



NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 19 NUMBER 1

January 5, 1987 Indexed 19 N.J.R. 1-164

(Includes rules filed through December 12, 1986)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: OCTOBER 20, 1986.

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE WILL BE DATED NOVEMBER 17, 1986.

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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 **February 4, 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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NEW JERSEY REGISTER

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

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

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

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

RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules: Credits and Identification of Wetlands

Proposed Amendments: N.J.A.C. 5:92-6.1 and 5:92-8.2

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

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.
Proposal Number: PRN 1987-21.

A public hearing concerning this proposal will be held on:
Wednesday, January 21, 1987 at 3:00 P.M. to 6:00 P.M.
Mercer County Community College
Audio Visual Room 109
1200 Old Trenton Road
Trenton, NJ 08690

Submit comments by February 4, 1987 to:
Douglas V. Opalski, Executive Director
New Jersey Council on Affordable Housing
707 Alexander Road
CN 813
Trenton, NJ 08625-0813

The agency proposal follows:

Summary

The Fair Housing Act requires the Council on Affordable Housing to adopt criteria for crediting past housing activity that resulted in a current unit of low and moderate income housing of adequate standard. The Council, after listening to the concerns of public interest groups, developers, municipal officials and professionals charged with implementing the Council's rules, has decided to amend N.J.A.C. 5:92-6.1(a). The amendment permits the Council to give credit to a municipality's good faith effort at providing low and moderate income housing subsequent to April 1, 1980 when the housing: either is funded, financed or otherwise assisted by a governmental program specifically designed to provide low or moderate housing; or was rehabilitated and is presently occupied by either the original low or moderate income household or a subsequent low or moderate income household. Rehabilitation credits are capped at and credited to the municipality's indigenous need.

The Council has also decided to amend N.J.A.C. 5:92-8.2(b)3ii to clarify its original intent. This rule change will allow a municipality to submit National Wetlands Inventory maps, prepared by the U.S. Fish and Wildlife Service, in its housing element to identify inland wetlands areas. Upon review of the housing element by the Council, on-site delineation by the appropriate regulatory agency, the U.S. Army Corps of Engineers or N.J. Department of Environmental Protection, may be required. This clarification of the rule will provide the most efficient, yet accurate administration of the regulation.

Economic Impact

The amendment to N.J.A.C. 5:92-6.1(a) provides municipalities with the opportunity to receive credit for good faith efforts at producing low and moderate income housing subsequent to April 1, 1980. Thus, these municipalities will be able to accommodate their fair share obligations in a manner that will place less of a strain on their fiscal resources and services.

The wetlands amendment at N.J.A.C. 5:92-8.2 results in a less costly means of identifying these sensitive areas within the state.

Social Impact

The social impact of the amendment to N.J.A.C. 5:92-6.1(a) will be to recognize municipalities that have made good faith efforts towards the

provision of low and moderate income housing through housing activities that have taken place since April 1980.

The social impact of the amendment to N.J.A.C. 5:92-8.2(b)3ii will be to enhance the Council's ability to protect inland wetland areas throughout the State.

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

5:92-6.1 Credits

(a) Municipal present and prospective fair share shall be determined after crediting, on a one to one basis, those housing units created or rehabilitated after April 1, 1980. **Credits for rehabilitation shall not exceed indigenous need and shall only be credited against indigenous need.** Credits are applicable when a unit's occupancy is restricted to low or moderate income households and when the municipality has implemented adequate assurances for continued affordability consistent with Subchapter 12, Controls on Affordability[.], **subject to the following exceptions:**

1. A housing unit created and occupied after April 1, 1980 is also eligible for crediting when it has been developed under the auspices of a government-funded, financed or otherwise-assisted housing program designed specifically for households whose incomes do not exceed 80 percent of median income where the unit is governed by controls on affordability that are substantially the same as those set forth in Subchapter 12, Controls on Affordability.

2. For rehabilitation, a unit shall be eligible for crediting if:

i. It was below applicable code standard and was rehabilitated up to applicable code standard between April 1, 1980 and January 1, 1987, provided it was occupied at the time of rehabilitation by an eligible low or moderate income household as defined in N.J.A.C. 5:92-1.3; and

ii. It is currently occupied by the occupants who resided within the unit at the time of rehabilitation, or by another eligible low or moderate income household as defined in N.J.A.C. 5:92-1.3.

(b) (No change.)

5:92-8.2 Adjustment process

(a) (No change.)

(b) The Council shall determine the amount and location of vacant and undeveloped land within a municipality. Specific parcels of vacant and developable lands shall be excluded as potential sites for low and moderate income housing based on the following criteria:

1.-2. (No change.)

3. Environmentally sensitive lands shall be excluded as follows:

i. (No change.)

ii. In areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, the Council shall exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or New Jersey Department of Environmental Protection, whichever agency has jurisdiction; **when on-site delineation is required by the Council;** flood hazard areas as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent as determined from the U.S.G.S. Topographic Quadrangles which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of steep slopes, flood hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this regulation shall not prohibit construction of low and moderate income housing on the remainder of the site.

iii. (No change.)

EDUCATION

STATE BOARD OF EDUCATION

The following proposals are authorized by the State Board of Education, Saul Cooperman, Secretary.

Submit comments by February 4, 1987 to:
Patricia Joseph, Rules Analyst
New Jersey Department of Education
225 West State Street
Trenton, New Jersey 08625

(a)

High School Graduation Requirements

Proposed Amendment: N.J.A.C. 6:8-7.1

Authority: N.J.S.A. 18A:1-1, 18A:4-15 as supplemented and amended by 18A:7A-1 et seq.

Proposal Number: PRN 1987-34.

The agency proposal follows:

Summary

At its September 3, 1986 meeting, State Board of Education members expressed their concern with the proposed increase in high school graduation requirements. At issue was the academic schedule that would result for all students. Board members further questioned whether there had been sufficient study of the necessity for the one-half credit year of career education for all students. In an attempt to study the issues, stimulate discussion, and to meet the deadline imposed by the sunset provisions of Executive Order No. 66(1978), the State Board of Education, while passing an amendment eliminating the career education requirement as of August, 1988, scheduled hearings on these issues.

Public input and information presented in support of the career education requirement has been sufficient to warrant reconsideration of the action taken by the Board at its September 3, 1986 meeting. Therefore, the State Board of Education has amended the provision of N.J.A.C. 6:8-7.1(c)(7) to restore career education to the high school graduation requirements and specifying the method for which credit may be awarded.

The State Board of Education has expressed a desire to clearly define methods through which districts could fulfill the career education requirement. As a result, language has been added to specify the various methods districts may use in meeting the career education requirement, and specifying the method for which credit may be awarded.

Under the proposed amendment, all public school students in New Jersey will be required to complete one-half credit year of career education as part of the high school graduation requirements. This amendment eliminates the August 1988 phase-out for this requirement that would have occurred as a result of a State Board action taken on September 3, 1986 (see proposal in the October 6, 1986 Register at 18 N.J.R. 1990) and, in effect, reinstates the requirement that has been in effect since September, 1981.

A technical amendment has been made to the graduation requirement for two years of social studies. The statutory requirement for the provision calls for a two year course of study in United States history, and the proposal has been amended to more accurately reflect the statutory language. In addition, language has been added to allow the career education requirement to be met through the alternative methods of infusion into existing courses, course equivalents or a career education course. However, course credit will only be awarded for a career education course as specified in N.J.A.C. 6:8-7.1(d).

Social Impact

Under the proposed amendment all public school students will continue to be required to complete one-half credit year of career education. This amendment will insure that students continue to be exposed to career options and/or opportunities before graduation from high school.

Economic Impact

Since the requirement for one-half credit year of career education has been in effect since September, 1981 and the amendment only serves to eliminate a phase-out that would have occurred in August, 1988, no additional cost will be incurred by the state or district boards of education.

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

6:8-7.1 Promotion, remediation and graduation procedures

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

(c) Minimum high school graduation requirements include the following:

1. District boards of education providing high school diplomas, in cooperation with any sending district(s), shall adopt policies and procedures for defining minimum high school curriculum requirement and locally determined proficiencies therein, pursuant to law and rule which shall include but not be limited to:

i. Requiring the successful completion of a program of study in grade nine through 12, effective with the September, 1987 grade nine class which shall include but not be limited to:

(1) One credit year of English for each year of enrollment, up to four credit years;

(2) Two credit years of mathematics effective through August, 1990, three credit years of mathematics effective with the September, 1990 grade nine class;

(3) Two credit years of social studies/[and] United States history as required by N.J.S.A. 18A:35-1 through August 1988, and one additional credit year of world history/cultures effective with the September, 1988 grade nine class;

(4) One credit year of natural or physical science through August, 1989; two credit years of natural or physical science effective with the September, 1989 grade nine class;

(5) One credit year of physical education, health and safety for each year of enrollment as required by N.J.S.A. 18A:35-7.

(6) One credit year of fine, practical, and/or performing arts until August, 1988; and

(7) One-half credit year of career education [until August, 1988]. **This requirement may be satisfied through the alternative methods of infusion into existing courses, course equivalents or a career education course. For credit to be awarded, career education shall be offered as a course as specified in ii. below or in (d) below.**

ii. Pupils may meet the curriculum requirements set forth in i. above through demonstration of mastery of the locally determined proficiencies in each of the above curriculum areas or through program completion procedures noted in (d) below. This determination shall be made by the district board of education.

2. Pupil proficiencies in (c) above shall be developed as follows:

i. The Commissioner of Education shall provide guidelines to district boards of education for the development of local proficiencies for each curriculum area.

ii. District boards of education shall establish proficiency requirements in each curriculum area. Upon approval of these proficiencies by the district board of education, demonstration of mastery will be required as a condition of graduation.

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

(b)

High School Graduation Requirements

Proposed Amendment: N.J.A.C. 6:8-7.1

Authority: N.J.S.A. 18A:1-1, 18A:4-15 as supplemented and amended by 18A:7A-1 et seq.

Proposal Number: PRN 1987-35.

The agency proposal follows:

Summary

At its September 3, 1986 meeting, State Board of Education members expressed their concern with the proposed increase in high school graduation requirements. At issue was the academic schedule that would result for all students. Board members further questioned whether there had been sufficient study of the necessity for the one-half credit year of career education for all students. In an attempt to study the issues, stimulate discussion, and to meet the deadlines imposed by the sunset provisions of Executive Order No. 66(1978), the State Board of Education, while passing an amendment eliminating the fine, practical, and/or performing arts requirement as of August, 1988, scheduled hearings on this issue.

Public input and information presented in support of the career education requirement has been sufficient to warrant reconsideration of the action taken by the Board at its September 3, 1986 meeting. Therefore, the State Board of Education has amended the provision of N.J.A.C. 6:8-7.1(c)(6) to restore fine, practical and/or performing arts to the high school graduation requirements.

Under the proposed amendment, all public school students in New Jersey will be required to complete one credit year of fine, practical and/or performing arts as part of the high school graduation requirements. This amendment eliminates the August, 1988 phase-out for the requirement that would have occurred as a result of a State Board action taken on September 3, 1986 (see proposal in the October 6, 1986 Register at 18 N.J.R. 1990) and, in effect, reinstates the requirement that has been in effect since September, 1981.

In addition, a technical amendment has been made to the graduation requirement for two years of social studies. The statutory requirement for the provision calls for a two year course of study in United States history, and the proposal has been amended to more accurately reflect the statutory language.

Social Impact

Under the proposed amendment, all public school students will continue to be required to complete one credit year of fine, practical and/or performing arts. This amendment will ensure that students continue to be exposed to arts before graduation.

Economic Impact

Since the requirement for one credit year of fine, practical and/or performing arts has been in effect since September, 1981 and the amendment only serves to eliminate a phase-out that would have occurred in August, 1988, no additional cost will be incurred by the state or district boards of education.

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

6:8-7.1 Promotion, remediation and graduation procedures

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

(c) Minimum high school graduation requirements include the following:

1. District boards of education providing high school diplomas, in cooperation with any sending district(s), shall adopt policies and procedures for defining minimum high school curriculum requirements and locally determined proficiencies therein, pursuant to law and rule, which shall include but not be limited to:

i. Requiring the successful completion of a program of study in grades nine through 12, effective with the September, 1987 grade nine class, which shall include but not be limited to:

(1) One credit year of English for each year of enrollment, up to four credit years;

(2) Two credit years of mathematics effective through August, 1990; three credit years of mathematics effective with the September, 1990 grade nine class;

(3) Two credit years of social studies/[and] **United States** history as required by N.J.S.A. 18A:35-1 through August 1988, and one additional credit year of world history/cultures effective with the September, 1988 grade nine class;

(4) One credit year of natural or physical science through August, 1989; two credit years of natural or physical science effective with the September, 1989 grade nine class;

(5) One credit year of physical education, health and safety for each year of enrollment as required by N.J.S.A. 18A:35-7.

(6) One credit year of fine, practical, and/or performing arts [until August, 1988]; and

(7) One-half credit year of career education until August, 1988.

ii. Pupils may meet the curriculum requirements set forth in i. above through demonstration of mastery of the locally determined proficiencies in each of the above curriculum areas or through program completion procedures noted in subsection (d). This determination shall be made by the district board of education.

2. Pupil proficiencies in (c) above shall be developed as follows:

i. The Commissioner of Education shall provide guidelines to district boards of education for the development of local proficiencies for each curriculum area.

ii. District boards of education shall establish proficiency requirements in each curriculum area. Upon approval of these proficiencies by the district board of education, demonstration of mastery will be required as a condition of graduation.

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

(a)

Pupil Transportation Inspection

Proposed New Rule: N.J.A.C. 6:21-18

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:39-1, 18A:39-20.1, 18A:39-21, 39:1-1, 39:8-1, 48:4-1, 48:4-2.1a, N.J.A.C. 13:20-30 and 16:53-3.23.

Proposal Number: PRN 1987-39.

The agency proposal follows:

Summary

The proposed new rules are for the inspection of all vehicles which are registered in the State, owned or leased by a district board of education, school bus contractors or individuals under contract with a board of education and used for the transportation of pupils to and from school and/or to and from related school activities.

The proposed new rules have been reviewed internally and found to be workable, effective and necessary to provide safe, efficient transportation for pupils.

This subchapter is being proposed to describe changes in law and procedures and to identify agencies responsible for the inspection of all vehicles intended for pupil transportation pursuant to N.J.S.A. 39:1-1 and 39:8-1, New Jersey Motor Vehicles and Traffic Regulations, and N.J.S.A. 48:4-1 and 48:4-2.1a, Public Utilities.

Prior to the enactment of Chapter 375 of the Public Laws of 1971, jurisdiction of "for hire" motor vehicles and motor buses was vested in the Board of Public Utilities; however, upon enactment of this law, jurisdiction was transferred to the New Jersey Department of Transportation. These vehicles may be used for transportation of pupils to and from school and/or to and from related school activities, provided they comply with the Division of Motor Vehicles statutes, N.J.S.A. 39, and the Department of Education regulations, N.J.A.C. 6:21, Subchapters 5, 8, 9 and 17.

Social Impact

The proposed new rules will impact favorably on all district boards of education, school bus contractors and individuals providing transportation to and from school and/or to and from related school activities by identifying the agency responsible for the inspection of these registered vehicles.

The systematic semi-annual inspection of all vehicles used for pupil transportation to and from school and/or to and from related school activities not only clarifies the number of times a vehicle shall be inspected but also protects the safety interests of pupils, drivers, district boards of education, school bus contractors and individuals providing transportation.

Economic Impact

Adoption of the proposed new rules will not increase State or local expenditures since school vehicles are presently inspected twice each year.

The semi-annual inspection of vehicles will not have an economic impact on district boards of education, school bus contractors or individuals providing transportation since there is no fee for inspection.

Full text of the new rule follows.

SUBCHAPTER 18. INSPECTION

6:21-18.1 Applicability

(a) The provisions of this subchapter shall be applicable to all vehicles which are registered in this State, owned or leased by a district board of education, school bus contractor or individual under contract with a board of education and used for transportation of pupils to and from school and/or to and from related school activities.

(b) All vehicles shall be systematically inspected twice within the year to ensure that such vehicles and accessories are in safe and proper operating condition. Time and location of inspection shall be established by the Director, Division of Motor Vehicles or the Commissioner, Department of Transportation, whichever is the appropriate agency. Nothing contained herein shall limit the Department of Education's authority to require more frequent inspection of such vehicles when, in the Department's determination, the safety of pupils so requires.

6:21-18.2 Division of Motor Vehicles inspection

(a) No school vehicle registered with the Division of Motor Vehicles which is owned by or under contract with a district board of education

shall be used for transportation of pupils to and from school and/or to and from related school activities, as defined in N.J.S.A. 18A:39-1, unless such school vehicle is issued a school bus inspection sticker by the Division of Motor Vehicles. School vehicles shall be inspected or re-inspected at Motor Vehicle Inspection Stations.

(b) The Division of Motor Vehicles is responsible for the school vehicle inspection of the following vehicle registrations:

1. S1 (School Vehicle Type I);
2. S2 (School Vehicle Type II);
3. Livery; and
4. Handicapped.

(c) Owners and operators of buses shall submit evidence of inspection by the Division of Motor Vehicles to the county superintendent of schools at such time as he or she may deem necessary.

6:21-18.3 Department of Transportation inspection

(a) No autobus under jurisdiction of the Department of Transportation and under contract with a district board of education shall be used for transportation of pupils to and from school and/or to and from school related activities, as defined in N.J.S.A. 18A:39-1 and 18A:39-20.1, unless such autobus is authorized for school use on the certificate of inspection issued by the Department of Transportation.

(b) The Department of Transportation is responsible for the inspection and certification for school use of the omnibus vehicle registration.

(c) Owners or operators of buses approved for school use by the Department of Transportation shall submit evidence of such approval to the county superintendent of schools at such time as he or she may deem necessary.

6:21-18.4 Responsibility for reports and records

(a) School bus owners shall retain all records of inspection and quarterly maintenance reports for the life of the vehicle. Such records shall be available for review by the Division of Motor Vehicles, Department of Transportation and the Department of Education.

(b) Inspection records must include:

1. A daily vehicle condition report by a driver. These reports must be retained for not less than 13 months;
2. A record of vehicle inspection;
3. A systematic inspection and quarterly maintenance record signed by the person making repairs and inspection which shall be maintained for each vehicle;
4. For leased or otherwise contracted vehicles, an identification of the lessor or contractor furnishing the school bus shall also be included.

(a)

State Library Assistance Programs Municipal Branch Library Services

Proposed New Rules: N.J.A.C. 6:68-7

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:74-3.2

Proposal Number: PRN 1987-38.

The agency proposal follows:

Summary

The Library Development Aid Law, Chapter 297, Public Laws of 1985 (N.J.S.A. 18A:74-3.2(a)), provides for State grants for municipal branch library services. The funds appropriated under this law will provide incentives for maintaining, operating and improving municipal branch libraries.

