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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 19 NUMBER 14
July 20, 1987 Indexed 19 N.J.R. 1259-1352
 (Includes adopted rules filed through June 26, 1987)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 18, 1987.

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE WILL BE DATED JUNE 15, 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 **August 19, 1987**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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August 17 issue:	
Proposals	July 20
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September 8 issue:	
Proposals	August 10
Adoptions	August 17
September 21 issue:	
Proposals	August 24
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October 5 issue:	
Proposals	September 4
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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

BANKING

(a)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Mortgage Bankers and Mortgage Brokers

Proposed Readoption: N.J.A.C. 3:38

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

Authority: N.J.S.A. 17:1-8.1 and 17:11B-5 and 13.

Proposal Number: PRN 1987-264.

Submit comments in writing by August 19, 1987 to:

Robert M. Jaworski
Deputy Commissioner
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), Chapter 38, Mortgage Bankers and Mortgage Brokers, of Title 3 of the Administrative Code expires September 7, 1987. The Department of Banking proposes to readopt these rules without change to ensure their continued effectiveness beyond the expiration date while proposed revisions to these rules are being formulated for publication and comment.

These rules were originally promulgated to implement and enforce the Mortgage Bankers and Mortgage Brokers Act (P.L. 1981, c.18) primarily with regard to the licensing of mortgage bankers and brokers, the disclosure of information to consumers and the establishment of standards for maintaining books and records and procedures for examination by the Department. In addition, license fees and the minimum bonding requirements are set by these rules and a hearing process for licensees is also established.

Social Impact

These rules have set a procedure for the initial licensing and continued relicensing of mortgage bankers and mortgage brokers in this State. Currently there are approximately 1,000 corporate and individual licensees representing over 400 mortgage companies. The rules have permitted the Department to monitor and examine on a regular basis the books and records of licensees to determine whether the business of the licensee is being conducted in accordance with the Act and rules. In addition, disclosure requirements have ensured that consumers receive fundamental information about the terms and conditions of payments, fees and charges and the mortgage processing procedure. Failure to readopt these rules would result in a loss of the ability to the Department to determine compliance with the law and would deprive the consumer of essential disclosures necessary for informed choices.

Economic Impact

The direct economic impact of these rules has been upon licensed mortgage bankers and brokers who are charged application and license fees to maintain offices and branch offices. These licensees must also incur the costs of maintaining specific books, records and files according to the provisions of this chapter and the cost of the examination of the books and records. The Department derives income from these fees which offsets costs of administration. The public has benefited from the oversight of an economically viable mortgage banking industry and consumers have had the advantage of mandatory disclosure of fees and charges. Lacking readoption, licensing and bookkeeping costs to the licensees would be reduced along with fee income to the Department and consumers may become subject to unnecessary costs due to poorly disclosed or hidden fees and charges.

Regulatory Flexibility Statement

The proposed readoption imposes compliance requirements on small businesses in the area of recordkeeping. Mortgage banker and mortgage broker licensees are predominantly small businesses and may need the

professional services of an accountant in establishing the required ledgers and accounts. Exemption from these recordkeeping requirements is not contemplated since they are necessary to permit the Department to determine the licensees' compliance with the Act, rules and regulations.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:38.

COMMUNITY AFFAIRS

(b)

OFFICE OF THE COMMISSIONER

Rules of Administration

Debarment and Suspension from Contracting

Proposed New Rules: N.J.A.C. 5:4-2.1 through 2.18.

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

Authority: N.J.S.A. 52:27D-3.

Proposal Number: PRN 1987-263.

Submit comments by August 19, 1987 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 804
Trenton, NJ 08625

The agency proposal follows:

Summary

This proposal sets forth new rules establishing standards and procedures for debarment and suspension from Department of Community Affairs (DCA) contracting, including contracting with other entities funded by DCA, of persons whose participation in such contracting might be deemed contrary to the public interest. Reasons include violations of criminal and civil statutes, failure to perform previous contracts and debarment by other agencies. Similar standards and procedures currently apply to contracts of the New Jersey Housing and Mortgage Finance Agency and are set forth at N.J.A.C. 5:80-18.1 et seq.

Social Impact

Establishment of these standards and procedures will reduce the likelihood that public contracts will be awarded to persons whose performance records indicate that they cannot be relied upon to perform in an acceptable manner and should increase public confidence in the process by which public contracts are awarded.

Economic Impact

The public is more likely to get value for its money if standards and procedures are established and implemented to prevent the awarding of contracts to persons who cannot be relied upon to discharge their contractual obligations properly.

Regulatory Flexibility Statement

The standards for debarment and suspension do not impose any particular burden upon small businesses, since all that is required of any business, large or small, is, essentially, that contractual obligations be honored and that the law be obeyed. Small businesses, which might be more likely than large firms to find themselves in situations in which their ability to perform is affected by forces beyond their control, may benefit from provisions in the standards requiring that failure to perform a contract be willful, or be caused by acts within the control of a person, in order to be grounds for debarment.

Full text of the proposed new rule follows:

SUBCHAPTER 2. DEBARMENT AND SUSPENSION FROM CONTRACTING

5:4-2.1 Definitions

When used in this subchapter, the following terms shall have the following meanings:

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"DCA" means the Department of Community Affairs.

"Debarment" means an exclusion from DCA contracting for reason of a demonstrated lack of responsibility as evidenced by one or more incidents involving an offense or failure or inadequacy of performance within a period of time that is reasonable in light of the seriousness of the offense or the failure or inadequacy of performance.

"DCA contracting" means any arrangement giving rise to an obligation to supply anything to, or perform any service for, DCA or any public or private entity or person purchasing the supply or service with funds provided by DCA where DCA retains the right to approve or disapprove the nature or quality of the supplies or services or the persons who may provide or perform the same.

"Person" means any natural person, company, firm, association, corporation or other entity.

"Suspension" means an exclusion from DCA contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

5:4-2.2 Causes for debarment

(a) In the public interest, DCA may debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

2. Violation of the Federal Organized Crime Control Act of 1970, or in commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty.

3. Violation of Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b and c).

4. Violation of any Federal or State law governing the conduct of elections.

5. Violation of the Law Against Discrimination (P.L. 1945, c.169, as supplemented by P.L. 1975, c.127) or of any other Federal or State law against discrimination in employment.

6. Violation of any law governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor.

7. Violation of any law governing the conduct of an occupation, profession or regulated industry.

8. Violation of any other law which may bear upon a lack of responsibility or moral integrity.

9. Willful failure to perform in accordance with contract specifications or within contractual time limits.

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred.

11. Violation of contractual or statutory provisions regulating contingent fees.

12. Any other cause affecting responsibility as a DCA contractor of such serious and compelling nature as may be determined by DCA to warrant debarment, even if such conduct has not been or may not be prosecuted as being a violation of such laws or contract.

13. Debarment by some other department or agency in the Executive branch.

14. Debarment by any department, agency or instrumentality of any other state or territory or of the United States of America.

5:4-2.3 Conditions affecting debarment

(a) Debarment pursuant to this subchapter shall be made only upon approval by the Commissioner.

(b) The existence of any of the causes set forth in N.J.A.C. 5:4-2.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Commissioner and shall be rendered in accordance with the best interests of the State.

(c) In determining the seriousness of the offense or failure or inadequacy of performance, and whether disbarment is warranted, the Commissioner shall give consideration to any mitigating factors.

(d) The existence of a cause set forth in N.J.A.C. 5:4-2.2(a)1 through 8 shall be established upon the rendering of a final judgment of conviction by, or the entry of a plea of guilty or nolo contendere in, a court of

competent jurisdiction or an administrative agency empowered to render such judgment. In the event of a successful appeal of a judgment of conviction, the debarment shall be removed unless other cause for debarment exists.

(e) The existence of a cause set forth in N.J.A.C. 5:4-2.2(a)9 through 12 shall be established by evidence which the Commissioner determines to be clear and convincing in nature.

(f) Debarment for one of the causes set forth in N.J.A.C. 5:4-2.2(a)13 and 14 shall be proper, provided that one of the causes set forth in N.J.A.C. 5:4-2.2(a), or an equivalent cause under the law of another jurisdiction, was the basis for debarment by the original debarring agency. Such debarment may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

5:4-2.4 Procedures; period of debarment; scope of debarment

(a) Any division within DCA seeking to debar a person or his affiliates shall furnish such person with a written notice which shall:

1. State that debarment is being proposed;

2. Set forth the reasons for the proposed debarment;

3. Indicate that the person is entitled to contest the proposed action in an administrative hearing to be conducted by the Office of Administrative Law in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. provided that a request for such a hearing is made within 15 days of receipt by the person of notice of the proposed debarment, and that hearing requests are to be sent to the Hearing Coordinator, Department of Community Affairs, CN 800, Trenton, NJ 08625.

(b) Debarment shall be for a reasonable, definitely stated period of time which shall not, without good cause, exceed five years. Debarment for an additional period of time shall be permitted, provided that notice of the intention to impose an additional period of debarment is provided to the person and the person is afforded an opportunity to contest the proposed further debarment in accordance with the Administrative Procedure Act in the manner set forth in (a) above.

(c) Except as may otherwise be provided by law, a debarment may be removed, or the period of debarment reduced, by the Commissioner upon submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the cause(s) for which debarment was imposed.

(d) A debarment may include all known affiliates of a person, provided that each affiliated person shall have the right to contest a proposed debarment in accordance with the Administrative Procedure Act in the manner set forth in (a) above.

5:4-2.5 Causes for suspension

In the public interest, the Commissioner, after consultation with the Division of Law, may suspend a person for any cause set forth in N.J.A.C. 5:4-2.2, or upon a reasonable suspicion that such cause exists.

5:4-2.6 Conditions for suspension

(a) Suspension shall be imposed only by the Commissioner after consultation with the Division of Law, except as may otherwise be provided by law.

(b) The existence of any cause for suspension shall not require that suspension be imposed. A decision to suspend shall be made at the discretion of the Commissioner and shall be rendered in the best interests of the State.

(c) Suspension shall be based only upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists and shall not be based upon any unsupported accusation. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence that is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

(d) Reasonable suspicion of the existence of a cause described in N.J.A.C. 5:4-2.2(a)1 through 8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did, in fact, occur.

(e) A suspension imposed by another agency for any of the causes described in N.J.A.C. 5:4-2.2 may be the basis for the imposition of a concurrent suspension by DCA, which suspension may be imposed when found to be in the best interest of the State.

5:4-2.7 Procedures; period of suspension; scope of suspension

(a) The Commissioner, after consultation with the Division of Law, may suspend a person or his affiliates, provided that within 10 days after the effective date of the suspension, the Commissioner provides each affected person with a written notice which shall:

1. State that a suspension has been imposed and set forth its effective date;
2. Set forth the reasons for the suspension to the extent that the Division of Law determines that such reasons may properly be disclosed;
3. State that the suspension is for a temporary period of time pending the completion of an investigation and such legal proceedings as may ensue; and
4. Indicate that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the person will be given an opportunity to contest the suspension in accordance with the Administrative Procedure Act in the manner set forth in N.J.A.C. 5:4-2.4(a).

(b) A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period or unless debarment action shall have been initiated. Whenever civil or criminal prosecution or debarment action shall have been initiated, the suspension may be continued until all legal proceedings shall have been completed.

(c) A suspension may include all known affiliates of a person, provided that each affected person shall have the right after 60 days from the date of the notice of suspension to contest the suspension in accordance with the Administrative Procedure Act in the manner set forth in N.J.A.C. 5:4-2.4(a).

5:4-2.8 Extent of debarment and suspension

Exclusion from DCA contracting by virtue of debarment or suspension shall extend to all contracting and subcontracting within the control or jurisdiction of DCA, including any contracts which utilize funds granted or loaned by DCA. When determined by the Commissioner, after consultation with the Division of Law, to be essential to the public interest, an exemption from total exclusion may be made with respect to a particular contract.

5:4-2.9 Lists of debarred and suspended persons

(a) DCA shall supply to the State Treasurer a monthly list of all persons who are currently debarred or suspended, including the effective date and term, if determined, of such debarment or suspension. Such list shall at all times be available for public inspection.

(b) Insofar as may be practicable, prior notice shall be given to the Attorney General and to the Treasurer of any proposed debarment or suspension.

5:4-2.10 Discretion

Nothing contained in this subchapter shall be construed to limit the authority of DCA to contract or to refrain from contracting within the discretion allowed by law.

5:4-2.11 Lists of other agencies

Notwithstanding the failure of DCA to debar or suspend any person pursuant to this subchapter, whenever DCA shall participate in any program financed, regulated or established by any department, agency, or instrumentality of the United States of America, it may rely on and distribute lists of persons suspended or debarred by such department, agency, or instrumentality and prevent any listed person from participating in that program.

5:4-2.12 Information concerning criminal conduct and records

To the extent permitted by State and Federal law, as determined by the Attorney General, DCA may seek to obtain, use and disclose information concerning the criminal conduct or criminal record of any person engaged in, or seeking to be engaged in, DCA contracting.

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
Fire Safety Code**

**Exemption of One and Two-Family Residences;
Boarding House Fire Suppression Systems**

Proposed Amendment: N.J.A.C. 5:18-4.1

Authorized By: Leonard S. Coleman, Jr., Commissioner,
Department of Community Affairs
Authority: N.J.A.C. 52:27D-198
Proposal Number: PRN 1987-255

Submit comments by August 19, 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 exemption from the Fire Safety Code set forth in N.J.A.C. 5:18-4.1(d) amended to change "buildings which are classified as Use Group R-3 in accordance with the Uniform Construction Code" to "one and two-family residences." This change is necessary in order to bring the rule into conformity with the statutory exemption, which is limited to owner-occupied one and two-family residences. Use Group R-3 includes rooming houses with five or fewer residents, which are not "owner-occupied buildings used exclusively for dwelling purposes and containing fewer than three dwelling units" (see N.J.S.A. 52:27D-197a).

Social Impact

This amendment will insure that owners of rooming houses with fewer than six residents will be required to bring their buildings into compliance with the Fire Safety Code by June 16, 1989, thereby better protecting the life safety of those occupying the building.

Economic Impact

The cost of bringing small rooming houses into compliance with the applicable requirements of the Fire Safety Code will vary by building. However, if a building is already in compliance with the fire safety requirements already established under the Rooming and Boarding House Act of 1979, no additional improvements will be required, and the only added cost will be the fee for inspections by the fire code enforcing agency having jurisdiction.

Regulatory Flexibility Statement

Rooming houses with five or fewer residents are invariably small businesses and there is therefore no basis for distinguishing between those that are small businesses and those that are not. This is not an industry, or segment of an industry, in which major corporations have shown any interest. To the extent that any additional costs will be imposed upon any rooming house owner, the two-year phase-in period should provide an ample opportunity for any necessary adjustments.

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

5:18-4.1 Code adopted/[S]scope

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

(d) All buildings for which requirements are established in this subchapter and which are not listed in (b) or (c) above shall be in compliance with such applicable requirements of this subchapter except N.J.A.C. 5:18-4.13 by June 16, 1989.

1. Exception to (d) above: Owner-occupied buildings [which are classified as Use Group R-3 in accordance with the Uniform Construction Code] **used exclusively for dwelling purposes and containing fewer than three dwelling units** shall be exempt from the provisions of this subchapter.

(e) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

General Provisions; Enforcing Agency

Classification; Construction Boards of Appeals: Licensing

**Proposed Amendments: N.J.A.C. 5:23-1.1, 3.10,
4.40, 5.2, 5.4 through 5.18, and 5.21 through 5.26**

Proposed Repeal: N.J.A.C. 5:23-5.20

Authorized By: Leonard S. Coleman, Jr., Commissioner,

Department of Community Affairs

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

Proposal Number: PRN 1987-270

Submit comments by August 19, 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 amendments are intended to clarify various sections of the State Uniform Construction Code and bring them into conformity with procedures which the Bureau considers to be appropriate. Changes to the various sections affected are summarized as follows:

5:23-1.1: The titles of the subchapters are updated.

5:23-3.10: Rules for classification of local enforcing agencies are clarified and a procedure is established for determining when an enforcing agency's classification is changed. The rules setting forth the types of project which each class of agency may review are amended to conform to the most recent editions of the adopted subcodes.

5:23-4.40: The requirement that one member of each construction board of appeals be a registered architect or licensed professional engineer has been deleted. Instead, one member of each board must be a person having at least the required qualifications of a building subcode official. Implementation of changes in board membership as a result of this or any future rule change is to be done when the term of an affected member expires. Course requirements are established for board members.

5:23-5.2: Minor technical changes are made.

5:23-5.4: Rules concerning trainees are clarified and reorganized. Trainees are required to be registered with the Department prior to, rather than within a month after, their hiring. A non-refundable \$10.00 trainee registration request processing fee is established. Fire service experience for trainee qualification is required to be in fire protection, fire prevention or firefighting, and not in an apprentice or trainee capacity. Quarterly evaluations of trainees are required. The prohibition against a trainee performing administrative tasks under supervision is eliminated. The trainee rules are made expressly applicable to private inspection and plan review agencies.

5:23-5.5: General license requirements are revised to make payment of the fee a prerequisite to consideration of the application rather than to issuance of the license. Applicants are given 18, rather than six, months for completion of licensing applications. Test results will not be usable for credit towards licensure for more than three years. United States Department of Labor standards are to be followed in evaluation of journeyman experience subsequent to completion of an apprenticeship program in a given trade. Credit for part-time experience is to be given on a proportional basis. Persons holding plumbing or electrical inspectors licenses issued by the agencies formerly responsible for issuing those licenses (the Department of Health and the Public Utilities Commission, respectively) whose licenses have been revoked or have lapsed for more than two years must reapply under the rules in effect at the time of reapplication.

5:23-5.6: A technical correction is made.

5:23-5.7: Educational requirements are clarified. Provision is made for credit to be allowed for training in engineering or architectural technology or for any area of study directly related to building construction. Fire-fighting experience is recognized as equivalent to fire protection or prevention experience for subcode official licensing purposes.

5:23-5.8 through 5.18: Experience and educational requirements for inspector licensure are clarified. Education in engineering or architectural technology or another major area of study directly related to building construction is made equivalent to education in engineering or architecture. An examination is required for the building, plumbing and fire protection inspector H.H.S. and fire protection inspector I.C.S. licenses.

5:23-5.20: The requirements for facility fire protection supervisor are deleted as this title has become obsolete. N.J.A.C. 5:23-5.20 through 5.26 are appropriately recodified to reflect this proposed repeal.

5:23-5.21: This section (formerly N.J.A.C. 5:23-5.22) is amended to clarify the continuing educational requirements for persons adding new license to licenses already held.

5:23-5.22: This section (formerly N.J.A.C. 5:23-5.24) is amended to limit the period in which examination records must be maintained to three years.

Social Impact

The proposed amendments clarify Departmental requirements, correct certain errors, and bring the requirements into line with practices which are either already being followed by the Department or which are regarded as desirable to adopt. Liberalized educational and experience requirements will enable more people to qualify for licensure.

Economic Impact

There will be a minor economic impact as a result of license fees having to be paid at the time of application rather than when the license is issued, since people who do not qualify will be out the \$10.00 fee. Liberalized licensing requirements will enable more people to become licensed, thus increasing the supply of licensed officials and giving them employment opportunities.

Regulatory Flexibility Statement

The same rules will apply to the use of trainees by private inspection and plan review agencies, which are likely to qualify as "small businesses" for purposes of the Regulatory Flexibility Act, as to municipal and other public enforcing agencies. The other rules concerning licensing will also be applicable to personnel of both kinds of agencies. The Department is aware of no reason why uniformity should not be an objective since the protection to be provided to the public is the same in both cases.

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

5:23-1.1 Title; division into [parts] **subchapters**

(a) (No change.)

(b) The regulations [contain five separate parts] **consist of the following subchapters:**

1. "General provisions" which may be cited throughout the regulations as N.J.A.C. 5:23-1 and when referred to in subchapter 1 of this chapter may be cited as this subchapter.

[1].2. [Part I is entitled] "Administration and enforcement[;] process" [and] which may be cited throughout the regulations as N.J.A.C. 5:23-2 and when referred to in subchapter 2 of this chapter may be cited as this subchapter.

[2].3. [Part II, entitled] "Subcodes [adoptions]" which may be cited throughout the regulations as N.J.A.C. 5:23-3 and when referred to in subchapter 3 of this chapter may be cited as this subchapter.

[i. The combination of N.J.A.C. 5:23-2 and N.J.A.C. 5:23-3 may also be known and cited as "the code."]

[3].4. [Part III, entitled] "Enforcing agencies: duties, powers, and procedures" which may be cited throughout the regulations as N.J.A.C. 5:23-4 of this chapter and when referred to in subchapter 4 [in] of this chapter[,] may be cited as this subchapter.

[4].5. [Part IV, entitled] "Licensing of Code Enforcement Officials" which may be cited throughout the regulations as N.J.A.C. 5:23-5 and when referred to in subchapter 5 of this chapter may be cited as this subchapter.

[5].6. [Part V, entitled] "Tax Exemptions [for Solar Facilities]" which may be cited throughout the regulations as N.J.A.C. 5:23-6 and when referred to in subchapter 6 of this chapter may be cited as this subchapter.

7. "Barrier Free Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-7 and when referred to in subchapter 7 of this chapter may be cited as this subchapter.

8. "Asbestos Hazard Abatement Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-8 and when referred to in subchapter 8 of this chapter may be cited as this subchapter.

5:23-3.10 Enforcing agency classification

(a) The classification of an enforcing agency is determined by the lowest level of inspector license held by any of the subcode officials appointed to establish such agency and by the highest level of inspector license held by the appointed construction official. In the case of subcode officials, the inspector license used to determine the classification of the agency must be in the subcode area for which that individual is appointed. Enforcing agencies shall be classified as follows:

1. Class 1 agency: [Whenever the construction official and all subcode officials are certified Class 1 in accordance with N.J.A.C. 5:23-5.] The lowest level of inspector license held in accordance with N.J.A.C. 5:23-5 by the construction official or any of the subcode officials appointed to constitute the enforcing agency is an HHS inspector license.

2. Class 2 agency: [Whenever the construction official and at least three subcode officials are licensed HHS or ICS in accordance with N.J.A.C. 5:23-5 and the remaining subcode official is licensed RCS. In the case of an RCS subcode official, such official must be enrolled in an approved course and successfully complete such course before January 1, 1982.] The lowest level of inspector license held in accordance with N.J.A.C. 5:23-5 by the construction official or any of the subcode officials appointed to constitute the enforcing agency is an ICS inspector license.

3. Class 3 agency: [Whenever the construction official and all subcode official are certified 1, 2 or 3 in accordance with subchapter 5 of this chapter.] The lowest level of inspector license held in accordance with N.J.A.C. 5:23-5 by the construction official or any of the subcode officials appointed to constitute the enforcing agency is an RCS inspector license.

(b) Any change in the classification of an enforcing agency shall be effective immediately upon a change in the level of licensure of any of the officials appointed to constitute the enforcement agency as described above. The ability of a municipality to accept an application for plan review shall be determined by the classification of that municipality as of the date of application. Nothing contained herein, however, shall be construed to permit any enforcement agency to continue to review plans submitted if the classification of the agency has changed so as to render the agency no longer eligible to review the plans in question.

[(b)](c) Enforcing agencies shall be permitted to perform plan review activities in accordance with the agency classification for the use groups listed in the following schedule (keyed to section [202.0] 301.0 of the building subcode):

1. Class 3 agencies:

i.-iv. (No change.)

v. Use Group R-3 as permitted in the building subcode and including accessory private garages (section[s] 413.1.1, 413.1.3 and 413.2 only) 608.0), [parking lots (section 423.0),] radio and television antenna[s]e (section [427.0] 624.0) and swimming pools (section [428.0] 625.0).

2. Class 2 agencies

i. (No change.)

ii. Use Group A-1[-A] less than 4,800 square feet, one story, 20 feet high;

[iii. Use Group A-1-B less than 8,400 square feet, two story, 30 feet high;]

[iv.-vii.]iii.-vi. (No change in text.)

[viii.]vii. Use Group B less than [34,000] 34,200 square feet, six story, [85] 75 feet high;

viii. Use Group E less than 14,400 square feet, two story, 30 feet high;

ix. (No change.)

x. Use Group H (Paint spray booths, section [411.0] 622.0 only);

xi. Use Group I-1 less than [6,000] 8,400 square feet, [one] three story, [20] 40 feet high;

xii. (No change.)

xiii. Use Group I-3 less than 6,000 square feet, one story, 20 feet high;

[xiii.-xvii.]xiv.-xviii. (No change in text.)

[xviii.]xix. Use Group [T] U as permitted by the building subcode.

3. (No change.)

4. Square foot area listed in [subparagraph i, ii, and iii hereof] (c)1, 2 and 3 above are per floor.

[(c)](d) (No change in text.)

[(d)](e) The department shall issue a roster of [certified class 1 and 2] enforcing agencies [quarterly] and their classification upon request. Copies may be obtained by contacting the Licensing Section, Bureau of Construction Code Enforcement, CN 805, Trenton, New Jersey 08625-0805.

5:23-4.40 Construction boards of appeals

(a) (No change.)

(b) Rules concerning organization are:

1. Membership; term; qualification of members:

i.-ii. (No change.)

iii. No more than two members of the board shall be selected from the same profession or business. At least one [of the members shall be either a registered architect or licensed professional engineer with building construction experience, and at least one] member of the board shall be as qualified as a plumbing subcode official, one as qualified as an electrical subcode official, one as qualified as a building subcode official and one as qualified as a fire protection subcode official;

(1) Whenever a change to the regulations governing the composition of the construction board of appeals is made, the appointing authority shall implement the change when the term of any affected member(s) expires.

iv. (No change.)

v. Each member shall be qualified by experience or training to perform his duties as a member of the board, which shall be no less than that which is required of a construction or subcode official, under section 8b of the act. Members of the board need not be certified. No member shall receive an appointment unless he shall meet at least these minimum requirements.

(1) Each member shall be required to attend a course offered by the Department for members of construction boards of appeals within 12 months of appointment if he or she has not already done so. Members currently serving on a construction board of appeals will have 12 months from the date on which the Department announces the availability of the course in which to complete this course. The Department will notify each Board on the Department roster at least two months prior to this date in order to provide adequate notice. Members who have completed the subcode official course offered by the Department pursuant to the Uniform Construction Code Act will not be required to fulfill any additional educational requirement.

(2) The commissioner may further require that members of the board satisfactorily undertake [a program of training and continuing education similar to that required of construction or subcode officials or may require] more specialized training consistent with the duties of members of a board of appeals.

(3) Failure to satisfactorily undertake such a program shall be deemed good cause for removal by the appointing authority. Failure to be present at one more than 50 percent of all meetings of the board during any calendar year shall be considered good cause for removal by the appointing authority; provided, however, that disqualification pursuant to [paragraph 3 of this subsection] (b)3 below shall not be considered in computing attendance;

vi. (No change.)

2.-6. (No change.)

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

5:23-5.2 Office established; hearings

(a) (No change.)

(b) Rules concerning hearings are:

1. (No change.)

2. Rules concerning hearing procedures are:

i. [Responsibility to request hearing; time to request hearing; contents of request for hearing;] The aggrieved person must request a hearing. The request must be made within 15 days after receipt of the action or ruling [complained of] being appealed. The request should be made to the Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, CN 804, Trenton, New Jersey 08625-0804. The request for hearing should raise all issues that will be set forth at the hearing.

5:23-5.4 Licenses required

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

(d) [Rules concerning trainee personnel are:]

[1. Public enforcing] Enforcing agencies, including private on-site inspection and plan review agencies, may establish code enforcement trainee positions subject to the following rules [to employ persons who may be eligible to be licensed within five years].

[i.]1. Private [enforcing] on-site inspection and plan review agencies may establish code enforcement trainee positions[. With] with the approval of the construction official of [a] the municipality to which the trainee is to be assigned subject to the same terms and conditions as a trainee employed by a public enforcing agency as listed below. [, trainees who may

be eligible to be licensed within five years shall be allowed to perform the same functions in the municipality, subject to the same conditions, as a trainee employed by a public enforcing agency would be permitted to perform shall be registered by the construction official with the Department of Community Affairs as provided in 2 below and shall be deemed to be occupying municipal trainee positions for purposes of 11 below.]

2. [Persons employed as trainees shall be registered by their municipal construction official with the Department of Community Affairs, Bureau of Construction Code Enforcement, Licensing Section, on the form provided by the Licensing Section within one month of the effective date of their employment.] **Persons applying for a trainee position with an enforcing agency must be officially registered with the Department of Community Affairs on the form provided by the Licensing Section of the Bureau of Construction Code Enforcement prior to being hired as a trainee.**

i. **Trainees shall renew their registration yearly and shall notify the Department of Community Affairs, Bureau of Construction Code Enforcement, Licensing Section, of any change in employment status or address within one month of any change. A non-refundable processing fee of \$10.00 is required for the initial Trainee Registration Request and for each subsequent renewal request.**

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

i. **Fire protection inspector trainee—**a minimum of one year of experience in the fire service **(other than as an apprentice or trainee) with fire prevention, fire protection or firefighting responsibilities.**

ii.-iv. (No change.)

v. **Persons who have graduated from an accredited institution of higher education with a bachelor's degree in architecture or engineering or in architectural or engineering technology or in a major area of study directly related to building construction, or who possess an associate's degree in code enforcement, or [having] have a current New Jersey license to practice as an architect or engineer at the time of application shall be exempt from the experience requirement for trainee employment.**

4. **Trainees must be evaluated by their supervisors on a quarterly basis. This evaluation must include a brief description of the trainee's code enforcement activities and an assessment of the trainee's performance in these activities. Trainees who receive satisfactory evaluation ratings by their supervisors and who occupy enforcing agency trainee positions while registered with the Department may use the trainee experience toward satisfying the experience requirement for licensure in accordance with N.J.A.C. 5:23-5.5. The effective date of their trainee experience begins at the time they are hired as a registered trainee by an authorized agency.**

[4. A trainee shall only perform functions that may be performed by a person having the lowest level of licensure of any technical inspector license class.]

5. [A trainee shall not perform any administrative functions of a sub-code official or construction official.] **The following conditions apply to work performed by a trainee:**

i. **Trainees may perform inspections required by N.J.A.C. 5:23-2.18 only under the direct supervision of an official or inspector licensed in the subcode area in which the trainee position has been approved. The licensed supervisor must be on site with the trainee during the performance of all required inspections.**

ii. **Trainees may perform an inspection of a singular specific point on a project, or a repetitive singular specific point on one or more projects, if directed to do so by a licensed supervisor where no code interpretation is required. In any such case, the inspection report shall be completed and signed by the trainee and reviewed and countersigned by the licensed supervisor.**

iii. **Trainees shall not act as subcode or construction officials or sign any permits, stickers, approved plans or inspection reports except as otherwise permitted by (d)5i and ii above.**

6. **The supervisor of the trainee must possess a valid code enforcement license in the same subcode as the registered trainee working under his direct supervision.**

i. **A qualified licensed inspector shall not supervise more than one trainee.**

ii. **Failure to a supervisor to properly oversee a registered trainee in accordance with the provisions of the regulations may result in disciplinary action against the supervisor.**

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

[7.]8. To remain employed by an enforcing agency, a trainee must pass the appropriate modules of the National Certification Test in his specific code area within [five] **two** years of the effective date of employment.

[8. Trainees shall not perform the inspections required by N.J.A.C. 5:23-2.18 except under the direct supervision of an official or inspector licensed in the subcode area in which the trainee position has been approved. The licensed supervisor must be on site with the trainee during performance of all required inspections.

i. **Trainees may perform inspections that are not required by N.J.A.C. 5:23-2.18 without direct supervision.**

ii. **Trainees may perform an inspection of a singular specific point on a project, or a repetitive singular specific point on one or more projects, if directed to do so by a licensed supervisor where no code interpretation is required. In any such case, the inspection report shall be completed by the trainee and reviewed and countersigned by the licensed supervisor.**

iii. **Trainees shall not act as subcode or construction officials or sign any permits, stickers, approved plans or inspection reports except as otherwise permitted by i and ii above.**

9. **Records of authorized supervised inspections by trainees and other on-the-job training activities must be signed by the supervisor and kept in the trainees job files.**

10. **Trainees shall renew their registration yearly and shall notify the Department of Community Affairs, Bureau of Construction Code Enforcement, Licensing Section of any change in employment status or address within one month of any change.**

11. **Trainees who receive satisfactory trainee evaluation ratings by their supervisors and who occupy municipal trainee positions under registration with the Department may use the trainee experience as acceptable inspector experience to meet the experience requirements for licensure in accordance with N.J.A.C. 5:23-5.5.**

12. **The supervisor of the trainee must possess a valid code enforcement license in the same subcode as the registered trainee working under his direct supervision.**

13. **A qualified licensed inspector shall not supervise more than one trainee.**

14. **Failure of a licensed supervisor to properly supervise a registered trainee in accordance with the provisions of the regulations shall result in disciplinary action.]**

(e) Rules concerning effect are:

1.-2. (No change.)

3. It shall be a violation of these regulations on and after October 1, 1978, in the case of construction **and subcode officials** and technical inspectors for any [local] enforcing agency, **including private on-site inspection and plan review agencies**, to offer employment to or to retain for employment any person who is not licensed in accordance with these regulations if such person has not been previously and continuously employed by such agency. Further, it shall be a violation of these regulations on and after January 1, 1981, for [a local] **an enforcing agency** to continue an individual in employment in a position for which a license is required pursuant to these regulations, if such person is not licensed in accordance with this subchapter. Violation of this section shall be deemed a failure to perform within the meaning of N.J.A.C. 5:23-4.3(g) of these regulations, **and** the [d]Department may exercise the remedies provided therein.

4. (No change.)

5:23-5.5 General license requirements

(a) (No change.)

(b) **After receipt of the required nonrefundable fee, [The] the [d]Department shall determine, by examination of the application and review of any supporting documents, including any evidence of experience, training and/or education submitted, whether an applicant is qualified for a license of the type and specialty for which the application has been made. If the application is satisfactory, the commissioner shall issue a license to the applicant [upon payment of the required fee]. This license will show that the person has met the established requirements and is eligible to be employed in this State in accordance with the provisions of these regulations.**

1.-2. (No change.)

3. **The applicant shall submit a complete application within [six] 18 months of receipt of the letter of acknowledgement. If a complete application is not submitted within the [six] 18 month period, the application shall be deemed abandoned, no further action shall be taken on it by the Department and a new application and **non-refundable** fee shall be required if the applicant desires to reapply.**

4. Only test results for test modules passed within three years of the date of application shall be accepted toward fulfilling the requirements for the license sought.

[4.]5. No credit shall be given by the [d]Department for any [skilled trade] experience not involving the construction or alteration of buildings.

6. No credit shall be given by the Department for any journeyman experience unless documentation of the completion of a formal or informal apprenticeship program, or its equivalent, is provided. The Department makes reference to the U.S. Department of Labor's National Apprenticeship Program for assigning the length of time required to complete an apprenticeship program in a given trade.

7. Credit for part-time work experience shall be given by the Department on a proportional basis.

(c) The following persons shall be exempt from the requirements of this section and shall be issued a license upon submission of an application and payment of the required fee.

1. Licensed plumbing inspectors:

i. (No change.)

ii. A person licensed by the Department under the above provision who subsequently loses his license as a result of revocation or of failure to renew within two years of lapsing must reapply for licensure under the requirements in effect at the time of reapplication without recourse to the above provision.

2. Licensed electrical inspectors:

i. A license for electrical inspector I.C.S. shall be issued to any person holding or receiving, prior to January 1, 1978, an electrical inspector's license, issued by the New Jersey Public Utilities Commission, pursuant to Title [45] 48, Revised Statutes.

ii. A person licensed by the Department under the above provision who subsequently loses his license as a result of revocation or of failure to renew within two years of lapsing must reapply for licensure under the requirements in effect at the time of reapplication without recourse to the above provision.

(d) (No change.)

5:23-5.6 Construction official requirements

(a) A candidate for a license as a construction official shall meet the following qualifications:

1. Possession of the qualifications established herein for at least one of the four subcode official licenses [in the specialty for which the construction official license is sought]; provided, however, that any person qualified as a fire protection subcode official must also have experience for the applicable period of time specified by N.J.S.A. 52:27D-126b; and 2.-3. (No change.)

5:23-5.7 Subcode official requirement

(a) A candidate for a license as a building, electrical, fire protection or plumbing subcode official shall meet the following qualifications:

1.-2. (No change.)

3. Completion of such additional experience in the subcode of qualification as may be required, beyond that needed for licensure as a technical inspector, to provide at least the following total experience:

i. (No change.)

ii. Five years of experience in construction, design or supervision [as an architect or engineer engaged] in building construction work, provided that such persons possess at least a bachelor's degree from an accredited institution of higher education in architecture or engineering or in architectural or engineering technology or in a major area of study directly related to building construction [from an accredited institution of higher education]; or

iii. (No change.)

4. Exception: A candidate for a license as a fire protection subcode official must possess at least the following experience:

i. Three years of experience as a fire prevention official; or

ii. Three years of experience as a fire protection official[.]; or

iii. Three years of experience as a firefighter.

5. A provisional license shall be issued to any person who [processes] possesses the required experience listed above provided that such person is licensed as a technical inspector. Such person shall have successfully completed the educational program required herein within 24 months of issuance of the provisional license.

6. (No change.)

7. A person who is already licensed as a fire protection subcode official must have the total years of experience as described in (a)3 above to satisfy the experience requirement for any other subcode official license.

5:23-5.8 Building inspector H.H.S. requirements

(a) A candidate for a license as a building inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. Seven years of experience consisting of some combination of the following:

[1.]i. [Seven years of experience] Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the building subcode; or

[2.]ii. [Seven years of experience] Experience as a building or housing inspector; or

[3.]iii. [Seven years of experience] Experience as a construction contractor in a field of construction currently regulated by the building subcode; or

[4.]2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering or in architectural or engineering technology or in a major area of study directly related to building construction and two years of experience in construction, design, inspection or supervision in a field of construction currently regulated by the building subcode; or

[5.-6.]3.-4. (No change in text.)

(b) A candidate for a license as a building inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved education program meeting the requirements established in N.J.A.C. 5:23[-5.21] -5.20 for building inspector H.H.S. [and an examination as required by N.J.A.C. 5:23-5.4 prior to application]; provided, however, that persons [have] having a [college] bachelor's degree in architecture or engineering [directly related to the building subcode] or in architectural or engineering technology or in a major area of study directly related to building construction shall be exempted from the educational program requirements for building inspector H.H.S.

2. Successful completion of an examination as required by N.J.A.C. 5:23-5.3.

[2.]3. Possession of, or eligibility for, the building inspector I.C.S. license.

5:23-5.9 Building inspector I.C.S. requirements

(a) A candidate for a license as a building inspector I.C.S. shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of some combination of the following:

[1.]i. [Five years of experience] Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the building subcode; or

[2.]ii. [Five years of experience] Experience as a building or housing inspector; or

[3.]iii. [Five years of experience] Experience as a construction contractor in a field of construction currently regulated by the building subcode; or

[4.]2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering or in architectural or engineering technology or in a major area of study directly related to building construction and one year of experience in construction, design, inspection or supervision in a field of construction currently regulated by the building subcode; or

[5.-6.]3.-4. (No change in text.)

(b) A candidate for a license as a building inspector I.C.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23[-5.21] -5.20 for building inspector I.C.S. [and an examination as required by N.J.A.C. 5:23-5.24 prior to application]; provided, however, that persons having a [college] bachelor's degree in architecture or engineering [directly related to the building subcode] or in architectural or engineering technology or in a major area of study directly related to building construction shall be exempted from the educational program requirements for building inspector I.C.S.

2. Successful completion of an examination as required by N.J.A.C. 5:23-5.23.

[2.]3. Possession of, or eligibility for, the building inspector R.C.S. license.

5:23-5.10 Building inspector R.C.S. requirements

(a) A candidate for a license as a building inspector R.C.S. shall meet one of the following educational and/or experience requirements:

1. Three years of experience consisting of some combination of the following:

[1].ji. [Three years of experience] **Experience** in construction, design or supervision as a journeyman in a skilled trade currently regulated by the building subcode; or

[2].jii. [Three years of experience] **Experience** as a building or housing inspector; or

[3].jiii. [Three years of experience] **Experience** as a construction contractor in a field of construction currently regulated by the building subcode; or

[4].j2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture [of] or engineering or in architectural or engineering technology or in a major area of study directly related to building construction; or

[5.-6.]j3.-4. (No change in text.)

(b) A candidate for a license as a building inspector R.C.S. shall also meet the following requirements prior to application:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23[-5.21] -5.20 for building inspector R.C.S.; provided, however, that persons having a [college] bachelor's degree in architecture or engineering [directly related to the building subcode] or in architectural or engineering technology or in a major area of study directly related to building construction shall be exempted from the educational program requirements for building inspector R.C.S.; and

2. Successful completion of an examination as required by N.J.A.C. 5:23[-5.24] -5.23.

5:23-5.11 Electrical inspector H.H.S. requirements

(a) A candidate for a license as an electrical inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. **Seven years of experience consisting of some combination of the following:**

[1].ji. [Seven years of experience] **Experience** in construction, design or supervision as a journeyman in a skilled trade currently regulated by the electrical subcode; or

[2].jii. [Seven years of experience] **Experience** as an electrical inspector; or

[3].jiii. [Seven years of experience] **Experience** as a construction contractor in a field of construction currently regulated by the electrical subcode; or

[4].j2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering or in architectural or engineering technology or in a major area of study directly related to building construction and two years of experience in construction, design, inspection or supervision in a field of construction currently regulated by the electrical subcode; or

[5.-6.]j3.-4. (No change in text.)

(b) A candidate for a license as an electrical inspector H.H.S. shall also meet the following requirements prior to application:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23[-5.21] -5.20 for electrical inspector H.H.S.; provided, however, that persons having a [college] bachelor's degree in architecture or engineering [directly related to the electrical subcode] or in architectural or engineering technology or in a major area of study directly related to building construction shall be exempted from the educational program requirements for electrical inspector H.H.S.; and

2. Successful completion of an examination as required by N.J.A.C. [5:23-5.21] 5:23-5.23.

3. **Possession of, or eligibility for, the electrical inspector I.C.S. license.**

5:23-5.12 Electrical inspector I.C.S. requirements

(a) A candidate for a license as an electrical inspector I.C.S. shall meet one of the following educational and/or experience requirements.

1. **Five years of experience consisting of some combination of the following:**

[1].ji. [Five years of experience] **Experience** in construction, design or supervision as a journeyman in a skilled trade currently regulated by the electrical subcode; or

[2].jii. [Five years of experience] **Experience** as an electrical inspector; or

[3].jiii. [Five years of experience] **Experience** as a construction contractor in a field of construction currently regulated by the electrical subcode; or

[4].j2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering or in architectural or engineering technology or in a major area of study directly related to

building construction and one year of experience in construction, design, inspection or supervision in a field of construction currently regulated by the electrical subcode; or

[5.-6.]j3.-4. (No change in text.)

(b) A candidate for a license as an electrical inspector I.C.S. shall also meet the following requirements prior to application:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23[-5.21] -5.20 for electrical inspector I.C.S.; provided, however, that persons having a [college] bachelor's degree in architecture or engineering [directly related to the electrical subcode] or in architectural or engineering technology or in a major area of study directly related to building construction shall be exempted from the educational program requirements for electrical inspector I.C.S.; and

2. Successful completion of an examination as required by N.J.A.C. 5:23[-5.24] -5.23.

5:23-5.13 Fire protection inspector H.H.S. requirements

(a) A candidate for a license as a fire protection inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. **Seven years of experience consisting of some combination of the following:**

[1].ji. [Seven years of experience] **Experience** in the fire service [as an officer, inspector or firefighter] (other than as an apprentice or trainee), with [responsibility for] fire prevention, fire protection or firefighting [activities] responsibilities; or

[2. Five years of experience as a journeyman in a skilled trade regulated by the fire protection subcode and two years of active service in the fire service.]

ii. **Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the fire protection subcode; or**

iii. **Experience as a construction contractor in a field of construction currently regulated by the fire protection subcode; or**

2. **Graduation from an accredited institution of higher education with a bachelor's degree in fire science, architecture or engineering, or in architectural, engineering or fire science technology, or in a major area of study directly related to building construction, plus two years of experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or**

3. **Possession of an associate's degree from an accredited institution of higher education in code enforcement, fire science, or fire science technology, and three years of experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or**

4. **Possession of a current New Jersey license to practice as an architect or engineer at the time of application.**

(b) A candidate for a license as a fire protection inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23[-5.21] -5.20 for fire protection inspector H.H.S. [and an examination as required by 5:23-5.24 prior to application]; provided, however, that persons having an associate's degree in code enforcement, fire science or fire science technology or a [college] bachelor's degree in fire science, architecture or engineering or in architectural, engineering or fire science technology or in a major area of study directly related to building construction [directly related to the fire protection subcode] shall be exempted from the educational program requirements for fire protection inspector H.H.S.

2. **Successful completion of an examination as required by N.J.A.C. 5:23-5.23.**

[2].j3. **Possession of, or eligibility for, the fire protection inspector I.C.S. license.**

5:23-5.14 Fire protection inspector I.C.S. requirements

(a) A candidate for a license as a fire protection inspector I.C.S. shall meet one of the following educational and/or experience requirements:

1. **Five years of experience consisting of some combination of the following:**

[1].ji. [Five years of experience] **Experience** in the fire service [as an officer, inspector or firefighter] (other than as an apprentice or trainee) with [responsibility for] fire prevention, fire protection, or firefighting [activities] responsibilities; or

[2. Three years of experience as a journeyman in a skilled trade regulated by the fire protection subcode and two years of active experience in fire service.]

ii. **Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the fire protection subcode; or**

iii. Experience as a construction contractor in a field of construction currently regulated by the fire protection subcode; or

2. Graduation from an accredited institution of higher education with a bachelor's degree in fire science, architecture or engineering, or in architectural, engineering or fire science technology, or in a major area of study directly related to building construction and one year of experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or

3. Possession of an associate's degree from an accredited institution of higher education in code enforcement, fire science, or fire science technology and two years of experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or

4. Possession of a current New Jersey license to practice as an architect or engineer at the time of application.

(b) A candidate for a license as a fire protection inspector I.C.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23[-5.21] -5.20 for fire protection inspector I.C.S. [and an examination as required by 5:23-5.24 prior to application]; provided, however, that persons having an associate's degree in code enforcement, fire science or fire science technology or a [college] bachelor's degree in fire science [or in], architecture or engineering [directly related to the fire protection subcode] or in architectural, engineering or fire science technology or in a major area of study directly related to building construction shall be exempted from the educational program requirements for fire protection inspector I.C.S.

2. Successful completion of an examination as required by N.J.A.C. 5:23-5.3.

[2.]3. Possession of, or eligibility for, the fire protection inspector R.C.S. license.

5:23-5.15 Fire protection inspector R.C.S. requirements

(a) A candidate for a license as a fire protection inspector R.C.S. shall meet one of the following [have had three years of active] educational and/or experience [in the fire service.] requirements:

1. Three years of experience consisting of some combination of the following:

i. Experience in the fire service (other than as an apprentice or trainee) with fire prevention, fire protection or firefighting responsibilities; or

ii. Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the fire protection subcode; or

iii. Experience as a construction contractor in a field of construction currently regulated by the fire protection subcode; or

2. Graduation from an accredited institution of higher education with a bachelor's degree in fire science, architecture or engineering, or in architectural, engineering or fire science technology, or in a major area of study directly related to building construction; or

3. Possession of an associate's degree from an accredited institution of higher education in code enforcement, fire science or fire science technology, and one year of experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or

4. Possession of a current New Jersey license to practice as an architect or engineer at the time of application.

(b) A candidate for a license as a fire protection inspector R.C.S. shall also meet the following requirements prior to application:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23[-5.21] -5.20 for fire protection inspector R.C.S.; provided, however, that persons having an associate's degree in code enforcement, fire science or fire science technology or a [college] bachelor's degree in fire science [or in], architecture or engineering or in architectural, engineering or fire science technology or in a major area of study directly related to building construction [directly related to the fire protection subcode] shall be exempted from the educational program requirements for fire protection inspector R.C.S.; and

2. Successful completion of an examination as required by N.J.A.C. 5:23[-5.24] -5.23.

(c) A provisional license shall be issued to any person who has been appointed to the position of fire protection inspector R.C.S. in a local enforcing agency, provided that such person possesses the required experience and further provided that such person shall have successfully completed the educational program established in N.J.A.C. 5:23-5.21 for fire protection inspector R.C.S. within 12 months of the appointment.]

5:23-5.16 Plumbing inspector H.H.S. requirements

(a) A candidate for a license as a plumbing inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. Seven years of experience consisting of some combination of the following:

[1.]i. [Seven years of experience] Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the plumbing subcode; or

[2.]ii. [Seven years of experience] Experience as a plumbing inspector; or

[3.]iii. [Seven years of experience] Experience as a construction contractor in a field of construction currently regulated by the plumbing subcode: or

[4.]2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering or in architectural or engineering technology or in a major area of study directly related to building construction and two years of experience in construction, design, inspection or supervision in a field of construction currently regulated by the plumbing subcode; or

[5.-6.]3.-4. (No change in text.)

(b) A candidate for a license as a plumbing inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23[-5.21] -5.20 for plumbing inspector H.H.S. [and an examination as required by N.J.A.C. 5:23-5.24 prior to application]; provided, however, that persons having a [college] bachelor's degree in architecture or engineering [directly related to the plumbing subcode] or in architectural or engineering technology or in a major area of study directly related to building construction shall be exempted from the educational program requirements for plumbing inspector H.H.S.

2. Successful completion of an examination as required by 5:23-5.23.

[2.]3. Possession of, or eligibility for, the plumbing inspector I.C.S. license.

5:23-5.17 Plumbing inspector I.C.S. requirements

(a) A candidate for a license as a plumbing inspector I.C.S. shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of some combination of the following:

[1.]i. [Five years of experience] Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the plumbing subcode; or

[2.]ii. [Five years of experience] Experience as a plumbing inspector; or

[3.]iii. [Five years of experience] Experience as a construction contractor in a field of construction currently regulated by the plumbing subcode; or

[4.]2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering or in architectural or engineering technology or in a major area of study directly related to building construction and one year of experience in construction, design, inspection or supervision in a field of construction currently regulated by the plumbing subcode; or

[5.-6.]3.-4. (No change in text.)

(b) A candidate for a license as a plumbing inspector I.C.S. shall also meet the following requirements prior to application:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23[-5.21] -5.20 for plumbing inspector I.C.S. [an examination as required by N.J.A.C. 5:23-5.24 prior to application]; provided, however, that persons having a college degree in architecture or engineering [directly related to the plumbing subcode] or in architectural or engineering technology or in a major area of study directly related to building construction shall be exempted from the educational program requirements for plumbing inspector I.C.S.

2. Successful completion of an examination as required by N.J.A.C. 5:23[-5.24] -5.23.

5:23-5.18 Inplant inspector requirements

(a) A candidate for a license as an inplant inspector shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of some combination of the following:

[1.]i. [Five years of experience] Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the building, electrical, fire protection or plumbing subcode, or a combination thereof; or

[2.]ii. [Five years of experience] Experience as a building, electrical, fire protection or plumbing inspector, or a combination thereof; or

[3.]iii. [Five years of experience] **Experience** as a construction contractor currently regulated by any of the four above enumerated subcode, or a combination thereof; or

[4.]2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering or in **architectural or engineering technology or in a major area of study directly related to building construction** and three years of experience in any one or more of the fields regulated by the above enumerated subcodes; or

[5.]3. Possession of a current New Jersey license or registration to practice engineering or architecture at the time of application.

(b) A candidate for a license as an inplant inspector shall have successfully completed examinations as required by N.J.A.C. 5:23[-5.24] -5.23 prior to application.

[5:23-5.20 Facility fire protection supervisor requirements]

[(a) A candidate for a license as a facility fire protection supervisor shall meet the following experience requirements:

1. Five years of experience as an officer responsible for fire prevention or fire protection activities; or
2. Three years of experience as a journeyman in a skilled trade regulated by the fire protection subcode; or
3. Three years of experience as a fire prevention inspector; or one year of experience as a fire protection inspector.

(b) A candidate for a technical license as a facility fire protection supervisor shall also meet the following requirements prior to application:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-21 for fire protection inspector I.C.S.; provided, however, that persons having a college degree in fire science or New Jersey professional license in engineering or architecture shall be exempted from the educational program requirement; and

2. Successful completion of an examination as required for fire protection inspector I.C.S. by 5:23-5.24. Persons having a college degree in fire science or a New Jersey professional license in engineering or architecture shall be exempted from the educational program requirement.]

[5:23-5.21]5:23-5.20 (No change in text.)

[5:23-5.22]5:23-5.21 Renewal of license

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

(d) Continuing education requirements:

1. (No change.)
2. **If an individual adds an inspector license in a new subcode area to an existing license, the continuing education requirements for the new subcode area are calculated in proportion to the time remaining on the existing license.**
 - i. **If there is less than two years, but more than one year, remaining on the existing license, then the technical CEU requirements are 0.5 CEU for the new subcode area.**
 - ii. **If there is one year or less remaining on the existing license, then there is no technical CEU requirement for renewal in the new subcode area.**
3. **If an individual adds administrative license(s) to an existing license, the continuing education requirements are as follows:**
 - i. For those adding both a subcode official and construction official license:
 - (1) **If there is less than two years, but more than one year, remaining on the existing license, then the administrative CEU requirement is 0.5 CEU for renewal of the new licenses.**
 - (2) **If there is one year or less remaining on the existing license, then there is no administrative CEU requirement for renewal of the new licenses.**
 - ii. For those adding either a subcode official or a construction official license:
 - (1) **If there is less than two years remaining on the existing license, then there is no administrative CEU requirement for renewal of the new license.**

(e)-(g) (No change.)

[5:23-5.23]5:23-5.22 (No change in text.)

[5:23-5.24]5:23-5.23 Examination requirements

(a)-(d) (No change.)

(e) The following records pertaining to every examination shall be preserved for a period of three years[.] :

[1. A copy of the public announcement;]

[2.]1. The resulting list of grades;

[3.]2. Such other records of information in the custody of the Department as may be pertinent.

[(f) Where only one examination module of the National Certification Program for Construction Code Inspectors is required for license qualification and a person fails this module three consecutive times, said person

shall be required to complete an applicable refresher course with any national code administering agency before being permitted to retake this examination module.

(g) Where multiple examination modules of the National Certification Program for Construction Code Inspectors are required for license qualification and a person fails any one module three consecutive times, said person shall be required to take refresher courses and to retake all modules applicable for licensing qualification.]

[5:23-5.25-5:23-5.26]5:23-5.24-5:23-5.25 (No change in text.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Barrier Free Subcode—Recreation Standards

Proposed Amendments: N.J.A.C. 5:23-2.38, 3.11, 7.2 and 7.3

Proposed New Rules: N.J.A.C. 5:23-7.100 through 7.116

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

Authority: N.J.S.A. 52:27D-123 and 52:32-5

Proposal Number: PRN 1987-271

A **public hearing** on the proposed regulations will be held at 10:00 A.M. on September 14, 1987 at the New Jersey State Library for the Blind and Handicapped, 2300 Stuyvesant Ave., Trenton, New Jersey. Those who wish to testify at this hearing are requested to notify Mr. Michael Ticktin at the address listed below.

Submit comments by September 21, 1987 to:

Michael L. Ticktin, Esq.

Administrative Practice Officer

Division of Housing and Development

CN 804

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments and new rules would create standards for accessibility for newly-constructed outdoor recreational facilities, as well as for additions or renovations to existing outdoor recreational facilities. The proposed amendments and new rules include standards for pools, swimming and skating areas, boating areas, fishing areas, court games, playing fields, golf facilities, ski lifts, aerial tramways and conveyors, trails, camping sites, recreation equipment and equestrian facilities.

Additionally, the proposed amendments and new rules establish a procedure for the handling of complaints regarding noncompliance with these standards. In accordance with the proposed amendments and new rules, the Department will make determinations with respect to complaints of noncompliance with these standards. When the Department determines that an apparent violation of the standards exists and the facility manager fails to correct it, then the complainant and the facility manager will contest the case at a fair hearing in the Office of Administrative Law. In such cases, members of Department staff may assist the aggrieved party in pursuing this course of action.

This procedure will give handicapped individuals and advocacy groups an opportunity to bring complaints and pursue them through to resolution at a fair hearing. This is an important departure from existing code enforcement procedures which do not give a complainant any opportunity to appeal an initial determination of the Department.

Other amendments contained in this proposal clarify that public or common areas in residential construction projects must be made accessible to the handicapped regardless of whether the dwelling units themselves must be made accessible. Finally, an amendment is made to require that indoor swimming pools and court games comply with the technical criteria established for similar outdoor facilities.

Social Impact

The proposed standards are intended to provide the handicapped with the opportunity to enjoy the same recreational facilities available for the rest of the population by requiring that newly-constructed or renovated facilities comply with standards for accessibility as delineated in the proposal.

Economic Impact

The proposed amendments and new rules may result in added costs for construction which will vary greatly depending on the characteristics of the facility. It should be noted that the rules impose no retroactive requirements, but apply only to newly-constructed or renovated facilities.

Regulatory Flexibility Statement

The proposed amendments and new rules will impact mostly upon county park commissions, schools and other entities which own and/or operate outdoor recreational facilities. The Department does not consider a differentiation of requirements for any small businesses that may be affected would be appropriate as to do so would be to defeat the objective of providing uniform access to recreational facilities throughout the State.

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

5:23-2.38 Departmental appeal

(a) (No change.)

(b) Any party in interest aggrieved by any decision made by a facility manager with respect to compliance with the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.100 through 7.116) shall have the right to appeal the decision to the Department. The Department shall forward a copy of the complaint to the facility manager and shall request a response from the facility manager. The facility manager shall respond in writing within 45 days of receipt of the request. The Department shall review the response and the complaint and shall determine whether a contested case exists. The Department shall make such determination within 60 days. In the event that the Department determines that a contested case exists, it shall forward such case for adjudication in an administrative hearing before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1-1 et seq.).

1. A "party in interest" may be either the owner, or authorized representative of the owner, of the premises that is the subject of the decision or an occupant, user or prospective occupant or user, of the premises, or a group representative of such occupants, users or prospective occupants or users; provided, however, that an occupant, user or representative group shall only be deemed to be a party in interest if notice of such interest has been given to the Department by the party prior to the issuance of the Department's determination.

5:23-3.11 Enforcement activities reserved to the State

(a)-(e) (No change.)

(f) The Department of Community Affairs shall be the sole agency for the enforcement of the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.100 through 7.116). Any complaint of noncompliance with these regulations shall be forwarded to the Department.

5:23-7.2 Scope and [A]pplicability

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

(c) Outdoor recreational equipment and/or facilities shall comply with N.J.A.C. 5:23-7.100 through 7.116.

1. Compliance with the provisions of this subchapter that relate to outdoor recreational equipment, facilities or sites shall be the responsibility of the manager of that recreational facility, of the owner of the facility, whether publicly or privately held, and of the agency responsible for the administration of that facility.

(d) Indoor swimming pools shall comply with all technical criteria of N.J.A.C. 5:23-7.104, and indoor court games shall comply with all technical criteria of N.J.A.C. 5:23-7.108. Notwithstanding any provision of these sections, all indoor swimming pools and court games shall be made accessible.

5:23-7.3 Exemptions

(a) The following are exempt from the provisions of this subchapter:

1. Buildings or projects of Use Group R-2 or R-3 with four or fewer dwelling units, having common or separate entrances directly from the exterior, whether for rental or arranged for sale shall be exempt. A dwelling unit shall be deemed to be "arranged for sale" if it is located on a separate lot or is part of a condominium project for which a Master Deed has been filed and which has been approved for registration as a planned real estate development by the Department at the time that the building permit is issued.

i. Public facilities, including entrances, parking lots, lobbies, vending machine areas, laundry areas, game rooms, exercise rooms, swimming pools, conference facilities, community rooms, mailbox areas, locker rooms,

restrooms, recreational facilities and storage facilities associated with buildings exempted by (a)1 above shall comply with all applicable provisions of this subchapter.

2. Buildings or projects of Use Group R-2 or R-3 which have dwelling units arranged for sale each of which has a separate entrance directly from the exterior shall be exempt. A dwelling unit shall be deemed to be arranged for sale if it is located on a separate lot or is part of a condominium project for which a Master Deed has been filed and which has been approved for registration as a planned real estate development by the Department at the time that the building permit is issued.

i. Public facilities, including entrances, parking lots, lobbies, vending machine areas, laundry areas, game rooms, exercise rooms, swimming pools, conference facilities, community rooms, mailbox areas, locker rooms, restrooms, recreational facilities and storage facilities associated with buildings exempted by (a)2 above shall comply with all applicable provisions of this subchapter.

3.-8. (No change.)

5:23-7.100 Recreation

(a) All facilities, equipment, and sites or portions thereof, intended for outdoor, active or passive recreation shall meet all applicable requirements of this subchapter in addition to the provisions of N.J.A.C. 5:23-7.101 through 7.116. All support facilities and site access points required to be on an accessible route of travel shall be made accessible in accordance with the applicable provisions of this subchapter.

(b) Compliance with the provisions of this subchapter that relate to outdoor recreational equipment, facilities or sites shall be the responsibility of the manager of that recreational facility, of the owner of the facility, whether publicly or privately held, and of the agency responsible for the administration of that facility.

1. The facility manager shall certify, in writing, that any work performed complies with all applicable provisions of this subchapter and shall retain this certification on file.

2. Complaints regarding lack of enforcement of these provisions shall be directed to the facility manager. The facility manager shall respond within 30 days to any written complaint received detailing the position taken with respect to this complaint. If the facility manager fails to respond in a manner satisfactory to the party registering the complaint, then that party shall have recourse to the appeals process as set forth at N.J.A.C. 5:23-2.38 and 3.11.

