and the water quality inventory (305(b)) report.

The amendment identifies, as one of the components of the Statewide WQM Plan, a document prepared by the Department, entitled "The New Jersey Continuing Planning Process for Water Quality Management—Descriptions of Selected Management Processes". A copy of this document has been filed with and may be reviewed at the Office of Administrative Law.

Summary of Public Comments and Agency Responses:

A draft of the subject document was distributed in January 1986 to the following organizations and agencies:

- Authorities Association of New Jersey
- New Jersey Builders Association
- New Jersey State Chamber of Commerce
- New Jersey Water Pollution Control Association
- Environmental Collegium
- Delaware River Basin Commission (DRBC)
- Interstate Sanitation Commission (ISC)
- Designated areawide water quality management planning agencies
- United States Environmental Protection Agency (EPA), Region II

Only DRBC and ISC recommended any changes to the January 1986 draft document. Department staff discussed these recommendations with DRBC and ISC staff in April 1986.

Notice of the Department's intention to propose to amend the Statewide WQM Plan was published in the New Jersey Register on April 7, 1986 (18 N.J.R. 711(d)). The notice identified the intended subject matter of the proposed amendment, stated that the Department was completing a final draft of the document, and stated that the Department would mail the final draft document to those who requested the document in writing.

Similar notice was given in a letter, dated March 17, 1986, sent to over 600 parties. A similar notice was published as a legal notice in two New Jersey newspapers: the Courier-Post (March 23, 1986) and the Star-Ledger (March 24, 1986).

Notice that the Department had completed a final draft of the document (dated May 1986), and notice of the proposed amendment to the Statewide WQM Plan, was published in the New Jersey Register on September 8, 1986 (18 N.J.R. 1842(c)). Similar notice, together with a detailed summary of the final draft document, was provided by a letter, dated August 5, 1986, sent to over 600 parties. The same letter and final draft summary, together with the final draft document, were mailed to all who requested the final draft document. A similar notice was published as a legal notice in two New Jersey newspapers: the Courier-Post (August 17, 1986) and the Star-Ledger (August 16, 1986). Copies of the final draft document and final draft summary were also made available for inspection at depository libraries for New Jersey documents.

The September 8, 1986 New Jersey Register notice, the August 5, 1986 letter, and the two newspaper notices stated that any interested person could request in writing that the Department hold a nonadversarial public hearing on the proposed amendment. The Department did not receive any requests for a public hearing. The Middlesex County Planning Board requested a short extension of the public comment period; the Department denied the request for reasons that are summarized below.

Comments submitted during the public comment period (which expired on October 8, 1986) became part of the official record of the administrative procedure. Comments were submitted during this period by the following:

- Western Monmouth Utilities Authority
- Sussex County Water Quality Management Policy Advisory Committee
- Middlesex County Planning Board
- New Jersey Department of Treasury, Office of Management and Budget
- New Jersey Board of Public Utilities
- Pennsylvania Department of Environmental Resources

The Department has carefully reviewed the comments submitted during the public comment period. The final document includes an Appendix entitled "Response to Public Comments on the Amendment to the Statewide Water Quality Management Program Plan". This Appendix includes further information about the Department's public participation activities concerning the proposed amendment, as well as statements of the issues raised, the Department's response, and, where necessary, a discussion of the response. A copy of this Appendix is being sent to all who commented on the proposed amendment. Others may request a copy from:

- Bureau of Water Resources Management Planning
- Division of Water Resources
- CN 029
- Trenton, NJ 08625

The following is a summary of the major issues raised, and a summary of the Department's response. Generally, the issues are listed in the order in which the chapters to which they pertain appeared in the final draft document and final draft summary.

CHAPTER I INTRODUCTION

COMMENT: The designated areawide water quality management (WQM) planning agencies that are still active in continuing planning deserve mention in any documents entitled "The New Jersey Continuing Planning Process for Water Quality Management". An example where such agencies should be listed by name is where Chapter I discusses coordination of planning activities between the Department and "other agencies".

RESPONSE: The Department has listed all of the designated areawide WQM planning agencies by name on page I-13 of the final document and page 2 of the final summary. On page I-3 of the final document, the Department has also added a statement explaining that, for purposes of the document, the term "Continuing Planning Process" means the Statewide "continuing planning process" required by section 303(e) of the federal Clean Water Act and section 7 of the New Jersey Water Quality Planning Act, not the areawide planning process required by section 208(b) of the federal Clean Water Act and section 5 of the New Jersey Water Quality Planning Act.

COMMENT: The document refers to the requirements which EPA has for the Continuing Planning Process (CPP) in 1983. We understand that more recent EPA guidance contained more detailed CPP requirements.

Does New Jersey's CPP meet EPA's 1986 CPP requirements? Since New Jersey and Pennsylvania are neighboring States, we want to assure that both States use similar guidance information so compatible CPPs are developed. We are particularly interested in EPA's views on the conceptual organization and various details.

RESPONSE: No change was made to the document.

DISCUSSION: EPA-Region II is allowing New Jersey to submit a final document that does not meet all of the CPP requirements in the present EPA Water Quality Planning and Management Regulation (40 CFR 130), with the understanding that New Jersey will subsequently update the final document to conform to that regulation. New Jersey completed a preliminary draft of the document before EPA adopted that regulation in 1985. Submission of the final document would have been much delayed had EPA-Region II required New Jersey to expand the final document to meet all of the 40 CFR 130 requirements before such submission. Although it is desirable for neighboring States to use similar EPA guidance in developing their CPPs, use of similar guidance can be impractical when States follow different timetables for CPP development and EPA guidance changes.

CHAPTER III

IDENTIFYING WATER QUALITY LIMITED SEGMENTS

COMMENT: The use of residual chlorine as a basis for determining that almost all segments are water quality limited is unreasonable. The Department could have required dechlorination years ago. There is no requirement in the Clean Water Act to chlorinate effluents. The question is whether or not a segment can assimilate a secondary effluent. (Page III-6)

RESPONSE: The discussion of total residual chlorine (TRC) in Chapter III has not been changed.

DISCUSSION: The use of TRC in Chapter III is reasonable. Any criteria in the Department's Surface Water Quality Standards are a potential basis for segment classification. These Standards include TRC criteria at N.J.A.C. 7:9-4.14(c)14.viii.

The question is not whether a segment can assimilate a secondary effluent, considering only parameters in the EPA secondary treatment regulation (biochemical oxygen demand and suspended solids), but whether the technology-based effluent limitations required by sections 301(b) and 306 of the Clean Water Act are adequate, by themselves, without any other pollution control requirements whatsoever, to ensure complete implementation of the Department's Surface Water Quality Standards. The classification policy should consider all point and non-point sources of pollution, and all parameters in the Standards. For municipal effluents the policy should consider not only biochemical oxygen demand and suspended solids, but other parameters in the Standards including TRC.

Whether or not Federal or State law requires chlorination for effluent disinfection is irrelevant to Chapter III. It is also irrelevant that "the Department could have required dechlorination years ago". The relevant considerations are that: (1) chlorine is the most widely used wastewater disinfectant in New Jersey; (2) the Department's Surface Water Quality Standards contain criteria for TRC; and (3) application of Clean Water Act technology-based effluent limitations will not ensure compliance with those TRC criteria. If the Department did not establish effluent limitations for TRC, criteria for TRC would commonly be contravened.

COMMENT: Our opinion is that the Kill Van Kull, Arthur Kill and Raritan Bay are water quality limited segments. On what evidence were these sections judged to be effluent limited? (Page III-7)

RESPONSE: The discussion of these water bodies in Chapter III has not been changed.

DISCUSSION: Page III-7 summarizes the segment classifications of these water bodies, as contained in existing areawide Water Quality Management (WQM) Plans. Page III-7 cannot be changed unless and until these classifications are officially changed. Also, the commenter provided no evidence or arguments to support his opinion. The comment thus provides no basis for changes to Chapter III.

The purpose of Chapter III is to summarize existing segment classifications and discuss general Department strategy for reviewing the classifications, not to make official decisions to change or retain the classification of particular segments. As page III-9 states, the Department expects to review the classification of all segments now classified as effluent limited, including Kill Van Kull, Arthur Kill, and Raritan Bay. Because these waters are in the Interstate Sanitation Commission (ISC) district, the review should be done in consultation with ISC and other member states. The Department expects to perform the review in future

administrative proceedings that focus on segment classification, and that allow public comment on specific Department proposals. Final decisions beforehand would be premature.