It is necessary to adopt these rules in order to give full force and effect to the existing statutes. If the rules are not adopted, the Department of Education, Division of the State Library cannot implement the statute successfully.

The Department of Education, in its effort to initiate concerns and comments, submitted this proposal to the following individuals and associations for review and evaluation:

Senior Staff of the Department of Education
State Library Advisory Council
County Superintendents of Schools
New Jersey Association of School Administrators
New Jersey Association of School Business Officials
New Jersey Education Association
New Jersey Principals and Supervisors Association
New Jersey School Boards Association

Directors of the following municipal public libraries:

Atlantic City Public Library	Bayonne Public Library
Belleville Free Public Library	Camden Free Public Library
Clifton Public Library	East Orange Public Library
Edison Twp. Free Public Library	Elizabeth Free Public Library
Johnson Free Public Library	Irvington Public Library
Kearny Public Library	Linden Free Public Library
Maplewood Memorial Library	Middletown Twp. Free Public Library
North Bergen Free Public Library	Old Bridge Public Library
Paramus Public Library	Pequannock Public Library
John F. Kennedy Library	Ridgewood Public Library
Rockaway Twp. Public Library	Trenton Free Public Library
Union Free Public Library	Union City Public Library
Wayne Public Library	Woodbridge Public Library
Jersey City Public Library	Montclair Public Library
Newark Public Library	Parsippany Troy Hills Public Library
Passaic Public Library	Paterson Free Public Library
West Orange Free Public Library	

Social Impact

Thirty-three municipal libraries in New Jersey serve over 2,250,000 people through their headquarters and 95 branch libraries. Many of these libraries are located in urban or semi-urban areas where funding for library service needs to be increased. For the residents of these municipalities, libraries are a vital source for knowledge, information, education and recreation.

The proposed new rules will make efficient and effective use of State funds allocated to improve library services to residents served by municipal branch libraries.

Economic Impact

Data gathered from a questionnaire sent to all 33 municipal libraries indicated that only 6 of the 26 responding libraries operate a full service branch (open at least 30 hours a week, provision of a full-time librarian and programs for children and adults). Many libraries do not have a separate budget for their branches.

The data revealed that in most of the libraries, branches were not considered a high priority in the allocation of funds, staff or materials. In addition, four of the libraries reported branch closings in the last few years.

The rules, when adopted, will make possible a method for the provision of supplemental financial assistance to strengthen library services in many communities where the need is critical. These funds may also encourage municipalities to increase local funding for branch services. The recommended appropriation for State FY 1988 is \$300,000.

Full text of the new rule follows:

6:68-7.1 Scope and purpose

The rules in this subchapter provide funds to any municipal library which receives State aid pursuant to N.J.S.A. 52:27D-178 et seq. and maintains one or more branch libraries to assist in maintaining, operating and improving branch libraries, pursuant to the provisions of the Library Development Aid Law, (Chapter 297, Laws of 1985), N.J.S.A. 18A:74-3.2(a).

6:68-7.2 Definitions

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

"Expanded programs of library services" means new services, changes in or expansion of services already offered.

"Municipal branch library" means an auxiliary public library which has all of the following but is administered from a central unit:

1. Separate quarters;
2. A permanent basic collection of library materials;
3. A permanent paid staff;
4. A regular schedule for opening to the public.

"Operational/developmental grants" means funds provided for a municipal branch library program, services and materials or for expanding/changing services to meet community needs.

"Planning grants" means funds for the preparation or updating of a plan which outlines the future development and services of a municipal branch library.

6:68-7.3 Eligible projects

(a) A planning grant of up to \$10,000 will be provided to a municipal library to fund the preparation or updating of a plan outlining the future development and services of a municipal branch library.

1. The plan must include a five year population projection, services to be provided by each branch library, a description of the target population to be served by the branch and a description of other existing library and information resources in the community.

2. At the end of the funding period, the project may be terminated without further obligation. A copy of the plan for municipal branch library development will be submitted with a report of expenditures to the State Librarian.

(b) An operational/developmental grant of up to \$25,000 will be provided to a municipal library for branch program, services and materials. Funds may also be used to develop expanded programs of branch library services. These services may be provided through cooperation with other types of libraries. To be eligible for an operational/developmental grant, a library must submit to the State Librarian a copy of the plan for municipal branch library development which was funded under (a) above or an acceptable master plan for municipal branch library development which was completed within the previous five years.

1. At the end of the funding period, the library will submit to the State Librarian a report of expenditures and a report describing the relationship of the activities undertaken with the municipal branch library plan.

2. A municipal library may apply for two additional years of funding. Renewal will be based on an evaluation of the previous year's activities and expenditures and the relationship of these factors to the plan for municipal branch library.

6:68-7.4 Grant application procedures

(a) Application forms for assistance programs may be obtained from the New Jersey State Library, Library Development Bureau, Grants/Contracts Unit, 185 West State Street, Trenton, New Jersey 08625-0520.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.

6:68-7.5 Criteria for approval

(a) Applications will be evaluated on the basis of the following criteria:

1. All initial applications shall be ranked in terms of the municipalities' ability to pay with priority given to applicants demonstrating the least financial resources. The ratio of equalized valuation (as listed in the "Certification of Table of Equalized Valuations", promulgated annually on October 1st by the New Jersey Division of Taxation) of the year preceding the date of application to the population estimate (as promulgated by the New Jersey Department of Labor) of the municipality for the year preceding the date of application shall be used as the criterion in determining financial ability. When applications for funds exceed the amount available, preference will be given to projects which have already been initiated under the Municipal Branch Library Services Program;

2. Description of the potential impact of the service on the population to be served;

3. Evidence of interest, need or demand for the proposed service;

4. Clearly defined goals and objectives for the program;

5. Adequacy and realism of budget and cost estimates;

6. Proposed method of measurement and evaluation.

6:68-7.6 Application of funds to library services

(a) Funds received pursuant to these rules shall not be applied to any other purpose than the development of branch library services.

(b) Funds received pursuant to these rules shall not be used for capital expenditures.

6:68-7.7 Reports and audits

Grant recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-7.8 Appeal procedures

(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity for an informal fair hearing before the State Librarian.

(b) In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 et seq.).

(a)

State Library Assistance Programs Collection Evaluation and Development Proposed New Rules: N.J.A.C. 6:68-8

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:74-3.2.

Proposal Number: PRN 1987-37.

The agency proposal follows:

Summary

The Library Development Aid Law, Chapter 297, Public Laws of 1985 (N.J.S.A. 18A:74-3.2(b)), provides for State funds for the evaluation and development of library collections. The Department of Education, Division of the State Library has developed three programs to implement the intention of the law. Program I will provide funds to public libraries to evaluate their collections. Program II provides funds for the development of coordinated collection development programs among libraries. Program III provides funds to a public library to develop and or strengthen specific subject specialities.

It is necessary to adopt these rules in order to give full force and effect to the existing statute. If the rules are not adopted, the Department of Education, Division of the State Library cannot implement the statute successfully.

The Department of Education, in its effort to initiate concerns and comments, submitted this proposal to the following individuals and associations for review and evaluation:

Senior Staff of the Department of Education
State Library Advisory Council
County Superintendents of Schools
New Jersey Association of School Administrators
New Jersey Association of School Business Officials
New Jersey Education Association
New Jersey Principals and Supervisors Association
New Jersey School Boards Association

Social Impact

The ability of a library to provide for the educational, recreational and informational needs of its patrons depends primarily on the quality of a library's collection. Several factors, however, are causing it to be increasingly more difficult for libraries to provide quality collections covering all the varied needs of its patrons. These factors include the rapid increase in the number of material being published, the varied informational needs of patrons, the increasing demand for specialized in-depth collections on specialized topics and declining library budgets for the acquisition of materials.

Funds provided for in these proposed programs will allow libraries to meet the challenge of providing quality collections in several ways. Libraries will be evaluating collections for future consideration of purchases.

Economic Impact

Programs proposed under these regulations will allow for the more effective utilization of library collection budgets in several ways: (1) funds will allow libraries to study current strengths and weaknesses of their collection and develop plans for the most cost effective utilization of future expenditures of library acquisition budgets; (2) funds will allow several libraries to develop a joint collection development program which would allow access to more materials for each library's patron and at the same time avoid unnecessary duplication of expensive materials; and (3) funds for the strengthening or expansion of subject specialization which a library would not be able to provide with its own resources.

The rules will provide for State funding to libraries, beginning with a recommended appropriation of \$500,000 for State FY 1988.

Full text of the new rule follows:

SUBCHAPTER 8. COLLECTION EVALUATION AND DEVELOPMENT

6:68-8.1 Scope and purpose

The rules in this subchapter provide for assistance to any public library for the evaluation and development of collections, pursuant to the Library Development Aid Law, (Chapter 292, Laws of 1985), N.J.S.A. 18A:74-3.2.

6:68-8.2 Definitions

The following words and terms, when used in this subchapter, shall

have the following meanings unless the context clearly indicates otherwise.

"Collection development" means activities relating to the development of a library collection, including the determination and coordination of selection policies, assessment of needs of users and potential users, collection use studies, collection evaluation, identification of collection needs, selection of materials, planning for resource sharing, collection maintenance and weeding and purchase of library books, periodicals and serials.

"Collection evaluation" means the process of assessing a library collection in terms of specific objectives or in terms of the needs of the patrons of the particular collection.

"Collections" means books, periodicals and serials in any format.

"Coordinated collection development plan" means an agreement among a group of libraries to take responsibility for building and maintaining collections in specific subject areas to increase the resource sharing capabilities of the libraries.

"Public library" means a municipal, county, association or joint library which receives public funding.

"User studies" means a method of determining the information needs of current library patrons or potential library patrons.

6:68-8.3 Eligible projects

(a) Grants will be available for the following activities which may be provided locally, regionally or statewide:

1. Collection evaluation and/or user studies;
2. Development of a written coordinated collection development plan among a group of public libraries.

(b) Grants will be available to a group of public libraries to purchase materials for their collections in accordance with their written coordinated collection development plan. The implementation of the coordinated collection development plan must increase the resource sharing capabilities of the libraries involved.

(c) Subject specialty development grants will be available to a public library(ies) to develop and/or to strengthen specific budget subject through the purchase of materials.

6:68-8.4 Funding allocation

The State Librarian shall determine annually percentages of the total funding to be assigned to each eligible project area.

6:68-8.5 Grant application procedures

(a) Application forms for assistance programs may be obtained from the New Jersey State Library, Library Development Bureau, Grants/Contracts Unit, 185 West State Street, Trenton, New Jersey 08625-0520.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.

6:68-8.6 Criteria for approval

(a) Applications will be evaluated on the basis of the following criteria:

1. The library must meet all State Library Aid criteria as specified in N.J.S.A. 6:68-1 et seq.;

2. The anticipated contribution of the program to the overall development of library resources in New Jersey;

3. The resource sharing potential of the project to a local public library and to the members of the New Jersey Library Network;

4. Assurance that the library will make provision for the bibliographic access to these materials to facilitate interlibrary loan;

5. Assurance that the library budget for collections will not be reduced below the amount the library received in the year preceding receipt of the grant for at least two years after the grant program is completed;

6. Evidence of need or demand for the proposed resources;

7. Adequacy and realism of budget and cost estimates;

8. Documentation to the effect that the proposed project could not be undertaken solely with local funds;

9. Anticipated contribution to the library programs and services of the applicant library; and

10. Such additional criteria and documentation as the State Librarian may establish on an annual basis.

6:68-8.7 Reports and audits

Grant recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-8.8 Appeal procedures

(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity for an informal fair hearing before the State Librarian.

(b) In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9

et seq. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 et seq.).

(a)

State Library Assistance Programs Maintenance of Library Collections

Proposed New Rules: N.J.A.C. 6:68-9

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:74-3.2

Proposal Number: PRN 1987-36.

The agency proposal follows:

Summary

The Library Development Aid Law, Chapter 297, Public Laws of 1985 (N.J.S.A. 18A:74-3.2(c)), provides for State grants for maintenance of library collections. The funds appropriated under this law will provide for assistance to libraries to be used for housing, protection, preservation, repair, restoration and maintenance of collections of historical or special interest. These proposed new rules will help to ensure that materials with permanent significance to New Jersey's documentary heritage will remain in usable form for the enlightenment of tomorrow's citizens.

It is necessary to adopt these rules in order to give full force and effect to the existing statute. If the rules are not adopted, the Department of Education, Division of the State Library could not implement the statute successfully.

The Department of Education, in its effort to initiate concerns and comments, submitted this proposal to the following individuals and associations for review and evaluation:

Senior Staff of the Department of Education

State Library Advisory Council

County Superintendents of Schools

New Jersey Association of School Administrators

New Jersey Association of School Business Officials

New Jersey Education Association

New Jersey Principals and Supervisors Association

New Jersey School Boards Association

Preservation and Conservation Advisory Committee to the State Librarian

Social Impact

Libraries and library collections found in historical societies, museums, and media centers in New Jersey contain a vast array of documentary resources. These library resources collectively improve the quality of life for New Jersey residents. They provide information on which to base personal, business and public decisions. They serve as a primary means by which we pass our culture and experience from one generation to another. Library informational resources also assist in continuing self-education and self-improvement and provide stimuli for individual contemplation and entertainment.

The value of library resources decreases when access to them is restricted. Access to information is fundamental to education and reasoned social change, to growth and prosperity in business and industry, and to sound and equitable government.

The proposed new rules will increase access to library resources by providing funds to preserve deteriorated and fragile materials and make them available to all users.

Economic Impact

Under the proposed new rules, collections already purchased, cataloged, and available to users will have their useful lives extended. Priceless and irreplaceable historic documents will be preserved.

The rules will provide for State funding to libraries, beginning with a recommended appropriation of \$150,000 for State FY 1988.

Full text of the new rule follows:

6:68-9.1 Scope and purpose

The rules in this subchapter provide for assistance to libraries to be used for housing, protection, preservation, repair, restoration and maintenance of collections of historical or special interest, pursuant to the provisions of the Library Development Aid Law (Chapter 297, Laws of 1985), N.J.S.A. 18A:74-3.2(c).

6:68-9.2 Definitions

The following words and terms, when in this subchapter, shall have

the following meanings unless the context clearly indicates otherwise.

"Accessibility" means availability of materials for borrowing, consultation, in-house use or reproduction, depending on the nature and condition of the materials and the collections.

"Collection maintenance" means activities to preserve the materials in a collection, including care and handling, binding, mending, repairing, marking and shelving.

"Collection of historical or special interest" means all or part of a group of materials with permanent significance to New Jersey's documentary heritage or with general research value and uniqueness.

"Comprehensive preservation program" means the organization and operation of all activities associated with maintaining library materials for use.

"Comprehensive preservation program development" means the initial steps taken by a library in planning for the establishment of a comprehensive program for preservation of its materials, including consultant visits, reports, and self-studies.

"Condition survey" means a systematic study of a library collection to ascertain its physical state.

"Conservation treatment" means the direct use of chemical and physical procedures to ensure the preservation of library materials.

"Cooperative preservation planning and programs" means planning or programs carried out by a group of libraries concerned with the care, protection and salvage of their collections.

"Disaster recovery" means supplies, equipment and services needed to restore a disaster-damaged collection to usefulness.

"Emergency planning" means the development of written instructions on how to deal effectively with emergency situations which can jeopardize the existence of a collection.

"Housing" means to provide equipment, products, supplies and appropriate environmental conditions or their creation and maintenance for the long term storage and maintenance of a collection.

"Identification/inventory" means a descriptive list of items in a collection, giving as a minimum the title, dates, quantity, arrangement, description of significant subject content and estimate of uniqueness, in a format meeting appropriate bibliographic standards.

"Library" means an organized collection of accessible print and/or nonprint materials with appropriate staff to maintain such materials and to provide reference, research and other services to the public.

"Maintenance" means the preservation of the physical and organizational integrity of the collection.

"Materials" means physical entities of any substance that serve as carriers of information.

"Materials conversion" means the process of converting library materials from one format to another for the purpose of preservation.

"Organization" means the systematic arrangement of the collection to facilitate access.

"Preservation" means the activities and organization associated with maintaining library and archival materials for use, either in their original physical form or in some other usable way.

"Privately supported library" means a library whose parent agency receives less than 50 percent of its annual funding support from governmental sources.

"Protection" means any of the various activities, containers and materials which shield library materials from the harmful effects of storage, environmental conditions and use.

"Publicly supported library" means a library whose agency receives 50 percent or more of its regular annual funding support from governmental sources.

"Repair" means the partial rehabilitation of a worn item using high quality, long lasting materials and supplies and accepted, conservationally sound methods.

"Restoration" means any of various processes whereby a deteriorated book or paper document or other library material is returned as nearly as possible to its original condition.

6:68-9.3 Eligible projects

(a) Grants will be made to libraries to increase accessibility to historical or special interest collections through projects including identification/inventory, organization and preservation, condition survey, collection maintenance, comprehensive preservation program development, emergency planning, disaster recovery, protection, collection maintenance, housing, materials conversion, repair, conservation treatment and restoration.

(b) Grants will be available for cooperative preservation planning and programs.

6:68-9.4 Funding allocation

(a) No less than 75 percent of program funding will be used each year for grant awards to publicly supported libraries.

(b) No more than 25 percent of program funding will be used each year for grant awards to privately supported libraries.

(c) Libraries with projects dealing with cooperative preservation planning or programs are encouraged to apply.

6:68-9.5 Grant application procedures

(a) Application forms for assistance programs may be obtained from the New Jersey State Library, Library Development Bureau, Grants/Contracts Unit, 185 West State Street, Trenton, New Jersey 08625-0520.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.

6:68-9.6 Criteria for approval

(a) Applications will be evaluated on the basis of the following criteria:

1. Historical or special nature of the collection and its value or uniqueness within New Jersey's documentary heritage;

2. Contribution of the project to resource sharing within the State and the New Jersey Library Network;

3. Evidence of prior preservation interest or development;

4. Evidence that the project fits into an ongoing, comprehensive preservation plan or that the project will initiate such a comprehensive preservation plan;

5. Provision of adequate staff and staff training;

6. Provision of consultants who meet the following requirements:

i. At least three years of appropriate library experience or an equivalent combination of training and experience;

ii. Familiarity with preservation and conservation in library applications;

iii. Demonstrated successful experience in preservation and conservation planning, implementation and consultation.

7. Evidence of the need for the project;

8. Clearly defined goals and objectives for the project;

9. Adequacy and realism of budget and cost estimates;

10. Documentation to the effect that the proposed project should not be undertaken solely with local funds;

11. Anticipated contribution to the library programs and services of the applicant library; and

12. Such additional criteria and documentation that the State Librarian may establish on an annual basis.

6:68-9.7 Report and audits

Grants recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-9.8 Appeal procedures

(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity for an informal fair hearing before the State Librarian.

(b) In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 et seq.).