3. Any alteration, renovation and/or addition to any existing recreational facility, the cost of which meets or exceeds the limit set forth in N.J.S.A. 40A:11-3, shall be performed in compliance with all applicable provisions of this subchapter. This limit shall apply to both privately- and publicly-owned recreational facilities. If it is feasible to achieve a greater degree of compliance with this subchapter with respect to the entire recreation area, then the facility manager may make alterations, renovations or additions in compliance with the applicable provisions of this subchapter to other facilities or equipment in lieu of the facility or equipment originally being altered, renovated and/or added.

i. Notwithstanding the above provisions, no alteration, renovation or addition shall be made which reduces or diminishes the degree to which any facility meets the criteria of this subchapter.

5:23-7.101 Recreation: definitions

"Park" or "recreation area" means an area set aside and designated for recreation, including either active participation, as in sports, or passive recreation, as in the observation of nature.

"Recreation equipment" means equipment and prescribed surrounding safety areas, including, but not limited to, fixed equipment, fixed manipulative play equipment (such as playground equipment), picnic tables, benches, fire places and grills, ski lifts, and aerial tramways.

"Recreation facility" means a facility, body of water, dock, court, field, location, or portion thereof, intended for active or passive recreation.

"Site access points" means entrances, waiting areas, drop-off zones, parking areas, and public transportation stops serving the recreational area or facility, except those used solely for maintenance purposes.

"Support facility" means a facility ancillary to a recreation facility including, but not limited to, toilet facilities, food services, information services, first aid stations, drinking fountains, telephones, and shelters. Facilities primarily housing mechanical equipment or those exclusively used for storage are not included in this definition.

"Undeveloped areas" means wilderness areas used for activities such as camping, hunting, fishing or the observation of nature or open space conservation areas.

5:23-7.102 Recreation: exceptions

These recreation requirements do not apply to undeveloped areas as defined in N.J.A.C. 5:23-7.101. These requirements also shall not apply to

facilities, equipment or sites which are associated with buildings exempted by N.J.A.C. 5:23-7.3(a)3, 4, 5, 6, 7 or 8.

5:23-7.103 Recreation: route of travel

There shall be an accessible route of travel connecting the following elements: at least 25 percent, but not less than one, of each type of support facility provided, at least one site access point and those recreation facilities and recreation equipment required to be accessible.

5:23-7.104 Recreation: pools

(a) At least one pool of each type provided in each distinct area on a site, intended for swimming, soaking, wading, or diving, exclusive of those intended for ornamental, decorative, or mechanical purposes, must adjoin an accessible route of travel. The interior of swimming pools, defined as pools with a depth ranging between 24 inches and 13 feet, and the interior of soaking pools shall be made accessible by one of the methods detailed in (a)1 through 3 below. Wading pools, defined as pools with a maximum depth less than 24 inches, and diving pools, defined as pools or tanks whose minimum depth is over 13 feet, are excluded from this interior access requirement.

1. A vertical lift meeting the following criteria and as shown in Figure 7.104a:

- i. Designed by its manufacturer for independent operation by the user;
- ii. Equipped with a chair designed for independent transfer from a wheelchair. The chair shall have a rigid seat with a depth of at least 15 inches and shall have a rigid back support at least 15 inches high;

(1) As an alternative to (a)1ii above, a pool may be equipped with a moving platform meeting the criteria of N.J.A.C. 5:23-7.81. A wheelchair shall be provided to the user if this option is used.

- iii. Adjoining a clear level floor area meeting the criteria of N.J.A.C.

- 5:23-7.17 whose minimum dimensions are five feet by five feet;
 - iv. Having controls which meet the criteria of N.J.A.C. 5:23-7.81; and
 - v. Located to meet the criteria of Figure 7.104a.
2. Interior/exterior steps meeting the criteria of Figure 7.104b;
 3. A ramp meeting the criteria of Figure 7.104c.
- i. A wheelchair shall be provided to the user if this option is used.

Figure 7.104a
Pool Entry

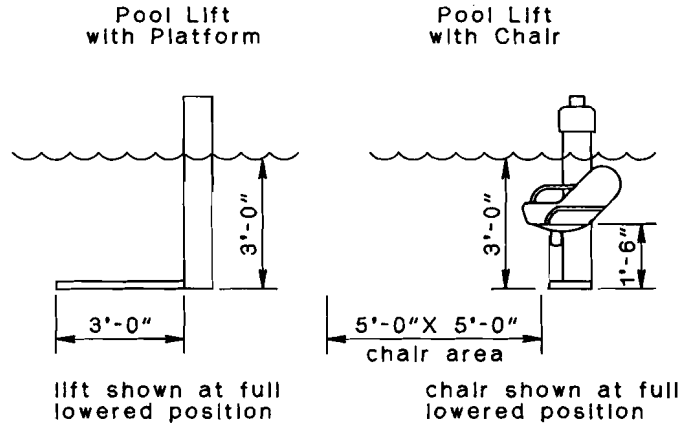
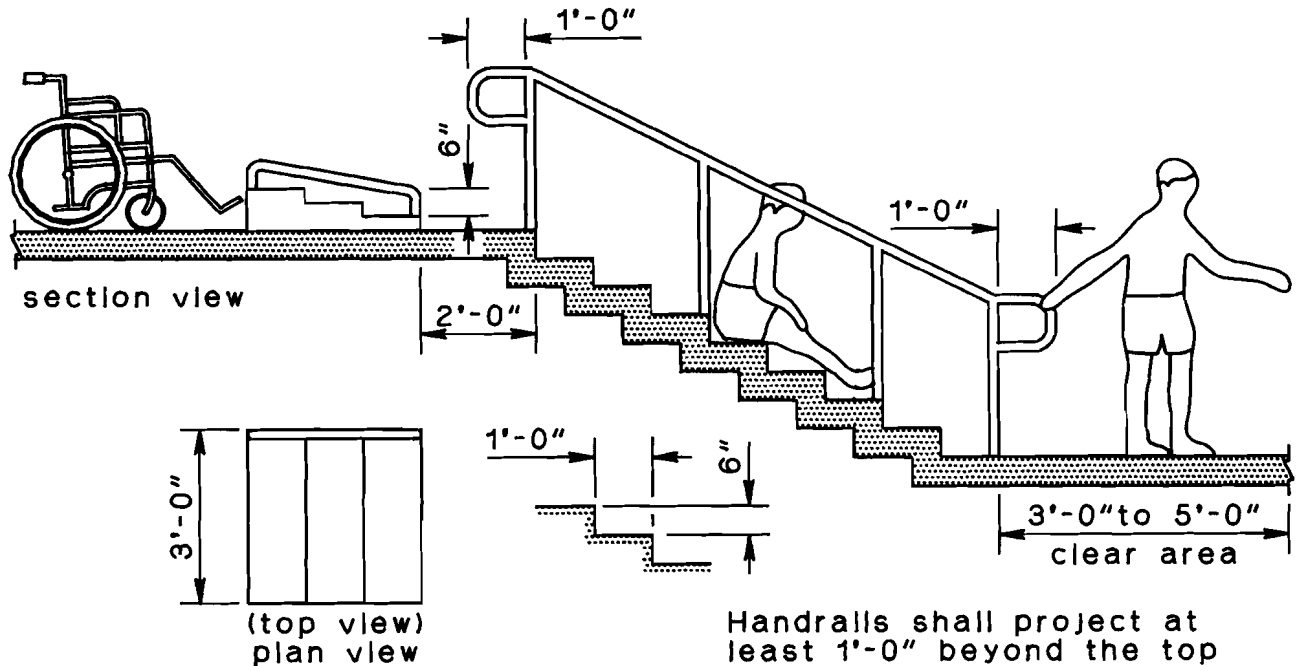
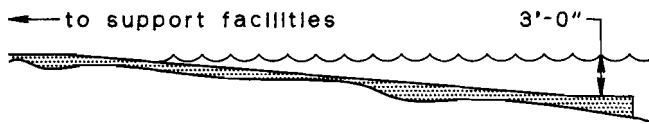


Figure 7.104b
Pool Entry



Handrails shall project at least 1'-0" beyond the top riser and at least 1'-0" plus the depth of one tread beyond the bottom riser.

Figure 7.104c
Ramp Into Water

Maximum ramp slope 1:12.

Provide no handrails but provide curbs.

Maximum ramp run 30'-0", use additional ramp runs with 5'-0" level platforms between, as necessary.

In pools, assure no access under ramp.

5:23-7.105 Recreation: swimming and skating areas

(a) At each designated swimming and/or skating area at natural or man-made bodies of water, there shall be an accessible route of travel connecting at least one point on the beach, and a point at the water's edge, defined as the mean high water mark.

1. At designated swimming and/or skating areas, the provision of access as described in (a) above at one location per site shall be deemed as satisfying the requirements of this section.

(b) Where swimming is provided, there shall be a ramp leading into the water to a depth of three feet. The ramp shall meet the criteria of N.J.A.C. 5:23-7.24 and of Figure 7.104c except that handrails shall not be provided. Visual markings for the underwater portion of the ramp, such as floats or flags, shall be provided to define the side edges. Alternately, means of access to a minimum water depth of three feet may be achieved by other methodologies as specified in N.J.A.C. 5:23-7.104. This provision shall not apply in those ocean front areas where wave action would render the provision of a ramp impractical from an engineering standpoint.

5:23-7.106 Recreation: boating areas

(a) Each boating area with docking facilities shall have one accessible mooring space.

(b) Each accessible mooring space shall adjoin an accessible route of travel and shall have a minimum clear space of five feet by five feet to allow transfer to the boat. Additionally, each accessible mooring space shall be a maximum of 36 inches above the mean water level in non-tidal areas.

5:23-7.107 Recreation: fishing areas

If docks are provided in a fishing area, the criteria of N.J.A.C. 5:23-7.106 shall apply.

5:23-7.108 Recreation: court games

(a) The surface of the court must adjoin an accessible route of travel. Entrances to courts required to be accessible shall meet criteria of N.J.A.C. 5:23-7.37. On sites with more than one court, at least one of each type of court in each distinct area at a site shall adjoin an accessible route of travel. Where there is a main or center court, this court shall be included as one of those on an accessible route of travel. Additionally, all permanent spectator viewing areas seating 50 or more persons shall be on an accessible route of travel.

(b) Court surfaces shall meet the criteria of N.J.A.C. 5:23-7.17 except in those instances where the recognized rules of the particular game dictate another surface.

5:23-7.109 Recreation: ice rinks and roller rinks

The surface of at least one of each type of rink provided in each distinct area on a site shall adjoin an accessible route of travel.

5:23-7.110 Recreation: playing fields

There shall be an accessible route of travel to at least one of each type of playing field provided in each distinct area on a site. For an overlay field, an accessible route of travel to the primary field shall fulfill the requirements of this section. For a complex of playing fields in a single area, an accessible route of travel to the area shall fulfill the requirements of this section. Additionally, all permanent spectator viewing areas seating 50 or more persons shall be on an accessible route of travel.

5:23-7.111 Recreation: golf facilities

(a) For golf facilities, there shall be an accessible route of travel to the area where the transfer to golf carts is made.

(b) Bridges, if provided, shall either be designed for use by golf carts or shall meet the criteria of N.J.A.C. 5:23-7.24.

(c) Where curbs are provided at points where courses cross thoroughfares, ramps or curb ramps meeting the criteria of N.J.A.C. 5:23-7.24 shall be provided.

5:23-7.112 Recreation: ski lifts, aerial tramways, and conveyors

(a) In areas where ski lifts or other comparable mechanisms for skiing are provided, there shall be an accessible route of travel connecting site access point(s) and support facilities required to be accessible with the area where the transfer to skis is made.

(b) In areas where aerial tramways, conveyors or other comparable mechanisms for sightseeing are provided, there shall be an accessible route of travel connecting site access point(s) and support facilities required to be accessible and the moving seat, car or platform of the aerial tramways, conveyors, or comparable mechanisms. A five feet by five feet clear, level area meeting the criteria of N.J.A.C. 5:23-7.17 shall be provided immediately adjacent to the upper, lower, and any intermediate terminals of such mechanisms to facilitate transfer from a wheelchair to the seat, car, or platform. If seats are involved, they shall be at a height of 16 inches to 18 inches above the clear, level area.

(c) There shall be a control immediately available to the operator of the ski lift, aerial tramway or conveyor to stop and restart the mechanism to allow the transfer of a disabled person on and off.

5:23-7.113 Recreation: trails

(a) Trails through undeveloped areas are exempted from the requirements of this subchapter.

(b) All other trails shall meet the criteria of N.J.A.C. 5:23-7.17.

1. Signs, where provided, shall meet the criteria of N.J.A.C. 5:23-7.86.

5:23-7.114 Recreation: camping sites

(a) In camping areas in other than undeveloped areas, at least four percent (rounded off to the next higher whole number) of camp sites shall meet the following criteria:

1. There shall be an accessible route of travel connecting these accessible camp sites with site access point(s) and support facilities required to be accessible;

2. Sites and signs leading to such sites shall be marked with the International Symbol of Accessibility displayed as specified in N.J.A.C. 5:23-7.86;

3. Where tent platforms are provided, each shall be equipped with a ramp meeting the criteria of N.J.A.C. 5:23-7.24;

4. The accessible camp sites shall be distributed throughout the camping area to the degree feasible as determined by the topography of the area.

5:23-7.115 Recreation equipment

(a) There shall be an accessible route of travel connecting site access point(s) required to be accessible, recreation facilities required to be accessible, support facilities required to be accessible, and each piece of recreation equipment required to be accessible as delineated below.

(b) Four percent of all picnic tables, benches, fireplaces and grills provided, rounded off to the next higher whole number, but not less than one, shall be on an accessible route of travel.

1. Such equipment shall be distributed throughout the picnic area to the degree feasible as determined by the topography of the area.

(c) At least 25 percent of all fixed manipulative play equipment within each play area on a site shall be of a type identified by the manufacturer as usable by both disabled and non-disabled persons and shall be on an accessible route of travel.

1. For each piece of recreation equipment required to be accessible whose manufacturer specifies a surrounding, resilient safety area, providing access to that safety area shall constitute compliance with the requirements of this section.

i. Sand or pea gravel shall not be used within resilient safety areas associated with equipment required to be accessible.

2. As existing playground equipment is replaced in any play area which is on an accessible route of travel, at least 50 percent of the replacement equipment shall be of a type identified by the manufacturer as usable by both disabled and non-disabled persons until the percentage as specified in (c) above is met.

5:23-7.116 Recreation: equestrian facilities

At the area normally used for mounting at each recreational equestrian facility, a mounting platform for the disabled shall be provided. The top of the platform shall be at a height 42 inches above the surface upon which the horse stands. The mounting platform shall have a minimum dimension of five feet long and three feet wide. Any ramp necessary to provide access to the mounting platform shall meet the criteria of N.J.A.C. 5:23-7.24 except that a maximum slope of 1:9 shall be allowable.

ENVIRONMENTAL PROTECTION

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Use of Water Supply Authority Property

Proposed Repeal: N.J.A.C. 7:11-1

Proposed New Rules: N.J.A.C. 7:11-1

Authorized By: Richard T. Dewling, Chairman, New Jersey
Water Supply Authority and Commissioner, Department of
Environmental Protection.

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 028-87-06.

Proposal Number: PRN 1987-266.

A public hearing concerning this proposal will be held on:

August 5, 1987

7:00 P.M.-9:00 P.M.

North Hunterdon Regional High School

Route 31 between Flemington and Clinton

Annandale, New Jersey

Submit comments by August 19, 1987 to:

Catherine A. Tormey, Esq.

Office of Regulatory Services

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules establish the permissible uses of property and waters under the jurisdiction of the New Jersey Water Supply Authority ("Authority") which includes the Delaware and Raritan Canal Transmission Complex, the Spruce Run-Round Valley Reservoir Complex, and other water supply facilities owned or operated by the State which may be acquired pursuant to any past or future bond issues, including the Water Supply Bond Act of 1981, P.L. 1981, c.261.

These proposed new rules regulate all activities, both recreational and non-recreational, which may be engaged in by the general public or some portion thereof on Authority property. The rules are necessary in order to preserve and protect Authority property, facilities, and waters so that the public water supply will not be disturbed. Further, the rules serve to protect the public health and safety while still extending to the public the use and enjoyment of those facilities free of charge.

The proposed new rules will also give Authority and State park service personnel a detailed property use code to enforce while providing clear guidelines as to what constitutes a violation of permissible uses.

The existing subchapter N.J.A.C. 7:11-1.1, governing use of the Delaware and Raritan Canal, is being repealed and these new rules proposed to update the Authority's rules governing use of property and to extend application of those rules to all lands and waters under the jurisdiction of the Authority.

Social Impact

The proposed new rules continue to offer use of Authority property, waters, and facilities to the public for their enjoyment. By providing specific guidelines governing a wide variety of activities that may take place on Authority property, the Authority accomplishes a two-fold objective: to preserve the water systems which the Authority is charged with operating and to protect the public health, welfare, and safety while using the Authority's facilities. As a result, it is anticipated that these proposed new rules will have a very positive social impact and effect.

Economic Impact

The Authority charges no fees to the public for use of Authority property. The proposed new rules continue that positive trend by allowing citizens of the State to enjoy the lands, waters and facilities of the Authority free of charge.

In addition, the proposed new rules are designed to prevent and deter damage to Authority property through intentional or inadvertent misuse by clearly establishing permissible uses and warning that criminal penalties will accompany any misuse. A positive economic impact results since decreased property abuse and damage mean decreased costs for maintenance, repair and replacement of Authority facilities.

Environmental Impact

The proposed new rules will have a positive environmental impact by prohibiting dumping and littering, and requiring proper disposal of trash; by controlling the use of signs, which preserves the natural condition and setting of Authority property; by prohibiting the maintenance of open fires which could have a devastating effect on forested areas; and by restricting sporting activities such as fishing and boating to designated areas which are determined to be capable of supporting such activities.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, the Department has determined that these rules will not impose reporting, recordkeeping, or other compliance requirements on small businesses because they are not impacted by the requirements of these rules.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 7:11-1.

Full text of the proposed new rule follows:

SUBCHAPTER 1. USE OF WATER SUPPLY AUTHORITY PROPERTY

7:11-1.1 Scope

Unless otherwise provided by rule or statute, this subchapter shall constitute the rules of the New Jersey Water Supply Authority governing the use of the Spruce Run and Round Valley Reservoir Complex, Delaware and Raritan Canal Transmission Complex, and all other State operated or owned water supply facilities now or hereafter authorized to be designed, constructed and operated pursuant to any past or future bond issue.

7:11-1.2 Construction

(a) This subchapter shall be liberally construed to permit the New Jersey Water Supply Authority to discharge its statutory functions.

(b) When, in the public interest, the Authority determines that it is necessary to waive the requirements of this subchapter, it may do so upon public notice. This determination may include limiting or closing to the public use of certain Authority lands, waters and facilities pursuant to N.J.A.C. 7:11-1.9.

7:11-1.3 Practice where rules do not govern

The Executive Director of the New Jersey Water Supply Authority shall exercise his or her authority in respect to any other matters not governed by this subchapter.

7:11-1.4 Relationship to Federal and State law

This subchapter shall not relieve any person of the duty to comply with all other laws and regulations governing activities regulated by this subchapter, including all other applicable regulations of the Department and other State, Federal and local agencies.

7:11-1.5 Purpose

(a) The purpose of this subchapter is to protect Authority resources and improvements thereon and to assure the safety, protection and general welfare of visitors and personnel on properties under its jurisdiction.

(b) Failure or refusal to obey the rules set out in this subchapter or any other applicable State law, rule or regulation shall be sufficient cause for removal from Authority property and prosecution by duly authorized personnel.

7:11-1.6 Definitions

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

"Act" means the New Jersey Water Supply Authority Act, N.J.S.A. 58:1B-1 et seq.

"ATV" means a motor vehicle, designed to travel over any terrain which is of a type possessing between three to six rubber tires and powered by a gasoline engine not exceeding 400 cubic centimeters but shall not include golf carts.

"Authority" means the New Jersey Water Supply Authority established in but not of the Department of Environmental Protection, pursuant to N.J.S.A. 58:1B-4.

"Closed" means a complete prohibition of access except by Authority personnel.

"Code" means the New Jersey Administrative Code.

"Commission" means the Delaware and Raritan Canal Commission.

"Commissioner" means the Commissioner of the Department of Environmental Protection who is also the Chairman and Chief Executive Officer of the Authority, or any other person designated to act on his behalf.

"Delaware and Raritan Canal" or "D&R Canal" means the Delaware and Raritan Canal Transmission Complex.

"Department" shall mean the Department of Environmental Protection.

"Executive Director" means the chief administrative officer of the Authority appointed to N.J.S.A. 58:1B-5j, or any other person designated to act on his or her behalf.

"Facility" means all property, real or personnel, including but not limited to the structures, buildings, equipment, storage vessels and other operations located on property owned by or under the jurisdiction of the Authority.

"Furbearers" means any animal which bears a fur skin.

"Motor vehicle" means any vehicle propelled by other than muscular power, except such vehicles that run only upon rails or tracks.

"Mud flats" means the muddy bottom of the reservoir which is normally covered by water but which is exposed to the air as the water level recedes.

"Open burning" means any fire whereby products of combustion are emitted directly into the open air, and are not directed through the stack or chimney of an incinerator.

"Permission" means the written or verbal authority given by the Executive Director or his or her lawful designee to engage in a public use.

"Permit" means a formal document issued by the Authority allowing a specified activity, properly executed and signed by the Executive Director.

"Person" means, but is not limited to, corporations, companies, associations, societies, including non-profit organizations, firms, partnerships, joint stock companies, individuals and governmental entities.

"Power boats" means all fuel or battery powered boats.

"Public agencies" means the government of the United States of America, the State of New Jersey, their political subdivisions, agencies or instrumentalities, and interstate and regional agencies exercising sovereign powers of government.

"Public recreation and conservation purposes" means the use of land for parks, natural and historic areas, nature education, forests, camping, fishing, water reserve, wildlife preservation, hunting, boating, recreation centers, winter sports and similar uses.

"Public use" means a use or right of use available to the general public or some portion thereof for public conservation and recreation purposes.

"Round Valley Recreation Area" means those areas of the Round Valley Reservoir which are under the administrative jurisdiction of the State Park Service and/or the Division of Fish, Game and Wildlife for the purpose of providing public recreational activities, including but not limited to swimming beaches, camping and picnic sites, horse trails and boat launching areas.

"Signs" means any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.

"Snowmobile" means any motor vehicle designed primarily to travel over ice or snow, of a type which uses sled-type runners, skis, and endless belt, treads, cleats or any combination of those or other similar means of contact with the surface upon which it is operated.

"Special event" means an organized race, exhibition or demonstration of limited duration which is conducted according to a prearranged schedule for which general public interest is apparent.

"Spelunking" means any activity which involves the exploration of caves.

"Spruce Run Recreation Area" means those areas of the Spruce Run Reservoir which are under the administrative jurisdiction of the State Park Service and/or the Division of Fish, Game and Wildlife for the purpose of providing public recreational activities, including but not limited to swimming beaches, camping and picnic sites and boat launching or storage areas.

"State" means the State of New Jersey.

"State Park Service" means the New Jersey Division of Parks and Forestry in the Department of Environmental Protection.

"Waters" means all water within the jurisdiction of the Authority.

7:11-1.7 Designation of land and water use

The New Jersey Water Supply Authority reserves the right to designate or direct any and all recreation or other public use on its lands and waters and within its facilities to such specific areas or locations within or upon said lands, waters and facilities as will be in the best interest of water supply, conservation, preservation, management of its facilities, and the health, safety and welfare of all persons concerned.

7:11-1.8 Posted instructions

No person shall make use of the lands, waters, conveniences and facilities under the jurisdiction of the Authority contrary to any instructions posted at Authority facilities and/or set out in any permit issued by the Authority.

7:11-1.9 Limitation or closing of land and water use

The New Jersey Water Supply Authority may limit or close to the public the use of specific areas, lands, waters and facilities under its jurisdiction whenever such action is deemed necessary for proper management and operation of its facilities and is in the best interest of the water supply, health, safety, and welfare of the public. Any decision to limit or close shall be announced to the public by a news release in a newspaper or newspapers of appropriate circulation, by notice on site and/or by written notice posted at the Authority's security office located in the Authority's administration building.

7:11-1.10 Posting, soliciting and selling

No person shall post signs or notices, distribute advertisements, beg, solicit, sell, or attempt to commit such acts on property under the control of the Authority without the written permission of the Authority.

7:11-1.11 Commercial use

No person shall engage in commercial enterprise and activities on lands and waters under the jurisdiction of the Authority without a permit issued by the Authority or pursuant to a contract or lease entered into with the Authority.

7:11-1.12 Alcoholic beverages

No person shall possess and/or consume alcoholic beverages on any lands and waters under the jurisdiction of the Authority except in certain locations in those recreation areas where the sale, use or possession of alcoholic beverages is specifically approved as evidenced by posted signs.

7:11-1.13 Dumping/littering

(a) No person shall dump, litter or burn trash, refuse, garbage, bottles, pollutants, or any other foreign substances or liquids on lands and waters under the jurisdiction of the Authority.

(b) Every person shall place all litter in proper refuse containers or shall remove the litter from the area.

7:11-1.14 Furred animals and pets

(a) Except as provided in N.J.A.C. 7:11-1.15 and (b) below, all furred animals or pets are prohibited from buildings, bathing beaches, bathing waters and overnight facilities.

(b) At other areas, where permitted, except as provided in N.J.A.C. 7:11-1.15, the owner of any furred animal or pet shall keep the furred animal or pet caged or held on a leash (maximum length—six feet) and under the immediate control of the owner at all times.

(c) Any nuisance, unsanitary condition, damage or injury caused by furred animals or pets shall be the sole responsibility of the owner of such animal.

7:11-1.15 Exemption of seeing eye, companion and hunting dogs

(a) Seeing eye dogs and companion dogs for the hearing impaired are permitted in any location where their presence is necessary to perform the duty for which they are trained.

(b) Dogs used while hunting during open season or used while on field trails in accordance with N.J.A.C. 7:25-5.20, are exempt from the leashing rule set forth at N.J.A.C. 7:11-1.14(b).

7:11-1.16 Damage to Authority property

(a) No person shall abuse, mutilate, injure, destroy, move or remove any living plant or animal or any structures or other physical features or properties on lands and water under the jurisdiction of the Authority without having first obtained the permission of the Authority.

(b) Subsection (a) above shall not apply to activities related to the capture, trapping, or hunting of fish, furbearers and other wildlife as permitted pursuant to Title 23 of New Jersey Statutes Annotated and N.J.A.C. 7:25-1 et seq., in those areas provided for such activities.

7:11-1.17 Conduct

No person shall engage in conduct or use language which disrupts, interferes with or prevents the enjoyment or maintenance of Authority lands or waters by other visitors or Authority personnel.

7:11-1.18 Fires (open)

(a) No person shall start or maintain any open fire upon lands under the jurisdiction of the Authority unless permission is given by the Executive Director or his or her designee and all Department rules regarding open burning as set out at N.J.A.C. 7:27-2.3 are complied with, if applicable. Such permission may include designated hours, location and types of fuel to be used.

(b) All types of fire may be prohibited by the Authority during periods of high forest fire danger.

7:11-1.19 Picnicking

No person shall picnic, with or without cooking grills, on property under the jurisdiction of the Authority except for those areas which are designated for such use.

7:11-1.20 Target practice

No person shall engage in target practice with any type of firearm or bow and arrow on Authority property unless by written permission of the Executive Director or his or her designee, and then only in specific areas designated by the Executive Director or his or her designee.

7:11-1.21 Metal detectors

No person shall use metal detectors or similar devices without a permit issued by the Authority. Said permit may limit the location, hours, and days of use. The Authority may deny permits for use in areas of significant historical or other value or where such use would be incompatible with protection of the resource and/or would interfere with public use of the facility.

7:11-1.22 Horseback riding

No person shall ride horseback on property under the jurisdiction of the Authority except on designated trails and in designated areas where horseback riding is allowed.

7:11-1.23 Hiking

No person shall hike on property under the jurisdiction of the Authority except on designated trails and in designated areas only.

7:11-1.24 Camping

No person shall camp on property under the jurisdiction of the Authority except in designated areas.

7:11-1.25 Swimming

No person shall swim in waters under the jurisdiction of the Authority except in designated areas.

7:11-1.26 Spelunking

No person shall spelunk on grounds under the jurisdiction of the Authority without a permit issued by the Executive Director or his or her designee.

7:11-1.27 Recreational activities

(a) All individual and group visits involving recreational facilities on Authority property but under the administrative control of the State Park Service or the Division of Fish, Game and Wildlife in the Department are also subject to the rules and regulations of the State Park Service, N.J.A.C. 7:2-1 et seq., and the Division of Fish, Game and Wildlife, N.J.A.C. 7:25-1 et seq.

(b) Activities not included in (a) above shall require a written permit issued by the Executive Director of the Authority or his or her designee. Interested individuals shall apply in writing to:

Executive Director
New Jersey Water Supply Authority
Post Office Box 5196
Clinton, New Jersey 08809

(c) No person shall engage in the following recreational activities on Authority lands and waters without a written permit issued by the Executive Director or his or her designee:

1. Parachuting;
2. Hot air ballooning;
3. Hang gliding;
4. Musketry, flint-lock, black powder shooting (other than hunting as noted in N.J.A.C. 7:11-1.28);
5. Rappelling;
6. Model airplane flying;
7. Rocketry;
8. Geological sampling expeditions;
9. Scuba diving;
10. Skin diving.

7:11-1.28 Hunting, fishing and trapping

(a) No person shall hunt, fish and trap except on specifically designated lands and waters of the Authority. All such use shall comply with Title 23 of the New Jersey Statutes Annotated, and the rules promulgated pursuant thereto, N.J.A.C. 7:25-1 et seq.

(b) No person shall fish within 200 feet of any reservoir tower.

(c) No person shall fish within any areas marked with buoys and/or signs saying "Keep-Out—No Trespassing" or "Restricted Area".

(d) No person shall fish within 100 feet of Delaware and Raritan Canal Locks.

(e) No person shall hunt with a rifle on Authority property except for muzzle loading in conformance with N.J.A.C. 7:25-5.1 et seq.

(f) The temporary use of portable hunting blinds and stands is permitted in authorized hunting areas only, provided that such devices shall be immediately removed by the hunter after use.

7:11-1.29 Identification and license of motor vehicles

(a) No person shall operate any motor vehicle as defined in N.J.S.A. 39:1-1 and N.J.A.C. 7:11-1.6 and identified as such by the NJ Division of Motor Vehicles in the New Jersey Department of Law and Public Safety on lands under the jurisdiction of the Authority or on established roads under the control of the Authority unless the vehicle is licensed and registered by the Division of Motor Vehicles before it is operated.

(b) No person shall operate a vehicle on said lands, unless the operator of the vehicle shall have in his or her possession a valid operator's license and other documentation required by the Division of Motor Vehicles in the New Jersey Department of Law and Public Safety as set forth in N.J.A.C. 13:21-1.1 et seq.

7:11-1.30 Unauthorized motor vehicles

(a) No person shall operate any motor vehicle which does not require licensing by the Division of Motor Vehicles in the New Jersey Department of Law and Public Safety on lands and/or waters under the jurisdiction of the Authority unless a permit is issued by the Executive Director or his or her designee for that activity.

(b) Any permit granted by the Authority pursuant to (a) above shall include designated hours and specific locations for operation.

(c) No person shall operate a motor vehicle upon the ice-covered waters of the Authority at any time without a permit issued by the Executive Director or his or her designee.

7:11-1.31 Motor vehicle conformance to state laws

All motor vehicles operated on lands under the jurisdiction of the Authority shall be subject to New Jersey Motor Vehicles Laws, N.J.S.A. 39:1-1 et seq., and all Authority regulations set forth in N.J.A.C. 7:11-1.1 et seq.

7:11-1.32 Operation of motor vehicles

(a) No person shall operate any motor vehicle on Authority lands except on established public roads or in designated parking areas unless permitted otherwise in accordance with this subchapter.

(b) No person shall operate a motor vehicle at any time on or over any road designated by "closed" signs or barriers. No person shall operate a motor vehicle on or over any cultivated or planted area, transmission line, survey line or in the woods or fields unless a permit is issued by the Executive Director or his or her designee.

(c) No person shall operate ATVs, trail bikes or off-road motor vehicles on or over restricted areas described in (b) above at any time except that when an area is so designated by the Authority, permits may be granted for organized special events to operate on an established course under prescribed conditions.

(d) No person or organization may conduct a motor vehicle race, rally, exhibition or demonstration of any type on Authority lands without a permit issued by the Executive Director or his or her designee.

7:11-1.33 Snowmobiles

No person shall use snowmobiles on lands and ice-covered waters under the jurisdiction of the Authority.

7:11-1.34 Motor vehicle speed limits

(a) No person shall travel by motor vehicle around the Authority Administration Building at a speed greater than 10 miles per hour.

(b) No person shall travel by motor vehicle on improved roadways under the jurisdiction of the Authority at a speed greater than 20 miles per hour unless posted otherwise.

7:11-1.35 Parking

No person shall park any vehicle, conveyance, or equipment except in areas designated for parking.

7:11-1.36 Application of rules to boating

Boating activities on Authority waters are also subject to the jurisdiction of the State Park Service and therefore all boating activities shall be in conformance with all rules of the State Park Service, N.J.A.C. 7:2-1.1 et seq.

7:11-1.37 Additional boating restrictions

(a) No person shall operate a power boat which has a motor size greater than 10 horsepower on Authority waters.

(b) No person shall operate a sailboat or ice sailboat with a mast height of greater than 25 feet on Authority waters.

(c) No person shall operate a boat at less than 200 feet distance from all reservoir towers.

(d) No person shall operate a boat at less than 200 feet distance from all reservoir towers.

(e) No person shall operate a power boat on the Delaware and Raritan Canal.

7:11-1.38 Sledding, skiing and tobogganing

No person shall sled, ski or toboggan except in designated areas only.

7:11-1.39 Ice fishing

No person shall ice fish unless in compliance with N.J.A.C. 7:25-6.10.

7:11-1.40 Ice skating

No person shall ice skate except in designated areas under the supervision of the State Park Service.

7:11-1.41 Ice boating

No person shall ice boat or ice yacht on Spruce Run and Round Valley Reservoirs unless in compliance with all applicable rules of the State Park Service, N.J.A.C. 7:2-8.1 et seq.

7:11-1.42 Trespassing

No person shall trespass in designated restricted areas posted with "Keep Out—No Trespassing" or "Restricted Area" signs.

7:11-1.43 Low water levels

During periods of low water levels in the reservoirs as evidenced by increased exposure of mud flats, all restricted area fence lines shall be deemed to be extended to the water's edge. This extension shall then be included in the restricted area limits and shall constitute the restricted area limits.

7:11-1.44 Delaware and Raritan Canal

(a) Swimming: In addition to all other restrictions set forth at N.J.A.C. 7:11-1.1 et seq. regarding use of Authority property, no person shall swim in the Delaware and Raritan Canal.

(b) Building of docks: No person shall build docks, of any kind or size, unless a written permit to build a dock has been given by the Authority and the State Park Service.

7:11-1.45 Explosives

No person shall use or possess explosives of any kind on any Authority property unless such activity is authorized by a permit issued by the Executive Director of the Authority or his or her designee.

7:11-1.46 Early warning systems

All early warning systems installed by the Authority to alert downstream residents of dangerous conditions involving Authority dams are the property of the Authority. No person shall damage, alter, tamper with, or disturb this equipment. Any person who causes damage, alters, tampers with or disturbs this equipment shall be subject to criminal action pursuant to N.J.S.A. 2C:17-3.

7:11-1.47 Severability

If any provision of this subchapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of the provisions shall not be affected thereby.

(a)

**DIVISION OF WATER RESOURCES
Flood Hazard Area Redelineation of Raritan River
Proposed Amendment: N.J.A.C. 7:13-7.1(d)**

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

Authority: N.J.S.A. 13:1B-3, 13:1D-2 et seq. and 58:16A-50 et seq.

DEP Docket Number: 027-87-06

Proposal Number: PRN 1987-267

A public hearing concerning this proposal will be held on:
August 6, 1987 at 1:00 P.M.
New Jersey Record Storage Center Conference Room
2300 Stuyvesant Ave.
Trenton, New Jersey

Submit written comments on or before August 19, 1987 to:
Marlen Dooley
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08540

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the existing floodway along the Raritan River from Station 1400+00 to Station 1430+00.

The proposed floodway is narrower than the previously adopted State floodway on Plates R-10 and 1 of 4 from station 1400+00 to station 1430+00. The 100-year profile and the New Jersey Flood Hazard Area profile matches the recently updates State profiles.

The proposed floodway revision is based on an optimization of the present floodway limits using the U.S. Geological Survey hydraulic model prepared for the Hillsborough Flood Insurance Study. The revised floodway model was prepared by Menlo Engineers representing Harry Hartunian in conjunction with Stream Encroachment Application No. 13415. As a result of having an optimized floodway analysis, the Department is updating the present floodway delineation to reflect the new information.

Delineated flood hazard areas are designed to preserve the flood carrying capacity and to minimize the threat to the public safety, health and general welfare. Revisions to existing delineations further clarify the bounds of such flood hazard areas.

The proposed floodway revision affects the Boroughs of Raritan and Somerville in Somerset County. This redelineation will require no change in the text of N.J.A.C. 7:13-7.1(d), since only a revision of the flood hazard area delineation map is required. Review of maps and profiles associated with this redelineation is recommended.

Social Impact

By delineating streams and rivers, the Department sets the approximate limits of the New Jersey Flood Hazard Area and locates the floodway limits, which are regulated under the Flood Hazard Area Control Act Regulations, N.J.A.C. 7:13. As part of the stream encroachment application, the applicant's engineer optimized the present floodway limits and accurately located the proposed floodway limits. Since the floodway is optimized within the State's .2 foot rise criteria, no additional social impact will result beyond what was reasonably foreseeable at the time of the original floodway delineation of the Raritan River.

Economic Impact

Since the proposed amendment is the result of an application of the existing delineation to a specific project, there is no economic impact resulting from this proposal, beyond what was reasonably foreseeable at the time of the original delineation. The proposed amendment will have a positive economic impact on the permit applicant, because the floodway will be narrowed allowing for some additional development.

Environmental Impact

No adverse environmental impact will result from this proposal. Revision of the present delineation is needed to reflect an optimized floodway analyses from a stream encroachment application.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, the Department has determined that this rule would not impose reporting or recordkeeping requirements on small businesses. The proposed amendment is an application of the existing delineation to a specific project and will result in a narrowing of the floodway. If the neighboring property owners are small businesses, they would be positively affected, because the floodway as it affects their property may be slightly narrower allowing for some additional development.

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.

(a)

**DIVISION OF HAZARDOUS WASTE MANAGEMENT
Hazardous Waste Criteria, Identification and Listing
Relating to Spent Solvents and Spent Solvent
Mixtures; Testing Procedures and Methods
Proposed Amendments: N.J.A.C. 7:26-8.13, 8.15,
and 8.16**

Authorized By: Richard T. Dewling, Commissioner, Department
of Environmental Protection
Authority: N.J.S.A. 13:1E-6(a)
DEP Docket Number: 026-87-06
Proposal Number: PRN 1987-268

Submit comments by August 19, 1987 to:
Ann Zeloof, Esq.
New Jersey Department of Environmental Protection
Office of Regulatory Services
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection ("NJDEP") proposes to amend N.J.A.C. 7:26-8.13, 8.15 and 8.16 by: redefining the hazardous waste listing F002 for spent halogenated solvents and still bottoms from recovery of spent solvents and spent solvent mixtures to include 1,1,2-trichloroethane; adding benzene, 2-ethoxyethanol, and 2-nitropropane to the hazardous waste listing F005 for spent non-halogenated solvents; adding 2-ethoxyethanol (ethylene glycol monoethyl ether) to the "U list" at N.J.A.C. 7:26-8.15 and the hazardous constituents list at N.J.A.C. 7:26-8.16; revising the listing for 2-Nitropropane (Propane, 2-nitro-) on the "U list" at N.J.A.C. 7:26-8.15; and including all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the solvents listed in F001, F002, F003, F004 and F005 and all still bottoms from the recovery of these spent solvents and spent solvent mixtures in the list of hazardous waste from non-specific sources.

The proposed amendments relating to spent solvent mixtures/blends are intended to clarify the original listing of spent solvents as hazardous wastes. Many members of the regulated community mistakenly interpreted N.J.A.C. 7:26-8.13 as omitting mixtures of solvents from listing as a hazardous waste. Many individuals argued that Hazardous Waste Listings F001 through F005 applied only to technical grade, practical grade or pure form solvents. The proposed amendments relating to spent solvent mixtures/blends are proposed for the purposes of clarification and to maintain equivalency with the U.S. Environmental Protection Agency (USEPA) regulations adopted in the December 31, 1985 Federal Register at 40 CFR 261.31 and in the February 25, 1986 Federal Register at 40 CFR 261.33 and 261-Appendix VIII.

Furthermore, all the solvents listed above are known to cause either carcinogenic, teratogenic, adverse reproductive or other chronic toxic effects in laboratory animals.

Note that the proposed amendments to N.J.A.C. 7:26-8.15 expanding the first paragraph and recodifying the other paragraphs are identical to the amendments to that section proposed in the June 15, 1987 New Jersey Register at 19 N.J.R. 1035(a).

Social Impact

By adopting the proposed amendments, NJDEP is maintaining equivalency with Federal regulations concerning the listing of certain spent solvents, 10 percent mixtures of spent solvents and still bottoms from the recovery of these spent solvents. These regulatory actions will have a positive social impact in that generators, transporters and disposers of hazardous waste would be subject to New Jersey (and not dual) regulations. The proposed amendments will aid in protecting the public health and the environment through the more comprehensive regulation of hazardous wastes.

Economic Impact

Manufacturers of paint, coating inks or organic chemicals may be affected by the proposed amendments. However, no adverse economic impact is anticipated from the proposed amendments. USEPA's February 25, 1986 and December 31, 1985 adoptions stated that the regulatory

changes included in the proposed amendments would not result in either a significant increase or decrease in prices or profits for affected industries.

Environmental Impact

The proposed amendments are expected to have a positive environmental impact. Three of the chemical compounds listed above (benzene, 2-ethoxyethanol and 2-nitropropane) exhibit the characteristic of ignitability; furthermore, two of these solvents (benzene and 1,1,2-trichloroethane) previously have been included on the list of discarded commercial chemical products, which are hazardous when discarded, due to their toxicity. The proposed amendments help assure that these hazardous wastes will be handled in an environmentally responsible manner. Most spent solvent mixtures used in industry contain more than 10 percent total solvents; therefore, the proposed 10 percent threshold level will capture the majority of solvent mixtures used by industry under NJDEP's hazardous waste management program, while excluding dilute mixtures or de minimis concentrations. At the 10 percent threshold set in today's rule (as well as in the corresponding Federal rule which is an interim measure), these solvents are known to cause substantial harm to human health. However, this interim standard may be amended by USEPA and/or the Department when additional information on the Toxicity Characteristic of the solvents is available.

Regulatory Flexibility Statement

The proposed rule amendments will have a minimal impact on small businesses. These rules are identical to the Federal regulations which are already in force. The regulated community should already be in compliance with these Federal regulations. Therefore, additional expenditures for recordkeeping, compliance, or consultant's fees should not be incurred by small businesses. Finally, protection of the public health and the environment require that a less stringent standard not be proposed for small businesses.

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

7:26-8.13 Hazardous waste from non-specific sources

(a) Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
Generic	F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and [the] chlorinated fluorocarbons; [and sludges from the recovery of these solvents from degreasing operations.] all spent solvent mixtures/blends used in degreasing containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004 and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
	F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, [o]0-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
	F003	The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the non-halogenated solvents listed above or those solvents listed in F001, F002, F004 and F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I*)
	F004	The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and all still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)

F005 The following spent non-halogenated solvents: (I,T)
toluene, methyl ethyl ketone, carbon disulfide,
isobutanol, pyridine, benzene, 2-ethoxyethanol, and
2-nitropropane; all spent solvent mixtures/blends
containing, before use, a total of 10 percent or more
(by volume) of one or more of the non-halogenated
solvents listed above or those solvents listed in F001,
F002 or F004; and still bottoms from the recovery
of these spent solvents and spent solvent mixtures.
NOTE: (I*,T*) Hazard Code should be used to spec-
ify mixtures containing ignitable and toxic consti-
tuents.

HEALTH
(a)

HOSPITAL REIMBURSEMENT
Procedural and Methodological Regulations
Proposed Amendment: N.J.A.C. 8:31B-3.38

Authorized By: John H. Rutledge, M.D., J.D., Acting
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-18d

Proposal Number: PRN 1987-258

Submit comments by September 4, 1987 to:
Pamela S. Dickson, Director,
Hospital Reimbursement
New Jersey State Department of Health
CN 360, Room 601
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The proposed amendments to the Chapter 83 Procedural and
Methodological Regulations will provide consistency with the previous
proposed amendments on capital and indirect cost reimbursement, as
approved by the Health Care Administration Board on May 26, 1987
and published in the New Jersey Register on July 6, 1987.

Proposed amendments to N.J.A.C. 8:31B-3.38(c)1 published on May
18, 1987 at 19 N.J.R. 840(a) are not superceded by these proposed amend-
ments. The Department contemplates adoption of the May 18th amend-
ments prior to the expiration of the comment period for these proposed
amendments. Upon adoption of these amendments, changes to the pres-
ent Code language due to the adoption of the May 18th amendments
shall be set forth in the adoption text as technical changes upon adoption.

This proposed amendment to N.J.A.C. 8:31B-3.38 is intended to
provide clarifying language in the apportionment of full financial ele-
ments as they are linked to volume variability in the proposed approach
to allow the Department to appropriately allot the capital and indirect
cost reimbursement in the preparation of hospitals' Schedules of Rates.

The comment period for this proposed amendment has been extended
to September 4, 1987.

Social Impact

The proposed amendment provides for the allocation of costs which
will be dependent on the overall efficiency of the hospital and the increase
in volume. Access to quality health care would be enhanced by ensuring
that limited financial resources are invested appropriately.

Economic Impact

The proposed amendment clarifies the allocation of costs and the
calculation of rate orders required to channel revenues to efficient hospi-
tals with a growing volume of patients. Hospitals which experience a
decreasing volume and high per unit indirect cost will lose reimbursement
and must therefore consider alternative utilization of excess beds and/or
downsizing of the facility or services.

No economic impact on an individual patient basis is anticipated.

Regulatory Flexibility Statement

The proposed amendment will be operative after adoption beginning
January 1, 1988. It is expected that as of that date, there will be no
hospitals subject to Chapter 83 Rate Setting regulations with fewer than
100 full-time employees. Therefore, these regulations have no impact on
an institution which would qualify as a small business as defined in
Section 2 of The New Jersey Regulatory Flexibility Act (P.L. 1986, c.169).

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

8:31B-3.38 Derivation from Preliminary Cost Base

(a) Apportionment of full financial elements [based on direct costs]:

1. All other [F]financial [E]elements, except those designated as volume
variable in N.J.A.C. 8:31B-3.24 and 3.27, are added to direct patient care
costs as percentages of direct costs per case (except for those areas
approved for cross subsidization). The Schedule of Rates is set such that
all patients' rates based on the cost of services received, including a

F006-F028 (No change.)

7:26-8.15 Discarded commercial chemical products, off-specification
species, containers, and spill residues [and process waste or
mixtures of process waste containing substances] thereof

(a) The following [material or items] chemicals, manufactured for com-
mercial or manufacturing use, their off-specification species, or their con-
tainer residues or spill residues are hazardous wastes if and when they
are discarded or intended to be discarded, in lieu of their original intended
use:

[(a)-(e)]1.-5. (No change in text.)

[(f)]6. The following commercial chemical products or manufacturing
chemical intermediates, referred to in (a)[, (b) and (d)] 1, 2 and 4 above,
are identified as toxic wastes (T) unless otherwise designated. These
wastes and their corresponding EPA Hazardous Waste Numbers are:

HAZARDOUS
WASTE
NUMBER SUBSTANCE

U359	2-Ethoxyethanol (I,T)
U359	Ethylene glycol monoethyl ether (I,T)
U171	2-Nitropropane (I,T)
U171	Propane, 2-nitro-(I,T)

[(g)]7. (No change in text.)

7:26-8.16 Hazardous constituents

(a) Waste streams containing the hazardous constituents listed below,
classified as hazardous waste by the generator or the Department
pursuant to N.J.A.C. 7:26-8.6 and 8.7, shall be manifested with the
corresponding waste code numbers. Test methods approved by the De-
partment shall be used in determining whether the waste in question
contains a given hazardous constituent.

C506	Ethylene glycol monoethyl ether (Ethanol, 2 ethoxy)
C507	2-Nitropropane (Propane, 2-nitro)

OAL NOTE: The paragraph text of N.J.A.C. 7:26-8.16(a) set forth
above is as adopted by the Department of Environmental Protection and
published on September 8, 1986 at 18 N.J.R. 1798(a). This text was
erroneously omitted from the 12-15-86 N.J.A.C. update which provides
the current text of the rule. The correct text will be published in the Code
with the next Title 7 update.

proportionate share of indirect financial elements which are not volume variable as defined in N.J.A.C. 8:31B-3.24 and 3.27. [requirements of operating hospital facilities plus adjustments to account for the apportionate of full financial elements among payors based on Commission approved payor differentials.] The per-case amount for indirect costs which are volume variable as defined in N.J.A.C. 8:31B-3.24 and 3.27 will be added to each inpatient bill. Inpatient bills will also be adjusted to reflect any Commissioner approved payor differential.

- 2. (No change.)
- (b) (No change.)
- (c) Basic rate order:

1. Each hospital shall receive from the Commission a rate order detailing the Schedule of Rates as follows:

SCHEDULE OF RATES

ITEM	RATE PER CASE
DIRECT COSTS RELATED TO PATIENT CARE	
DRG 1	\$ _____
DRG 2	\$ _____
DRG 3	\$ _____
CLINIC PATIENTS	\$ _____
HOME HEALTH PATIENTS	\$ _____ ***
EMERGENCY SERVICE OUTPATIENTS	\$ _____ ***
OUTPATIENT DIALYSIS TREATMENT	\$ _____ ***
AMBULATORY SURGERY	\$ _____ ***
SAME-DAY PSYCHIATRY	\$ _____ ***
HOME DIALYSIS	\$ _____ ***
OTHER AMBULATORY	\$ _____ ***
VOLUME VARIABLE CAPITAL COSTS (N.J.A.C. 8:31B-3.27)	\$ _____
VOLUME VARIABLE INDIRECT COSTS (N.J.A.C. 8:31B-3.24)	\$ _____
INDIRECT FINANCIAL ELEMENTS	AMOUNT
INDIRECT COSTS RELATE TO PATIENT COSTS (NON-VOLUME VARIABLE AS PER N.J.A.C. 8:31B-3.24)	\$ _____
NET INCOME FROM OTHER SOURCES	\$ () _____
CAPITAL FACILITIES ALLOWANCE (NON-VOLUME VARIABLE AS PER N.J.A.C. 8:31B-3.27)	\$ _____
COMMISSION APPROVED WORKING CASH INFUSION	\$ _____
GRANTS ON BEHALF OF THE MEDICALLY INDIGENT	\$ () _____
ESTIMATED UNCOMPENSATED CARE ___%	
ESTIMATED PERSONNEL HEALTH PROGRAM ___%	

NOTE: The Schedule of Rates shall be adjusted to reflect 5 percent working capital increases and ___ percent for payor differentials as specified by the Commission. Payor Class A shall pay ___ percent of this Schedule of Rates. Payor Class B shall pay ___ percent of this Schedule of Rates and all other Payor Classes shall pay 100 percent of this Schedule of Rates.

Patients receiving these services will be billed at controlled charges; however, this rate per visit will be used for purposes of reconciliation.

- 2. (No change.)
- (d) (No change.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

Certificate of Need

Application and Review Process

Proposed Amendments: N.J.A.C. 8:33-1.5, 2.7 and 2.8

Proposed Repeal: N.J.A.C. 8:33-4.15

Authorized By: John H. Rutledge, M.D., J.D., M.P.H., Acting Commissioner Department of Health (with approval of Health Care Administration Board)

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1987-259

Submit comments by August 19, 1987 to:

John A. Calabria, Chief
New Jersey Department of Health
Health Systems Review
Room 604, CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

"Batching" is the process in which Certificate of Need applications for the establishment of certain types of health care facilities and services are accepted by the State Department of Health at specified times of the year and reviewed competitively.

N.J.A.C. 8:33-1.5(d) provides a listing of the dates when applications for Certificates of Need for various batched health services are accepted and reviewed by the Department. Of the currently "batched" health care services, surgical facilities and services and proposals for hospital bed additions, modernization/renovation, and new construction projects of \$10 million or more are batched twice per year. All other "batched" services are currently scheduled for review three times per year. The proposed amendments will:

1. Limit the number of batching cycles for each health care service to two per year and revise the dates on which applications for specific services will be accepted and reviewed.
2. Delete the requirement for a two-stage review for hospital bed addition, modernization/renovation, or new construction projects.
3. Change the monetary threshold for such hospital modernization and construction projects from \$10 million to \$5 million.

Social Impact

The current New Jersey Certificate of Need rules (N.J.A.C. 8:33) recognize the benefits of reviewing applications for certain regionalized and/or costly services and for facility construction projects in competitive batches. These batches help assure that applications which best meet the quality, cost-containment, and access principles of the enabling statute are approved.

The proposed change in batching cycles from three to two per year is expected to have a positive social impact. The total number of applications received for any particular health care service in a given year is not expected to change. Rather, the number of applications reviewed during any given batch will increase. This will provide the decision-making participants in the review process with a larger pool of applicants from which to choose those that best meet identified need, while also satisfying the quality, access, and cost-containment principles of the enabling statute.

Reducing the number of batching cycles to two year per year will yield benefits to prospective Certificate of Need applicants. Under the current rules, applicants are required to submit applications for a new batch before the Commissioner of the Department of Health has had an opportunity to act upon the Statewide Health Coordinating Council and Health Systems Agencies' recommendations from the previous batch. The proposed amendments will remedy this situation.

While it is anticipated that removing the second stage review requirement for hospital bed additions or construction applications will have little or no impact, reducing the monetary threshold from \$10 million to \$5 million is expected to have a positive impact. The proposed amendments mean that hospital projects with a total project cost of \$5 million or more will be reviewed in a batch instead of on a piecemeal basis. Five million dollars remains a substantial sum, especially in light of concerns

over excess hospital capacity, the need for limits on capital spending, and projected changes in capital reimbursement methods. With this in mind, hospital projects of \$5 million or more need to be batched so that the review process can more readily monitor its capital decision and more easily weigh such capital requests in relation to similar projects and according to criteria contained in the Hospital Policy Manual (N.J.A.C. 8:34E-1.1 et seq.).

Economic Impact

While the proposed amendments are not expected to have any negative economic impact, the reduction in the number of batching cycles for batched services and the reduction of the monetary threshold for hospital construction projects will enable the review process to better assess the impact of proposed new capital and operating expenditures on the State's health care system. A larger pool of "batched" applications will be reviewed in each of the two proposed cycles; hence, it should also encourage applicants to develop more economically competitive applications.

Under these proposed amendments, at the time of application, applicants will have knowledge of the Commissioner's action on previous applications. This will provide them with more definitive information on remaining need and allow them to develop more realistic applications or, perhaps, to refrain from developing an application (with its attendant expenses) at that particular time.

Regulatory Flexibility Statement

The Department of Health has determined that compliance with the proposed amendment, as well as with all of N.J.A.C. 8:33, is required by all health care facilities which provide health care services as defined in N.J.A.C. 8:33-1.6 Definitions. The Department acknowledges that many applicants which desire to develop health care facilities and services could conceivably have less than 100 full-time employees and therefore be categorized as small businesses defined in Section 2 of the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169).

In order to assure the orderly development of health care services, the Department must develop these amendments to be equitably and uniformly applied regardless of type or size of the applicant organization. This action will assure that quality health care services, of demonstrated need, efficiently provided, properly utilized, and at a reasonable cost are established to best serve the public health.

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

8:33-1.5 Batching cycles and deadline[s] dates

(a) There shall be [12] **10** review cycles for non-batched Certificate of Need applications in a year. The beginning of each cycle shall be the 15th day of each month and a decision should be rendered by the Commissioner of Health approximately three months after the beginning of the review process.

(b) (No change.)

(c) The calendar for the non-batched Certificate of Need review process follows:

Deadline for Initial Submission	Cycle Begins	Commissioner's Decision Due
December 1	January 15	April 15
January 1	February 15	May 15
February 1	March 15	June 15
March 1	April 15	July 15
April 1	May 15	August 15
[May 1]	[June 15]	[September 15]
June 1	July 15	October 15
July 1	August 15	November 15
August 1	September 15	December 15
[September 1]	[October 15]	[January 15]
October 1	November 15	February 15
November 1	December 15	March 15

(b) Batching cycles: Applications pertaining to the following services, facilities, and equipment must be batched according to the following review cycles:

Category	Deadline for Actual Submission	Cycle Begins
Hospital bed additions; modernization/renovation/new construction of \$[10] 5 million or more [(two phase process)]	[Phase 1:] Jan.[July]1 July[Jan.]1	Feb.[Aug.]15 Aug.[Feb.]15
	[Phase 2:] [Administrative Review—may be submitted for any cycle.]	
Long term care bed additions; new construction	[Oct. 1] Feb. 1 [June 1]	[Nov. 15] March 15 July 15
CAT Scanners; PET Scanners; nuclear medicine equipment; magnetic resonance imaging	Aug. 1 Apr. 1 [Aug. 1] [Dec. 1]	Sept. 15 May 15 [Sept. 15] [Jan. 15]
Megavoltage therapy equipment	Oct. 1 Apr. 1 [Aug. 1] [Dec. 1]	Nov. 15 May 15 [Sept. 15] [Jan. 15]
Cardiac diagnostic and surgical services, modernization/renovation and equipment	Oct. 1 [May 1] [Sept. 1] [Jan. 1]	Nov. 15 [Aug. 15] [Oct. 15] [Feb. 15]
End stage renal disease equipment and services	Feb. 1 Aug. 1	March 15 Sept. 15
Home Health Care Services	May 1 [Sept. 1] [Jan. 1]	June 15 [Oct. 15] [Feb. 15]
Surgical Facilities and Services (inpatient and free-standing)	Apr. 1 [Aug. 1] June 1 Dec. 1	May 15 [Sept. 15] July 15 Jan. 15
Emergency Transport & MICU Services	Jan.[July]1 July[Jan.]1	Feb.[Aug.]15 Aug.[Feb.]15
Other Ambulatory Care Services (initiation and expansion; does not include renovating only to hospital outpatient services)	[Oct. 1] [Feb. 1] June 1 Dec. 1	[Nov. 15] [March 15] July 15 Jan. 15
Intermediate Adult and Special Psychiatric Beds	Jan. 1 July 1	Feb. 15 Aug. 15

8:33-2.7 Equipment and modernization

(a) The following criteria shall apply to equipment and modernization; 1.-10. (No change.)

[11. For projects involving hospital bed additions, modernization/renovation, or new construction which under generally accepted accounting principles results in a total project cost of 10 million dollars or more, the applicant is required to submit two separate Certificate of Need applications as follows:

i. The first application shall address the need for the project and its conformance with appropriate Departmental regulations, the State Health Plan, and the area's health systems plan. The application shall be a request to undertake facility planning studies and for conceptual drawings with scope and cost estimates indicating various architectural options for the construction/modernization/renovation;

ii. If the first application is approved the second application shall be submitted following consultation with the Department and appropriate Health Systems Agency staff regarding the findings of the facility planning studies and architectural, planning, and cost options. This Certificate of Need request shall follow the administrative review process outlined in N.J.A.C. 8:33-4.15 and shall be for the specific construction/modernization/renovation option the applicant has chosen and shall include capital cost and operating cost estimates;

iii. Applications shall be batched according to the schedule specified in N.J.A.C. 8:33-1.5(d).]

8:33-2.8 Batching

(a) Applications pertaining to the following services, facilities, and equipment must be considered in relation to each other ("batched") according to the schedule specified in N.J.A.C. 8:33-1.5(d):

1. Hospital bed additions;[/] modernization/renovation/new construction of [10] five million dollars or more.

2.-11. (No change.)

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

8:33-4.15 [Architectural and cost review of hospital construction/modernization/renovation projects] (Reserved)

[(a) After a hospital applicant has satisfied the requirements identified at N.J.A.C. 8:33-2.7(a)] for projects with a total project cost of 10 million dollars or more, such applicant shall file for the administrative review of the specific construction/modernization/renovation option chosen.

(b) Minimum information required includes:

1. Outline of all construction options that were considered.
2. Reasons that the specific option requested for review was chosen.
3. Capital cost estimates for all options.
4. Operating cost estimates for all options.

(c) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.

(d) Within 90 days after initiation of a review cycle, a decision from the Commissioner shall be forthcoming.]

DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

The following proposals are authorized by John H. Rutledge, M.D., J.D., M.P.H., Acting Commissioner, Department of Health (with approval of Health Care Administrative Board).

Submit comments by September 19, 1987 to:

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

(a)

Certificate of Need: Cardiac Facilities Cardiac Diagnostic Facilities

Proposed Amendments: N.J.A.C. 8:33E-1.1, 1.2, and 1.3

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

Proposal Number: PRN 1987-261

The agency proposal follows:

Summary

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

The current rules require periodic updating based on changes in clinical practice and Statewide utilization of existing cardiac service resources. The proposed amendments were originally included in an earlier re-adoption of these rules at 19 N.J.R. 606(a) and 610(a) but were withdrawn at the request of the Statewide Health Coordinating Council for further study. Following further discussion of the concepts involved in the performance of complex electrophysiology studies, proposed standards and criteria for complex EPS procedures have been recommended for approval by the Statewide Health Coordinating Council.