Chapter III itself expresses dissatisfaction with the historical basis for the existing classification of these waters. Page III-6 states that "the present classification of effluent limited segments was based on a general (and sometimes preliminary or outdated) analysis for at most a few conventional pollutants". Due to incomplete descriptions in areawide WQM Plans and older documents, definitive description of the evidence on which the existing classifications were based is apparently impossible. It is certain that the classifications were not developed with the most recent official water quality models for New York Harbor. More importantly, the classifications apparently were based entirely on the belief that secondary treatment would be adequate to attain the dissolved oxygen criteria in the Department's Surface Water Quality Standards, with no consideration of other present antidegradation policies or other water quality criteria. The Department expects to follow a broader approach when it reviews the classifications.

CHAPTER IV

DEVELOPING TOTAL MAXIMUM DAILY LOADS AND WASTELOAD ALLOCATIONS

COMMENT: In general, the Department should review the quality of the various segments. For those segments which do not meet the water quality standards, the total maximum daily load is obviously being exceeded. The Department should prioritize the segments to determine which segments' non-compliance with standards is most significant. Intensive surveys should then be conducted which, when modeled, would generate total maximum daily loads and the wasteload allocations for the segment. If segments are found to meet all standards, they should have no priority until all segments not in compliance have been studied and total maximum daily loads and wasteload allocations assigned.

RESPONSE: Chapter IV has not been changed.

DISCUSSION: It is premature to make final decisions now about the priority ranking system. When the Department drafts and proposes this system (see page IV-11), the Department will consider in detail how priorities should be set. The Department agrees that the priority ranking must consider which segments' non-compliance with standards is most significant. Additional factors should also be considered for possible use in the ranking system. For example, total maximum daily loads are generally more useful for point source control than for nonpoint source control. Therefore, the ranking system should consider for particular segments how much of the non-compliance is due to wastewater treatment plants. If some treatment plants are not meeting technology-based requirements, the Department may also want to consider whether non-compliance will be reduced or eliminated through technology-based requirements alone.

Where intensive surveys would require very substantial resources, or where coordination is required for interstate waters, the Department may have to assign low priority to what would otherwise be high priority segments, until the resources or coordination can be obtained. It may also be reasonable for the ranking system to consider the needs and schedules of the discharge permit, enforcement, sewerage construction, and water supply programs. Some segments may warrant high priority even though their existing water quality meets all water quality standards, because of proposed new discharges that need to be evaluated against the antidegradation policies in the standards. Preventing deterioration of some high quality waters may be at least as important as restoring the quality of some presently degraded waters.

CHAPTER VIII

REVIEWING DISCHARGE PERMITS AND CONSTRUCTION GRANTS FOR CONSISTENCY WITH WATER QUALITY MANAGEMENT PLANS

COMMENT: On page 22 of the final draft summary, the first paragraph of Chapter VIII should include Sussex County in its list of participants that deal with consistency determinations.

RESPONSE: The Department did not list Sussex County on page 23 of the final summary (top paragraph), or on page VIII-3 of the final document.

DISCUSSION: The purpose of the first sentence in the subject paragraph is to identify the "lead administrative unit" for the process. Not every agency that participates in a process is necessarily a "lead administrative unit" for that process. In Chapter VIII, the term "lead administrative unit" is reserved for (1) the agency with Statewide responsibility

for rulemaking and delegation decisions governing consistency review (the Department), (2) the agency or agencies that actually issue consistency determinations and perform consistency reviews (at present, only the Department), and (3) any other agency that has been delegated authority to issue consistency determinations (no other agency, at present, has such delegated authority, Middlesex County's delegation having been withdrawn in January 1987). Such agencies have a substantially greater role in the process than do agencies that only provide comments about consistency determinations to be issued by the Department. The provision of such comments by designated planning agencies was recognized in the final draft document (page VIII-16) and final draft summary (page 24), and continues to be recognized in the final document (page VIII-15) and final summary (page 25).

COMMENT: Chapter VIII specifically identifies the Middlesex County Planning Board as a "Lead Administrative Unit" for the consistency determination process. At its September 9, 1986 meeting, the Planning Board discussed the issue of acceptance of the delegation of the consistency determination process. The Planning Board agreed that further discussion with legal counsel and representatives of the Board of Chosen Freeholders is necessary; a position could thus not be taken at that meeting. There is concern that while the County should logically carry out the consistency determination process, the separation of consistency determination from actual permit review and issuance creates hardship for applicants and makes coordination between reviewers difficult. Also, the document references only New Jersey Pollutant Discharge Elimination System permits. We understood that delegation would first be considered for sewer extension permits. In light of Middlesex County's need for additional internal discussion and the fact that the next meeting of the Planning Board will not be until October 14, 1986, we request that the October 8, 1986 deadline for comments be extended to allow official comment from the Planning Board meeting of October 14.

RESPONSE: The Department did not extend the October 8, 1986 deadline. The issue became moot on January 26, 1987 when the Department withdrew its March 5, 1985 delegation to Middlesex County of responsibility for the Water Quality Management Consistency Determination Program. The Department then updated Chapter VIII by changing the "Date of the Summary Description of the Process" to January 1987, deleting the listing of the Middlesex County Planning Board as a "Lead Administrative Unit", and deleting other special references to Middlesex County in Chapter VIII. The Department also deleted most of the discussion in Chapter VIII of the "Water Quality Management Planning Delegation" strategy in the Statewide WQM Plan, and revised Chapter VIII to state that the Department is now considering whether to abandon the concept of consistency determinations and permits being issued by different agencies for the same project (see page VIII-16 in the final document).

DISCUSSION: The Department denied the request for an extended public comment period because the Department could accommodate the Middlesex County Planning Board's concerns without the paperwork and delay required to extend the comment period.

By letter dated October 14, 1986, the Planning Board submitted additional comments on Chapter VIII. Because this submission came after the public comment period ended, the Department could not recognize this letter as a comment on the proposed amendment. However, this letter had independent significance for the consistency determination program. For example, the letter established that the Planning Board did not want to issue consistency determinations for discharge permits. On January 26, 1987, because of this letter, the Department withdrew its March 1985 delegation to Middlesex County of responsibility for the consistency determination program. This withdrawal was a significant event that the Department could acknowledge by updating Chapter VIII. Moreover, this withdrawal reflected growing Department dissatisfaction with the "Water Quality Management Planning Delegation" strategy in the Statewide WQM Plan, a change in Department policy that the Department could also acknowledge in an updated Chapter VIII. (That strategy is still part of the Statewide WQM Plan, but should now be read together with the statement on page VIII-16 in the final document.)

Sewer extension permits are part of the New Jersey Pollutant Discharge Elimination System (NJPDES), and are issued under the NJPDES rules as a type of "Treatment Works Approval" (N.J.A.C. 7:14A-12). However, sewer extension permits are not "discharge permits", as that term is used in Chapter VIII. Sewer extension permits are outside the scope of Chapter VIII.

In addition to making changes to Chapter I in response to public comments, the Department has updated Chapter I of the final document in response to other events that occurred after May 1986. The Department

has also revised Chapter I to cite sections 101(b) and 510 of the federal Clean Water Act as part of the "Legal Basis for the Continuing Planning Process", and to state that no part of the document has been updated in response to the Federal "Water Quality Act of 1987".

(a)

**Proposed Statewide Sludge Management Plan
Comment Period Extension**

Take notice that the Department of Environmental Protection is extending until April 27, 1987, the period for submission of written comments on the proposed Statewide Sludge Management Plan. The original notice was published on November 3, 1986 in the New Jersey Register at 18 N.J.R. 2217(b). A subsequent notice extending the public comment period was published on February 2, 1987 at 19 N.J.R. 306(a). Please refer to these notices for further information.