ENVIRONMENTAL PROTECTION DIVISION OF HAZARDOUS WASTE MANAGEMENT

(a)

Interim Environmental Cleanup Responsibility Act Rules

Proposed Readoption: N.J.A.C. 7:1-3

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

Authority: N.J.S.A. 13:1K-6 et seq., specifically 13:1K-10.

DEP Docket No. 056-86-12.

Proposal Number: PRN 1987-27.

Submit comments by February 4, 1987 to:

Howard Geduldig, Esq.

Office of Regulatory Services

New Jersey Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Interim Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:1-3 ("Regulations"), will expire on March 5, 1987. The New Jersey Department of Environmental Protection ("NJDEP") originally rejected the option of the normal five-year expiration period for the Regulations upon its March 19, 1984 adoption. NJDEP realized that utilization of the innovative environmental protection provisions of the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. ("ECRA" or "Act"), would be a dynamic process of building upon accumulated ECRA program experiences. However, the extraordinarily large ECRA workload, plus a large number of 1985 year-end ECRA transactions, had resulted in NJDEP's planned revision of the ECRA Regulations after two years becoming unattainable. A one-year extension of these Regulations was proposed on February 3, 1986 at 18 N.J.R. 242(a) and was adopted, effective on March 5, 1986 at 18 N.J.R. 645(a). It now appears unlikely that the planned major revision of ECRA Regulations will be ready for adoption by March 5, 1987, when the one-year extension expires. Therefore, NJDEP is proposing readoption of these Regulations, pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., to prevent the occurrence of any lapse in regulations prior to the effective date of the revision. The drafting of revised regulations continues with involvement of all appropriate NJDEP personnel.

The Regulations require the owner or operator of an industrial establishment planning to close or sell or transfer operations to notify the NJDEP no more than five days subsequent to public release of its decision to close operations, or within five days of the execution of any agreement of sale or any option to purchase pursuant to N.J.A.C. 7:1-3.7. N.J.A.C. 7:1-3.7(d) sets forth the minimum information required to be included in the initial ECRA notice submission. N.J.A.C. 7:1-3.7(d)1-8 requires information known as the General Information Submission or ECRA I and N.J.A.C. 7:1-3.7(d)9-17 requires additional, more detailed information known as the Site Evaluation Submission or ECRA II. A preliminary site inspection required by N.J.A.C. 7:1-3.8 shall be scheduled and conducted by NJDEP of all industrial establishments notifying NJDEP pursuant to N.J.A.C. 7:1-3.7. The NJDEP's ECRA case manager shall be accompanied by appropriate representatives of the industrial establishment and be given access to all site areas, buildings, and records deemed necessary by NJDEP for the purposes of the Act and Regulations. The ECRA case manager shall prepare a preliminary inspection report detailing conditions of the site of the industrial establishment and provide guidance to the owner or operator of the industrial establishment concerning ECRA compliance.

Pursuant to N.J.A.C. 7:1-3.9, the owner or operator of an industrial establishment shall submit and, after written NJDEP approval, implement prior to submission of their negative declaration or cleanup plan a detailed soil, groundwater, and surface water sampling plan for the site of the industrial establishment reflecting known historical and current uses of the site. N.J.A.C. 7:1-3.7(d)14 sets forth the requirements of a detailed sampling plan for the purposes of the Regulations.

N.J.A.C. 7:1-3.10(a) requires that the owner or operator of an industrial establishment planning to close operations shall, upon closing oper-

ations or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, submit to the NJDEP for approval either a negative declaration prepared pursuant to N.J.A.C. 7:1-3.11 or a cleanup plan prepared pursuant to N.J.A.C. 7:1-3.12. N.J.A.C. 7:1-3.10(b) requires that the owner or operator of an industrial establishment planning to sell or transfer operations shall, within 60 days prior to transfer of title, submit to the NJDEP for approval either a negative declaration prepared pursuant to N.J.A.C. 7:1-3.11 or a cleanup plan prepared pursuant to N.J.A.C. 7:1-3.12. The owner or operator of an industrial establishment shall obtain a surety bond or other financial security approved by the NJDEP guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan pursuant to N.J.A.C. 7:1-3.13. Industrial establishments subject to N.J.A.C. 7:1-3.10(a) would be required to submit this bond or security with the cleanup plan, subject to a revision of the amount thereof, upon written approval by the NJDEP of the cleanup plan. Industrial establishments subject to N.J.A.C. 7:1-3.10(b) would be required to submit this bond or security upon approval of the cleanup plan, again subject to appropriate revisions. N.J.A.C. 7:1-3.11 establishes the criteria for negative declarations and N.J.A.C. 7:1-3.12 establishes the criteria for cleanup plans that must be complied with by the owner or operator of industrial establishments, as appropriate.

N.J.A.C. 7:1-3.14 establishes a procedure that allows the NJDEP to approve, conditionally approve, or deny deferral of cleanup plan implementation if the industrial establishment would be subject to substantially the same use. The NJDEP's authority to defer implementation of the cleanup plan has not been construed to limit, restrict, or prohibit the NJDEP from directing site cleanup nor limit the liabilities of past owners or operators under any statute, rule, or regulation.

N.J.A.C. 7:1-3.15 provides that until adoption of minimum standards required pursuant to Section 5(a) of the Act, the NJDEP shall review and approve or disapprove negative declarations and cleanup plans on a case-by-case basis for soil, groundwater, and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the locations of the site and surrounding ambient conditions.

N.J.A.C. 7:1-3.17 establishes special ECRA compliance provisions for the owners or operators of industrial establishments initiating the sale or closure of operations before the December 31, 1983 effective date of the Act.

N.J.A.C. 7:1-3.20 provides procedures for amending the Regulations to exempt sub-groups within the definition of industrial establishment as a class from the requirements of the Regulations and the Act upon a determination that their type of industrial establishment does not pose a risk to public health and safety.

The Act establishes several options to deal with violations of the Act, and the Regulations outline these provisions at N.J.A.C. 7:1-3.16, including voiding the sale or transfer of an industrial establishment by the transferee and the Department, strict liability without regard to fault for all cleanup and removal costs and indirect damages resulting from any failure to implement a cleanup plan, penalties of \$25,000 for each day a violation continues, and for the imposition of personal liability for any penalties against any officer or management official who knowingly directs or authorizes the violation of any provision of the Act or the Regulations. Nothing in the Act or the Regulations has been construed to limit, restrict or prohibit the NJDEP from directing immediate site cleanup under any other statute, rule or regulation. In addition, given that NJDEP approvals of negative declarations and cleanup plans pursuant to the Regulations will be based upon existing information and standards, N.J.A.C. 7:1-3.21(a) expressly reserves the right of the NJDEP to require remedial actions for subsequent closing, terminations, or transferring of operations of industrial establishments covered by the Act.

Social Impact

The proposed readoption of the Regulations will allow NJDEP to continue, in full force and effect, the successful ECRA program requiring adequate preparation and implementation of acceptable cleanup procedures as a precondition to the closure or sale of industrial establishments in New Jersey. Thus, the proposed readoption will continue the important and innovative NJDEP tool further minimizing the exposure of the citizens, property and natural resources of the State to the inherent dangers of handling, storage, and disposal of hazardous substances and wastes.

Economic Impact

The proposed readoption of these rules would result in a continuation of the existing ECRA program. The Regulations require owners or operators of industrial establishments to prepare and submit information and to finance implementation of detailed sampling plans and cleanup plans, including obtaining a surety bond or other financial security for the cleanup, as required by the NJDEP. Potential delays during the NJDEP's initial implementation efforts under the Act may cause additional costs during real estate transactions. However, the Legislature and the NJDEP continue to believe that the owner or operator of industrial establishments should properly incur these expenses as a precondition to the closure or sale of operations rather than the citizens and taxpayers of New Jersey at some later date.

Environmental Impact

The proposed readoption of the Regulations will have the positive environmental impact of continuing without interruption the regulatory framework necessary to implement the benefits of ECRA. NJDEP firmly believes that the Regulations have a major positive environmental impact for the citizens, property, and natural resources of New Jersey. The Regulations provide the NJDEP with an important remedial tool to significantly reduce the occurrence of future contaminated site problems throughout the State.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1-3.

(a)**OFFICE OF SCIENCE AND RESEARCH****Industrial Survey Project Rules****Proposed Readoption: N.J.A.C. 7:1F-1 and 7:1F-2**

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

Authority: N.J.S.A. 13:1D-9 and 58:10A-1 et seq.

DEP Docket No. 058-86-12.

Proposal Number: PRN 1987-29.

Submit comments by February 4, 1987 to:

David Bosted, Esq.
Office of Regulatory Services
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

P.L. 1970, c. 33 (N.J.S.A. 13:1D-9 et seq.) provides the Commissioner of the Department of Environmental Protection ("Department") with the authority to promulgate rules and regulations to create a survey of industrial establishments in order to obtain data concerning the use, manufacture, packaging, repackaging, disposal and release into the environment of certain carcinogenic and toxic chemicals. The information contained in the survey has been useful in making preliminary assessments as to the role which the industrial use and release of these substances may play in the development of cancer and other diseases in New Jersey. N.J.A.C. 7:1F-1 and 7:1F-2 were originally effective on March 27, 1980 (see 12 N.J.R. 259(c)). N.J.A.C. 7:1F-1 describes the objectives and organization of the Industrial Survey Project, including the penalties for failure to respond to the questionnaire. N.J.A.C. 7:1F-2 allows respondents to the questionnaire to assert a confidentiality claim for information which may constitute trade secrets, proprietary information or information related to national security.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:1F-1 and 7:1F-2 were to expire on March 27, 1985. Governor Kean waived the provision of Executive Order 66 as regards the Industrial Survey Project regulations for the period March 27, 1985 through March 27, 1987, inclusive of both dates. The basis for this waiver was the Governor's finding that a lapse in the Department authority to obtain information on toxic substances would work to the detriment of the health, safety and welfare of the general public and impede the effectiveness and enforcement of environmental laws and programs carried out by the Department.

The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Since the Industrial Survey Project was adopted,

the Department has used the data collected to conduct site-specific investigations of toxic contamination, to provide a valuable cross-check for regulatory programs including programs established pursuant to the Toxic Catastrophe Prevention Act and the Environmental Cleanup and Responsibility Act, and to provide directions for in-depth toxics research and the development of legislation, such as the Safe Drinking Water Act. The Department proposes, therefore, to readopt these rules to continue their necessary purpose beyond the impending expiration date.

Social Impact

The proposed readoption of N.J.A.C. 7:1F-1 will protect the public health, safety and welfare by identifying the quantities and locations of hazardous substances used, stored or released in New Jersey and by providing the Department with a comprehensive database on which to base regulatory programs.

The proposed readoption of N.J.A.C. 7:1F-2 will encourage corporate compliance by protecting confidential information. The information obtained by the Industrial Survey will make data on health threats from carcinogenic and toxic substances used by industry more readily available to the public.

Economic Impact

The proposed readoption of N.J.A.C. 7:1F-1 and 7:1F-2 will allow continued access to essential environmental data in an effective and economically sound manner. The cost to industry to fill out the questionnaire is insignificant because it merely duplicates the inventory of data on toxic chemicals that any responsible corporation would ordinarily maintain. No court judgments for wrongful access or disclosure have been imposed under N.J.A.C. 7:1F-2, and none are anticipated by the Department if the rule is readopted.

Environmental Impact

The information collected by the Industrial Survey Project aids the Department in selecting toxic substances to monitor in the environment and provides information necessary for the development and aggressive enforcement of environmental regulations to control toxic substance emissions and discharges. Although readoption of N.J.A.C. 7:1F-2 will protect confidential business information, emergency disclosure provisions would be available to alleviate imminent and substantial danger to the environment and, in turn, to the public health and safety.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1F-1 and 7:1F-2.

(b)**DIVISION OF HAZARDOUS WASTE MANAGEMENT****Hazardous Waste Facilities: Application Signatories****Proposed Amendment: N.J.A.C. 7:26-12.2**

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

Authority: N.J.S.A. 13:1E-6 and 13:1D-9.

DEP Docket No. 057-86-12.

Proposal Number: PRN 1987-28.

Submit comments by February 4, 1987 to:

Ann Zeloof, Esq.
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On December 16, 1985, at 17 N.J.R. 2941(a), the New Jersey Department of Environmental Protection ("Department") published proposed amendments to N.J.A.C. 7:26-8.1, 8.2, 9.3, 9.7, 12.2, and a proposed new rule at N.J.A.C. 7:26-8.19. The proposal was formulated in response to a petition for rulemaking filed by the Chemical Industry Council ("C.I.C."). All of the proposed amendments, with the exception of proposed N.J.A.C. 7:26-12.2, have been adopted by the Department. (See the related adoption which appears in this issue of the New Jersey Register.)

The proposed amendment at N.J.A.C. 7:26-12.2 concerned certification and signatory requirements for permit applications and related reports. (See 17 N.J.R. at 2944 for the text of the proposed amendment; see also the September 1, 1983 Federal Register at 48 FR 39611 and 40 CFR Part

270.11.) In response to the proposal, the Division of Criminal Justice in the New Jersey Department of Law and Public Safety submitted a written comment which pointed out that the proposed text did not require the signer to certify that the submitted information was true, complete and accurate, but rather allowed the signer to depend upon an inquiry of other persons who manage the system, or those persons directly responsible for gathering the information, in stating that the information submitted is, to the best of the signer's knowledge and belief, true, complete, and accurate. The commenter stated that such language has the potential of allowing corporate individuals to avoid responsibility for providing false and misleading information to the State and that this could pose a major threat to the environment. The comment further stated that it is the purpose of the signatory and certification requirement to impose, rather than alleviate, personal responsibility.

The Department has reconsidered the proposed amendment, evaluated the comment, and has elected not to adopt the proposed amendment at N.J.A.C. 7:26-12.2. The Department now repropose an amendment which consists of a two-part certification and signatory requirement. The repropose amendment requires that both the top corporation executive officer and the management of the facility involved sign and certify as to the accuracy of permit applications and reports.

The current text of N.J.A.C. 7:26-12.2, which now appears in the New Jersey Administrative Code, thus remains presently in effect, pending the adoption of the newly proposed amendment which is set forth below. The proposed amendment regarding application signatories in the hazardous waste facilities context is the same as was recently proposed concerning New Jersey Pollutant Discharge Elimination System applications (see 18 N.J.R. 2085(a), October 20, 1986).

Social Impact

The proposed amendment of N.J.A.C. 7:26-12.2 will require that both the top executive officer of a corporation as well as the management level of the facility involved complete the signatory and certification requirements for permit applications and reports. The standard of strict liability for the accuracy of the submitted information will be required at the management level of the facility involved.

Economic Impact

With reference to the State, the cost of administering and processing the relevant forms is expected to remain unchanged, with no additional expenses or personnel required. The regulated public may incur increased costs due to the introduction of new forms.

Environmental Impact

The proposed amendment will promote and protect the integrity of the environment by ensuring that those individuals responsible for their facilities will be held personally liable for submission of incorrect information to the State.

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

7:26-12.2 Permit application

(a)-(i) (No change.)

[(j)] All permit applications shall be signed as follows:

1. For a corporation, by a principal executive officer of at least the level of vice president;
2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
3. For a municipality, State, Federal, or other public agency, by either a principal executive officer or ranking elected official.

(k) Any person signing a permit application or report under (j) or (l) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(j) All permit applications shall contain the following signatures and two-part certification which provides the following:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (j)1 shall be signed by the highest ranking corporate, partnership, or governmental officer or official at the facility to

which the information pertains.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false information, including the possibility of fine and/or imprisonment."

i. The certification required by (j)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

[(1)]k All reports required by permits and other information requested by the Department shall be signed by a person described in (j)2i above who shall make the certification set forth in (j)2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if

1. The authorization is made in writing by a person described in (j)2i above;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or [a] well field, superintendent or **person** [position] of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

3. The written authorization is submitted to the Department;

4. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this subsection **[must]** **shall** be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

5. A duly authorized person shall make the following certification:

i. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment, for violations."

HEALTH

(a)

PUBLIC HEALTH COUNCIL Public Recreational Bathing Public Hearing

The **public hearing** on the proposed amendments to the Public Recreational Bathing regulations, N.J.A.C. 8:26, scheduled for December 8, 1986, was cancelled. The hearing has been rescheduled for January 12, 1987 at:

N.J. State Department of Health
Commissioner's Conference Room
Health-Agriculture Bldg., 8th floor
John Fitch Plaza
Trenton, New Jersey 08625

Please contact Joseph Kale at (609) 292-9382 if you plan to attend.

(b)

HOSPITAL REIMBURSEMENT Procedural and Methodological Regulations Cost/Volume Methodology Notice of Correction: N.J.A.C. 8:31B-3.73 and Appendix IX

Take notice that errors appear in the Proposal Notice appearing in the November 17, 1986 issue of the New Jersey Register at 18 N.J.R. 2285 and 2286 concerning the amendment to Appendix IV, Determining Volume/Intensity Changes and Upside and Downside Volume Shifts. The

amendment to Appendix IX should have appeared in the Register as follows:

8:31B-3.73 Reconciliation: Hospitals

(a) (No change.)

APPENDIX IX
Volume Variability Adjustment

D. [Determining] **Determination of the overall average percentage change in volume/intensity between the base and rate years. This is calculated as follows:**

$$\left(\frac{\text{Rate-Year [Admissions] Discharges}}{\text{Base-Year [Admissions] Discharges}} \times \frac{\text{Rate-Year Weighted Avg. Payment Rate}}{\text{Base-Year Weighted Avg. Payment Rate}} \right) - 1$$

Upside [and Downside] Volume Shifts

f = average [fixed] **compensation** cost percentage for the hospital's [Direct Inpatient] **Inpatient Direct Patient Care** cost centers

Example: If the rate-year is 1982, and the base-year is 1979, if the total [volume change as measured by the] volume/intensity [and admissions measures] **change** is 6 percent between the base year and rate years, and if

m = 40[%] **percent**

f = 60[%] **percent**

x = \$1,000

$$b = \frac{(6)^2}{10^2} = \frac{36}{100} = .36$$

then:

$$y = (.040)(1000) + (.36)(.60)(1000)$$

$$y = 400 + 216 = \$616$$

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

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

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1987-10.