These proposed amendments include the retention of Department of Health policy, standards and criteria, as reflected in the existing rules, with the following proposed changes regarding the provision of "complex" electrophysiology studies (EPS):

1. Revised definition of electrophysiology study at N.J.A.C. 8:33E-1.1(a)ii to indicate that the complex variety, as defined, should only be performed at cardiac surgery centers. Those EPS procedures not defined as the tachystimulation or complex variety may be performed at

any hospital-based invasive cardiac diagnostic facility that is able to satisfy the minimum utilization, training and staffing criteria and standards for invasive cardiac diagnostic services contained in this subchapter.

2. Addition of a revised subsection at N.J.A.C. 8:33E-1.2(c) which adds the concept of cardiac catheterization equivalents (CEs) as a means of determining the need for additional laboratory capacity at existing invasive cardiac diagnostic facilities. This concept was endorsed by the New Jersey Cardiac Services Task Force and is incorporated in the previously adopted cardiac surgery rule at N.J.A.C. 8:33E-2.3(c)2.

3. Addition of a new subsection at N.J.A.C. 8:33E-1.2(g), previously reserved for this purpose, which states that complex electrophysiology procedures must be performed in a hospital-based facility where cardiac surgery services are immediately available on site. The tachystimulation variety of electrophysiology studies are permitted in invasive cardiac diagnostic facilities that do not have cardiac surgery available on site and minimum facility and physician volumes are also proposed in this section.

4. Addition of a new subsection at N.J.A.C. 8:33E-1.3(d), previously reserved for this purpose, for the establishment of minimum professional credentials and staffing for the performance of tachystimulation electrophysiology studies.

Social Impact

The New Jersey Cardiac Services Task Force, in its January 15, 1987 report, stated that there is "particular merit in restricting the availability of EPS services to a limited number of medical centers at this time." The Task Force based its conclusion on the fact that complex EPS is a relatively new field with indications for these complex procedures still being defined and EPS techniques still under development. In the opinion of the Task Force, limitation of complex EPS performance to those institutions and groups which may contribute to our understanding of the indications, technique, and efficacy of complex EPS would be beneficial. It was on this basis that the Task Force recommended that complex EPS be performed in a hospital setting in which cardiac surgery is available.

During 1986 only three of the State's invasive cardiac diagnostic facilities performed electrophysiology studies, and these were simple as opposed to complex EPS. The Statewide EPS total of 735 procedures in 1986 represents 3.2 percent of the total number of invasive cardiac diagnostic procedures performed during that year at the State's 23 adult cardiac diagnostic services. A total of 713 EPS (simple and complex) procedures or 97 percent were performed in eight of the State's nine adult cardiac surgery centers, with the remaining 22 EPS procedures performed in three of the State's 13 adult invasive cardiac diagnostic facilities. As these 1986 figures indicate, virtually all EPS, regardless of their complexity, are performed within the State's cardiac surgery centers. Furthermore, since 1983 the number of EPS procedures performed in the State has increased 68 percent (437 total EPS procedures in 1983). These proposed amendments will therefore differentiate between simple, tachystimulation, and complex EPS procedures, and permit the performance of simple EPS procedures at all invasive cardiac diagnostic facilities that are in compliance with the minimum standards and criteria contained in this subchapter. These proposed amendments also restrict the performance of "complex" EPS procedures to cardiac surgery centers which offer these patients a full range of medical and surgical therapeutic interventions. The tachystimulation variety of EPS is to be permitted in both the invasive cardiac diagnostic facility and the cardiac surgery center provided that the minimum standards and criteria for this type of service are satisfied.

Economic Impact

The New Jersey Cardiac Services Task Force report indicated 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 the delivery of these services. The proposed amendments clearly differentiate between simple and complex EPS procedures in order to promote high quality EPS procedures and efficient volume levels. Since the cost of providing cardiac services is largely determined by spreading fixed costs over the number of cases performed, a cardiac service providing insufficient patient volumes represents a less than efficient use of a costly resource.

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

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 an invasive cardiac diagnostic service, no recordkeeping, reporting or other compliance requirements are placed upon small businesses by the proposed amendments.

OAL NOTE: Full text of the current rule may be found in the Adoption section of this issue of the New Jersey Register.

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

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 colocated, 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 **complex electrophysiology studies (EPS).**

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

i. (No change.)

ii. "**Complex [E]lectrophysiology 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.] **means the more complex variety of electrophysiology study (such as catheter mapping, ablation techniques, device implants and surgical procedures) and not the tachystimulation (atrial and ventricular stimulation of the heart) or the His bundle study variety.**

(b)-(d) (No change.)

8:33E-1.2 Utilization of invasive cardiac diagnostic facilities

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

(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 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.

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

(g) [(Reserved)] **The following shall apply to invasive cardiac diagnostic facilities providing or seeking to provide tachystimulation electrophysiology studies (EPS):**

1. An applicant for a certificate of need as an invasive cardiac diagnostic facility that also seeks to provide tachystimulation electrophysiology studies or an existing invasive cardiac diagnostic facility seeking to initiate tachystimulation electrophysiology studies must provide written documentation that the center will perform a minimum of 100 tachystimulation electrophysiology studies per year, with at least 50 of these studies representing initial studies of patients. These new tachystimulation electrophysiology services must achieve this minimum utilization level within three years of service implementation.

2. An invasive cardiac diagnostic facility shall continue to perform a minimum of 100 tachystimulation electrophysiology studies annually in order to assure acceptable institutional quality. Existing invasive cardiac diagnostic facilities providing tachystimulation electrophysiology studies must comply with this minimum utilization standard within one year of the effective date of this subchapter and maintain this standard on an annual basis thereafter.

3. Complex electrophysiology studies must be performed in a hospital-based facility where cardiac surgery services are immediately available on site.

4. Each invasive cardiac diagnostic facility providing tachystimulation electrophysiology studies should establish a minimum number of tachystimulation electrophysiology studies for each physician with electrophysiology privileges. The Commissioner's Cardiac Services Task Force recommends that each physician seeking to continue to perform tachystimulation electrophysiology studies should participate in a minimum of 50 tachystimulation EPS per year as the primary operator, with at least 25 of these as initial studies.

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

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

(d) [(Reserved)] **The following shall apply to invasive cardiac diagnostic facilities that seek to perform tachystimulation electrophysiology studies (EPS):**

1. Each invasive cardiac diagnostic service must be minimally staffed by the following personnel during a tachystimulation EPS:

i. The physician directing the procedure must be a board certified cardiologist with well-recognized excellence in the management of routine cardiac catheterization who has obtained at least one additional year of specialized training in tachystimulation EPS and cardiac arrhythmias, including participation in 100 tachystimulation EPS procedures;

ii. An assisting board certified cardiologist must be present during tachystimulation EPS procedures;

iii. A registered nurse trained and experienced in advanced life support, cardiac drugs, and cardiac catheterization/EPS shall be present during the procedures; and

iv. A technician trained and experienced in cardiac catheterization/EPS shall be present during the procedure.

(a)

Certificate of Need: Cardiac Facilities Cardiac Surgery Centers

Proposed Amendments: N.J.A.C. 8:33E-2.2, 2.3 and 2.4

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

Proposal Number: PRN 1987-260

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, identified at N.J.A.C. 8:33E-1.1 et seq., establishes rules for the provision of invasive cardiac diagnostic services where cardiac surgery is not offered.

The current rules require periodic updating based on changes in clinical practice and Statewide utilization of existing cardiac service resources. The proposed amendments were originally included in an earlier re-adoption of these rules at 19 N.J.R. 606(a) and 610(a) but were withdrawn at the request of the Statewide Health Coordinating Council for further study of the issues surrounding the provision of simple and complex electrophysiology studies (EPS). Following further discussion of the concepts involved in the performance of complex electrophysiology studies, proposed standards and criteria for complex EPS procedures have been recommended for approval by the Statewide Health Coordinating Council.

This proposal includes the retention of Department of Health policy, standards and criteria, as reflected in the existing rule, with the following proposed changes regarding the provision of tachystimulation and complex electrophysiology studies:

1. Revised definition of electrophysiology study to indicate that the complex variety, as defined, should only be performed at cardiac surgery centers. Those EPS procedures not defined as either tachystimulation or the complex variety may be performed at any hospital-based invasive cardiac diagnostic facility that is in compliance with the minimum standards and criteria contained at N.J.A.C. 8:33E-1.1 et seq.

2. Addition of a new section at N.J.A.C. 8:33E-2.3(e), previously reserved for this purpose, for the establishment of minimum utilization standards for the performance of tachystimulation and complex electrophysiology procedures (EPS). This addition also confines the provision of complex electrophysiology studies to hospital-based facilities where cardiac surgery services are immediately available on site.

3. Addition of a new section at N.J.A.C. 8:33E-2.4(f), previously reserved for this purpose, for the establishment of minimum professional credentials and staffing for the performance of tachystimulation and complex electrophysiology studies (EPS).

Social Impact

The New Jersey Cardiac Services Task Force, in its January 15, 1987 report stated that there is "particular merit in restricting the availability of EPS services to a limited number of medical centers at this time." The Task Force based its conclusion on the fact that complex EPS is a relatively new field with indications for complex EPS still being defined and complex EPS techniques still under development. In the opinion of the Task Force, limitation of complex EPS performance to those institutions and groups which may contribute to our understanding of the indications, technique, and efficacy of complex EPS would be beneficial. It was on this basis that the Task Force recommended that complex EPS be performed in a hospital setting in which cardiac surgery is available.

During 1986 only four of the State's cardiac surgery centers performed complex electrophysiology studies. The vast majority of these procedures are performed at a single site, Newark Beth Israel Medical Center, which performed 535 of the Statewide total of 735 simple and complex EPS procedures performed in 1986. A total of 713 EPS (simple and complex) procedures or 97 percent were performed in cardiac surgery centers, with the remaining 22 EPS procedures performed in invasive cardiac diagnostic facilities. As these 1986 figures indicate, virtually all EPS, regardless of their complexity, are performed in the State's cardiac surgery centers. Furthermore, since 1983 the number of EPS procedures performed in the State has increased 68 percent (437 total EPS procedures in 1983). These proposed amendments will therefore provide standards and criteria for tachystimulation and complex EPS procedures that do not currently exist in the existing cardiac rule and will also provide a means of assessing the capacity of potential new tachystimulation and complex EPS providers to perform these procedures effectively and efficiently.

Economic Impact

The New Jersey Cardiac Services Task Force report indicated 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 the delivery of these services. These proposed rule amendments establish minimum utilization, staffing and professional credential requirements that are designed to promote high quality tachystimulation and complex EPS procedures and efficient volume levels for these procedures. Since the cost of providing cardiac services is largely determined by spreading fixed costs over the number of cases performed, a cardiac service providing insufficient patient volumes represents a less than efficient use of a costly resource.

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

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.

OAL NOTE: Full text of the current rule may be found in the Adoption section of this issue of the New Jersey Register.

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

8:33E-2.2 Definitions

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

...
"Complex [E]lectrophysiology 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.] means the more complex variety of electrophysiology study (such as catheter mapping, ablation techniques, device implants and surgical procedures) and not the tachystimulation (atrial and ventricular stimulation of the heart) or the His bundle study variety.

8:33E-2.3 Utilization of cardiac surgical centers

(a)-(d) (No change.)
(e) [(Reserved.)] The following shall apply to adult cardiac surgery centers providing or seeking to provide complex electrophysiology studies (EPS) and tachystimulation electrophysiology studies:

1. An applicant for a certificate of need as a regional adult cardiac surgery center that also seeks to provide tachystimulation EPS and/or complex EPS or an existing cardiac surgery center seeking to initiate tachystimulation EPS and/or complex electrophysiology services must provide written documentation that the center will perform a minimum of 100 tachystimulation and/or complex electrophysiology studies per year, with at least 50 of these studies representing initial studies of patients. These new tachystimulation EPS and/or complex electrophysiology services must achieve this minimum utilization level within three years of service implementation.

2. A regional cardiac surgery center shall continue to perform a minimum of 100 tachystimulation EPS and/or complex EPS annually in order to assure acceptable institutional quality. Existing cardiac surgery centers providing tachystimulation EPS and/or complex EPS must comply with this utilization standard within one year of the effective date of this subchapter and maintain this standard on an annual basis thereafter.

3. Complex electrophysiology studies must be performed in a hospital-based facility where cardiac surgery services are immediately available on site.

4. Each tachystimulation and/or complex EPS service should establish a minimum number of tachystimulation and/or complex EPS for each physician with electrophysiology laboratory privileges. The Commissioner's Cardiac Services Task Force recommends that each physician seeking to continue to perform tachystimulation and/or complex EPS should participate in a minimum of 50 tachystimulation and/or complex EPS per year as the primary operator, with at least 25 of these as initial studies.

8:33E-2.4 Cardiac surgery center personnel

(a)-(e) (No change.)

(f) [(Reserved.)] The following shall apply to invasive cardiac diagnostic services located in cardiac surgery centers that seek to perform tachystimulation and/or complex electrophysiology studies (EPS):

1. Each invasive cardiac diagnostic service must be minimally staffed by the following personnel during a tachystimulation and/or complex electrophysiology study (EPS):

i. The physician directing the procedure must be a board certified cardiologist with well-recognized excellence in the management of routine cardiac catheterization who has obtained at least one additional year of specialized training in tachystimulation EPS, complex EPS and cardiac arrhythmias, including participation in 100 tachystimulation and/or complex EPS procedures;

ii. An assisting board certified cardiologist must be present during tachystimulation and/or complex EPS procedures;

iii. A registered nurse trained and experienced in advanced life support, cardiac drugs, and cardiac catheterization/EPS shall be present during the procedure; and

iv. A technician trained and experienced in cardiac catheterization/EPS shall be present during the procedure.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Fraudulent Academic Degrees

Proposed New Rules: N.J.A.C. 9:1-7

Authorized By: Board of Higher Education,

T. Edward Hollander, Chancellor and Secretary

Authority: N.J.S.A. 18A:3-15.6

Proposal Number: PRN 1987-262

Submit comments by August 19, 1987 to:

Grey J. Dimenna, Esq.

Administrative Practice Officer

Department of Higher Education

225 West State Street

CN 542

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 18A:3-15.1 et seq., the Board of Higher Education is authorized to promulgate rules regarding the use of fraudulent academic degrees. The proposed new rules define certain terms utilized

within the statute and set criteria for the use of academic degree designations by persons for degrees received from institutions both within and outside of the United States.

Social Impact

The proposed new rules will prevent persons from holding themselves out to the public as having earned a particular academic degree from an institution when the degree was fraudulently obtained or the institution did not meet certain recognized standards. Persons who obtained a legitimate degree from a recognized institution shall not be restricted from utilizing their degree designation in conjunction with their name.

Economic Impact

The proposed new rules will not result in any additional costs to the public or the State as they only set forth requirements regarding the use of academic degree designations.

Regulatory Flexibility Statement

The proposed new rules do not require a regulatory flexibility analysis as they do not impose any requirements on small businesses.

Full text of the proposed new rules follows:

SUBCHAPTER 7. FRAUDULENT ACADEMIC DEGREES

9:1-7.1 Definitions

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

"Academic degree" means any certificate, diploma, associate degree, baccalaureate degree, masters degree, or doctoral degree regardless of the specific discipline in which it was awarded. For the purposes of this definition, a certificate or diploma shall constitute evidence of successful completion of a course of study at an institution of higher education which by virtue of educational content or duration does not satisfy requirements for a full degree program but which is specifically designed to offer content and skill acquisition and other experience appropriate to the objectives of such programs.

"Letters" means the designated abbreviations used to refer to an academic degree.

"Other legal entity" includes but is not limited to a firm, association, institution, corporation or partnership.

"Out-of-State institution" means an institution located within the United States or its possessions but not within the State of New Jersey.

"Person", as stated in N.J.S.A. 18A:3-15.5, includes any individual or other legal entity.

"Seeking accreditation" means that the institution has achieved candidacy status or the equivalent standing as evidenced by meeting criteria as defined by the Commission on Higher Education of the Middle States Association of Colleges and Schools or the equivalent criteria as established by an appropriate accrediting body recognized by the Council on Postsecondary Accreditation or the United States Department of Education.

9:1-7.2 Protected degree designations

(a) A person shall not utilize or append to his or her name any academic degree designation, letters, derivatives thereof, or other designations as evidence of receipt of an academic degree unless the person has received the academic degree from a duly authorized institution of higher education, as defined in N.J.S.A. 18A:3-15.3.

(b) A person may utilize or append to his or her name an academic degree designation or letters as evidence of the receipt of or the fulfillment of the requirements for an academic degree from an institution of higher education located outside of the United States or its possessions provided the degree was earned at an institution which is recognized by the appropriate body in the particular country.

(c) The institution's requirements for awarding an academic degree shall be generally equivalent to those accepted in the United States by an accrediting body recognized by the Council on Postsecondary Accreditation or the U.S. Department of Education.

9:1-7.3 Honorary degrees

Any person who has received an honorary degree must follow the academic degree or the letters used to abbreviate such a degree with the word "Honorary" or "Hon." in parenthesis when representing themselves as having received such a degree or credential.

9:1-7.4 Out-of-State duly authorized institutions of higher education

In those states which do not have a licensing requirement for institutions of higher education, a duly authorized institution of higher education shall mean an institution which is regionally accredited or accredited

by the appropriate accrediting body recognized by the Council on Postsecondary Accreditation or the United States Department of Education, or is seeking accreditation by the appropriate accrediting body recognized by the Council on Postsecondary Accreditation or the United States Department of Education.

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Adoption Assistance and Child Welfare Act of 1980 Requirements

Proposed Readoption with Amendments: N.J.A.C. 10:131

Authorized By: Drew Altman, Ph.D., Commissioner,
Department of Human Services
Authority: N.J.S.A. 30:4C-4 and 30:1-12
Proposal Number: PRN 1987-273

Submit comments in writing by August 19, 1987 to:
Jesse L. Moskowitz, Administrator
Office of Regulatory and Legislative Affairs
Division of Youth and Family Services
CN 717
1 South Montgomery Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:131 will expire on September 20, 1987. The Division of Youth and Family Services proposes to readopt this chapter with only technical changes.

Federal law (the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272) requires states to set forth specific goals as to the maximum number of children who will remain in foster care for more than 24 months for each fiscal year. This requirement is consistent with the intent of the Federal legislation to improve services provided to children and their families, reducing the number of children removed from their families and increasing the number of children returned to their families from out-of-home placement. This requirement is also consistent with the goal of the Division under N.J.S.A. 30:4C-1 et seq., to provide all children with permanency planning. New Jersey has established that during Federal fiscal year 1983 and thereafter no more than 2,150 children will remain in foster care for more than 24 months.

Social Impact

The State child welfare services planning process is a vehicle for the State to evaluate on an ongoing basis its own performance in meeting and upgrading its standards in the area of child welfare services, specifically, prevention of out-of-home placement; prevention of child abuse and neglect; and reunification of children in out-of-home placements with their families.

Economic Impact

Readoption of these rules will continue New Jersey eligibility for Federal funds in the child welfare services area by fulfillment of Federal requirements. No direct or indirect impact on families served under programs partially or fully funded with Federal monies is anticipated.

Regulatory Flexibility Statement

This proposal does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses. The proposed readoption primarily affects continuing Division eligibility for Federal funds by compliance with Federal requirements that a State plan be adopted.

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

CHAPTER 131
ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF
1980 REQUIREMENTS

SUBCHAPTER 1. TITLE IV-B STATE PLAN: CHILD WELFARE
SERVICES

10:131-1.1 State Child Welfare Services Plan

New Jersey [developed a three year] **develops an annual State Child Welfare Services Plan** [for Fiscal years 1981-1983 which was updated in fiscal year 1982. The bulk of the State Plan is a needs analysis, while the bulk of the update is a status report]. Copies of the State Child Welfare Services Plan [and Updates] may be obtained from:

Division of Youth and Family Services
Office of [Program] Policy, Planning and Support
One South Montgomery Street
CN 717
Trenton, New Jersey 08625

SUBCHAPTER 2. GOALS FOR CHILDREN REMAINING IN
FOSTER CARE IN EXCESS OF 24 MONTHS

10:131-2.1 State child welfare services permanency planning

The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) mandates that specific goals be established by State law before October 1st for each fiscal year [commencing with FFY 1983] as to the maximum number of **Title IV-E eligible** children who will remain in foster care for more than 24 months. This requirement is consistent with the intent of the legislation to improve services provided to children and their families, therefore reducing the number of children removed from their families and increasing the number of children returned to their families from out-of-home placement. This requirement is also consistent with the goal of the Division of Youth and Family Services, under N.J.S.A. 30:4C-1 et seq., to provide all children with permanency planning, therefore minimizing the number of children in temporary out-of-home placement.

10:131-2.2 State child welfare services goals

New Jersey has established that no more than 2,150 **Title IV-E eligible** children will remain in foster care for more than 24 months during Federal fiscal year 1983 and thereafter. The Division of Youth and Family Services will make every effort within available resources to ensure that services are provided to maintain children in their own homes and to reunify children in out-of-home placement with their families as quickly as possible.

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Replacement of Life Insurance Policy

Proposed Repeal: N.J.A.C. 11:4-2

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

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

Proposal Number: PRN 1987-272.

Submit comments by August 19, 1987 to:

James D. Zarnowski, Director
Regulatory Affairs
Department of Insurance
201 East State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed repeal removes from the Code rules which have through the test of time, been determined to be ineffective. Requirements placed upon agents and insurers were cumbersome and may have served to deter replacements which may have been in the best interest of the policyholder.

At the time that the original rules were promulgated in 1972, replacements were generally not considered to be in the best interest of insureds. Because of changes in the economy and the development of new products, this generalization can no longer be made. Therefore, the Department of Insurance proposes to remove these rules from the Code.

The repeal of this subchapter results from serious consideration of public and interdepartmental comments concerning prior proposed new rules. For example, it has been found that comparison forms, which are required by the existing rules, are ineffective in assisting consumers in making knowledgeable decisions concerning life insurance products. Additionally, these comparison forms are costly to insurers, and, with the development of new interest-sensitive policies, difficult to prepare given the variable nature of the information to be included.

Also, the existing rules require replacing insurers to notify the existing insurers of proposed replacements. The Department has received numerous complaints from consumers stating that they consider this notification to be an invasion of privacy, and that agents of existing insurers harass them in order to conserve the existing coverage.

Lastly, the Department believes that the repeal of these rules will serve to foster competition among insurers, thereby providing insureds with comprehensive, competitively-priced coverage.

While the Department acknowledges that some existing policies may be replaced by less suitable coverage, it is often the case that insureds initially purchase coverage that does not adequately satisfy their insurance needs. In these situations, replacement of these policies would be advantageous to the consumer.

Finally, it is important to note that the requirements of the existing rules are far more burdensome to the insurer than are the requirements of the Life Insurance Solicitation rule (N.J.A.C. 11:4-11 et seq.). Those rules require insurers to furnish a policy summary to the applicants, advising the applicant as to the pertinent aspects of the proposed coverage.

Social Impact

The removal of these rules from the Code will facilitate the process of competitive replacement of life insurance. As a result, some companies may experience an increase in replacement activity.

Applicants will no longer find themselves being contacted by their existing insurer with regard to the conservation of existing coverage.

Economic Impact

The repeal of N.J.A.C. 11:4-2 would possibly result in a greater volume of replacements of certain companies' policies, thereby reducing the premium income of the existing insurers. Insureds may experience an economic benefit in the form of somewhat lower premiums resulting from the heightened competitive atmosphere in the industry. There is no economic impact to the Department of Insurance.

Regulatory Flexibility Statement

Some insurers affected by the proposed repeal are small businesses as that term is defined in the Regulatory Flexibility Act, P.L. 1986, c.169. To provide for uniform and consistent applicability of these rules, and to avoid the granting of a prescribed business advantage to insurers who are small businesses by exempting them from the requirements, no differential treatment is accorded small businesses by this proposed repeal.

Full text of the rule proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 11:4-2.

**COMMERCE AND
ECONOMIC DEVELOPMENT**

(b)

**Financial Assistance to Counties and Municipalities:
Programs for Small Businesses, Minority-Owned
and Women-Owned Businesses**

Proposed New Rules: N.J.A.C. 12A:12-1

Authorized By: Borden R. Putnam, Commissioner, Department of Commerce and Economic Development.

Authority: P.L. 1987, c.56; N.J.S.A. 52:27H-6f.

Proposal Number: PRN 1987-253.

Submit comments by August 19, 1987 to:

Elizabeth T. Lyons
Department of Commerce and Economic Development
Certification and Approvals Unit
One West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules implement P.L. 1987, c.56, which provides financial assistance grants to counties and municipalities for pilot small businesses, minority and women businesses development and promotion programs. These rules are proposed by the Department of Commerce and Economic Development, which is given responsibility for implementing the Act. The purpose of the Act is to provide grants to counties and municipalities for pilot programs for development and promotion of small businesses, minority and women businesses.

Some key provisions of the proposed rules include:

1. Information a county or municipality must include in its proposal for a grant. N.J.A.C. 12A:12-1.3.
2. The time in which a county or municipality must submit a proposal. N.J.A.C. 12A:12-1.4.
3. Reporting and compliance requirements for a grant recipient. N.J.A.C. 12A:12-1.6.

Social Impact

According to section 1 of the Act, "local levels of government have a unique opportunity and responsibility in encouraging the development of such [small and minority and women-owned] businesses within their jurisdictions." The proposed new rules attempt to facilitate these objectives by providing grants of up to 50 percent of the total program by a county or municipality. An impact as such should be to provide more services to the enumerated businesses as well as more localized service.

Economic Impact

The Act and these proposed rules are expected to impact on the State's economy by assisting in the development and promotion of small businesses, and minority or women businesses. The actual economic impact of the program will be ascertained through reports and surveys required under these proposed rules and the Act.

Counties and municipalities participating in this grant program will experience costs associated with supporting the portion of the pilot program not funded through a State grant.

Regulatory Flexibility Statement

The only impact upon small businesses under the Act and these rules will be positive. Any negative impact for these businesses will be determined by pilot program requirements of the counties and municipalities which receive grants.

Full text of the proposed new rules follows:

CHAPTER 12
FINANCIAL ASSISTANCE GRANTS

SUBCHAPTER 1. GRANTS TO COUNTIES AND MUNICIPALITIES FOR SMALL BUSINESSES, MINORITY AND WOMEN-OWNED BUSINESS PROGRAMS

12A:12-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Department of Commerce and Economic Development to implement P.L. 1987, c.56. The Act authorizes the Department of Commerce and Economic Development to make grants of financial assistance to County and Municipal units of government. These grants are for the purpose of establishing pilot projects within the jurisdiction of the grantee county or municipality to provide certification, development, and coordination assistance to small, minority, and women businesses.

(b) The Act requires the Department of Commerce and Economic Development to establish and implement standards and procedures for distribution of the awarding of grants.

(c) Applications and questions regarding participation in this program should be addressed to:

Division of the Development of Small Businesses and
Minority and Women Businesses
Department of Commerce and Economic Development
1 West State Street
CN 825
Trenton, NJ 08625

(d) The Act applies to all counties and municipalities in the State. All applications for the grant program shall be given due consideration as long as all requirements are met, however not all applicants are guaranteed to be awarded a grant.

12A:12-1.2 Definitions

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

"Business" means a sole proprietorship, partnership, joint venture, corporation, and any other business entity authorized under the laws of the United States.

"Certification" means the designation of a business by the Certification and Approvals Unit of the Department of Commerce and Economic Development as provided for under the Uniform Certification Act, P.L. 1986, c.195, or a business certified by a county or municipality as provided under P.L. 1987, Ch. 55.

"Certification assistance" means aiding a minority and/or women's business within the grantee's jurisdiction in becoming certified, under state regulations, to be eligible to bid on specific public contracts. This assistance also covers the cost to the grantee of integrating and standardizing existing local government certification procedures with state certification standards and procedures.

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development, or his designated representative.

"DCED" means the Department of Commerce and Economic Development.

"Director" means the Director of the Division for the Development of Small Businesses and Minority and Women Businesses.

"Division" means the Division for the Development of Small Businesses and Minority and Women Businesses.

"Grantee" means a county or municipality incorporated under the laws of New Jersey who has received a grant under this Act.

"Minority" means a person who is:

1. Black American, a person having origins in any of the black racial groups of Africa; or

2. Hispanic American, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race; or

3. Asian American, a person having origin in any of the original people of the Far East, Southeast Asia, Indian Subcontinent, and Hawaii, or the Pacific Islands; or

4. American Indian or Alaskan Natives, a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition.

"Minority businesses" means a business which is at least 51 percent owned and controlled by a minority or group of minorities who are responsible for the long term and daily management of the business.

"Small businesses" means a business which is independently owned and operated, has its principal place of business in New Jersey, and has 100 or fewer employees.

"Technical assistance" means aiding the establishment, development, and promotion of small, minority, and women businesses operating within the grantee's jurisdiction.

"Women" means a female or females regardless of race.

"Women businesses" means a business which is at least 51 percent owned and controlled by a woman or group of women who are responsible for the long term and daily management of the business.

12A:12-1.3 Standards of eligibility of municipalities and counties to receive financial assistance grants

(a) To be eligible for consideration to receive a financial assistance grant for development and promotion programs, the applicant must forward to the Department a grant proposal which shall include:

1. A description of that applicant's current programs for development and promotion of small businesses, minority and/or women businesses;

2. The budget of the applicant's current programs for development and promotion of small businesses, minority and/or women businesses;

3. A proposal for new and/or additional programs for development and promotion of small businesses, minority and/or women businesses in the applicant's jurisdiction, which shall include:

i. A statement of the objectives of the proposal; and

ii. A schedule of completion of the objectives of the proposal;

4. A proposal budget for the new and/or additional programs for development and promotion of small businesses, minority and/or women businesses in the applicant's jurisdiction, which shall include:

i. The total expenditures needed for the entire program as proposed;

ii. The total amount of funds dedicated to the program by the applicant;

iii. The amount of grant money requested from the department not exceeding 50 percent of the total cost of the program;

iv. The amount of funds received or applied for by the applicant from other sources or levels of government;

v. Positions and salaries of current staff or future staff for current or proposed programs;

vi. A resume of all current employees with clear explanations of their position and duties, and what their position and duties will be under the proposed program;

vii. A report, where applicable to the applicant, regarding the Set-Aside Program under N.J.S.A. 52:32-17 et seq.; and

viii. Evidence of the availability to the applicant of otherwise unencumbered and/or uncommitted funds sufficient to finance that portion of the services which is not to be funded by the grant.

(b) Where applicable to a county or municipality when applying for the grant, it shall enclose its proposal for certification assistance and technical assistance. This part of the application for the grant is subject to all requirements of N.J.A.C. 12:A12-1.3(a) but shall be independent of proposals under that subsection.

(c) An applicant may submit a proposal under either subsection 12A:12-1.3(a), (b), or both.

12A:12-1.4 Time for application for a grant

(a) An applicant for a grant award shall submit the application to the department no later than September 1 for that current fiscal year.

(b) Any application not postmarked on or before September 1 shall not be considered for a possible award.

(c) The Commissioner may for administrative purposes change the September 1 application date as he deems necessary.

1. When the Commissioner changes the date for the receipt of the grant application he must forward by registered mail a notice of such intent to all current grantees and pending grant applicants, to all county governments, and all municipal governments with a population of 50,000 or more.

2. Such notice shall announce to all parties designated in (a)1 above the new deadline date for receipt of grant applications and the address to which the application should be sent.

12A:12-1.5 Evaluation of grant applications

(a) The director shall designate appropriate division staff for the purpose of evaluating and making recommendations to the grant advisory committee.

(b) The grant advisory committee shall consist of:

1. The Director;

2. The Chiefs of:

i. The Office of Small Businesses Assistance, and/or his designee;

ii. The Office of Minority Businesses Enterprise, and/or his designee;

and

iii. The Office of Women Business Enterprise, and/or his designee; and

3. The Administrators of the Bureau of Hispanic Enterprise and the Certification Unit, and/or their designees.

(c) Upon receipt of the division staff recommendations as to possible grantees and the amount to be received, the advisory committee shall consider the following factors:

1. The innovation and uniqueness of the proposed program;

2. The assimilation of the program into the overall multiple State Set-Aside Programs;

3. The potential for the success of the program;

4. The need for the program in that jurisdiction versus the need in other jurisdictions in the State;

5. If applicable under the proposal, the assimilation of the proposed program into the State Certification Program under P.L. 1986 Ch. 195;

6. Whether the grants for the programs will compliment State programs to directly assist small, minority and women's businesses.

(d) The advisory committee shall then prepare a report for the Commissioner which shall include:

1. A prioritized listing for recommended recipients of the grant;

2. A recommended amount for each grantee to receive; and

3. The amount requested by the applicants.

(e) The Commissioner shall then issue a final decision as to recipients of the grants and the amounts of such grants.

(f) Unless otherwise provided in these rules, announcement and distribution of grant funds under this program shall take place no later than November 1 of each year.

(g) The Commissioner may award grants on an incremental basis, such that the grantee may be required to produce specific documents or periodic reports at certain periods during the term of the grant.

(h) All grants shall be for a term of one year.

12A:12-1.6 Reports and compliance

(a) Upon the receipt of a grant the grantee shall submit to the department a minimum of two reports, which are:

1. A six month evaluation and progress report; and

2. A final evaluation and progress report.

(b) The Commissioner, as a condition to award a grant, may require additional reports from the jurisdiction.

(c) The nature of the report will be determined by the accepted or amended proposal and the terms set forth by the Commissioner.

(d) Failure of a grantee to file a required report in a timely fashion may result in that jurisdiction being dropped from the grant program for that program year of the grant and all further payments of grants may be suspended or rescinded.

1. The Commissioner may also bar that jurisdiction from receiving a grant under this program for a period of up to two years.

(e) The Commissioner, upon award of the grant to a jurisdiction, shall specify the terms of compliance for that grant for the jurisdiction.

12A:12-1.7 Grant rejection or rescission

(a) Any grants rejected in whole or part by a grantee shall be returned to the general grant pool and shall be available for award to other applicants or to increase the awards of other grantees.

(b) Any grant rescinded by the Commissioner for noncompliance by the grantee shall be returned to the general grant fund and may be used for other applicants or to increase the awards to other grantees.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Speed Limits

Route 94 in Warren County

Proposed Amendment: N.J.A.C. 16:28-1.79

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98

Proposal Number: PRN 1987-257

Submit comments by August 19, 1987 to:

Charles L. Meyers

Administrative Practice Officer

Department of Transportation

1035 Parkway Avenue

CN 600

Trenton, New Jersey 08625

The agency proposal follows.

Summary

The proposed amendment will establish a school speed zone in Frel-inghuysen Township, Warren County along Route 94 in Zone 6 for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children during recess, while going to or leaving school during opening or closing hours.

Based upon a request from local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a school speed zone in Zone 6 was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.79 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish a school speed zone in Frel-inghuysen Township, Warren County along Route 94 for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children during recess, while going to or leaving school during opening and closing hours. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and municipality will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of school speed zones signs. Motorists who violate the rules will be assessed the appropriate fines.

Regulatory Flexibility Statement

The proposed amendment does not impose any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined in the Regulatory Flexibility Act, P.L. 1986, c.169. Therefore, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28-1.79 Route 94

(a) The rate of speed designated for the certain parts of State highway Route 94 described in this section shall be designated and adopted as the maximum legal rate of speed thereat:

1.-2. (No change.)

3. In Frelinghuysen Township, Warren County:

i. 35 miles per hour School speed zone in Zone 6, within Frelinghuysen Township School Zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.

(a)

**NEW JERSEY TRANSIT CORPORATION
Reduced Fare Transportation Program for the
Elderly and Handicapped**

**Proposed Amendments: N.J.A.C. 16:73-1.1, 2.1, 2.2,
2.3, 2.4 and 3.2**

Authorized By: New Jersey Transit Corporation,

Jerome C. Premo, Executive Director

Authority: N.J.S.A. 27:25-5(e)

Proposal Number: PRN 1987-265

Submit comments by August 19, 1987 to:

Albert R. Hasbrouck, III

Assistant Executive Director

New Jersey Transit Corporation

(NJ TRANSIT)

P.O. Box 10009

Newark, NJ 07101

The agency proposal follows.

Summary

The New Jersey Transit Corporation (NJ TRANSIT) administers a reduced fare transportation program for the elderly and handicapped. Under the present rules, riders on motorbus carriers must present a reduced fare ticket as well as a valid Medicare or identification card for each ride together with the proper reduced fare. NJ TRANSIT believes it is in the public interest to amend the existing rules to simplify the program to facilitate easier use by senior citizens and handicapped persons. Accordingly, the amended rules provide for the elimination of reduced fare tickets on most motorbus carrier services throughout the State so that under the proposed amendment riders will simply need to provide a valid Medicare or identification card with the proper reduced fare.

In addition, the existing rules provide that NJ TRANSIT shall reimburse participating carriers based upon the number of eligible trips which are taken by handicapped persons and senior citizens participating in the program. The number of eligible trips are determined by the number of reduced fare tickets submitted. It is, therefore, further suggested that the rules be amended to allow for other methods to be utilized for reimbursing those carriers who will no longer utilize reduced fare tickets.

Social Impact

The purpose of the Reduced Fare Transportation Program for the Elderly and Handicapped is to facilitate the use of New Jersey's public transportation system by such persons. The proposed amendments will have the effect of simplifying the procedure when boarding a bus. At present, the procedure requires the display of identification as well as the submission of the reduced fare ticket. Many elderly and handicapped persons find this a difficult and cumbersome procedure. Accordingly, the impact of the proposed change is to make it easier for the intended beneficiaries to use the system.

Economic Impact

The economic impact of the proposed changes are twofold. First, they will result in a savings to NJ TRANSIT in administrative costs estimated up to \$100,000 annually with regard to the distribution and processing of the reduced fare tickets. Secondly, it will also reduce the administrative costs of the private carriers participating in the program.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping or other compliance requirements on small businesses other than existing under the original rules. In fact, the effect to is simplify the process by no longer requiring the collection, counting and submission of reduced fare tickets by such carriers.

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

16:73-1.1 Definitions

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

"Off-peak times" means the hours from 9:30 A.M. to 4:00 P.M. and from 7:00 P.M. to 6:00 A.M. during the weekdays, and all day on Saturdays, Sundays and State holidays.

16:73-2.1 Registration of [S]enior [C]itizens for NJ TRANSIT [R]educed [F]are Identification Cards

(a) (No change.)

(b) A senior citizen who does not have a Medicare Card will need an Identification Card. Applications for the Identification Card are available at most banks, savings and loan associations, [or] County Offices on Aging [which serve as application centers] and State offices providing services for elderly and disabled persons. The applicant should bring proof of age to the application center. Any valid legal document will serve as proof of age. Examples are: [D]river's license, birth certificate, passport, military discharge papers (DD214), etc.

(c) (No change.)

(d) (No change.)

16:73-2.2 Registration of handicapped persons for NJ TRANSIT reduced fare Identification Cards

(a) (No change.)

(b) Applicants will fill out the first part of the application form and give it to a registered physician, [or] doctor of osteopathy or other designee of NJ TRANSIT who will complete the application and mail it to NJ TRANSIT. The final decision on eligibility will be made by NJ TRANSIT.

(c) (No change.)

(d) (No change.)

16:73-2.3 Use of Medicare and Identification Cards

(a) (No change.)

[(c)](b) For motorbus services, the handicapped or senior citizens must present to the motorbus operator or ticket agent one Reduced Fare Ticket and a valid Medicare or Identification Card for each ride; together with the proper Reduced Fare.]

[(c)](b) Presentation of a validated Medicare or Identification Card together with the proper Reduced Fare is all that is required for rail passenger travel and all motorbus passenger travel; provided, however, that on motorbus routes run by certain carriers, NJ TRANSIT may, upon consultation with such carriers, continue to require presentation of Reduced Fare Tickets.

[(d)](c) The Identification Card, which is not transferable, may be used only by the person to whom it is issued, and must be kept in that person's possession during the entire ride.

[(e)](d) (No change in text.)

16:73-2.4 Reduced fare tickets

(a) To obtain a book of Reduced Fare Tickets, the handicapped or senior citizen will [complete an application for one book of Reduced Fare Tickets at an application center and] present [the application with] a valid Medicare or Identification Card at an application center. An authorized person will examine the [application] Medicare or Identification Card and issue a book of Reduced Fare Tickets.

(b) (No change.)

16:73-3.2 Method of payments to carriers

Reimbursement to the participating carriers shall be an amount equal to the difference between the regular adult fare and the handicapped/senior citizen reduced fare, multiplied by the number of eligible trips by handicapped or senior citizens participating in the Reduced Fare Transportation Program, provided that the total payments to the carrier do not exceed the total appropriation for this program. For bus service, [E]ligible trips [are] may be determined by the number of reduced fare tickets submitted by bus carriers, [and] or such other reasonable method as shall be determined by NJ TRANSIT, including, but not limited to the use of historical payment data. For rail service, eligible trips are determined by special tickets provided by the rail carriers under their existing tariff rules.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Drop boxes; transportation to and from gaming tables; storage in count room

Proposed Amendment: N.J.A.C. 19:45-1.17

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and 5:12-69.

Proposal Number: PRN 1987-256.

Submit comments by August 19, 1987 to:

Deno R. Marino

Deputy Director, Operations

Casino Control Commission

Princeton Pike Office Park

Building No. 5, CN-208

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:45-1.17 would allow emergency drop boxes, not actively in use, to be stored in a secured area outside the count room as approved by the Commission.

Social Impact

From the social perspective, the proposal would allow greater flexibility in design and location of the storage area for emergency drop boxes while still maintaining stringent internal control procedures to assure continued integrity. It is believed that the discretionary powers of the licensee may increase design and location efficiency. This proposal will not negatively affect the goal of maintaining public confidence and trust in the operation and regulation of casino gaming in this State.

Economic Impact

Costs may be incurred in construction of the new storage location, installation and utilization of additional CCTV cameras and, to a limited degree, the re-instruction of security and surveillance personnel. However, since casinos have the option of continuing to store drop boxes in the count room, the costs would only be incurred if the casino perceived a benefit from storing the boxes elsewhere.

Regulatory Flexibility Statement

This proposal will only affect the operations of the casino licensees and, therefore, will not impact on any business addressed under the Regulatory Flexibility Act.

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

19:45-1.17 Drop boxes; transportation to and from gaming tables;
storage in count room

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

(c) All drop boxes, not attached to a gaming table, **except emergency drop boxes which are not actively in use**, shall be stored in the count room in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by a Commission inspector. **Emergency drop boxes, when not in use, may be stored in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system in a secured area outside the count room as approved by the Commission. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by a Commission inspector.**

(d) Drop boxes, when not in use, during a shift may be stored on the gaming tables provided there is adequate security, as approved by the Commission. If adequate security is not provided during this time, the drop boxes shall be stored in the count room in an enclosed storage cabinet or trolley **except that emergency drop boxes not actively in use may be stored in a secured area outside of the count room as approved by the Commission, as required in (c) above.**

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

Organizational Rule Operation and Procedures of the Office of Administrative Law

Readoption: N.J.A.C. 1:31-1

Adopted: June 16, 1987 by Ronald I. Parker, Acting Director,
Office of Administrative Law.
Filed: June 17, 1987 as R.1987 d.286, **without change**.
Authority: N.J.S.A. 52:14B-3(1), 52:14B-4(b) and 52:14F-5(f), (h)
and (i).
Effective Date: June 17, 1987.
Expiration Date: June 17, 1992.

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 1:31-1 will expire on August 12, 1987. The Office of Administrative Law has decided to readopt the subchapter without change.
N.J.A.C. 1:31-1 describes the organization of the Office of Administrative Law, as required by N.J.S.A. 52:14B-3(1). Such organizational rules are exempt from the notice and hearing requirements of the Administrative Procedure Act and become effective upon filing with the Office of Administrative Law (N.J.S.A. 52:14B-4(b)).

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 1:31-1.

(b)

Procedures of the Office of Administrative Law Petition for a Rule

Readoption with Amendments: N.J.A.C. 1:31-1.2 Adopted Recodification: N.J.A.C. 1:31-1.2 to 1:31-2.1

Proposed: May 4, 1987 at 19 N.J.R. 677(a).
Adopted: June 16, 1987 by Ronald I. Parker, Acting Director,
Office of Administrative Law.
Filed: June 17, 1987 as R.1987 d.287, **without change**.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Effective Date: June 17, 1987, Readoption; July 20, 1987,
Amendments.
Expiration Date: June 17, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 2. PROCEDURES OF THE OFFICE OF ADMINISTRATIVE LAW

1:31-2.1 Procedure to petition for a rule

(a) An interested person may petition for the promulgation, amendment or repeal of any rule of the Office of Administrative Law. A petition shall be in writing, shall be legible and intelligible and shall be signed by the petitioner. Each petition shall contain the following information:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The statutory authority under which the Office of Administrative Law may take the requested action.

(b) The Office of Administrative Law shall immediately date stamp and log each document submitted as a petition. Upon filing, the Office of Administrative Law shall forthwith publish the notice of petition for a rule in the New Jersey Register pursuant to the requirements of N.J.A.C. 1:30-3.6(a).

(c) No later than 30 days after receiving a petition, the Office of Administrative Law 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 N.J.A.C. 1:30-3.6(b). 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 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 date certain. The results of these further deliberations shall be mailed to the petitioner and shall be submitted for publication in the Register.

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

(c)

Condominium and Cooperative Conversion Standards of Fair Dealing

Adopted Amendment: N.J.A.C. 5:24-1.12

Proposed: May 18, 1987 at 19 N.J.R. 797(a).
Adopted: June 22, 1987 by Leonard S. Coleman, Jr.,
Commissioner, Department of Community Affairs.
Filed: June 22, 1987 as R.1987 d.292, **without change**.
Authority: N.J.S.A. 2A:18-61.12.
Effective Date: July 20, 1987.
Expiration Date: September 1, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:24-1.12 Standards of fair dealing

(a) Any discount or reduction in sales price offered to a tenant in occupancy in order to induce such tenant to agree to purchase his unit during the exclusive right to purchase period shall be available, without any change that would have the effect of raising the price to such tenant, for the entire exclusive right to purchase period. Any subsequent discount or reduction in sales price, offered at any time during the exclusive right to purchase period, must be continued through the end of that period.
(b)-(c) (No change.)

(d)

Planned Real Estate Development Full Disclosure Powers and Duties of Community Associations

Adopted Amendment: N.J.A.C. 5:26-8.2

Proposed: May 18, 1987 at 19 N.J.R. 797(b).
Adopted: June 19, 1987 by Arthur R. Kondrup, Director,
Division of Housing and Development, Department of
Community Affairs.
Filed: June 22, 1987 as R.1987 d.291, **without change**.
Authority: N.J.S.A. 45:22A-35.
Effective Date: July 20, 1987.
Expiration Date: March 1, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:26-8.2 Powers and duties

(a) Subject to the master deed, declaration of covenants and restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization.

(b) The association shall discharge its powers in a manner that protects and furthers the health, safety and general welfare of the residents of the community.

(c) The association shall provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association, and between different unit owners, that shall be readily available as an alternative to litigation.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineation

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

Adopted Amendment: N.J.A.C. 7:13-7.1(g).

Proposed: January 20, 1987 at 19 N.J.R. 169(a)

Adopted: June 26, 1987 by Richard T. Dewling, Commissioner,
Department of Environmental Protection

Filed: June 26, 1987 as R.1987 d.310, **without change.**

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

DEP Docket Number: 059-86-12

Effective Date: July 20, 1987

Expiration Date: May 4, 1989

Summary of Public Comments and Agency Responses:

Notice of the proposed amendment was published on January 20, 1987 in the New Jersey Register at 19 N.J.R. 169(a). The notice also advised that a public hearing was scheduled for February 4, 1987 at 1:00 pm 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 January 2, 1987 which was published in The Record, Hackensack. Both notices invited written comments to be submitted on or before February 19, 1987. Seven people were in attendance at the hearing. No written comments were received during the comment period.

COMMENT: Has the stream channel work done between Grove Street and East Ridgewood Avenue and its effect on the water surface elevation for that region of the Saddle River been taken into consideration by the Department in determining the flood hazard area?

RESPONSE: The stream channel work was not taken into consideration, because stream cleaning or dredging less than two feet deep along the Saddle River will not change the profiles. In addition, the area will silt-up during the next storm. Over time the dredged area will fill back to its original level.

COMMENT: The Department should have taken into consideration that the New Jersey Department of Transportation is currently in the process of replacing the Route 17 bridge on the Saddle River.

RESPONSE: Bridge widening does not ordinarily adversely affect the 100 year flood or New Jersey Flood Hazard Area profiles. In addition, since the Route 17 bridge has not been built but is only proposed, it could not be considered by the Department. If the bridge is built, it will have to be built according to State standards.

COMMENT: Why do maps indicate water surface elevations of Ho-Ho-Kus Brook downstream from Grove Street to the confluence with the Saddle River at station 40.00 to be approximately two feet higher than on previous maps while water surface elevations downstream of this point appear to have dropped?

RESPONSE: The original stream study was done in segments. Some studies were performed by the State and some by subcontractors. Later,

the State performed a study of the entire area. Some errors were found in the earlier studies. The present surface elevations represent the correct system profile.

COMMENT: A stormwater detention facility and reconstructed storm drain facilities at the upstream end of Beaver Dam Brook should have been taken into consideration in determining the flood plain delineations in that area.

RESPONSE: The stormwater detention facility and reconstructed storm drain facilities at the upstream end of Beaver Dam Brook were taken into consideration. During a New Jersey flood hazard area design flood, backwater from the Saddle River will inundate these facilities.

COMMENT: There is a secondary channel in Ho-Ho-Kus Brook in the area between Meadow Brook and Lynwood Avenues and upstream between Glen and Lynwood Avenue which should modify the floodway as presently shown for this area.

RESPONSE: The Department has had discussions with Boswell Engineering which indicates that the Bergen County Engineering Department plans to drop the secondary channel floodway proposal. The Bergen County Engineering Department is considering diking or channeling the brook through this location.

Full text of the adoption follows:

7:13-7.1 Delineated Floodways

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

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

1. (No change in text.)

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

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

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

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

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

In addition, maps of the adopted delineations and redelineations have been sent to Clerks of the affected municipalities and to the Bergen County Engineering Department. Maps are also available for inspection during normal working hours at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey 08625.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Endangered and Nongame Species

Adopted Amendments: N.J.A.C. 7:25-4.13 and 4.17

Proposed: April 6, 1987 at 19 N.J.R. 491(a)
Adopted: June 26, 1987 by Richard T. Dewling, Commissioner,
Department of Environmental Protection.
Filed: June 26, 1987 as R.1987 d.308, without change.

Authority: N.J.S.A. 23:2A-1 et seq.
DEP Docket Number: 008-87-03.
Effective Date: July 20, 1987.
Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

The public comment period ended on May 6, 1987. One comment was received from the Passaic River Coalition.

COMMENT: The commentor supported the proposal and recognized the importance of the Department's periodic evaluation of the status and, where necessary, revisions to the listing of indigenous species of nongame wildlife.

RESPONSE: The Department thanks the commentor for the support and adopts the proposed amendments without change.

Full text of the adoption follows:

- 7:25-4.13 List of endangered species
(a) (No change.)
(b) In accordance therewith, the following species are determined to be endangered:
1.-18. (No change.)
19. Loggerhead Shrike, *Lanius ludovicianus*
Renummer existing 19.-34. as 20.-35. (No change in text.)

7:25-4.17 Defining status of indigenous nongame wildlife species of New Jersey

(a) The following table defines the status of indigenous nongame wildlife species of New Jersey:

Key:			
D	(declining)	P	(peripheral)
E	(endangered)	S	(stable)
EX	(extirpated)	T	(threatened)
I	(introduced)	U	(undetermined)
INC	(increasing)		

AMPHIBIANS	STATUS
...	
Silvery Salamander— <i>Ambystoma platineum</i>	D
...	
REPTILES	
...	
Eastern Mud Turtle— <i>Kinosternon subrubrum</i>	U
...	
Corn Snake— <i>Elaphe guttata</i>	E
Corn Snake (albino specimens)— <i>Elaphe guttata</i>	S
...	
BIRDS (Note: "(b)" means breeds in New Jersey.)	STATUS
...	
American Bittern— <i>Botaurus lentiginosus</i> (b)	T
...	
Northern Goshawk— <i>Accipiter gentilis</i>	T
...	
Peregrine Falcon— <i>Falco peregrinus</i> (b)	E
Black Rail— <i>Laterallus jamaicensis</i>	T
...	
Willow Flycatcher— <i>Empidonax traillii</i> (b)	INC
...	
Least Flycatcher— <i>Empidonax minimus</i> (b)	D
...	
Long-billed Marsh Wren— <i>Cistothorus palustris</i> (b)	D
...	
Eastern Bluebird— <i>Sialia sialis</i> (b)	S
...	

Loggerhead Shrike— <i>Lanius ludovicianus</i>	E
...	
Warbling Vireo— <i>Vireo gilvus</i> (b)	S
...	
Tennessee Warbler— <i>Vermivora peregrina</i>	S
...	
Cape May Warbler— <i>Dendroica tigrina</i>	S
...	
Bay-breasted Warbler— <i>Dendroica castanea</i>	S
Blackpoll Warbler— <i>Dendroica striata</i>	S
...	

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste Management: Containers,

Landfills and Existing Facility Requirements

Adopted Amendments: N.J.A.C. 7:26-7.2, 9.1, 9.3, 10.8 and 11.4

Proposed: March 16, 1987 at 19 N.J.R. 441(a)
Adopted: June 26, 1987 by Richard T. Dewling, Commissioner,
Department of Environmental Protection
Filed: June 26, 1987 as R.1987 d.307, without change.

Authority: N.J.S.A. 13:1E-6 and 13:1D-9
DEP Docket Number: 003-87-02
Effective Date: July 20, 1987
Expiration Date: November 4, 1990

Summary of Public Comments and Agency Responses:

The public comment period for this rule closed on April 15, 1987. Three letters were received.

N.J.A.C. 7:26-7.2

COMMENT: Several commentors stated that the requirement to add the phrase "... or the New Jersey Department of Environmental Protection" to the warning label required by N.J.A.C. 7:26-7.2(b)1 will require the printing of new labels. This will be an added and unnecessary expense for generators.

RESPONSE: The Department believes this requirement will not present an undue economic burden and generators will not necessarily have to go to the expense of printing new labels. The requirements of N.J.A.C. 7:26-7.2(b)1 could be met by adding the new wording to existing labels in indelible ink or paint or by adding another small label with the additional wording. The additional expense should be minimal. Of course, generators could have new labels printed if they wished.

COMMENT: Since drums are often shipped out-of-state, people should not be expected to contact the Department if they find drums, since they will not know the Department's telephone number.

RESPONSE: The new wording will simply offer the option of contacting the Department if the drums are lost, abandoned or otherwise separated from the manifest. Generators could list the DEP Hotline number, (609) 292-7172, on the label. This number is staffed 24 hours a day. The number is listed in telephone books within the State and would be available to out-of-state residents who called the operator for information.

N.J.A.C. 7:26-9.3

COMMENT: The requirement at N.J.A.C. 7:26-9.3(a)3 to mark containers in accordance with 49 CFR Part 172 in which hazardous waste is accumulated on-site is not identical to the Federal regulations at 40 CFR 262.32 and 262.34. The Federal regulations require such marking prior to transportation rather than during accumulation on-site.

RESPONSE: N.J.A.C. 7:26-9.3(a)3 is identical to 40 CFR 262.34. The Federal regulation requires containers to be labeled or marked with the words "Hazardous Waste" while being accumulated on-site. 40 CFR 262.32 does require that each package of hazardous waste be marked in accordance with applicable Department of Transportation regulations on hazardous materials under 49 CFR 172, but the commentor is correct that the marking is only required prior to transportation off-site. However, it would not appear that labeling containers during accumulation rather than just prior to transport would cause any economic burden. The accumulation start date is necessary to determine the length of time a container has been stored.

COMMENT: At N.J.A.C. 7:26-9.3(b)9, the Department should allow above ground tanks to be labeled with the actual waste product identification (that is, "Waste Lube Oil", "Waste Solvent", etc.) in lieu of generic labeling as "Hazardous Waste".

RESPONSE: The Department believes that labeling above ground tanks with the words "Hazardous Waste" is necessary to alert those who handle the material to the possible hazard associated with the material. Labeling the material simply as "Waste Solvent" would not, in the Department's opinion, adequately convey the need to handle the material with extreme caution. There would be nothing wrong with labeling the tank with the name of the specific waste stored within, in addition to "Hazardous Waste."

Full text of the adoption follows.

7:26-7.2 Container requirements

(a) (No change.)

(b) The hazardous waste generator shall insure that all containers used to transport hazardous waste off-site are in conformance with the construction type and labeling requirements of the United States Department of Transportation concerning hazardous material containerization (49 CFR 171-49 CFR 179), including 1, below.

1. Prior to transporting or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE—Federal and State Laws Prohibit Improper Disposal. If found, contact the nearest police or public safety authority, the U.S. Environmental Protection Agency or the New Jersey Department of Environmental Protection.

Generator's Name and Address _____

Manifest Document Number _____

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

7:26-9.1 Scope and Applicability

(a) (No change.)

(b) An owner or operator of an "existing facility" who is eligible to operate the facility prior to final disposition of a permit application must comply with all requirements of this subchapter (see N.J.A.C. 7:26-12.3) except those that specifically address requirements for new facilities or facilities operating pursuant to a permit issued pursuant to N.J.A.C. 7:26-12.1 et seq. After final disposition of the permit application all sections apply to existing facilities in accordance with subsection 9.1(a).

1. The owner or operator of an existing facility whose existing facility status has been terminated is subject to all requirements under N.J.A.C. 7:26-9, N.J.A.C. 7:26-10 and N.J.A.C. 7:26-11 until applicable closure and post-closure responsibilities under N.J.A.C. 7:26-9.8, 9.9, 9.10 and 9.11 have been fulfilled. These standards apply to all treatment, storage and disposal activities at these facilities, except as specifically provided otherwise in this subchapter or in N.J.A.C. 7:26-1 or N.J.A.C. 7:26-8.

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

7:26-9.3 Accumulation of hazardous waste for 90 days or less

(a) A generator may accumulate hazardous waste on-site without a permit for 90 days or less provided that:

1.-2. (No change.)

3. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container. While being accumulated on-site, each container shall be clearly labeled or marked with the words "Hazardous Waste" and labeled in accordance with 49 CFR 172.304.

4. (No change.)

(b) A generator may accumulate hazardous waste on-site in an above-ground tank, for 90 days or less without a permit, after obtaining written approval from the Department, provided that the following requirements are met:

1.-8. (No change.)

9. While being accumulated on-site, each tank shall be clearly labeled or marked with the words "Hazardous Waste".

(c) (No change.)

7:26-10.8 Hazardous waste landfills

(a)-(d) (No change.)

(e) Operational standards for hazardous waste landfills include the following:

1.-11. (No change.)

12. Unless they are very small, such as an ampule, containers must be either:

- i. At least 90 percent full when placed in a landfill; or
- ii. Crushed flat, shredded, or similarly reduced in volume to the maximum practical extent before it is buried beneath the surface of a hazardous waste landfill;

13.-21. (No change.)

(f)-(h) (No change.)

(i) Closure and post-closure requirements for hazardous waste landfills include the following:

1. At final closure of the landfill or upon closure of any cell, the owner or operator shall place final cover over the hazardous waste landfill to provide long-term minimization of migration of liquids through the closed landfill;

2. The final cover shall function with minimum maintenance and shall consist of the following:

i. (No change.)

ii. A drainage layer which will promote drainage and minimize erosion or abrasion of the cover, and which has the following design characteristics:

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

iii. A liner system constructed with the following design characteristics:

(1) (No change.)

(2) The upper liner shall consist of a synthetic material at least 30 mil (.03 inches) thick which has a permeability less than or equal to the permeability of the bottom liner and is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life (including the closure period) of the facility:

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

iv. (No change.)

3.-4. (No change.)

5. In addition to the post-closure requirements of N.J.A.C. 7:26-9.9, the owner or operator of a hazardous waste landfill shall:

i. Maintain the function and integrity of the final cover, including making repairs to the liner as necessary to correct the effects of settling, subsidence, erosion or other events;

ii.-vi. (No change.)

vii. Protect and maintain surveyed benchmarks used in complying with N.J.A.C. 7:26-10.8(f); and

viii. (No change.)

(j) (No change.)

7:26-11.4 Hazardous waste landfills

(a) Operational standards for hazardous waste landfills include the following:

1.-9. (No change.)

10. Unless they are very small, such as an ampule, containers must be either:

i. At least 90 percent full when placed in the landfill or;

ii. Crushed flat, shredded, or similarly reduced in volume to the maximum practical extent before it is buried beneath the surface of a hazardous waste landfill; and

11. (No change.)

(b) (No change.)

(c) Closure and post-closure requirements for hazardous waste landfills include the following:

1.-3. (No change.)

4. In addition to the requirements of N.J.A.C. 7:26-9.9, the post-closure period, the owner or operator of a hazardous waste landfill shall:

i. Maintain the function and integrity of the final cover including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events;

ii.-iii. (No change.)

iv. Protect and maintain surveyed benchmarks used in complying with N.J.A.C. 7:26-11.4(b)1;

v. (No change.)

vi. Maintain and monitor the groundwater monitoring systems as per N.J.A.C. 7:26-9.5 and N.J.A.C. 7:14A-6; and

vii. Prevent run-on and run-off from eroding or otherwise damaging the final cover.

(d) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

1. Provide long-term minimization of migration of liquids through the closed landfill;

2. Function with minimum maintenance;

- 3. Promote drainage and minimize erosion or abrasion of the cover;
- 4. Accommodate settling and subsidence so that the cover's integrity is maintained; and
- 5. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Pesticide Control Code

Adopted Amendment: N.J.A.C. 7:30-2.3

Proposed: April 6, 1987 at 19 N.J.R. 492(a)
 Adopted: June 26, 1987 by Richard T. Dewling, Commissioner,
 Department of Environmental Protection
 Filed: June 26, 1987 as R.1987 d.309, **without change.**
 Authority: N.J.S.A. 13:1B-3 and 13:1D-2, specifically 13:1F-4
 and 5.