Interested persons may submit written comments on the proposed Plan to:

Helen Pettit-Chase
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, New Jersey 08625

(b)

**DIVISION OF FISH, GAME AND WILDLIFE
Marine Fisheries Administration
Notice of Closure of Certain Natural Oyster Seed
Beds in Delaware Bay**

Authority: N.J.S.A. 50:1-5

Take notice that based upon physical tests of natural oyster seed beds and the recommendation of the Bay Season Advisory Committee and the Rutgers Oyster Research Laboratory, the Delaware Bay Section of the Shellfisheries Council has voted at their regularly scheduled meeting on February 3, 1987, that the natural oyster seed beds above the southwest line in Delaware Bay will not be open for the taking of oysters in 1987, due to depletion of the beds as determined by sampling. Pursuant to N.J.A.C. 7:25A-1.9(f), Richard T. Dewling, Commissioner of Environmental Protection, approves the closure of these beds to preserve and improve the shellfish industry.

HEALTH

(c)

**DIVISION OF HEALTH FACILITIES EVALUATION
Standards; All Health Care Facilities
Administrative Recodification of N.J.A.C. 8:31-26
Public Notice**

Take notice that the Department of Health has recodified the various provisions of N.J.A.C. 8:31-26, Standards for All Health Care Facilities. The purpose of the recodification is to facilitate the use of the eight chapters of the New Jersey Administrative Code which contain the standards for licensure of eight distinct types of health care facilities: N.J.A.C. 8:39 (long-term care facilities), N.J.A.C. 8:42 (home health agencies), N.J.A.C. 8:42A (alcoholism treatment facilities), N.J.A.C. 8:42B (drug treatment facilities), N.J.A.C. 8:43 (residential health care facilities), N.J.A.C. 8:43A (ambulatory care facilities), N.J.A.C. 8:43B (hospital facilities), and N.J.A.C. 8:43F (medical day care facilities).

The individual chapters have not been uniform with respect to the inclusion of pertinent sections of N.J.A.C. 8:31-26. Whereas a given chapter may have explicitly stated one pertinent section of N.J.A.C. 8:31-26, other pertinent sections of N.J.A.C. 8:31-26 may have been cross-referenced or may have been neither explicitly stated nor cross-referenced. Furthermore, many of the chapters contained rules regarding licensure fees which had been superseded by amendments to N.J.A.C. 8:31-26.5 in 1985 (see 17 N.J.R. 664(a), 17 N.J.R. 1760(b), 17 N.J.R. 2032(a), 17 N.J.R. 1999(a), 17 N.J.R. 2768(a)). A major effect of this recodification

is the inclusion of all relevant provisions of N.J.A.C. 8:31-26 in each set of licensure standards. The recodification of N.J.A.C. 8:31-26 eliminates the need to consult two distinct chapters of the New Jersey Administrative Code in order to ascertain the standards for licensure currently in effect for a single type of health care facility.

In transferring provisions of N.J.A.C. 8:31-26 to other chapters of the New Jersey Administrative Code, it was sometimes necessary to edit the current text of N.J.A.C. 8:31-26 for the purpose of grammatical and technical correctness. In such cases the standards for licensure have not

been changed in any substantive way. Similarly, the replacement of outdated licensure fees by the superseding provisions of N.J.A.C. 8:31-26.5 does not in any way alter the fees which facilities currently pay for the filing of an application for licensure or for the annual renewal of the license. The recodification of N.J.A.C. 8:31-26 introduces no new standards for licensure for any type of health care facility.

The following chart matches each section of N.J.A.C. 8:31-26 with the corresponding citation in each of the recodified chapters to which the section applies.

CURRENT N.J.A.C. CITATIONS

Former Citations from N.J.A.C. 8:31-26	Long-Term Care	Home Health Agencies	Alcoholism Treatment	Drug Treatment	Residential Health Care	Ambulatory Care	Hospital	Medical Day Care
8:31-26.1	8:39-3.2(b)	8:42-1.8(q)	8:42A-3.2(b)	8:42B-3.2(b)	8:43-1.3(e)	8:43A-3.2(b)	8:43B-2.3	8:43F-3.3(b)
8:31-26.3(a)	8:39-3.5(a)8	8:42-1.8(r)	8:42A-3.7(a)24	8:42B-3.6(a)23	8:43-4.6(k)	Not Applicable	8:43B-5.1(g)	8:43F-3.27
8:31-26.3(a)1	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	8:43B-5.1(g)	Not Applicable
8:31-26.3(a)2	Not Applicable	8:42-1.8(r)	8:42A-3.7(a)24	8:42B-3.6(a)23	Not Applicable	Not Applicable	8:43B-5.1(g)	Not Applicable
8:31-26.4	Not Applicable	8:42-1.8(p)	8:42A-3.19	Not Applicable	Not Applicable	Not Applicable	8:43B-1.13	Not Applicable
8:31-26.5	8:39-2.2(b)	8:42-1.4(b)	8:42A-2.2(b)	8:42B-2.2(b)	8:43-1.4(h)	8:43A-2.2(b)	Not Applicable	8:43F-2.3(b)
8:31-26.6	8:39-3.12	8:42-1.8(s)	8:42A-3.20	8:42B-3.14	8:43-4.14	8:43A-3.11	8:43B-1.14	8:43F-3.28

Some of the rules cited in the chart did not result from recodification of N.J.A.C. 8:31-26. N.J.A.C. 8:43A-2.2(b), N.J.A.C. 8:43A-3.2(b), N.J.A.C. 8:43A-3.11, and N.J.A.C. 8:43F-3.3(b) were already present in the New Jersey Administrative Code and required no editing. The chart does not refer to N.J.A.C. 8:31-26.2 because that section expired on July 1, 1984, pursuant to the requirements of Executive Order 66(1978), and was not readopted. Also, N.J.A.C. 8:31-26.3(b) through (d) and N.J.A.C. 8:31-26.4(c) were rendered superfluous by the recodification. N.J.A.C. 8:42A-3.2(b) requires amendment and will be changed when the entire Manual of Standards for Licensure of Alcoholism Treatment Facilities, N.J.A.C. 8:42A, is revised.

N.J.A.C. 10:85-9.4(b)3.ii(2) was deleted in an adoption notice published in the June 18, 1984 issue of the New Jersey Register at 16 N.J.R. 1610(a) and should not appear in the Code.

Full text of N.J.A.C. 10:82-5.10, 10:85-4.6 and 10:85-9.4 should appear in the New Jersey Administrative Code as follows:

10:82-5.10 Emergency assistance

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

(c) When there has been substantial loss of shelter, food, clothing, or household furnishings by fire, flood or other similar natural disaster, or when, because of an emergent situation over which they had no control or opportunity to plan in advance, the eligible unit is in a state of homelessness and the county welfare agency determines that the providing of shelter, and/or food and/or emergency clothing, and/or minimum essential house furnishings are necessary for health and safety, such needs may be recognized in accordance with the regulations and limitations in the following sections:

1. Emergency shelter: When an actual state of homelessness exists or is manifestly imminent, the county welfare agency shall authorize payment of the actual cost of adequate emergency shelter arrangements at the most reasonable rate available, for a specified temporary period not to exceed two calendar months following the month in which the state of homelessness first becomes known to the county welfare agency.

i.-ii. (No change in text.)

iii. When required to establish the family in a more permanent living arrangement, allowances may be authorized for security deposits for rent and utilities.

2.-5. (No change in text.)

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

10:85-4.6 Emergency grants

(a) (No change in text.)

(b) Standards for emergency grants are:

1. Emergency shelter: When an actual state of homelessness exists or is manifestly imminent in accordance with (a)1 or (a)2 of this section the authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed the two calendar months following the month in which the state of homelessness first becomes known to the municipal welfare department.

i.-ii. (No change in text.)

2.-4. (No change in text.)

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

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook: N.J.A.C 10:82-5.10

General Assistance Manual: N.J.A.C. 10:85-4.6, 10:85-9.4

Notice of Correction

Take notice that errors appear in the New Jersey Administrative Code at N.J.A.C. 10:82-5.10(c)1.iii, Schedule VII: Emergency Shelter Reduction Amounts; N.J.A.C. 10:85-4.6(b)1.iii, Emergency grants; and N.J.A.C. 10:85-9.4(b)3.ii(2), Limitations of obligatory contributions.