A **public hearing** concerning this proposal will be held on January 27, 1987, at 2:00 P.M. at:

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

Submit comments by February 4, 1987 to:

Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council
New Jersey Department of Health
Room 801, CN 360
Trenton, N.J. 08625
609-984-1304

The agency proposal follows:

Summary

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

For example, the proposed Amiloride/HCTZ tablets could be used as a less expensive substitute for Moduretic, a branded prescription medicine. Similarly, the proposed cephalexin capsules could be substituted for the more costly branded product, Keflex.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without

such assurance of "therapeutic equivalency", any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

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

Social Impact

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

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

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

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

Full text of the proposal follows:

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
Amitriptyline tabs 150 mg	Barr
Amitriptyline/chlordiazep 5/12.5, 10/25	Mylan
Antipyrine/Benzocaine otic soln	Barre-National
Atropine SO4 ophth soln 1%	Carter-Glogau
Belladonna alks/phenobarb elixir	Life
Betamethasone valerate cream 0.1%	Clay-Park
Cefradroxil for susp 125, 250, 500/5 ml	Biocraft
Cefadroxil caps 500 mg	Biocraft
Cephalexin caps 250, 500 mg	Vitarine
Cephadrine caps 250, 500 mg	Biocraft
Chloramphenicol oph soln 0.5%	Carter-Glogau
Chlordiazepoxide/amitrip. 5/12.5, 10/25	Barr
Chlorpromazine HCl conc. 100 mg/ml	NPC
Chlorthalidone tabs 25, 50 mg	Mutual
Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Interpharm
Clonidine tabs 0.1, 0.2, 0.3 mg	Mylan
Clonidine tabs 0.3 mg	Cord
Codeine/phenyleph/chlorphen/K1 ("Pediocof")	Life
Cyproheptadine syrup 2 mg/5 ml	Halsey
Cyproheptadine tabs 4 mg	Halsey
Decongestant caps (Entex cap. formula)	Amide
Dexamethasone sod PO4 ophth. soln 0.1%	Carter-Glogau
Diazepam tabs 2, 5, 10 mg	Halsey
Diazepam tabs 2, 5, 10 mg	Superpharm
Dicyclomine tabs 20 mg	Pioneer
Diphenhydramine caps 25, 50 mg	Pioneer
Diphenhydramine caps 50 mg	Halsey
Diphenhydramine syrup 12.5 mg/5 ml	Halsey
Diphenhydramine syrup 12.5 mg/5 ml	Life
Dipyridamole tabs 25, 50, 75 mg	Mutual
Disopyramide phosphate caps 100, 150 mg	Barr
Doxepin caps 10, 25, 50, 75, 100 mg	Quantum
Doxycycline caps 50 mg	Lemmon
Doxycycline hyclate caps 50, 100 mg	PFI

Ergoloid 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 mg
Haloperidol tabs 0.5, 1, 2, 5 mg
Haloperidol tabs 0.5, 1, 2, 5 mg
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 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
Metoclopramide tabs 10 mg
Metronidazole tabs 250, 500 mg
Metronidazole tabs 500 mg
Neomycin/dexamethasone sod PO4 ophth sol
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
Propranolol/HCTZ tabs 40/25 mg
Quinidine gluconate E.R. tabs 234 mg
Quinidine sulfate tabs 200 mg
SMZ/TMP tabs 400/80, 800/160
Spironolactone tabs 25 mg
Spironolactone/HCTZ tabs 25/25
Sulfanilamide 15% vag crm (Vagitrol for)
Temazepam caps 15, 30 mg
Temazepam caps 15, 30 mg
Temazepam caps 15, 30 mg
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
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)

Superpharm
Barre-National
Barr
Mylan
Carter-Glogau
Reed-Carnrick
Barr
Quantum
Cord
Par
Searle
Mutual
Halsey
Life
Mutual
Par
Pioneer
Barr
Superpharm
Danbury
Mylan
Roxane
Barr
Barr
Interpharm
Mutual
Halsey
Carter-Glogau
Carter-Glogau
Carter-Glogau
PharmBasics
Life
Amide
Danbury
Life
Cenci
P-D
Par
Barr
Danbury
Barr
Par
Barr
Mylan
Superpharm
Cord
Mutual
Mutual
Superpharm
Lemmon
Sandoz
Barr
Par
PFI
Superpharm
Life
Barr
Mutual
Interpharm
Superpharm
Amer. Ther.
Quantum
Barr
Life
P-D
Barr
Amide
Amide

HIGHER EDUCATION

For the following proposals, submit comments by February 4, 1987 to:

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

(a)

BOARD OF HIGHER EDUCATION Community Colleges; Chargeback Proposed New Rule: N.J.A.C. 9:4-1.5

Authorized By: Board of Higher Education,
T. Edward Hollander, Chancellor and Secretary.
Authority: N.J.S.A. 18A:64A-7.
Proposal Number: PRN 1987-30.

The agency proposal follows:

Summary

The Board of Higher Education is statutorily charged with establishing policies and procedures governing the operation of New Jersey's county college system.

Regulations governing policies and procedures at the county colleges, including chargeback, were adopted by the Board on October 30, 1986 and published in the New Jersey Register on December 1, 1986 at 18 N.J.R. 2382(a). Due to comments received from the public, the proposed language of N.J.A.C. 9:4-1.5(g) and (h) was not adopted but those sections were reserved as the Board desired to amend the proposal in those two subsections in a substantial manner, thereby requiring renoticing of those provisions. This proposal reflects the new language which the Board seeks to adopt in these two subsections and should be read in conjunction with the previous proposal of the Board.

The chargeback system provides a method by which a student may attend a county college in a county other than his or her county of residence at a county resident tuition rate. Attendance on a chargeback basis is limited to when the student's home county does not have a county college, the student's home county college does not offer a particular program of study or the student's home county college cannot admit the student into a particular program of study. The chargeback system also provides for the student's home county to pay a particular fee to the county college attended by the student.

The proposal sets guidelines for chargeback students in need of remedial coursework and where such coursework must be taken.

Social Impact

The proposal shall affect students in the county college sector in a positive fashion for several reasons. First, the lack of explicit guidelines in this area has led to uneven application of policy and procedure on this issue between various county colleges. Adoption of the policy will ensure equal treatment for all students. Second, those students who are required to take minimal remediation, generally accomplished while taking other collegiate courses, will be allowed to take all their coursework at one college rather than having to attend two distinct county colleges simultaneously, possibly in distant geographical areas, to complete both remedial and regular college coursework. Lastly, the proposal will also benefit counties by not requiring them to fund chargeback fees for certain students taking remediation as such instruction will be provided by the home county college.

Economic Impact

The effect of the proposal will be to lessen the number of students required to pay the higher out-of-county resident tuition rates. Depending upon each county's previous policy with regard to chargeback payments for remedial coursework, the total chargeback fees of each county may increase or decrease.

Full text of the current rule appears at 18 N.J.R. 2382(a).

Full text of the proposed new rule follows:

9:4-1.5 Chargeback
(a)-(f) (No change.)

(g) [(Reserved)] Students required to enroll in a comprehensive remedial program, as defined by the Chancellor, must take that full sequence of mediation in the home county. Each academic year, the Chancellor shall determine and distribute to the county colleges a definition of comprehensive remedial program for such students which shall be based upon severe deficiencies in reading, writing and mathematics as evidenced by New Jersey college Basic Skills Placement Test results. After the successful completion of such remediation, students will be eligible to take the intended courses of study on a chargeback basis at the out-of-county institution.

(h) [(Reserved)] Students not required to enroll in a comprehensive remedial program as defined in (g) above may take such remediation as part of the program of student at the out-of-county institution on a chargeback basis.

(i)-(l) (No change.)

(a)

EDUCATIONAL OPPORTUNITY FUND

Administrative Policies and Procedures

Financial Eligibility for Undergraduate Grants

Proposed Amendment: N.J.A.C. 9:11-1.5

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Authorized By: Educational Opportunity Fund,

T. Edward Hollander, Chairman, Department of Higher Education.

Proposal Number: PRN 1987-31.

The agency proposal follows:

Summary

The Educational Opportunity Fund Board is statutorily authorized to establish policies and procedures governing the operation of the Educational Opportunity Fund Program which provides academic support services and financial aid to educationally and economically disadvantaged students. Such aid may be utilized by students attending both public and private institutions of higher education in New Jersey in pursuit of a collegiate degree.

The proposed amendment will clarify for institutions of higher education which students may be admitted who do not meet the current financial eligibility requirements of the program, but whose circumstances result in a disadvantaged background which meets the original intent of the program. No more than 20 percent of each campus's program population may be admitted under this discretionary waiver. Clarifying language includes a definition of a "high distress" area and a "pocket of poverty" both of which are criteria which must be found in a student's record before they would be admitted pursuant to this 20 percent discretionary waiver.

Social Impact

The proposed amendment will clarify the expansion of the EOF Program to a student who does not meet the current financial eligibility requirements of the program but whose circumstances result in a disadvantaged background which meets the original intent of the program. A student who has resided in an area of a municipality known as a pocket of poverty may meet the criteria for admission under this expansion. Such an area 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.

Economic Impact

The proposed amendment will clarify criteria for participation in the EOF Program making the institutions of higher education better able to grant students EOF financial aid grants. The Board anticipates that any enrollment increases due to this clarification can be met by the funding recommended by the Governor for the 1987 fiscal year, as previously several institutions did not meet full enrollment goals.

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

9:11-1.5 Financial eligibility for undergraduate grants

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

(e) Where there is evidence that strict adherence[s] 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 2 above;

[3.]4. The student has a sibling who was, or is currently, enrolled in an EOF Program;

[4.]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.

[5.](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.

[(f)] When making awards that exceed five percent, permission must be granted by the Executive Director. All efforts should be made to give priority to the students whose income is within the limits of the guidelines. Five percent exemptions for EOF initial students will become effective January 1, 1983.]

HUMAN SERVICES

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

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

For proposals numbered PRN 1987-8 and 33, submit comments by February 4, 1987 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625

(b)

Manual for Dental Services

HPCPS Codes for Dental Services

Proposed Repeal and New Rule: N.J.A.C. 10:56-3

Authority: N.J.S.A. 30:4D-6a(2)b(3)(4)(6); 6g(1)(2)(3)(4) 7, 7a, 7b, 7c; 42 CFR 440.100; N.J.S.A. 30:1-12.

Proposal Number: PRN 1987-33.

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services (The Division) intends to utilize the HCPCS Procedure Coding System for dental services. (HCPCS stands for Health Care Financing Administration Common Procedure Coding System.) This proposal is designed to delete the existing text of Subchapter Three and replace it with the HCPCS procedure codes.

The HCPCS procedure codes for dental services follows the American Dental Association's Codes on Dental Procedures and nomenclature in order to identify and categorize dental procedures covered under all types of third party programs. The HCPCS coding system is intended to facilitate the filing and processing of claims, and assist in the collection of statistical data.

This subchapter is divided into 11 sections (3.2 through 3.12) pertaining to basic categories of dental services. For example, section 3.2 is entitled diagnostic services, section 3.5 is entitled endodontics, section 3.11 is entitled orthodontics, etc. Each section contains the HCPCS procedure

code, a brief narrative description of the dental procedure, the corresponding fee schedule, and any qualifiers or modifiers. Two examples follow:

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM ALLOWANCE	
				S \$	NS
	02110		Amalgam One Surface Primary	9.00	7.50
*	01510	22	Space Maintainer Fixed Unilateral (Utilizing single Stainless steel crown)	59.00	51.00

A dentist performing an amalgam restoration would enter HCPCS code 02110 on the claim form. A dentist who has inserted a space maintainer would enter HCPCS code 01510 and the modifier 22, which indicates a greater or unusual service, on the claim form. The asterisk (*) is an identifier which denotes those procedures which normally require prior authorization. This asterisk is not entered on the claim form.

Dentists participating in the New Jersey Medicaid program will be required to utilize the HCPCS procedure code system when submitting a claim for reimbursement. It is anticipated the change will occur on or about April 1, 1987.

The Division also added a new procedure code (01351) for sealant, which is a preventive procedure to prevent tooth decay. This procedure is used primarily on young patients as their permanent teeth erupt. It is limited to first and second molars.

Social Impact

This rule will impact on all dental providers (participating in the New Jersey Medicaid program), whether the provider is a private practitioner, independent dental clinic, or hospital outpatient department. These dental providers will be required to use HCPCS codes when submitting a claim to Medicaid for reimbursement. Claims that are completed properly using the HCPCS codes will be processed for reimbursement.

The rule impacts on the Prudential Insurance Company, who is the Division's fiscal agent for processing dental claims.

The rule impacts on Medicaid patients who may require dental services and treatment. There is only one change in the scope of services available associated with this conversion and that is the addition of the procedure code for sealant. Otherwise, the scope of services remains the same. The same limitations, such as prior authorization, for certain services, will still apply. Dental services are available to both categorically and Medically Needy eligible individuals. With respect to Medically Needy, dental services are available to all three coverage groups (pregnant women, dependent children, and the aged, blind or disabled).

Economic Impact

It is estimated that the additional procedure code (01351-Sealant) will cost the New Jersey Medicaid program approximately \$525,000 per year (Federal-State share combined).

The economic impact on providers will vary, depending on the number of Medicaid patients being treated. However, all dental providers will be reimbursed for dental services and treatment covered by the New Jersey Medicaid program so long as they utilize the HCPCS procedure codes. The Prudential Insurance Company will process the claims and make reimbursement in accordance with the appropriate fee schedule assigned to the procedures code.

There is no cost to the Medicaid patient for dental services. However, Medically Needy eligible individuals may have to meet spend-down requirements in order to qualify.

Full text of the proposed repeal can be found at N.J.A.C. 10:56-3.

Full text of the proposed new rule follows.

SUBCHAPTER 3. HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

10:56-3.1 Introduction

(a) The New Jersey Medicaid Program has adopted the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). Dental HCPCS follows the American Dental Association's Codes on Dental Procedures and Nomenclature in order to "identify and categorize dental procedures covered under all types of third party programs. It is intended to facilitate the filing and processing claims, data

tabulation, and the collection of statistics for third party program operation." The HCFA assigned codes and modifiers may contain both alphabetic and numeric characters.

(b) The HCPCS codes listed in this subchapter are divided into 11 sections:

- N.J.A.C. 10:56-3.2 —Diagnostic
- N.J.A.C. 10:56-3.3 —Preventive
- N.J.A.C. 10:56-3.4 —Restorative
- N.J.A.C. 10:56-3.5 —Endodontics
- N.J.A.C. 10:56-3.6 —Periodontics
- N.J.A.C. 10:56-3.7 —Prosthodontics, Removable
- N.J.A.C. 10:56-3.8 —Maxillofacial Prosthetics
- N.J.A.C. 10:56-3.9 —Prosthodontics, Fixed
- N.J.A.C. 10:56-3.10—Oral Surgery
- N.J.A.C. 10:56-3.11—Orthodontics
- N.J.A.C. 10:56-3.12—Adjunctive General Services

(c) The basic categories and their assigned code series are as follows:

Category of Service		
I. Diagnostic	00100-00999	Y2000-Y2099
II. Preventive	01000-01999	Y2100-Y2199
III. Restorative	02000-02999	Y2200-Y2299
IV. Endodontics	03000-03999	Y2300-Y2399
V. Periodontics	04000-04999	Y2400-Y2499
VI. Prosthodontics, Removable	05000-05899	Y2500-Y2599
VII. Maxillofacial Prosthetics	05900-05999	Y2600-Y2699
VIII. Prosthodontics, Fixed	06000-06999	Y2700-Y2799
IX. Oral Surgery	07000-07999	Y2800-Y2899
X. Orthodontics	08000-08999	Y2900-Y2999
XI. Adjunctive General Services	09000-09999	Y3000-Y3099

¹Journal of the American Dental Association, Volume 85, October 1972 page 789.

(d) Specific elements of the HCPCS Coding System which require the attention of the dental provider.

The lists of HCPCS code numbers in the 11 separate sections of this subchapter are arranged in tabular form with specific information for a code given under columns with titles such as: "IND", "HCPCS CODES", "MOD", "DESCRIPTION", AND "MAXIMUM FEE ALLOWANCE". The information given under each column is summarized below:

COLUMN TITLE

1. IND—(Indicator) Lists symbols used to refer provider to information concerning the New Jersey Medicaid Program's qualifications and requirements when a procedure or service code is used.

Explanation of indicators used in this column is given below:

i. "*" An asterisk (*) denotes those procedures which normally require prior authorization in order to be eligible for reimbursement under the New Jersey Medicaid Program.

ii. "**" A double asterisk (**) denotes those procedures which may be treated in an emergency situation when prior authorization is not feasible. These procedures must receive authorization prior to payment.

iii. "d" The letter (d) denotes those procedures which require that a diagnosis be entered in the appropriate item on the Dental Services Claim form (MC-10) in order to be eligible for reimbursement.

2. HCPCS CODES—Lists the HCPCS procedure code numbers.

3. MOD—(Modifier) Lists alphabetic or numeric characters. Services and procedures may be modified under certain circumstances. When applicable, the modifying circumstance is identified by the addition of alphabetic or numeric characters at the end of the code. The New Jersey Medicaid Program's recognized modifier codes are listed with appropriate procedure codes in this Subchapter 3. The Modifiers "22" and "52" are the copyright 1985, American Medical Association, Physicians' Current Procedural Terminology, Fourth Edition. The modifiers with definitions as designated for use in the New Jersey Medicaid Dental Manual are as follows:

i. 22—Unusual Services: When the service(s) provided is greater than that usually required for the listed procedure, it may be identified by adding modifier "22" to the usual procedure number. A report may also be appropriate.

NOTE: This modifier has also been applied when a dental laboratory procedure is used in conjunction with specified chairside procedures or where an adjunctive service is rendered in addition to the basic service.

ii. 52—Reduced Services: Under certain circumstances a service or

procedure is partially reduced or eliminated at the practitioner's election. Under these circumstances the service provided can be identified by its usual procedure number and the addition of the modifier "52", signifying that the service is reduced.

- iii. YL—Mandibular-Lower.
- iv. YU—Maxillary-Upper.

When it is necessary for the New Jersey Medicaid Program to distinguish between services rendered in the mandibular arch as opposed to the maxillary arch and the basic codes do not make this differentiation, the modifiers "YL" and "YU" have been assigned to make this distinction.

4. DESCRIPTION—Lists the code narrative.

5. MAXIMUM FEE ALLOWANCE—Lists the New Jersey Medicaid Program's maximum reimbursement schedule for Specialist and Non-Specialist.

- i. S—Denotes Specialist fee.
- ii. NS—Denotes Non-Specialist fee.
- iii. BR—Denotes By Report (Individual Consideration of Procedure and Fee).

This means that additional information will be required in order to properly evaluate the service and determine an appropriate fee. A copy of this report must be attached to the Dental Services Claim form (MC-10).

(e) Alphabetic and numeric symbols under "IND" & "MOD" and notes under "DESCRIPTION"

1. These symbols and notes when listed under the "IND", "MOD" and "DESCRIPTION" columns are elements of the HCPCS coding system. They assist the dentist in determining the appropriate procedure codes to be used, the area to be covered, the minimum requirements needed, and any additional parameters required for reimbursement purposes.

2. These symbols and/or letters and/or notes must not be ignored because in certain instances requirements are created in addition to the narrative which accompanies the HCPCS code. THE PROVIDER WILL THEN BE LIABLE FOR THE ADDITIONAL REQUIREMENTS AND NOT JUST THE HCPCS CODE NARRATIVE. These requirements must be fulfilled in order to receive reimbursement.