DEP Docket Number: 009-87-03
 Effective Date: July 20, 1987
 Expiration Date: December 6, 1987

Summary of Public Comments and Agency Responses:

A public hearing was held on these amendments on April 28, 1987 to provide interested persons the opportunity to present testimony on this proposal. The comment period closed on May 6, 1987. Two people testified at the hearing and 10 written comments were received. The suggestions and responses were as follows:

N.J.A.C. 7:30-2.3(a)6

COMMENT: Six of the witnesses presenting oral or written testimony requested that the plant growth regulant daminozide (Alar) be suspended for use in New Jersey.

RESPONSE: Although the Environmental Protection Agency (EPA) had proposed a ban on daminozide for use on food products in 1985, they reconsidered after receiving additional information and on the advice of their Scientific Advisory Panel. The EPA did require reduced rates of application and lowered tolerance levels (residues) for apples. Placing daminozide on the restricted use pesticide list will insure that only certified and registered pesticide applicators will be able to purchase and use the pesticide. This should reduce the incidence of misapplications and potential exposure to persons and the environment. Therefore, the Department has included daminozide on the restricted use list.

N.J.A.C. 7:30-2.3(a)7

COMMENT: One commentator indicated that he could not recommend for or against reducing disulfoton's use restrictions because of concern with data gaps in areas of "Chronic Testing" and "Mutagenicity Testing". One commentator was also concerned with teratogenic and fetotoxic effects of disulfoton.

RESPONSE: Reports submitted by Mobay Corporation to the Department and reviewed by the University of Medicine and Dentistry of New Jersey—Robert Wood Johnson Medical School indicated that disulfoton at two percent or less in home use products, should not present undue risk if used according to label directions. As additional information is received by the Department to fill in data gaps, the decision will be reevaluated and additional steps taken if necessary.

COMMENT: One commentator suggested that temik and chlordane be banned for use in New Jersey.

RESPONSE: The Department had not considered any change in status for these pesticides as part of this rulemaking. However, if additional information is received by the Department concerning them, the Department will consider it. At the present time, both of these pesticides are considered restricted use.

COMMENT: One witness stated that alachlor should be kept as a general use pesticide because there are no proven adverse health effects or environmental impacts.

RESPONSE: Testing has indicated that alachlor has the potential to be a human carcinogen. Exposure can occur while mixing, loading, and applying the pesticide, and also while harvesting crops, eating foods containing alachlor residues or through drinking water containing residues. The greatest potential exposure is probably to the applicator using the pesticide. The extent of possible ground water contamination by alachlor is still under study. Placing alachlor on the restricted use pesticide list will restrict its use to trained and licensed applicators. This should insure proper use and disposal and reduce the possibility of exposure and

contamination problems. There should not be a serious economic impact since the majority of private applicators who would use alachlor are already certified. The cost to farmers to obtain certification in New Jersey is minimal.

COMMENT: Alachlor should be banned because it is a suspected human carcinogen and a potential ground water contaminant.

RESPONSE: The potential for carcinogenic effects is greatest to the persons mixing, loading and applying alachlor. Insuring that these persons are trained and registered pesticide applicators and aware of the proper safety procedures should reduce the potential for harm in this group. When properly trained, the proper rates and technique will be used to minimize chances of groundwater contamination. Placing alachlor on the restricted use pesticide list will require that users become registered pesticide applicators. The potential for ground water contamination is still under study but to date no alachlor residues were found in samples collected from wells in New Jersey. The potential exposure due to residues in food products appears to be very low. The Department will continue to monitor additional information as it becomes available, including studies by the EPA, and take appropriate steps as necessary.

Full text of the adoption follows:

7:30-2.3 Restricted use pesticides

(a) The following pesticides are restricted use pesticides which can be purchased and/or used only by certified and registered responsible pesticide applicators or persons working under their direct supervision. Unless it is otherwise provided, all formulations and uses of the following pesticides are restricted use.

1.-5. (No change.)

6. Any herbicides and related materials listed below:

CAS Number	Restricted Pesticides
94-75-7	2,4-Dichlorophenoxyacetic acid (high volatile esters)
7775-09-9	Sodium Chlorate
93-76-5	2,4,5-Trichlorophenoxyacetic acid
50-31-7	2,3,6-Trichlorobenzoic acid and related polychlorobenzoic acids, dimethylamine salts
21725-46-2	[[2-4-chloro-6-(ethylamino)-s-triazine-2yl] amino]-2-methyl-propionitrile—all concentrations above 30
61-82-5	Amitrole
88-85-7	Dinoseb
7784-46-5	Sodium arsenite
15972-60-8	Alachlor
1596-84-5	Daminozide

7. Any insecticides and related materials listed below:

CAS Number	Restricted Pesticides
75-74-9	Chlordane
62-73-7	2,2-dichlorovinyl dimethyl phosphate—all concentrations above 3%, resin strips not restricted unless so classified by the EPA as referenced in 2 above.
2310-17-0	Phosalone—all concentrations above 12%
56-72-4	0,0-diethyl 0-(3 chloro-4-methyl-2oxo-2H-1 benzopyran-7-yl) phosphorothioate—all concentrations above 5%
333-41-5	0,0-Diethyl 0-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate—all concentrations above 25%
315-18-4	Mexacarbate—all concentrations above 2%
122-10-1	Dimethyl 3-hydroxylglutaconate dimethyl phosphate—all concentrations above 1%
55-38-9	Fenthion—all concentrations above 0.5%
563-12-1	Ethion—all concentrations above 6% G; 3% all others
114-26-1	O-Isopropoxyphenyl-methylcarbamate—all concentrations above 2%; resin strips not restricted unless so classified by the EPA as referenced in 2 above.
58-89-9	Lindane (Gamma isomer of benzene hexachloride)—all concentrations above 20%
311-45-5	Paraoxon
60-51-5	Dimethoate—all concentrations above 25%
22781-23-3	Bendiocarb—all concentrations above 15%
732-11-6	N-(Mercaptomethyl) phthalimide S-(0,0-dimethyl) phosphorodithioate—all concentrations above 20%

HEALTH

(a)

**PUBLIC HEALTH COUNCIL
Environmental Health Services
Chapter IX—State Sanitary Code
Public Recreational Bathing**

Adopted Amendment: N.J.A.C. 8:26-5.7

Proposed: April 6, 1987 at 19 N.J.R. 494(a).

Adopted: June 8, 1987 by Evelyn Geddes, Chairperson, Public Health Council.

Filed: June 19, 1987 as R.1987 d.288, **without change.**

Authority: N.J.S.A. 26:1A-7.

Effective Date: July 20, 1987.

Expiration Date: August 4, 1991.

Summary of Public Comments and Agency Responses:

The Department received six public comments regarding its proposed amendments to N.J.A.C. 8:26-5.7 concerning the deferment of a lifeguard training program certified by the United States Lifesaving Association until May 27, 1988. Three comments were received supporting the deferment of this standard in order to allow beach owners and operators adequate time to comply with this requirement. One Mayor responded that this regulation would not effect his township in that the township does not operate a bathing beach. Two comments were received objecting to the certification program of the United States Lifesaving Association. The commentors' specific recommendations follow:

COMMENT: One Mayor objected to the certification program by the United States Lifesaving Association because he felt the program would be both costly and restrictive.

RESPONSE: The United States Lifesaving Association is the only professional organization that provides a program for lifeguarding of ocean and tidal waters. The cost of implementing this program will vary according to the type of training program currently being used. Many beach operators have stated that their current training programs for lifeguards are similar to that of the United States Lifesaving Association and thus cost of implementation would not be a factor. Operators who do not have a training program that equals the U.S.L.A. certification program would naturally assume the greatest increase in cost. These costs would be offset by better services and a higher degree of safety to the general public.

COMMENT: A beach supervisor felt that public beaches have training programs equal to the United States Lifesaving certification program and that more attention should be spent on private beaches and clubs. He also felt that there is no greater safeguard than experience. He feels that the local health departments will not have experienced staff to check the certification programs.

RESPONSE: The Department feels that a uniform standard that includes municipal beaches, private beaches and clubs would be in the best interest of the general public. The Department agrees that experienced staff is a key element in building a strong lifeguarding program. The Department will draw upon the expertise of the United States Lifesaving Association and Operators of Public Beaches to establish a monitoring tool for public health officials.

Full text of the adoption follows.

8:26-5.7 Bathing beaches

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

(c) A bathing beach open for use shall establish and post hours of operation and shall be under the management of a designated adult supervisor who is familiar with these regulations and who shall be responsible for all phases of the operation, during said hours, which shall include a reasonable time period, such as 9:00 A.M. to 5:00 P.M., or similar time period, reflecting hours of maximum use.

1. A lifeguard training program certified by the United States Lifesaving Association, Office of Certification, Mid-Atlantic Region, P.O. Box 1, Avon, New Jersey 07717 shall be established by the owner or operator for ocean and tidal waters.

i. The effective date of the provision in 1 above shall be deferred until May 27, 1988.

2.-8. (No change.)

(d) (No change.)

112-56-1	Beta-Butoxy beta'-thiocyano diethyl ether—all concentrations above 10%
2032-65-7	4-(Methylthio)-3,5-xylyl methylcarbamate—all concentrations above 2%
919-86-8	Metasystox—all concentrations above 7%
23103-98-2	Pirimicarb—all concentrations above 15%
23505-41-1	Pirimiphos-ethyl—all concentrations above 20%
52-68-6	Dimethyl (2,2-trichloro-1-hydroxyethyl) phosphonate—all concentrations above 15%
390-00-2	Aldrin
60-57-1	Dieldrin
76-44-8	Heptachlor
8001-35-2	Toxaphene
72-20-8	Endrin
2921-88-2	Chlorpyrifos—all concentrations above 15%
7440-38-2	Any inorganic arsenical pesticide not specifically covered elsewhere which has greater than 0.5 ounces of active ingredient
115-29-7	Endosulfan
86-50-0	Azinphos-methyl
298-04-4	Disulfoton—all concentrations above 2%
7681-49-4	Sodium fluoride
8.	Any rodenticides and related materials listed below:
CAS Number	Restricted Pesticides
117-52-2	3-(alpha-acetyl-furfuryl)-4-hydroxycoumarin—all concentrations above 3%
86-88-4	Alpha-Naphthylthiourea—all concentrations above 4%
504-24-5	4-Aminopyridine
535-89-7	2-Chloro-4-(dimethylamino)-6-methylpyrimidine
82-66-6	Diphacinone—all concentrations above 3%
7723-14-0	Phosphorus (yellow, white)
83-26-1	2-Pivalyl-1, 3-indandione—all concentrations above 3%
81-81-2	Warfarin—all concentrations above 3%
28772-56-7	3-4-hydroxy-2H-1-benzopyran-2 one—all concentrations above 0.01%
3691-35-8	2-1,3-indandione—all concentrations above 0.2% and above.
507-60-8	Red Squill—all concentrations above 30%
1327-53-3	Arsenic Trioxide—all concentrations above 1.5% in products intended for the control of rodents.
56073-10-0	Brodifacoum—all concentrations above 0.005%

NOTE: Chemical Abstract Society (CAS) numbers of 7440-43-9, 7439-97-6, and 7440-38-2 are for the elemental form.

(b) (No change.)

(a)

RESEARCH, POLICY AND PLANNING**Uncompensated Care Trust Fund****Adopted New Rule: N.J.A.C. 8:31B-7**

Proposed: April 6, 1987 at 19 N.J.R. 495(a).

Adopted: June 19, 1987 by Molly Joel Coye, M.D., M.P.H.,

Commissioner, State Department of Health (with the approval of the Health Care Administrative Board).

Filed: June 23, 1987 as R.1987 d.298, **with substantive and technical changes** not requiring notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1986, c.204.

Effective Date: July 20, 1987.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

Comments were received at the Department of Health by May 20, 1987 from the following organizations:

New Jersey Hospital Association
 New Jersey Patient Account Managers
 Health Insurance Association of America
 Nexus
 Raritan Bay Medical Center
 Dover General Hospital and Medical Center
 Division of Medical Assistance
 Community Memorial Hospital
 New Jersey Business Group on Health
 Monmouth Medical Center
 Deborah Heart and Lung Center
 Elizabeth General
 Bayshore Hospital
 Zurbrugg Hospital
 Overlook Hospital
 Newark Beth Israel Medical Center
 Northern Ocean Hospital System
 Jersey City Medical Center
 Robert Wood Johnson University Hospital
 Healthcare Financial Management Association
 St. Francis Medical Center
 Department of the Public Advocate
 Cohen, Shapiro, Polisher, Shiekman and Cohen

N.J.A.C. 8:31B-7.1 Purpose

COMMENT: Uncompensated care over- and undercollections should be reconciled through the Trust Fund. Future payments or receipts from the Fund should be adjusted to reconcile past over (under) collections.

RESPONSE: The Trust Fund necessarily operates on a prospective basis, and was not designed to pay actual uncompensated care amounts, but rather projected approved amounts. Therefore, uncompensated care under and overcollections are most appropriately reconciled at the Chapter 83 Final Reconciliation.

As a practical matter, Final Reconciliations that occur during the two year period authorized by the Uncompensated Care Trust Fund Act will be for rate years prior to the implementation of the Trust Fund. Reconciliations for Trust Fund payment years (1987 and 1988) would take place after the December 31, 1988 sunset of the Act. At that time the system may not be empowered to use the Trust Fund mechanism to pay for under (over) collections.

COMMENT: The funding of research and/or administration of the Trust Fund should not come from the Uncompensated Care Trust Fund but from alternative funding sources.

RESPONSE: The Uncompensated Care Trust Fund Act (P.L. 1986, c.204) specifically directs that funding for the administration of the Trust Fund is to be paid through the Uncompensated Care Trust Fund. As the law also imposes certain fact-finding responsibilities on the Department, this "research" has been properly included in the administration of the Trust Fund.

COMMENT: The hospital industry should be included in any proposed development of enhanced auditing procedures. Any auditing procedures developed should be used for prospective, not retrospective, audits.

RESPONSE: The Department will be working on enhanced auditing procedures with the Uncompensated Care Trust Fund Advisory Committee and the Steering Committee on Health Care for the Uninsured, both of which have industry representatives.

The Department will develop and implement audit procedures on a prospective basis, except to the extent that new audits only measure hospital compliance with current uncompensated care regulations. If the audit does not include a change in Department policy but does include a shift in monitoring of hospital compliance with existing requirements, it would be proper to do so on a retrospective, as well as a prospective basis.

COMMENT: N.J.A.C. 8:31B-7.1(b) indicates that "hospitals are required to make a good-faith effort to identify all possible sources of public and private funding and to secure all available and appropriate payments from these sources before allocating costs for bad debts and charity care to uncompensated care." Since Section 8:31B-4.38(b)3 of the Procedural and Methodological Regulations specifies that only grants and other funds available for the medically indigent will be used to offset uncompensated care costs, the Department should clarify the intent of this statement.

RESPONSE: The intent of this section is to implement the Uncompensated Care Trust Fund Act provision that "The Commission shall approve each hospital's reasonable uncompensated care costs". Reasonable uncompensated care costs has been defined as uncompensated care costs for which no other sources of funding are available. Other sources of funding for bad debt and charity care shall include but not be limited to third party insurance, governmental programs, no-fault insurance and workers' compensation. This section is intended to emphasize that accounts may not be written off to bad debt or charity care as long as there is a potential payment source available. It does not include, due to a provision in Chapter 83 legislation, fund raising and donations, except those specifically earmarked for uncompensated care.

COMMENT: N.J.A.C. 8:31B-7.1(d) states "Sources of public and private payment shall include but not be limited to any revenue paid to the hospital in excess of what would have been paid pursuant to the New Jersey Chapter 83 regulations." The intent of this section is unclear and should be clarified in a reproposal. The Department has indicated that post-waiver Medicare payments in excess of the Chapter 83 rates would first be applied to uncompensated care. It is inappropriate and illegal for reimbursement outside the Chapter 83 system to be used to subsidize Chapter 83 payments.

RESPONSE: The Department will clarify and repropose N.J.A.C. 8:31B-7.1(d) at the July HCAB meeting. Subsection (d) has been withdrawn and deleted from the adoption.

COMMENT: If any excess payment is to be offset, then shortfalls which relate to uncompensated care must also be included.

RESPONSE: As indicated above, the Department has withdrawn this subsection of the regulation until the July HCAB meeting.

COMMENT: The Department has not given adequate notice to the public of the meaning of proposed new rule N.J.A.C. 8:31B-7.1(d) as required by the Administrative Procedure Act.

RESPONSE: The Department has withdrawn N.J.A.C. 8:31B-7.1(d) from final adoption. It will be amended and repropose for publication at the July HCAB meeting.

COMMENT: Proposed new rule N.J.A.C. 8:31B-7.1(d) violates the Uncompensated Care Trust Fund Act.

RESPONSE: The Department has withdrawn N.J.A.C. 8:31B-7.1(d) from final adoption. It will be amended and repropose for initial publication at the July HCAB meeting.

COMMENT: N.J.A.C. 8:31B-7.1(d) bears no relationship and violates the statute from which it attempts to draw its authority, P.L. 1986, Chapter 204.

RESPONSE: The Department has withdrawn N.J.A.C. 8:31B-7.1(d) from final adoption. It will be amended and repropose for initial publication at the July HCAB meeting.

COMMENT: The proposed new rule violates the Social Security Act and the United States Constitution.

RESPONSE: The Department has withdrawn N.J.A.C. 8:31B-7.1(d) from final adoption. It will be amended and repropose for initial publication at the July HCAB meeting.

COMMENT: N.J.A.C. 8:31B-7.1(b) implies that hospitals are obligated to seek funding for uncompensated care through grants, donations, etc. in addition to identifying third party reimbursement sources before receiving trust fund payments.

RESPONSE: Although the Department encourages hospitals to seek alternative funding for uncompensated care, the original Chapter 83 legislation bars the Department from offsetting philanthropy from revenue, except in the case of grants and donations specifically earmarked for uncompensated care.

COMMENT: Hospitals are expected to reduce costs but the Department will add costs for administration research and audits of hospitals' reports which will be buried in the uniform statewide uncompensated care add-on.

RESPONSE: Cost of administration and audit are negligible costing well less than one percent than of the uncompensated care. The Department is authorized to fund administration by section 4a of the Uncompensated Care Trust Fund Act (P.L. 1986, c.204). The law also mandates fact-finding and audit activities related to uncompensated care.

COMMENT: Some New Jersey hospitals are underpaid, comparing Chapter 83 to what they would have been paid if complying with PPS regulations. Shouldn't New Jersey hospitals be entitled to the full cost of treating Medicare patients, as identified through the PPS system, rather than consider those potential dollars "excess"? New Jersey regulations state hospitals will be entitled to their "full financial elements." This should include "reasonable cost" of treating Medicare patients, as defined by the Health Care Financing Administration, plus reimbursement for uncompensated care.

RESPONSE: Subsection (d) of the regulation has been withdrawn. It will be restated and repropose for initial publication at the July HCAB meeting.

N.J.A.C. 8:31B-7.2 Definitions

COMMENT: Definitions should be provided for the following:

Cost as used in N.J.A.C. 8:31B-7.1(b)

Cost Reduction Plan as used in N.J.A.C. 8:31B-7.8

RESPONSE: The Department believes that the definition of "cost" is evident. Cost reduction plans, as indicated in the legislation and regulations, are documents submitted to the Commission by a hospital that has been found to be providing uncompensated care in an inefficient or inappropriate manner which outlines a plan of correction.

COMMENT: N.J.A.C. 8:31B-7.2 does not include a definition of the word Department used in N.J.A.C. 8:31B-7.6.

RESPONSE: The regulation has been amended to indicate that the term "Department" refers to the State Department of Health.

N.J.A.C. 8:31B-7.3 Determination of Uniform Statewide Uncompensated Care Add-on

COMMENT: The calculation of the Statewide Uncompensated Care Add-on along with data and data sources should be made public via timely memorandums to hospitals. Individual hospital calculations determining payments to or from the fund should be forwarded to each hospital for review and comment.

RESPONSE: All hospitals have been provided with memoranda detailing the calculations and data sources to be used by the Uncompensated Care Trust Fund. The Department will continue to provide hospitals with copies of Commission-approved hospital-specific Uncompensated Care Trust Fund payment amounts on a bi-annual basis.

COMMENT: The current calculation used by the Department employs two year old data. These figures do not represent a hospital's current year bad debt. The calculation should at least be revised to use the most recent year end data.

RESPONSE: N.J.A.C. 8:31B-7.3(b) provides that Trust Fund amounts will be determined using the most recent reliable aggregate group of hospital Chapter 83 actuals and rate reports. If hospitals have submitted reliable 1986 actuals and financial statements on schedule (May 31, 1987) the January 1988 calculation will be based on 1986 rate year experience. These amounts are increased by the general inflation factor. Prior to the Uncompensated Care Trust Fund's existence, initial uncompensated care amounts were determined on the same schedule.

N.J.A.C. 8:31B-7.5 Delinquent Payments

COMMENT: The use of penalties on delinquent payments should not be imposed unless a hospital's cash flow appeal to the HRSC has been denied. A mechanism for addressing timely cash-flow appeals should be developed prior to implementation of this aspect of the regulation.

RESPONSE: The Department will recommend penalties to the Commission regardless of the status of any cash flow request. Payments from the Trust Fund depend on timely receipt of the unearned portion of the Uncompensated Care Add-on from the hospitals that pay into the Trust Fund. Hospitals are able to use the current cash flow appeal methodology for any verifiable cash flow requests.

COMMENT: There is no provision to allow hospitals to appeal their delinquent status and/or penalties. For instance payments may be delinquent for cash flow reasons outside the control of the hospital.

RESPONSE: Penalties will only be imposed with the approval of the Hospital Rate Setting Commission. Hospitals will have an opportunity to be heard and present their case at the Commission when the Department makes a recommendation for a penalty. Therefore, no appeal process is necessary.

COMMENT: If the Uncompensated Care add-on has been removed due to the delinquency of payments to the trust fund, only the add-on should be restored once the delinquency is made up. No interim lost revenues should be restored.

RESPONSE: Only the add-on factor will be restored through the Trust Fund once the delinquent payments have been made. Uncompensated care provided during the period that the add-on had been removed will be paid only at final reconciliation.

N.J.A.C. 8:31B-7.6 Documentation Requirements

COMMENT: This section is a duplication of what is already required in N.J.A.C. 8:31B-4.38 through 4.40.

RESPONSE: Although the referenced regulations do cover much of the same substantive issues as the current proposal, this section specifies the timing and format of certain documentation submissions. Therefore it is not duplicative but rather adds to the Department's ability to scrutinize uncompensated care as required under the Uncompensated Care Trust Fund Act.

COMMENT: Each hospital should have the right to appeal a unilateral determination of inadequate or inappropriate hospital credit and collection requirements before a reduction of uncompensated care approved revenue.

RESPONSE: Neither the Department nor the Commission will be making "unilateral" determinations of inadequate or inappropriate hospital credit and collection requirements. The Department after a review of hospital credit and collection documentation submitted under this section would make a recommendation to the Commission for a reduction in payments. The Commission would provide an opportunity for the hospital to be heard in response to this recommendation.

COMMENT: N.J.A.C. 8:31B-7.6(a) 2iv. should be restated as follows:

iv. Determining whether **and when** to write off accounts.

RESPONSE: The Department accepts the comment and has made the change requested.

COMMENT: Medical denials should only include cases where the liability is the responsibility of the hospital, not the patient.

RESPONSE: In accordance with Department of Health policy, medical denials are not to be included in reporting Uncompensated Care. Although the hospital may bill the patient for services after a medical denial, costs associated with these services are not properly attributable to Uncompensated Care. The Uncompensated Care Trust Fund Act directs the Commission to approve the reasonable costs of Uncompensated Care. As these services have been determined too "unnecessary", they are not reasonable costs of Uncompensated Care.

COMMENT: The Documentation Requirements require many signed statements by the CEO indicating that he is agreeing to a law that he has had to agree to for years.

RESPONSE: The Department finds this a minimal burden which will provide the Department with assurances that all hospitals are aware of their responsibilities under various federal and state laws and that they are in fact in compliance.

COMMENT: N.J.A.C. 8:31B-7.6(a)4. should not exclude unpaid Medicare deductible and coinsurance as items in uncompensated care. Under the all payor Chapter 83 System, Medicare coinsurance and deductible bad debts are included in the overall bad debt expense paid by Medicare.

RESPONSE: The Department has added the phrase "not subject to Medicare waiver provisions" to this section.

Further, this documentation is to be submitted in December 1987 to indicate policies that will be followed in 1988.

COMMENT: N.J.A.C. 8:31B-7.6(d) provides for punitive action against hospitals for "untimely submissions" of the above requested information. This should only be utilized if a hospital changes its policies and does not inform the Department.

RESPONSE: As the Department will be requesting this information on an annual basis, the section providing for penalties for untimely submission will remain.

COMMENT: Uniform statewide requirements for charity care eligibility and bad debt credit and collection policies should be established.

RESPONSE: The Department agrees that such standards should be implemented and will undertake further review of the comments received.

COMMENT: The volume of documentation that the Department is asking for on an annual basis is burdensome to both the hospital and the Department. A one-time submission of the documents, with the Chief Executive Officer affirming that there are no changes on a yearly basis, would be sufficient.

RESPONSE: The Department will reassess this section after it sees the volume of documentation involved and the scope and number of changes each year.

COMMENT: N.J.A.C. 8:31B-7.6(a)1. duplicates the Chapter 83 rules concerning uncompensated care policies and procedures. There are no criteria in this section which indicate what standards are appropriate for informing patients about their options.

RESPONSE: N.J.A.C. 8:31B-7.6(a)1. requires the submission of uncompensated care policies and procedures to the Department. This differs from the Chapter 83 regulations which require the hospitals to implement such policies.

The Department is currently investigating the concept of standardizing such policies.

NOTE: The Department has added N.J.A.C. 8:31B-7.6(a)6 requiring documentation of the relationship between the hospital and collection agencies to enable the Department to more effectively monitor hospital collection efforts. This amendment was added with the approval of the Cost Containment Subcommittee of the Steering Committee on the Health Care for the Uninsured. Notice of the change was provided to representatives of all affected parties prior to adoption by the HCAB. N.J.A.C. 8:31B-7.7. Audit

COMMENT: The audit section refers to regulations hospitals are already required to comply with; this section is duplicative and unnecessary.

RESPONSE: The Department added this section reiterating that hospitals are required to comply with existing uncompensated care audits under Chapter 83 at the direction of the HCAB. The Department announced at initial publication that new audit regulations would be proposed.

COMMENT: The "tightening up" of auditing procedures is a must and it was urged that N.J.A.C. 8:31B-7.7 be amended as soon as consensus is reached on the development of strengthened uncompensated care auditing procedures.

RESPONSE: The Department is currently involved in designing strengthened audit policy or regulations and anticipates bringing them for initial publication in the fall.

COMMENT: Although the current proposal refers to the audit section "uncompensated care audits shall be conducted pursuant to N.J.A.C. 8:31B-4.38 through 4.40" it is our understanding that changes will be made to those criteria at some point later this year. The current criteria should be modified to take into account differentiation of free care and bad debt, patients' ability or willingness to relinquish information on their financial situation, cost effectiveness of handling small balance bad debt accounts the same as large balance accounts, etc.

Any changes or modifications made to the audit criteria must be on a prospective basis and not retrospectively. The impact of retrospective changes could be devastating on hospital compliance and, in most cases, beyond the control of the hospitals to comply.

RESPONSE: This comment refers to regulations to be promulgated in the future, not the regulatory language currently proposed.

COMMENT: The Audit and Verification of compliance with sections 8:31B-4.38 through 4.40 could easily be handled through the SHARE Forms by having the hospitals, independent auditors and Chief Executive Officers and/or Chief Financial Officers certify that the hospital is in compliance with the regulations.

RESPONSE: The Department will be proposing new audit regulations in the near future. Therefore, no separate audit activities will be established pursuant to N.J.A.C. 8:31B-7.7 at this time.

N.J.A.C. 8:31-7.8 Cost Reduction Plans

COMMENT: The proposed regulations require the submission of a cost reduction plan to the Commission within 30 working days of the issuance of the order. This is insufficient time to formulate a cost reduction plan.

RESPONSE: The Department believes that 30 working days (a minimum of six weeks) should provide sufficient time to develop a cost reduction plan. In addition the Commission may give the hospital additional time to respond if the hospital can make a showing that such an extension is warranted. Hospitals with high uncompensated care amounts are advised to begin thinking about possible cost reduction plans.

COMMENT: The inclusion of a Cost Reduction Plan within an Uncompensated Care regulation is unfounded.

RESPONSE: The authority for this regulation is the Uncompensated Care Trust Fund Act (P.L. 1986, c.204). This law mandates that "The Commission shall require a hospital which engages in inefficient or inappropriate provision of uncompensated care services to submit to the Commission a cost reduction plan." Therefore the inclusion of this section is appropriate.

COMMENT: Various extraneous elements have been included in this proposal which are not in keeping with the purpose of the Trust Fund Act S-2024. The Trust Fund was implemented to insure the continuance of payments to hospitals for uncompensated care, rather than be used as a vehicle to implement "cost reduction" measures.

RESPONSE: Section 7(a) of the Uncompensated Care Trust Fund Act directs the Commission to require the submission of cost reduction plans. This section also requires the commission to ensure that Uncompensated Care Services are provided in the most appropriate and cost-effective manner possible.

COMMENT: N.J.A.C. 8:31B-7.8(g) should be restated as follows: "The Commission may order the termination of a cost reduction plan monitoring upon a finding that, in view of said plan's successful implementation, the hospital is no longer engaging in inefficient and inappropriate provision of care."

RESPONSE: The Department accepts the comment and has made the change upon adoption.

COMMENT: The term "cost reduction plan" does not appear to be as suitable as a "plan of correction" if the Commission feels that uncompensated care levels are too high. Also, the matter of who pays the cost for plans such as maintaining an emergency room triage, patient tracking and information systems, utilization review is not addressed.

RESPONSE: The term cost reduction plan is used in the Uncompensated Trust Fund Act and will be retained in the regulations. Cost reduction plans will be recommended to the Commission only if they deemed to decrease costs by providing appropriate and efficient care.

COMMENT: Regarding N.J.A.C. 8:31B-7.8, while we understand the need to prevent uncompensated care levels from escalating, a "cost reduction" plan is an inappropriate concept in this regard. Hospitals theoretically have little control over who does not pay for care rendered at their institutions, especially since hospitals are required to treat patients regardless of their ability to pay. A true cost reduction plan would mean that patients can be treated at a lesser cost. The level of uncompensated care and the cost of treating patients are unrelated.

RESPONSE: The concept of the cost reduction plan, as indicated in the Uncompensated Care Trust Fund Act and regulations, is to foster appropriate and efficient care for patients, thus decreasing the cost of uncompensated care. Hospitals are still required to provide appropriate access to hospital services; however, some hospitals may be required to institute certain delivery or administrative actions designed to promote efficient and appropriate delivery of care.

COMMENT: The Department of Health should adjust fixed outpatient rates to compensate for any transfer of activity between hospital units or to facilities outside the hospital.

RESPONSE: Hospital should be paid only for appropriate care given at an appropriate level and site of care. Therefore, no adjustment is contemplated.

COMMENT: N.J.A.C. 8:31B-7.8 is very vague and uses relative terms as appropriate, effective and efficient. Can these terms be further defined by the Department? Do the terms appropriate, effective and efficient relate to a hospital's own resources or is the Department suggesting a peer comparison?

RESPONSE: The judgement of the appropriateness, effectiveness and efficiency of uncompensated care services will be made by the Commission. The Department's recommendation will be based on a review of the hospital's own resources although a comparison of various factors among hospitals may indicate to the Department which hospital should be investigated for cost reduction plans.

The Department has amended N.J.A.C. 8:31B-7.8(a)1, to clarify the definition of effective triage system which is one that ensures that patients are treated in the most appropriate delivery site and level of care that is feasible to provide, and according to a cost-effective plan.

COMMENT: The process of how the Department will determine when a Cost Reduction Plan is to be submitted needs to be delineated. What are the steps, and what is the timing of the steps involved? Also, what are the criteria that will be used to determine if a Cost Reduction Plan is necessary?

RESPONSE: The process of how the Department will determine when a Cost Reduction Plan is to be submitted is delineated in N.J.A.C. 8:31B-7.8. The criteria that will be used are laid out in N.J.A.C. 8:31B-7.8(a) 1 through 3.

COMMENT: Interested parties should be advised in advance of the Department's schedule of uncompensated care cost containment evaluations. This lends predictability and certainty to the process and assures hospitals, consumers and third-party payers alike that all hospitals will be treated equally.

RESPONSE: The Department has not developed a schedule for performing uncompensated care cost containment evaluations for the purpose of determining when a cost reduction plan should be recommended. It is reasonable to assume that the first evaluations will focus on high uncompensated care hospitals, particularly those receiving payments under the Trust Fund.

COMMENT: The regulations state that the price of ambulatory services will be reviewed. The hospital industry has very little control over this factor and unless deregulation comes about, this regulation may not be fair.

RESPONSE: Cost reduction plans are to be addressed primarily to the appropriateness and efficiency of the delivery of health care, not the pricing of such care.

COMMENT: Such items as "referring patients to non-hospital providers", refer to patients who cannot or will not pay their bills. What providers would take these patients? It is unrealistic to hold the hospital responsible for patients who are not acceptable in the for-profit non-hospital setting.

RESPONSE: The regulation includes as a criterion that patients are referred to non-hospital ambulatory providers when appropriate. If out-of-hospital providers are unavailable or unwilling to accept referrals, such referrals are not appropriate.

COMMENT: Cost reduction plans should not be part of the Uncompensated Care Regulations. Hospitals are currently being reviewed for inefficient and inappropriate care by many other entities, that is JCAH, U.R., PRO, Department of Health, etc. and these reviews include all patients. Any further reviews of uncompensated care patients would be redundant and face more complexities to stay in compliance in an already difficult situation.

RESPONSE: The authority for this regulation is the Uncompensated Care Trust Fund Act (P.L. 1986, c.204). This law mandates that the "Commission shall require a hospital which engages in inefficient or inappropriate provision of uncompensated care services to submit to the Commission a cost reduction plan." Therefore the inclusion of this section is appropriate.

COMMENT: The Cost Reduction Plans indicate that hospitals may have to increase costs in order to try and reduce uncompensated care which certainly does not make economic sense.

RESPONSE: The Department intends that cost reduction plans should be undertaken only if care can be provided in a more cost efficient manner.

COMMENT: N.J.A.C. 8:31B-7.8(b) departs from the intent of the statute because it reduces the Commission's role to that of merely reacting to Department of Health requests. The Commission is mandated by statute to require cost reduction plans where uncompensated care services are not provided in the most appropriate or cost effective manner.

RESPONSE: The Department accepts the comment and has added the phrase, "order a cost reduction plan at its own initiative or" to this subsection.

COMMENT: The appropriateness criteria listed are directed at outpatient care and are not adequately defined. Guidelines are extremely vague and would subject the hospital to different interpretations by different regulatory personnel.

It appears that the phrase "presence of and effective triage system in the emergency room" refers to the determination as to whether the emergency room should render care or should refer the patient elsewhere. It would be necessary for the hospital to employ a physician in the emergency room 24 hours a day to perform this "duty" alone. In addition, we are encroaching on the patient's right to ask for care and changing the fundamental manner in which healthcare is rendered in this country.

RESPONSE: The guidelines are not intended to be vague. Moreover, judgments as to efficiency, appropriateness and effectiveness would be made on the record by the Hospital Rate Setting Commission.

The Department does not intend to require a hospital to employ a physician for triage; the literature indicates that triage can be done by a nurse.

Finally, patients will be benefited by being provided with care in the most appropriate setting; this will not cause a diminution in the patient's right to care.

COMMENT: The Public Advocate has a crucial role to play in the evaluation of cost containment plans. Primarily, the Public Advocate's role is to serve as a check on any inadvertent diminution of emphasis on access and quality of care which could arise during the cost containment process. Second, the Public Advocate, in its statutorily mandated role as Rate Counsel, can provide a voice for rate payers in the cost reduction process.

RESPONSE: The Department would be pleased to have the input of the Department of the Public Advocate on the issue of the effect on access of cost reduction plans. To this end, the Public Advocate is to be provided with copies of hospital proposals for cost reduction plans and monitoring reports provided by the hospital during the cost reduction plan.

COMMENT: It costs more to provide two services, (clinic and emergency) than one. This makes the proposed shifting of patients to another ambulatory setting more costly to the health care delivery system.

RESPONSE: The Department will not recommend approval of cost reduction plans if they unreasonably add to the costs of the health care delivery system. Cost reduction plans are designed to promote efficient and appropriate use of health care services, not to add costs.

COMMENT: Uncompensated Care which has been determined to be reimbursable to hospitals is based on each hospital's prospectively determined approved revenue. It has no basis in cost. It may very well have cost a hospital twice as much to treat a particular patient than is determined to be reimbursable uncompensated care for that patient. The hospital's cost has no bearing on reimbursement.

RESPONSE: The Department is focusing on promoting efficiency and appropriateness of care, rather than the costs of the care.

COMMENT: The efficiency criteria for the most part are already covered under the audit procedure and are also unnecessary in the cost reduction area. The remaining areas are covered by other entities and are also unnecessary in the cost reduction area.

RESPONSE: To the extent that a hospital is already in compliance with the cost reduction plan criteria, that hospital would not be requested to submit a cost reduction plan. To the extent that these criteria are covered by other laws and regulations they will not impose any additional burden on the hospitals.

However these regulations are necessary because they give the Department a more focused ability to review hospitals for efficiency and appropriateness than the current audit.

COMMENT: The proposed language also includes references to a utilization review presence for ambulatory care. Presently, utilization review is primarily focused on inpatient care. The word "focused" also indicates not all inpatient care is reviewed, only certain areas. To review all inpatient care would be cost prohibitive according to many payers. Likewise, the potential work involved in including outpatient services will also substantially increase costs. If the Department mandates utilization review functions in the outpatient area, the reimbursement must also be provided. Jersey City Medical Center requests the regulatory language on ambulatory utilization review, if maintained, be expanded to provide additional reimbursement for the added costs. Also, does this proposal now require all hospitals to be delegated for utilization review functions?

RESPONSE: The Department is making reference to internal utilization review to ensure that patients are being treated in an appropriate manner not any additional URO/PRO activities. Hospitals that are effectively managed should already be doing these activities.

COMMENT: Under Section 8:31B-7.8 the regulations speak to cost reduction plans and efficiency criteria. The goal seems to be to force non-emergency patients to be treated in non-hospital ambulatory facilities. It would be extremely difficult from a risk management and public relations standpoint to implement such a policy. In addition there exists the possibility that someone who needs medical care but cannot afford it might get turned away from a private physician's office. Emergency Room rates would have to be recalculated since these types of cases would have been included in the base year and there is the possibility that the hospital would not recover its costs.

RESPONSE: A number of hospitals in New Jersey and elsewhere have initiated relationships with ambulatory centers or groups. The criteria seek to ensure that patients are treated in the most efficient and appropriate setting possible. This may involve referring the patient to an ambulatory facility within or outside the hospital. However, patients should not be referred after triage unless the hospital has verified that services could be available to them in the alternate setting. Thus, there should be no liability issue.

Reasonable uncompensated care should not include care delivered in an inappropriate setting.

COMMENT: While hospitals generally have some triaging mechanism for the Emergency Room, questions of liability are always present when directing patients from an emergency room to other sources of care.

RESPONSE: Patients should be referred to more appropriate settings after triage only if the hospital has verified that services would be available to them in the alternate setting. This combination of activities should eliminate liability issues.

COMMENT: N.J.A.C. 8:31B-7.8(a)1iv. (Appropriateness criteria) requires that hospitals make an effort to refer patients outside the hospital setting and implies they may be penalized for not doing so. Recently, the Medicaid emergency room denial issue focused on the problem associated with hospitals attempting to refer patients when they present themselves for treatment.

RESPONSE: The reasonable costs of uncompensated care should not include care delivered in inappropriate sites. However, referral cannot be made if there are no available appropriate sites outside the hospital.

COMMENT: Adding a requirement that hospitals make a good faith effort to quantify the effects of each cost reduction plan element will make the plan more meaningful as a cost reduction tool, and aid all parties in assessing the adequacy of the plan both as proposed and implemented by the hospital.

RESPONSE: The Department agrees that this requirement would assist in the implementation and monitoring of cost reduction plans. However, nothing in the regulations would bar the Department from including this in the format of a cost reduction plan.

COMMENT: N.J.A.C. 8:31B-7.8(a)2. requires that "the price of ambulatory services to the uninsured is reasonable and consistent with the type of services provided." This implies that, if a treatment is not deemed suitable for the emergency room, the Department may recommend a lesser rate. This is inappropriate as a function of the Uncompensated Care Trust Fund and should be considered as part of utilization review guidelines.

RESPONSE: The Department is currently considering the concept of two tiered payment for emergency room services. This payment decision is an appropriate function for the Uncompensated Care Trust fund in its efforts to determine reasonable costs for uncompensated care. The Trust Fund legislation authorizes the Commission to approve the reasonable cost of uncompensated care. One criteria for reasonableness would be whether care was delivered in an appropriate site.

COMMENT: The Cost Reduction Plan appears to be directed solely toward the delivery of ambulatory care. The example of triaging ER patients to a clinic setting was mentioned. This may actually increase the dollar amount of uncompensated care to be addressed by the Trust Fund. Benefit coverage provided by many insurance carriers for outpatient clinic service is not generally as broad as that provided for emergency room service. Consequently, the actual dollar amount of uncompensated care may increase unless the insurance industry alters its benefit coverage to better provide for outpatient clinic services.

RESPONSE: The cost reduction plan section is primarily directed toward the delivery of ambulatory care because a disproportionate amount of hospital uncompensated care is provided in ambulatory settings. The Department is interested in cost reduction plans that increase the appropriateness and efficiency of uncompensated care delivery. The extent to which insurance coverage problems create additional uncompensated care would be addressed in the determination of the economic feasibility of a cost reduction plan.

COMMENT: All costs determined to be excessive have already been carved out of the system through the application of disincentives. Hospitals determined to have disincentives in the 1982 base year have had those dollars removed from their rates each and every year since 1984. Therefore, they have already been forced to either reduce their costs or incur losses from operations. Application of a cost reduction plan at this point is overkill and should be removed from these proposed regulations.

RESPONSE: The cost reduction plans will be focused towards the appropriateness of services and the efficiency of operations. Reductions in uncompensated care costs are to be obtained by increasing the appropriateness and efficiency of service delivery.

COMMENT: Hospitals have little control over those patients who either cannot or will not pay for the care rendered. Existing reimbursement regulations are both specific and comprehensive with respect to steps hospitals must follow to assure that only reasonable determinations of charity or bad debts are made. The "efficiency criteria" are redundant. These items are already included as a part of the hospital's credit and collection procedure required by existing regulations and are reviewed

during the Department's audit process. The appropriateness criteria contain requirements which are both costly to implement and unjustified on a cost/benefit basis.

RESPONSE: The efficiency criteria follow existing legislation and regulations. This means that a hospital complying with the required procedures would not be requested to submit a cost reduction plan on this point. However, the use of the criteria is not redundant; it strengthens the Department's ability to require compliance with its credit and collection policies.

COMMENT: The specifics of a cost reduction plan are unclear and vague. Before any plan can be formulated, a problem must be identified. Since the method of identifying the problem and what constitutes a problem has not been determined, any plan which will correct an unknown problem is presumptuous. Specific criteria defining what is considered a problem must be formulated first.

RESPONSE: The efficiency and appropriateness criteria in N.J.A.C. 8:31B-7.8 define what the Department is looking for in terms of efficient and appropriate delivery of uncompensated care in the ambulatory setting. Hospitals found to be providing inefficient and inappropriate care, as defined by these criteria, may be asked to submit a cost reduction plan.

COMMENT: Included within the appropriateness criteria should be a statement that funding will be approved for hospitals to provide the necessary staff for the utilization review and patient management system.

RESPONSE: This criteria relates to internal management controls that make economic sense as well as add to the efficiency and appropriateness of uncompensated care.

COMMENT: It should be noted that most outpatient services are private referred visits which are ordered by physicians not employed by the hospital based upon findings in their office practices. The establishment of a "review system" to determine whether such physician orders are inappropriate or excessive would result in additional hospital costs. There are over 100,000 such visits per year at this hospital which would require review.

The proposed regulations would increase the costs of rendering outpatient care and, accordingly, increase the costs of uncompensated care rather than decrease the costs.

RESPONSE: This section is intended to focus on care rendered in clinics and emergency rooms to persons receiving primary care not ancillary services, in the hospital. Therefore, it is unlikely the Department would request a cost reduction plan related to private referred outpatient services.

General Comments

COMMENT: The proposal contains adequate safeguards which should protect the integrity of the Uncompensated Care Trust Fund. I would oppose any weakening or elimination of these controls which include provisions that require hospitals to submit written procedures for bad debt/charity care and to provide for an effective triage and UR system as well as an effective screening and billing system.

RESPONSE: The Department acknowledges this positive comment.

COMMENT: We have received the Regulations and fully agree with the Social Impact which more equitably spreads the uncompensated care costs.

RESPONSE: The Department acknowledges this positive comment.

COMMENT: We were supportive of the legislation (P.L. 1986 c.204) to establish the Trust Fund and have been active in the development of the regulations under the auspices of the Steering Committee on Health Care for the Uninsured. The regulations, as proposed, will ensure the equitable and appropriate collection and disbursement of payments for uncompensated care in New Jersey. Additionally, the requirements for cost reduction plans will ensure that the services financed by the Trust Fund are provided in the most appropriate and cost effective manner.

RESPONSE: The Department acknowledges this positive comment.

COMMENT: We hope that the HCAB does not approve all the unnecessary and duplicative regulations which will do nothing more than overshadow the benefit gained by the implementation of the Uncompensated Care Trust Fund by sections 8:31B-7.4 and 7.5.

RESPONSE: The Department finds the proposed regulations necessary to ensure policymakers and payers that funds for uncompensated care services are being spent in the most efficient and cost effective way, as required by the Uncompensated Care Trust Fund Act.

COMMENT: The regulations are extremely difficult to comprehend as they are written. It is not fair to have regulations so broadly written that interpretations can encompass almost anything.

RESPONSE: The Department has attempted to promulgate clear regulations and has tried to maximize industry understanding of these provisions through an educational seminar, responses to individual hospital's questions, and the responses to the comments.

COMMENT: We support the substance of the proposed Trust Fund regulations. These regulations present a comprehensive and equitable program for addressing the current uncertainties in the "all payer" system. They effectuate the intent of the pool legislation, and allow hospitals serving a high proportion of New Jersey's medically needy population to do so without placing themselves at a competitive disadvantage with respect to other hospitals.

RESPONSE: The Department acknowledges this positive comment.

COMMENT: Under N.J.A.C. 8:31B-7.1(d) hospitals who legally will receive PPS payments in excess of Chapter 83 will have these funds applied to Chapter 83 uncompensated care costs. The economic impact of this will be to allocate revenue not for uncompensated care into the state uncompensated fund. This conflicts with the economic impact statement that these regulations do not change the amount of funding only the distribution.

RESPONSE: This subsection of the regulation has been withdrawn at this time and will be repropoed at the July HCAB meeting.

COMMENT: The regulations must provide penalties for hospitals which fail to comply with the Trust Fund requirements. However, hospitals may confuse a reduction in their uncompensated care factor with a reduction in their duty to provide access to the medically indigent. Penalties should be a monetary fine which is payable to the Trust Fund.

RESPONSE: The regulations provide for penalties under three circumstances: failure to make payments to the Trust Fund; failure to submit or implement a cost reduction plan; and failure to submit documentation on an annual basis. The first two penalties are required by the Trust Fund Statute to be implemented through reductions in uncompensated care payments. The Department has amended the proposal to provide for a penalty not to exceed \$200.00 per day for failure to submit documentation under N.J.A.C. 8:31B-7.6(a)1.-6. This amendment will limit the amount of penalty to a maximum daily figure, thus adding to a hospital certainty of the potential consequences of failing to comply with this section. Moreover, it is likely that this amendment will produce lower penalty amounts than the prior proposal language which contained no limits.

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

SUBCHAPTER 7. UNCOMPENSATED CARE TRUST FUND

8:31B-7.1 Purpose

(a) The Uncompensated Care Trust Fund is established to ensure equitable and appropriate collection and distribution of payment for uncompensated hospital care and thereby to protect the fiscal solvency of the State's general hospitals, and to ensure that residents who cannot pay for needed hospital care have equal access to such care. The Uncompensated Care Trust Fund is not a payer of care

(b) The intent of the Trust Fund is to collect and distribute payments made to hospitals by payers of care for bad debt and charity care for which no other source of payment is available. Hospitals are required to make a good faith effort to identify all possible sources of public and private funding and to secure all available and appropriate payments from these sources before allocating costs for bad debt and charity care to uncompensated care.

(c) The Uncompensated Care Trust Fund has the following functions:

1. To calculate the appropriate uncompensated care add-on to hospital rates;

2. To collect from and transmit payments to hospitals for uncompensated care for a current rate year. No year end reconciliation for any year will be carried out through the Trust Fund;

3. To collect through hospital rates in order to repay any money appropriated to the Fund from the State Treasury; and

4. To collect from hospitals to pay for the administration of the Trust Fund. This includes:

- i. Administration of the Trust Fund Advisory Committee;
- ii. Research into causes of and solutions to uncompensated care;
- iii. Development of strengthened uncompensated care auditing procedures.

[(d) Sources of public and private payment shall include but not be limited to any revenue paid to the hospital in excess of what would have been paid pursuant to the New Jersey Chapter 83 system.]

*[(e)]***(d)* Payments from the Trust Fund are not intended to constitute payments to or on behalf of individuals for the purpose of determining individual or dependent eligibility for public programs or assistance.

8:31B-7.2 Definitions

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

"Commission" means the Hospital Rate Setting Commission established pursuant to Section 5 of P.L. 1978, c. 83 (N.J.S.A. 26:2H-4.1).

"Commissioner" means the Commissioner of the State Department of Health.

***"Department" means the State Department of Health.*

"Hospital" means a general acute care hospital whose schedule of rates is approved by the Commission pursuant to Section 11 of P.L. 1978, c. 83 (N.J.S.A. 26:2H-18.1).

"Payer" means a governmental or non-governmental third-party payer or any purchaser of hospital services whose hospital reimbursement rates are established by the Commission.

"Statewide amount of uncompensated care" means the sum of the hospital-specific amounts of approved uncompensated care in all hospitals.

"Uncompensated Care Trust Fund Reserve" means an amount equal to 1/12 of the fund's total estimated annual payment for uncompensated care costs for the prior calendar year, except that during the first year of the fund the reserve shall be equal to 1/12 of the estimated annual payment for uncompensated care costs for the current calendar year.

8:31B-7.3 Determination of uniform statewide uncompensated care add-on

(a) The statewide uncompensated care add-on shall be determined by dividing:

1. The statewide amount of approved uncompensated care; plus an amount adequate to repay any direct appropriation of State funds; plus an amount to fund the reasonable cost of administering the fund; plus an amount to maintain the Trust Fund reserve, by

2. The statewide amount of approved revenue for all payers and approved revenue for medically indigent persons minus the statewide amount of approved uncompensated care.

(b) The statewide amount of approved uncompensated care and the statewide amount of approved revenue for all payers shall be determined prior to January 1 of each year and July 1 of each year from the most recent reliable aggregate group of hospital Chapter 83 actuals and rate reports available as determined by the Department.

(c) Any payments from the Trust Fund reserve made during the calendar year shall be restored through the Trust Fund during the following one calendar year period. The uncompensated care add-on shall be calculated so that the entire appropriation of \$15,000,000 is restored by the end of the calendar year 1988.

(d) Any interest payments credited to the benefit of the Trust Fund shall be used to reduce the amount of the uniform statewide uncompensated care add-on for the next period, except that, prospectively estimated interest to accrue for the period July 1 through December 31, 1988 shall be used to reduce the amount of the uniform statewide uncompensated care add-on for that period.

(e) Costs for administering the fund and for related research activities shall be included in the uniform statewide uncompensated care add-on on a current basis.

8:31B-7.4 Payments of Hospital and Trust Fund

(a) Payments to the Trust Fund shall be made on the last banking day of the month through an automated clearing house by electronic fund transfer or in any other method specified by the Commissioner.

(b) Payments from the Trust Fund shall be made on the 15th day of each month through an automated clearing house or any other method specified by the Commissioner. If the 15th day of the month falls on a weekend or holiday, payment shall be made on the first banking day after the 15th.

8:31B-7.5 Delinquent payments

(a) Payments to the Trust Fund are delinquent if there are insufficient funds in the hospital's account which is accessible to the Department by automated clearing house or other method specified by the Commissioner to pay the hospital's required payment to the Trust Fund on the last working day of the month, or if the hospital fails to provide access to an account.

(b) The penalty for any delinquent payments shall be one percent of the amount owed. The penalty will rise to two percent after 15 days, three percent after 30 days, four percent after 60 days and five percent after 90 days. After 45 days, the Department may recommend to the Commission that the delinquent hospital's rates be reduced by the amount of the uniform statewide uncompensated care add-on until all delinquent payments are received by the Department. After all delinquent payments

are received, the statewide add-on may be returned to the hospital's rates by the Commission. Uncompensated Care revenues for the period when the add-on was removed will be collected through the hospital's rates, not through the Trust Fund.

(c) Penalties within the stated limits*, **once the Commission has determined at its discretion to impose penalties,*** shall be implemented by the Commission. Hospitals may not recover the amount of penalties from either the Uncompensated Care Trust Fund or the Chapter 83 system.

8:31B-7.6 Documentation requirements

(a) Each hospital shall submit annually, or at longer intervals at the discretion of the Department, two copies of the following written statements to the Department in a format provided by the Department:

1. The hospital's written materials for informing individuals about its charity care policy and governmental medical aid programs including, but not limited to, Chapter 83, Hill-Burton program, Medicaid, including the Medically Needy program, and Public Welfare. The written materials shall include, but not be limited to, any documents given to patients, written instructions for hospital personnel who determine charity care eligibility, any forms used in the eligibility determination process and the criteria used by the hospital to determine*[d]* eligibility for charity use.

2. A written statement signed by the Chief Executive Officer outlining the hospital's procedures for:

- i. Determining eligibility for charity care or insurance coverage/ability to pay;
- ii. Verifying charity care eligibility or insurance coverage;
- iii. Following appropriate collection procedures; and
- iv. Determining whether ***and when*** to write off accounts.

3. A written statement signed by the Chief Executive Officer outlining the hospital's policies on providing charity care without respect to race, color, national origin, creed or any other ground unrelated to the individual's need for the service or the availability of the needed service, and the hospital's written patient appeals process regarding refusal to provide charity care.

4. A written statement signed by the Chief Executive Officer indicating that the hospital is not submitting unpaid items including, but not limited to, medical denials, courtesy adjustments (discounts), and unpaid Medicare deductible and coinsurance items ***not subject to Medicare waiver provisions*** as uncompensated care.

5. A written statement from the Chief Executive Officer that the hospital is applying its charity care and bad debt criteria consistently and equitably.

6. A written statement signed by the Chief Executive Officer describing the relationship between the hospital and any collection agencies it intends to use during the year. The hospital also must submit copies of all contracts between the hospital and its collection agency(ies) as well as a statement indicating the number and amount of accounts turned over to each collection agency.

(b) The information required under (a) above shall be submitted to the Department annually by December 1.

(c) The hospital's written statements submitted pursuant to this section shall remain in effect throughout the rate year unless the hospital informs the Commission of any changes to the policies at least 30 working days prior to implementation of the change and receives the Commission's approval for such change.

(d) The Commission may ***[reduce a hospital's uncompensated care approved revenue]* ***implement a penalty not to exceed \$200.00 per day*** if:**

1. The hospital has failed to submit the required information on a timely basis; or
2. The Commission finds that the hospital's policies are inadequate or inappropriate when judged against the charity care and bad debt credit and collection requirements of N.J.A.C. 8:31B-4.38 through 4.40, and the requirements of N.J.A.C. 8:31B-7.7; or
3. The Commission finds that the hospital failed to implement its policies consistently and equitably or failed to follow its policies as submitted to the Commission without advance notice to and approval of the Commission.

8:31B-7.7 Audit

Uncompensated care audits shall be conducted pursuant to N.J.A.C. 8:31B-4.38 through 4.40.

8:31B-7.8 Cost reduction plans

(a) The Commission shall ensure that uncompensated care services financed through the Uncompensated Care Trust Fund are provided in the most appropriate and cost-effective manner which the Commission determines hospitals can reasonably be required to achieve. Criteria to

define when a hospital is failing to engage in efficient and appropriate provision of care shall include but not be limited to the following:

1. Appropriateness criteria:

i. Presence of an effective triage system in the emergency room or other entry point into the ambulatory care services; ***An effective triage system is one that ensures that patients are treated in the most appropriate delivery site and level of care that is feasible to provide, and according to a cost-effective plan.***

ii. Presence of an effective patient tracking and information system;

iii. Presence of a utilization review system for ambulatory care designed to prevent inappropriate or excessive visits;

iv. Presence of a system of patient management that assures appropriate ambulatory care referrals and services in the hospital and refers patients to non-hospital ambulatory providers when appropriate; and

v. Evidence of good faith effort to establish an appropriate relationship with primary care provider(s) outside the hospital for referral of patients needing primary care.

2. Efficiency criteria:

i. Presence of an effective screening and billing system to identify third party coverage, to classify patients correctly as charity care or self pay, and to maintain records which distinguish accounts by inpatient/outpatient and bad debt/charity care;

ii. Demonstration of effective collection efforts for non-charity care uninsured patients and third party insurers;

iii. Care is provided to uninsured patients in efficiently managed settings;

iv. The ***[price]* ***charges*** of ambulatory services to the uninsured ***[is]* ***are*** reasonable*, as determined by the Commission pursuant to Chapter 83 regulations*** and consistent with the type of services provided;**

3. Additional criteria may be determined prospectively by the Commission.

(b) Based on the criteria in (a) above, the Commission will ***order a cost reduction plan at its own initiative or*** evaluate the Department's request for the Commission to issue an order for a hospital to submit a cost reduction plan. If ordered by the Commission, and unless otherwise stipulated by the Commission, the hospital must submit the cost reduction plan to the Commission within 30 working days of the issuance of the order. At the same time, copies of the cost reduction plan must be sent to the Department and the Public Advocate's office.

(c) The Department will review the hospital's cost reduction plan for compliance with the Commission's order and make a recommendation to the Commission on whether to accept the plan. The Commission will review the cost reduction plan and the Department's recommendation and decide to:

1. Accept the plan;
2. Accept the plan with modifications;
3. Direct that the hospital revise the plan; or
4. Reject the plan.

(d) The Commission will establish a timeframe not to exceed 90 days for the initial implementation of the activities required under each cost reduction plan. The Commission may reduce a hospital's uncompensated care amount in accordance with its order if:

1. The hospital fails to submit a cost reduction plan within the specified timeframe;
2. The Commission rejects the cost reduction plan for failure to comply with the Commission's order; or
3. The Commission finds that the hospital has not taken appropriate action to implement the cost reduction plan within the stated timeframes.

[(a)]*(e) The Department will monitor the hospital's implementation of the cost reduction plan. The hospital shall provide any information determined by the Department to be relevant to this monitoring function. The hospital shall report semi-annually to the Commission on the implementation of the cost reduction plan. Copies of the report shall be provided to the Department and the Public Advocate's office.

(f) At any time after the initial semi-annual report, the Department or the hospital may return to the Commission for a new or revised order for a cost reduction plan.

(g) The Commission may order the termination of a cost reduction plan upon a finding that*, **in view of the plan's successful implementation,*** the hospital is no longer engaging in inefficient and inappropriate provision of care.

(h) Reductions approved pursuant to (d) above shall be effective for the rate year for which the plan was ordered and for subsequent rate years until a plan ***[is]* approved by the Commission ***is implemented***.**

**DIVISION OF HEALTH PLANNING AND RESOURCES
DEVELOPMENT**

(a)

**Certificate of Need: Cardiac Diagnostic Facilities
Readoption with Amendments: N.J.A.C. 8:33E-1**

Proposed: April 20, 1987 at 19 N.J.R. 606(a).

Adopted: June 22, 1987 by Molly Joel Coye, M.D., M.P.H.,
Commissioner, Department of Health (with approval of the
Health Care Administration Board).

Filed: June 23, 1987 as R.1987 d.294, **with technical changes** not
requiring additional public notice and comment (see N.J.A.C.
1:30-4.3(c)).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: June 23, 1987 for Readoption; July 20, 1987 for
Amendments.

Expiration Date: June 23, 1992.

Summary of Public Comments and Agency Responses:

Hospital Planning and Marketing Society of New Jersey
(HPMSNJ)
Our Lady of Lourdes Medical Center (OLOL/MC)
Jersey City Medical Center (JCMC)
Community Memorial Hospital (CMH)
Stephen J. Daly, D.O.
Somerset Medical Center (SMC)
Middlesex Medical Associates
N. Natarajan, M.D.
Association for Ambulatory Cardiac Catheterization (AACC)
Wichita Heart Center, L.P.
Mountainside Hospital (MH)
Raritan Bay Health Services Corporation (RBHSC)
West Jersey Health System (WJHS)
St. Joseph's Hospital and Medical Center (SJH/MC)
Ashok Kunar, M.D.
The Valley Hospital (VH)

COMMENT: Two of the commentors (Middlesex Medical Associates,
and Ashok Kunar, M.D.) were concerned that the proposed annual
physician volume requirement (50 cases) for coronary angio-
graphy/catheterization is arbitrary and could promote unnecessary
procedures and complications. It is suggested that operator proficiency
can best be judged by complication rates rather than by the number of
cases performed annually.