Amendments to N.J.A.C. 10:82-5.10 and 10:85-4.6 were adopted on an emergency basis and were filed with the Office of Administrative Law and became effective on March 27, 1986. The provisions of the emergency adoption were also proposed concurrently. The adopted emergency amendment for N.J.A.C. 10:82-5.10 expired May 26, 1986 (see 18 N.J.R. 849(a)). The adopted emergency amendment for N.J.A.C. 10:85-4.6 expired May 28, 1986 (see 18 N.J.R. 850(a)). The concurrent proposals were not readopted.

Since the concurrent proposals accompanying the emergency amendments were not readopted in compliance with the normal rulemaking requirements of the Administrative Procedure Act (specifically, N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5), N.J.A.C. 10:82-5.10(c)1.iii and N.J.A.C. 10:85-4.6(b)1.iii, should not appear in the Code. Subsequent amendments adopted under normal rulemaking requirements, however, were adopted for N.J.A.C. 10:82-5.10 (see 18 N.J.R. 1200(b) and N.J.A.C. 10:85-4.6 (see 18 N.J.R. 1962(a)).

10:85-9.4 Determining amount of support

- (a) (No change in text.)
- (b) Rules concerning the determination of LRR capacity to support are:
 - 1.-2. (No change in text.)
 - 3. Method for determining capacity:
 - i. The amount of the obligatory contribution is calculated as follows: (1)-(5) (No change in text.)
 - ii. Limitation of obligatory contributions:
 - (1) (No change in text.)
 - Schedules IV and V (No change in text.)

INSURANCE

(a)

REAL ESTATE COMMISSION

Notice of Action Upon Petition for Declaratory Ruling and/or Rulemaking Limiting the Scope of Advertising Rules: N.J.A.C. 11:5-1.15

Petitioner: Coldwell Banker Residential Real Estate, Inc.

Authority: N.J.S.A. 45:15-3, N.J.S.A. 45:15-16; N.J.S.A. 45:15-17; N.J.S.A. 52:14B-4(f); N.J.S.A. 52:14B-8.

Take notice that on February 19, 1987 petitioner filed a petition with the New Jersey Real Commission requesting a declaratory ruling and/or an amendment to N.J.A.C. 11:5-1.15 limiting the scope of certain sections of these advertising rules. Notice of this petition was published in the April 6, 1987 issue of the New Jersey Register at 19 N.J.R. 570(d). Specifically, petitioner requested a declaratory ruling that certain sections of the advertising rules of the New Jersey Real Estate Commission, N.J.A.C. 11:5-1.15, are not applicable to any advertising by Coldwell Banker which is "non-specific media advertising," that is, advertising not related to the sale of particular property in New Jersey, non-specific signs, office stationery, contracts, business cards, brochures, circulars and the like. In the alternative, petitioner requested that N.J.A.C. 11:5-1.15 be amended to exempt such advertising from the provisions of N.J.A.C. 11:5-1.15(a), (b), (c), (j), (k) and (m). Petitioner stated that the requested limitations would permit Coldwell Banker and other similar national organizations to advertise in such a way as to "project a uniform public image as a full service real estate organization." It is asserted that the petitioner's legal rights and interests in doing so justify either a construction or amendment of the rule "to exempt all forms of . . . non-specific advertising from local control."

NEW JERSEY REAL ESTATE COMMISSION RESPONSE:

It is hereby certified that this petition was duly considered by the New Jersey Real Estate Commission pursuant to law at the regular Commission meeting on March 3, 1987, at which time the Commission voted to afford Coldwell Banker a full public hearing prior to issuing any declaratory ruling pursuant to N.J.S.A. 52:14B-8, and which shall also constitute a pre-proposal hearing on the proposed amendment to N.J.A.C. 11:5-1.15 pursuant to N.J.S.A. 52:14B-4(f). The Commission noted that the petitioner's request to exempt national real estate marketing advertising from local advertising rules in New Jersey is of consider-

able importance to all New Jersey real estate buyers, sellers and practitioners and to other national real estate organizations and corporations. Therefore, this notice of the Commission's intent to conduct public hearings on this issue invites the participation of other interested parties in addition to the petitioner, including consumers and other national marketing organizations.

Interested persons and businesses who wish to participate in the Real Estate Commission hearings on this issue by presenting written or oral testimony to the Commission should send a letter to the Commission on or before **May 15, 1987** stating their interest in the matter and their intent to participate in the hearing.

Interested persons may also submit written comments to the Commission until **June 30, 1987**. The public hearing will be held during the month of June at a time, place and date to be announced.

Address letters of intent to participate, comments and questions to:

Sarah T. Darrow
Deputy Attorney General
New Jersey Real Estate Commission
CN 325
Trenton, New Jersey 08625
ATTN: CBII.

The Commission will not consider or propose an amendment of the advertising rules until the hearing record and written comments have been considered and a decision reached with respect to a declaratory ruling. The Commission will address this issue in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

OTHER AGENCIES

CASINO CONTROL COMMISSION

(b)

Petition for Rulemaking Inactive Emergency Drop Box Storage N.J.A.C. 19:45-1.17(c) and (d)

**Petitioners: Resorts International Hotel, Inc. and
Resorts International, Inc. of New Jersey**

Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f)

Take notice that on March 11, 1987, petitioners filed a rulemaking petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:45-1.17. This amendment would enable the petitioners and other casinos to construct and utilize storage cabinets outside of the count room for the purpose of storing empty unused emergency drop boxes.

Specifically, the proposal would allow for the storage of inactive emergency drop boxes in a double locked, enclosed storage cabinet or trolley in a secured area outside of the count room rather than the present requirement that they be stored inside the count room. The key to one lock of the enclosed storage cabinet or trolley would be maintained by the Security Department, the other key would be maintained by the Commission inspector. The petitioners maintain that this will result in additional space availability in the count room while still maintaining the high level of security required.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c).

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 March 2, 1987 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1987 d.1 means the first rule adopted in 1987.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: FEBRUARY 17, 1987.

NEXT UPDATE WILL BE DATED MARCH 16, 1987.

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
18 N.J.R. 583 and 726	April 7, 1986	18 N.J.R. 2069 and 2148	October 20, 1986
18 N.J.R. 727 and 868	April 21, 1986	18 N.J.R. 2149 and 2234	November 3, 1986
18 N.J.R. 869 and 1018	May 5, 1986	18 N.J.R. 2235 and 2344	November 17, 1986
18 N.J.R. 1019 and 1122	May 19, 1986	18 N.J.R. 2345 and 2408	December 1, 1986
18 N.J.R. 1123 and 1222	June 2, 1986	18 N.J.R. 2409 and 2472	December 15, 1986
18 N.J.R. 1223 and 1326	June 16, 1986	19 N.J.R. 1 and 164	January 5, 1987
18 N.J.R. 1327 and 1432	July 7, 1986	19 N.J.R. 165 and 260	January 20, 1987
18 N.J.R. 1433 and 1504	July 21, 1986	19 N.J.R. 261 and 324	February 2, 1987
18 N.J.R. 1505 and 1640	August 4, 1986	19 N.J.R. 325 and 392	February 17, 1987
18 N.J.R. 1641 and 1726	August 18, 1986	19 N.J.R. 393 and 430	March 2, 1987
18 N.J.R. 1727 and 1862	September 8, 1986	19 N.J.R. 431 and 476	March 16, 1987
18 N.J.R. 1863 and 1978	September 22, 1986	19 N.J.R. 477 and 586	April 6, 1987
18 N.J.R. 1979 and 2078	October 6, 1986	19 N.J.R. 587 and 672	April 20, 1987

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:1, 1:2—1:21 Administrative hearings

PROPOSAL NOTICE (N.J.R. CITATION)

18 N.J.R. 1728(a)

DOCUMENT NUMBER

ADOPTION NOTICE (N.J.R. CITATION)

(TRANSMITTAL 25, dated December 15, 1986)

AGRICULTURE—TITLE 2

2:22 Control of dangerously injurious insects
 2:32 Sire Stakes Program
 2:50 Milk production and supply
 2:69-1.11 Commercial values of fertilizers
 2:90-1.3 Soil erosion and sedimentation control
 2:90-1.5, 1.13, 1.14 Soil erosion and sediment control

19 N.J.R. 479(a)
 19 N.J.R. 480(a)
 19 N.J.R. 433(a)
 19 N.J.R. 484(a)
 18 N.J.R. 2081(a)
 19 N.J.R. 395(a)

R.1987 d.171

19 N.J.R. 513(a)

(TRANSMITTAL 1987-1, dated February 17, 1987)