3. If there is no identifying symbol or note listed, the HCPCS code narrative prevails.

(f) Policies and procedures regarding use of HCPCS

Listed below and throughout Subchapter 3. are both some general and specific policies of New Jersey Medicaid Program relevant to HCPCS. These are not necessarily complete but may have been paraphrased from the complete policies as outlined in Subchapter 1. (Chapter II, 3/78) and Subchapter 2. (Chapter III, 3/78). This has been done so that the provider will have pertinent information available in conjunction with the procedures to be requested and/or delivered. For complete and specific policies in addition to those outlined herein, the practitioner must consult Subchapter 1. and/or 2.

1. General Requirements

i. When requesting authorization or filing a claim, the HCPCS Codes, including the referenced modifiers, must be used in conjunction with the narratives in this Subchapter.

ii. The use of a procedure code will be interpreted by the New Jersey Medicaid Program as evidence that the dentist personally furnished, as a minimum, the service for which it stands.

iii. For purposes of reimbursement, a dentist, dental group, shared health care facility or dentists sharing a common record are considered as a single provider.

iv. When billing, the provider must enter into the procedure code column (Item 15B) of the Dental Services Claim form (MC-10), a HCPCS code as listed in this subchapter. If an appropriate code cannot be found, leave the procedure code column blank and submit a narrative description of the service for authorization and fee assignment.

v. Date(s) of service(s) must be indicated on the Dental Services Claim form (MC-10), in the records of a facility when treatment is rendered to one of its residents, and in the practitioner's own record for each service billed.

vi. When submitting a claim, the dentist must always use her or his usual and customary fee. The fee designated for the HCPCS procedure codes represents the New Jersey Medicaid Program's maximum reimbursement for the given procedure.

10:56-3.2 00100-00999 I. DIAGNOSTIC

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE	
				S \$	NS
(a)	Clinical Oral Examination				
	00110		Initial Oral Examination	7.00	6.00

NOTE 1: This is the code to be used for a Comprehensive Clinical Oral Examination of Medicaid recipients, both Initial and Periodic.

NOTE 2: This code requires a thorough observation of all conditions present in the oral cavity and contiguous structures to include:

a. Charting of all abnormalities;

b. Development of a complete treatment plan to be recorded in its entirety on the Dental Services Claim form (MC-10).

NOTE 3: for reimbursement of the examination:

a. A comprehensive clinical oral examination shall be limited to once every six months for those patients through age 17, and once every 12 months for those patients 18 years of age or older except as authorized by a Dental Consultant of the New Jersey Medicaid Program;

b. All items on the Dental Services Claim form (MC-10) must be completed;

c. If No Other Treatment is Necessary, this fact must be noted on the Dental Services Claim form (MC-10) in the diagnosis box. The abbreviation "NOTN" may be used.

d	00130		Emergency Oral Examination	4.00	3.00
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NOTE: For diagnosis and/or observation of a specific complaint—make note of diagnosis and/or observation(s) on Dental Service Claim form (MC-10). This code is not reimbursable as an adjunct to any reimbursable service except for diagnostic radiographs.

(b) Radiographs

1. Radiographs should be limited to those normally required to make a diagnosis, but must show all areas where treatment is anticipated with the exception of soft tissue lesions. The originals of all radiographs must be forwarded to the Dental Consultant for evaluation of the treatment or treatment request.

a. For complete limitations according to age and time, see 2.b. below;

b. As part of an examination, posterior bitewings and single anterior films may be taken as needed;

c. In an emergency situation, a radiograph(s) may be taken at any time in order to establish a diagnosis.

2. Intraoral Radiographs: (Periapical/Bitewing/Occlusal)

a. Indicate number of films in items 13 and 15F of the Dental Services Claims form (MC-10);

b. For a complete series of radiographs, limitations pertaining to age are found in the first note below each code, and the maximum number of radiographs reimbursable as a single radiographic study every three years without prior authorization is found in the second note below each code.

00210	52	Intraoral—Complete Series (including bitewings) NOTE 1: Limited to patients up to and including age 6. NOTE 2: 8 films.	9.00	9.00
00210		Intraoral—Complete Series (including bitewings) NOTE 1: Limited to patients age 7 up to and including age 14. NOTE 2: 12 films.	13.00	13.00
00210	22	Intraoral—Complete Series (including bitewings) NOTE 1: Limited to patients age 15 or older. NOTE 2: Minimum of 16 films.	17.00	17.00
00220		Intraoral—Periapical—First Film NOTE: Or bitewing.	2.00	2.00
00230		Intraoral—Periapical—Each Additional Film NOTE 1: Or each additional bitewing. NOTE 2: Indicate complete number of films (00220 Plus 00230) in items 13 and 15F.	1.00	1.00
00240		Intraoral—Occlusal Film NOTE 1: Per film (maximum—two (2) films). NOTE 2: Indicate number of films in item 15F.	5.00	5.00
3. Extraoral Radiographs				
00250	52	Extraoral, First Film NOTE 1: Indicate number of views in item 15F of the Dental Services Claim form (MC-10). NOTE 2: Code to be used for lateral, anterioposterior, temporomandibular radiographs, etc. (one view).	10.00	10.00
00260		Extraoral—Each Additional Film NOTE: Maximum reimbursable—2 additional views.	5.00	5.00
00310		Sialography	15.00	15.00
00310		Sialography NOTE: Includes injection of contrast material (filling and/or emptying phases).	30.00	30.00
00330		Panoramic Film	10.00	10.00
* 00340		Cephalometric Film	10.00	10.00
* 00340	22	Cephalometric Film NOTE: Includes tracing.	15.00	15.00
(c) Test and Laboratory Examinations				
* 00470		Diagnostic Casts NOTE: Casts must have bases and be trimmed to permit articulation, per cast.	11.50	10.00

* 00471		Diagnostic Photographs NOTE: Or slide, per view.	1.00	1.00
d 00501		Histopathologic Examination NOTE 1: The gross and microscopic examination of oral tissues, both hard and soft. NOTE 2: Limited to specialists in oral pathology, and Oral Diagnosis (Pathology) Department of dental schools.	10.00	—
d* 00999		Unspecified Diagnostic Procedure, By Report NOTE: Complete description of procedure and why.	BR	BR

10:56-3.3 01000-01999 II. PREVENTIVE

(a) Dental Prophylaxis

1. Dental prophylaxis is the removal of calculus and stains from the supragingival and subgingival surfaces of the teeth by scaling and polishing.

a. For reimbursement purposes, dental prophylaxis shall be limited to once every six months for those patients up to and including age 17 and once every 12 months for those patients 18 years of age or older except as authorized by a Dental Consultant of the Medicaid Program.

			MAXIMUM FEE ALLOWANCE	
IND	HCPDS CODE	MOD	S \$	NS
	01110		11.00	10.00
	01110	52	5.50	5.00
	01120		8.00	7.00

2. Scaling over and above that necessary under prophylaxis (see codes 01110 and 01110 52 above), the calculus must be abnormally heavy and visible to the Dental Consultant on radiograph(s). Such scaling must be authorized.

* Y2105		Patients 16 years of age or older, maxillary and mandibular arches	11.00	11.00
* Y2105	52	Patients 16 yrs of age or older, maxillary or mandibular arch NOTE: Code to be used if patient is edentulous in one arch.	5.50	5.00

(b) Topical Fluoride Treatment (Office Procedure)

1. Topical application of stannous fluoride or acid fluoride phosphate—one treatment following a complete prophylaxis (fee includes both services).

a. Reimbursement for topical fluoride treatment shall be limited to once every six months without authorization for those patients up to and including age 17, and once every 12 months for those patients 18 years of age, up to and including 20 years of age. (Not a covered service for persons 21 years of age and over). A complete prophylaxis must be performed immediately prior to the topical fluoride treatment.

01201		Topical Application of Fluoride (Including Prophylaxis)—Child NOTE: Patients up to and including 15 years of age, maxillary and mandibular arches.	14.00	12.00
01202		Topical Application of Fluoride (Including Prophylaxis)—Adult NOTE: Patients age 16, up to and including 20 years of age, maxillary and mandibular arches.	17.00	15.00
01202	52	Topical Application of Fluoride (Including Prophylaxis)—Adult NOTE: Patients age 16, up to and including 20 years of age, maxillary and mandibular arch. Code to be used if patient is edentulous in one arch.	8.50	7.50
(c) Other Preventive Services				
01351		Sealant—Per Tooth NOTE 1: Application of sealants is limited to a one time application to caries free and restoration free first and second permanent molars as follows: a. First molars: Sealants are reimbursable when applied upon eruption at ages six (6) or seven (7); b. Second molars: Sealants are reimbursable when applied upon eruption, at ages twelve (12) or thirteen (13). NOTE 2: Sealants applied other than as detailed above are not reimbursable unless authorized by a Medicaid Dental Consultant. A complete explanation of the request must be attached. NOTE 3: Since the sealants may be reimbursed only once for each tooth, the provider should make certain that sealants have not been applied previously.	7.00	6.00
(d) Space Maintenance (Passive Appliances)				
* 01510		Space Maintainer—Fixed—Unilateral NOTE: Utilizing band(s).	40.00	35.00
* 01510	22	Space Maintainer—Fixed—Unilateral NOTE: Utilizing single stainless steel crown.	59.00	51.00
* 01515		Space Maintainer—Fixed—Bilateral NOTE: Lingual or palatal arch utilizing bands.	61.00	53.00
* 01515	22	Space Maintainer—Fixed—Bilateral NOTE: Lingual or palatal arch utilizing stainless steel crowns.	105.00	91.00

* Y2115	Tooth Processed to Arch Bar (Wire), Per Tooth	6.00	5.00
* 01525	Space Maintainer—Removable—Bilateral	69.00	60.00
01550	Recementation of Space Maintainer	7.00	6.00
* Y2125	Unspecified Preventive Procedure, By Report NOTE: Complete description of procedure(s) and why.	BR	BR

10:56-3.4 02000-02999 III. RESTORATIVE

(a) Reimbursement for restorations in deciduous teeth is limited to deciduous cuspids and molars of children up to and including age 9 or in deciduous incisors up to and including age 5, but not where exfoliation is imminent.

1. Exception: Prior authorization by a Medicaid Dental Consultant.

(b) Amalgam Restorations (Including Polishing)

1. Reimbursement for a restoration will include treatment of pulp exposure, lining or base, restoration, polishing of restoration, and local anesthesia or analgesia.

2. Procedure code must be selected on the basis of the number of surfaces restored per individual tooth (not on the basis of individual restorations); therefore, the fee for any surface will include one or more restorations on that surface.

3. Only one code is reimbursable per tooth except when amalgam and resin restorations are placed on the same tooth.

4. Reimbursement for an occlusal restoration includes any extensions onto the occlusal one-third of the buccal or lingual surface(s) of the tooth.

5. Extensions of interproximal fillings into self cleansing areas will not be considered as additional surfaces. An additional surface will be reimbursable only when the buccal (facial) or lingual margin extends beyond the proximal one-third (1/3) of the buccal (facial) and/or lingual surface(s).

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE	
				\$	NS
	02110		Amalgam—One Surface, Primary	9.00	7.50
	02120		Amalgam—Two Surfaces, Primary	14.50	13.00
	02130		Amalgam—Three Surfaces, Primary	20.00	18.50
	02131		Amalgam—Four Surfaces, Primary NOTE: Code to be utilized for four or more surfaces.	25.50	24.00
	02140		Amalgam—One Surface, Permanent	9.00	7.50
	02150		Amalgam—Two Surfaces, Permanent	14.50	13.00
	02160		Amalgam—Three Surfaces, Permanent	20.00	18.50
	02161		Amalgam—Four or More Surfaces, Permanent	25.50	24.00

(c) Silicate Restorations

Silicate restorations are NOT a covered service of the New Jersey Medicaid Program.

(d) Filled or Unfilled Resin Restorations

1. Filled or unfilled resin filling material is reimbursable only when that material is utilized for teeth numbers 4 through 13 and 20 through 29 and/or C through H and M through R in each arch.

a. Exception: Prior authorization by a Medicaid Dental Consultant.

2. Proximal restorations in anterior teeth are normally considered to be single surface restorations. When access to a proximal cavity is gained by involvement of a second surface, reimbursement will be permitted for only one surface. A two (2) or three (3) surface proximal restoration will be reimbursed only when the facial and/or lingual margin(s) of the

restoration extends beyond the proximal one-third (1/3) of the facial and/or lingual surface(s).

3. Extension of proximal fillings into self-cleansing areas will not be considered as additional surfaces.

4. In selecting the code to be submitted for an individual tooth, please note that only one code is reimbursable per tooth except when amalgam and resin restorations are placed on the same tooth.

5. The fee for any surface will include one or more restorations on that surface.

6. Reimbursement for an occlusal one-third of the buccal (facial) or lingual surface(s) of the tooth.

7. Reimbursement for a restoration will include treatment of pulp exposure, lining or base, restoration, polishing of restoration, and local anesthesia or analgesia.

8. Reimbursement will include acid etch where appropriate.

02330	Resin—One Surface	11.00	10.00
02331	Resin—Two Surfaces	18.00	16.00
02332	Resin—Three Surfaces	25.00	22.00
02335	Resin—Four or More Surfaces or Involving Incisal Angle	31.50	28.00

(e) Gold Foil Restorations

1. Primarily for use in Dental Colleges.

* 02410	Gold Foil—One Surface	9.00	8.00
* 02420	Gold Foil—Two Surfaces	18.00	16.00
* 02430	Gold Foil—Three Surfaces	27.00	24.00

NOTE: Code to be used for three or more surfaces.

(f) Inlay Restorations

1. Primarily for use in Dental Colleges.

* 02510	Inlay—Metallic—One Surface	31.00	27.00
* 02520	Inlay—Metallic—Two Surfaces	56.00	49.00
* 02530	Inlay—Metallic—Three Surfaces	75.00	65.00

NOTE: Code to be used for three or more surfaces.

* 02540	Onlay—Metallic—Per Tooth (In Addition to Inlay)	23.00	20.00
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(g) Crowns—Single Restoration Only

1. Authorization for crowns will be granted only when substantial loss of tooth structure exists and conditions of remaining teeth and supporting tissues justify this treatment.

2. Acrylic or porcelain veneer on metal will be authorized only when esthetically necessary.

3. There is only one fee for each type of crown. Use the type of alloy most appropriate for the patient's needs.

4. The Noble Metal Classification System has been adopted as a more precise method of reporting various alloys used in dentistry. The alloys are defined on the basis of the percentage of noble metal content.

Classification	High Noble Alloy	Noble Alloy	Predominantly Base Alloy
Weight %	Au., Pd. and/or Pt. 60% (with at least 40% Au)	Au., Pd. and/or Pt. 25%	Au., Pd. and/or Pt. 25%
* 02710	Crown—Resin (Laboratory)		98.00 85.00
	NOTE: Laboratory processed.		
* 02720	Crown—Resin with High Noble Metal		161.00 140.00
	NOTE: Acrylic veneer.		
* 02721	Crown—Resin with Predominantly Base Metal		161.00 140.00
	NOTE: Acrylic veneer.		

* 02722	Crown—Resin with Noble Metal	161.00	140.00
	NOTE: Acrylic veneer.		
* 02750	Crown—Porcelain Fused to High Noble Metal	201.00	175.00
* 02751	Crown—Porcelain Fused to Predominantly Base Metal	201.00	175.00
* 02752	Crown—Porcelain Fused to Noble Metal	201.00	175.00
* 02790	Crown—Full Cast High Noble Metal	161.00	140.00
* 02791	Crown—Full Cast Predominately Base Metal	161.00	140.00
* 02792	Crown—Full Cast Noble Metal	161.00	140.00
(h) Other Restorative Services			
02910	Recement Inlay	7.00	6.00
02920	Recement Crown	7.00	6.00
* 02930	Prefabricated Stainless Steel Crown—Primary Tooth	41.00	35.00
	NOTE: Authorized only for deciduous teeth.		
* 02931	Prefabricated Stainless Steel Crown—Permanent Tooth	41.00	35.00
	NOTE: Generally authorized only for permanent posterior teeth up to and including 17 years of age.		
* 02932	Prefabricated Resin Crown	40.00	35.00
	NOTE: E.G., Polycarbonate—generally authorized only for deciduous and permanent anterior teeth up to and including 15 years of age.		
* 02950	Crown Buildup Including Any Pins	34.00	30.00
	NOTE 1: And/or post.		
	NOTE 2: Core of composite or amalgam.		
02951	Pin Retention—Per Tooth, In Addition To Restoration	4.00	3.00
	NOTE 1: Per pin.		
	NOTE 2: Maximum reimbursable—three (3) pins.		
* 02952	Cast Post And Core In Addition To Crown	52.00	45.00
	NOTE: Post and core fabricated (cast) and cemented as a separate unit from crown.		
* 02954	Prefabricated Post And Core In Addition To Crown	34.00	30.00
* 02970	Temporary (Fractured Tooth)	29.00	25.00
	NOTE: Temporary crown—not reimbursable in conjunction with any other restorative procedure on same tooth.		
* 02999	Unspecified Restorative Procedure, By Report	BR	BR

10:56-3.5 03000-03999 IV. ENDODONTICS

(a) Authorization of endodontic treatment will be at the discretion of the Medicaid Dental Consultant, and will be influenced by the:

1. Age and general health of the patient;

2. Status of the tooth in the arch; and
3. Condition of the remaining dentition and supporting structures.

(b) Pulp Capping—Direct/Indirect

1. Pulp Capping is no longer a separately covered service under the Medicaid Program.

(c) Therapeutic Pulpotomy

1. A pulpotomy will be limited to a deciduous tooth, or a permanent tooth with incompletely formed roots.

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE		
				\$	\$	NS
d*	03220		Therapeutic Pulpotomy (Excluding Final Resto- ration)	15.00	13.00	

(d) Pulpectomy

1. A pulpectomy for deciduous teeth includes extirpation, treatment and filling of all the root canal(s) with resorbable filling material. Post-operative radiograph(s) must be available. Reimbursable only for deciduous teeth with permanent successors.

*	Y2310		Pulpectomy (Excluding Final Restoration)	17.00	15.00	
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(e) Root Canal Therapy (Including Treatment Plan, Clinical Procedures, and Follow-Up Care)

1. The fee for root canal therapy includes the extirpation, treatment (complete filling of all the root canal(s) with permanent material), all necessary radiographs during treatment and post-operatively, and follow-up care (excludes final restoration).