RESPONSE: The minimum annual physician volumes proposed for
cardiac catheterization procedures at N.J.A.C. 8:33E-1.2(d) are guidelines
which were originally recommended by the Commissioner's Cardiac Ad-
visory Committee (CCAC) and most recently by the New Jersey Cardiac
Services Task Force. This numerical volume level has been included in
the rule for the past five years and is intended to be used by hospital
credentialing bodies, together with other indicators of physician per-
formance (that would certainly include the rate of complications), in
determining the suitability of maintaining cardiac catheterization privi-
leges in any given invasive cardiac diagnostic laboratory.

COMMENT: In commenting on the requirement that invasive cardiac
diagnostic procedures be performed in a hospital-based facility (N.J.A.C.
8:33E-1.2(f)), Our Lady of Lourdes Hospital was supportive while both
the Association for Ambulatory Cardiac Catheterization (AACC) and the
Wichita Heart Center, L.P. (WHC) provided information and data on
the performance of free-standing outpatient cardiac catheterization labo-
ratories existing in several states throughout the country.

RESPONSE: A number of highly reputable professional organizations
(that is, American College of Physicians, American College of
Cardiology, American Heart Association) as well as the January, 1987
report of the New Jersey Cardiac Services Task Force have recommended
that invasive cardiac diagnostic services should be restricted to hospital-
based settings and should not be provided in free-standing units which
lack ready access to inpatient support services. For several years the
Department of Health has encouraged the development of outpatient
cardiac catheterization at hospital-based settings. Several applicants have
indeed received certificate of need approval to provide this type of service.
The movement of this type of invasive cardiac diagnostic procedure to
the outpatient free-standing site, however, would offer the patient no

medical benefit but could lead to unnecessary risk associated with
diminished access to emergent hospital-based care and reduced quality
assurance.

COMMENT: A total of six commentors (HPMSNJ, CMH, RBHSC,
MH, WJHS, SMC) disagreed with the retention of language contained
at N.J.A.C. 8:33E-1.11, which restricts consideration of new facilities to
those health service areas where the existing providers meet the minimum
annual volume requirement specified at N.J.A.C. 8:33E-1.2(b), and
further permits the approval of no more than one new facility in a given
health service area until all existing and approved providers achieve
minimum volume levels. One comment was received (i.e., OLOL/MC)
which supports the retention of this language. HPMSNJ, SMC and CMH
state that the intent of this language is already satisfied by the sanctions
contained in the compliance section (N.J.A.C. 8:33E-1.10), while MH
states that other factors contained at N.J.A.C. 8:33E-1.11(c) adequately
address this issue. RBHSC argues that a reasonable distance should be
established, similar to that included in the renal dialysis rule, rather than
the use of an entire health service area. WJHS suggests that hospital
service area should be the primary consideration, rather than the entire
health service area. OLOL/MC, on the other hand, is supportive of this
section on the basis of the established link between volume and outcome
and the cost implications of a proliferation of these services.

RESPONSE: In the Department's view, retention of this section is
essential in maintaining quality invasive cardiac diagnostic services at
affordable costs. It was the view of the New Jersey Cardiac Services Task
Force that, since most of these procedures are performed on a non-
emergent basis, the appropriate networking of services would "enhance
quality and reduce long-term costs". The Department not only shares
these views, but considers the existing language to be supportive of this
view as well.

The existing section has been in place since 1982, and has permitted
the Certificate of Need approval of three new invasive cardiac diagnostic
facilities (that is, St. Francis Medical Center, Englewood Hospital, Atlan-
tic City Medical Center/Mainland Division), the relocation of an existing
facility (Jersey City Medical Center) and the expansion of invasive cardiac
diagnostic services at eight of the nine adult cardiac surgery centers in
the State. Historically, unlike the addition of new cardiac surgery centers,
utilization of new cardiac catheterization services have been relatively
slow in developing. Allowing additional services during this development
stage would seriously jeopardize the volume at these new cardiac
diagnostic services and increase the cost of providing these services.

COMMENT: Two commentors (MH and Steven J. Daly, D.O.) ques-
tioned the appropriateness of the one-year allotted existing shared labo-
ratories to achieve compliance with annual minimum utilization levels (at
N.J.A.C. 8:33E-1.2(b)). (These levels are being increased from 250 to 500
cases annually.) MH considers the one year phase-in period to be too
short, indicating that "demonstrated progress toward achieving the new
minimum volume, as well as other quality indicators, should be examined
when reviewing the status of existing labs". Dr. Daly also considers the
one-year phase-in period to be inadequate. Both Dr. Daly and MH also
consider the proposed new minimum volume level of 500 cases annually
to be overly burdensome on "shared" laboratories.

RESPONSE: The one-year phase-in period allocated to existing
providers is consistent with the recommendation for the New Jersey
Cardiac Services Task Force. In actual practice, the existing shared labo-
ratories in the State are being utilized well-above the previous minimum
utilization level (250 cases annually). Since Statewide utilization of in-
vasive cardiac diagnostic services have increased an average 15 percent
per year since 1979, the vast majority of existing shared laboratories
should be able to achieve the proposed new minimum utilization level
in the one-year time period. It should also be emphasized that the sanc-
tions included in this section are discretionary and not mandatory, which
would allow a degree of flexibility in "demonstrating progress" in achiev-
ing minimum utilization levels.

The minimum utilization level of 500 cases annually is being extended
for all invasive cardiac diagnostic services, whether they are shared or
dedicated. The average invasive cardiac diagnostic program utilization
in New Jersey during 1986 was 1,140 cases annually. During 1986, two
of the State's five shared laboratories average 633 cases per laboratory.
The achievement of 500 cases per laboratory amounts to an average of
less than two cases per day, a level which is readily achievable by both
shared or dedicated facilities.

COMMENT: Three comments were received regarding the require-
ment, at N.J.A.C. 8:33E-1.6, that at least one referral agreement must
be with a cardiac surgery center that is within "one hour over the road
travel time from the diagnostic facility to insure prompt referral in the

event of an emergency." All three commentors, (HPMSNJ, MH and JCMC), indicated that helicopter service agreements should be considered as an alternative for rural areas of the State.

RESPONSE: The geographic distribution of the State's existing invasive cardiac diagnostic services are such that, with the exception of remote and sparsely populated portions of south and northwest New Jersey, virtually the entire State is well within one hour over the road travel time from an existing cardiac surgery center. In view of the fact that a statewide emergency helicopter services is imminent, however, the Department has deleted the words "over the road" to allow consideration of helicopter service agreements as a means of complying with this aspect of the rule. It is the amount of time, rather than the mode of travel, which is the relevant factor in including this requirement in the rule.

COMMENT: Three comments were received concerning the composition and charge of the ongoing Commissioner's Cardiac Services Committee (CCSC). The three commentors (that is, HPMSNJ, MH, JCMC) seek assurance that there will be appropriate physician specialty, nursing, and type of facility representation as well as geographic representation on the CCSC. These three commentors also applauded the absence of CCSC involvement in certificate of need review.

RESPONSE: The Commissioner is aware of the need to provide appropriate representation on the CCSC. To the greatest extent possible, there will be a full range of physician and non-physician representation that will be appropriate to fulfill the Committee's charge. It must also be stated that the CCSC is by no means restricted from involvement in the technical aspects of certificate of need projects and will in all likelihood become involved in the technical issues at the discretion of the Commissioner in accordance with N.J.A.C. 8:33E-1.5(a)3.

COMMENT: The JCMC questioned whether "new" and "existing" service required further definition. An example is given of a program that has ceased operations for total refurbishment and whether this service would be considered new or existing when it becomes operational again.

RESPONSE: The determination of new or existing is dependent on the circumstances leading to the certificate of need approval to initiate or continue the service and the conditions placed on those approvals. The specific case of JCMC is being clarified through discussions between the Department and JCMC.

COMMENT: A total of seven commentors (that is, SJHMC, VH, HPMSNJ, JCMC, MH, Drs. Daly and Natarajan) addressed the issue of electrophysiology (EPS) standards and criteria, which were essentially deleted from the rule (with the exception of a definition at N.J.A.C. 8:33E-1.1(a)1.ii.) prior to its publication in the New Jersey Register.

RESPONSE: These comments will not be acted upon at this time. The issue of EPS has been addressed in proposed amendments to this rule published in this issue of the Register.

COMMENT: One comment was received from Dr. Natarajan regarding minimum staffing for cardiac catheterization procedures. Dr. Natarajan states that while one physician, one registered nurse, and one technician can handle routine cases, this team would be inadequate if hemodynamic and arrhythmia complications were to occur.

RESPONSE: The rule provides minimum staffing levels (at N.J.A.C. 8:33E-1.3(a)) that are intended to provide high quality care to patients requiring this service. Additional personnel may be present during this procedure, at the discretion of the physician-in-charge.

COMMENT: Dr. Natarajan requested a clarification regarding the minimum qualifications for a catheterizing physician contained at N.J.A.C. 8:33-1.3(b)1. In effect, does "12 months in a cardiac catheterization training program" necessarily mean spending 12 months experience in a catheterization laboratory.

RESPONSE: The requirement pertains to the duration of the catheterization training program. The extent of actual laboratory experience may vary from program to program, which is why the number of catheterization procedures required during the training period is also included as part of this requirement.

Full text of the adoption follows (deletions from proposal indicated in brackets with asterisks *[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 colocated, 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 Inter-Society Commission for Heart Disease Resources (I.C.H.D.) and the New Jersey Cardiac Services Task Force support 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.

(d) The standards and criteria defined in this subchapter shall apply to the efficient delivery of quality invasive cardiac diagnostic services within the setting of the 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 for the more comprehensive cardiac surgery center 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 is 500 per year in order to maintain the skills of the catheterization team and the efficiency and effectiveness of the invasive cardiac diagnostic service. 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.

(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).

(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 Commissioner's Cardiac Task Force recommends that each physician should perform 50 cases a year with a minimum of 100 cases over a two year period. (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. One technician.

(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 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.

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 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.

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 (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 (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.

(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 services committee

(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 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-1.8 Statistical data required

At the request of the Commissioner, 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 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, Room 405, CN 360, Trenton, New Jersey 08625.

8:33E-1.9 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-1.10 Compliance

Facilities, which are providing cardiac diagnostic services without cardiac surgery, must meet the minimal criteria and standards outlined in this subchapter within one year following the effective date of this subchapter and each year thereafter or be subjected 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.

8:33E-1.11 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 minimum levels of utilization as specified at N.J.A.C. 8:33E-1.2(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 minimum levels of utilization as specified at N.J.A.C. 8:33E-1.2(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 area are operating at minimum levels of utilization as specified at N.J.A.C. 8:33E-1.2(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, 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-1.12 Subchapter review

This subchapter will be reviewed and evaluated at least annually by the Commissioner's cardiac services committee.

(a)

Certificate of Need: Cardiac Surgery Centers Readoption with Amendments: N.J.A.C. 8:33E-2.

Proposed: April 20, 1987 at 19 N.J.R. 610(a).

Adopted: June 22, 1987 by Molly Joel Coye, M.D., M.P.H.,
Commissioner, Department of Health (with approval of the
Health Care Administration Board)

Filed: June 23, 1987 as R. 1987 d.296, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: June 23, 1987 for Readoption; July 20, 1987 for
Amendments.

Expiration Date: June 23, 1992.

Summary of Public Comments and Agency Responses:

Written comments were received from the following:

Hospital Planning and Marketing
Society of New Jersey (HPMSNJ)
St. Joseph's Hospital and Medical Center (SJH/MC)
Our Lady of Lourdes Medical Center (OLOLMC)
The Valley Hospital (VH)
Thomas V. Inglesby, M.D.
Atlantic Health Systems, Inc. (AHS)
Burdette Tomlin Memorial Hospital (BTMH)
Hackettstown Community Hospital (HCH)
Health Corporation/Archdiocese of Newark (HCAN)
New Jersey State Nurses Association (NJSNA)
The Mended Hearts, Inc. (Metropolitan Chapter)
John J. Gregory, M.D.
Victor Parsonnet, M.D.
Ames L. Filippone, Jr., M.D.
Robert B. Ambrose, M.D.
Seymour Wexler, M.D.
Carl J. Vitale, M.D.
Thomas A. Lanzilotti, M.D.
Associates in Cardiology, P.A. (AC/PA)
Cardiology Diagnostic Associates, P.A. (CDA/PA)
Cardiology Center of Northwest New Jersey (CCNNJ)
George J. Saviano, M.D.
Erwin Mermelstein, M.D.
John J. Burns, M.D.
Middlesex Medical Associates, P.A. (MMA/PA)

COMMENT: The deletion of the section at N.J.A.C. 8:33E-2.13(b), which had required that each cardiac surgery center in the health service area achieve minimum utilization levels prior to the approval of a new cardiac surgery service in that area, attracted the vast majority of comments. A total of eighteen commentors addressed this issue, with sixteen commentors endorsing the deletion and two advocating the retention of this section. The sixteen comments that supported the deletion of the section were made by:

Hospital Planning and Marketing
Society of New Jersey (HPMSNJ)
St. Joseph's Hospital and Medical Center (SJH/MC)
The Valley Hospital (VH)
Atlantic Health Systems, Inc. (AHS)
Burdette Tomlin Memorial Hospital (BTMH)
Hackettstown Community Hospital (HCH)
Thomas V. Inglesby, M.D.
John J. Gregory, M.D.
Ames L. Filippone, Jr., M.D.
Robert B. Ambrose, M.D.
Seymour Wexler, M.D.
Carl J. Vitale, M.D.
Thomas A. Lanzilotti, M.D.
Associates in Cardiology, P.A. (AC/PA)
Cardiology Diagnostic Associates, P.A. (CDA/PA)
Cardiology Center of Northwest New Jersey (CCNNJ)

The arguments supporting the continued deletion of this section predominantly stress the fact that the continued retention of this section would preclude the development of a successful new program purely on the basis that an existing cardiac surgery center has been unsuccessful in attracting area surgical referrals for whatever reason. The majority of these commentors emphasize that there are other criteria appearing in

this rule that will ensure the protection of patients at existing surgical programs and that sanctions are included which will allow the Department of Health to take action against existing and new programs which fail to meet the utilization standards that are required in the rule.

Two commentors (Our Lady of Lourdes Medical Center, Health Corporation/Archdiocese of Newark) recommended the retention of this section. Our Lady of Lourdes Medical Center emphasizes the direct relationship between volume and outcome, the negative impact that would result from a proliferation of new programs, and the considerable cardiac surgery capacity of the existing cardiac surgery centers in the State. Health Corporation Archdiocese of Newark (HCAN) states that the deletion of this section would negatively impact the financial viability of its St. Michael's cardiac surgery program by permitting duplicative services and jeopardize the provision of such care to the inner city population.

RESPONSE: The Department accepts the vast majority of comments that this specific section of the previous rule (formerly N.J.A.C. 8:33E-2.13(b)) should be deleted. As indicated by many of these commentors, there are sufficient new sections in the proposed rule, dealing with sanctions and additional review criteria (particularly N.J.A.C. 8:33E-2.13(a)4.), which will permit the Department to take into consideration the factors mandated under the Health Care Facilities Planning Act (as amended). These factors (N.J.S.A. 26:2H-8) include:

- (a) The availability of facilities or services which may serve as alternatives or substitutes,
- (b) The need for special equipment and services in the area,
- (c) The possible economies and improvement in services to be anticipated from the operation of joint central services,
- (d) The adequacy of financial resources and sources of present and future revenues,
- (e) The availability of sufficient manpower in the several professional disciplines, and
- (f) Such other factors as established by regulation.

The Department agrees that the deletion of this section will not impede the ability of the planning process "to provide required health care in the area to be served" and assure that these services "can be economically accomplished and maintained" and will indeed "contribute to the orderly development of adequate and effective health care services."

COMMENT: The Hospital Planning and Marketing Society of New Jersey (HPMSNJ) requested a clarification of the intent of N.J.A.C. 8:33E-2.3(a)1. with regard to minimum number of cases required of a new program.

RESPONSE: Under the provisions at N.J.A.C. 8:33E-2.3(a)1. a new program must document an ability to perform a minimum of 350 open heart surgery procedures per year by the end of the third year of operation (thereby justifying the need for a second cardiac surgery operating room). Having achieved this level, however, the new program will then have an additional year to achieve the minimum level of utilization required of an existing cardiac surgery center with two operating rooms. That minimum level is 250 cases per year per operating room and must be achieved by the end of year four of the program. The intent of both the Task Force recommendations and the Department's proposed rule amendment is to approve new programs *only* in those areas that can justify the need for a cardiac surgery program with two operating rooms.

COMMENT: Dr. Victor Parsonnet, a member of the New Jersey Cardiac Services Task Force, commented on the apparent inadvertent omission of a definition of the Surgical Critical Care Unit and its nursing staff ratio.

RESPONSE: The definition and nursing staff ratios are included in the rule at N.J.A.C. 8:33E-2.4(b). This section has been in place for the past five years, but appears in the personnel section rather than in the inpatient facility section.

COMMENT: Our Lady of Lourdes Medical Center (OLOLMC) comments that the number of open heart procedures per physician (at N.J.A.C. 8:33E-2.3(a)5.) should remain at 50 per year rather than the 100 recommended by the New Jersey Cardiac Services Task Force and proposed as a rule amendment by the Department. In a similar vein, OLOLMC also suggests that the minimum PTCA volume level of 75 per year (at N.J.A.C. 8:33E-2.3(d)4.) is excessive and should be reduced to 36 per year. Similar views were offered by Dr. John J. Burns, Dr. Erwin Mermelstein and Dr. George J. Saviano.

RESPONSE: The minimum volume levels for professionals which are proposed in this rule (50 catheterizations annually, 75 PTCAs annually and 100 open heart procedures annually) are intended to be *recommended guidelines* that are to be used by hospital credentialing bodies (together with other appropriate indicators of physician performance) in determin-

ing the suitability of maintaining privileges at any given cardiac surgery center. The Department's intent is identical to that of the New Jersey Cardiac Services Task Force which stated:

"... Rather specific volume standards are recommended for institutions. The recommendations on criteria for professionals which follow are less firm and are intended:

- to serve as guidelines for hospitals to use in developing their own criteria, and
- to permit the State to determine whether a hospital has the appropriate resources when it petitions for CON permission to provide a specific cardiac service.

As is apparent from this statement, the Task Force believes that the hospital professional infrastructure has the best mechanisms of which to judge the qualifications of individual professionals and their competence in carrying out such complex cardiac procedures.

COMMENT: Our Lady of Lourdes Medical Center commented that the volume of PTCA procedures at N.J.A.C. 8:33E-2.4(e)1.i. (100 PTCA procedures with 50 as the primary operator) is inconsistent with the minimum annual physician volume of 75 specified at N.J.A.C. 8:33E-2.3(d)4.

RESPONSE: The volume levels specified in the proposed rule are those intended by the Department and are consistent with the recommendations of the New Jersey Cardiac Services Task Force. The 100 PTCA procedures are N.J.A.C. 8:33E-2.4(e)1.i. refers to the minimum number of procedures that are required during the physician's training period. The 75 PTCA minimum annual volume level at N.J.A.C. 8:33E-2.3(d)4. is to be recommended for all PTCA practitioners subsequent to their training period.

COMMENT: Our Lady of Lourdes Medical Center states that nurses and technicians should be required to be properly trained in Basic Life Support (BLS) rather than Advanced Life Support (ALS) which is proposed in the rule. This lower training level is sufficient since there is always a physician present in the catheterization laboratory.

RESPONSE: The Department concurs with the New Jersey Cardiac Services Task Force which recommended the higher level of training for these personnel. Considering the fact that minimum personnel requirements are being significantly lowered in this proposal, the remaining personnel must be appropriately trained to deal with the occasional emergencies that arise.

COMMENT: The New Jersey State Nurses Association commented that it is pleased that the Department has recognized the value of the registered nurse in every aspect of cardiac surgical care and commended the work of the Task Force (as did several other commentors).

RESPONSE: The Department concurs with these comments.

COMMENT: Three comments were received concerning the composition and charge of the ongoing Commissioner's Cardiac Services Committee (CCSC). The three commentors (HPMSNJ, MH, JCMC) seek assurance that there will be appropriate physician specialty, nursing, and type of facility representation as well as geographic representation on the CCSC. These three commentors also applauded the absence of CCSC involvement in certificate of need review.

RESPONSE: The Commissioner is aware of the need to provide appropriate representation on the CCSC. To the greatest extent possible, there will be a full range of physician and non-physician representation that will be appropriate to fulfill the Committee's charge. It must also be stated that the CCSC is by no means restricted from involvement in the technical aspects of certificate of need projects and will in all likelihood become involved in the technical issues at the discretion of the Commissioner in accordance with N.J.A.C. 8:33E-1.5(a)3. and N.J.A.C. 8:33E-2.6(a)3.

COMMENT: A total of seven commentors (SJH/MC, VH, HPMSNJ, JCMC, MH, Drs. Daly and Natarajan) addressed the issue of electrophysiology (EPS) standards and criteria, which were essentially deleted from the rule (with the exception of a definition at N.J.A.C. 8:33E-2.2(a)) prior to its publication in the New Jersey Register.

RESPONSE: These comments will not be acted upon at this time. The issue of EPS has been addressed in proposed amendments to this rule published in this issue of the New Jersey Register.

Full text of the adoption follows.

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 reasonable cost to the consumer.

(b) A regional cardiac surgical center is defined as a 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 rule for open heart surgery are minimal for all cardiovascular surgical procedures.

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-2.3 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 at least a total of 350 adult open heart surgical procedures by the end of the third year 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 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. 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.

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 Services Task Force (CSTF) has recommended that a minimum of 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.

(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.

(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 500 per year in order to maintain the efficiency and the skills of the catheterization team.

i. Each invasive cardiac diagnostic 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 Cardiac Services Task Force recommends that each physician should perform 50 cases a year with a minimum of 100 cases over a two year period.

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-2.4 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 250 open heart procedures the basic team of the regional cardiac surgical center for each operation 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 qualified surgeon. A cardiothoracic surgery resident or fellow may serve as an assistant. There shall be two surgeons in the operating room;

iii. 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 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. 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 postoperative 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. One technician.

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 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;

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-2.5 Use of inpatient facilities

(a) In a center performing 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, 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 postoperative care. It shall include 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-2.6 Commissioner's cardiac services committee (CCSC)

(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-2.7 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 invasive cardiac diagnostic facilities in its service area or health services area, whichever is larger.

8:33E-2.8 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 Commissioner's cardiac services committee (CCSC) based on the utilization of cardiac surgical resources reported to the department on a quarterly basis.

8:33E-2.9 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 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, 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 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.

8:33E-2.14 Review

This subchapter will be reviewed and evaluated 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**

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

Proposed: April 20, 1987 at 19 N.J.R. 614(a).

Adopted: June 22, 1987 by Molly Joel Coye, M.D., M.P.H.,

Commissioner, Department of Health (with approval of the
Health Care Administration Board)

Filed: June 23, 1987 as R.1987 d.295, **without change.**

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

Effective Date: July 20, 1987.

Expiration Date: July 19, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

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 tempo-
rarily exceed licensed bed capacity shall be as follows:

i. The Department of Health shall accept written requests to tempo-
rarily exceed licensed bed capacity.

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 year period from the date the facility is approved by the Depart-
ment 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.

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.

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, which-
ever is applicable.

3. (No change.)

(b) (No change.)

DRUG UTILIZATION REVIEW COUNCIL

(b)

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: April 20, 1987 at 19 N.J.R. 615(a).

Adopted: June 16, 1987 by the Drug Utilization Review Council,
Sanford Luger, Chairman.

Filed: June 23, 1987 as R.1987 d.297, 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: July 20, 1987.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

Regarding chlorpromazine:

Mr. J. Dobrenski, representing Smith Kline Beckman, stated that the
PharmBasics chlorpromazine tablets have a "BP" rating by the FDA,

and that the Council has not added such BP products to the Formulary
in the past.

The Council agreed and rejected this product.

Regarding trifluoperazine:

Mr. J. Dobrenski also commented that this Bolar product has not yet
received an FDA therapeutic code.

The Council agreed and deferred action on this product.

Regarding oral contraceptives:

Mr. J. Holleman, representing Ortho, objected to all proposed
substitutes for Ortho-Novum. He said that the Corona formulation is
no longer marketed by Searle, and that listing the Syntex formulation
as "Ortho-Novum formula" was incorrect in that the excipients in the
two products differ.

Mr. Holleman also stated that it would be inappropriate to allow
substitution for oral contraceptives because of the consequences that may
attend patient error or product failure.

Ortho Pharmaceutical Corporation reiterated and expanded on their
verbal comments at the meeting in two letters dated May 15, 1987, and
May 19, 1987. Ortho makes these points, all in support of their conclusion
that oral contraceptives are one category of medicine for which generic
substitution is inappropriate:

a. The Corona products are not marketed.

b. The listing as "Ortho-Novum Formula" is misleading in that the
excipients differ, and the listing does not convey whether the products
distributed by Rugby are under consideration.

c. The Council has previously rejected substitution for oral contracep-
tives.

d. Low dose oral contraceptives have greater potential for clinical
problems if the generics vary from the brand.

e. The Corona biodata show extreme values compared to Ortho-
Novum and greatly different relative bioavailability of both the nor-
ethindrone and ethinyl estradiol components.

f. Packaging differences can cause compliance problems possibly lead-
ing to unwanted pregnancies, and cited one such clinical incident.

g. Tablet color confusion can cause compliance problems.

h. Surveys and trials demonstrate that women prefer certain oral con-
traceptive packages and make errors when switching.

i. Different starting regimens cause additional confusion.

Ortho sent further written comments comparing the dissolution data
for Rugby/Syntex products versus Ortho-Novum products, concluding
that substantial differences occur.

Mr. Leon Langley, representing the New Jersey Pharmaceutical As-
sociation, registered their objection to proposed substitution for oral
contraceptives, citing the possibility of unwanted pregnancies and
"vascular accidents." The New Jersey Pharmaceutical Association's ob-
jection to substitution for oral contraceptives was based on the following
points:

a. Lower current doses of the products, such that variability may cause
clinical problems.

b. Changes from one unique package to a different one would necessi-
tate that the pharmacist counsel the patient about the new package, which
is unrealistic.

c. Fear of the threat of lawsuits, especially long-term liability.

Rugby Laboratories, commented in support of substitution for oral
contraceptives, citing:

a. Average consumer savings of 23 percent.

b. Ease of transfer from Ortho's Dialpak to Rugby's package, as
evidenced by Ortho's own study.

c. No bioavailability problems: the Rugby product is made by Syntex,
whose products' efficacy is based on clinical studies done through a
shared agreement with Ortho, as verified by the FDA's AB rating.

d. Liability concerns should be eased by Syntex's written notice of
indemnification for Rugby.

e. Liability for side effects would not be greater for Rugby's product
than for oral contraceptives in general.

f. No other states have rejected the generic Rugby products.

Despite acknowledging the therapeutic equivalency of the proposed
Syntex oral contraceptive and its lower price when distributed by Rugby,
the Council agreed with Ortho that confusion may attend the interchange
of oral contraceptives because of the varying package types, tablet starting
times and different colors. The Council thus reaffirmed their previous
policy of *not* allowing generic substitution for oral contraceptives.

The two proposed oral contraceptive products remain pending; if ex-
perience with the general oral contraceptives in other states shows no
evidence of problems attending such substitution, the Council will, in the
future, reconsider its position.

Regarding nitroglycerin transdermal patches:

CIBA-Geigy Corporation objected to the proposal because the FDA has not resolved all clinical and scientific questions concerning nitroglycerin, in general. Also, they questioned the clinical effects of product differences, and said that the Hercon patches display low nitroglycerin levels for several hours each day.

Searle Laboratories also objected to generic nitroglycerin transdermal patches because (1) Hercon has only compared their product to a nitroglycerin ointment, (2) Hercon's patches display different plasma curves than Searle's product, (3) the different patches contain different amounts of nitroglycerin, and (4) the FDA has not assigned therapeutic equivalency ratings to nitroglycerin products.

The Schering Corporation also made its objections, citing the same lack of comparison studies and different physicochemical properties of the various patches (nature of the adhesive, etc), and asked that the generic nitroglycerin patches be again rejected. Mr. Les Cohoon, representing Schering, objected to the proposed Hercon (Bolar) nitroglycerin patches because they had not been compared to brand-name patches, but rather to the ointment, which doesn't guarantee equivalency to the patches.

Ms. V. Ludwig, representing G.D. Searle, also opposed the Hercon nitroglycerin patches because:

1. There was no comparison to patches.
2. The blood levels achieved are not equal to those from Searle's patches (based on separate studies).
3. The entire issue of nitroglycerin patches has not been resolved by the FDA.

The Council agreed with those in opposition to generic nitroglycerin patches that direct comparisons to the other patches are necessary. Bolar has begun such comparisons, thus the Council deferred action on these products.

Regarding phenytoin sodium extended:

Parke-Davis objected to the proposed substitute, citing lack of individual patient AUC and Cmax data in the biostudies provided by Sidmak, thus preventing adequate analysis. Parke-Davis asks for a deferral.

The Council found the data which Parke-Davis could not. In addition, the Council acts on average data, not individual patient data, and those average data showed this generic to be interchangeable with Dilantin. The Council added this product to the Formulary.

Regarding minoxidil:

Upjohn presented a minoxidil "position paper" regarding the use of minoxidil (and possibly generic minoxidil tablets for extemporaneous topical preparation) for hair growth.

The Council points out that Upjohn's comments are not germane because any potential patient-infringing activities of pharmacists are not the Council's concern nor under the Council's control. The Council added minoxidil products to the Formulary.

Regarding nitrofurantoin macrocrystals:

Norwich Eaton objected to Bolar's proposed products on the basis that Bolar had not presented NEW data on its bioequivalency to Macro-dantin, as requested by the Council when it considered this same application last year. They ask that the proposal be deferred until new data are received.

The Council has received new data; however, they deferred action until FDA approval has been received.

Regarding ibuprofen tablets:

PFI (Private Formulations Inc.) presented arguments in support of their proposed ibuprofen tablets, pointing out that the observed differences were due to a fed/fasting difference in the study and also reminding the Council that they had previously accepted ibuprofen products with differences as large as, if not larger, than those seen in the PFI data. PFI also presented a short clinical opinion supporting their product.

The Council agreed and accepted this product.

Regarding tolbutamide:

Danbury Pharmacal reiterated data from an earlier letter in support of their tolbutamide. Basically, Danbury has analyzed the blood glucose levels in their biostudy and found no statistically significant differences between their product and Orinase. Danbury also provided comparative dissolution data.

The Council agreed and accepted this product.

The following products and their manufacturers were **ADOPTED**:

Allopurinol tabs 100, 300 mg	Mutual
Amitriptyline/perphenzine 2/10, 2/25, 4/10, 4/25	Barr
Betamethasone diprop. cream & oint 0.05%	NMC
Betamethasone diprop. lotion 0.05%	NMC
Bethanechol tabs 5, 50 mg	Sidmak
Butalbital, aspirin, and caffeine tabs	Halsey

Carbamazepine tabs 200 mg
Cephalexin caps 250, 500 mg
Cephalexin for susp. 125/5, 250/5 ml
Cephadrine for susp. 125/5, 250/5 ml
Chlordiazepoxide/amitrip. tabs 5/12.5/10/25
Clonidine 0.1, 0.2, 0.3/chlorthalidone tabs
Clonidine tablets 0.1, 0.2, 0.3 mg
Diazepam tabs 2, 5, 10 mg
Diphenhydramine caps 25, 50 mg
Doxepin caps 10, 25, 50, 75, 100 mg
Doxepin caps 10 mg
Doxycycline hyclate tabs 100 mg
Haloperidol tabs 0.5, 1, 2, 5 mg
Hydralazine tabs 10, 100 mg
Hydralazine/HCTZ caps 25/25, 50/50
Hydrocortisone cream 2.5%
Hydrocortisone cream 2.5%
Hydroxyzine pamoate caps 25, 50, 100 mg
Ibuprofen tabs 300, 400, 600 mg
Indomethacin capsules 25, 50 mg
Lorazepam tabs 0.5, 1, 2 mg
Meclofenamate sod. caps 50, 100 mg
Meclofenamate sod. caps 50, 100 mg
Methyldopa/HCTZ 500/30, 500/50 mg
Methyldopa/HCTZ 250/15, 250/25 mg
Metoclopramide tabs 10 mg
Metoclopramide tabs 10 mg
Metoclopramide tabs 10 mg
Minoxidil tabs 2.5, 10 mg
Minoxidil tabs 10 mg
Multiple vitamins/fluoride drops 0.25 mg
Multivit/C 500/Folic acid tabs
Nystatin oint
Nystatin/triamcinolone oint
Phenytoin sod. extended caps 100 mg
Prenatal vitamins 1+1 with zinc
Propoxyphene naps./APAP 100/650
Propranolol tabs 10, 20, 40, 60, 80 mg
SMZ/TMP oral suspension
Spirolactone tabs 25 mg
Temazepam caps 15, 30 mg
Tolbutamide tabs 250, 500 mg
Tolbutamide tabs 500 mg
Tolbutamide tabs 500 mg
Trazodone HCl tabs 50, 100 mg
Triamcinolone acetonide dental paste 0.1%
Valproic acid syrup 250 mg/5 ml

W-C
Biocraft
Biocraft
Biocraft
Mylan
Mylan
Bolar
Danbury
Mutual
Cord
Chelsea
Pharbita
Mylan
Sidmak
Superpharm
Fougera/Altana
Pharmaderm/Altana
Superpharm
PFI
Mutual
Superpharm
Amer. Ther.
Bolar
Par
Par
Bolar
Halsey
Schering
Danbury
Quantum
Barre-National
Copley
NMC
NMC
Sidmak
Copley
Superpharm
Bolar
My-K
Superpharm
Bolar
Bolar
Danbury
Purepac
Bolar
K-Line
My-K

The following product and its manufacturer was **not adopted**
Chlorpromazine tabs 10, 25, 50, 100, 200 mg PharmBasics

The following products were **not adopted but are still pending**

Acetohexamide tabs 250, 500 mg	PharmBasics
Amitriptyline tabs 10, 25, 50, 75, 100 150 mg	Mutual
Amitriptyline/perphenzine 2/10, 2/25, 4/25	Cord
Butalbital, APAP, caffeine tabs	Graham
Cephalexin caps 250, 500 mg	Nuovo
Chlorothiazide tabs 500 mg	Mylan
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
Disopyramide caps 100 mg	Superpharm
Doxepin caps 150 mg	Chelsea
Flurazepam caps 15, 30 mg	Duramed
Glutethimide tabs 250, 500 mg	Halsey
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Haloperidol tabs 10, 20 mg	Cord
Ibuprofen tabs 800 mg	Chelsea
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
Lorazepam tabs 0.5, 1, 2 mg
Lorazepam tabs 2 mg
Meclofenamate sod. caps 50, 100 mg
Medroxyprogesterone tabs 2.5, 5, 10 mg
Methyldopa/HCTZ tabs 250/15, 250/25
Nitrofurantoin macrocrys. caps 50, 100 mg
Nitroglycerin E.R. caps 2.5, 6.5, 9 mg
Nitroglycerin transdermal patch 10 mg
Nitroglycerin transdermal patch 15 mg
Nitroglycerin transdermal patch 5 mg
Norethindrone 0.5 mg/ethinyl estr. 35 mcg
Norethindrone 1 mg/ethinyl estr. 35 mcg
Ortho-Novum formula 1/35, 1/50
Oxazepam tabs 15 mg
Perphenazine tabs 8 mg
Perphenazine/amitriptyline tabs 4/50
Pramoxine 1%/HC 1% rectal foam
Prazosin caps 1, 2, 5 mg
Prednisone tabs 5, 10, 20 mg
Procainamide E.R. tabs 1000 mg
Propranolol/HCTZ tabs 40/25, 80/25
Pyrilamine/Chlorpheniramine/PE tannates susp
Pyrilamine/Chlorpheniramine/PE tannates tabs
Quinidine gluconate E.R. tabs 324 mg
SMZ/TMP Susp. 200 mg+40 mg/5 ml
Salsalate tabs 500, 750 mg
Temazepam caps 15, 30 mg
Temazepam caps 15, 30 mg
Thiothixene caps 1, 2, 5, 10 mg
Trazodone HCl tabs 50, 100 mg
Trifluoperazine tabs 5 mg
Verapamil tabs 80, 120 mg
Verapamil tabs 80, 120 mg

Bolar
Cord
Bolar
Quantum
Duramed
Chelsea
Bolar
Vitarine
Hercon
Hercon
Hercon
Corona
Corona
Syntex
W-C
Chelsea
Bolar
Copley
Zenith
Amer. Ther.
Bolar
Cord
Copley
Copley
Mutual
Naska
Copley
Cord
Duramed
Cord
PharmBasics
Bolar
Bolar
Cord

Amitriptyline tabs 150 mg
Amitriptyline/chlordiazep 5/12.5, 10/25
Antipyrine/Benzocaine otic soln
Atropine SO4 ophth soln 1%
Belladonna alks/phenobarb elixir
Betamethasone valerate cream 0.1%
Cefradroxil for susp 125, 250, 500/5 ml
Cefadroxil caps 500 mg
Cephalexin caps 250, 500 mg
Chloramphenicol ophth soln 0.5%
Chlordiazepoxide/amitrip. 5/12.5, 10/25
Chlorpromazine HCl conc. 100 mg/ml
Clonidine tabs 0.1, 0.2, 0.3 mg
Clonidine tabs 0.3 mg
Codeine/phenyleph/chlorphen/KI ("Pediocof")
Cyproheptadine syrup 2 mg/5 ml
Cyproheptadine tabs 4 mg
Decongestant caps (Entex cap. formula)
Dexamethasone sod PO4 ophth. soln 0.1%
Diazepam tabs 2, 5, 10 mg
Diazepam tabs 2, 5, 10 mg
Dicyclomine tabs 20 mg
Diphenhydramine caps 25, 50 mg
Diphenhydramine caps 50 mg
Diphenhydramine syrup 12.5 mg/5 ml
Diphenhydramine syrup 12.5 mg/5 ml
Dipyridamole tabs 25, 50, 75 mg
Disopyramide phosphate caps 100, 150 mg
Doxepin caps 10, 25, 50, 75, 100 mg
Doxycycline caps 50 mg
Doxycycline hyclate caps 50, 100 mg
Ergolid mesylates SL tabs 0.5, 1 mg
Erythromycin 2% topical soln
Flurazepam caps 15, 30 mg
Furosemide tabs 80 mg
Gentamicin ophth soln 3 mg/ml
Golytely formula
Haloperidol tabs 0.5, 1, 2, 5 mg
Haloperidol tabs 20 mg
Hydralazine tabs 10 mg
Hydrocodone/Homatrop MBR 5+1.5/5 ml
Hydrocortisone cream 1%
Ibuprofen tabs 300, 400, 600 mg
Ibuprofen tabs 300, 800 mg
Indomethacin caps 25, 50 mg
Indomethacin caps 25, 50 mg
Indomethacin caps 25, 50 mg
Lorazepam tabs 0.5, 1, 2 mg
Meclofenamate caps 50, 100 mg
Methyldopa tabs 125, 250, 500 mg
Methyldopa tabs 125, 250, 500 mg
Metoclopramide tabs 10 mg
Metronidazole tabs 250, 500 mg
Metronidazole tabs 500 mg
Neomycin/dexamethasone sod PO4 ophth soln
Neomycin/polymyxin/HC otic soln
Neomycin/polymyxin/HC otic susp
Nystatin oral tabs 500,000 U
Potassium Cl liquid 10%, 20%
Prenatal 1+1/Zn (Stuartnatal 1+1 new)
Procainamide E.R. tabs 250, 750 mg
Promethazine cough syrup 6.25 mg/5 ml
Promethazine/cod, VC PL, VC/cod syrups
Propranolol tabs 10, 20, 40, 60, 80 mg
Propranolol tabs 10, 20, 40, 60, 80 mg
Propranolol tabs 60 mg
Propranolol tabs 60, 90 mg
Propranolol tabs 80 mg
Propranolol tabs 90 mg
Propranolol/HCTZ 40/25, 80/25
Quinidine gluconate E.R. tabs 234 mg
SMZ/TMP tabs 400/80, 800/160
Spironolactone tabs 25 mg
Sulfanilamide 15% vag crm (Vagitrol for)
Temazepam caps 15, 30 mg
Temazepam caps 15, 30 mg

Barr
Mylan
Barre-National
Carter-Glogau
Life
Clay-Park
Biocraft
Biocraft
Vitarine
Carter-Glogau
Barr
NPC
Mylan
Cord
Life
Halsey
Halsey
Amide
Carter-Glogau
Halsey
Superpharm
Pioneer
Pioneer
Halsey
Halsey
Life
Mutual
Barr
Quantum
Lemmon
PFI
Superpharm
Barre-National
Barr
Mylan
Carter-Glogau
Reed-Carnick
Cord
Searle
Mutual
Halsey
Life
Mutual
Par
Pioneer
Barr
Superpharm
Danbury
Mylan
Roxane
Barr
Interpharm
Mutual
Halsey
Carter-Glogau
Carter-Glogau
Carter-Glogau
PharmBasics
Life
Amide
Danbury
Life
Cenci
P-D
Par
Barr
Danbury
Barr
Par
Barr
Superpharm
Mutual
Mutual
Lemmon
Sandoz
Barr

(a)

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: January 5, 1987 at 19 N.J.R. 13(a).

Adopted: June 16, 1987 by the Drug Utilization Review Council,
Sanford Luger, Chairman

Filed: June 23, 1987 as R.1987 d.299, 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: July 20, 1987.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their manufacturers were **ADOPTED**:

Cephadrine caps 500 mg	Biocraft
Chlorthalidone tabs 25, 50 mg	Mutual
Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Interpharm
Haloperidol tabs 0.5, 1, 2 mg	Barr
Haloperidol tabs 0.5, 1, 2, 5 mg	Quantum
Haloperidol tabs 0.5, 1, 2, 5 mg	Par
Metoclopramide tabs 10 mg	Barr
Propranolol/HCTZ tabs 40/25 mg	Mylan
Spironolactone/HCTZ tabs 25/25	Superpharm
Temazepam caps 15, 30 mg	Par
Trazodone tabs 50, 100 mg	Quantum

The following product and its manufacturer was **not adopted**:
Quinidine sulfate tabs 200 mg
Cord

The following products were **not adopted but are still pending**:

Acetic acid 2%/Hydrocor. otic soln 1%	Barre-National
Acetic acid otic soln 2%	Barre-National
Allopurinol tabs 100, 300 mg	Mylan
Allopurinol tabs 100, 300 mg	Superpharm
Amanatadine HCl caps 100 mg	Scherer
Amanatadine HCl caps 100 mg	Chase
Amiloride/HCTZ tabs 5/50	Barr

Tetracycline HCl caps 250, 500 mg
Tetracycline HCl caps 250, 500 mg
Theophylline elixir 80 mg/15 ml
Thioridazine HCl tabs 10, 15, 25, 50 mg
Thioridazine tabs 10, 25, 50 mg
Tolazamide tabs 250, 500 mg
Tolazamide tabs 250, 500 mg
Trazodone tabs 50, 100 mg
Trazodone tabs 50, 100 mg
Triprol/pseudoephed/cod cough syrup
Verapamil tablets 80, 120 mg
Verapamil tabs 80, 120 mg
Vitamin B Cmplx Plus (Berocca Plus Formula)
Vitamin B complex (Berocca Formula)

PFI
Superpharm
Life
Barr
Mutual
Interpharm
Superpharm
Amer. Ther.
Barr
Life
P-D
Barr
Amide
Amide

Ergoloid mesylates oral tabs 1 mg
Erythromycin ethylsuccinate susp 400/5 ml
Erythromycin ethylsuccinate 200 mg/5 ml
Flurazepam caps 15, 30 mg
Flurazepam caps 15, 30 mg
Furosemide tabs 80 mg
Gentamicin oint & cream 0.1%
Gentamicin oint & cream 0.1%
Gentamicin sulfate 0.3% ophth. solution
Haloperidol oral solution 2 mg/ml
Haloperidol oral solution 2 mg/ml
Haloperidol oral solution 2 mg/ml
Haloperidol tabs 0.5, 1, 2, 5, 10 mg
Haloperidol tabs 0.5, 1, 2, 5, 10 mg
Hydralazine HCl tabs 25, 50 mg
Hydralazine/HCTZ caps 25/25, 50/50
Hydrocodone/homatropine 5/1.5 mg/5 ml
Hydroxyzine HCl syrup 10 mg/5 ml
Hydroxyzine HCl syrup 10 mg/5 ml
Hydroxyzine HCl tabs 10, 25, 50 mg
Ibuprofen tabs 200, 300, 400, 600 mg
Ibuprofen tabs 200, 300, 400, 600 mg
Ibuprofen tabs 300 mg
Indomethacin sustained rel caps 75 mg
Iodinated glycerol liquid 60 mg/5 ml
Iodinated glycerol/DM liquid
Iodinated glycerol/codeine 30mg+10mg/5ml
Iodinated glycerol/codeine 30mg+10mg/5ml
Isosorbide dinitrate tabs 20, 30 mg
Lidocaine HCl oral solution 2%, 4%
Lidocaine viscous liquid 2%
Lithium carbonate caps 300 mg
Lorazepam tabs 0.5, 1.0, 2.0 mg
Lorazepam tabs 0.5, 1.0, 2.0 mg
Meclofenamate caps 50, 100 mg
Methyclothiazide tabs 5 mg
Methyldopa tabs 250, 500 mg
Methyldopa tabs 250, 500 mg
Methyldopa/HCTZ 250/15 tabs
Methyldopa/HCTZ 250/15, 250/25
Methyldopa/HCTZ 500/30 tabs
Methyldopa/HCTZ 500/30, 500/50 tabs
Methyldopa/HCTZ tabs 250/25, 500/50
Metoclopramide tabs 10 mg
Metoclopramide tabs 10 mg
Multivit. drops/fluoride 0.5 mg
Neomycin/polymyxin/HC otic susp
Nitroglycerin transdermal 5 mg, 15 mg
Oxazepam caps 10, 15, 30 mg
Perphenazine tabs 2, 4, 8, 16 mg
Perphenazine/ amitrip 2/10, 2/25, 4/10, 4/25, 4/50
Perphenazine/ amitrip 2/10, 2/25, 4/25, 4/10, 4/50
Potassium Iodide saturated solution
Potassium Cl mod rel 8 mEq and 10 mEq
Prednisolone tabs 5 mg
Prednisone tabs 5, 10, 20 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/dextromethorphan oral liq.
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
Propoxyphene naps/APAP 50/325, 100/650
Propranolol HCl tabs 60 mg
Propranolol HCl tabs 60 mg
Propranolol HCl/HCTZ tabs 40/25, 80/25
Propranolol tabs 10, 20, 40, 60, 80 mg
Propranolol tabs 10, 20, 40, 80 mg
Propranolol tabs 60, 90 mg
Propranolol/HCTZ tabs 40/25
Propranolol/HCTZ tabs 40/25, 80/25
Spironolactone/HCTZ 25/25 tabs
Sulfamethoxazole/trimethoprim 400/80, 800/160

Sandoz
Naska
Naska
Par
Zenith
Zenith
Altana/Foug.
Altana/PHDRM
Allergan
Barre-National
My-K
Searle
Searle
Zenith
Mutual
Reid-Rowell
Naska
My-K
Naska
Mutual
Cord
Zenith
Chelsea
Zenith
My-K
My-K
My-K
Barre-National
Chelsea
My-K
Naska
Reid-Rowell
Watson
Zenith
Chelsea
Pharm. Basics
Danbury
Parke-Davis
Bolar
Zenith
Bolar
Zenith
Bolar
Beecham
Chelsea
My-K
Carter-Glogau
Hercon
Zenith
Zenith
Par
Zenith
My-K
Uppsher-Smith
PFI
Mutual
Chelsea
Cord
Cord
Duramed
My-K
Naska
Naska
Naska
Naska
Naska
Chelsea
Chelsea
Schering
Chelsea
Cord
Zenith
Duramed
Zenith
Duramed
Danbury
Cord

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption may be found at 19 N.J.R. 641(a) and 880(a).

(a)

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: September 8, 1986 at 18 N.J.R. 1775(a).
Adopted: June 16, 1987, by the Drug Utilization Review Council, Sanford Luger, Chairman.
Filed: June 23, 1987 as R.1987 d.300, with portions of the proposal not adopted but still pending.
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: July 20, 1987.
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their manufacturers were ADOPTED:

Carbamazepine tabs 200 mg Teva
Cephalexin caps 250, 500 mg Zenith
Haloperidol tabs 0.5, 1, 2, 5 mg Duramed
Indomethacin caps 25, 50 mg Cord
Propranolol HCl tabs 20, 40 mg Lemmon

The following products were not adopted but are still pending:

Acetaminophen/codeine elix 120/12 Naska
Allopurinol tabs 100, 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 10/2, 25/2 tab Chelsea
Amitriptyline/perphenazine 10/4, 25/4 tab Chelsea
Amitriptyline/perphenazine 50/4 tabs Chelsea
Bacitracin/polymyxin/neomycin ophth oint Pharmafair
Brompheniramine/pseudoephed/DM liquid My-K
Cephadroxil caps 500 mg Zenith
Cephadroxil tabs 1 g Zenith
Cephradine caps 250, 500 mg Zenith
Chlorothiazide tabs 250 mg West-Ward
Chlorothiazide tabs 500 mg West-Ward
Chlorpheniramine 12/PPA 75 mg ER caps Chelsea
Chlorthalidone tabs 25, 50 mg Danbury
Clofibrate caps 0.5 g Chelsea
Clonidine HCl tabs 0.1, 0.2, 0.3 mg Amer. Ther.
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 Duramed
Clonidine tabs 0.1, 0.2, 0.3 mg Zenith
Cyproheptadine syrup 2 mg/5 ml Naska
Dexamethasone elixir 0.5 mg/5 ml Naska
Dipyridamole tabs 25, 50, 75 mg Cord
Disopyramide phos caps 100, 150 mg Cord
Disopyramide phosphate caps 100, 150 mg Chelsea
Doxepin caps 25, 50, 75 mg Cord
Doxycycline hyclate caps 50, 100 mg Mutual
Doxycycline hyclate caps 50, 100 mg Parke-Davis
Doxycycline hyclate tabs 100 mg Mutual
Doxycycline hyclate tabs 100 mg Parke-Davis

Temazepam caps 15, 30 mg
Theophylline elixir 80 mg/15 ml
Thioridazine 10, 15, 25, 50, 100, 150, 200 mg
Thioridazine HCL conc 30 mg, 100 mg/ml
Thioridazine HCl tabs 10, 15, 25, 50 mg
Thioridazine conc. 30 mg/ml, 100 mg/ml
Thioridazine susp 25 mg/5 ml, 100 mg/5 ml
Thioridazine tabs 150, 200 mg
Thiothixene caps 2, 5, 10 mg
Tolbutamide tabs 500 mg
Triamcinolone acetone lotion 0.1%
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
Verapamil tabs 80, 120 mg

Mylan
Naska
Sandoz
Roxane
Danbury
Sandoz
Sandoz
Cord
Chelsea
Danbury
Thames
Zenith
Zenith
Chelsea
BASF
Zenith
Watson

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption may be found at 19 N.J.R. 116(c), 217(a), 640(b), and 881(a).

HIGHER EDUCATION

(a)

EDUCATIONAL OPPORTUNITY FUND

Administrative Policies and Procedures Financial Eligibility for Undergraduate Grants Adopted Amendment: N.J.A.C. 9:11-1.5

Proposed: January 5, 1987 at 19 N.J.R. 15(a).
Adopted: June 22, 1987 by Board of Directors of Educational Opportunity Fund, T. Edward Hollander, Chairman.
Filed: June 19, 1987 as R.1987 d.289, **without change**.
Authority: N.J.S.A. 18A:71-33 through 18A:71-36.
Effective Date: July 20, 1987.
Expiration Date: January 17, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:11-1.5 Financial eligibility for undergraduate grants
(a)-(d) (No change.)

(e) Where there is evidence that strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the EOF Program, the campus EOF director may admit up to a maximum of 20 percent of the annual freshmen class under a waiver pursuant to the provisions of this section. Students admitted under this provision must meet one of the following criteria:

1. The student attend(ed) a District Factor Group A or B school district as certified by the New Jersey Department of Education;

2. The student has resided in a municipality defined as a "high distress" area. A high distress area, as defined by the New Jersey Office of Management and Budget, is one which in comparison to the rest of the State is characterized by old or substandard housing and/or low real estate value, low per capita income, high unemployment, population decline, and a high percentage of residents receiving welfare and other benefits targeted for low-income families;

3. The student has resided in an area of a municipality that is historically populated by low-income families; such an area is commonly known as a "pocket of poverty" as characterized by criteria outlined in (e)2 above;

4. The student has a sibling who was, or is currently, enrolled in an EOF Program;

5. The student (or family) is eligible for government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs; free and reduced breakfast/lunch programs, food stamps) and is a first-generation college student.

(f) The student's record must contain sufficient documentation for verification of the above criteria. All efforts should be made to give priority to those students whose incomes are within the limits of these guidelines.

HUMAN SERVICES

DIVISION OF PUBLIC WELFARE

(b)

Public Assistance Manual Protective Payee; Requirements for Periodic Redetermination; Notice to Client of County Welfare Agency Decision

Adopted Amendments: N.J.A.C. 10:81-4.9, 5.2 and 7.1

Proposed: February 17, 1987 at 19 N.J.R. 341(a).
Adopted: June 15, 1987 by Drew Altman, Ph.D., Commissioner, Department of Human Services.
Filed: June 15, 1987 as R.1987 d.284, **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. 44:7-6 and 44:10-3, 45 CFR 205.10, 206.10 and 234.60.

Effective Date: July 20, 1987.

Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:

COMMENT: Comments were received from a county welfare agency. The commentator was concerned with amendments at N.J.A.C. 10:81-7.1 and suggested that the Aid to Families with Dependent Children (AFDC) regulations be aligned with Food Stamp regulations wherein a verbal request by a client to close a case can be considered an exception to timely notice.

RESPONSE: Essentially, no substantive changes have been made at N.J.A.C. 10:81-7.1. The revisions primarily redefine requirements of notice of agency decision and provide for additional exceptions to timely notice permitted by Federal regulations at 45 CFR 205.10. With regard to alignment of Food Stamp and AFDC provisions on exceptions to timely notice, it should be noted that in the AFDC program, 45 CFR 205.10(a)(4)(ii)(B) specifies that a public assistance recipient must indicate in a written statement signed by the recipient that he or she no longer wishes assistance. Food Stamp regulations do provide that a verbal request by a household to terminate participation may be considered as an exemption from timely notice, however, the agency is required to send the household a letter confirming the voluntary withdrawal in accordance with Federal regulations at CFR 273.13(b)12.

Summary of Changes Subsequent to Proposal:

Minor changes between the proposal and adoption include the addition and/or deletion of language for clarification purposes at N.J.A.C. 10:81-5.2(b)2, 10:81-7.1(b) and (d)ii. The change at N.J.A.C. 10:81-5.2(c) clarifies that the face-to-face redetermination for cases not in monthly reporting or error-prone profiling shall be conducted every six months, as is the current policy. Publication errors are corrected at N.J.A.C. 10:81-7.1(a) to reinsert omitted language and at N.J.A.C. 10:81-7.1(d)8 to change the word "completed" to "complete".

Full text of the changes between proposal and adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:81-4.9 Protective payee

(a) When it is determined by the CWA that the use of funds by the parent or relative is not in the best interest of the child(ren), assistance shall be paid, whenever possible, to a protective payee. A protective payee is not authorized to receive, hold or administer any other property, real or personal, of the recipient nor to act as representative of the recipient in any other manner whatsoever. Such a decision shall be subject to the following criteria:

1.-7. (No change.)

8. The CWA will review the case as frequently as indicated by the individual's circumstances, but at least every 12 months, relevant to the need for protective payments and the way in which the protective payee's responsibilities are carried out.

9.-10. (No change.)

10:81-5.2 Requirements for periodic redetermination

(a) Redetermination defined: Redetermination is a review of factors affecting AFDC eligibility and payment amount, for example, continued absence, income (including child and spousal support), and so forth. At the redetermination, the parent(s) shall execute a formal application for continuation of assistance. If a redetermination is not conducted and the CWA is responsible, the right of the client to continued assistance shall not be jeopardized.

(b) Frequency of redetermination: For recipients of AFDC, all factors of eligibility shall be redetermined at least every six months except for cases in monthly reporting or cases covered by an approved error-prone profiling system.

1. Monthly reporting: In cases subject to monthly reporting, a redetermination shall be done at least once every 12 months (see N.J.A.C. 10:90).

2. Error-prone profiling: In cases covered by error-prone profiling, a redetermination shall be done as frequently as specified in an alternative redetermination plan based on error-prone profiling ***(but at least once every 12 months)***, which has been approved by the United States Department of Health and Human Services and includes:

i. A description of the statistical methodology used to develop the error-prone profile system upon which the redetermination schedule is based;

ii. The criteria to be used to vary the scope of review and to assign different types of cases; and

iii. A detailed outline of the evaluation of the system, including provisions for necessary changes in the error-prone output, such as types of cases, types of errors, frequencies of redeterminations and corrective actions.

(c) Face-to-face redetermination: Under the AFDC program, at least one face-to-face redetermination must be conducted in each case once every 12 months. ***A face-to-face redetermination is conducted once in every six months for cases not in monthly reporting or error-prone profiling.***

(d) (No change in text.)

10:81-7.1 Notice to client of county welfare agency decision

(a) Notice to client of agency decision: The county welfare agency shall promptly notify the client in writing of any agency decision affecting that client. The term "agency decision" refers to a decision made by ***the county welfare agency and includes any decision made by*** executive authority of the CWA director, as well as any decision made initially by the welfare agency, or any change made by formal board action with respect to a previous executive decision. In the case of a client who cannot be located, notice shall be sent to his or her last known address.

(b) Notice of adverse action: An adverse action is an action to deny an application for assistance, to ***[discontinue,]*** terminate, suspend or reduce assistance (including service, vendor payments or Medicaid entitlement) or to change the manner or form of payment to a protective, vendor or two-party payment. In cases of intended adverse action, the county welfare agencies shall give timely and adequate notice, except as provided for in (d) below.

1. Timely notice: "Timely" means that the notice is mailed at least 10 days before the effective date of agency action.

2. Adequate notice: "Adequate" means a written notice that includes:

i. The action the agency intends to take;

ii. The reasons for the intended agency action;

iii. The specific regulations supporting such action;

iv. An explanation of the individual's right to request a fair hearing;

v. An explanation of the circumstances under which assistance is continued if a hearing is requested;

vi. An explanation of the requirement to repay assistance received during the period pending the hearing, if the agency action is upheld;

vii. A sentence in Spanish cautioning the client that the notice relates to a change in his or her grant and if he or she does not understand the notice, he or she should contact the CWA; and

viii. The name, address and phone number of the nearest legal services office where available.

(c) Effective date of adverse action: Where an agency decision results in an adverse action, there will be no change in the grant until 10 days after the mailing date of the notice, except in situations in (d) and (k)4 and 5 below.

(d) Adverse action and exception to timely notice: Timely notice may be dispensed with but adequate notice shall be sent not later than the effective date of action when:

1. The agency has factual information confirming the death of a recipient or of the AFDC payee when there is no relative available to serve as the new payee;

2. The agency receives a clear written statement signed by the recipient that he or she no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that he or she understands that this must be the consequence of supplying such information;

3. The payee has been admitted or committed to an institution, and further payments to that individual do not qualify for Federal financial participation under the State plan;

4. The recipient has been placed in a skilled nursing care, intermediate care or long-term hospitalization;

5. The claimant's whereabouts are unknown and agency mail directed to him or her has been returned by the post office indicating no known forwarding address. The claimant's check must, however, be made available to him or her if his or her whereabouts become known during the payment period covered by the returned check, unless i below applies.

i. The claimant moves out-of-state, with apparent intent to remain permanently absent from New Jersey.

6. A recipient has been accepted for assistance in another state and that fact has been established by the CWA previously providing assistance;

7. An AFDC child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his or her legal guardian;

8. For AFDC, the CWA takes action because of information the recipient furnished in a monthly report or because the recipient has failed to submit a complete*[d]* or a timely monthly report without good cause (see N.J.A.C. 10:90);

9. An additional payment or special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;

10. Assistance is reinstated in the corrected amount following suspension*[.]***;

11. An application for assistance is being denied and no assistance payment has been issued.

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

(k) Notice of intention to reduce, suspend, or terminate amount of regular assistance payment or benefits prior to any change in payment procedure, reduction, suspension, or termination of any regular amount of assistance (including service, vendor payments or Medicaid entitlement), recipients of assistance are entitled to:

1.-5. (No change.)

(l)-(m) (No change.)

(a)

**Assistance Standards Handbook
Exempt Resources and Income, Nonrecurring
Earned and Unearned Income**

Adopted Amendments: N.J.A.C. 10:82-3.2, 4.13 and 4.15

Adopted Repeal and New Rule: N.J.A.C. 10:82-4.14

Proposed: February 17, 1987 at 19 N.J.R. 344(a).

Adopted: June 15, 1987 by Drew Altman, Ph.D., Commissioner, Department of Human Services.

Filed: June 15, 1987 as R.1987 d.285, **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. 44:7-6 and 44:10-3, 45 CFR 233.20.

Effective Date: July 20, 1987.

Expiration Date: October 29, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Changes Subsequent to Proposal:

• The additional language at N.J.A.C. 10:82-3.2(b)7ii, concerning exempt resources, clarifies the manner of determining the value of a gift received by one member of an eligible Aid to Families with Dependent Children (AFDC) unit in that the value of the gift may be allocated in the way most advantageous to the entire AFDC unit.