BANKING—TITLE 3

3:7-5.1 Statement of interest and bank holding companies
 3:11-11.13 Leeway investments: confidentiality of approval process
 3:23 License fees
 3:41 Cemeteries: disinterment and reinterment of human remains

19 N.J.R. 327(a)
 18 N.J.R. 1224(a)
 19 N.J.R. 485(a)
 18 N.J.R. 1642(a)

R.1987 d.192

19 N.J.R. 632(a)

(TRANSMITTAL 1987-1, dated February 17, 1987)

PERSONNEL (CIVIL SERVICE)—TITLE 4

4:1-27.1 Overtime rules
 4:2-27 Overtime rules
 4:6 Overtime Committee Rules

19 N.J.R. 327(b)
 19 N.J.R. 327(b)
 19 N.J.R. 327(b)

(TRANSMITTAL 1987-1, dated January 20, 1987)

COMMUNITY AFFAIRS—TITLE 5

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
 5:18A-2.3, 4.3, 4.4 Fire Code Enforcement
 5:23-3.18, 6.1-6.3 Energy subcode; solar energy property tax exemptions
 5:23-4.5 Uniform Construction Code enforcement: conflict of interest
 5:23-7.100-7.116 Barrier Free Subcode
 5:80-21 Housing and Mortgage Finance: single family loans
 5:92-6.1, 8.2 Council on Affordable Housing: municipal credits; wetlands identification

18 N.J.R. 1225(a)
 18 N.J.R. 1225(a)
 19 N.J.R. 433(b)
 19 N.J.R. 332(a)
 18 N.J.R. 757(a)
 18 N.J.R. 2238(a)
 19 N.J.R. 3(a)

R.1987 d.123

19 N.J.R. 407(a)

(TRANSMITTAL 1987-2, dated February 17, 1987)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
EDUCATION—TITLE 6				
6:3-2	Pupil records	19 N.J.R. 333(a)		
6:8-7.1	High school graduation requirements	19 N.J.R. 4(a)	R.1987 d.185	19 N.J.R. 632(b)
6:8-7.1	High school graduation requirements	19 N.J.R. 4(b)	R.1987 d.186	19 N.J.R. 633(a)
6:20-2.14	Appropriation of free balance by local district	19 N.J.R. 437(a)		
6:20-4	Tuition for private schools for the handicapped	19 N.J.R. 336(a)		
6:21-18	Inspection of vehicles used for pupil transportation	19 N.J.R. 5(a)	R.1987 d.184	19 N.J.R. 633(b)
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		
6:53	Vocational education safety standards	19 N.J.R. 485(b)		
6:68-7	Municipal branch library services	19 N.J.R. 6(a)	R.1987 d.183	19 N.J.R. 634(a)
6:68-8	Evaluation and development of library collections	19 N.J.R. 7(a)	R.1987 d.182	19 N.J.R. 635(a)
6:68-9	Maintenance of library collections	19 N.J.R. 8(a)	R.1987 d.181	19 N.J.R. 635(b)

(TRANSMITTAL 1987-2, dated February 17, 1987)

ENVIRONMENTAL PROTECTION—TITLE 7				
7:1-3	Interim Environmental Cleanup Responsibility Act rules	19 N.J.R. 10(a)	R.1987 d.147	19 N.J.R. 514(a)
7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:1A	Water Supply Bond Loan Program	19 N.J.R. 437(b)		
7:1F-1, 2	Industrial Survey Project rules	19 N.J.R. 11(a)	R.1987 d.193	19 N.J.R. 637(a)
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: hazardous substances and materials	19 N.J.R. 438(a)		
7:2-11	Natural Areas System	18 N.J.R. 2349(b)		
7:6-1.26, 1.37, 3.2, 3.5, 3.10, 3.11, 3.12, 4.5, 4.7	Boating and water-skiing	19 N.J.R. 396(a)	R.1987 d.194	19 N.J.R. 637(b)
7:6-1.42	Boating rules: diving and swimming	18 N.J.R. 1712(a)	R.1987 d.125	19 N.J.R. 408(a)
7:7-1, 2, 3, 4, 6	Coastal Permit Program	18 N.J.R. 2156(a)		
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)		
7:8-1.3, 1.7, 2.1, 2.2, 2.6, 3.4, 3.6	Stormwater management	19 N.J.R. 488(a)		
7:9-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:9-13	Sewer connection bans	18 N.J.R. 2163(a)		
7:9-13	Sewer connection ban: extension of comment period	19 N.J.R. 263(b)		
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)	R.1987 d.138	19 N.J.R. 449(a)
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: repropoed	19 N.J.R. 167(b)		
7:13-7.1(d)	Redelineation of Wolf Creek in Hackensack Basin	18 N.J.R. 2355(a)		
7:13-7.1(d)	Redelineation of Holland Brook in Somerset County	18 N.J.R. 1866(a)	R.1987 d.197	19 N.J.R. 639(a)
7:13-7.1(d)	Redelineation of North Branch Raritan River in Somerset County	18 N.J.R. 1866(b)	R.1987 d.196	19 N.J.R. 639(c)
7:13-7.1(d)	Flood plain delineations in Passaic-Hackensack and Raritan basins	19 N.J.R. 489(a)		
7:13-7.1(e)	Redelineation of Henderson Brook in Fair Lawn	18 N.J.R. 2169(a)	R.1987 d.195	19 N.J.R. 639(b)
7:13-7.1(g)	Flood hazard areas along the Saddle, Ramapo and Mahwah rivers, and Masonic Brook	19 N.J.R. 169(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System: comment period extended	18 N.J.R. 2411(a)		
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)		
7:14A-1.9, 12	Sewer connection bans: extension of comment period	19 N.J.R. 263(b)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:22-6	Pinelands Infrastructure Trust Fund procedures	18 N.J.R. 1896(a)		
7:22-7	Determination of allowable costs: Pinelands	18 N.J.R. 1904(a)		
7:25-2.18, 2.22	Use of land and water areas	19 N.J.R. 398(a)		
7:25-4.13, 4.17	Endangered and nongame species lists	19 N.J.R. 491(a)		
7:25-18A.4	Sale of striped bass	18 N.J.R. 2170(a)	R.1987 d.126	19 N.J.R. 408(a)
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)		
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-7.2, 9.1, 9.3, 10.8, 11.4	Hazardous waste management: containers, landfills, existing facilities	19 N.J.R. 441(a)		
7:26-8.14	Hazardous waste listing: ethylene dibromide wastes	19 N.J.R. 443(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management	18 N.J.R. 2356(a)		
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management: extension of comment period	19 N.J.R. 263(c)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)		
7:26-15	Recycling Grants and Loans Program	18 N.J.R. 2358(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-19.2, 19.3, 19.4, 19.6, 19.9, 19.10, 19.12	Licensure of orthopedic and urologic x-ray technologists	18 N.J.R. 2361(a)	R.1987 d.139	19 N.J.R. 449(b)
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		
7:30-2.3	Pesticide Control Code: correction to Administrative Code			19 N.J.R. 466(b)
7:30-2.3	Restricted-use pesticides	19 N.J.R. 492(a)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)		
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		

(TRANSMITTAL 1987-2, dated February 17, 1987)