2. For emergency endodontic procedures, use code 09110.

d*	03310		One Canal (Excluding Final Restoration) NOTE: Code to be used for incisors and cuspids (per- manent).	103.00	90.00	
d*	03320		Two Canals (Excluding Final Restoration) NOTE: Code to be used for bicuspid and all deciduous teeth without permanent suc- cessors.	132.00	115.00	
d*	03330		Three Canals (Excluding Final Restoration) NOTE: Code to be used for molars (permanent).	172.00	150.00	
d*	03350		Apexification (Per Treatment Visit) NOTE 1: Treatment may ex- tend over a period of 6 to 18 months. NOTE 2: Maximum—two (2) visits.	31.00	27.00	

(f) Periapical Services

1. Apicoectomy will be considered for authorization and reimbursement only if one or more of the following conditions exist:

- a. Overfilled canal (previously treated tooth);
 - b. Canal cannot be filled properly because of excessive root curvature or calcification;
 - c. Fractured root tip that cannot be reached endodontically;
 - d. Broken instrument in canal;
 - e. Perforation of apical third of canal;
 - f. Broken root canal filling lying free in periapical tissues and acting as an irritant;
 - g. Periapical pathology not resolved by previous endodontic therapy;
 - h. Periapical pathology which will not be resolved by endodontic therapy alone;
 - i. A post, post and core, or post-crown which cannot be removed.
2. Apicoectomy should not be performed for convenience. If endodontic treatment is necessary, but none of the above conditions exist, authorization for the apicoectomy will not be granted.
3. When more than one apical curettage and/or apicoectomy is per-

formed through the same operative site, the maximum amount reimbursable by the New Jersey Medicaid Program shall be the amount specified in this schedule with the greater allowance, plus one-half of the amounts specified for each of the other procedures.

4. Retrograde filling(s) will be inserted when necessary in conjunction with appropriate endodontic treatment, but not in lieu of a properly filled canal.

5. The fee includes those post-treatment radiographs determined necessary by the practitioner and must be available to the Medicaid Program upon request.

d*	03410		Apicoectomy (Per Tooth)— First Root	55.00	48.00	
d*	03411		Apicoectomy (Per Tooth)— Each Additional Root NOTE: Maximum—two (2) additional roots.	28.00	24.00	

(g) Apicoectomy performed in conjunction with endodontic procedure

1. Single stage nerve extirpation and canal filling. Services provided at same visit.

d*	03410	22	Apicoectomy/Endodontic Procedure (Per Tooth)—First Root	111.50	98.50	
d*	03411	22	Apicoectomy/Endodontic Procedure (Per Tooth)— Each Additional Root NOTE: Maximum—two (2) additional roots.	44.00	36.00	
d*	03430		Retrograde Filling—Per Root NOTE 1: On addition to apicoectomy. NOTE 2: Maximum—per tooth—three (3) roots.	9.00	7.50	
d*	03440		Apical Curettage NOTE: Per tooth.	49.00	42.00	
*	03450		Root Amputation—Per Root NOTE 1: Surgical resection of entire root(s). NOTE 2: Per tooth.	55.00	48.00	

(h) Other Endodontic Procedures

*	03920		Hemisection (Including Any Root Removal), Not Includ- ing Root Canal Therapy	55.00	48.00	
*	03950		Canal Preparation and Fit- ting of Prefomed Dowel or Post NOTE: Without cementa- tion.	16.00	14.00	
*	03950	22	Canal Preparation and Fit- ting of Prefomed Dowel or Post NOTE: With cementation.	23.00	20.00	
*	03960		Bleaching Discolored Tooth NOTE 1: Limited to non- vital teeth. NOTE 2: Per visit. NOTE 3: Reimbursement limited to 2 visits.	11.00	10.00	
d*	03999		Unspecified Endodontic Pro- cedure, By Report	BR	BR	

10:56-3.6 04000-04999 V. PERIODONTICS

(a) Treatment for periodontics will be authorized on a very selective basis. Detailed description, radiographs, and periodontal charting are required. Reimbursement will be based upon quadrants, a portion thereof

or the equivalent thereof as determined by the Medicaid Dental Consultant.

(b) Surgical Services (Including Usual Postoperative Services)

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE	
				S \$	NS
*	04210		Gingivectomy or Gingivoplasty—Per Quadrant	43.60	37.50
*	04211		Gingivectomy or Gingivoplasty—Per Tooth	6.00	5.50
*	04220		Gingival Curettage, By Report NOTE: Per quadrant.	22.60	19.50
*	04260		Osseous Surgery (Including Flap Entry and Closure)—Per Quadrant	75.00	64.50
*	04261		Osseous Graft—Single Site (Including Flap Entry, Closure, and Donor Sites)	BR	BR
*	04262		Osseous Graft—Multiple Sites (Including Flap Entry, Closure and Donor Sites)	BR	BR
*	04270		Pedicle Soft Tissue Graft Procedure NOTE: Per site.	32.00	28.00
*	04271		Free Soft Tissue Graft Procedure (Including Donor Site) NOTE: Per site.	49.00	42.00
*	04272		Apically Repositioning Flap Procedure NOTE: Per quadrant.	36.00	31.50

(c) Adjunctive Periodontal Services

*	04320		Provisional Splinting—Intra-coronal NOTE: Per tooth.	18.00	16.00
*	04321		Provisional Splinting—Extra-coronal NOTE 1: Per tooth. NOTE 2: This code may also be used for stabilization of traumatized teeth.	11.00	10.00
*	04340		Periodontal Scaling and Rooting Planing—Entire Mouth	102.00	90.00
*	04341		Periodontal Scaling and Root Planing—Per Quadrant	25.50	22.50
*	04999		Unspecified Periodontal Service, By Report	BR	BR

10:56-3.7 05000-05899 VI. PROSTHODONTICS (REMOVALBE)

(a) Dentures, both partial and complete, may be authorized when submitted evidence indicates masticatory deficiencies likely to impair the general health of the patient.

(b) Normally, there must be a three month wait (for healing) between the date of the last extraction and initiation of the denture(s), partial and/or complete, except immediate denture(s).

(c) The fee for partial and complete dentures will include necessary adjustments, relines and/or rebases for a six month period following insertion.

(d) The fee for immediate dentures will also include the necessary adjustments, relines and/or rebases for a six month period following insertion.

(e) Partial dentures must be described on the Dental Services Claim

form (MC-10) indicating material to be used, position of clasps, and teeth to be replaced.

(f) PAYMENT FOR DENTURES WILL BE DENIED UNLESS ALL DENTAL PROCEDURES IN BOTH ARCHES ARE COMPLETED BEFORE IMPRESSIONS ARE TAKEN FOR AUTHORIZED DENTURES (COMPLETE AND PARTIAL).

(g) Denture relining, rebasing (jumping), or repairing are reimbursable. No additional reimbursement will be made for repair procedures in conjunction with a rebase or reline of a denture except for the replacement of missing or fractured teeth and/or clasp(s) and/or welding, and then only code(s) 05520, 05620, 05640, and/or Y2510 can be used.

1. The fee will include all necessary adjustments for a six (6) month period following insertion for relining and rebasing, and three (3) months for repairs.

(h) The patient's name must be processed into all dentures during the original fabrication or where possible during any subsequent processing procedure (repair, rebase, reline, and so forth). The Social Security number must also be included if space permits. This is MANDATORY and complies both with New Jersey Medicaid regulations in effect since May, 1978 and the "Denture I.D. Law" which became effective April 16, 1984 (N.J.S.A. 45:6-19.1 et seq.).

(i) Complete Dentures (Including Routine Post Delivery Care)

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE	
				S \$	NS
*	05110		Complete Upper NOTE: Maxillary.	197.00	171.00
*	05120		Complete Lower NOTE: Mandibular.	202.00	176.00

(j) Immediate Complete Dentures (Including Six Months Post Delivery Care)

1. Reimbursement also includes necessary rebases and/or relines, and so forth.

2. In order to qualify for immediate denture reimbursement, the denture must involve the immediate replacement of anterior teeth which may include first bicuspid (teeth nos. 5 through 12 and 21 through 28 only). Second bicuspid and molars must not be included among the qualifying teeth. The date of insertion of a denture and the extractions must carry an identical date of service. List tooth code(s) of teeth involved.

*	05130		Immediate Upper NOTE 1: Maxillary. NOTE 2: 1 through 4 teeth.	215.00	186.00
*	05130	22	Immediate Upper NOTE 1: Maxillary. NOTE 2: 5 through 8 teeth.	239.00	206.00
*	05140		Immediate Lower NOTE 1: Mandibular. NOTE 2: 1 through 4 teeth.	220.00	191.00
*	05140	22	Immediate Lower NOTE 1: Mandibular. NOTE 2: 5 through 8 teeth.	244.00	211.00

(k) Partial Dentures (Including Routine Post Delivery Care)

1. For additional clasp(s), see Code Y2510.

*	05211		Upper Partial—Acrylic Base (Including Any Conventional Clasps and Rests) NOTE: Includes two (2) cast chrome clasps with rests.	161.00	140.00
*	05211	52	Upper Partial—Acrylic Base—Without Clasps (Flipper)	86.00	75.00
*	05212		Lower Partial—Acrylic Base (Including Any Conventional Clasps and Rests) NOTE: Includes two (2) cast chrome clasps	161.00	140.00

*	05212	52	Lower Partial—Acrylic Base—Without Clasps (Flip-per)	86.00	75.00
*	05213		Upper Partial—Predominantly Base Cast Base with Acrylic Saddles (Including any Conventional Clasps and Rests)	213.00	185.00
*	05214		Lower Partial—Predominantly Base Cast Base with Acrylic Saddles (Including any Conventional Clasps and Rests)	201.00	175.00

(l) Immediate replacement of anterior teeth in conjunction with partial dentures (codes 05211 through 05214 only) in addition to denture, maximum six teeth (Teeth #s 6 through 11 and 22 through 27 only).

1. Immediate partial dentures also include necessary rebases and/or relines, and so forth.

*	Y2505		Immediate Replacement of Anterior Teeth—Per Tooth	6.00	5.00

(m) Adjustments to Dentures—other than dentist providing denture or after the required period of post delivery care (for example, new dentures, relines, rebases—six (6) months; repairs—three (3) months, and so forth).

05410		Adjust Complete Denture—Upper	7.00	6.00
05411		Adjust Complete Denture—Lower	7.00	6.00
05421		Adjust Partial Denture—Upper	7.00	6.00
05422		Adjust Partial Denture—Lower	7.00	6.00

(n) Repairs to Complete Dentures—includes adjustments for three (3) months. Prior authorization is not normally necessary when Medicaid reimbursement for a repair to a denture does not exceed \$55.00 specialist fee or \$48.00 non-specialist fee.

1. Repair Broken Complete Denture Base

a. Includes replacing undamaged teeth on denture.

05510	YU	Repair Broken Complete Denture Base	34.50	30.00
		NOTE: Maxillary—Upper.		
05510	YL	Repair Broken Complete Denture Base	34.50	30.00
		NOTE: Mandibular—Lower.		
05520		Replace Missing or Broken Teeth—Complete Denture (Each Tooth)	5.00	5.00
		NOTE 1: Code may be used in addition to codes 05510 YU or YL above.		
		NOTE 2: List tooth codes of teeth being replaced.		

(o) Repairs To Partial Denture—includes adjustments for three (3) months. Prior authorization is not normally necessary when Medicaid reimbursement for a repair to a denture does not exceed \$53.00 specialist fee or \$48.00 non-specialist fee.

05610	YU	Repair Acrylic Saddle or Base	34.50	30.00
		NOTE: Maxillary.		

05610	YL	Repair Acrylic Saddle or Base	34.50	30.00
		NOTE: Mandibular.		
05620		Repair Cast Framework	23.00	20.00
		NOTE: Welding in addition to repair procedure(s), limit two (2) per denture.		
05630	YU	Repair or Replace Broken Clasp	52.50	48.00
		NOTE: Maxillary.		
05630	YL	Repair or Replace Broken Clasp	52.50	48.00
		NOTE: Mandibular.		
05640		Replace Broken Teeth—Per Tooth	5.00	5.00
		NOTE: Code 05640 may be used in addition to repair procedure(s).		
05650		Add Tooth to Existing Partial Denture	46.00	40.00
		NOTE: To replace extracted tooth (list tooth being replaced).		
05660	YU	Add Clasp to Existing Partial Denture	52.50	48.00
		NOTE: Maxillary.		
05660	YL	Add Clasp to Existing Partial Denture	52.50	48.00
		NOTE: Mandibular.		
Y2510		Each Additional Clasp—For Repair	21.00	18.00
		NOTE 1: List tooth being clasped.		
		NOTE 2: Code Y2510 may be used in addition to repair procedure(s).		
		NOTE 3: Code 2510 may be used for addition clasp(s) during initial fabrication of partial denture(s), maximum two (2) per denture.		

(p) Denture Rebase Procedures

1. Rebasing is the process of refitting a denture by the complete replacement of the denture base material without changing the occlusal relationship of the teeth. Includes adjustments for six (6) months.

*	05710	Rebase Complete Upper Denture	92.00	80.00
*	05711	Rebase Complete Lower Denture	92.00	80.00
*	05720	Rebase Upper Partial Denture	86.00	75.00
*	05721	Rebase Lower Partial Denture	86.00	75.00

(q) Denture Reline Procedures

1. Relining is the process of resurfacing the tissue side of a denture with new base material to make it fit more accurately.

*	05730	Reline Upper Complete Denture (Chairside)	20.00	17.00
*	05731	Reline Lower Complete Denture (Chairside)	20.00	17.00
*	05740	Reline Upper Partial Denture (Chairside)	20.00	17.00

*	05741	Reline Lower Partial Denture (Chairside)	20.00	17.00
*	05750	Reline Upper Complete Denture (Laboratory)	69.00	60.00
*	05751	Reline Lower Complete Denture (Laboratory)	69.00	60.00
*	05760	Reline Upper Partial Denture (Laboratory)	63.00	55.00
*	05761	Reline Lower Partial Denture (Laboratory)	63.00	55.00

(r) Other Removable Prosthetic Services

1. Insertion of name and Social Security number of recipient into base material of complete or partial denture during initial fabrication, rebasing, relining or repair, per denture. This is required to comply with New Jersey Medicaid regulations in effect since May, 1978 and the "Denture I.D. Law" which became effective April 16, 1984. (N.J.S.A. 45:6-19.1 et. seq.)

	Y2515	YU	Insertion of Identification into Denture—Maxillary—Upper	4.00	4.00
	Y2515	YL	Insertion of Identification into Denture—Mandibular—Lower	4.00	4.00
*	05899		Unspecified Removable Prosthodontic Procedure, By Report	BR	BR

10:56-3.8 05900-05999 VII. MAXILLOFACIAL PROSTHETICS

(a) Treatment Prostheses

**	05982	Surgical Stent	50.00	43.00
*	05999	Unspecified Maxillofacial Prosthesis, By Report	BR	BR

10:56-3.9 06000-06999 VIII. PROSTHODONTICS, FIXED

(a) Each Abutment and Each Pontic Constitutes a Unit in a Bridge

1. The Noble Metal Classification System has been adopted as a more precise method of reporting various alloys used in dentistry. The alloys are defined on the basis of the percentage of noble metal content.

Classification	High Noble Alloy	Noble Alloy	Predominantly Base Alloy
Weight %	Au., Pd. and/or Pt. 60% (with at least 40% Au)	Au., Pd. and/or Pt. 25%	Au., Pd. and/or Pt. 25%

2. There is only one fee for each type of pontic or crown. Use the type of alloy most appropriate for the patient's needs.

(b) Bridge Pontics

IND	HPCPS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE	
				S	NS
*	06210		Pontic—Cast High Noble Metal	76.00	66.00
*	06211		Pontic—Cast Predominantly Base Metal	76.00	66.00
*	06212		Pontic—Cast Noble Metal	76.00	66.00
*	06240		Pontic—Porcelain Fused to High Noble Metal	115.00	110.00
*	06241		Pontic—Porcelain Fused to Predmonantly Base Metal	115.00	110.00
*	06242		Pontic—Porcelain Fused to Noble Metal	115.00	110.00
*	06250		Pontic—Resin with High Noble Metal	90.00	80.00

*	06251	Pontic—Resin with Predominantly Base Metal	90.00	80.00
*	06252	Pontic—Resin with Noble Metal	90.00	80.00

(c) Bridge Retainers—Crowns

*	06720	Crown—Resin with High Noble Metal	161.00	140.00
*	06721	Crown—Resin with Predominantly Base Metal	161.00	140.00
*	06722	Crown—Resin with Noble Metal	161.00	140.00
*	06750	Crown—Porcelain Fused to High Noble Metal	201.00	175.00
*	06751	Crown—Porcelain Fused to Predominantly Base Metal	201.00	175.00
*	06752	Crown—Porcelain Fused to Noble Metal	201.00	175.00
*	06790	Crown—Full Cast High Noble Metal	161.00	140.00
*	06791	Crown—Full Cast Predominantly Base Metal	161.00	140.00
*	06792	Crown—Full Cast Noble Metal	161.00	140.00

(d) Other Fixed Prosthetic Services

	06930	Recement Bridge	8.00	7.00
		NOTE 1: One abutment.		
		NOTE 2: Code may be used when recementing facing.		
	06930	22 Recement Bridge	14.00	12.00
		NOTE: Two or more abutments.		
*	06970	Cast Post and Core in Addition to Bridge Retainer	52.00	45.00
		NOTE: Post and core fabricated (cast) and cemented as a separate unit from crown.		
*	06972	Prefabricated Post and Core in Addition to Bridge Retainer	34.00	30.00
*	06980	Bridge Repair, By Report	BR	BR
*	06999	Unspecified Fixed Prosthodontic Procedure, By Report	BR	BR

10:56-3.10 07000-07999 IX. ORAL SURGERY

(a) In the event that the oral surgery service to be performed is of an emergency nature and prior authorization is normally required but not feasible, then the Dental Services Claim form (MC-10) with all necessary information should be forwarded to the Dental Consultant for authorization after completion of the service but prior to submission for reimbursement.

(b) Exodontia

1. Reimbursement for dental extraction(s) will include local anesthesia, indicated alveoloplasty, and routine postoperative care.

2. Reimbursement will be denied for the following treatment rendered without prior authorization:

a. Extraction of teeth other than those classified as non-restorable;
b. Extraction of one or more teeth which will necessitate a dental prosthesis; or

c. All extractions preparatory to or in conjunction with orthodontic care.

3. Extractions in more than one quadrant of the mouth must be justified as an emergency procedure.

(c) Extractions—Includes Local Anesthesia and Routine Postoperative Care

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE	
				S \$	NS
	07110		Single Tooth	10.50	9.00
**	07130		Root Removal—Exposed Roots	15.00	13.00
			NOTE 1: Per tooth.		
			NOTE 2: Root partially im- bedded in bone.		
	07130		Root Removal—Exposed Roots	10.50	9.00
			NOTE 1: Per tooth.		
			NOTE 2: Root completely located in soft tissue.		

(d) Surgical Extractions—Includes Local Anesthesia and Routine Postoperative Care

1. Reimbursement will not be made for extraction of impacted teeth which have not been prior authorized.

2. Authorization will be granted only when conditions arising from such impactions warrant their removal. Extraction of asymptomatic impacted teeth or those teeth where dental/medical necessity cannot be demonstrated will not be authorized or accepted for reimbursement.