• At N.J.A.C. 10:82-4.14(b) concerning income tax refunds as exempt income, language is added to clarify that the actual amount of the refund remaining in the month following the month of receipt should be considered a resource, not the actual payment.

• At N.J.A.C. 10:82-4.15(a) concerning the period of ineligibility due to the receipt of nonrecurring lump sum income by an AFDC recipient, language is added to clarify that the AFDC grant is not considered income when calculating the period of ineligibility for a client.

Full text of the adoption follows (additions to proposal indicated by boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:82-3.2 Exempt resources

(a) (No change.)

(b) The exempt resources are as follows:

1.-5. (No change.)

6. Resources designated for special purposes as follows:

i.-vi. (No change.)

vii. Certain other Federal programs: Funds received by applicants and recipients through certain Federal programs (see below) shall be regarded as exempt resources in determining eligibility for assistance.

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

(8) HUD community development block grant funds under Title I of the Housing and Community Development Act of 1974;

(9) Benefits received by eligible households under the Low Income Home Energy Assistance Act of 1981 pursuant to section 2605(f) of Public Law 97-35.

7. Occasional nonrecurring gifts and contributions of nominal amount or value, such as those for birthdays, graduations, Christmas or other holidays, to the extent the value does not exceed an average of \$30.00 per recipient in any calendar quarter.

i. In cases where such gifts and contributions exceed an average of \$30.00 per recipient in any calendar quarter, that excess shall be counted as unearned income.

ii. In determining value, a gift received by one member of the eligible unit but intended for the entire eligible unit may be allocated among the eligible unit members in the way most advantageous to the entire unit.

8.-11. (No change.)

10:82-4.13 Contributions of support

(a) Obligatory contributions to the support of one or more members of the eligible unit shall be recognized as unearned income, regardless of whether such contributions are in cash or in kind. (See N.J.A.C. 10:82-3.12, Acceptable forms of support.)

(b) When shelter is being *[procided]* ***provided*** by a legally responsible relative (LRR) who has been determined by the CWA IV-A unit to have a capacity to provide support, the actual cash value shall, whenever possible, be determined and recognized as unearned income to the eligible unit. Where the actual ***value*** cannot be established, and is not stipulated by a court order to be made in an identifiable cash amount to a third party, the monthly monetary values shall be recognized according to Schedule VI and shall not exceed the LRR's evaluated capacity.

(c) Nonobligatory contributions, other than occasional gifts identified in N.J.A.C. 10:82-3.2(b)7, shall be recognized as unearned income only when made in cash to one or more members of the eligible unit (see also N.J.A.C. 10:82-2.3). This does not apply to LRRs who have an evaluated capacity to support.

10:82-4.14 Exempt income

(a) Exempt income is not considered in determining eligibility for assistance or in computing the amount of the assistance payments.

(b) Exempt income is as follows:

1. Items set forth in N.J.A.C. 10:82-3.2(b); and

2. Income tax refunds (except the earned income credit (EIC) portion), but *[such payments shall be considered as resources in the month following the month of receipt.]* ***the actual amount of the refund remaining in the month following the month of receipt shall be considered as resources in that following month.***

10:82-4.15 Nonrecurring earned or unearned lump sum income

(a) When a recipient receives nonrecurring earned or unearned lump sum income including AFDC, retroactive R.S.D.I. payments and other monthly benefits, and payments in the nature of a windfall, such as inheritances and lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it was paid (for example, monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, and so forth), that income will be added together *[with all other income received that month by the eligible unit after application]* with all other income received that month by the eligible unit after application of the disregards in N.J.A.C. 10:82-2.8 and 2.12 and the exemption of income in N.J.A.C. 10:82-2.7. ***The AFDC grant shall not be considered income.*** No portion of lump sum or other

income may be applied toward the resource limit in the month of its receipt. When this total exceeds the AFDC allowance standards in Tables I or II as appropriate, the family will be ineligible for AFDC for the number of full months derived by dividing this total income by the allowance standard applicable to the eligible unit. Any remaining income *[frm]* ***from*** this calculation is treated as if it is unearned income received in the first month following the period of ineligibility and is considered available for use at that time. SSI payments shall not be subject to lump sum treatment.

1.-5. (No change.)

(b) (No change.)

(a)

DIVISION OF PUBLIC WELFARE

Service Programs for Aged, Blind or Disabled

Persons

Special Payments Handbook; Aged, Blind and Disabled

Adopted Amendment: N.J.A.C. 10:100-3.6

Proposed: February 17, 1987 at 19 N.J.R. 345(a).

Adopted: June 15, 1987 by Drew Altman, Ph.D., Commissioner, Department of Human Services.

Filed: June 15, 1987 as R.1987 d.283, **without change.**

Authority: N.J.S.A. 44:1-157.1, 44:7-12, 44:7-13, 44:7-38 and 44:7-43.

Effective Date: July 20, 1987.

Expiration Date: February 6, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:100-3.6 Condition of payment

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

(c) Submission of petition: The funeral director or other claimant shall, within 30 days after interment or cremation, submit to the CWA a petition on Form PA-11 or on a substantially similar document which certifies to services rendered, to payments contracted, received and expected, and to compliance with all applicable laws and regulations. Petitions submitted beyond the 30 day period may be considered upon a showing of good cause (as determined by the CWA) which is not prejudicial to the validity of the claim.

1. (No change in text.)

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

CORRECTIONS

(b)

THE COMMISSIONER

Medical and Health Services

Pregnant Inmates

Adopted Repeal and New Rules: N.J.A.C. 10A:16-6

Proposed: April 6, 1987 at 19 N.J.R. 503(a).

Adopted: June 25, 1987, by William H. Fauver, Commissioner, Department of Corrections.

Filed: June 26, 1987 as R.1987 d.305, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

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

Effective Date: July 20, 1987.

Expiration Date: April 6, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections (Department) proposed new rules for inmate medical and health services, N.J.A.C. 10A:16, on August 18, 1986, at 18 N.J.R. 1662(a). Part of that proposal, N.J.A.C. 10A:16-6, pertain to pregnant inmates.

In the April 6, 1987 issue of the New Jersey Register, the Department adopted the inmate medical and health services rules. However, after due consideration of comments received regarding medical and health services for pregnant inmates, the Department proposed a new rule pertaining to pregnant inmates which also appeared in the April 6, 1987 issue at 19 N.J.R. 503(a).

The Department is now adopting the new rules on medical and health services for pregnant inmates and repealing the rule on pregnant inmates, adopted as part of Chapter 16: Medical and Health Services at 19 N.J.R. 535(a).

COMMENT: Two commentors asked that pregnancy tests be performed as a routine intake procedure.

RESPONSE: The Department of Corrections agrees and has added the appropriate language to N.J.A.C. 10A:16-6.1(a).

COMMENT: A commentor suggested that N.J.A.C. 10A:16-6.3(a) refer only to "counseling" without use of the term "religious", and that the counselor should not be a correction's staff person.

RESPONSE: It is necessary to give the inmate some choice in types of counseling available. Unless the various options are spelled out, staff and inmate will be uncertain as to what is available, sought or should be offered. The counselor may be a social worker, psychologist, priest or minister, depending on the inmate's need for services. Whether the counselor is a correction's staff person is less important than whether the individual counselor is qualified and sympathetic.

COMMENT: A commentor stated that the statement, "unless the treating physician and/or gynecologist determines that the pregnancy cannot be terminated," is commonly used in standard medical practice, and is not necessary at N.J.A.C. 10A:16-6.3(b).

RESPONSE: Inmates who read these rules are not necessarily familiar with standard medical practice. Inclusion of the foregoing statement provides notice that in some cases, termination may be deemed medically inadvisable.

COMMENT: A commentor requested that pregnant inmates who have chemical substance addictions receive special evaluation and treatment.

RESPONSE: The Department believes such special directive is unnecessary. Medical staff will provide appropriate treatment for any special condition, whether chemical dependency or other medical problem(s).

COMMENT: A commentor suggested the addition of a policy directing appropriate postpartum care.

RESPONSE: The Department agrees that postpartum care should be added to medical services for pregnant inmates. This has been referred to in N.J.A.C. 10A:16-6.1(a).

COMMENT: A commentor suggested that the rules provide for special clothing, work and housing related needs of the pregnant inmate who chooses childbirth.

RESPONSE: The Department agrees and has added these suggestions, subject to limitations, at N.J.A.C. 10A:16-6.3—*Maternity clothes, housing assignments, exercise and work schedule*. All subsequent sections have been renumbered.

COMMENT: A commentor did not object to the requirement in N.J.A.C. 10A:16-6.3(c) that an inmate sign a form when desiring to terminate a pregnancy but suggested that the inmate sign a form when desiring to maintain a pregnancy.

RESPONSE: The Department disagrees. If an inmate is already pregnant, there is no question as to her consent when she elects to continue the pregnancy. The only consent necessary is when the pregnant inmate elects to change her condition by abortion. The counseling referred to in N.J.A.C. 10A:16-1(a) is designed to assist her in either case.

COMMENT: A commentor sought a provision implementing N.J.S.A. 30:4-26.2, which may permit a female prisoner to keep an infant under two years old in the prison.

RESPONSE: This suggestion was answered by the Department in the April 6, 1987, issue of the New Jersey Register at 19 N.J.R. 536. In addition to those responses, the institution, due to overcrowding, has no facilities with which to accommodate infants of prisoners.

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 6. PREGNANT INMATES

10A:16-6.1 Care of pregnant inmates

(a) The Department of Corrections shall provide a pregnant inmate with medical aid and social services, which shall include:

1. Prenatal medical evaluation and care*, including the routine pregnancy tests given to all female inmates upon admission to the institution*;

2. Nutritional supplements and diet as prescribed by the physician;
3. Counseling regarding:
 - i. Family planning;
 - ii. Birth control;
 - iii. Termination of pregnancy; *[and]*
 - iv. Child placement services*[.]* *;* *v. Religious counseling, if desired by the inmate.*
- *4. Appropriate postpartum care.*

10A:16-6.2 Obstetrical services

When the pregnant inmate elects to carry the pregnancy to term, arrangements shall be scheduled in advance for the delivery at an appropriate medical facility.

10A:16-6.3 Maternity clothes, housing assignments, exercise and work schedules

*(a) The institution shall provide the pregnant inmate with:

1. Suitable maternity clothes, if the inmate is unable to provide her own;
2. Reasonable housing assignments, as permitted by available space and the inmate's security status; and
3. Appropriate exercise and reduced work schedules, as deemed medically advisable by the treating physician.*

10A:16-6.*[3]**4* Termination of pregnancy

(a) As soon as possible after the pregnancy is diagnosed, the correctional facility shall provide the pregnant inmate with medical care and shall offer her religious and social counseling to aid her in making the decision to continue or to terminate the pregnancy.

(b) Should the inmate elect to proceed with terminating the pregnancy, arrangements shall be made without undue delay to schedule and complete the procedure, unless the treating physician and/or gynecologist determines that the pregnancy cannot be terminated.

(c) An inmate who elects to terminate a pregnancy shall be required to sign a form indicating her desire to terminate the pregnancy and acknowledging that she has received medical care and has been offered religious and social counseling in reaching her decision.

(d) A pregnancy shall be terminated only at a state-licensed medical facility or hospital. Appropriate follow-up medical care shall be provided in the correctional facility or by a contracted physician consultant.

10A:16-6.*[4]**5* Father of the child

(a) The father, if not incarcerated, may attend the birth of his child in the delivery room.

(b) The father's presence in the delivery room is dependent upon the security risk of the mother and hospital policy.

10A:16-6.*[5]**6* Placement of infants

(a) Counseling and assistance shall be provided to pregnant inmates in keeping with their expressed desires in planning for their unborn children. Counseling and social services shall be available to assist pregnant inmates in making decisions such as whether to keep their child or give the child up for adoption. Counseling shall not advocate any particular alternative to the inmate.

(b) The Division of Youth and Family Services (D.Y.F.S.), Department of Human Services, shall be contacted by the correctional facility when adoption or foster home placement is being contemplated by the prospective mother.

(c) Plans for the placement of all anticipated infants shall be developed well in advance of delivery date.

10A:16-6.*[6]**7* Written procedures

Superintendents of correctional facilities housing female inmates shall be responsible for the development and implementation of written procedures consistent with the requirements of this subchapter.

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Limited Death Benefit Forms

Adopted Amendments: N.J.A.C. 11:4-21

Proposed: May 18, 1987 at 19 N.J.R. 843(b).

Adopted: June 26, 1987 by Kenneth D. Merin, Commissioner,
Department of Insurance.

Filed: June 26, 1987 as R.1987 d.306, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:44A-21, 17B:25-18,
17B:27-25 and 17B:30-1 et seq., specifically 17B:30-15.

Effective Date: July 20, 1987.

Operative Date: September 18, 1987.

Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses
No comments received.

Full text of the adoption follows.

SUBCHAPTER 21. LIMITED DEATH BENEFIT FORMS

11:4-21.1 Purpose; scope

(a) The purpose of this subchapter is to establish guidelines for the filing and review of limited death benefit policy forms which will:

1. Make life insurance available to people who are otherwise uninsurable;
2. Assure that limited death policies are not sold by agents in preference to full death benefit policies and that the applicant understands that he or she may qualify for a full death benefit policy;
3. Reduce through disclosure the likelihood of misunderstanding arising where the sales presentation emphasizes the underwriting feature while minimizing or ignoring the limitation on death benefits at early durations; and
4. Set standards for the advertising of limited death benefit policy forms so as to eliminate unfair, misleading or deceptive advertising practices.

(b) This subchapter shall apply to all life insurance policy forms delivered or issued for delivery after the operative date hereof that limit death benefits during a period following the inception of the policy as an alternative to underwriting. The requirements in this subchapter apply to all previously filed forms as well as any forms submitted in the future. Previously filed forms which do not comply with these requirements are considered withdrawn as of the operative date of this subchapter.

11:4-21.2 Definitions

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

"Advertising" means any advertising materials and sales presentations in the following categories:

1. Printed and published material, audiovisual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, billboards and similar displays;
2. Descriptive literature and sales aids of all kinds issued by an insurer or agent, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;
3. Material used for the recruitment, training and education of an insurer's sales personnel, agents, solicitors, and brokers which is designed to be used or used to induce the public to purchase, increase, modify, reinstate, or retain a policy; and
4. Prepared sales talks, presentations and material for use by sales personnel, agents, solicitors and brokers.

"Department" means the New Jersey Department of Insurance.

"Full death benefit policy" means any individual life insurance policy, group life insurance policy, group life insurance certificate, or fraternal benefit society certificate delivered or issued for delivery in this State which provides the full face amount as the death benefit at all times following the inception date of the policy.

"Limited death benefit policy" means any individual life insurance policy, group life insurance policy, group life insurance certificate, or fraternal benefit society certificate delivered or issued for delivery in this State which limits death benefits during a period following the inception date of the policy as an alternative to underwriting.

11:4-21.3 General requirements

(a) No limited death benefit policy shall be issued in this State unless the insurer has, at the time of application, obtained from the applicant a signed and dated statement attesting that the applicant understands that he or she may qualify for a full death benefit policy which provides full benefits from inception. A copy of this statement must be submitted to the Department for review prior to its use.

(b) All advertising of a limited death benefit policy and any revisions to the advertising must be submitted to the Department prior to use. The material submitted must include a narrative statement of the method by which the policy will be sold.

(c) All advertising for a limited death benefit policy shall prominently explain the nature of the limited death benefit policy and state the duration of the limited death benefit period.

(d) Any advertising of a limited death benefit policy which makes reference to a specific premium rate must provide:

1. For other than radio and television, a listing of the rates and benefits for all available ages (male and female); and
2. For radio and television, instructions in the procedure to be followed by the applicant to learn what benefits and rates are available.

(e) When sold by agents, the commission may not be greater on the sale of limited death benefit policies than on the sale of full death benefit policies.

(f) The limited death benefit shall not be less than the amount of premiums paid with interest at the rate used to determine nonforfeiture values under the policy.

(g) The period during which a limited death benefit applies shall not exceed 25 percent of life expectancy at the issue age, as determined by the mortality table used for nonforfeiture values under the policy, or two years, whichever is shorter.

(h) The face or ultimate amount of insurance shall not exceed \$15,000.

(i) The issue age shall not be less than 45.

(j) The policy shall include a provision allowing for the return of the policy for a full refund of premiums within 30 days after delivery.

11:4-21.4 Severability

If any provision of this subchapter, or its application to any person or circumstances, is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Administration

Delinquent Enrollment; Employer Liability

Adopted New Rule: N.J.A.C. 17:1-12.8

Proposed: April 20, 1987, at 19 N.J.R. 626(a).

Adopted: June 18, 1987, by Douglas R. Forrester, Director,
Division of Pensions.

Filed: June 23, 1987 as R.1987 d.293, **without change.**

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: July 20, 1987.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption 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.

OTHER AGENCIES

CASINO CONTROL COMMISSION

(a)

Internal Controls; Gaming Equipment Slot Machine Merchandise Payouts

Adopted New Rule: N.J.A.C. 19:45-1.40A
Adopted Amendments: N.J.A.C. 19:40-1.2,
19:45-1.1, 1.37, 1.40 and 19:46-1.26

Proposed: October 6, 1986, at 18 N.J.R. 2005(a).
Adopted: June 24, 1987 by the Casino Control Commission,
Carl Zeitz, Vice-Chairman.
Filed: June 25, 1987, as R.1987 d.302, with substantive changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 5:12-45, 5:12-63(c), 5:12-69, and 5:12-70(g).
Effective Date: July 20, 1987.
Expiration Date: N.J.A.C. 19:45, April 7, 1988; N.J.A.C. 19:40,
September 26, 1989; and N.J.A.C. 19:46, May 4, 1988.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement, International Game Technology, the Atlantic City Casino Association and the Sands Hotel, Casino and Country Club. These comments and the Commission's responses are summarized below.

Comments of the Division of Gaming Enforcement (Division)

COMMENT: The Division generally supported the adoption of the proposal. In addition, the Division recommended that operational procedures similar to those used for progressive slot machine jackpots be developed to provide the casino industry with flexibility in the area of merchandise payouts.

RESPONSE: The Commission agrees that appropriate operating procedures should be developed. After the proposal is adopted, the staffs of the Commission and Division will meet to develop such procedures.

Comments of International Game Technology (IGT)

COMMENT: IGT suggested that the phrase "merchandise or thing of value" be defined so as to distinguish "merchandise" from "cash" and thereby clarify which items fall into which categories.

RESPONSE: The Commission rejected this comment on the basis that no further clarification is necessary to distinguish merchandise from cash. If any issues arise concerning whether a particular proposed jackpot is merchandise or a "thing of value" within the meaning of N.J.S.A. 5:12-45, the Commission shall address them on a case-by-case basis.

Comments of the Atlantic City Casino Association (ACCA)

COMMENT: The ACCA suggested that the proposed amendment to N.J.A.C. 19:45-1.37(a)4 be modified to permit the information specified therein to be displayed on a sign near the slot machine rather than on the slot machine itself.

RESPONSE: This comment was accepted by the Commission; the requirements of N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)5 have been modified to allow a licensee to put a sign on the front of the slot machine which either: (1) includes the information specified by the rules; or (2) simply identifies the merchandise or thing of value offered, as long as a sign containing the information specified in the rules is in an area near the slot machine approved by the Commission.

COMMENT: The ACCA opposed the requirement that a prize's cash equivalent value be included on the signs and advertisements identified in N.J.A.C. 19:45-1.37(a)4, 19:45-1.40A(n) and 19:46-1.26(a)5. The ACCA maintained that this information is unnecessary since the cash equivalent value is not included for purposes of computing gross revenue or determining the payout percentage of slot machines.

RESPONSE: This comment was rejected. Pursuant to N.J.S.A. 5:12-45, the Commission is charged with the responsibility to promulgate rules defining "cash equivalent value" in order to assure fairness, uniformity and comparability of slot machine payoffs. The Commission believes the statutory goals of fairness, uniformity and comparability are enhanced if patrons are able to identify and compare the cash equivalent values of jackpots offered at each casino.

COMMENT: The ACCA suggested that the term "credit card" be added to the definition of slot machine so as to accommodate the future use of special credit cards which would be issued to patrons for slot machine play.

RESPONSE: This comment was rejected as being totally unrelated to the current proposal.

Comments of Sands Hotel, Casino and Country Club (Sands)

COMMENT: Sands suggested that the method of determining "cash equivalent value" selected by the Commission in N.J.A.C. 19:45-1.40A(b) be eliminated in favor of a standard based on the fair market value of the merchandise at the time it is purchased. According to Sands, this change would eliminate patron confusion which will be caused by the current formula, would conform the rule to current federal tax requirements, and will expand the number of items which could be offered as merchandise jackpots.

RESPONSE: This comment was rejected by the Commission because the standards for calculation of "cash equivalent value" contained in N.J.A.C. 19:45-1.40A(b) provide more uniformity, clarity and comparability than notions of fair market value. Casino licensees may advise patrons that cash equivalent value is not necessarily equal to fair market value, but simply is a measure of the value of the merchandise or thing of value to the issuing casino licensee.

COMMENT: Sands suggested that the provisions of N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)5 which require a clear and accurate description of the merchandise offered and its cash equivalent value to be displayed on the slot machine be deleted. Sands argued that N.J.S.A. 5:12-45 does not require such information to be displayed and that a casino licensee should not be required to further identify the prizes available from any particular slot machine except by reference thereon.

RESPONSE: This comment was also unacceptable to the Commission since the rules are intended to give patrons fair notice as to the merchandise prize which is available to be won from any particular slot machine. The Commission believes the rules will help alleviate potential misunderstandings between patrons and casino licensees.

COMMENT: Sands suggested that the proposal treats merchandise payouts like progressive jackpot submissions. Since Sands believes the present progressive jackpot regulatory procedures are "prohibitive and wasteful of both regulatory and licensee efforts," Sands suggested that the submission process for payouts of merchandise or things of value be deleted or "flexible enough to give full meaning to the Legislature's intent" in amending N.J.S.A. 5:12-45.

RESPONSE: As noted earlier, the Division and Commission will be meeting to develop procedures for merchandise jackpot submissions; Sands' concerns will be reviewed and evaluated further as part of that process.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks *thus*; deletions from the proposal shown in brackets within asterisks *[thus]*).

19:40-1.2 Definitions

...
"Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, currency, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or thing of value or a token to be exchanged for any merchandise or thing of value, whether the payoff is made automatically from the machine or in any other manner whatsoever.
...

19:45-1.1 Definitions

...
"Cash equivalent value of any merchandise or thing of value" is defined in N.J.A.C. 19:45-1.40A.
...

"Jackpot" means any money, merchandise or thing of value to be paid to a patron as the result of a specific combination(s) of characters indicated on a slot machine.

"Payout" is defined in N.J.A.C. 19:45-1.40 and 19:45-1.40A.

"Slot Machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, currency, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or thing of value or a token to be exchanged for any merchandise or thing of value, whether the payoff is made automatically from the machine or in any other manner whatsoever.

"Slot Machine Win" means the amount determined by subtracting the hopper fills, other than initial hopper fills, and cash payouts pursuant to N.J.A.C. 19:45-1.40 from the slot machine drop.

19:45-1.37 Slot machines; identification; signs; meters

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1.-3. (No change.)

4. A display on the front of the slot machine that clearly represents its rules of play, character combinations requiring payouts, and the amount of the related payouts. In addition, a casino licensee shall display on the slot machine ***either***

i. A * [a] * clear description of any merchandise or thing of value offered as a payout, including the cash equivalent value of the merchandise or thing of value offered, the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit upon initially offering the merchandise or thing of value and the availability or unavailability to the patron of the optional cash equivalent value authorized by N.J.A.C. 19:45-1.40A(m); *or

ii. The name or a brief description of the merchandise or thing of value offered; provided, however, a sign containing the information specified in i. above shall be displayed in a location approved by the Commission near the slot machine.

5.-6. (No change.)

(b)-(e) (No change.)

(f) The casino licensee shall set each slot machine to pay out, at a minimum, 83 percent of the amount of coins, currency or tokens placed by patrons into the slot machine and shall maintain a record of each slot machine setting and theoretical payout percentage. No payout of any merchandise or thing of value or payment of cash in lieu of any merchandise or thing of value pursuant to N.J.A.C. 19:45-1.40A shall be included in determining whether a slot machine meets the 83 percent minimum payout requirement.

(g)-(h) (No change.)

19:45-1.40 Jackpot payouts of cash

(a) Whenever a patron wins a jackpot of cash or tokens to be exchanged for cash that is not totally and automatically paid directly from the slot machine, a slot booth cashier ("slot cashier") shall prepare a Jackpot Payout Slip ("Payouts").

(b)-(j) (No change.)

19:45-1.40A Jackpot payouts of merchandise or other things of value

(a) Whenever a casino licensee offers any merchandise or thing of value as part of a slot machine payout, such payout shall have a cash equivalent value of at least \$5,000 and shall not be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenue or be included in determining the payout percentage of any slot machine.

(b) The cash equivalent value of such payout shall be determined in accordance with the following requirements:

1. Any merchandise or thing of value of a type sold directly to the public in the normal course of a casino licensee's business shall be recorded at an amount based upon the full retail price normally charged for such item;

2. Any merchandise or thing of value which is of a type not offered for sale to the public in the normal course of a casino licensee's business but which is provided directly to the patron by the casino licensee shall be recorded at an amount based upon the actual cost to the casino licensee of providing such item;

3. Any merchandise or thing of value provided directly or indirectly to the patron on behalf of a casino licensee by a third party not affiliated

with the casino licensee shall be recorded at an amount based upon the actual cost to the casino licensee of having the third party provide such item;

4. Any merchandise or thing of value provided directly or indirectly to the patron on behalf of a casino licensee by a third party who is affiliated with the casino licensee shall be recorded by the casino licensee in accordance with the provisions of this section as if the affiliated party were the licensee.

(c) The casino licensee shall retain and make available to the Commission and Division upon request any supporting documentation relating to the acquisition and valuation of any merchandise or thing of value to be offered as a payout and shall accumulate the total dollar amount and number of such payouts. The supporting documentation shall include a detailed description of the merchandise or thing of value and shall specifically identify which slot machines offer which merchandise or things of value as payouts. In addition, a quarterly report shall be filed with the Commission, on a form prescribed by the Commission, which shall, at a minimum, provide the current quarter and year-to-date total dollar amount and number of payouts of merchandise or things of value.

(d) Whenever a patron wins a jackpot which includes any merchandise or thing of value, an accounting representative, with no incompatible functions, shall prepare a Payout Slip ("Slip"). Such Slips shall be serially prenumbered forms and shall be used in sequential order. All original and duplicate void Slips shall be marked "Void" and shall require the signature of the preparer.

(e) For establishments in which Slips are manually prepared, the following procedures and requirements shall be observed:

1. Each series of Slips shall be a three-part form, at a minimum, and shall be inserted in a locked dispenser that will permit an individual Slip in the series and its copies to be written upon simultaneously while still locked in the dispenser, and that will discharge the original Slip and a duplicate copy while the triplicate copy remains in a continuous, unbroken form in the dispenser; and

2. Access to the triplicate copy shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of Slips, placing Slips in the dispensers, and removing from the dispensers each day the triplicate copy remaining therein. These employees shall have no incompatible functions.

(f) For establishments in which Slips are computer prepared, each series of Slips shall be a two-part form, at a minimum, and shall be inserted in a printer that will: simultaneously print an original Slip and duplicate copy; store, in machine readable form, all information printed on those copies; and discharge the original Slip and duplicate copy. The stored data shall not be susceptible to change or removal by any personnel after preparation of a Slip.

(g) On the original and all copies of the Slip, or in stored data, the preparer shall record, at a minimum, the following information:

1. The casino number of the slot machine on which the jackpot was registered;

2. The winning combinations of characters constituting the jackpot;

3. The date, shift and time when the jackpot occurred;

4. The merchandise or thing of value won and its cash equivalent value;

5. The selection of merchandise or its cash equivalent value as made by the patron;

6. The time of the Slip's preparation;

7. The signature or, if computer prepared, identification code of the preparer.

(h) Signatures attesting to the accuracy of the information contained on the Slip shall be, at a minimum, of the following personnel at the following times:

1. The original:

i. An accounting representative with no incompatible functions upon preparation; and

ii. A slot supervisor after observing the combination of characters indicated on the slot machine; and

2. The duplicate:

i. An accounting representative with no incompatible functions upon preparation;

ii. A slot supervisor after observing the combination of characters indicated on the slot machine; and

iii. A security department member after observing the combination of characters indicated on the slot machine.

(i) Upon meeting the signature requirements as described in (h) above, the security department shall maintain and control the duplicate copy of the Slip, and the accounting department shall maintain and control the original Slip.

(j) At the end of gaming activity each day, at a minimum, the original Slip and duplicate copy of the Slip shall be forwarded as follows:

1. The original Slip shall be forwarded to the accounting department for agreement with the triplicate copy or stored data; and

2. The duplicate Slip shall be forwarded to the accounting department for agreement with the triplicate copy or stored data.

(k) Except as otherwise provided in (m) below, any merchandise or thing of value to which a patron is entitled as a result of a slot machine payout shall be given to the patron. Documentation supporting the receipt by the patron of such merchandise, thing of value or, in accordance with (m) below, cash equivalent value shall be prepared by a representative of the casino licensee having no incompatible functions and shall be agreed to the triplicate copy of the Slip or stored data by a representative of the accounting department having no incompatible functions.

(l) Each casino licensee offering slot machine payouts of tokens redeemable for any merchandise or thing of value shall submit, at a minimum, to the Commission and Division a description of the internal procedures governing such payouts, which shall include, without limitation, access to and security over the slot machines, accountability and control over the tokens and such other controls as are necessary to ensure integrity of the game and fairness to the patron equivalent to that provided by these regulations for payouts based on slot machine character combinations.

(m) The casino licensee may permit a winning patron to request and receive the exact cash equivalent value of the merchandise or thing of value as determined in (b)1-4 above in lieu of the merchandise or thing of value. However, any cash so provided shall not be included in determining gross revenue or in determining the minimum 83 percent payout of any slot machine as required by N.J.A.C. 19:45-1.37(f) and 19:46-1.26(e). If a licensee chooses to offer a patron this option, the licensee shall advise the patron in advance of actual play pursuant to N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)5.

(n) Any advertising involving slot machine payouts of any merchandise or thing of value by the casino licensee shall include an accurate description of the merchandise or thing of value offered, the cash equivalent value of the merchandise or thing of value offered and the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit upon initially offering the merchandise or thing of value. Any statements or depictions contained in the advertisement shall not be contrary to the provisions of the Casino Control Act or the Commission's regulations.

(o) Until the expiration of any time limit established in accordance with (n) above or, if no such time limit is initially established by the casino licensee, until the merchandise or thing of value offered as a slot machine payout is won by a patron, a casino licensee shall not change the odds of winning the merchandise or thing of value, the denomination of the machine, nor in any other way vary the terms upon which the merchandise or thing of value is offered to the public until it is won by a patron. Repair or replacement of a slot machine offering any merchandise or thing of value shall be governed by the restrictions applicable to progressive jackpot machines pursuant to N.J.A.C. 19:45-1.39, whether or not the merchandise or thing of value is offered in conjunction with a progressive jackpot payout.

19:46-1.26 Slot machines, identification; signs; meters; other devices

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following features:

1.-4. (No change.)

5. A display on the front of the slot machine that clearly represents its rules of play, character combinations requiring payouts, and the amount of the related payouts. In addition, a casino licensee shall display on the slot machine *[a]* *either

i. A* clear description of any merchandise or thing of value offered as a payout, including the cash equivalent value of the merchandise or thing of value offered, the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit upon initially offering the merchandise or thing of value and the availability or unavailability to the patron of the optional cash equivalent value authorized by N.J.A.C. 19:45-1.40A(m); *[and]* *or*

ii. The name or a brief description of the merchandise or thing of value offered; provided, however, a sign containing the information specified in i. above shall be displayed in a location approved by the Commission near the slot machine; and

6. (No change.)

(b)-(d) (No change.)

(e) The casino licensee shall set each slot machine to payout at a minimum 83 percent of the amount of coins, currency or tokens placed by patrons into the slot machine and shall maintain a record of each slot machine setting and theoretical payout percentage. No payout of any merchandise or thing of value or payment of cash in lieu of any merchandise or thing of value pursuant to N.J.A.C. 19:45-1.40A shall be included in determining whether a slot machine meets the 83 percent minimum payout requirement.

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

(a)

**Junkets
Junket Prearrival Reports**

Adopted Amendment: N.J.A.C. 19:49-3.1

Proposed: May 18, 1987 at 19 N.J.R. 860(a).

Adopted: June 24, 1987 by Casino Control Commission,
Carl Zeitz, Vice-Chairman.

Filed: June 25, 1987 as R.1987 d.303, **without change.**

Authority: N.J.S.A. 5:12-69 and 5:12-102.

Effective Date: July 20, 1987.

Expiration Date: March 29, 1988.

Summary of Public Comments and Agency Responses:

The only comment received was submitted by the Division of Gaming Enforcement and supported the adoption of the proposal as published.

Full text of the adoption follows.

19:49-3.1 Junket prearrival reports

(a) A prearrival report shall be prepared by a casino licensee for each junket which involves either:

1. A junket enterprise; or

2. A sole owner/operator junket enterprise.

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

EMERGENCY ADOPTIONS

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual

Optional Categorically Needy Eligibility Manual

Introduction, Case Processing, Nonfinancial Eligibility Factors, Financial Eligibility, and Other Administrative Requirements

Adopted Emergency Amendments and Concurrent

Proposal: N.J.A.C. 10:49-1.1 and 1.2

Adopted Emergency New Rule and Concurrent

Proposal: N.J.A.C. 10:72

Emergency Amendments and Rules Adopted: June 8, 1987 by Drew Altman, Ph.D., Commissioner, Department of Human Services.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): June 29, 1987.

Emergency Amendments and New Rule Filed: June 29, 1987 as R.1987 d.312.

Authority: N.J.S.A. 30:4D-3, 30:4D-6, 30:4D-7a, b, and c, 30:4D-12, and §1902(1) of the Social Security Act.

Emergency Amendments and New Rule Effective Date: June 29, 1987.

Emergency Amendment and New Rule Operative Date: July 1, 1987.

Emergency Amendment Expiration Date: August 28, 1987.

Concurrent Proposal Number: PRN 1987-285

Submit comments and inquiries by August 19, 1987 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN-712
Trenton, New Jersey 08625

These amendments and new rules 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 these emergency amendments and new rules are being proposed for re-adoption in compliance with the normal rule making requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follow:

Summary

These proposed amendments and new rules concern recent amendments to the New Jersey Medicaid Legislation establishing additional coverage under Title XIX (Medicaid) for pregnant women and certain children whose income and/or resources exceed the categorical eligibility levels. The proposed amendments and new rules describe the basic criteria by which persons may establish eligibility under this expansion of the Medicaid program. The topics covered include the application process, financial and nonfinancial factors governing eligibility, and other administrative requirements.

There are two coverage groups under this expansion of the Medicaid program; pregnant women and certain children. A pregnant woman determined eligible under the provisions of these proposed amendments and new rules is eligible for services as a pregnant woman during the term of the pregnancy itself and for the 60-day period beginning with the last day of the pregnancy. Children may establish eligibility with the following age restrictions:

Through September 30, 1987 under the age of one year, and under the age of two years effective October 1, 1987.

A child for whom application has been made and who is eligible for Medicaid prior to October 1, 1987 and who attains the age of one year before that date will continue to be viewed as meeting the age requirement until October 1. This provision will prevent eligible children from "aging out" of the program who would again be eligible October 1 and will, therefore, provide for the continuity of medical care.

In order to establish eligibility for Medicaid under the provisions of the proposed amendments and new rules, a pregnant woman or child must be a citizen of the United States or an alien lawfully admitted for permanent residence, as well as a resident of New Jersey. Before eligibility will be granted, an individual must apply for any pensions or benefits to which he or she is entitled. No person who is an inmate of a public institution may receive Medicaid benefits.

For pregnant women and children described in the proposed amendments and new rules, the value of their resources or assets is not counted in determining Medicaid eligibility. Resources will, however, be reviewed as part of the eligibility process to identify possible income sources.

In determining income eligibility for Medicaid benefits under the proposed amendments and new rules, income of the entire "household unit" will be considered. In the case of a pregnant woman, the household unit will consist of the pregnant woman and her unborn child, her spouse, and her children under the age of 21 who reside in the same household. For children, the household unit will include the child, the child's natural or adoptive parents, and the child's blood-related or adoptive siblings who are under the age 21 and who reside in the same household.

The household unit's income is determined in accordance with the methods employed in the AFDC-C program as found in N.J.A.C. 10:82 with the following exceptions. The maximum income limits at N.J.A.C. 10:82-1.2(d), the \$30 and one-third disregard of earned income at N.J.A.C. 10:82-2.8(a)3 and 4.4(c), the deeming of stepparent income at N.J.A.C. 10:82-2.9(d), and the deeming of income of an alien's sponsor do not apply in determining income eligibility under the provisions of this chapter.

Countable household unit income is compared to the official poverty income guidelines as published annually by the U.S. Department of Health and Human Services as required by sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L.97-35). If the income is less than or equal to the guideline for the household unit size, income eligibility is established. If that guideline is exceeded, eligibility for Medicaid benefits does not exist. The Federal poverty income guidelines for 1987 are as follows:

Family Size	Monthly Poverty Guideline
1	\$ 458
2	616
3	775
4	933
5	1091
6	1250
7	1408
8	1566
each additional	158

If, during the term of her pregnancy, a woman meets the income and all other eligibility requirements, she will remain income eligible for the full term of her pregnancy as well as for the 60-day period following the last day of pregnancy. The child resulting from the pregnancy will likewise continue income eligible for the 60-day period following birth. For children otherwise age eligible under the proposed amendments and new rules, in order to obtain Medicaid benefits, income eligibility must continue to be met each month. Thus, an increase in the household unit's income may cause a previously eligible child to lose entitlement to benefits.

Persons who are determined eligible for this program will be entitled to the full range of Medicaid services, including but not limited to, hospital services (inpatient and outpatient), physician's services, independent clinic services, laboratory and radiological services, pharmaceutical services, medical supplies and equipment, prosthetic and orthotic devices, vision care services, dental services, nurse-midwifery services, and long term care and home care services.

Social Impact

The proposed amendments and new rules affect pregnant women and those children meeting the age criteria who do not currently qualify for medical assistance coverage because of excess countable income or re-

sources. Those persons whose income equals or is less than the Federal poverty guidelines and who meet the other categorical requirements may now qualify for Medicaid benefits.

The Medically Needy program currently provides certain medical services to categorically eligible pregnant women and children whose income exceeds the categorical Medicaid limits. In that program, however, many persons must spend-down to the Medically Needy Income Level. There is no spend-down requirement to qualify for Medicaid benefits described in the proposed amendments and new rules. Pregnant women and children who are currently enrolled in the Medically Needy program, will, if they qualify under these rules, now be eligible for payment for full Medicaid benefits without a spend-down liability.

The proposed amendments and new rules will impact on virtually all providers of medical care, services, goods and supplies authorized under New Jersey's Title XIX (Medicaid) program. Providers will be responsible for verifying patient eligibility when the service is rendered or the treatment provided, and must submit a complete claim within prescribed time limits in order to be reimbursed by the New Jersey Medicaid program. Providers should follow the same procedures for this new group of eligible individuals as they do for currently eligible Medicaid patients.

Economic Impact

The estimated increased service expenditure for this expansion of the Medicaid program is approximately \$30,926,000 (Federal and State share combined) for fiscal year 1988.

There is no cost to the Medicaid patient for the services provided by the Medicaid program.

There is no change in reimbursement for providers associated with these proposed amendments and new rules. They will be reimbursed in accordance with existing Medicaid policies and procedures. The economic impact on individual providers will vary, depending on the number of Medicaid patients treated.

Regulatory Flexibility Statement

The Division does not believe a regulatory flexibility analysis is required for this proposal. There are no additional reporting, record keeping or compliance requirements other than those specified by law (N.J.S.A. 30:4D-12). Medicaid providers are already required to keep and maintain sufficient records to fully identify the recipient to whom the service was rendered, the dates and nature of service, etc. (N.J.S.A. 30:4D-12(d)). This proposal does not change this statutory requirement.

Full text of the emergency amendments and new rules and concurrent proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

10:49-1.1 Who is eligible for Medicaid

(a) (No change.)

(b) The following groups are eligible for medical and health services covered under the New Jersey Medicaid Program when provided in conjunction with program requirements specifically outlined in the second chapter of each service manual. The groups are not all inclusive:

1.-8. (No change.)

9. Pregnant women and children up to two years of age who meet the income standards of the Optional Categorically Needy Program (OCN):

i. Individuals are determined to be eligible by the county welfare agency or board of social services. They must have family income which does not exceed 100 percent of the federal poverty level.

ii. Pregnant women are eligible during pregnancy and through 60 days following the last day of the pregnancy.

iii. Children up to age two will be phased in as follows:

(1) Provided all other eligibility criteria are met, effective July 1, 1987, children up to age one are eligible and effective October 1, 1987, children up to the age of two are eligible. A child under the age of one year for whom application is made and who is eligible prior to October 1, 1987, and before his or her first birthday, will be deemed to meet the age requirements until October 1, 1987.

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

(e) If a patient has not applied for benefits, is unable to pay for services rendered and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider should encourage the patient or his/her representative to apply for benefits through the county welfare agency or board of social services for [either] the Aid to Families with Dependent Children program, **the Optional Categorically Needy program** or for the Medically Needy program, to the Social Security Administration for Supplemental Security Income Benefits, or in certain cases to the New Jersey Division of Youth and Family Services. The agency will process the application and notify the patient of the resulting determination.

1. (No change.)

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

10:49-1.2 How to identify a covered person

Note: All eligible persons as described below have an HSP (Medicaid) Case Number, which includes a two-digit individual Person Number. This identification number appears on the validation of eligibility form which must be presented to providers of services as proof of eligibility.

(a) An HSP (Medicaid) Case Number, as currently assigned, consists of 12 digits.

1.-2. (No change.)

3. The third and fourth digits of the 12-digit HSP (Medicaid) Case Number designate the category under which a person is determined eligible for the New Jersey Medicaid Program.

10—Aged—SSI related (65 years of age or older)

15—Aged—Medically Needy related

20—Disabled—SSI related (under 65 years of age)

25—Disabled—Medically Needy related

30—Aid to Families with Dependent Children (AFDC) (**Optimal Categorically Needy eligible individuals are included in this category.**)

35—AFDC—Medically Needy related

50—Blind—SSI related

55—Blind—Medically Needy related

60—Children in Foster Care

70—Medical Assistance for Aged—A New Jersey State Program

80—Refugee Program

4.-6. (No change.)

(b) There are four forms used for validation of eligibility: A New Jersey Medicaid provider may verify the client's Medicaid eligibility by means of the Department of Human Services "Medicaid-ID" (FD-152), "Medicaid Eligibility Identification Card" (FD-73/178), "DYFS 16-36", or "Validation of Eligibility" (FD-34).

1. (No change.)

2. "Medicaid Eligibility Identification Card" (MEI Card) (FD-73/178) (See Exhibit II for the regular Medicaid Program MEI Card and Exhibit V for the Medically Needy Program MEI Card at the end of this section): This card is issued monthly or quarterly depending on the basis of the recipient's eligibility. The MEI Card is issued monthly to individuals (aged, blind and disabled) determined by the Social Security Administration to be eligible for Supplemental Security Income (SSI), **monthly to individuals determined by the county welfare agency or board of social services to be eligible in the Optional Categorically Needy Program**, monthly to individuals in the Special Status Program (see (b)2v[.] below) and monthly to individuals determined by the county welfare agency or board of social services to be eligible in the Medically Needy Program (see (b)2[.]vi[.] below). It is issued quarterly for Medicaid eligible children under the supervision of the Division of Youth and Family Services (DYFS).

i. The MEI Card usually identifies eligibility for only one person; however, **the Optional Categorically Needy Program identifies all eligible persons in the family on the MEI Card** and the Special Status Program identifies all eligible persons in the family and restrictions apply to all eligible persons listed on the MEI Card when issued as a Medicaid Special Status Card. Also, when the MEI Card is issued to the Medically Needy, more than one eligible person may be listed and a service code is indicated next to each name (see (b)2 vi[.] below).

ii.-vi. (No change.)

3. (No change.)

CHAPTER 72

OPTIONAL CATEGORICALLY NEEDY ELIGIBILITY MANUAL SUBCHAPTER 1. INTRODUCTION

10:72-1.1 Program scope

(a) This chapter contains the criteria for Medicaid eligibility for certain pregnant women and children not eligible under the provisions of N.J.A.C. 10:81 and 82. The provisions of this chapter are effective July 1, 1987.

1. Because the eligibility criteria established by the rules contained within this chapter are more liberal than those applicable under AFDC-related Medicaid, children (of the applicable ages) and pregnant women losing Medicaid eligibility because of financial reasons should be evaluated under the provisions of this chapter for the possibility of continuing Medicaid eligibility.

2. Children and pregnant women financially ineligible for Medicaid under the provisions of N.J.A.C. 10:81 and 82 and who are income ineligible for Medicaid under the provisions of this chapter shall be

evaluated for eligibility as Medically Needy under the provisions of N.J.A.C. 10:70.

(b) Medicaid eligibility under the provisions of this chapter is limited to:

1. Pregnant women; and
2. Children of the following ages (see N.J.A.C. 10:72-3.4(a) 4 and 5 for protected eligibility for children reaching the age limits):

- i. Through September 30, 1987, children under the age of one year; and

- ii. Effective October 1, 1987, children under the age of two years.

(c) Retroactive Medicaid eligibility is available beginning with the third month prior to the month of application for Medicaid for any month during which the applicant meets all eligibility criteria and during which the applicant has unpaid medical expenses for covered services. In order to qualify for retroactive coverage, an individual need not be determined eligible at the time of application for Medicaid benefits. Application for retroactive Medicaid coverage may be made on behalf of a deceased person so long as the person was alive during a portion of the three-month period immediately prior to the month of application and he or she has unpaid medical expenses for Medicaid covered services.

- i. Retroactive Medicaid coverage is not available under the provisions of this chapter for any period prior to July 1, 1987.

10:72-1.2 Purpose

(a) The purpose of the rules contained within this chapter is to:

1. Set forth eligibility criteria for the Medicaid program; and
2. Specify the rights and responsibilities of program applicants and eligible persons.

(b) Circumstances which are neither specifically nor generally addressed in these regulations shall be referred to designated staff of the Division of Medical Assistance and Health Services for resolution.

(c) The director of the county welfare agency shall assign copies of this chapter to administrative staff, all staff responsible for the determination of Medicaid eligibility for pregnant women and children, and to social service staff as appropriate and shall ensure that each staff member is thoroughly familiar with its requirements in order to apply the policy and procedures consistently.

(d) The Division of Medical Assistance and Health Services will issue revisions to this chapter as they are promulgated in accordance with New Jersey Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

- i. At least one administrative copy of all obsolete pages of this chapter must be maintained by the county welfare agency.

(e) This chapter is a public document. All copies in use must be updated accurately as revisions are issued. The chapter is available as follows:

1. Copies are available in the State offices of the Division of Medical Assistance and Health Services and in each county welfare office for examination and review during regular office hours.

2. Specific policy material necessary for an applicant or recipient or his or her representative to determine whether a fair hearing is to be requested or to prepare for a fair hearing shall be provided to such persons without charge.

3. All public and university libraries which have agreed to maintain the chapter up-to-date will have a copy available under their regulations.

4. Welfare, social service, and other nonprofit organizations will be furnished with a copy of this chapter at no cost upon an official written request on agency letterhead to the Division of Medical Assistance and Health Services.

5. A current up-to-date copy of this chapter is available from the Division of Medical Assistance and Health Services at the cost of printing and mailing to anyone who requests it in writing.

10:72-1.3 Administrative organization

Financial eligibility for the Medicaid program is administered by the county welfare agencies under the supervision of the Division of Medical Assistance and Health Services.

10:72-1.4 Principles of administration

(a) The following principles of administration apply in the Medicaid program.

1. Opportunity to make application: Any individual who believes he or she is eligible shall be afforded an opportunity to make application (or reapplication) for the Medicaid program without delay.

2. Primary source of information: Program applicants or eligible persons are the primary source of information concerning program eligibility. The county welfare agency shall, when necessary, in the process of determining eligibility, use secondary sources of information with the knowledge and consent of the applicant or eligible person.

3. Adherence to law and administrative policy: There shall be strict adherence to law and complete conformity with rules and administrative policy. Requirements other than those established by law or rule shall not be imposed as a condition of receiving assistance under the Medicaid program.

10:72-1.5 Confidentiality of information

(a) No member, officer, or employee of the county welfare agency shall produce or disclose any confidential information to any person except as authorized below.

1. Information considered confidential includes, but is not limited to, the following:

- i. Names and addresses;
 - ii. Medical services provided;
 - iii. Social and economic conditions and circumstances;
 - iv. County welfare agency evaluation of personal information; and
 - v. Medical data, including diagnosis and past history of disease or disability.

2. The county welfare agency may disclose information concerning an applicant or eligible person to persons and agencies directly related to the administration of the Medicaid program. Persons and agencies directly related to program administration are those who are properly authorized to be involved in the following:

- i. The establishment of eligibility;
 - ii. The determination of the amount and scope of medical assistance;
 - iii. The provision of services for recipients; and
 - iv. The conduct or assisting in the conduct of an investigation, prosecution, or civil or criminal proceeding related to the Medicaid program.

3. The county welfare agency may release information whenever the applicant or eligible person waives confidentiality, but only to the extent authorized by the waiver.

4. If a court issues a subpoena for a case record or any other confidential information or for any agency representative to testify concerning an applicant or eligible person the county welfare agency shall make a statement substantially as follows:

- i. "Under provisions of the Social Security Act, information concerning applicants and recipients of medical assistance must be restricted to persons directly connected to the administration of such assistance. Officials of the Federal government have advised that this includes a requirement of nondisclosure of such information in response to a subpoena. If a disclosure is made of this information, either by personal testimony or by the protection of records, this is considered nonconformance with Federal requirements and may subject the State to loss of Federal financial participation in the medical assistance program."

5. In no instance is it intended that any officer or employee of the county welfare agency place him or herself in contempt of court through the refusal to follow orders of the court. In any instance of a subpoena for case record information or for agency testimony, a complete report of the disposition of the court's request shall be entered into the case record.

6. Pertinent information and records may be released in conjunction with an administrative hearing conducted by the Office of Administrative Law regarding action or inaction of the county welfare agency affecting an applicant's or eligible person's eligibility or entitlement under the Medicaid program.

10:72-1.6 Materials distributed to Medicaid applicants or eligible persons

(a) All materials distributed to program applicants or eligible persons must:

1. Directly relate to the administration of the Medicaid program;
 2. Have no political implications;
 3. Contain names only of individuals directly connected with the administration of the Medicaid program; and
 4. Identify those individuals only in their capacity with the State or the county welfare agency.

- (b) The county welfare agency shall not distribute materials such as "holiday" greetings, general public announcements, voting information, or alien registration notices.

- (c) The county welfare agency may distribute materials directly related to the health and welfare of program applicants and eligible persons, such as announcements of free medical examinations, availability of surplus food, and consumer protection information.

10:72-1.7 Nondiscrimination

(a) Title VI of the Federal Civil Rights Act of 1964 (P.L. 88-352) and section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the ground of race, color, national origin, or handicap in the adminis-

tration of any program for which Federal funds are received. Strict compliance with the provisions of these Acts and any regulations based thereon is required as a condition to receive Federal funds for the assistance programs administered by the county welfare agencies. These principles apply to the Medicaid program in New Jersey.

1. The county welfare agency shall inform all staff members of their obligations in regard to the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973.

2. All persons seeking medical assistance shall be informed of Title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973.

3. All persons seeking or receiving medical assistance shall be afforded an opportunity to file a complaint alleging discrimination on the ground of race, color, nation origin, or handicap. Such complaints may be filed directly with the Regional Manager, U.S. Department of Health and Human Services, Office of Civil Rights, Federal Plaza, New York, New York 10007, or with the Director, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625.

4. In any instance in which a complaint of alleged discrimination is filed with a State or county agency, the complaint shall be forwarded immediately to the Director, Division of Medical Assistance and Health Services. The Director, upon receipt of any such complaint, will take any such action he or she deems appropriate to the situation. This action may include, but is not limited to, the securing of reports from whatever sources have knowledge pertinent to the situation and referral to the Division of Civil Rights of the New Jersey Department of Law and Public Safety, for investigation, evaluation, and recommendation by that agency.

5. The county welfare agency shall afford full cooperation in the investigation of complaints of discrimination as may be requested by the Federal Department of Health and Human Services, the State Division of Medical Assistance and Health Services, or the State Division of Civil Rights.

10:72-1.8 Assignment of medical support rights

(a) Any person who applies for Medicaid, by virtue of the application for benefits, is deemed to have assigned to the Commissioner of the Department of Human Services any rights to support for the purpose of medical care as determined by a court or administrative order and any rights to payment for care from any third party. Program applicants and recipients are required to cooperate in the identification of and the obtaining of any such rights.

1. The county welfare agency shall advise program applicants and recipients of the terms of the assignment and the consequences thereto.

SUBCHAPTER 2. CASE PROCESSING

10:72-2.1 Application

(a) Application for Medicaid benefits for pregnant women and children shall be accomplished by the completion and signing of Form PA-1J as well as any addenda to that form as prescribed by the Division of Medical Assistance and Health Services.

1. The application for the program shall be executed by:

i. The pregnant women (regardless of age); or
ii. The parent, guardian, or caretaker relative of a child for whom Medicaid is sought;

2. For cases in which, because of confinement, illness, incapacity, disability, or lack of competence of a person specified in (a)1 above, the application may be executed on behalf of such person by:

i. A relative by blood or marriage;
ii. A staff member of a public or private welfare or social service agency of which the person seeking assistance is a client and who has been designated by the agency to so act;
iii. An attorney or physician of the person seeking Medicaid benefits; or

iv. A staff member of an institution or facility in which the individual is receiving care and who has been designated by the institution or facility to so act.

3. A legal guardian shall be recognized as an authorized agent to execute an application on behalf of a pregnant woman or child.

(b) The county welfare agency, under policies and procedures established by the Division of Medical Assistance and Health Services, has the direct responsibility in the application process to:

1. Inform applicants of the purpose of and the eligibility requirements for the Medicaid program, including their rights to a fair hearing;

2. Receive applications and review them for completeness, consistency, and reasonableness;

3. Assist program applicants in exploring their eligibility for program benefits;

4. Make known to program applicants the appropriate resources and services both within the agency and in the community; and

5. Assure the prompt and accurate submission of eligibility data to the Medicaid Status File for eligible persons of the reason for their ineligibility.

(c) As part of the application process, an applicant for Medicaid has the responsibility to:

1. Complete, with the assistance of the county welfare agency as required, any forms required as part of the application process;

2. Assist the county welfare agency in securing evidence that verifies his or her statements regarding eligibility; and

3. Provide medical confirmation of pregnancy when Medicaid benefits are sought on that basis.

(d) For any application for Medicaid benefits under the provisions of this chapter, the county welfare agency must accomplish disposition of the application as soon as all factors of eligibility are met and verified but not later than 30 days from the date of application (or from the date of the inquiry form Pa-1C, if applicable). Exceptions to the timeliness standard appear in (d)2 below.

1. "Disposition of the application" means the official determination by the county welfare agency of eligibility or ineligibility of the applicant(s) for Medicaid.

2. Disposition of the application may exceed the 30-day processing standard when substantially reliable evidence of eligibility or entitlement for benefits is lacking at the end of the processing period. In such circumstances, the application may be continued in pending status. The county welfare agency shall fully document in the case record the circumstances of the delayed application processing. The processing standard may be exceeded for any of the following:

i. Circumstances wholly within the control of the applicant;

ii. A determination by the county welfare agency, when evidence of eligibility or entitlement is incomplete or inconclusive, to afford the applicant additional time to provide evidence of eligibility before final action on the application;

iii. An administrative or other emergency that could not reasonably have been avoided;

iv. Circumstances wholly beyond the control of both the applicant and the county welfare agency.

3. When disposition of the application is delayed beyond the processing standard, the county welfare agency shall provide the applicant written notification prior to the expiration of the processing period setting forth the specific reasons for the delay.

4. Each county welfare agency director shall establish appropriate operational controls to expedite the processing of applications and to assure maximum compliance with the processing standard.

i. The county welfare agency shall maintain control records which identify all pending applications which have exceeded the processing standard and the reason therefore. The record shall be adequate to make possible the preparation of reports of such information as may be requested by the Division of Medical Assistance and Health Services.

(e) The following actions on an application qualify as disposition of an application for purposes of the processing standard:

1. Approved: The applicant has been determined eligible for Medicaid;

2. Denied: The applicant has been determined ineligible for Medicaid;

3. Dismissed: A decision by the county welfare agency that the application process need not be completed because:

i. The applicant has died (the application process must be completed if there are unpaid medical bills for covered services in the retroactive coverage period or subsequent to program application);

ii. The applicant cannot be located;

iii. The application was registered in error;

iv. The applicant has moved out of the State during the application process.

4. Withdrawn: The applicant requests that eligibility for the Medicaid program be no longer considered.

10:72-2.2 Interview

The county welfare agency is required to conduct a personal face-to-face interview with the program applicant or the authorized agents as part of the process of determining program eligibility.

10:72-2.3 Verification requirements

(a) The county welfare agency is required to verify all factors related to eligibility for the Medicaid program. Factors subject to verification include:

1. Pregnancy: For women seeking benefits under the provisions of this chapter, pregnancy must be medically verified. The medical verification must include the estimated dates of conception and delivery.

2. Birth date: The birth date of any person for whom benefits are sought must be verified.

3. Alien status: The status of any alien seeking benefits must be verified to establish entitlement for Medicaid benefits.

4. Citizenship: When an applicant's or recipient's statements of U.S. citizenship are questionable, citizenship must be verified.

5. Household composition: The county welfare agency must verify the household composition in order to ascertain which persons will be included in the determination of eligibility for Medicaid benefits.

6. Social Security number: The Social Security number of any person seeking Medicaid benefits must be verified.

7. The county welfare agency must verify all sources of income of any person whose income must be counted in the determination of program eligibility. While resources are not a factor of eligibility for benefits under this chapter, resources must be identified and verified to determine if income is derived from the resources.

(b) The county welfare agency shall use documentary evidence as the primary source of verification. Documentary evidence is written confirmation of the family's circumstances. It is the responsibility of the applicant to obtain or to assist the county welfare agency in obtaining any required documentation.

(c) In circumstances in which the documentary evidence is questionable or is not available, the county welfare agency may use collateral contact to confirm the family's circumstances. A collateral contact is a verbal confirmation of a family's circumstances by a person outside the family. In order to be acceptable as verification, a collateral contact must be in a position to provide accurate information about the family and the circumstance in question.

(d) Subsequent to the initial application, verification is required for only those factors of eligibility which are subject to change or for those factors for which the original verification has become questionable.

(e) In the absence of credible verification of all eligibility factors, eligibility for the Medicaid program may not be established.

10:72-2.4 Case transfer

(a) When individuals move permanently to another county within the State, responsibility for the case shall be transferred in accordance with the provisions of this section. The case transfer shall be accomplished in a manner so as not to adversely affect the rights of any individual to program entitlement.

1. A temporary visit out-of-county shall not be considered to be a change of county residence until the visit has continued for longer than three calendar months.

(b) The county of origin shall initiate and the receiving county shall, on request, immediately undertake an investigation of the circumstances surrounding the move. If the move is permanent, each county shall execute its respective responsibilities in accordance with (c) and (d) below.

(c) Applicant cases: For persons who move from the county in which application for Medicaid is made prior to the determination of eligibility or ineligibility:

1. The county in which the application was made has the responsibility to:

- i. Complete the eligibility determination process;
- ii. If determined eligible for the Medicaid program, accrete the eligible person(s) to the Medicaid Status File with the correct effective date of Medicaid eligibility and the new address in the receiving county; and
- iii. If the case is determined eligible, within five working days of that determination, transfer the case record material to the receiving county in accordance with (d) i through iv below.

2. The receiving county has the responsibility to:

- i. Communicate promptly with the client upon the receipt of the case material to advise of continued program entitlement; and
- ii. Immediately notify the county of origin, in writing, of the date the case material was received.

(d) Eligible cases: For cases which are determined eligible for the Medicaid program:

1. The county of origin has the responsibility to:

- i. Transfer, within five working days from the date it is notified of the actual move, a copy of pertinent case material to the receiving county. Such material shall include, at a minimum, a copy of the first application and most recent application form (including all verification), Social Security numbers, and the new address in the receiving county;
- ii. Send with the above case material, a cover letter specifying that the case is being transferred and requesting written acknowledgement of receipt;
- iii. Forward promptly to the receiving county, copies of any other material mutually identified as necessary for case administration; and

iv. Notify the receiving county if there will be a delay in providing any of the case material.

2. The receiving county has the responsibility to:

i. Communicate promptly with the client upon receipt of the case material;

ii. Immediately notify the county of origin, in writing, of the date the initial case material was received;

iii. Review eligibility for the case. If questions regarding case eligibility exist because of information provided by the county of origin, that county shall be consulted for resolution of the issues;

iv. Accept responsibility for the case (provided application to transfer has been made) effective with the next month if the initial case material has been received before the 10th of the month;

v. Accept responsibility for the case (provided application to transfer has been made) for the second month after the month of receipt of initial case material when such material is received on or after the 10th of the month;

vi. Update the Medicaid Status File as necessary including entry of a new case number. If the case is determined eligible for Medicaid in the receiving county, there shall be no interruption of entitlement. If the case is determined ineligible for Medicaid in the receiving county, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible persons deleted from the Medicaid Status File; and

vii. Notify the county of origin of the date eligibility for Medicaid will begin or will be terminated in the receiving county.