HEALTH—TITLE 8

8:2-1	Birth certificates	18 N.J.R. 2278(a)		
8:2-1	Birth certificates: extension of comment period	19 N.J.R. 264(a)		
8:21-2.41	Sale of striped bass	18 N.J.R. 2174(a)	R.1987 d.127	19 N.J.R. 409(a)
8:21-4	Control of new drugs and Laetrile use	18 N.J.R. 2363(a)		
8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:21-5	Order to remove from sale and recall of foods, drugs, cosmetics, and devices: extension of proposal comment period	18 N.J.R. 1715(b)		
8:26-5.7	Lifeguard training at ocean and tidal bathing beaches	19 N.J.R. 494(a)		
8:31-26	Standards for All Health Care Facilities: administrative recodification			19 N.J.R. 662(c)
8:31-26.3, 26.4	Home health agencies: employee physicals; child abuse and neglect	18 N.J.R. 2283(a)		
8:31B-2.2, 3.51, 3.57, 3.73, 4.40	Hospital reimbursement: Same Day Surgery services	18 N.J.R. 1908(a)		
8:31B-3.27, 4.42	Hospital reimbursement: capital facilities allowance	18 N.J.R. 1912(a)		
8:31B-3.41, 4.15, 4.38, 4.39	Hospital reimbursement: uncompensated care	18 N.J.R. 2283(b)		
8:31B-3.72	Hospital reimbursement: periodic adjustments	18 N.J.R. 1917(a)		
8:31B-3.73, App. IX	Hospital reimbursement: cost/volume methodology	18 N.J.R. 2284(a)		
8:31B-3.73, App. IX	Hospital reimbursement: correction to cost/volume methodology	19 N.J.R. 264(b)		
8:31B-7	Uncompensated Care Trust Fund	19 N.J.R. 495(a)		
8:31B-7.4, 7.5	Uncompensated Care Trust Fund Emergency		R.1987 d.164	19 N.J.R. 568(a)
8:42	Licensure of home health agencies	18 N.J.R. 2287(a)		
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:43E-5	Intermediate Adult and Special Psychiatric Beds: certification of need	19 N.J.R. 171(b)		
8:52-1.8	Local health educators	19 N.J.R. 398(b)		
8:65-10.3	Controlled substances: Tiletamine-Zolazepam preparations	19 N.J.R. 497(a)		
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a), 1463(b), 1957(a), 2015(a), 19 N.J.R. 118(a), 216(b))	18 N.J.R. 537(a)	R.1987 d.133	19 N.J.R. 450(a)
8:71	Generic drug list additions (see 18 N.J.R. 1955(b), 2208(b), 19 N.J.R. 116(b), 216(c))	18 N.J.R. 1167(a)	R.1987 d.189	19 N.J.R. 640(a)
8:71	Generic drug additions (see 19 N.J.R. 116(c), 217(a))	18 N.J.R. 1775(a)	R.1987 d.190	19 N.J.R. 640(b)
8:71	Interchangeable drug products (see 19 N.J.R. 215(a))	18 N.J.R. 2100(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 216(a))	18 N.J.R. 2101(a)		
8:71	Interchangeable drug products	19 N.J.R. 13(a)	R.1987 d.191	19 N.J.R. 641(a)

(TRANSMITTAL 1987-2, dated February 17, 1987)

HIGHER EDUCATION—TITLE 9

9:1-1.4	Submission of financial statements by independent special purpose and theological institutions	18 N.J.R. 2364(a)	R.1987 d.150	19 N.J.R. 514(b)
9:1-6.1	Approval of courses-for-credit offered by out-of-state institutions	18 N.J.R. 2365(a)	R.1987 d.151	19 N.J.R. 514(c)
9:4-1.5	Community college chargeback system	19 N.J.R. 14(a)	R.1987 d.152	19 N.J.R. 515(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
9:5-1.1	Student dependency status defined	19 N.J.R. 264(c)		
9:6-6	Student membership on State college board of trustees	19 N.J.R. 265(a)		
9:7-2.6	Student assistance programs: student dependency status defined	19 N.J.R. 176(a)	R.1987 d.169	19 N.J.R. 515(b)
9:7-3.1	Tuition Aid Grant Program: 1987-88 Award Table	19 N.J.R. 177(a)	R.1987 d.170	19 N.J.R. 516(a)
9:7-4.11	Distinguished Scholars Program: academic criteria	19 N.J.R. 498(a)		
9:7-9	Congressional Teacher Scholarship Program	18 N.J.R. 2174(b)	R.1987 d.168	19 N.J.R. 516(b)
9:9-3.5	Capitalization of PLUS loan interest	19 N.J.R. 498(b)		
9:11-1.2	Student residency	18 N.J.R. 1777(a)	R.1987 d.135	19 N.J.R. 450(b)
9:11-1.4	Educational Opportunity Fund: student dependency status defined	19 N.J.R. 266(a)		
9:11-1.5	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 15(a)		
9:11-1.5	EOF: financial eligibility for undergraduate grants	19 N.J.R. 499(a)		
9:11-1.7	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 399(a)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)	R.1987 d.134	19 N.J.R. 451(a)

(TRANSMITTAL 1987-1, dated January 20, 1987)

HUMAN SERVICES—TITLE 10

10:49-1.5	Records retention by long-term care facilities	18 N.J.R. 2411(c)	R.1987 d.180	19 N.J.R. 643(a)
10:51-2.6, 5.18	Correction to Administrative Code			19 N.J.R. 466(d)
10:56-3	HCPCS codes for dental services	19 N.J.R. 15(b)	R.1987 d.166	19 N.J.R. 519(a)
10:60-2.2, 2.3, 3.1	Personal care assistant services	18 N.J.R. 2365(b)	R.1987 d.179	19 N.J.R. 643(b)
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:63-1.14	Records retention by long-term care facilities	18 N.J.R. 2411(c)	R.1987 d.180	19 N.J.R. 643(a)
10:65-1.5, 1.8	Medical day care centers: recordkeeping	19 N.J.R. 30(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:81-3.12	PAM: parent-minor and AFDC	19 N.J.R. 31(a)		
10:81-3.18	PAM: exemption from WIN registration	18 N.J.R. 2301(a)	R.1987 d.132	19 N.J.R. 451(b)
10:81-3.34	PAM: temporary absence of child from home	18 N.J.R. 1675(a)	R.1987 d.175	19 N.J.R. 644(a)
10:81-4.9, 5.2, 7.1	PAM: administration of AFDC program	19 N.J.R. 341(a)		
10:81-7.29	Retroactive funeral payments	18 N.J.R. 2176(a)	R.1987 d.136	19 N.J.R. 452(a)
10:81-11.7, 11.9	PAM: annual notice of child support collections	19 N.J.R. 343(a)		
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
10:82-1.2, 2.13, 5.11	AFDC payment levels	19 N.J.R. 500(a)		
10:82-1.3, 4.16	ASH: household defined; court-ordered support	19 N.J.R. 31(b)		
10:82-3.2, 4.13, 4.14, 4.15	ASH: resources and income in AFDC	19 N.J.R. 344(a)		
10:82-4.15	ASH: lump sum income	19 N.J.R. 32(a)	R.1987 d.178	19 N.J.R. 645(a)
10:82-5.10	Correction to Administrative Code			19 N.J.R. 663(a)
10:82-5.12	ASH: disregarded child support payments	19 N.J.R. 501(a)		
10:85-3.2	GAM: exemption from work requirement and unemployability	18 N.J.R. 2183(a)		
10:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)		
10:85-3.3	General Assistance rate in residential health care facilities			19 N.J.R. 570(c)
10:85-3.3, 3.4	GAM: treatment of agent orange payments	19 N.J.R. 32(b)	R.1987 d.177	19 N.J.R. 645(b)
10:85-4.1, 9.4	General Assistance payment levels	19 N.J.R. 502(a)		
10:85-4.6, 9.4	Correction to Administrative Code			19 N.J.R. 663(a)
10:85-4.9	Retroactive funeral payments	18 N.J.R. 2176(a)	R.1987 d.136	19 N.J.R. 452(a)
10:85-5.3	GAM: payment of medical insurance premiums	19 N.J.R. 33(a)	R.1987 d.176	19 N.J.R. 646(a)
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:87-2.3, 2.6, 2.19, 3.13—3.21	Food Stamp Program: employment and training requirements	Emergency	R.1987 d.202	19 N.J.R. 649(a)
10:94	Medicaid Only Manual recodified to 10:71			19 N.J.R. 466(e)
10:94-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	19 N.J.R. 245(a)	R.1987 d.174	19 N.J.R. 646(b)
10:100-3.6	Submission of cemetery petition by funeral directors	19 N.J.R. 345(a)		
10:100-3.10	Retroactive funeral payments	18 N.J.R. 2176(a)	R.1987 d.136	19 N.J.R. 452(a)
10:100-App. A	Supplemental Security Income payment levels	19 N.J.R. 246(a)	R.1987 d.172	19 N.J.R. 533(a)

(TRANSMITTAL 1987-2, dated February 17, 1987)