3. In order to qualify for a surgical removal of a tooth with partial or complete bone impaction, the following is required:

- Incision of overlying soft tissue;
- Removal of bone; and/or
- Sectioning of tooth.

**	07210		Surgical Removal of Erupted Tooth Requiring Elevation of Mucoperiosteal Flap and Re- moval of Bone and/or Sec- tion of Tooth	15.00	13.00
**	07220		Removal of Impacted Tooth—Soft Tissue	21.00	18.00
**	07230		Removal of Impacted Tooth—Partially Bony	61.00	53.00
**	07240		Removal of Impacted Tooth—Completely Bony	61.00	53.00
**	07250		Surgical Removal of Residual Tooth Roots (Cutting Pro- cedure)	30.00	26.00
			NOTE: Completely covered by bone.		

(e) Other Surgical Procedures

**	07260		Oroantral Fistula Closure	72.00	63.00
			NOTE: Code may also be used for antral root recovery.		
**	07270		Tooth Re-implantation and/ or Stabilization of Acciden- tally Evulsed or Displaced Tooth and/or Alveolus	61.00	53.00
**	07270	22	Tooth Re-implantation and/ or Stabilization of Acciden- tally Evulsed or Displaced Tooth and/or Alveolus	86.00	75.00
			NOTE: Includes single stage nerve extirpation and canal filling.		
**	07280		Surgical Exposure of Im- pacted or Unerupted Tooth for Orthodontic Reason (In- cluding Orthodontic Attach- ments)	54.00	47.00

**	07281		Surgical Exposure of Im- pacted or Unerupted Tooth to Aid Eruption	30.00	26.00
d	07285		Biopsy of Oral Tissue—Hard NOTE: Independent proce- dure (laboratory must bill separately).	30.00	26.00
d	07286		Biopsy of Oral Tissue—Soft NOTE: Independent proce- dure (laboratory must bill separately).	18.00	16.00

(f) Alveoloplasty—Surgical Preparation of Ridge for Dentures
1. Reimbursement will be based upon quadrants, a portion thereof or the equivalent thereof as determined by the Medicaid Dental Consultant.

*	07320		Alveoloplasty Not in Con- junction With Extraction— Per Quadrant	43.50	37.50
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(g) Vestibuloplasty—including revision of soft tissues on ridges, muscle reattachment, tongue, palate, and other oral soft tissues (complete description including size and position must be submitted). Reimbursement will be based upon quadrants, a portion thereof or the equivalent thereof as determined by the Medicaid Dental Consultant.

*	07340		Vestibuloplasty—Ridge Ex- tension (Secondary Epithel- ialization)	45.00	39.00
			NOTE: Including manage- ment of hypertrophied and hyperplastic tissue, Per Quad- rant.		
*	07350		Vestibuloplasty—Ridge Ex- tension (Including Soft Tissue Grafts, Muscle Re-attach- ments, Revision of Soft Tis- sue Attachment, and Man- agement of Hypertrophied and Hyperplastic Tissue)	118.00	102.00
			NOTE: Per Quadrant.		

(h) Surgical Excision of Reactive Inflammatory Lesions (Scar Tissue of Localized Congenital Lesions)

1. Includes lesions of skin, subcutaneous or mucous membranes, pyogenic granulomata and operculi).

d*	07410		Radical Excision—Lesion Diameter Up To 1.25 cm.	30.00	26.00
d*	07420		Radical Excision—Lesion Diameter Over 1.25 cm.	42.00	37.00
			NOTE: Up to and including 3 cm.		
d*	07420	22	Radical Excision—Lesion Diameter Over 3 cm.	100.00	86.00

(i) Removal of Tumors, Cysts, and Neoplasms

1. In the excision and management of this type of lesion a biopsy report must be available.

d*	07430		Excision of Benign Tumor— Lesion Diameter Up To 1.25 cm	30.00	26.00
d*	07431		Excision of Benign Tumor— Lesion Diameter Over 1.25 cm	42.00	37.00
			NOTE: Up to and including 3 cm.		
d*	07431	22	Excision of Benign Tumor— Lesion Diameter Over 3 cm.	100.00	86.00
d**	07440		Excision of Malignant Tumor—Lesion Diameter Up To 1.25 cm	100.00	86.00

d**	07441		Excision of Malignant Tumor—Lesion Diameter Over 1.25 cm	274.00	256.00	**	07550		Sequestrectomy for Osteomyelitis	90.00	75.00
			NOTE: Up to and including 3 cm.						NOTE: Extraoral.		
d**	07441	22	Excision of Malignant Tumor—Lesion Diameter Over 3 cm	473.00	413.00	d**	07560		Maxillary Sinusotomy for Removal of Tooth Fragment or Foreign Body	242.00	210.00
									NOTE: Sinusotomy, maxillary (antrotomy, Caldwell-Luc), unilateral.		
d*	07450		Removal of Odontogenic Cyst or Tumor—Lesion Diameter Up To 1.25. cm.	50.00	43.00				(l) Treatment of Fractures—Simple		
d*	07451		Removal of Odontogenic Cyst or Tumor—Lesion Diameter Over 1.25 cm.	100.00	87.00				1. Open reduction involves the dissection of tissues and/or the visual inspection of the fracture site.		
			NOTE: Up to and including 3 cm.			**	07610		Maxilla—Open Reduction (Teeth Immobilized if Present)	182.00	158.00
d*	07451	22	Removal of Odontogenic Cyst or Tumor—Lesion Diameter Over 3 cm.	150.00	130.00	**	07620		Maxilla—Closed Reduction (Teeth Immobilized if Present)	121.00	105.00
d*	07460		Removal of Non-Odontogenic Cyst or Tumor—Lesion Diameter Up To 1.25 cm.	50.00	43.00	**	07620	52	Maxilla—Closed Reduction (Teeth Immobilized if Present)	30.00	26.00
									NOTE: No manipulation or fixation.		
d*	07461		Removal of Non-Odontogenic Cyst or Tumor—Lesion Diameter Over 1.25 cm.	100.00	87.00	**	07630		Mandible—Open Reduction (Teeth Immobilized if Present)	242.00	210.00
			NOTE: Up to and including 3 cm.			**	07630	22	Mandible—Open Reduction (Teeth Immobilized if Present)	303.00	263.00
d*	07461	22	Removal of Non-Odontogenic Cyst or Tumor—Lesion Diameter Over 3 cm	150.00	130.00				NOTE: Complicated-multiple surgical approaches (three (3) or more) including internal fixation, interdental fixation, skeletal pinning with extraoral fixation, and so forth.		
d*	07465		Destruction of Lesion(s) by Physical Methods: Electrosurgery, Chemotherapy, Cryotherapy or Laser	18.00	15.00	**	07640		Mandible—Closed Reduction (Teeth Immobilized if Present)	121.00	105.00
			(j) Excision of Bone Tissue			**	07640	52	Mandible—Closed Reduction	30.00	26.00
			1. Reimbursement will be based upon quadrants, a portion thereof, of the equivalent thereof as determined by the Medicaid Dental Consultant.						NOTE: No manipulation or fixation.		
*	07470		Removal of Exostosis—Maxilla or Mandible	43.50	37.50	**	07650		Malar and/or Zygomatic Arch—Open Reduction	121.00	105.00
			NOTE: Per quadrant.			**	07660		Malar and/or Zygomatic Arch—Closed Reduction	42.00	37.00
*	07470	22	Removal of Exostosis	90.00	79.00				NOTE: Including towel clip technique.		
			NOTE: Torus palatinus.			**	07660	52	Malar and/or Zygomatic Arch—Closed Reduction	30.00	26.00
d*	07480		Partial Osteotomy (Guttering or Sauterization)	211.00	184.00				NOTE: No manipulation or fixation.		
d*	07490		Radical Resection of Mandible with Bone Graft	BR	BR	**	07670	YU	Alveolus—Stabilization of Teeth, Open Reduction Splinting	92.00	80.00
									NOTE 1: Maxillary alveolar fracture.		
			(k) Surgical Incision			**	07670	YL	NOTE 2: Reduction with wiring, application of arch bar or splint, and so forth.		
	07510		Incision and Drainage of Abscess—Intraoral Soft Tissue	18.00	16.00				Alveolus—Stabilization of Teeth, Open Reduction Splinting	92.00	80.00
	07520		Incision and Drainage of Abscess—Extraoral Soft Tissue	42.00	37.00				NOTE 1: Mandibular alveolar fracture.		
**	07530		Removal of Foreign Body, Skin, or Subcutaneous Areolar Tissue	18.00	16.00				NOTE 2: Reduction with wiring, application of arch bar or splint, and so forth.		
**	07540		Removal of Reaction-Producing Foreign Bodies, Musculoskeletal System	51.00	45.00						
**	07550		Sequestrectomy for Osteomyelitis	48.00	42.00						
			NOTE: Intraoral.								

** 07680 Facial Bones—Complicated Reduction with Fixation and Multiple Surgical Approaches 242.00 210.00
NOTE 1: Maxilla, malar and/or zygomatic arch.
NOTE 2: Multiple surgical approaches (three (3) or more), fixation, traction, headframe, multiple internal and/or external fixation, head cap, and so forth.

(m) Treatment of Fractures—Compound

1. Open reduction involves the dissection of tissues and/or the visual inspection of the fracture site.

** 07710 Maxilla—Open Reduction 182.00 158.00
NOTE: Teeth immobilized if present.

** 07720 Maxilla—Closed Reduction 121.00 105.00
NOTE: Teeth immobilized if present.

** 07720 52 Maxilla—Closed Reduction 30.00 26.00
NOTE: No manipulation or fixation.

** 07730 Mandible—Open Reduction 242.00 210.00
NOTE: Teeth immobilized if present.

** 07730 22 Mandible—Open reduction 303.00 263.00
NOTE: Complicated—multiple surgical approaches (three (3) or more) including internal fixation, inter-dental fixation, skeletal pinning with extraoral fixation, and so forth.

** 07740 Mandible—Closed Reduction 121.00 105.00
NOTE: Teeth immobilized if present.

** 07740 52 Mandible—Closed Reduction 30.00 26.00
NOTE: No manipulation or fixation.

** 07750 Malar and/or Zygomatic Arch—Open Reduction 121.00 105.00

** 07760 Malar and/or Zygomatic Arch—Closed Reduction 42.00 37.00
NOTE: Including towel clip technique.

** 07760 52 Malar and/or Zygomatic Arch—Closed Reduction 30.00 26.00
NOTE: No manipulation or fixation.

** 07770 YU Alveolus—Stabilization of Teeth, Open Reduction Splinting 92.00 80.00
NOTE 1: Maxillary alveolar fracture.
NOTE 2: Reduction with wiring, application of arch bar or splint, and so forth.

** 07770 YL Alveolus—Stabilization of Teeth, Open Reduction Splinting 92.00 80.00
NOTE 1: Mandibular alveolar fracture.

NOTE 2: Reduction with wiring, application of arch bar or splint, and so forth.

** 07780 Facial Bones—Complicated Reduction with Fixation and Multiple Surgical Approaches 242.00 210.00
NOTE 1: Maxilla, malar and/or zygomatic arch.
NOTE 2: Multiple surgical approaches (three (3) or more), fixation, traction, headframe, multiple internal and/or external fixation, head cap, and so forth.

(n) Reduction of Dislocation and Management of Other Temporomandibular Joint Dysfunctions

** 07810 Open Reduction of Dislocation 182.00 158.00

** 07820 Closed Reduction of Dislocation 18.00 16.00

d** 07830 Manipulation under Anesthesia 18.00 16.00
NOTE: Anesthesia additional.

d* 07840 Condylectomy 362.00 315.00

d* 07850 Meniscectomy 362.00 315.00

d* 07860 Arthrotomy 362.00 315.00

d** 07870 Arthrocentesis 18.00 16.00
NOTE: Injection or aspiration (Give complete details).

(o) Repair of Traumatic Wounds

1. Describe completely, giving size and site, and so forth.
2. Fee includes suture removal.

** 07910 52 Suture of Recent Small Wounds 18.00 16.00
NOTE: Up to 2.6 cm.

** 07910 Suture of Recent Small Wounds up to 5 cm. 24.00 21.00
NOTE: 2.6 cm. up to 5 cm.

** 07910 22 Suture of Recent Small Wounds 30.00 26.00
NOTE: Over 5 cm. up to 7.5 cm.

3. Lacerations over 7.5 cm. use code 07999

(p) Complicated Suturing (Reconstruction Requiring Delicate Handling of Tissues and Wide Undermining for Meticulous Closure)

1. Also for irregularly shaped lacerations requiring extensive debridement.

** 07911 Suture—Up to 5 cm. BR BR

** 07912 Suture—Over 5 cm. BR BR

(q) Other Repair Procedures

** 07940 Osteoplasty—For Orthognathic Deformities BR BR

** 07955 Repair of Maxillofacial Soft and Hard Tissue Defects BR BR

* 07960 Frenulectomy (Frenectomy or Frenotomy)—Separate Procedure 32.00 28.00

d** 07980 Sialolithotomy 48.00 42.00

d* 07981 Excision of Salivary Gland 182.00 158.00

d* 07982 Sialodochoplasty 151.00 131.00

d*	07983	Closure of Salivary Fistula	151.00	131.00
**	07990	Emergency Tracheotomy	121.00	105.00
d**	07999	Unspecified Oral Surgery Procedure, By Report	BR	BR
		NOTE: Complete description of procedure, and why.		

10:56-3.11 08000-08999 X. ORTHODONTICS

(a) Minor Treatment for Tooth Guidance

1. Includes all necessary adjustments.
2. Code may also be used for Orthodontic Retention Appliances following comprehensive treatment by a previous dentist.

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE	
				S \$	NS
*	08110		Removable Appliance Therapy	115.00	100.00
*	08120		Fixed Appliance Therapy	115.00	100.00
			(b) Minor Treatment to Control Harmful Habits		
			1. Includes all necessary adjustment.		
*	08210		Removable Appliance Therapy	115.00	100.00
*	08220		Fixed Appliance Therapy	115.00	100.00

(c) Comprehensive Orthodontic Treatment—Permanent Dentition

1. Treatment of permanent dentition. Case type—fixed or removable appliances. Itemize fee for diagnostic procedures and formal treatment separately. Indicate anticipated time under treatment—maximum treatment reimbursable including retention—three (3) years. When authorized, reimbursement for comprehensive orthodontic treatment will include retention as required at no additional charge.

2. Reimbursement for the monthly fee is based on one or more visits to the practitioner during any calendar month. Reimbursement must not be requested for any month in which there is no monthly visit.

*	Y2910		Appliances	162.00	140.00
*	Y2920		1st Through 12th Month of Treatment (To Start On Day Insertion of Appliances Is Completed), Per Month	30.00	26.00
*	Y2930		13th Through 24th Month of Treatment, Per Month	28.00	24.00
*	Y2940		25th Through 30th Month of Treatment, Per Month	11.00	9.00
*	Y2950		31st Through 36th Month (Maximum Reimbursable Period of Treatment), Per Month	11.00	9.00

(d) Other Orthodontic Services

1. Comprehensive Orthodontic Examination and/or Orthodontic Assessment Examination:

- a. Reimbursement is limited to the provider or provider group who does such an examination with the intention of personally providing any orthodontic treatment necessary.

- b. Reimbursement is limited to once every 12 months unless authorized.

- c. Orthodontic examinations are not reimbursable for individuals age 20 or older.

- d. When requesting reimbursement for the Orthodontic Assessment Examination, the Definition and Criteria for Assessing Handicapping Malocclusion Permanent Dentition form (FD-10) must accompany the Dental Services Claim form (MC-10).

Y2965		Orthodontic Examination (Comprehensive) and (Complete Orthodontic) Treatment Plan	6.00	5.00
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Y2975

Orthodontic Assessment Examination, using the Handicapping Malocclusion Assessment System

6.00 5.00

* 08999

Unspecified Orthodontic Procedure, By Report

BR BR

NOTE: Complete description, diagnosis and treatment plan must be submitted.

10:56-3.12 09000-09999 XI. ADJUNCTIVE GENERAL SERVICES

(a) Unclassified Treatment

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE	
				S \$	NS
d	09110		Palliative (Emergency) Treatment of Dental Pain—Minor Procedures	7.00	6.00

NOTE 1: Emergency treatment of dental pain or infection, palliative (flat fee for all services performed, when not covered by separately listed procedure). Diagnosis and description of treatment is required.

NOTE 2: Code to be used for initial endodontic emergency procedure. Diagnosis and description of treatment is required.

(b) Anesthesia

d**	09210		Local Anesthesia Not in Conjunction with Operative or Surgical Procedures	13.00	11.00
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NOTE: Infiltration and/or nerve block for diagnostic purposes or purposes other than anesthesia.

09220

General Anesthesia
NOTE 1: This code applies when the dentist performing the services (attending dentist) also administers the general anesthesia or in conjunction with oral surgery services only.

12.50 12.50

NOTE 2: Reimbursement will be made for the administration of only one general anesthesia per visit.

(c) Special General Anesthesia

1. (Basic units—See American College of Anesthesiologists Relative Value Guide—1967).

*	09220	22	Maximum 4 units	22.00	22.00
*	09220	52	Time units: Each additional 15 minute period or major portion thereof. (Limited to "table" or "chair" time only). Maximum reimbursable two hours	5.50	5.50

NOTE 1: The general anesthesia codes above are limited to use in restorative dentistry alone or restorative dentistry in conjunction with other dental services requiring anesthetic management,

and must receive prior authorization from the Office of the Chief, Bureau of Dental Services. Those codes apply to those dentists appropriately qualified in general anesthesia and are reimbursable only to the dentist whose sole function is to administer general anesthesia.

NOTE 2: An anesthesia record must be submitted which shows elapsed anesthesia time, and pinpoints time and amounts of drugs administered, pulse rate and character, blood pressure, respiration, and so forth. The Dental Services Claim form (MC-10) for anesthesia and treatment must accompany this record to permit authorization for reimbursement.

09240	Intravenous Sedation	10.00	9.00
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(d) Professional Consultation (Diagnostic service provided by a dentist other than practitioner providing treatment)

1. A complete report must be available.

d	09310	Consultation—Per Session	22.00	17.00
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(d) Professional Visits

09410	House Call	10.50	9.00
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NOTE: In addition to fee for service provided.

Y3005	Long Term Care Facility Visits	10.50	9.00
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NOTE 1: In addition to fee for service provided.

NOTE 2: This code is reimbursable only once per trip per facility regardless of the number of patients examined or treated.

09420	52	Hospital Call	9.00	7.00
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NOTE 1: Hospital visit, in addition to fee for service provided.

NOTE 2: Code 09420 52 will not be reimbursable in conjunction with Code 09310 or Codes 09420 22 or 09420. Not applicable in conjunction with those services which include follow-up days.

NOTE 3: Code 09420 52 is reimbursable only once per trip per facility regardless of number of patients examined or treated.