10:72-2.5 Redetermination of eligibility

(a) Eligibility for Medicaid under this chapter shall be redetermined, including a face-to-face interview and the completion of a new application form, as follows:

1. For a pregnant woman, eligibility need not be redetermined until the birth of her child. Upon the birth of the child, eligibility should be redetermined prior to the expiration of the 60-day period following the birth to determine on-going eligibility for the newborn.

2. For the eligibility of children, eligibility must be redetermined no later than six months following the month of initial eligibility or the last redetermination.

(b) The county welfare agency shall reassess program eligibility as follows:

1. When required on the basis of information the county welfare agency has obtained previously about anticipated change in the case situation or when additional information is needed to ascertain income eligibility for the program.

2. Promptly after information is obtained by the county welfare agency which indicates changes in the case circumstances that may affect program eligibility.

10:72-2.6 Post-application client responsibilities

(a) Upon a determination of eligibility for the Medicaid program, eligible persons have the on-going responsibility for the reporting of changes in family circumstances and for the provision of information as delineated at N.J.A.C. 10:72-2.1(c). Further, as requested by the county welfare agency, additional information must be provided. At any time that the county welfare agency lacks sufficient information to confirm continuing program eligibility because of the unwillingness of an eligible person to provide necessary information, the agency shall commence action to terminate the case.

10:72-2.7 Retroactive eligibility

(a) Persons may be eligible under the provisions of this chapter for retroactive Medicaid eligibility for the three months preceding the month of application. In order to be entitled for retroactive Medicaid, the applicant(s) must have been eligible during any of the three months prior to the month of application and have unpaid medical bills during a month of eligibility. In the case of a pregnant woman, in order to be eligible for a retroactive month, the medical verification of pregnancy must have occurred in the retroactive month or in a previous month.

(b) Determination of retroactive eligibility is the responsibility of the Division of Medical Assistance and Health Services. If the applicant has unpaid medical bills from the retroactive eligibility period, the county welfare agency shall provide the applicant with the appropriate forms and instruct the applicant to send them to the Division of Medical Assistance and Health Services, Retroactive Eligibility Unit, CN-712, Trenton, New Jersey 08625. An application for retroactive eligibility must be received by the Retroactive Eligibility Unit within six months of the date of application for Medicaid at the county welfare agency.

SUBCHAPTER 3. NONFINANCIAL ELIGIBILITY FACTORS

10:72-3.1 General provisions

(a) Eligibility for the Medicaid program must be established in relation to each requirement of the Medicaid program to provide a valid basis for the granting or denying of medicaid assistance.

(b) The applicant's statements regarding his or her eligibility, as set forth in the application form, are evidence. The statements must be consistent and meet prudent tests of credibility. Incomplete or questionable statements shall be supplemented and substantiated by corroborative evidence from other pertinent sources.

10:72-3.2 Citizenship

(a) In order to be eligible for the Medicaid program, an individual must be a citizen of the United States, an alien lawfully admitted for permanent residence, or an alien approved for temporary residence.

1. The term "citizen of the United States" includes persons born in Puerto Rico, Guam, the Virgin Islands, Swains Island, American Samoa, and the Northern Mariana Islands.

2. The following aliens shall be considered lawfully admitted for permanent residence for purposes of establishing eligibility for the Medicaid program:

i. Immigrant: An alien lawfully admitted for permanent residence pursuant to sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act;

ii. Continuous residence: An alien who entered the United States prior to June 30, 1948, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the United States Attorney General pursuant to section 249 of the Immigration and Nationality Act;

iii. Conditional entry after March 31, 1980: An alien qualified for conditional entry after March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political belief pursuant to section 207 (formerly section 203(a)(7)) of the Immigration and Nationality Act;

iv. Conditional entry prior to April 1, 1980: An alien who qualifies for conditional entry prior to April 1, 1980 pursuant to former section 203(l)(7) of the Immigration and Nationality Act;

v. Granted asylum: An alien granted asylum through an exercise of discretion by the United States Attorney General pursuant to section 208 of the Immigration and Nationality Act;

vi. Emergent reasons: An alien lawfully present in the United States as a result of an exercise of discretion by the United States Attorney General for emergent reasons or for reasons deemed strictly to be in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a grant of parole by the United States Attorney General;

vii. Deportation withheld: An alien living in the United States to whom the United States Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgement of the United States Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion.

3. Aliens granted the status of lawfully admitted for temporary residence by the Immigration and Naturalization Service are, if otherwise eligible, entitled to Medicaid under the provisions of this chapter.

10:72-3.3 State residency

(a) In order to be eligible for the Medicaid program, an individual must be a resident of the State of New Jersey. The term "resident" shall be interpreted to mean a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.

1. If an individual leaves New Jersey with the intent to establish permanent residence elsewhere, or for an indefinite period for purposes other than a temporary visit, he or she ceases to be eligible to receive Medicaid from this State.

2. When an individual enters this State in order to receive medical care and applies for Medicaid to meet all or a portion of the costs of such care, the fact that the immediate purpose of the move was to secure medical care does not, in and of itself, have the effect of making the person ineligible for the Medicaid program. It is the responsibility of the county welfare agency to evaluate all such cases and to make an eligibility determination, considering carefully all the following criteria:

i. Whether the move is a temporary one, being solely for the purpose of receiving medical care for a limited time;

ii. Whether there is clear expression of intent on the part of the individual to remain permanently in this State;

iii. Whether there is objective evidence that the individual has, in fact, abandoned or not abandoned residence in the State from which he or she came;

iv. Whether the state in which the individual previously resided recognizes him or her as having continuing eligibility under the Medicaid program (or other program providing payment for medical care) of that jurisdiction.

3. If, after full consideration of the above factors, the county welfare agency is satisfied that the individual has become a resident of this State, Medicaid eligibility may be established.

10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1. Pregnant women: Needy women of any age during the term of a medically verified pregnancy.

i. A woman who is determined eligible under the criteria of this chapter will, for purposes of eligibility, be considered to be a pregnant woman until the end of the 60-day period beginning with the last day of her pregnancy.

2. Children of the following ages:

i. Through September 30, 1987, children under the age of one year; and

ii. Effective October 1, 1987, children under the age of two years;

3. The child resulting from the pregnancy of a woman eligible for Medicaid under the provisions of this chapter shall remain eligible so long as the mother of (a)1i above and the child lives with his or her mother. Eligibility of the child resulting from the pregnancy will be made without regard to income for the 60-day period following the child's birth.

4. A child under the age of one year for whom application is made and who is eligible prior to October 1, 1987 and before his or her first birthday will be deemed to meet the age requirement until October 1, 1987.

5. Any child receiving Medicaid under the provisions of this chapter who but for the age limits in (a)2 above would be eligible for Medicaid under the provisions of this chapter and who is receiving inpatient services covered by Medicaid at the time he or she reaches the age limit, will continue to be eligible for Medicaid until the end of the stay for which the inpatient services are furnished.

10:72-3.5 Household unit

(a) The term "Household unit" means those persons whose income is counted in the determination of eligibility of pregnant women and children under the provisions of this chapter. The following persons, if they reside with a pregnant woman or a child shall be considered members of the household unit:

1. In the case of a pregnant woman:

i. The pregnant woman and the unborn child;

ii. The pregnant woman's spouse;

iii. The pregnant woman's natural or adoptive children under the age of 21; and

iv. The blood-related siblings (including those of half blood) of the pregnant woman's children who are under the age of 21.

2. In the case of a child:

i. The child;

ii. The child's natural or adoptive parents;

iii. The child's blood-related (including half-blood) and adoptive siblings under the age of 21; and

iv. At the option of the applicant, the child's stepparent. If the applicant elects not to include the stepparent in the household unit, his or her income will not be included in the determination of eligibility except to the extent that he or she makes it available to the eligible members.

3. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for Medicaid based on eligibility for those cash assistance programs will not be included in the household unit. Any person whose income and resources have been deemed to be an eligible SSI recipient shall likewise not be included in the household unit.

4. Any person in (a)1 and 2 above shall be included in the household unit even if he or she is in a Medically Needy budget unit in accordance with N.J.A.C. 10:70-3.5. Likewise, any person required by that rule to be included in a Medically Needy budget unit, shall be included in that budget unit even if he or she is included in a household unit under the provisions of this section.

10:72-3.6 Third party liability

Program applicants and recipients are required to identify to the county welfare agency any third party (individual, entity, or program) that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient.

10:72-3.7 Persons sanctioned under AFDC rules

Persons who are ineligible for AFDC due to the imposition of a sanction of ineligibility for a factor of AFDC eligibility that does not apply in Medicaid (such as noncooperation with work registration or WIN requirements) shall have eligibility determined under this chapter without regard to the sanction. (For persons ineligible for AFDC due to a period of ineligibility imposed as a result of the receipt of lump sum income, see N.J.A.C. 10:72-4.3(c)).

10:72-3.8 Application for other benefits

(a) As a condition of eligibility for the Medicaid program, applicants and recipients are required to take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Applicants and recipients must avail themselves of any health insurance coverage available to the household unit at no cost, such as coverage provided by an employer at no cost.

1. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, Social Security benefits, and unemployment compensation. They do not include AFDC, Supplemental Security Income (SSI), or General Assistance.

10:72-3.9 Inmates of public institutions

(a) Any person who is an inmate of a public institution is ineligible for the Medicaid program.

(b) Any person who is incarcerated in a Federal, State, or local correction facility (prison, jail, detention center, reformatory, etc.) is not eligible for the Medicaid program.

SUBCHAPTER 4. FINANCIAL ELIGIBILITY

10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for persons covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). The monthly income standard will be one-twelfth of the poverty income guideline rounded down to the next whole dollar amount for each household unit size. The annual revision to the Federal poverty income guideline will be effective for purposes of this chapter with the first month beginning 30 days after publication of the poverty line in the Federal Register by the Department of Health and Human Services.

(b) In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a) above.

1. If a pregnant woman is determined to be income eligible during any month prior to the end of her pregnancy, she, if otherwise eligible, will continue eligible without regard to changes in the household unit's income for the term of her pregnancy, including the 60-day period beginning with the last day of the pregnancy whether or not the pregnancy results in a live birth. If the income change results from the addition of a new household member, the new income is not considered through the 60-day period beginning with the last day of the pregnancy.

i. The child resulting from the pregnancy will likewise be eligible for Medicaid without regard to changes in the household unit's income for the 60-day period following its birth.

2. With the exception in (b)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

10:72-4.2 Prospective budgeting of income

(a) The county welfare agency shall establish the best estimate of income that will be available to the household unit.

1. The best estimate of income shall be based on an average of the household unit's income for the full two-month period preceding the date of application or redetermination. Adjustments shall be made to the estimated income to reflect changes in income that either have occurred or which are reasonably anticipated to occur which would affect the household unit's income during a period of eligibility.

10:72-4.3 Countable income

(a) Except as specified below, countable income for persons under the provisions of this chapter shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1. The maximum income limits as provided for at N.J.A.C. 10:82-1.2(d) do not apply.

2. Neither the \$30.00 nor the one-third disregard of earned income at N.J.A.C. 10:82-2.8(a)3 and 10:82-4.4(c) apply.

3. The deeming of stepparent income at N.J.A.C. 10:82-2.9(d) does not apply. (See N.J.A.C. 10:72-3.5(a)2 regarding the inclusion or exclusion of the stepparent in the household unit.)

4. The deeming of an alien's sponsor at N.J.A.C. 10:82-3.13 does not apply.

(b) Nonrecurring lump sum income received by a household unit shall be added to any other income received by the household unit in that month. The total shall be divided by the income eligibility limit applicable to the household. The result will be the number of months the eligible members of the household unit shall be ineligible to receive Medicaid under the provisions of this chapter. Any remaining income from this calculation is treated as if it were unearned income in the first month following the period of ineligibility. No period of ineligibility shall apply to a pregnant woman eligible under the provisions of this chapter.

1. The period of ineligibility shall begin the first month subsequent to the month the nonrecurring income is received or, if there is insufficient time to provide timely adverse action notice, the following month.

2. Once established, the period of ineligibility may be reduced only in accordance with the AFDC provisions for shortening a period of ineligibility as found at N.J.A.C. 10:82-4.15(a)5. The basis for a determination to shorten the period of ineligibility shall be fully documented in the case record.

(c) Any person who received AFDC or Medicaid based on AFDC rules and became ineligible for such assistance because of a period of ineligibility imposed as a result of the provisions of this chapter. The amount of the lump sum used to determine the original period of ineligibility shall be divided by the applicable income eligibility limit to determine the period of ineligibility for Medicaid under this chapter. If that period has already expired, eligibility for benefits under this chapter may be established so long as all other eligibility criteria are met.

(d) The parents of children and the spouse of a pregnant woman are legally responsible relatives to persons applying for or eligible for benefits under the provisions of this chapter. When a legally responsible relative resides in the same household, his or her income is considered in the determination of eligibility and no further action is required. When a legally responsible relative does not reside in the same household, the county welfare agency shall pursue support from that relative in accordance with the provisions of N.J.A.C. 10:82-3.8 et seq.

1. Except when the legally responsible relative resides in the same household, income of the relative shall be counted only to the extent that the income is actually made available to the household unit.

10:72-4.4 Resource eligibility

Persons seeking Medicaid benefits under the provisions of this chapter are eligible without regard to the value of the household unit's resources. The county welfare agency shall inquire about the household unit's resources only in order to establish income that may result from the household unit's resources.

SUBCHAPTER 5. ADMINISTRATIVE REQUIREMENTS

10:72-5.1 Notice of the county welfare agency decision

(a) The county welfare agency shall promptly notify any applicant for, or recipient of, the Medicaid program in writing of any agency decision affecting the applicant or recipient. When a decision relates to any adverse action which may entitle a recipient to a fair hearing, the action may not be implemented until at least 10 days after the mailing of the notice (see (e) below for exceptions to the ten-day notice requirement).

1. For notices of action adverse to a recipient, the date of mailing of the notice must appear on the notice.

2. Notices of any county welfare agency action must contain the name, address, and telephone number of the legal services agency serving that county.

3. In the case of an applicant or recipient who cannot be located, the notice shall be mailed to his or her last known address.

(b) All notices of agency decision shall state in clear and simple language, the nature of the agency decision and an accurate and factual legal basis for the decision.

1. All notices of the agency decision shall include an explanation of the right to a fair hearing.

2. Notices of agency decisions adverse to the applicant or recipient shall include the citation and title of the regulations upon which the agency decision is based.

(c) All notices of denial or termination shall include an explicit statement of the reason for program ineligibility and (except in the case of the death of an applicant or recipient) advise of the right to reapply whenever the applicant or recipient believes that circumstances have changed such that the reason for program ineligibility no longer exist.

(d) When the processing of an application will be delayed beyond the standards for disposition of an application as set forth in N.J.A.C. 10:72-2.1(d), notice shall be mailed prior to the expiration of the disposition period notifying the applicant of the delay and the reasons for it.

(e) The 10-day notice requirement for actions adverse to a program recipient need not be adhered to when:

1. The county welfare agency has factual information confirming the death of a recipient;

2. The county welfare agency receives a clear written statement, signed by the recipient, that he or she no longer wishes to receive program benefits, or which gives information indicating a change in circumstances which requires a termination or reduction in benefits, and the recipient has indicated in writing that he or she understands that this must be the consequence of supplying such information;

3. The recipient's whereabouts are unknown and agency mail directed to him or her has been returned by the postal service indicating no forwarding address;

4. The recipient has been accepted for public or medical assistance in another state and that fact has been confirmed by the county welfare agency; or

5. A recipient child has been removed from the home as a result of a judicial determination or voluntarily placed in foster care by his or her legal guardian.

10:72-5.2 Fair hearings

(a) It is the right of every applicant for or recipient of the Medicaid program to be afforded the opportunity for a fair hearing in the manner set forth in N.J.A.C. 10:49-5.1 et seq., including, when applicable, continuation of program benefits pending the results of the fair hearing.

(b) Any request for a fair hearing shall be forwarded to the Division of Medical Assistance and Health Services, Bureau of Research and Development, CN-712, Trenton, New Jersey 08625.

10:72-5.3 Case records

(a) The purpose of the case record is to provide a complete documentary record of county welfare agency actions and the reasons therefor.

(b) The case record shall include:

1. A record of all county welfare agency actions and decisions relating to the case, as well as documentary evidence relating to such actions and decisions, including application forms.

2. All forms relating to financial eligibility.

3. All case-related correspondence, memorandum, and documents except those required by law or regulation to be maintained elsewhere.

(c) No case record, or part thereof, shall be removed from its file location without a record identifying the person who has custody of it.

(d) No case record, or part thereof, shall be removed from the county welfare agency offices except upon the specific authorization of the agency director, deputy director, or other person specifically designated by the agency director to authorize such removal.

(e) All case records shall be filed in a secure and fire-resistant location.

(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Program

Revised Maximum Income Eligibility Limits

Adopted Emergency Amendments and Concurrent Proposal: N.J.A.C. 10:87-12.3, 12.4, and 12.7

Emergency Amendments Adopted: June 15, 1987 by

Drew Altman, Ph.D., Commissioner, Department of Human Services.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): June 24, 1987.

Emergency Amendment Filed: June 25, 1987 as R.1987 d.304.

Authority: N.J.S.A. 30:4B-2, the Food Stamp Act of 1977, as amended (7 USC 2014), and 7 CFR 273.9(a).

Emergency Amendment Effective Date: June 25, 1987

Emergency Amendment Operative Date: July 1, 1987

Emergency Amendment Expiration Date: August 24, 1987

The Concurrent Proposal is known as PRN 1987-281

Submit comments by August 19, 1987 to:

Marion E. Reitz, Acting Director

Division of Public Welfare

CN 716

Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of this emergency amendment are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted amendment becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.6).

The agency emergency adoption and concurrent proposal follows:

Summary

The Department of Human Services is mandated by the Food Stamp Act of 1977, as amended (7 USC 2014) and by Federal regulations at 7 CFR 273.9(a) to revise the maximum allowable net and gross income eligibility standards to reflect the annual Federal adjustment of income eligibility limits which take into account changes in the cost of living and the annual adjustment of the poverty guidelines issued by the United States Department of Health and Human Services. The "165 percent of poverty level" used when determining separate household status for elderly and disabled individuals is also revised. Since all three standards are based on the poverty income guidelines, they are being adjusted simultaneously. While the General Notice announcing the income levels has not yet been published in the Federal Register, the United States Department of Agriculture, Food and Nutrition Service, has instructed the State via letter received April 23, 1987 to implement the revised income eligibility levels transmitted with that letter, effective July 1, 1987.

Social Impact

The increase in the income eligibility standards will increase the number of households eligible to participate in the program and receive food stamp benefits. The changes to the eligibility standards will not increase food stamp benefit levels to any currently eligible household.

Economic Impact

The revised, increased income eligibility limits will expand the number of households eligible to receive food stamp benefits. These changes will bring additional Federal funds into the State for those households previously not eligible to participate in this Federally funded program. This change will not impact significantly on administrative functions of the Department or the county welfare agencies administering the program.

Regulatory Flexibility Statement

This rule 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.

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

10:87-12.3 Maximum allowable net income standards

TABLE III

Maximum Allowable Net Income	
Household Size	Maximum Allowable Income
1	\$ [447] 459
2	[604] 617
3	[760] 775
4	[917] 934
5	[1074] 1092
6	[1230] 1250
7	[1387] 1409
8	[1544] 1567
9	[1701] 1726
10	[1858] 1885
Each Additional Member	[+157] +159

10:87-12.4 Maximum allowable gross income standards

TABLE IV

Maximum Allowable Gross Income	
Household Size	Maximum Allowable Income
1	\$ [581] 596
2	[785] 802
3	[988] 1008
4	[1192] 1214
5	[1396] 1420
6	[1599] 1625
7	[1803] 1831
8	[2007] 2037
9	[2211] 2243
10	[2415] 2449
Each Additional Member	[+204] +206

10:87-12.7 165 percent of poverty level

(a) The following table is to be used when determining separate household status for elderly and disabled individuals in accordance with N.J.A.C. 10:87-2.2(a)4.

TABLE VII

165 Percent of Poverty Level

165 Percent of Poverty Level	
Household Size	Maximum Allowable Income
1	\$ [737] 757
2	[996] 1018
3	[1254] 1279
4	[1513] 1540
5	[1771] 1802
6	[2030] 2063
7	[2288] 2324
8	[2547] 2585
9	[2806] 2847
10	[3065] 3109
Each Additional Member	[+259] +262

TRANSPORTATION

(a)

THE COMMISSIONER

Lane Usage

Route 35 in Ocean County

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 16:30-3.1

Emergency Amendment Adopted: June 10, 1987 by Hazel Frank Gluck, Commissioner, Department of Transportation.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): June 18, 1987.

Emergency Amendment Filed: June 22, 1987 as R.1987 d.290.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:7-21(i), 39:4-6.

Emergency Amendment Effective Date: June 22, 1987.

Emergency Amendment Expiration Date: August 21, 1987.

The Concurrent Proposal is known as PRN 1987-269.

Submit comments by August 19, 1987 to:

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

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B(c) as implemented by N.J.A.C. 1:30-4.5).

Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rule making requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendment becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.6).

The agency emergency adoption and concurrent proposal follows:

Summary

The New Jersey Transit Corporation (NJ Transit) officials under the provisions of N.J.S.A. 39:4-6 by emergent conditions established the need to authorize buses to use the northbound shoulder on Saturdays, Sundays and Holidays, to preclude present congested traffic conditions during peak periods. Based upon the request from NJ Transit officials, engineering studies were conducted by the Department's Bureau of Traffic Engineering and Safety Programs. The engineering studies found that because of the large volume of vehicular traffic along Route 35 that the use of the northbound shoulder by buses was warranted.

The Department therefore has adopted an emergency amendment to N.J.A.C. 16:30-3.1, along with a concurrent proposal, in accordance with the requests from local officials and the Department's agreement and findings.

Social Impact

The amendment will authorize buses to use the northbound shoulder along Route 35 in Ocean County on Saturdays, Sundays and Holidays allowing them to bypass traffic congestion along the highway system for the efficient flow of traffic. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs advising the motoring public.

Regulatory Flexibility Statement

This amendment does not effect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses. The amendment will primarily effect the use of the northbound shoulder of Route 35 by buses on Saturdays, Sundays and Holidays.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**).

16:30-31 Route 35

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

(c) The northbound shoulder of Route 35 may be used by buses and is reserved therefor on **Saturdays, Sundays, and holidays** from 3:00 P.M. to 10:00 P.M. from Faber Lane (**milepost 7.9**) in the Township of Brick,

north to Herbert Street (**milepost 10.0**) in the Borough of Mantoloking, County of Ocean.

(d) (No change.) _____

MISCELLANEOUS NOTICES

COMMUNITY AFFAIRS

(a)

NOTICE OF REVISED TRUTH-IN-RENTING STATEMENT

Public Hearing: August 14, 1987

Take notice that the Department of Community Affairs proposes to issue a revised Truth-in-Renting statement. The statement is prepared pursuant to "The Truth-in-Renting Act," N.J.S.A. 46:8-43 et seq., which requires the Department to "prepare and make available at cost to the public a statement, in a form and size suitable for posting and distributing . . . of the primary, clearly established legal rights and responsibilities of tenants and landlords of rental dwelling units." N.J.S.A. 46:8-46 requires every landlord to distribute a copy of the statement to each of his tenants within 30 days after it has been made available by the Department and to provide a copy to each new tenant. Buildings with not more than two rental units are exempt from this requirement.

Comments concerning the proposed statement may be submitted to:

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

A public hearing on the proposed statement will be held on August 14, 1987 at 10:00 A.M. at the Bureau of Housing Inspection, 3131 Princeton Pike, Building 3, Lawrenceville, New Jersey.

This public notice is being published so that those who might wish to submit comments or testify at the hearing will have a more informed basis for doing so. No regulation is being proposed.

Full text of the proposed statement follows:

INTRODUCTION

About the "Truth in Renting" Act—About the Current Statement—Special Note on Applicability

THE LEASE

General Provisions—Mobile Home Leases—Public Housing Leases—Renewal and Breaking—Security Deposits—Discrimination—Consumer Fraud Protection—Identity of Landlord—Rent—Senior Citizen Grace Period—Nonpayment and Distraint—Rent Increases and Rent Control—Public and Subsidized Housing—State—Financed Housing Developments—Property Tax Rebate for Tenants—State Income Tax Rebate for Tenants

MAINTENANCE

Health, Safety and Maintenance Standards—State Inspection and Enforcement—State Heat and Utility Requirements—State Department of Health and Municipal Authority—"Repair and Deduct" and Rent Withholding—Rent Receivership—Crime Insurance Information—Locks—Penalties for Damaged Property—Public Housing Maintenance

EVICITION

"Self-help" Evictions—Causes for Eviction—Other Evictions—Senior Citizen and Disabled Protected Tenancy—Rooming and Boarding House Evictions—Penalties for Eviction Law Violations—Reprisal/Civil Rights of Tenants—Procedures for Recovery of Premises—Public Housing Evictions

FOOTNOTES

About the "Truth In Renting" Act

The "Truth in Renting" Act was signed into law on February 19, 1976 as Chapter 310 of the New Jersey Public Laws of 1975. The Act requires the New Jersey Department of Community Affairs to prepare, distribute, and update annually a statement of the established rights and responsibilities of residential tenants and landlords in the State. The Act calls for distribution of the statement to all tenants with a rental term of at least one month living in residences with more than two rental units (or more than three if the landlord occupies one). The landlord is required to give a copy of the statement to each tenant, to give a current statement to each new tenant when a lease is entered into, and to post the current statement in the building where the tenants can easily find it.

In addition, the landlord must have copies of the current statement available for tenants. A landlord who does not properly distribute or post the statement can be subject to a penalty of up to \$100 for each offense, About the Current Statement

The Truth in Renting statement is available from the Department of Community Affairs, Office of Landlord-tenant Information, CN 810 Trenton, N.J. 08625-0810. Any change in the size of print or content of the booklet or poster that is not approved in writing by the Office of Landlord-Tenant Information will be considered to be in violation of the Act. The deadline for posting and distributing this current statement is 30 days after the Department of Community Affairs makes it available for distribution.

The statement is based on existing State laws, regulations and court cases. Its purpose is to give information; it is **not** a complete summary of all laws and court decisions which concern landlord-tenant relations. Any person who plans to take any legal action in a landlord-tenant dispute may wish to consult with the appropriate enforcing agency (see Directory), a county legal services agency, a private attorney, or an owners, tenants, or mobile home organization.

Special Note on Applicability

The information contained in this statement should be generally useful to all residential tenants and landlords in New Jersey. However, some laws do not apply to all types of buildings. You can find out if a law applies to your situation by careful reading of the section describing that law. If it does not say that there are any exceptions, then the law applies to all residential tenants and landlords.

A few particular laws—discrimination against children, so-called "self-help" evictions, and distraint, for instance—apply to **all** residential rentals. Most laws apply to all residential buildings other than owner-occupied two and three-family homes and hotels, motels and guesthouses serving transient or seasonal guests.

Additional information with more detail concerning particular laws may be obtained upon written request from the Office of Landlord-Tenant Information, CN 810, Trenton, New Jersey 08625-0810.

The Lease

General Provisions

A landlord-tenant relationship is formed when a landlord lets another person use a dwelling unit for a specified period of time in return for rent. A dwelling unit, or unit, may be an apartment, a house, a room or a mobile home or mobile home space. Parties to a lease must be at least 18 years old and mentally competent.¹

A lease may be either oral or written. If written, it must be in plain language.² This means that it must be written so that an average person can understand it. A lease can be reviewed by the Division of Consumer Affairs, 1100 Raymond Boulevard (Room 504), Newark, N.J. 07102 to see if it is in plain language. A fee may be charged for this review. For more information, call 201-648-3539 or 201-648-3559.

The Truth-in-Renting Act³ provides that any written lease entered into or offered to a tenant must not violate any State laws in effect at the time the lease is made. Agreements in a lease must be reasonable. Once a lease has been made, neither party can be made to accept any new agreement while it is in effect. Any fees which the landlord intends to charge should be clearly stated. This can prevent confusion and possible dispute later. A lease may permit a "late charge" when the rent is not paid by a certain date, although this charge may not be made when the five-day senior citizen grace period⁴ applies, and may also provide for payment by the tenant of the landlord's attorney fees and court costs in the event of eviction for non-payment of rent or for other causes.

A landlord can require a written lease or rental agreement at the beginning of the rental or at any time after that. There is no law that requires the landlord to give the tenant a copy of the lease. The tenant should read the lease or rental agreement before signing. It is advisable for the tenant to get a copy of the lease for his own records at the time that it is signed. If a new landlord takes over the building, both he and the tenant must honor the lease or rental agreement until it expires.

Later disputes can be avoided if tenant and landlord (or landlord's representative) walk through the unit together and make a list (which both should sign) of all items that are in need of repair or replacement. Neither a tenant nor a landlord has the right to damage the other's property and either can be sued by the other for any property damage. If a lease contains illegal provisions, a tenant has the right to ask the court to end the agreement.⁵

Generally, it is the responsibility of the landlord to obtain any certificate of occupancy that may be required by the municipality before a new tenant moves into a unit, although this is not always made clear in local ordinances and this cost is sometimes passed on to the tenant, depending on what the lease says.

A landlord may not forbid or prevent installation of cable television and may not require advance payment from tenants for permission to install it.⁶

Mobile Home Leases

A mobile home park landlord or operator is required:⁷ (1) to offer a written lease for at least 12 months to each mobile home dweller within the park or to a person who has purchased a mobile home from the landlord or operator. The lease must be offered within 30 days from the time the purchaser lawfully moved in; (2) to give the mobile home dweller a copy of all park rules and regulations prior to signing a lease; (3) to post a copy of park rules and regulations in a recreation hall or some other place within the park where they can be easily found; and (4) to fully disclose all fees, charges and assessments, which must be based on actual costs incurred, and all rules and regulations, before the dweller moves in. Written notices of any changes must be given at least 30 days before the changes become effective.

No mobile home park landlord or operator may move, or require anyone else to move, any mobile home owned by someone else, unless he is able to show that it is reasonably necessary to do so and 30 days written notice is given, except in the case of an emergency. All costs of moving a mobile home at the request of the park landlord or operator, including any loss or damage, must be paid or reimbursed by the park landlord or operator. Any bribe or other payment to get into a mobile park accepted by a park landlord or operator makes the landlord or operator a disorderly person and the person making the payment can recover double its amount plus costs in court.

No mobile park landlord or operator may deny any resident the right to sell the resident's own mobile home. The park landlord or operator can reserve the right to approve the purchaser but permission cannot be unreasonably withheld. The posting of a "For Sale" sign on a mobile home may not be forbidden.

Public Housing Leases

Public housing authorities must follow lease regulations developed by the U.S. Department of Housing and Urban Development (HUD) as well as existing State laws. These HUD regulations list both provisions which must be included in housing authority leases and provisions which may not be included.⁸

Renewal and Breaking

No landlord may fail to renew any lease, regardless of whether it is written or oral, except for one of the good cause reasons described in detail below under "Eviction."⁹ This applies to all residential rental tenants except those in owner-occupied two- or three-family dwellings or in hotels or who are seasonal tenants.¹⁰

A tenant who breaks a lease will continue to be responsible for payment of the rent as damages if the owner has made a reasonable attempt to re-rent the dwelling, or for the difference if the owner has had to re-rent at a lower rental. However, the owner has the burden of showing that a reasonable effort was made to find a new tenant at the same rent.¹¹

Security Deposits

The following applies to all residential rental properties, including mobile homes, except owner-occupied two- or three-family dwellings¹² and cooperatives. (A tenant in an owner-occupied two- or three-family dwelling may, however, make this provision applicable to his tenancy 30 days after sending written notice to the landlord.)¹³

The security deposit cannot be more than one and one-half times one month's rent.¹⁴ It can be less. This money continues to be the property of the person making the deposit and must be held in trust by the person receiving the money. This means that the person who receives the money must make sure that no use is made of it that is not permitted by law.

The security money must be deposited in a bank or savings and loan association in New Jersey in an account bearing interest at the current rate. However, a person who receives security deposit money for ten or more units must invest that money in an insured money market fund of a New Jersey-based investment company or deposit it in a money market account at a New Jersey bank, savings bank or savings and loan association. To pay for his administrative expenses, the person who received the security deposit is entitled to keep either one percent of the amount deposited or 12½ percent of the interest, whichever is greater, minus any service fee charged by the investment company, bank, savings bank or savings and loan association.

A person who receives a security deposit may not combine security deposit money with his own funds.

A tenant must be notified in writing of the name and address of the banking institution or investment company at which the money is deposited and the amount of the deposit. This must be done within 30 days after the deposit is made. If a tenant does not receive this notice, the tenant may use the security deposit for rent payments. A tenant who wants to use the security deposit for payment of rent must give written notice to the landlord that the security money should be used for rent payments due or to become due from the tenant. After giving this notice, a tenant does not have to make another security deposit while he is living at that dwelling.¹⁵

After all administrative expenses are taken off, the security money that is left, plus all interest, belongs to the tenant. The interest must be credited toward the payment of rent due on the anniversary or renewal of a lease or, if the building has ten or more units, it can be left on deposit to compound for the benefit of the tenant.

If a tenant is forced to move from a dwelling as a result of fire, flood, evacuation or condemnation by a municipal or State agency and will not be able to move back in for at least seven days, the landlord must return the security deposit, minus any rent that may be due and owing. Within three business days after receiving notice that the tenant has had to move, the landlord must let the tenant know that the security deposit will be returned and tell him where it can be collected. The landlord may arrange to have the municipal clerk hold the security deposit so that the tenant may collect it at the clerk's office. If the tenant has not collected the deposit within 30 days, the landlord can re-deposit it with the same banking institution or investment company with which it was deposited before. If the tenant is later able to move back into the apartment but has already collected the deposit, the tenant must again pay a security deposit (1/3 will be due immediately, another 1/3 in 30 days and the last third in 60 days) to the landlord.

Within 30 days after the end of a tenancy, a landlord must return to a tenant the money made as a deposit plus the interest that has been earned. The landlord may deduct from this sum the cost of any damages to the property or any other money due to him under the terms of the lease or agreement. The landlord must return this money either by personal delivery or by registered or certified mail. If there are any deductions made from the security deposit by the landlord, an itemized list of these deductions must also be sent to the tenant by registered or certified mail within 30 days. If the amount or money owed to the landlord for damages or unpaid rent is greater than the amount of the security deposit, the landlord may sue for the difference.

If a landlord fails to return the security deposit within 30 days, the tenant may sue. If the tenant is successful, the court may award the tenant double the amount owed, together with court costs and reasonable attorney's fees.¹⁶

If a building is sold, the original landlord is required to turn over the deposit plus any interest owed to the new landlord and then to notify the tenant by registered or certified mail that the new landlord will be responsible for the security deposit.¹⁷ A recent court decision held that it is the responsibility of the new landlord to get the deposited security from the old landlord and the new landlord will be held responsible for the return of the security money even if he does not get it from the old landlord.¹⁸

The Division of Small Claims of the Special Civil Part of the Superior Court Law Division has jurisdiction in actions involving security deposits where the amount does not exceed \$1,000.00.¹⁹

Any person who unlawfully uses security deposit moneys may be criminally charged as a disorderly person and may be subject to a fine of not less than \$200.00 or imprisonment for not more than 30 days, or both.

Discrimination

The New Jersey Law Against Discrimination requires equal treatment in sale or rental of housing regardless of race, creed, color, national origin, ancestry, sex, marital status, or physical condition.²¹ The Law applies to all landlord-tenant relationships except those involving owner-occupied two- or three-family dwellings.²² Discrimination complaints should be reported to the field office of the Division on Civil Rights, New Jersey Department of Law and Public Safety, which is responsible for the area where the property is located.²³

Refusal to rent to a family which includes children under 14 years of age and refusal to rent because of the source of any legal income are prohibited by another law.²³ Also prohibited is an agreement that a lease is cancelled upon the birth of a child. A complaint against a person who refuses to rent, or who tries to cancel a lease, on any of these grounds

may be filed with the Municipal Court in the community in which the discrimination occurred. It is not illegal to refuse to rent if illegal overcrowding would result or if an applicant has a poor credit rating or not enough income to afford the rent.

Consumer Fraud Protection

Since 1976, deception, fraud, misrepresentation, or knowing failure or refusal to provide important information in connection with the sale or advertisement of real estate has been illegal in New Jersey.²⁴

The Department of Law and Public Safety, Division of Consumer Affairs, Office of Consumer Protection, 1100 Raymond Boulevard, Newark, New Jersey 07102 (201-648-3022) is responsible for enforcing the Consumer Fraud Act. An individual can also sue for triple damages for consumer fraud.²⁵

Identity of Landlord

A landlord who owns a one- or two-family non-owner occupied house is required by law to file a registration statement with the clerk of the municipality in which the building is located.²⁶ If the building has three or more units, the statement must be filed with the Bureau of Housing Inspection, CN 810, Trenton, New Jersey 08625-0810, upon a registration form provided by the Bureau. The Bureau sends a validated copy of the filed registration form to the municipal clerk. No filing is required for owner-occupied two-family houses.

The registration statement must also be given to each tenant and posted in a place in the building where it can be easily seen. The document must state the date of preparation and contain the names and addresses of the following: (a) the owner or owners of the building and the owners of the rental business if not the same person; (b) the registered agent and corporate officers if the owner is a corporation; (c) a person who resides in or has an office in the same county as the building and is authorized to accept service of process, if the owner is not located in the county; (d) the managing agent; (e) regular maintenance personnel; (f) the owner's representative who must be available and able to act in an emergency (the representative's telephone number must be listed); (g) every holder of a recorded mortgage on the building. If fuel oil is used to provide heat to the building and it is furnished by the owner, the name and address of the fuel oil dealer and the grade of oil used must also be included.

If there is any change in any of this information, a landlord must file an amended registration with the Bureau of Housing Inspection or, in the case of a one- or two-family dwelling, with the clerk of the municipality, within 20 days, correct the information posted in the building and notify each tenant in writing within 7 days after filing. No fee is charged by the Bureau for the filing of amended registration statements.

In any eviction action by a landlord who has failed to follow the provisions of this law, the court is required by law to reserve judgment and continue the case—that is, to keep the case open and not issue a judgment for eviction—for up to 90 days to allow the landlord time to comply. If the owner has not complied within this time, the court must dismiss the case, which means that the tenant is not evicted.

A landlord who violates this act is liable for a penalty of not more than \$500.00 for each offense. The penalty may be enforced in a summary proceeding in the Special Civil Part of the Superior Court Law Division or in the municipal court under the Penalty Enforcement law upon a complaint by the Attorney General or any other person. If there is a money judgment, the amount will be paid to the State Treasurer of New Jersey, if the Attorney General brings suit, or to the municipality if anyone else brings suit.

Rent

A tenant has the responsibility to pay the full amount of rent on time. In exchange, an owner has the responsibility to maintain the dwelling in a livable condition.

Senior Citizen Grace Period

Any senior citizen receiving a Social Security Old Age Pension, a Railroad Retirement Pension, or any other governmental pension in lieu of Social Security, must be given a 5-day grace period for payment when the rent is due on the first of the month. No delinquency or late charge may be made for this 5-day grace period. Any person who fails to allow this grace period may be criminally prosecuted as a disorderly person.²⁷

Nonpayment and Distraint

When a tenant threatens to leave the unit without payment of rent, and a landlord has not yet received judgment from the court, the landlord may seek a temporary restraining order to prohibit the tenant from leaving the jurisdiction of the court without paying rent.²⁸

A landlord is prohibited from taking or holding a residential tenant's possession for nonpayment of rent. The legal term for this practice is "distraint." A landlord cannot use distraint for money owned on a lease of other agreement for a unit used only as a residence.²⁹

A tenant may sue for damages resulting from distraint for nonpayment of rent in Superior Court. The court may award double damages and costs of action to a tenant whose property was wrongfully distrainted.

Rent Increases and Rent Control

The State of New Jersey has no laws which establish, govern or control rents. Rent control, or rent leveling, exists only by action of those municipal governing bodies that have passed ordinances to establish it. These ordinances are enforced by locally-created boards. They have been upheld as a valid exercise of the municipal police power where there is a housing shortage.³⁰

Notice requirements for rent increases are contained in the Eviction Law.³¹ This law provides that before an owner can evict a tenant for nonpayment of an increased rent, he must first serve the tenant with a valid notice to quit and increase of rent. (This notice does not mean that the tenant must actually leave; he has the right to remain as long as he pays any legal increase in rent.) The increase in rent must not be unconscionable—that is, it must not be so unreasonable as to shock the conscience of a fair and honest person—and must comply with state laws and any municipal ordinances governing rent increases. If a tenant does not agree that a rent increase is legal and the landlord sues to evict the tenant for not paying the increase, it will be up to the court to decide if the increase is legal. If the court finds that the increase is legal, the tenant will have to pay it in order to avoid being evicted.

When a building is converted to a condominium or cooperative form of ownership, or to fee simple ownership of units, rents may not be increased to cover costs resulting solely from the conversion. This protection applies to all tenants, regardless of whether they are eligible for protected tenancy as senior citizens or disabled persons or not.

When a landlord follows the requirements for increasing rent and a tenant refuses to pay the increased amount, the landlord may begin an eviction action. If an increase is unconscionable or a tenant has not received proper notice, the tenant may file a complaint with a municipal rent control board where one exists.

Where there is no municipal rent control and a rent increase is charged which a tenant does not pay on the grounds that it is unconscionable, the landlord may seek to evict the tenant by court action and prove that the increase is not unconscionable.

Housing developments owned or subsidized by the U.S. Department of Housing and Urban Development (HUD), as well as unsubsidized developments with HUD-insured mortgages determined by HUD to have certain economic problems, are not subject to municipal rent control ordinances. Likewise, rents fixed and controlled by the New Jersey Housing and Mortgage Finance Agency (N.J.H.M.F.A.) in projects which it finances are not subject to municipal rent control ordinances.³²

Public and Subsidized Housing

Landlords of subsidized housing projects who seek an increase in the maximum rents they may charge and public housing authorities requesting rent schedule changes must notify the tenants or their intention and must give them an opportunity to comment.³³

State-Financed Housing Developments

In housing developments financed by the New Jersey Housing and Mortgage Finance Agency, a landlord is required to notify tenants in writing of any proposed increase upon receiving confirmation from the Agency that an increase is under consideration. The notice to tenants shall include information on the right to a hearing on a proposed increase in rent.

Property Tax Rebate For Tenants

The Tenants Property Tax Rebate Act requires owners to pass on to their tenants 65 percent of any property tax reduction and of any refund of school property taxes, as compared with 1976 or the first year the property was rented, whichever is later. This Act applies to all rental property used for residential purposes, including rented or leased mobile homes, except for hotels and motels serving transient or seasonal tenants, owner-occupied two- or three-family dwellings, and buildings subject to payments in lieu of taxes under the provisions of the Limited Dividend and Non-profit Housing Corporation or Associations Law.

All questions about this rebate should be directed to the Department of Community Affairs, Division of Local Government Services, Tenant Rebate Office, CN 803, Trenton, NJ 08625-0803 (609-984-5076).

State Income Tax Rebate For Tenants

Tenants may be eligible for a \$65.00 credit on their New Jersey Gross Income Tax if they were tenants during the year for which the return is filed and were not eligible for a Homestead Rebate. This is not a credit on rent payments and is not paid by or through the landlord. It is claimed on the New Jersey Gross Income Tax form which must be filed by April 15th of each year with the New Jersey Division of Taxation. Questions

concerning this credit should be directed to the Division of Taxation, Taxpayers Information Service, 50 Barrack Street, Trenton, NJ 08646 (609-292-6400).

Maintenance

Both landlords and tenants have certain obligations for the maintenance of dwelling units. These are based upon both lease provisions and New Jersey statutes and court decisions.

In general, a tenant must protect and preserve a landlord's property. Generally acceptable housekeeping practices must be followed. Proper and timely notice must be given to a landlord when there are conditions that must be repaired or corrected. A property should be returned to the landlord in the same condition as it was received, except for normal wear and tear.

A landlord, in turn, must maintain the property in livable condition. The New Jersey Supreme Court has held that a landlord offering a dwelling unit for rent implies that it is in livable condition and agrees to keep it in that condition. A landlord must repair damage to vital facilities caused by normal wear and tear after being properly notified in writing and after being given a reasonable amount of time.

Health, Safety, and Maintenance Standards

By statute, certain state and local agencies have the power to adopt and enforce standards for the condition of dwelling units. These powers are outlined in the following three subsections.

State Inspection and Enforcement

The Bureau of Housing Inspection (BHI) in the Department of Community Affairs is responsible for the statewide enforcement of the Hotel and Multiple Dwelling Law³⁴ and the Regulations for the Maintenance of Hotels and Multiple Dwellings. Every owner of a hotel or a multiple dwelling (that is, a building with three or more apartments) must file a certificate of registration with the Bureau. Multiple dwellings are required to be inspected at least once every five years and hotels, at least once every three years.

The Hotel and Multiple Dwelling Law gives the Commissioner of the Department of Community Affairs power to issue and enforce regulations and to levy penalties to assure that multiple dwellings are maintained so that they do not endanger the health, safety or welfare of the tenants or the general public.³⁵ Both landlords and tenants must maintain buildings so that there is no violation of these regulations. Tenants must take care of their units and report any code violations to the landlord or superintendent and must, upon one-day notice, allow the landlord or his representative to enter the unit to make any inspections, repairs or alterations required in order to meet code requirements. The landlord must keep the property in good repair, clean, free of infestation and free of any hazards or nuisances which might be harmful to the health or safety of the occupants, and must provide basic maintenance, including heat, building security, smoke alarm systems and properly functioning plumbing and electrical systems, etc.

State Heat and Utility Requirements

The Hotel and Multiple Dwelling regulations establish heating standards for multiple dwellings. Every unit or dwelling space must have a heating system that will provide and maintain heat at a temperature of 68°F. From October 1 to May 1, the landlord is responsible for maintaining a temperature of at least 68°F. from 6:00 A.M. to 11:00 P.M. and 65°F. at other hours, supplying the required fuel or energy, and maintaining the heating system in good condition so that it can provide the required amount of heat. However, a landlord and a tenant may agree that the tenant will supply heat to a dwelling unit when the unit is served by separate heating equipment and the source of that heat can be separately computed and billed.

The State Board of Public Utilities (B.P.U.) enforces regulations which prohibit utility companies from shutting off utilities in tenant-occupied buildings whose owners have failed to make payments until tenants have been notified and given an opportunity to agree to make future payments. The offices of the B.P.U. are located at 1100 Raymond Boulevard, Newark, NJ 07101 (201-648-2350).

State Department of Health and Municipal Authority

The State Department of Health requires that local Boards of Health conduct a housing code enforcement program which meets State standards. The local, regional, or county board of health must adopt an ordinance at least equivalent to the New Jersey State Housing Code or BHI regulations, both published by the New Jersey Department of Community Affairs; or equivalent to the maintenance codes published by BOCA (Building Officials and Code Administrators, Inc.) or APHA (American Public Health Associations). The board of health must conduct complaint inspections in any building within its jurisdiction and follow up with any necessary court enforcement.³⁶

A local board of health has the authority to order the removal of lead paint from the interior of a dwelling unit when it causes a danger to occupants. When the heating equipment in a residential unit fails and the landlord does not take appropriate action after receiving proper notice from the tenant, the local board of health may act as agent for the landlord and order the repairs necessary to restore the equipment to operating condition.³⁷

For emergency action in the event of failure to provide required heat, a tenant can contact the local health officer immediately after giving, or attempting to give, notice to the landlord.

"Repair and Deduct" and Rent Withholding

"Repair and deduct" and rent withholding are remedies available to a tenant only when there is a defect in a vital facility (that is, something necessary for living does not work) or a hazardous condition threatening the safety of residents. (A maintenance problem that does not make something necessary for living unusable and does not threaten residents' safety is not a "defect in a vital facility.") In any particular case, the courts may have to decide if the reason for using either remedy is justified. It is generally advisable that any rent that is withheld be set aside and not used for any other purpose until the court has decided the matter. Legal assistance, or the assistance of a tenants' or mobile home organization, in the use of these remedies is advisable.

The New Jersey Supreme Court has allowed the self-help remedy of "repair and deduct."³⁸ A landlord promises at the beginning of a lease that the vital facilities needed to make the dwelling unit livable are in good condition and the property will be maintained. When there are defects in the vital facilities, A TENANT MUST FIRST NOTIFY THE LANDLORD OF THE SITUATION AND ALLOW A REASONABLE AMOUNT OF TIME FOR THE LANDLORD TO MAKE REPAIRS OR REPLACEMENTS. If a landlord fails to take action, a tenant may have the repairs made and deduct the cost from future rents. However, a landlord may take a tenant to court for nonpayment of rent. As a defense, the tenant would have to prove the presence of defects, the failure of the owner to act despite having received reasonable notice, and the need to make repairs. In case the matter goes to court, the tenant may be required to demonstrate that the deducted amount is in hand. (This is not required by statute but it is the practice in some courts.) If there is a finding in favor of the landlord, the unpaid rent must be paid by the end of the court day to avoid eviction.

Rent withholding was authorized when the New Jersey Supreme Court³⁹ held that the obligation of a tenant to pay rent and the obligation—whether written or not—on the part of a landlord to maintain the property in a livable condition are mutually dependent.

If there are defects in the vital facilities and the landlord has not fixed them after receiving proper and timely notice from the tenant, the tenant may either seek a decrease in rent by court action or simply withhold rent. A landlord may bring an eviction action for nonpayment of rent. As a defense, the tenant must prove the necessity to make repairs and the failure of the landlord to act despite having received reasonable notice. To avoid possible eviction in the event the court finds in favor of the landlord, the tenant should save the amount of money withheld so that he will be able to pay it by the end of the day. It is a good idea to set up a separate bank account for this purpose.

Rent Receivership

In the event that a dwelling unit fails to meet minimum standards of safety and sanitation, the Rent Receivership law permits the public officer of a municipality or tenant(s) of a dwelling to petition the court for a judgment directing the deposit of rents into court and the appointment of an administrator who must use the money to correct the unsafe conditions.⁴⁰

Crime Insurance Information

State law requires that every landlord of a multiple dwelling of ten or more dwelling units make available to tenants, within 30 days after they move in, information regarding crime insurance (available through the Federal Crime Insurance Program of Title VI of the Housing and Urban Development Act of 1970) and advise them where applications for such insurance may be obtained.⁴¹ Information is available from the Federal Emergency Management Agency, Federal Insurance Administration, Federal Crime Insurance program, 451 Hungerford Drive, P.O. Box 6301, Rockville, MD 20850.

Any landlord who fails to provide information on crime insurance shall be liable for a penalty of not more than \$200 for each offense. The penalty may be enforced in a summary proceeding in Superior Court under the Penalty Enforcement Law upon a complaint by the Attorney General or any other person. If there is a money judgment, the amount will be paid to the State Treasurer.

Locks

In order for a dwelling unit to be insurable it must be equipped with locks that meet Federal standards as described below.

State law requires that every landlord of a multiple dwelling equip the building with locks meeting Federal standards. These standards are the same as those required under the New Jersey Hotel and Multiple Dwelling Regulations. The regulations call for each exterior doorway to be protected by a door which, if not a sliding door, is equipped with a dead lock using either an interlocking vertical bolt and striker, or a minimum 1/2-inch throw dead bolt, or a minimum 1/2-inch throw self-locking latch. A fuller description may be obtained from the Bureau of Housing Inspection, Department of Community Affairs, CN 810, Trenton, NJ 08625-0810. Request a copy of the BHI Technical Bulletin on Security.

Penalties for Damaged Property

Destruction, damage, or injury to the premises by a tenant, whether done willfully or through gross negligence, is a cause for eviction. The landlord may institute a summary dispossession action in the Special Civil Part of the Superior Court Law Division to obtain possession of the premises three days after giving written notice to the tenant.

A landlord may sue a destructive tenant in a civil action in Superior Court for costs resulting from damage. The Special Civil Part of the Superior Court Law Division has jurisdiction in actions between a landlord and a tenant when the amount is \$5,000 or less.

A tenant who is maliciously destructive can be brought to municipal court on charges of being a disorderly person.⁴²

Public Housing Maintenance

Public Housing Authority leases must contain the rights and responsibilities of both the authority and the tenant in the event there is extensive damage to a property and conditions are created which are hazardous to life, health, or safety of the occupants. A lease must include a provision for standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time, and a provision for reduction of rent in proportion to the seriousness of the damage and loss in value as a dwelling.⁴³

Eviction

A landlord may recover possession of a dwelling unit used only as a residence by consent of the tenants or through the legal process of eviction. When a landlord obtains a judgment of possession from a court, the landlord is entitled to a warrant of removal. This warrant will direct an officer of the court to remove all persons from the dwelling unit and give the landlord full possession. The warrant may also direct the officer of the court to remove tenants' belongings.

"Self-help" Eviction

"Self-help" evictions—that is, entry into a dwelling unit and removal of tenants without their permission or without a judgment from a court—are not permitted in New Jersey under any circumstances. A landlord or any other person who enters into or holds an apartment or property by force or threat of force is guilty of unlawful entry and detainer.⁴⁴

A person evicted in this manner may file a complaint with the Clerk of the Special Civil Part of the Law Division, or the Chancery Division, of the Superior Court, in the county in which the act was committed. In a successful action by a tenant evicted through forcible entry and detainer, the court may award possession of the dwelling unit and all damages including court costs and reasonable attorney's fees. If the dwelling unit cannot be returned to the tenant, the court may award damages.

Causes for Eviction

The eviction for good cause law applies to all residential rental properties, including mobile homes, except owner-occupied two- or three-family dwellings, hotels, motels, and other dwellings housing transient or seasonal tenants.⁴⁵ The Rooming and Boarding Regulations make it applicable to rooming and boarding houses as well as also provide that notice for residents of those buildings must be given to the county welfare board three days before an eviction action is instituted.⁴⁶

There are a number of causes for eviction. Each cause, except for nonpayment of rent, must be described in detail by a landlord in a written notice to a tenant. No residential landlord may evict or fail to renew a lease, whether written or oral, unless he can prove in court one of the thirteen causes listed below.⁴⁷ Depending on the cause, a certain amount of time must pass after delivery of written notice before a landlord may begin eviction action by filing a complaint in the Special Civil Part of the Superior Court Law Division. When a complaint is filed, a tenant will receive a summons to appear in court on a certain date. FAILURE TO APPEAR MAY RESULT IN LOSING THE CASE BY DEFAULT.

In some cases a landlord is required to give a tenant a preliminary written notice (written notice to cease) to stop certain acts. Only when a tenant continues such acts after the first notice does a landlord have a cause for eviction.

CAUSES FOR EVICTION, NOTICE REQUIREMENTS, AND TIME BEFORE LEGAL ACTION FOR EVICTION MAY BE INSTITUTED, ARE AS FOLLOWS:

A. A TENANT FAILS TO PAY RENT, DUE AND OWING, ON AN ORAL OR WRITTEN LEASE. No written notice is required and legal action may be instituted immediately.

B. A TENANT CONTINUES DISORDERLY CONDUCT THAT DENIES PEACE AND QUIET TO OTHER TENANTS OR TO OTHER PEOPLE IN THE NEIGHBORHOOD AFTER A WRITTEN NOTICE TO STOP. Legal action may be instituted three days after a second written notice.

C. A TENANT CAUSES DESTRUCTION, DAMAGE, OR INJURY TO THE PREMISES WILLFULLY OR THROUGH GROSS NEGLIGENCE. Legal action may be instituted three days after a written notice.

D. A TENANT CONTINUES TO VIOLATE ANY REASONABLE RULES AND REGULATIONS AFTER A WRITTEN NOTICE TO STOP. (THE RULES AND REGULATIONS MUST HAVE BEEN ACCEPTED IN WRITING BY THE TENANT OR MADE PART OF THE LEASE AT THE BEGINNING OF THE LEASE TERM.) Legal action may be instituted one month after a second written notice. (Note: Month to month leases begin on the day rent is due and end one month later. Any rules or regulations for this type of tenancy would be given on or before the start of the new month and continue after that.)

E. A TENANT CONTINUES A SUBSTANTIAL BREACH OF ANY REASONABLE COVENANT OR AGREEMENT IN A LEASE AFTER A WRITTEN NOTICE TO STOP. (THE COVENANT OR AGREEMENT MUST HAVE BEEN CONTAINED IN THE LEASE AT THE BEGINNING OF THE LEASE TERM.) Legal action may be instituted one month after a second written notice.

F. A TENANT FAILS TO PAY RENT AFTER A VALID NOTICE TO QUIT AND NOTICE OF RENT INCREASE.⁴⁸ (THE INCREASE MUST NOT BE UNCONSCIONABLE AND MUST COMPLY WITH ANY LAWS OR MUNICIPAL ORDINANCES GOVERNING RENT INCREASES.)⁴⁹ No written notice is required and legal action may be instituted immediately. (Note: The notice to "quit" the premises that accompanies a rent increase notice is a legal technicality. It does not mean that the tenant must actually leave the unit—although he may have to do so if he does not wish to pay a legal rent increase—or that the landlord is bringing an eviction action.)

(Note: Tenants evicted under the following "G" provisions may be eligible for financial and other assistance for relocation. If they are eligible, this assistance must be provided before they can be evicted. Information on relocation assistance can be obtained from the Office of Landlord-Tenant Information, CN 810, Trenton, NJ 08625-0810 (609-530-3285).)

G. (1) A LANDLORD OR OWNER WHO HAS BEEN CITED FOR VIOLATIONS OF LOCAL OR STATE CODES WANTS TO PERMANENTLY BOARD UP OR DEMOLISH THE PREMISES OR CAN PROVE IT IS ECONOMICALLY UNFEASIBLE FOR THE OWNER TO ELIMINATE THE VIOLATIONS. Legal action may be instituted three months after a written notice. (No warrant for possession will be issued until the requirements of the relocation law have been met.)

G. (2) A LANDLORD OR OWNER HAS BEEN CITED FOR VIOLATIONS OF LOCAL OR STATE CODES AND IT IS NOT FEASIBLE TO REMEDY THE CONDITIONS WITHOUT REMOVING THE TENANTS. Legal action may be instituted three months after a written notice. (No warrant for possession will be issued until the requirements of the relocation laws have been met. In addition, notice must be given by the landlord to the Department of Community Affairs so that the Department may prepare a report advising the court and the parties as to the feasibility of remedying the conditions without removing the tenants.)

G. (3) A LANDLORD OR OWNER WHO HAS BEEN CITED FOR VIOLATION OF LOCAL OR STATE CODES SEEKS TO CORRECT AN ILLEGAL OCCUPANCY. Legal action may be instituted three months after a written notice. (No warrant for possession will be issued until the requirements of the relocation law have been met.)

G. (4) A LANDLORD OR OWNER IS A GOVERNMENTAL AGENCY THAT WANTS TO REMOVE THE PROPERTY FROM THE RENTAL MARKET TO CARRY OUT A REDEVELOPMENT

OR LAND CLEARANCE PLAN. Legal action may be instituted three months after a written notice. (No warrant for possession will be issued until the requirements of the relocation law have been met.)

H. AN OWNER IS PERMANENTLY REMOVING A BUILDING OR A MOBILE HOME PARK FROM RESIDENTIAL USE. Legal action may be instituted 18 months after written notice. (When a lease is in effect, no legal action may be taken until the lease expires.)

Additional requirements apply when a landlord or owner of a building located in Atlantic City wishes to remove the property from residential use of "take the building off the rental market". A twelve month written notice is required before any legal action may be instituted. Then, legal action may be instituted only after the building's permanent tenants⁵⁰ have received procedurally correct notices and relocation assistance or compensation from the landlord. The landlord must provide proof in court that either (a) comparable housing in Atlantic City or within a 10 mile radius was provided, or (b) payment in an amount equivalent to five months' rent was provided at the end of the first six months of the notice period, or (c) five months rent free was provided after the one year notice period. If the landlord chooses to provide either payment in the amount of five months' rent or to allow the tenant to live in the unit for five months without paying rent, a second written notice must be sent at least six months before any legal action is instituted. If the landlord is not able to provide any of the above three alternatives, legal action may be instituted 36 months after the initial notice was given.⁵¹

I. A LANDLORD OR OWNER AT THE TERMINATION OF A LEASE PROPOSES REASONABLE CHANGES OF SUBSTANCE IN THE TERMS OR CONDITIONS OF THE LEASE (WHICH COULD INCLUDE A CHANGE IN TERM) AND THE TENANT REFUSES TO ACCEPT THE CHANGES AFTER RECEIVING A WRITTEN NOTICE DESCRIBING THE CHANGES. Legal action may be instituted one month after a second written notice.

J. A TENANT HABITUALLY FAILS TO PAY RENT DUE AND OWING WITHOUT LEGAL JUSTIFICATION AFTER RECEIVING A WRITTEN NOTICE TO CEASE. Legal action may be instituted one month after a second written notice. (Note: The second written notice in this and the other cases where the phrase "second written notice" is used is usually entitled a "notice to quit". A "notice to cease" must come first in order to warn the tenant that such action as habitual late payment or the causes in B., D., or E. are no longer acceptable, and, if continued, will serve as a cause for eviction.)