CORRECTIONS—TITLE 10A

10A:4-4.1	Inmate discipline: prohibited acts	19 N.J.R. 178(a)	R.1987 d.154	19 N.J.R. 534(a)
10A:4-5.2	Inmate discipline: schedule of sanctions at Youth Complex	19 N.J.R. 178(b)	R.1987 d.155	19 N.J.R. 534(b)
10A:9-4.6	Reduced custody consideration for inmates with mandatory minimum sentences of 24 months or less	19 N.J.R. 178(c)	R.1987 d.156	19 N.J.R. 534(c)
10A:16	Medical and health services	18 N.J.R. 1662(a)	R.1987 d.160	19 N.J.R. 535(a)
10A:16-6	Pregnant inmates	19 N.J.R. 503(a)		
10A:18	Mail, visits, and use of telephone	19 N.J.R. 33(b)		
10A:34-2	Municipal detention facilities	18 N.J.R. 2412(a)	R.1987 d.149	19 N.J.R. 548(a)

(TRANSMITTAL 1987-1, dated January 20, 1987)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
INSURANCE—TITLE 11				
11:1-24	Credit cards and payment of insurance premiums	18 N.J.R. 1999(a)		
11:2-17.11, 17.14	Settlement of automobile damage claims	18 N.J.R. 2415(a)		
11:3-7	Automobile Reparation Reform: additional personal injury protection	19 N.J.R. 44(a)	R.1987 d.140	19 N.J.R. 453(a)
11:3-10.3, 10.10	Settlement of automobile damage claims	18 N.J.R. 2415(a)		
11:3-13.1, 13.3, 13.4, 13.5, 13.6	Deductibles for private passenger automobile coverage	19 N.J.R. 46(a)	R.1987 d.142	19 N.J.R. 455(a)
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:3-17.4, 17.5	Private passenger automobile rate filings	19 N.J.R. 47(a)	R.1987 d.141	19 N.J.R. 455(b)
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)	Expired	
11:4-21	Limited death benefit policies	18 N.J.R. 1085(a)		
11:5-1.16	Obligations of real estate licensees	18 N.J.R. 1677(a)	R.1987 d.159	19 N.J.R. 551(a)
11:5-1.16	Real estate contracts and leases subject to attorney review	19 N.J.R. 503(b)		
11:5-1.16, 1.23	Public hearing: Obligations of real estate licensees	18 N.J.R. 2113(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.25	Sales of interstate properties	18 N.J.R. 2416(a)	R.1987 d.199	19 N.J.R. 647(a)
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:5-1.30	Transfer of real estate licenses	18 N.J.R. 2418(a)	R.1987 d.119	19 N.J.R. 409(b)
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1783(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

(TRANSMITTAL 1987-2, dated February 17, 1987)

LABOR—TITLE 12

12:60	Prevailing wages for public works	19 N.J.R. 345(b)		
12:100-4.2	Protection of firefighters	19 N.J.R. 48(a)		
12:100-4.2, 5.2, 6.2, 7	Public employees and exposure to toxic and hazardous substances	19 N.J.R. 267(a)		

(TRANSMITTAL 1987-1, dated February 17, 1987)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10-1	Award of contracts to small, female-owned and minority businesses	18 N.J.R. 2306(a)	R.1987 d.143	19 N.J.R. 457(b)
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(TRANSMITTAL 1, dated September 22, 1986)

LAW AND PUBLIC SAFETY—TITLE 13

13:27-8.14	Advertising by persons not certified as landscape architects	19 N.J.R. 400(a)		
13:29-1.7	Conditional credit on Uniform CPA examination	19 N.J.R. 48(b)		
13:30-8.6, 8.15	Practice of dentistry and referral fees	18 N.J.R. 2419(a)	R.1987 d.158	19 N.J.R. 552(a)
13:31-1.12, 1.13, 1.14, 1.15	Licensure of electrical contractors	19 N.J.R. 49(a)		
13:31-1.16	Electrical contractor ID	19 N.J.R. 352(a)		
13:32-1.9	Master plumber ID	19 N.J.R. 352(b)		
13:35-1.5	Practice by medical school graduates in hospital residency programs	18 N.J.R. 2184(a)		
13:35-6.13	Medical Examiners Board: fee schedule	19 N.J.R. 353(a)		
13:36-1.9	Itemization of funeral expenses	18 N.J.R. 2186(a)		
13:39A-1.4	Licensure of physical therapists: fees and charges	18 N.J.R. 1177(a)		
13:39A-2.2	Authorized practice by physical therapist	18 N.J.R. 1177(b)		
13:39A-2.2, 3.3	Electromyographic testing by licensed physical therapist: public hearing	18 N.J.R. 1684(b)		
13:39A-3.3	Physical therapy: unlawful practices	18 N.J.R. 1178(a)		
13:40-5.1	Preparation of land surveys	18 N.J.R. 2367(b)		
13:44B-1	Compensation of professional and occupational licensing board members	19 N.J.R. 444(a)		
13:45A-2	Motor vehicle advertising practices	18 N.J.R. 2419(b)		
13:45A-6.2	Unlawful automobile sales practices	18 N.J.R. 2115(a)		
13:45A-24	Safe of gray market merchandise	19 N.J.R. 179(a)		
13:46-5.23	Boxing: time between bouts	18 N.J.R. 2423(a)		
13:46-8.14	Boxing: three knockdown rule	18 N.J.R. 2424(a)	R.1987 d.122	19 N.J.R. 409(c)
13:47-14.3	Rental of premises for bingo	18 N.J.R. 1180(b)		
13:47B-1.22	Approaches for vehicle scales	18 N.J.R. 2116(a)	R.1987 d.173	19 N.J.R. 552(b)
13:51	Chemical breath testing	19 N.J.R. 444(b)		
13:70-29.29—29.34	Thoroughbred racing: refunds of advance wagers	18 N.J.R. 2368(a)	R.1987 d.120	19 N.J.R. 409(d)

(TRANSMITTAL 1987-2, dated February 17, 1987)

PUBLIC UTILITIES—TITLE 14

14:3-7.9	Form of bill for metered service	18 N.J.R. 2425(a)	R.1987 d.163	19 N.J.R. 552(c)
14:3-7.12A	Residential electric and gas service during heating season	18 N.J.R. 2315(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14:17-6.21	Cable TV: petition to set aside county refusal	19 N.J.R. 504(a)		
14:18-14.5, 14.6	Cable TV: notices of rate and channel line-up changes	19 N.J.R. 505(a)		

(TRANSMITTAL 1987-2, dated February 17, 1987)

ENERGY—TITLE 14A

14A:3-4.1—4.6	Energy subcode	19 N.J.R. 433(b)		
14A:4-1.1—3.1	Solar energy property tax exemptions	19 N.J.R. 433(b)		
14A:11-4.2, 4.3, 4.4, 5.2, 5.3, 5.4	Reporting by retail fuel merchants and motor fuel dealers	19 N.J.R. 50(a)	R.1987 d.161	19 N.J.R. 552(d)

(TRANSMITTAL 1987-1, dated February 17, 1987)

STATE—TITLE 15

(TRANSMITTAL 1987-1, dated February 17, 1987)

PUBLIC ADVOCATE—TITLE 15A

(TRANSMITTAL 1, dated March 20, 1978)

TRANSPORTATION—TITLE 16

16:28A-1.7, 1.41, 1.108	No parking zones along U.S. 9 in Little Egg Harbor, and Routes 77 and U.S. 40-N.J. 45 in Salem County	19 N.J.R. 180(a)	R.1987 d.145	19 N.J.R. 553(a)
16:28A-1.8, 1.18	Parking along Routes 10 in Livingston and 27 in Linden	19 N.J.R. 51(a)	R.1987 d.129	19 N.J.R. 455(c)
16:29-1.66	No passing zone along Route 140 in Carney's Point	19 N.J.R. 181(a)	R.1987 d.146	19 N.J.R. 553(b)
16:44-3.2, 3.4, 7.5-7.9	Contract administration: construction plans; deferred payments to contractors	19 N.J.R. 181(b)		
16:49-1.3	Transportation of hazardous materials	18 N.J.R. 933(a)		
16:51	Practice and procedure before Office of Regulatory Affairs	19 N.J.R. 182(a)	R.1987 d.148	19 N.J.R. 553(c)
16:53D-1.1	Zone of rate freedom	18 N.J.R. 2376(a)	R.1987 d.131	19 N.J.R. 456(a)
16:73	NJ TRANSIT: Reduced Fare Program for Elderly and Handicapped	18 N.J.R. 2437(a)	R.1987 d.121	19 N.J.R. 410(a)
16:75	NJ TRANSIT: bus allocation to private carriers	19 N.J.R. 506(a)		