K. A LANDLORD OR OWNER OF A BUILDING IS CONVERTING FROM THE RENTAL MARKET TO A CONDOMINIUM OR COOPERATIVE. Legal action may be instituted three years after written notice, except that tenants who qualify for protection under the Senior Citizen and Disabled Projected Tenants Act (see below) cannot be evicted for forty years. When a lease is in effect, no legal action may be taken until the lease expires. The landlord must comply with the regulations governing conversion to condominiums and cooperatives. At any time within 18 months of receiving notice demanding possession of the unit, a tenant may request the landlord, in writing, to provide an opportunity to rent comparable housing. ("Comparable housing" is housing that is decent, safe and sanitary and does not violate any housing codes, that is open to all people regardless of race, creed, national origin, ancestry, marital status or sex, that is similar to the unit from which the tenant is being evicted with regard to size, number of rooms, rent range, major kitchen and bathroom facilities and any special facilities needed for a handicapped or infirm person, is located in an area that is as desirable with regard to closeness to the tenant's job or business, closeness to shopping and community facilities and the quality of the general surroundings, and that meets such additional reasonable requirements as the tenant has included in his written request for comparable housing.) Up to five one-year stays of eviction shall be granted by the court until the court is satisfied that the tenant has been offered a reasonable opportunity to examine and rent comparable housing, except that not more than one one-year stay shall be granted if the landlord allows the tenant five months' free rent as compensation for hardship in relocation. (Note: Further information concerning condominium and cooperative conversion and application for senior citizen and disabled protected tenancy may be obtained from the Office of Landlord-Tenant Information, CN 810, Trenton, NJ 08625-0810 (609-530-3285).)

L. (1) AN OWNER OF A BUILDING OR MOBILE HOME PARK WHICH IS CONSTRUCTED AS OR IS BEING CONVERTED TO, A CONDOMINIUM, COOPERATIVE OR FEE SIMPLE OWNERSHIP OF UNITS HAS CONTRACTED TO SELL THE UNIT TO A BUYER WHO WANTS TO OCCUPY IT. (THE TENANT MUST HAVE MOVED IN AFTER THE RECORDING OF THE CON-

DOMINIUM MASTER DEED, COOPERATIVE AGREEMENT OR SUBDIVISION MAP.) Legal action may be instituted two months after written notice. (When a lease is in effect, no legal action may be taken until the lease expires. In addition, the statement concerning conversion as required by law must be provided to the tenant.)⁵²

L. (2) AN OWNER OF 3 OR FEWER CONDOMINIUM OR CO-OPERATIVE UNITS IN A BUILDING WANTS TO PERSONALLY OCCUPY THE UNIT OR HAS SOLD IT TO A BUYER WHO WISHES TO PERSONALLY OCCUPY IT. (THE TENANT MUST HAVE MOVED IN AFTER THE RECORDING OF THE MASTER DEED OR COOPERATIVE AGREEMENT AND MUST HAVE RENTED THE UNIT FROM AN OWNER OF 3 OR FEWER UNITS.) Legal action may be instituted two months after written notice. (When a lease is in effect, no legal action may be taken until it expires. In addition, the statement concerning conversion required by law must be provided to the tenant.)⁵³

L. (3) AN OWNER OF A BUILDING WITH 3 OR FEWER UNITS WISHES TO PERSONALLY OCCUPY A UNIT OR HAS CONTRACTED TO SELL THE BUILDING TO A PERSON WHO WISHES TO PERSONALLY OCCUPY IT AND THE CONTRACT CALLS FOR THE UNIT TO BE VACANT AT CLOSING. Legal action may be instituted two months after written notice. (When a lease is in effect, no legal action may be taken until it expires.)

M. A LANDLORD OR OWNER CONDITIONED A TENANCY UPON THE TENANT'S EMPLOYMENT BY THE LANDLORD AS A SUPERINTENDENT, JANITOR OR IN SOME OTHER CAPACITY AND THE EMPLOYMENT IS BEING TERMINATED. Legal action may be instituted three days after written notice.

Other Evictions

Tenants of non-residential or commercial premises, or landlord-tenant two and three-family dwellings, can be removed only when a court issues an order for eviction. However, in these cases, none of the good causes listed above needs to be proven and the landlord must only show that the tenant is (a) staying after the expiration of the terms of the lease and receipt of a written notice to leave, (b) is staying after a failure to pay rent, (c) is disorderly so as to destroy the peace and quiet of other tenants, (d) willfully destroys or damages the premises, (e) constantly violates the written rules and regulations or (f) violates any lease provision where the lease provides a right of re-entry reserved. No further notice is required before bringing action in court to evict in the first two causes, but a three day written notice is required for any of the causes described as disorderly, destructive or violative of written rules or lease provisions.⁵⁴

Senior Citizen and Disabled Protected Tenancy

Tenants who are at least 62 years of age or who are permanently disabled who live in buildings being converted to condominiums, cooperatives of fee simple ownership of units may be protected from eviction for forty years, if they have lived in the buildings for at least two years as of the conversion date and have a family income which is not more than three times the average per person income in their county. (The "conversion date" is the date on which a master deed or deed to a cooperative corporation, or a subdivision deed or map legally establishing separate lots, is filed.) The landlord or converter is required to notify all tenants of their right to file for protected tenancy if they may be eligible. Generally, applications for protected tenancy must be filed with the designated municipal official or board within 60 days, although later filings may be accepted if there is good reason for the late filing and the conversion has not yet taken place. The legal requirements which must be met by landlords or converters, tenants and local officials are more fully described in a "fact sheet" which may be obtained from the office of Landlord-Tenant Information, CN 810, Trenton, New Jersey 08625-0810 (609-530-3285).

Rooming and Boarding House Evictions

The Regulations Governing Rooming and Boarding Houses, which are enforced by the Bureau of Rooming and Boarding House Standards of the Department of Community Affairs, require owners of rooming and boarding houses to follow the good cause and notice requirements of the Eviction Law⁵⁵ when evicting residents, except if otherwise ordered by the Bureau. There is a further requirement that the owner give at least three days' notice to the County Welfare Board before starting the eviction action.⁵⁶

Any building having at least two living units without private kitchens and bathrooms is a rooming or boarding house if it does not meet one of the exceptions in the Rooming and Boarding House Act.⁵⁷ These exceptions include hotels with more than 85 percent temporary occupancy by people with homes elsewhere, school and college dormitories, buildings

housing only college students and certain residences for the disabled. For additional information concerning rooming and boarding houses, contact the Bureau of Rooming and Boarding House Standards, CN 804, Trenton, NJ 08625-0804.

Penalties for Eviction Law Violations

When a tenant vacates a dwelling unit after having been given notice that the landlord wishes personally to occupy the unit and the landlord then arbitrarily fails to occupy the unit for at least six months, but instead permits personal occupancy of the unit by another tenant or registration of conversion of the property to a planned real estate development, the landlord is liable to the former tenant for three times the damages plus attorney fees and costs.

When a tenant vacates a dwelling unit after having been given notice that the landlord seeks to permanently board up or demolish the building or to permanently retire it from residential use, and the landlord does not do any of these, but instead allows any residential use of the unit for a period of five years from the date the unit became vacant, the landlord, or the former landlord, may be liable to the tenant for three times the damages plus attorney fees and costs. Additionally, the landlord or former landlord may be liable to a civil penalty of from \$2,500 to \$10,000 for each violation of this law and the property may not be registered as a planned real estate development during the five year period following the date on which any dwelling unit in the property became vacant as a result of an eviction notice stating that the property was being permanently removed from residential use.⁵⁸

Reprisal—Civil Rights of Tenants

A landlord cannot take reprisal against a tenant by eviction, substantial alteration of a lease or its terms, or refusal to renew a lease when a tenant exercises certain civil rights.⁵⁹ The law against reprisal applies to all rental properties used for dwelling purposes, including mobile homes, except owner-occupied two- or three-family dwellings.

These civil rights are:

1. A tenant attempts to enforce any rights under the lease or State or local laws.
2. A tenant has made a good faith complaint to a governmental authority about a landlord's violation of any health or safety law, regulation, code, or ordinance. (A TENANT MUST HAVE FIRST NOTIFIED THE LANDLORD AND GIVEN THE LANDLORD A REASONABLE TIME TO CORRECT THE VIOLATION BEFORE MAKING THE COMPLAINT.)
3. A tenant has been an organizer, or member, of any lawful organization, including a tenant organization.
4. A tenant refuses to comply with changes in the lease or agreement, if the changes have been made by the owner because the tenant took any of the above actions.

If a landlord does take reprisal action against a tenant, a tenant may sue the landlord for damages in a civil action.

Procedures for Recovery of Premises

A landlord may recover possession of a dwelling unit through a summary dispossess action in the Special Civil Part of the Superior Court Law Division. Monetary damages must be recovered in a separate civil action in Superior Court. Actions for rent in the Special Civil Part cannot exceed \$5,000.

When a landlord obtains a judgment for possession from the Special Civil Part, the warrant of removal cannot be issued until 3 days after judgment and only between the hours of 8:00 a.m. and 6:00 p.m. This warrant of removal cannot be executed until a minimum of three days (two days for seasonal tenants in buildings with five or fewer units) have elapsed since it was issued.⁶⁰ The Fair Eviction Notice Act requires any warrant for removal to include a notice that the tenant has a right to request more time (called a "stay of execution").⁶¹ The court will continue the case for up to 10 days after the execution of the warrant for the purpose of hearing applications by the tenant for lawful relief.

Public Housing Evictions

Public housing authorities must follow State laws regarding evictions as well as the regulations of the U.S. Department of Housing and Urban Development (HUD). In the case of an eviction, a public housing tenant may request a hearing from the housing authority after receiving a notice of termination of tenancy. A housing authority may not begin an eviction action in court until the decision of the hearing officer or the hearing panel has been mailed or delivered to the tenant and a notice to vacate has been served.⁶²

APARTMENT HOUSE SAFETY TIPS

1. Safety Devices (deadbolt locks, peepholes, door chains) are required by law for your protection. **USE THEM!**
2. Do not admit strangers to your apartment. Utility men, telephone repairmen, etc. carry photo identification (I.D.) Insist upon seeing this I.D. before you open your door. Accept deliveries at your door. Do not let strangers come in and look around your apartment to see what you have there.
3. The police are your friends. Always call them if you are suspicious about any person or activity in your building.
4. If you find your apartment has been burglarized while you were away, do not touch anything but your telephone. Call the police. **DO NOT STRAIGHTEN THINGS UP.**
5. Do not leave small valuables lying around where they can be seen. You can rent a safe deposit box at your bank. It is less expensive than a loss of valuables. It is also a good idea to protect your investment in your property, and protect yourself from liability in case someone is injured in your apartment, by having tenant property insurance.
6. Try to organize your building or floor into a crime watch unit. Watching out for each other works. Your local police department can help you set it up properly.
7. Do not leave your house or apartment keys on your car keys holder.
8. Assigned parking spaces should not bear the same number as the apartment occupied by the car owner, since this can let burglars know when nobody is home. Landlords and tenants should cooperate to develop and follow a safer space identification system.
9. Even if not required in your lease, a spare key can be left with your management office, in a sealed envelope, preferably a personalized one, with your signature across the sealed flap. It could be useful in case of an emergency, system failure or fire.
10. Do not leave your apartment unlocked, even if you are just going to the mail box, laundry room or pool. It is an invitation to an intruder.

OPERATION IDENTIFICATION

"Operation Identification" is the engraving of your valuables with your New Jersey driver's license number to deter burglars and also to prove ownership should the article be stolen and recovered by the police. Permanently marked valuables are more difficult for a burglar to dispose of and many times he won't bother stealing these items.

DO NOT mark valuables with your Social Security number. Federal regulations governing the identity of Social Security registrants make the numbers next to impossible to trace.

- Electric engravers are usually available from your Police Department Crime Prevention Unit, or can be purchased inexpensively from a hardware store. You should mark your valuables "NJ" followed by your driver's license number. This number can then be traced back to you in the event that marked or stolen property is recovered by the police.

- Valuables that cannot be marked, such as antiques, silver, china, coins, etc. should be photographed in detail with a complete description of the article on the back of the photograph.

- After you have marked your valuable property, display an Operation Identification sticker on all exterior doors to advertise the fact. This alone may discourage a potential burglar. Stickers are available from your Police Department.

- Make sure you have a record of all marked valuables which includes their serial number, make, model and the location of your marking.

- To obtain the electric engraver and inventory sheet, contact your Police Crime Prevention Unit.

Truth-In-Renting Footnotes

1. NJSA 9:17B-1 (1973) Legal Age Requirement
2. NJSA 56:12-1 (1980) Plain Language Review Law
3. NJSA 46:8-43 thru 49 (1976) Truth in Renting Law
4. NJSA 2A:46-6.1 thru 6.3 Senior Citizen Grace Period
5. NJSA 46:8-48 (1976) Truth in Renting Law
6. NJSA 48:5A-49 (1972) CATV Law
7. NJSA 46:8c-2 thru 7 (1973) Mobile Home Law
8. Title 24, Code of Federal Regulations, part 866; Federal Register, August 7, 1975, pp. 33402-33408 (Public Housing Lease Regulations)
9. NJSA 2A:18-61.3 Eviction Law
10. NJSA 2A:18-61.1 Eviction Law
11. *Sommer v. Kridel*, 74 NJ 446 (1977) Mitigation of damages)
12. NJSA 46:8-26 Security Deposit Law
13. NJSA 46:8-26 Security Deposit Law
14. NJSA 46:8-21.1 Security Deposit Law
15. NJSA 46:8-19 Security Deposit Law
16. NJSA 46:8-21.1 Security Deposit Law

17. NJSА 46:8-20 Security Deposit Law
18. *Hunter v. J & H Weissberger*, 212 NJ Super. 262 (1986)
19. NJSА 2A:6-33.1 Small Claims Jurisdiction
20. NJSА 46:8-25 Security Deposit Law
21. NJSА 10:5-12(g) and (h) Discrimination Law
22. NJSА 10:5-5(n) Discrimination Law
23. NJSА 2A:42-100 thru 102 Discrimination based on children; income
24. NJSА 56:8-1(e) Consumer Fraud
25. NJSА 56:8-19 Consumer Fraud
26. NJSА 46:8-27 thru 37 Landlord Identity Law
27. NJSА 2A:46-6.1 thru 6.3 Senior Grace Period Law
28. N.J. Court Rule 4:51, Writ of Ne Exeat
29. NJSА 2A:33-1 thru 23 Distraint Law
30. *Inganamort v. Borough of Fort Lee*, 120 NJ Super. 286, 293 (Law Division 1973) See also *Helmely v. Borough of Fort Lee*, 18 NJ 200 (1978)—Rent Increase Cases
31. NJSА 2A:18-61.1(f) Eviction Law
32. For HUD Projects: Title 24, Code of Federal Regulations, Part 403; Federal Register 11/9/79. For HFAMFA Projects: *Overlook Terrace v. West New York* 71 NJ 451 (1976)
33. Subsidized Projects: Title 24, Code of Federal Regulations, Part 401; Federal Register July 10, 1975. Public Housing Authorities: Title 24, Code of Federal Register, Part 402, 861 Federal Register April 15, 1977. The regulations are also available in U.S. Department of Housing and Urban Development Handbook 7465.1, October 18, 1978
34. NJSА 55:13A-1 et seq. Hotel & Multiple Dwelling Law
35. New Jersey Administrative Code (NJAC) 5:10-1. The Maintenance regulations are also available for \$5.00 from the Bureau of Housing Inspection, Department of Community Affairs, CN 810, Trenton, NJ 08625-0810. The Amendments to the regulations are available for \$1.00 at the same address
36. NJSА Title 8, Chapter 51—Board of Health Regulations
37. NJSА 26:3-31 to 31.10 Laws concerning Boards of Health
38. *Marini v. Ireland*, 56 NJ 130 (1970) Repair & Deduct Case
39. *Berzito v. Gambino*, 114 NJ Super. 124 (1971), affirmed 63 NJ 460 (1973)
40. NJSА 46:8-38 (1974) Rent Receivership Law
41. NJSА 48:8-33 thru 42 Crime Insurance Law
42. Anyone found to be a disorderly person will be guilty of a petty offense and may be imprisoned for not more than six months or fined not more than \$500 or both unless otherwise noted. A disorderly person complaint is made to a municipal court. NJSА 2C:1-4
43. See Footnote 32
44. NJSА 2A:39-1 (amended 1971) Forcible Entry & Detainer
45. NJSА 2A:18-61.1 (1967) Eviction Law
46. NJSА 5:27-3.3(c) Rooming & Boarding House Regs
47. NJSА 2A:18-61.3 Eviction Law
48. NJSА 2A:18-61.1(f) Definition of valid notice to quit can be found in *Gretkowski v. Wojciechowski*, 26 NJ Super. 245 (1953)—Valid Rent Increase
49. NJSА 2A:18-61.1(f) Unconscionability is an indefinite standard. It has been defined in terms of "actions which would not be acceptable to any fair and honest man or conduct which is monstrously harsh and shocking to the conscience." *Black's Law Dictionary*, 4th Ed.; *Toker v. Westerman*, 113 NJ Super 452 (District Court, 1970). See also *Edgemere at Somerset v. Barbara Jean Johnson*, Somerset County District Court (1976), and see *Philip Sgroi v. Ricky L. Rosenbaum and Karen Arkenau*, Union County District Court (1978), (The judge in the latter case decided that an increase of more than 10 percent in a calendar year may be considered "unconscionable," depending on the facts of the situation.)
50. NJSА 2A:18-61.14 "Permanent Tenants" are those who have established permanent residence in Atlantic City. Paying rent on a monthly rather than weekly basis, paying State taxes, voting in State, residing in the area at least six months of each year are all considerations which may be used in determining permanent residence. Tenants who meet these criteria would be eligible for the considerations outlined in H(2) in the text. (Non-permanent tenants in Atlantic City would require the notice as described in H(1).)
51. NJSА 2A:18-61.17 Eviction Law
52. NJSА 2A:18-61.9 (1976) Eviction Law
53. NJSА 2A:18-61.9 (1976) and NJAC 4:24-1 Section 9
54. NJSА 2A:18-53 Eviction Law
55. NJSА 5:27-3.3(c) Rooming & Boarding House Regs
56. NJSА 5:27-3.4(c) Rooming & Boarding House Regs
57. NJSА 55:13B(1-16) Rooming & Boarding House Law
58. NJSА 2A:18-61.6 and 61.1F Eviction Law

59. NJSА 2A:42-10.10 Reprisal Law
60. NJSА 2A:42-10.16 & 17
61. NJSА 2A:18-57 (1976) Eviction Law
62. Title 24, Code of Federal Regulations, Part 866; Federal Register August 7, 1975, pp. 33402-33408. Public Housing Lease Regulations.
63. Offices of the New Jersey Division on Civil Rights:
 - a. 1100 Raymond Boulevard
Newark, NJ 07102
(201) 684-2700
 - b. 1548 Atlantic and
Kentucky Avenues
Atlantic City, NJ 08401
(609) 441-3100
 - c. 601 Bangs Avenue
Asbury Park, NJ 07712
(201) 988-5550
 - d. 530 Cooper Street
Camden, NJ 08108
(609) 757-2850
 - e. 24 Washington Street
Moorestown, NJ 07960
(201) 984-8366
 - f. 195 Broadway
Paterson, NJ 07505
(201) 977-4500
 - g. 383 West State Street
Trenton, NJ 08606
(609) 292-4605
 - h. 501 Landis Ave.
Vineland, NJ 08360
(609) 696-6837

(a)

DIVISION OF HOUSING AND DEVELOPMENT**Uniform Fire Code****Fire Safety Code: Fire Code Enforcement****Notice of Correction: N.J.A.C. 5:18-2.7**

Take notice that an error appears in the June 15, 1987 issue of the New Jersey Register at 19 N.J.R. 1078(a) concerning Permits required, N.J.A.C. 5:18-2.7. N.J.A.C. 5:18-2.7 should read as follows:

5:18-2.7 Permits required

(a) (No change.)

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

1. (No change.)

2. Type 1 permit:

i.-vi. (No change.)

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

viii.-ix. (No change.)

(c)-(k) (No change.)

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF SOLID WASTE MANAGEMENT**DIVISION OF WATER RESOURCES****Disposal of Solid Waste****Notice of Correction: N.J.A.C. 7:26-2A**

Take notice that text was omitted from the notice of adoption in the June 1, 1987 issue of the New Jersey Register at 19 N.J.R. 979 concerning the requirements for the escrow account, N.J.A.C. 7:26-2A.9(g). N.J.A.C. 7:26-2A.9(g) should have appeared as follows:

7:26A-9 Closure and post-closure care of sanitary landfills

(a)-(f)

(g) Pursuant to N.J.S.A. 13:1E-100, et seq. the requirements for the escrow account are as follows:

1.-19. (No change.)

20. The owner or operator of every sanitary landfill shall file with the department, in duplicate, an annual audit of the escrow account established for the closure of the sanitary landfill. The annual audit of the escrow account shall be conducted by a New Jersey certified public accountant and shall be filed with the department no later than October 31 of each year, including each of the post-closure care period years. For the purposes of the escrow account only, the fiscal year shall begin on October 1 and terminate on September 30 of the following year, except that fiscal year 1982 shall begin on January 1, 1982 and terminate on September 30, 1982;

21. The owner or operator of every sanitary landfill facility shall file, on or before the 20th of every month, with the Office of Special Funds Administration, Landfill Closure Escrow Account, Department of Environmental Protection, CN 402, 428 East State Street, Trenton, New Jersey 08625, a statement showing the exact amounts of all solid waste accepted for disposal during the preceding month, the total amounts of solid waste received calendar year-to-date, the funds deposited in and withdrawn from the escrow account for the particular sanitary landfill during the current month, interest accrued, escrow account balance, and the total calendar year-to-date funds deposited in and withdrawn from the escrow account. These statements shall be filed on forms provided by the Department; provided, however, the Department may at its discretion upon written petition from the owner or operator relieve the owner or operator from the requirement for monthly reports and substitute a quarterly (that is, once every three months) reporting requirement therefor, if it determines that the monthly reporting on an account of less than \$25,000 would impose an unnecessary burden on the owner or operator.

APPENDIX A (No change.)

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Ambient Air Quality Standards; State Implementation Plan (SIP) for Attainment and Maintenance of National Ambient Air Quality Standards for Lead; SIP Revision for United States Metals Refining Co., Carteret

Notice of Public Hearing

Take notice that the Department of Environmental Protection will hold a public hearing to receive comments concerning a proposed revision to the State Implementation Plan (SIP) for lead for the vicinity of the United States Metals Refining Co. (USMR) plant in Carteret. The hearing will be held at 10:00 A.M. on August 21, 1987, at the Council Chambers, Municipal Building, Cooke Avenue, Carteret, New Jersey.

Interested persons may also submit written comments on the proposed SIP revision on or before August 31, 1987, to:

John C. Elston
Assistant Director
Air Quality Management and Surveillance
Division of Environmental Quality
CN 027
Trenton, New Jersey 08625

Copies of this notice and the revised SIP for lead will be available for inspection during normal office hours, until August 31, 1987, at:

New Jersey Department of Environmental Protection
Division of Environmental Quality
401 E. State Street, 2nd Floor
Trenton, New Jersey

New Jersey State Library
185 West State Street
Trenton, New Jersey

Central Regional Enforcement Field Office
Division of Environmental Quality
Twin River Office
State Highway 33
Hightstown, New Jersey

Metropolitan Regional Enforcement Field Office
Division of Environmental Quality
2 Babcock Place
West Orange, New Jersey
Woodbridge Public Library
George Frederick Plaza
Woodbridge, New Jersey
Carteret Public Library
63 Carteret Avenue
Carteret, New Jersey

Summary

The Department is proposing a revision to the State Implementation Plan (SIP) for the Attainment and Maintenance of the National Ambient Air Quality Standard (NAAQS) for lead. In the SIP proposed in 1984, the United States Metals Refining Co. (USMR), a division of AMAX,

Inc., in Carteret, New Jersey was identified as a major source contributing to a violation of the NAAQS for lead. Control measures implemented in accordance with Appendix V-1 of the SIP were expected to achieve attainment of the NAAQS. However, as modeling of the USMR plant's lead emissions demonstrated marginal attainment, ambient air monitoring in the vicinity of the plant was initiated in 1984. Violations of the NAAQS were recorded from late 1984 through mid-1986.

This SIP revision addresses those violations of the lead standard. It includes a modeling demonstration which shows that the monitored violations resulted from both stack and fugitive emissions during plant operations. Also, wind blown dust from piles of baghouse dust which accumulated prior to recycling are also identified as a significant contributor to the ambient concentration of lead. Operations at an adjacent plant were shown to have no significant effect on ambient lead concentrations.

Operations at the USMR plant have now been permanently shut down and the piles of dust which contributed to the ambient concentration have been removed. Therefore, the strategy for attaining and maintaining the ambient standard includes the permanent shutdown of the plant's significant lead-emitting operations, the removal of loose piles of baghouse dust, and other measures, such as wetting down and vacuum sweeping, to prevent any lead contaminated surface dust from being blown away. Similar dust control measures will be implemented during the planned dismantling of the plant and monitoring will be continued until a period of at least two years without a recorded violation has elapsed.

Social Impact

Lead is emitted to the atmosphere by the industrial activities of man and enters the human body through inhalation and ingestion. Excess lead in the body is associated with a number of developmental blood and metabolic irregularities.

The proposed SIP revision will protect the public health, safety and welfare by minimizing the amount of lead reaching the human body and reducing the potential for blood disorder and neurologic effects in both children, the most sensitive population, and adults alike.

Economic Impact

The requirements of this proposed revision to the SIP will have only a small economic effect on USMR as it has now ceased its operations at Carteret and is planning to dismantle the plant.

Environmental Impact

Lead emitted to the atmosphere is deposited on soil, water and plants. Ambient air lead concentrations influence human exposure through direct inhalation of lead particles and through ingestion of lead which has been deposited from the air onto surfaces. The proposed SIP revision commits USMR to follow good housekeeping measures to minimize the possibility of lead contaminated surface dust from being blown away during the plant's dismantling and thus will provide for the attainment and maintenance of the National Ambient Air Quality Standards for lead in the vicinity of the facility.

HEALTH

(b)

NARCOTIC AND DRUG ABUSE CONTROL

Drugs and Devices

New Drugs and Laetrile

Notice of Correction: N.J.A.C. 8:21-4.5

Take notice that errors appear in the New Jersey Administrative Code at N.J.A.C. 8:21-4.5 and also in the New Jersey Register at 18 N.J.R. 2363(a) and 19 N.J.R. 873(a), concerning Subpart A, General provisions; new drug applications. N.J.A.C. 8:21-4.5 should read as follows:

8:21-4.5 Subpart A, General provisions; new drug applications

(a) 21 C.F.R. 314.1 (Applications), 21 C.F.R. 314.60 (Amended applications), 21 C.F.R. 314.65 (Withdrawal of applications without prejudice), 21 C.F.R. 314.70 (Supplemental applications), 21 C.F.R. 314.90 (Insufficient information in application), 21 C.F.R. 314.105 (New drug application approvals; notification to applicant of approval of application; availability of information), 21 C.F.R. 314.420 (Master files), 21 C.F.R. 314.12 (Untrue statements in application), 21 C.F.R. 314.104 (New drugs with potential for abuse) and 21 C.F.R. 314.140 (Confidentiality of data and information in a new drug application, NDA, file) are hereby adopted by reference.

(b) Regarding subpart B (Administrative actions on application), 21 C.F.R. 314.102 (Comment on application), 21 C.F.R. 314.125 (Reasons for refusing to file applications), 21 C.F.R. 314.120 (Refusal to approve the application), 21 C.F.R. 314.150 (Withdrawal of approval of an application), 21 C.F.R. 314.152 (Notice of withdrawal of approval of application), 21 C.F.R. 314.160 (Revocation of order refusing to approve application, or suspending or withdrawing approval of an application), and 21 C.F.R. 314.162 (Notices and orders) are hereby adopted by reference.

(a)

**HOSPITAL REIMBURSEMENT
Procedural and Methodological Regulations
Financial Elements and Reporting
Public Notice**

Take notice that the Department of Health hereby withdraws the proposed amendment to N.J.A.C. 8:31B-4.42 and proposed repeal and new rule, N.J.A.C. 8:31B-3.27 concerning capital cost reimbursement as published September 22, 1986 in the New Jersey Register at 18 N.J.R. 1912(a) as PRN 1986-383.

The issue of capital cost reimbursement has been addressed in a new proposal as published in the New Jersey Register at 19 N.J.R. 1147(a), July 6, 1987. Since the new proposal supercedes the original proposal in this matter, the Department withdraws the original proposal.

INSURANCE

(b)

**THE COMMISSIONER
Notice of Cancellation and Nonrenewal of Fire and
Casualty Coverage
Public Notice**

Take notice that Kenneth D. Merin, Commissioner of Insurance, pursuant to the provisions of N.J.S.A. 17:29C-3, has recertified to the

Legislature the need for continuation of the notice of cancellation and nonrenewal requirement applicable to fire and casualty insurance policies, excluding accident and health policies for the fiscal year commencing July 1, 1987. The notice of cancellation and nonrenewal requirement is set forth at N.J.A.C. 11:1-5.2, which rule continues in full force and effect.

This notice is published as a matter of public information.

TREASURY-TAXATION

(c)

**DIVISION OF TAXATION
Solid Waste Recycling Tax
Tax Rate Increase
Public Notice**

The owners and operators of all sanitary landfill facilities in New Jersey that accept solid waste for disposal or transfer are required to file a Consolidated Sanitary Landfill Tax Return (Form SLT-5) on a monthly basis. The Solid Waste Recycling Tax is one of five taxes reportable on this consolidated return.

Please take notice that an amendment to the Clean Communities and Recycling Act, P.L. 1987, c.102, approved on April 20, 1987, provides for a Solid Waste Recycling Tax rate increase effective July 1, 1987.

The Solid Waste Recycling Tax rate will be increased from \$.12 per cubic yard or \$.40 per ton to \$.45 per cubic yard or \$1.50 per ton on all solid waste in solid form. The tax rate for all solid waste in liquid form will be increased from \$.0006 per gallon to \$.00225 per gallon. The tax rates for all other sanitary landfill taxes reportable on the Consolidated Sanitary Landfill Tax Return remain unchanged.

Revised Consolidated Sanitary Landfill Tax Returns, reflecting the rate increases, which are to be filed for the taxable months of July 1987 (due August 20, 1987) through December 1987 (due January 20, 1988) will be sent to all sanitary landfill facilities in the near future.

Any inquiries regarding the sanitary landfill taxes should be directed to: Special Audit Section, Division of Taxation, 50 Barrack Street, Trenton, New Jersey 08646, Telephone (609) 292-5300.

**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 June 1, 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: MAY 18, 1987.

NEXT UPDATE WILL BE DATED JUNE 15, 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. 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
18 N.J.R. 2069 and 2148	October 20, 1986	19 N.J.R. 673 and 794	May 4, 1987
18 N.J.R. 2149 and 2234	November 3, 1986	19 N.J.R. 795 and 898	May 18, 1987
18 N.J.R. 2235 and 2344	November 17, 1986	19 N.J.R. 899 and 1006	June 1, 1987
18 N.J.R. 2345 and 2408	December 1, 1986	19 N.J.R. 1007 and 1120	June 15, 1987
18 N.J.R. 2409 and 2472	December 15, 1986	19 N.J.R. 1121 and 1258	July 6, 1987
19 N.J.R. 1 and 164	January 5, 1987	19 N.J.R. 1259 and 1352	July 20, 1987

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-18.4	Filing of exceptions to factual findings: submittal of transcripts	19 N.J.R. 1123(a)		
1:30-1.2, 2.8	Use of appendices	19 N.J.R. 675(a)		
1:30-3.1	Additional notice of proposed rulemaking	19 N.J.R. 675(b)		
1:30-4.1, 4.5	Filing of adopted rules; emergency rule adoptions	19 N.J.R. 676(a)		
1:31-1	Organizational Rule—Operation and Procedures of the Office of Administrative Law		R.1987 d.286	19 N.J.R. 1291(a)
1:31-1.2-2.1	Petition for a rule	19 N.J.R. 677(a)	R.1987 d.286	19 N.J.R. 1291(b)

(TRANSMITTAL 1987-1, dated May 18, 1987)

AGRICULTURE—TITLE 2				
2:22	Control of dangerously injurious insects	19 N.J.R. 479(a)	R.1987 d.274	19 N.J.R. 1184(a)
2:32	Sire Stakes Program	19 N.J.R. 480(a)	R.1987 d.236	19 N.J.R. 924(a)
2:50	Milk production and supply	19 N.J.R. 433(a)	R.1987 d.232	19 N.J.R. 927(a)
2:69-1.11	Commercial values of fertilizers	19 N.J.R. 484(a)	R.1987 d.275	19 N.J.R. 1184(b)
2:71-2.28	Fees for grading of fruits and vegetables	19 N.J.R. 901(a)		
2:76-5.3, 5.8	Cost-share funding of soil and water conservation projects	19 N.J.R. 1123(b)		
2:76-7	Review of nonagricultural development projects in agricultural areas	19 N.J.R. 1009(a)		

(TRANSMITTAL 1987-3, dated May 18, 1987)

BANKING—TITLE 3				
3:6-16	Qualified bank acquisitions of underwritten securities	19 N.J.R. 677(b)	R.1987 d.271	19 N.J.R. 1184(c)
3:11-7.10	Borrowing limitation of director of executive officer	19 N.J.R. 1124(a)		
3:11-11.13	Leeway investments: confidentiality of approval process	18 N.J.R. 1224(a)	Expired	
3:23	License fees	19 N.J.R. 485(a)	R.1987 d.254	19 N.J.R. 1185(a)
3:25-1	Debt adjustment and credit counseling fees	19 N.J.R. 901(b)		
3:41	Cemeteries: disinterment and reinterment of human remains	18 N.J.R. 1642(a)		

(TRANSMITTAL 1987-2, dated April 20, 1987)

PERSONNEL (CIVIL SERVICE)—TITLE 4				
4:1-1, 2, 3, 4	Repeal (see 4A:1)	19 N.J.R. 1011(A)		
4:1-5, 13.6, 13.7, 16.7-16.12, 16.14, 23	Repeal (see 4A:2)	19 N.J.R. 1013(a)		
4:1-10.3	Repeal (see 4A:5)	19 N.J.R. 1018(a)		
4:1-21.2, 21.6	Repeal (see 4A:7)	19 N.J.R. 1020(a)		
4:1-27.1	Overtime rules	19 N.J.R. 327(b)	R.1987 d.259	19 N.J.R. 1185(b)
4:2-16.4, 16.5, 23	Repeal (see 4A:2)	19 N.J.R. 1013(a)		
4:2-21.1-21.6	Repeal (see 4A:7)	19 N.J.R. 1020(a)		
4:2-27	Overtime rules	19 N.J.R. 327(b)	R.1987 d.259	19 N.J.R. 1185(b)
4:3-16.3, 16.4	Repeal (see 4A:2)	19 N.J.R. 1013(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4:3-21.1, 21.2	Repeal (see 4A:7)	19 N.J.R. 1020(a)		
4:6	Overtime Committee Rules	19 N.J.R. 327(b)	R.1987 d.259	19 N.J.R. 1185(b)
4A:1	General rules and department organization	19 N.J.R. 1011(a)		
4A:2	Appeals, discipline and separations	19 N.J.R. 1013(a)		
4A:5	Veterans and disabled veterans preference	19 N.J.R. 1018(a)		
4A:7	Equal employment opportunity and affirmative action	19 N.J.R. 1020(a)		
4A:9-1	Political subdivisions	19 N.J.R. 1022(a)		

(TRANSMITTAL 1987-1, dated January 20, 1987)

COMMUNITY AFFAIRS—TITLE 5

5:14-1.1-1.4, 2.1-2.3, 3.1-3.23, 4.1-4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.12, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)	R.1987 d.247	19 N.J.R. 1078(a)
5:18-2.7	Notice of Correction: Fire Code Enforcement	_____	_____	19 N.J.R. 1341(a)
5:18-4	Fire Safety Code: correction	18 N.J.R. 1225(a)	R.1987 d.247	19 N.J.R. 1190(a)
5:18-4.7, 4.9	Fire safety in boarding homes, day nurseries, hotels and motels	19 N.J.R. 1023(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)	R.1987 d.247	19 N.J.R. 1078(a)
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)		
5:23-3.2, 3.4, 3.8A, 3.14, 3.15, 3.16, 3.17, 3.20, 3.21, 4.16	Uniform Construction Code: subcodes	19 N.J.R. 1024(a)		
5:23-3.18. 6.1-6.3	Energy subcode; solar energy property tax exemptions	19 N.J.R. 433(b)		
5:23-4.5	UCC enforcement: conflict of interest—withdrawal of proposal	19 N.J.R. 1033(a)		
5:23-8	Asbestos Hazard Abatement Subcode	19 N.J.R. 902(a)		
5:24-1.12	Condominium and cooperative conversion	19 N.J.R. 797(a)	R.1987 d.292	19 N.J.R. 1291(c)
5:26-8.2	Duties of community associations in planned real estate developments	19 N.J.R. 797(b)	R.1987 d.291	19 N.J.R. 1291(d)
5:70	Congregate Housing Services Program	19 N.J.R. 678(a)		
5:80-3	Housing and Mortgage Finance: return on equity for housing sponsors	19 N.J.R. 1125(a)		
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)		
5:80-22	Affirmative Fair Housing Marketing Plan	19 N.J.R. 798(a)		
5:80-26	Housing resale and rental affordability control	19 N.J.R. 802(a)		
5:92-7.1	Council on Affordable Housing: drastic alteration of development	19 N.J.R. 806(a)		

(TRANSMITTAL 1987-3, dated March 16, 1987)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:8-7.1	High school proficiency standards and handicapped pupils	19 N.J.R. 1033(b)		
6:20-2.14	Appropriation of free balance by local district	19 N.J.R. 437(a)	R.1987 d.239	19 N.J.R. 928(a)
6:28-3.6, 4.4	High school proficiency standards and handicapped pupils	19 N.J.R. 1033(b)		
6:31-1	Bilingual education	19 N.J.R. 1126(a)		
6:39-1.5	High school proficiency standards and handicapped pupils	19 N.J.R. 1033(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)		
6:68-1.4	State library aid to municipalities	19 N.J.R. 1128(a)		

(TRANSMITTAL 1987-5, dated May 18, 1987)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-3, 4	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:1-6	Disposal of solid waste	18 N.J.R. 883(a)	R.1987 d.235	19 N.J.R. 928(b)
7:1A	Water Supply Bond Loan Program	19 N.J.R. 437(b)	R.1987 d.264	19 N.J.R. 1190(b)
7:1A	Water Supply Bond Loan Program: extension of comment period	19 N.J.R. 806(b)		
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)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: assessment of civil administrative penalties for nondisclosure of information	19 N.J.R. 703(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:2-11	Natural Areas System	18 N.J.R. 2349(b)		
7:7-2.1, 2.3	Coastal Permit Program: CAFRA exemptions; waterfront development	19 N.J.R. 807(a)		
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)		
7:7E-7.4, 8.11	Coastal resources and development: high rise structures; public access to Hudson River waterfront	19 N.J.R. 1034(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)		
7:9-2.60	Percolation tests: correction to Administrative Code			19 N.J.R. 1109(e)
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)		
7:9-15.6	Phase II lake restoration projects: State funding level	19 N.J.R. 909(a)		
7:12	Classification of shellfish growing waters	19 N.J.R. 1129(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)	R.1987 d.279	19 N.J.R. 1190(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(g)	Flood hazard areas along the Saddle, Ramapo and Mahwah rivers, and Masonicus Brook	19 N.J.R. 169(a)	R.1987 d.310	19 N.J.R. 1292(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-1.8	NJPDES fee schedule	19 N.J.R. 706(a)	R.1987 d.281	19 N.J.R. 1191(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)	R.1987 d.235	19 N.J.R. 928(b)
7:25-2.18, 2.22	Use of land and water areas	19 N.J.R. 398(a)	R.1987 d.250	19 N.J.R. 1090(a)
7:25-4.13, 4.17	Endangered and nongame species lists	19 N.J.R. 491(a)	R.1987 d.308	19 N.J.R. 1293(a)
7:25-5	1987-1988 Game Code	19 N.J.R. 808(a)		
7:26-1.1, 1.4, 1.6, 2.1, 7.5, 8.1, 8.2, 8.13, 8.15, 9.1, 10.7, 11.5, 11.6, 12.1, 12.3	Solid waste defined; hazardous waste recycling	19 N.J.R. 1035(a)		
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)	R.1987 d.235	19 N.J.R. 928(b)
7:26-1.4, 7.5, 7.7, 8.2, 8.13	Waste oil	18 N.J.R. 878(a)	R.1987 d.234	19 N.J.R. 1091(a)
7:26-1.10	Master performance permits for transfer station facilities	Emergency (expires 8-22-87)	R.1987 d.301	19 N.J.R. 1242(a)
7:26-2A.9(g) 20 and 21	Notice of Correction: Disposal of Solid Waste			19 N.J.R. 1341(b)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(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)	R.1987 d.307	19 N.J.R. 1293(b)
7:26-8.2	Waste oil exclusions: correction	18 N.J.R. 878(a)	R.1987 d.234	19 N.J.R. 1196(a)
7:26-8.14	Hazardous waste listing: ethylene dibromide wastes	19 N.J.R. 443(a)	R.1987 d.280	19 N.J.R. 1196(b)
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)		
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		
7:26-15	Recycling Grants and Loans Program	18 N.J.R. 2358(a)		
7:26B	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:28-3	Registration of ionizing radiation-producing machines and radioactive materials	19 N.J.R. 836(a)		
7:28-4	Naturally-occurring and accelerator-produced radioactive materials: handling and use	19 N.J.R. 1041(a)		
7:28-5	Designation of controlled areas for use of radiation and radioactive materials	19 N.J.R. 839(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)	R.1987 d.258	19 N.J.R. 1196(c)
7:30-2.3	Restricted-use pesticides	19 N.J.R. 492(a)	R.1987 d.309	19 N.J.R. 1295(a)
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		
(TRANSMITTAL 1987-5, dated May 18, 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)		
8:13	Processing and handling of shellfish; depuration of soft shell clams	19 N.J.R. 1143(a)		
8:20-1.2	Reportable birth defects	19 N.J.R. 909(b)		
8:21-4.5	Notice of Correction: Drugs and Devices			19 N.J.R. 1342(b)
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)	R.1987 d.288	19 N.J.R. 1296(a)
8:31-26.3, 26.4	Home health agencies: employee physicals; child abuse and neglect	18 N.J.R. 2283(a)		
8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42	Hospital reimbursement for existing capital indebtedness	19 N.J.R. 1145(a)		
8:31B-3.22, 3.31, 3.51	Hospital reimbursement: graduate medical education	19 N.J.R. 605(a)		
8:31B-3.24, 3.51, 3.71, 3.73	Hospital reimbursement: indirect costs	19 N.J.R. 1147(a)		
8:31B-3.38, 4.62	Hospital reimbursement: outpatient dialysis	19 N.J.R. 840(a)		
8:31B-3.41, 4.15, 4.38, 4.39	Hospital reimbursement: uncompensated care	18 N.J.R. 2283(b)		
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)	R.1987 d.298	19 N.J.R. 1297(a)
8:33E-1	Cardiac diagnostic facilities and services	19 N.J.R. 606(a)	R.1987 d.294	19 N.J.R. 1304(a)
8:33E-2	Cardiac surgical centers	19 N.J.R. 610(a)	R.1987 d.296	19 N.J.R. 1307(a)
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:33H-2.1, 3.1, 3.3, 3.5	"Specialized" long-term care; licensure track records; location of residential health care facilities	19 N.J.R. 1149(a)		
8:33H-3.11	Certificate of Need: Long-Term Care Facilities	19 N.J.R. 614(a)	R.1987 d.295	19 N.J.R. 1312(a)
8:42	Licensure of home health agencies	18 N.J.R. 2287(a)		
8:65-10.1, 10.2	Controlled substances: reschedule Alfentanil from Schedule I to Schedule II	19 N.J.R. 841(a)		
8:65-10.2	Controlled substances: addition of Nabilone to Schedule II	19 N.J.R. 1050(a)		
8:65-10.3	Controlled substances: Tiletamine-Zolazepam preparations	19 N.J.R. 497(a)		
8:65-10.3, 10.4	Reassignment of CDS Codes in Schedules III and IV	19 N.J.R. 911(a)		
8:71	Generic drug list additions (see 18 N.J.R. 1955(b), 2208(b), 19 N.J.R. 116(b), 216(c), 640(a), 880(b))	18 N.J.R. 1167(a)		
8:71	Generic drug additions (see 19 N.J.R. 116(c), 217(a), 640(b), 881(a))	18 N.J.R. 1775(a)	R.1987 d.300	19 N.J.R. 1315(a)
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 (see 19 N.J.R. 641(a), 880(a))	19 N.J.R. 13(a)	R.1987 d.299	19 N.J.R. 1314(a)
8:71	Interchangeable drug products	19 N.J.R. 615(a)	R.1987 d.297	19 N.J.R. 1312(b)

(TRANSMITTAL 1987-5, dated May 18, 1987)**HIGHER EDUCATION—TITLE 9**

9:2-3	Early retirement program for tenured faculty: rehiring as adjunct faculty	19 N.J.R. 912(a)		
9:2-8	Petitions for rulemaking	19 N.J.R. 913(a)		
9:2-9	Organization of Board and Department of Higher Education	Exempt	R.1987 d.240	19 N.J.R. 986(a)
9:7-2.10, 2.11	Tuition Aid Grant benefits	19 N.J.R. 1153(a)		
9:7-4.1	Distinguished Scholars Program: academic criteria	19 N.J.R. 498(a)	R.1987 d.278	19 N.J.R. 1207(a)
9:7-9.9, 9.11, 9.12, 9.15	Congressional Teacher Scholarship Program	19 N.J.R. 1154(a)		
9:9-3.5	Capitalization of PLUS loan interest	19 N.J.R. 498(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)	R.1987 d.289	19 N.J.R. 1316(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		

(TRANSMITTAL 1987-4, dated May 18, 1987)

HUMAN SERVICES—TITLE 10

10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:49-1.1 and 1.2	Administration Manual: Optional Categorically Needy Eligibility Manual	Emergency (expires 8-28-87)	R.1987 d.312	19 N.J.R. 1324(a)
10:49-1.12	Medicaid reimbursement: timely submission of claims by service providers	19 N.J.R. 1155(a)		
10:50-2 through 10:68-2	Medicaid reimbursement: timely submission of claims by service providers	19 N.J.R. 1155(a)		
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)	Expired	
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)	Expired	
10:72	Administration Manual: Optional Categorically Needy Eligibility Manual	Emergency (expires 8-28-87)	R.1987 d.312	19 N.J.R. 1324(a)
10:81-2.6, 3.13	AFDC eligibility and full-time students	19 N.J.R. 618(a)		
10:81-3.12	PAM: parent-minor and AFDC	19 N.J.R. 31(a)		
10:81-3.38	AFDC qualification and child support orders	19 N.J.R. 618(b)		
10:81-4.9, 5.2, 7.1	PAM: administration of AFDC program	19 N.J.R. 341(a)	R.1987 d.284	19 N.J.R. 1316(b)
10:81-11.3	AFDC: newborn child and application for Social Security number	19 N.J.R. 619(a)		
10:81-11.4	PAM: recovery of child support overpayments	19 N.J.R. 1171(a)		
10:81-11.7, 11.9	PAM: annual notice of child support collections	19 N.J.R. 343(a)	R.1987 d.253	19 N.J.R. 1093(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)	R.1987 d.252	19 N.J.R. 1094(a)
10:82-1.3, 4.16	ASH: household defined; court-ordered support	19 N.J.R. 31(b)		
10:82-1.7, 1.8, 3.2	AFDC benefits and educational financial aid	19 N.J.R. 709(a)		
10:82-3.2, 4.13, 4.14, 4.15	ASH: resources and income in AFDC	19 N.J.R. 344(a)	R.1987 d.285	19 N.J.R. 1317(a)
10:82-5.10	Emergency Assistance in AFDC program	19 N.J.R. 1171(b)		
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)		
10:85-4.1, 9.4	General Assistance payment levels	19 N.J.R. 502(a)	R.1987 d.251	19 N.J.R. 1095(a)
10:85-5.3	Personal needs allowance for GA recipients in nursing homes and intermediate care facilities	19 N.J.R. 619(b)		
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	19 N.J.R. 649(a)	R.1987 d.261	19 N.J.R. 1207(b)
10:87-12.3, 12.4 and 12.7	Food Stamp Program: Revised maximum income eligibility limits	Emergency (expires 8-24-87)	R.1987 d.304	19 N.J.R. 1331(a)
10:100-3.6	Service programs for aged, blind or disabled persons	19 N.J.R. 345(a)	R.1987 d.283	19 N.J.R. 1318(a)

(TRANSMITTAL 1987-4, dated April 20, 1987)

CORRECTIONS—TITLE 10A

10A:1-1	Department operation and procedures	19 N.J.R. 620(a)	R.1987 d.282	19 N.J.R. 1214(a)
10A:3-5.8, 5.11	Random searches of correctional facilities by canine teams	19 N.J.R. 1175(a)		
10A:4-9.12	Representation of inmate in disciplinary case	19 N.J.R. 913(b)		
10A:5-5.2	Involuntary placement into protective custody	19 N.J.R. 842(a)		
10A:6	Inmate access to courts	19 N.J.R. 914(a)		
10A:9-5.6	Earning work credits in county facilities	19 N.J.R. 843(a)		
10A:10-6	International transfer of inmates	19 N.J.R. 916(a)		
10A:16-6	Pregnant inmates	19 N.J.R. 503(a)	R.1987 d.305	19 N.J.R. 1318(b)
10A:18	Mail, visits, and use of telephone	19 N.J.R. 33(b)	R.1987 d.263	19 N.J.R. 1214(b)

(TRANSMITTAL 1987-2, dated April 20, 1987)

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11:1-24	Credit cards and payment of insurance premiums	18 N.J.R. 1999(a)		
11:1-2.5	Official department mailing list: address information	19 N.J.R. 1050(b)		
11:2-17.11, 17.14	Settlement of automobile damage claims	18 N.J.R. 2415(a)	R.1987 d.249	19 N.J.R. 1096(a)
11:3-10.3, 10.10	Settlement of automobile damage claims	18 N.J.R. 2415(a)	R.1987 d.249	19 N.J.R. 1096(a)
11:4-21	Limited death benefit policy forms	19 N.J.R. 843(b)	R.1987 d.306	19 N.J.R. 1320(a)
11:4-28	Group coordination of health care benefits	19 N.J.R. 845(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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)		
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1783(a)		

(TRANSMITTAL 1987-4, dated April 20, 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)	R.1987 d.241	19 N.J.R. 1098(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:11-1	Certification of women and minority-owned business	19 N.J.R. 1176(a)		
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(TRANSMITTAL 1987-1, dated March 16, 1987)

LAW AND PUBLIC SAFETY—TITLE 13

13:19-9	Designated State official for notification of out-of-state motor vehicle convictions	19 N.J.R. 621(a)		
13:21-9.4	Restoration of driving privilege	19 N.J.R. 621(b)		
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)	R.1987 d.262	19 N.J.R. 1227(a)
13:30-2.1, 2.2, 2.7, 2.8, 2.9, 2.13, 2.14, 6.2, 6.5, 6.6, 6.9, 8.2	Licensure of dental hygienists; duties of dental assistants; approval of schools of oral hygiene	19 N.J.R. 849(a)		
13:30-8.6	Professional advertising by dentists	19 N.J.R. 1053(a)		
13:31-1.12, 1.13, 1.14, 1.15	Licensure of electrical contractors	19 N.J.R. 49(a)	R.1987 d.242	19 N.J.R. 1099(a)
13:31-1.16	Electrical contractor ID	19 N.J.R. 352(a)	R.1987 d.244	19 N.J.R. 1100(a)
13:32-1.9	Master plumber ID	19 N.J.R. 352(b)	R.1987 d.257	19 N.J.R. 1227(b)
13:33-1.11, 1.13	Licensure as ophthalmic dispenser: temporary permit; apprenticeship	19 N.J.R. 917(a)		
13:35-1.5	Practice by medical school graduates in hospital residency programs	18 N.J.R. 2184(a)		
13:35-3.6	Licensure of physicians as bioanalytical laboratory directors	19 N.J.R. 1179(a)		
13:35-6.13	Board of Medical Examiners: fee schedule; acupuncturist registration	19 N.J.R. 1054(a)		
13:35-8.25	Biennial registration fee for hearing aid dispensers	19 N.J.R. 1055(a)		
13:36-1.9	Itemization of funeral expenses	18 N.J.R. 2186(a)	R.1987 d.243	19 N.J.R. 1100(b)
13:39A-1.4	Licensure of physical therapists: fees and charges	18 N.J.R. 1177(a)	R.1987 d.238	19 N.J.R. 986(b)
13:39A-2.2	Authorized practice by physical therapist	18 N.J.R. 1177(b)	R.1987 d.256	19 N.J.R. 1227(c)
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)	R.1987 d.255	19 N.J.R. 1228(a)
13:40-2, 3.1, 6.1	Professional engineers and land surveyors: requirements for licensure; client relationships; applicant fees	19 N.J.R. 851(a)		
13:44B-1	Compensation of professional and occupational licensing board members	19 N.J.R. 444(a)		
13:45A-2	Motor vehicle advertising practices	19 N.J.R. 1056(a)		
13:45A-6.2	Unlawful automobile sales practices	18 N.J.R. 2115(a)		
13:45A-12	Sale of dogs and cats	19 N.J.R. 853(a)		
13:45A-21, 22	Sale of Kosher food and food products	19 N.J.R. 1060(a)		
13:45A-24	Sale of gray market merchandise	19 N.J.R. 179(a)		
13:46-12.12	Compensation for physicians at boxing and wrestling shows	19 N.J.R. 1179(b)		
13:47-14.3	Rental of premises for bingo	18 N.J.R. 1180(b)	R.1987 d.230	19 N.J.R. 987(a)
13:70-20.11	Thoroughbred racing: entering or starting nerved horses	19 N.J.R. 918(a)		
13:71-1.25	Harness racing: horsemen associations	19 N.J.R. 856(a)		
13:71-20.23	Harness racing: registration of nerved horses	19 N.J.R. 919(a)		

(TRANSMITTAL 1987-5, dated May 18, 1987)

PUBLIC UTILITIES—TITLE 14

14:1	Change of address: Board of Public Utilities			19 N.J.R. 890(a)
14:1-11	Board of Public Utilities: settlement conferences	19 N.J.R. 919(b)		
14:3-7.12A	Residential electric and gas service during heating season	18 N.J.R. 2315(a)		
14:17	Change of address: Office of Cable Television			19 N.J.R. 890(a)
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 1987-3, dated April 20, 1987)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		

(TRANSMITTAL 1987-2, dated April 20, 1987)

STATE—TITLE 15

(TRANSMITTAL 1987-1, dated February 17, 1987)

PUBLIC ADVOCATE—TITLE 15A

(TRANSMITTAL 1987-1, dated April 20, 1987)

TRANSPORTATION—TITLE 16

16:20A-2.4, 4.1, 4.2, 5.1	Federal Aid Urban System Substitution Program: audits by local government	19 N.J.R. 622(a)	R.1987 d.265	19 N.J.R. 1229(a)
16:20B-1.2, 3.1, 3.2, 5.1	1984 Transportation Trust Fund aid: audits by local government	19 N.J.R. 623(a)	R.1987 d.266	19 N.J.R. 1229(b)
16:21-3.2, 5.1	State aid to counties and municipalities: audits by recipients	19 N.J.R. 624(a)	R.1987 d.267	19 N.J.R. 1230(a)
16:21A-3.2, 5.1	Bridge rehabilitation and improvement funds: audits by local government	19 N.J.R. 624(b)	R.1987 d.268	19 N.J.R. 1230(b)
16:22-3.2, 5.1	Urban revitalization, special demonstration and emergency projects aid: audits by local government	19 N.J.R. 625(a)	R.1987 d.269	19 N.J.R. 1231(a)
16:25	Utility accommodation on highway rights-of-way	19 N.J.R. 1064(a)		
16:28A-1.4, 1.7, 1.11, 1.21, 1.28, 1.32, 1.33, 1.44, 1.46, 1.51, 1.69, 1.85, 1.104	No parking zones and bus stops on various State routes	19 N.J.R. 710(a)	R.1987 d.270	19 N.J.R. 1231(b)
16:28A-1.10	Bus stop zones along Route 20 in East Rutherford	19 N.J.R. 1074(a)		
16:28A-1.31	Bus stop zones on Route 45 in Woodbury	19 N.J.R. 920(a)		
16:28A-1.32	Bus stop zones along U.S. 46 in Denville	19 N.J.R. 1180(a)		
16:30-3.1	Lane usage	Emergency (expires 8-21-87)	R.1987 d.290	19 N.J.R. 1332(a)
16:30-10.4	Midblock crosswalk on Route 33 in Freehold	19 N.J.R. 857(a)		
16:41	Permits for use of or work upon highway rights-of-way	19 N.J.R. 1074(b)		
16:54-1.6	Heliports/helistops: correction to Administrative Code			19 N.J.R. 1240(a)
16:56-14.1	Publicly funded airports and state audit policy	19 N.J.R. 921(a)		
16:75	NJ TRANSIT: bus allocation to private carriers	19 N.J.R. 506(a)	R.1987 d.260	19 N.J.R. 1233(a)

(TRANSMITTAL 1987-5, dated May 18, 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)	R.1987 d.276	19 N.J.R. 1235(a)
17:1-12.8	State retirement systems: delinquent enrollment and employer liability	19 N.J.R. 626(a)	R.1987 d.293	19 N.J.R. 1320(b)
17:2-4.4	Public Employees' Retirement System: accrual of loan interest	19 N.J.R. 194(a)		
17:19-10	Architect-engineer selection process for State projects	19 N.J.R. 627(a)	R.1987 d.245	19 N.J.R. 1101(a)
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 1987-5, dated May 18, 1987)

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18:3-2.1	Tax rate on wine produced from New Jersey grapes	19 N.J.R. 1181(a)		
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)		
18:7-1.16, 5.2	"Financial business corporation" defined: computation of entire net income	19 N.J.R. 712(a)		
18:15-14.6	Farmland assessments	19 N.J.R. 447(b)	R.1987 d.237	19 N.J.R. 987(b)
18:24-1.1	Sales and use tax forms	18 N.J.R. 2192(a)	R.1987 d.246	19 N.J.R. 1104(a)
18:24-1.2, 1.3	Newspaper, periodical, and magazine defined	19 N.J.R. 858(a)		
18:24-7.8	Sales of motor vehicles to military personnel stationed in State	19 N.J.R. 1181(b)		
18:35-1.13	Sale of principal residence	19 N.J.R. 1182(a)		
18:38	Litter control tax	19 N.J.R. 400(b)		
18:39-1	Tax amnesty	19 N.J.R. 1075(a)		

(TRANSMITTAL 1987-2, dated May 18, 1987)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
TITLE 19—OTHER AGENCIES				
19:4-6.28	Rezoning in Little Ferry	19 N.J.R. 53(b)		
19:4-6.28	Zoning change in Secaucus	19 N.J.R. 448(a)	R.1987 d.272	19 N.J.R. 1236(a)
19:4-6.28	Zoning change in Little Ferry	19 N.J.R. 512(a)	R.1987 d.273	19 N.J.R. 1236(b)
19:17-2.1, 3.1-4.5	PERC: Appeal Board procedure	19 N.J.R. 196(a)	R.1987 d.248	19 N.J.R. 1105(a)
19:17-2.1, 3.1-4.5	PERC Appeal Board procedure: rescheduled public hearing	19 N.J.R. 404(a)		
19:30-2.1, 2.3, 2.4, 2.6	Economic Development Authority: application and closing fees; categorization of transactions	19 N.J.R. 922(a)		

(TRANSMITTAL 1987-2, dated May 18, 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)		
19:45-1.1, 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)	R.1987 d.277	19 N.J.R. 1237(a)
19:45-1.33	Accuracy procedures for currency counting machines	19 N.J.R. 923(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)	R.1987 d.302	19 N.J.R. 1321(a)
19:47-7.7	Minibaccarat	19 N.J.R. 54(b)		
19:47-8.2	Big Six minimum wagers	19 N.J.R. 858(b)		
19:49-3.1	Junket prearrival reports	19 N.J.R. 860(a)	R.1987 d.303	19 N.J.R. 1323(a)
19:50-1.6	Security of alcoholic beverages	18 N.J.R. 2323(a)		
19:53-1.5	Pre-proposal: Affirmative action employment goals for handicapped or disabled persons	19 N.J.R. 1182(a)		

(TRANSMITTAL 1987-3, dated May 18, 1987)

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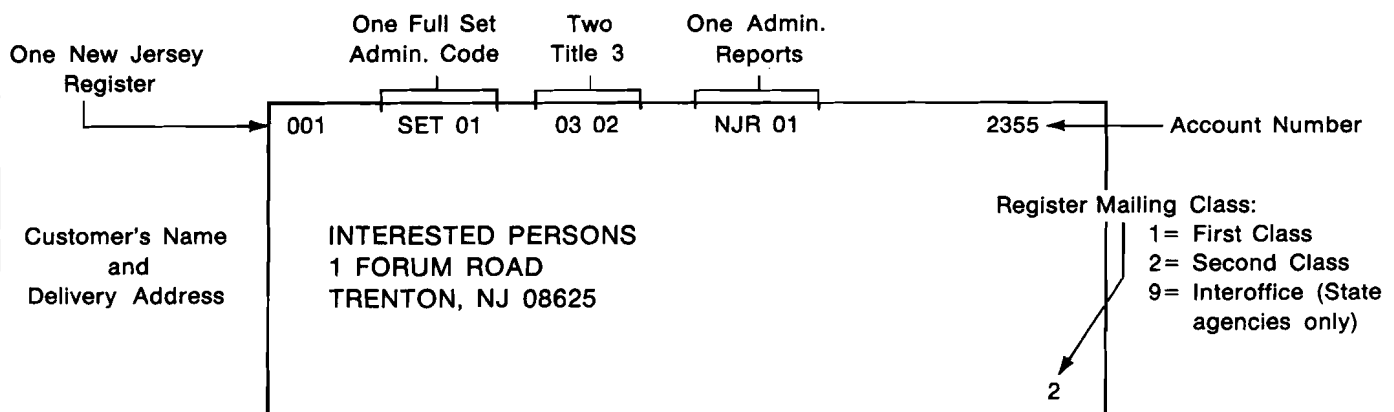
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