(TRANSMITTAL 1987-2, dated February 17, 1987)

TREASURY-GENERAL—TITLE 17

17:1-1.10	Balances in withdrawn pension accounts	19 N.J.R. 446(a)		
17:1-1.10	Positive and negative balances in pension accounts	19 N.J.R. 447(a)		
17:1-2.37	Alternate Benefit Program: transmittal of employee contributions	18 N.J.R. 1256(a)		
17:1-4.36	Pension credit for peacetime military service	19 N.J.R. 353(b)		
17:1-7.4	Retirees returning to public employment	19 N.J.R. 51(b)	R.1987 d.128	19 N.J.R. 458(b)
17:2-1.4	Public Employees' Retirement System: candidates for member-trustee	19 N.J.R. 52(a)	R.1987 d.157	19 N.J.R. 565(a)
17:2-2.4, 3.1, 5.2	Enrollment in PERS	18 N.J.R. 2320(b)	R.1987 d.144	19 N.J.R. 566(a)
17:2-4.4	Public Employees' Retirement System: accrual of loan interest	19 N.J.R. 194(a)		
17:3-4.4	Teachers' Pension and Annuity: accrual of loan interest	19 N.J.R. 52(b)	R.1987 d.130	19 N.J.R. 457(a)
17:3-6.15	Teachers' Pension and Annuity Fund: compulsory retirement	19 N.J.R. 195(a)	R.1987 d.187	19 N.J.R. 648(a)
17:4-2.6	Enrollment in Police and Firemen's Retirement System	18 N.J.R. 2321(a)	R.1987 d.124	19 N.J.R. 410(b)
17:4-4.4	Police and Firemen's Retirement System: loan interest	18 N.J.R. 2437(b)	R.1987 d.153	19 N.J.R. 566(b)
17:4-5.1, 5.2	Enrollment in Police and Firemen's Retirement System	18 N.J.R. 2321(a)	R.1987 d.167	19 N.J.R. 566(c)
17:8-3.7	Supplemental Annuity Collective Trust: investment of contributions	19 N.J.R. 52(c)	R.1987 d.162	19 N.J.R. 567(a)
17:12-6	Award of contracts to small, female-owned and minority businesses	18 N.J.R. 2306(a)	R.1987 d.143	19 N.J.R. 457(b)
17:30	Urban Enterprise Zone Authority	18 N.J.R. 2191(b)		
17:30	Urban Enterprise Zone Authority: comment period reopened	19 N.J.R. 354(a)		
17:32	Municipal and county cross-acceptance of State Development and Redevelopment Plan	19 N.J.R. 509(a)		

(TRANSMITTAL 1987-2, dated February 17, 1987)

TREASURY-TAXATION—TITLE 18

18:5-3.6	Purchase of cigarette revenue stamps	18 N.J.R. 2378(b)		
18:5-3.6, 3.7, 3.8	Purchase of cigarette tax stamps	19 N.J.R. 511(a)		
18:7-4.5, 4.6, 5.5	Corporation business tax: indebtedness, interest, and offsets	18 N.J.R. 2004(b)	R.1987 d.118	19 N.J.R. 410(c)
18:7-8.4	Corporation business tax: tangible personal property	18 N.J.R. 627(a)	R.1987 d.137	19 N.J.R. 464(a)
18:14-2.11	Veteran's and senior citizen's property tax deductions	19 N.J.R. 195(b)		
18:15-14.6	Farmland assessments	19 N.J.R. 447(b)		
18:24-1.1	Sales and use tax forms	18 N.J.R. 2192(a)		
18:24-1.2	Sales and Use Tax: "periodicals"	18 N.J.R. 1928(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
18:26-12.2	Representation of estates	18 N.J.R. 2321(b)		
18:38	Litter control tax	19 N.J.R. 400(b)		

(TRANSMITTAL 39, dated December 15, 1986)

TITLE 19—OTHER AGENCIES

19:4-4.152, 4.154, 4.155, 6.28	Commercial Park Zone	19 N.J.R. 53(a)		
19:4-6.28	Rezoning in Little Ferry	19 N.J.R. 53(b)		
19:4-6.28	Rezoning in Secaucus	19 N.J.R. 54(a)		
19:4-6.28	Zoning change in Secaucus	19 N.J.R. 448(a)		
19:4-6.28	Zoning change in Little Ferry	19 N.J.R. 512(a)		
19:17-2.1, 3.1-4.5	PERC: Appeal Board procedure	19 N.J.R. 196(a)		
19:17-2.1, 3.1—4.5	PERC Appeal Board procedure: rescheduled public hearing	19 N.J.R. 404(a)		

(TRANSMITTAL 1987-1, dated January 20, 1987)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40-1.2	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:41-9.7	Fee for casino hotel alcoholic beverage license	18 N.J.R. 1687(a)		
19:44-8.3	Minibaccarat training	18 N.J.R. 2322(a)		
19:44-17.11	Advertising by gaming schools	18 N.J.R. 2439(a)	R.1987 d.188	19 N.J.R. 648(b)
19:45-1.1, 1.37, 1.40, 1.40A	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:45-1.12	Minibaccarat	19 N.J.R. 54(b)		
19:45-1.32, 1.43	Hard count room procedures	18 N.J.R. 1929(a)		
19:46-1.12	Minibaccarat	19 N.J.R. 54(b)		
19:46-1.16, 1.18, 1.20	Gaming equipment and evidence of cheating or tampering	18 N.J.R. 2121(a)		
19:46-1.26	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:47-7.7	Minibaccarat	19 N.J.R. 54(b)		
19:50-1.6	Security of alcoholic beverages	18 N.J.R. 2323(a)		
19:50-1.6	Operating conditions of alcoholic beverage licensees	18 N.J.R. 2439(b)	R.1987 d.165	19 N.J.R. 567(b)
19:65-1.2, 2.1, 2.4, 2.5, 2.7, 2.9, 2.10, 2.11	Casino Reinvestment Development Authority projects	19 N.J.R. 404(b)		

(TRANSMITTAL 1987-1, dated February 17, 1987)

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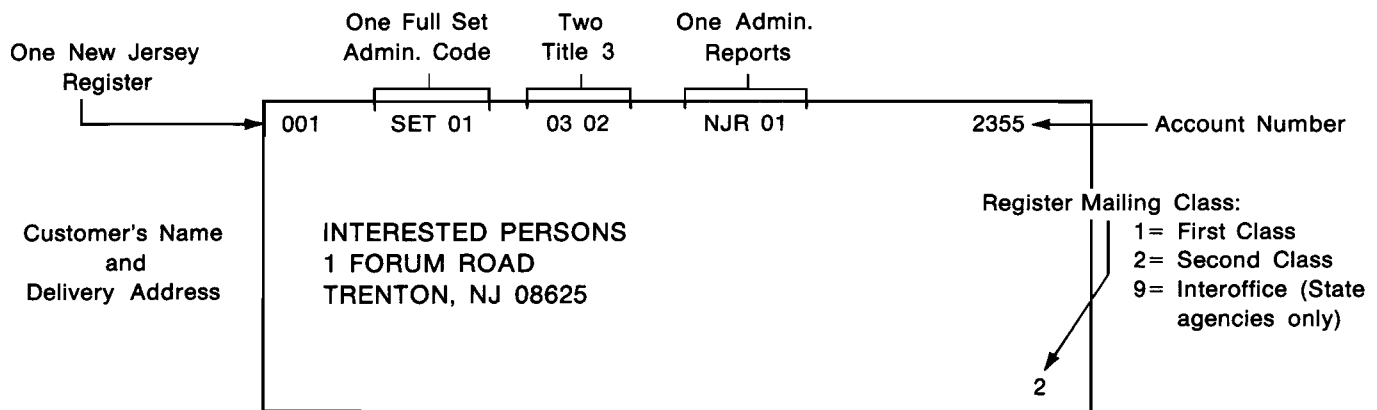
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