NOTE 4: Code 09420 52 is not reimbursable when Medicaid fee for service exceeds \$25.00.

09420	22	Hospital Call	22.00	17.00
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NOTE 1: Code to be used for Hospital Day—Initial.

NOTE 2: Hospital record must include as a minimum:

- a. Chief Complaint(s);
- b. Complete history of the

present illness and related systemic review including recording of pertinent negative findings;

c. Complete pertinent past medical history;

d. Pertinent family history;

e. A full examination pertaining to the history of the present condition and including recording of pertinent negative findings; and

f. Working diagnosis and treatment plan, including preparation of the "order sheet".

g. If history and examination noted above are not personally done by the "billing" practitioner then this code will be downgraded to code 09420, provided that code's criteria are met.

NOTE 3: Code 09420 22 will not be reimbursed again if performed on the same recipient by the same practitioner, members of same group, members of a shared health care facility, practitioners sharing a common record or when Code 09310 has been billed in conjunction with the same hospital admission and/or stay by the same practitioner, members of the same group, members of a shared health care facility, or practitioners sharing a common record.

09420	Hospital Call	9.00	7.00
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NOTE 1: Code to be used for Hospital Day—Subsequent.

NOTE 2: Consisting of care and treatment by the Practitioner subsequent to date of "Hospital Day—Initial" and including those procedures ordinarily performed during a hospital visit dependent upon the practitioner's discipline. The following may be included in the progress notes:

a. Update of symptoms;

b. Update of physical findings;

c. Resume of findings of procedures, if any done;

d. Laboratory, X-ray, consultations, etc., pertinent positive and negative findings;

e. Changes or confirmations of diagnosis and progress of case;

f. Additional planned studies, if any, and why; and

g. Treatment changes, if any.

NOTE 3: Not reimbursable for those services that include follow-up days.

(f) Drugs				
d	09610	Therapeutic Drug Injection, By Report	2.50	2.50
d**	09610	22 Therapeutic Drug Injection, By Report	13.00	11.00
		NOTE: Injection of one or more muscles of mastication in conjunction with treatment of T.M.J. dysfunction.		
d*	09630	Other Drugs and/or Medicaments, By Report	BR	BR
(g) Miscellaneous Services				
	09910	Application of Desensitizing Medicaments	6.00	5.00
		NOTE 1: Application to a tooth, i.e., cervical sensitivity, erosions, etc.		
		NOTE 2: Specify tooth code(s).		
*	09930	Treatment of Complications (Post Surgical)—Unusual Circumstances, By Report	6.00	5.00
		NOTE: This code may also be used for post-operative treatment beyond that normally provided as part of the basic procedure or when provided by practitioner other than one who provided the original service or in excess of "follow-up days" (California Relative Value Study—1964), per visit.		

(a)

**Medical Day Care Centers
Records****Proposed Amendments: N.J.A.C. 10:65-1.5 and 1.8**

Authority: N.J.S.A. 30:4D-6b(16), 4D-12, 7a, b, c.

Proposal Number: PRN 1987-8.

The agency proposal follows:

Summary

This proposal concerns records maintained by Medical Day Care Centers, hereinafter referred to as "centers".

The proposal will require centers to complete certain records after the first five days of attendance or within one month whichever is less. The records governed by this requirement are individual plan of care, nursing assessment, social history and activity assessment. The patient's medical history, record of physical examination, and medication should be recorded initially by the attending physician. All of the records listed above must be updated at least every 90 days in accordance with current requirements.

The proposal is designed to standardize the entries on the records which are required to be maintained by centers. This standardization, combined with the requirement for a prompt initial entry, should help identify the services required by the Medicaid patient.

Social Impact

This proposal has an impact on Medicaid patients who attend centers. The Medical Day Care Program is designed to provide a health services alternative to total institutionalization. The program provides medically supervised, health related services in an ambulatory care setting to eligible Medicaid patients whose health maintenance needs can be met in a community setting.

Centers are required to maintain records containing information about the patient's health. There must be entries completed by the attending physician, nursing and social service staff. The entries must be made within the time frames prescribed in the rule.

Economic Impact

There is virtually no economic impact associated with this proposal. Centers are already required to maintain records and update them periodically. There is no cost to the Medicaid patient for services provided by Medical Day Care Centers.

There is no administrative cost to the Division.

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

10:65-1.5 Staff

(a) (No change.)

1.-2. (No change.)

3. Social Worker: The Social Worker shall possess a Master's degree in Social Work from an accredited graduate school of Social Work plus one year of full-time or full-time equivalent social work experience in a health care setting. If a designate is utilized, the designate shall possess a Bachelor's degree in the social sciences plus one year of social work experience in a health care setting. A designate must have available on-site consultation from a qualified social worker, a person with a Master's degree in Social Work from an accredited School of Social Work in accordance with the New Jersey State Department of Health's standards (see N.J.A.C. [8:39-1.20(d)] **8:39-12.2**).

10:65-1.8 Records

(a) As a minimum, the participants' chart shall contain the following information:

1. (No change.)

2. Individualized plan of care; performed [initially] **after the first five days of attendance or within a period of one month (whichever is less)** and updated every 90 days, **with input from each discipline**;

3. Medical history, record of physical examination, **and** medication record, [and laboratory reports, performed] **as recorded initially** by the attending physician [initially] and updated every 90 days thereafter, citing general medical condition, disabilities and limitations. Also included shall be any consultations **and laboratory reports** performed;

4. **Nursing assessment to be completed after the first five days of attendance or within a period of a month (whichever is less);** [D]daily nursing observations for the first five days of attendance and nursing progress notes; [at least every 30 days thereafter or more often as needed;] **care plan, and short-term goals at least every 90 days thereafter; long-term goals to be revised annually**;

5. Social history [initially,] **to be completed after the first five days of attendance or within a period of one month (whichever is less);** [and] social services progress notes every 90 days;

6. **Activity assessment and plan to be completed after the first five days of attendance or within a period of a month (whichever is less);** [A]activity progress notes every 90 days;

7.-8. (No change.)

(b) An Individualized Plan of Care shall be written for each participant [prior to admission to the Program], with input from the participant, family and interested community agencies. The plan shall state medical needs of the participant as evaluated by the attending physician, and nursing, social service, **activity** and other service needs as determined by the Center Staff, with in-put from community agencies. Overall goals and services to be provided by the Center to fulfill the needs expressed should be indicated.

1.-3. (No change.)

DIVISION OF PUBLIC WELFARE

For the following proposals, submit comments by February 4, 1987 to:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

(a)**Public Assistance Manual****Parent-Minor in AFDC-C, -F and -N****Proposed Amendment: N.J.A.C. 10:81-3.12**

Authority: N.J.S.A. 44:7-6, 44:10-3; Section 2640 of the Deficit Reduction Act of 1984 (Public Law 98-369); 45 CFR 206.10(a)(1)(vii).

Proposal Number: PRN 1987-5.

The agency proposal follows:

Summary

This amendment is being proposed in accordance with a recent policy clarification from the United States Department of Health and Human Services (USDHHS) regarding the assistance unit provisions of the Deficit Reduction Act of 1984 (DEFRA), Public Law 98-369.

N.J.A.C. 10:81-3.12(a)2 currently provides that when a parent-minor and his or her child(ren) are living in the home of either one or both of the parent-minor's natural or adoptive parents, who are themselves eligible for AFDC-C or -F, or relatives who qualify as parent-persons of the parent-minor, there shall be a discussion between the parent-minor and the adult(s) as to whether it is desirable to have the parent-minor apply for assistance or whether the adult parent(s) should do so. The regulation is inconsistent with policy set forth at both section 2640 of DEFRA and regulations at N.J.A.C. 10:82-1.3 and 1.4, which provide that the eligible unit for AFDC-C or -F shall consist of (1) the natural or adoptive brothers and sisters living in the same household and who are otherwise eligible for AFDC-C or -F, and (2) the natural or adoptive parent(s) of one or more of the eligible children. Text at N.J.A.C. 10:81-3.12(a)2 is therefore being amended to ensure uniformity of rules.

Social Impact

The proposed amendment merely provides for uniformity of rules. The amendment may have a slight adverse impact on those individual families which had been receiving AFDC as two separate eligible units, instead of the single consolidated unit required under DEFRA.

Economic Impact

A slight adverse economic impact is anticipated as a result of the proposed amendment. The families now required to be a single consolidated eligible unit may experience a slight decrease in total monthly AFDC benefits, compared to the two separate monthly benefit amounts received as two separate eligible units.

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

10:81-3.12 Parent-minor in AFDC-C, -F and -N

(a) For purposes of this section, the term parent-minor refers to a parent under age 18. (Special income deeming rules apply to a parent under the age of 19 residing in the same home as his or her parent(s) or guardian(s); see N.J.A.C. 10:82-3.14.) When application is made for AFDC-C by a parent who is under age 18 or for -F or -N where both parents are under age 18, the following action shall be taken in specific situations:

1. (No change.)

2. [When a parent-minor and child(ren) are living in the home of one natural or adoptive parent of the parent-minor, or both natural or adoptive parents who are themselves eligible for AFDC-C or -F, or relatives who qualify as parent-persons of the parent-minor, there shall be a discussion with the parent-minor and the adult(s) as to whether it is desirable to have the parent-minor apply for assistance or whether the adult parent(s) should do so. The implications, options and consequences of each application shall be fully explored. The parent-minor shall make the decision. Deeming of income of parents and guardians of AFDC-C and -F adolescent parents shall be in accordance with the provisions of N.J.A.C. 10:82-3.14.] **When a parent-minor and his or her child(ren)**

are living in the home of one or both of the parent-minor's natural or adoptive parents, or relative(s) who qualify as parent-person(s) of the parent-minor, and such parent(s) or parent-person(s) are themselves eligible for AFDC-C or -F, the eligible unit shall consist of the following persons:

i. **The parent-minor, brothers and sisters of the parent-minor described at N.J.A.C. 10:82-1.3(a)1, and the parent(s) or parent-person(s).**

ii. **There is no requirement that assistance be sought for the child(ren) of the parent-minor. However, if application is made for such children, then they must be included in the eligible unit in i. above.**

3. (No change.)

(b)-(f) (No change.)

(b)**Assistance Standards Handbook****Eligible Unit; Court-Ordered Support****Proposed Amendment: N.J.A.C. 10:82-1.3 and 4.16**

Authority: N.J.S.A. 44:7-6 and 44:10-3; Section 2640 of the Deficit Reduction Act of 1984 (Public Law 98-369); 45 CFR 206.10(a)(1)(vii).

Proposal Number: PRN 1987-4.

The agency proposal follows:

Summary

N.J.A.C. 10:82-1.3(a) is being amended to provide a definition for the term "household" in the Aid to Families with Dependent Children (AFDC) program. The proposed amendment provides that, in accordance with a recent policy clarification from the United States Department of Health and Human Services (USDHHS), a household is defined as individuals sharing common quarters. For purposes of determining eligible unit composition under Federal requirements, family members living in common quarters shall be presumed to be a single household. Exceptions to this definition shall be limited to situations such as clear landlord/tenant arrangements, as verified by tax returns or other corroborating evidence.

N.J.A.C. 10:82-4.16 is being amended to clarify that only court-ordered child support and alimony payments made by any member of the AFDC eligible unit shall be disregarded in the determination of the assistance payment.

Social Impact

The proposed amendment at N.J.A.C. 10:82-1.3(a)3 is expected to have no adverse social impact upon the client population. The proposed amendment at N.J.A.C. 10:82-4.16 should allow county welfare agencies (CWAs) to more easily determine the amount an eligible unit member actually pays in alimony and/or child support that qualifies as a disregard from unearned income.

Economic Impact

The economic impact of the proposed amendments to N.J.A.C. 10:82-1.3 and 4.16 is anticipated to be minimal, since they merely clarify current policy. There may be a slight reduction in assistance expenditures as a result of uniformity of application of the policy statewide.

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

10:82-1.3 Eligible unit; all segments

(a) The eligible unit shall be comprised of those family members who apply for and are eligible to receive public assistance. [It] **Eligible unit** shall include one or more eligible children unless such child is a recipient of SSI benefits.

1. (No change.)

2. A stepparent of the children for whom assistance is sought may be included in the eligible unit in accordance with the provisions of N.J.A.C. [10:82-1.9] **10:82-2.9.**

3. **Household defined: A household is defined as those individuals living in common quarters. Family members living in common quarters shall be presumed to be a single household for purposes of determining eligible unit composition.**

i. **Exceptions shall be limited to situations such as clear landlord/tenant relationships, as verified by tax returns or other corroborating evidence.**

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

10:82-4.16 **Court-ordered** [S]support and alimony paid by a member of the eligible unit

Court-ordered [C]child support and alimony payments paid by any member of the AFDC household shall be disregarded in the determination of the assistance payment.

(a)

**Assistance Standards Handbook
Nonrecurring Lump Sum Income**

Proposed Amendment: N.J.A.C. 10:82-4.15

Authority: N.J.S.A. 44:7-6 and 44:10-3; 42 CFR 435.10 and 42 CFR 435.115.

Proposal Number: PRN 1987-15.

The agency proposal follows:

Summary

This amendment is being proposed in accordance with policy interpretation received from the Office of Family Assistance and the Health Care Financing Administration of the United States Department of Health and Human Services.

N.J.A.C. 10:82-4.15(b) is being added to provide clarification regarding the treatment of nonrecurring earned or unearned lump sum income and the resulting period of ineligibility in the Aid to Families with Dependent Children (AFDC) and Medicaid programs. The amendment provides that for AFDC purposes, a period of ineligibility imposed on a recipient of Medicaid Only or Medicaid Special benefits due to the receipt of lump sum income cannot be carried over into the AFDC program. Such period of ineligibility cannot, therefore, cause ineligibility for either AFDC or associated Medicaid benefits, if the individual applies and is determined eligible for AFDC cash assistance.

For Medicaid purposes, eligibility for Medicaid Only or Medicaid Special benefits, with respect to the receipt of lump sum income and the application of a period of ineligibility, is determined in accordance with AFDC regulations. Thus, a period of ineligibility imposed on a recipient of AFDC or associated Medicaid benefits due to the receipt of lump sum income shall continue to be in effect if the individual subsequently applies for Medicaid Only or Medicaid Special benefits.

Social Impact

The proposed amendment merely clarifies existing policy. It thus has no adverse impact on either the client population or the general public.

Economic Impact

The proposed amendment merely clarifies policy regarding the treatment of lump sum income and thus has little or no fiscal impact on Federal, State or local expenditures.

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

10:82-4.15 Nonrecurring earned or unearned lump sum income

(a) (No change.)

(b) **For the AFDC and Medicaid programs, lump sum income and the resulting period of ineligibility shall be treated in accordance with the following provisions:**

1. **AFDC program:** Only those individuals actually receiving AFDC cash assistance or deemed to be receiving AFDC are considered to be AFDC recipients. An individual receiving Medicaid Only or Medicaid Special is not considered an AFDC recipient. Therefore, a period of ineligibility imposed on a recipient of Medicaid Only or Medicaid Special benefits due to the receipt of lump sum income cannot be carried over into the AFDC program, and cannot cause ineligibility for either AFDC or associated Medicaid benefits, if such individual applies and is determined eligible for AFDC cash assistance.

2. **Medicaid program:** Eligibility for Medicaid Only and Medicaid Special benefits, with respect to the receipt of lump sum income and application of a period of ineligibility, is determined in accordance with AFDC regulations. Thus, an AFDC recipient determined ineligible for AFDC and Medicaid for a certain number of months due to the receipt of lump sum income shall continue to be ineligible if he or she applies for Medicaid Only or Medicaid Special benefits during the period of ineligibility. However, an individual receiving Medicaid Only or Medicaid Special benefits, who is ineligible for such benefits due to the receipt of lump sum income, shall not be required to complete the period of ineligibility if subsequently determined eligible for AFDC.

i. **Example:** An employed woman applies for AFDC for herself and her two children. Upon learning that the family is eligible for only a \$12.00 AFDC grant, she elects to forego the AFDC grant and to receive Medicaid Only. The next month, a family member receives a \$2,500 lump sum payment, causing ineligibility for Medicaid benefits for a period of eight months. Five months later the woman loses her job; the family applies for AFDC and is determined eligible. The family will not be required to complete the remaining three months of ineligibility for Medicaid caused by the receipt of lump sum income, because a period of ineligibility imposed on a recipient of Medicaid Only cannot be carried over into the AFDC program.

ii. **Example:** A pregnant woman applies for Medicaid Special benefits on behalf of her unborn child. Three months before the child is born, she receives a \$1,900 lump sum payment, causing ineligibility for Medicaid benefits for a period of six months. Within four months, she has given birth to her child. She applies for AFDC for herself and her child and is determined eligible. The mother and child will be eligible for Medicaid effective with the date of eligibility for AFDC. The mother will not be required to complete the remaining two months of ineligibility for Medicaid caused by the receipt of lump sum income, because a period of ineligibility imposed on a recipient of Medicaid Special cannot be carried over into the AFDC program.

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

(b)

**General Assistance Manual
Agent Orange Payments**

Proposed Amendments: N.J.A.C. 10:85-3.3 and 3.4

Authority: N.J.S.A. 44:8-11(d) and 44:8-125; N.J.S.A. 30:1-12.
Proposal Number: PRN 1987-22.

The agency proposal follows:

Summary

With the approval of Senate Bill 1633, now Chapter 65, Laws of 1986, the proceeds of damage suits against manufacturers and distributors of "Agent Orange" are exempt in determinations of General Assistance eligibility and in computations of assistance grants. Also, such proceeds are immune from recoveries on account of assistance granted. The proposed amendments add specific exemptions in the regulations dealing with income, resources, and recoveries.

Social Impact

The social impact of this proposal is likely to be minimal. A veteran who was exposed to "Agent Orange" is not likely, as a result of the proposed amendments to alter his or her decision to seek or not to seek compensation on account of the exposure. Similarly, neither is such a veteran, if in need, likely to alter his or her decision about applying for assistance.

Economic Impact

The economic impact of this proposal is likely to be minimal. To date no distribution has been made from the proceeds of any "Agent Orange" suit. It is not currently known when or how any such proceeds may be distributed. If and when distribution occurs, there may be some economic impact on certain veterans who will realize a now unknown economic benefit. No such veterans are known to have received assistance or are known to be receiving assistance now. The offsetting negative impact on the public treasury will be imperceptible.

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

10:85-3.3 Financial eligibility

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

(e) Rules concerning unearned income are:

1.-4. (No change.)

5. Income exclusions: The following shall not be counted when determining financial eligibility:

i.-xii. (No change.)

xiii. **Agent Orange payments:** Money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange."

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

10:85-3.4 Resources

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

CORRECTIONS

(b)

THE COMMISSIONER

Mail, Visits and Telephone

Proposed New Rules: N.J.A.C. 10A:18

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

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

Proposal Number: PRN 1987-2.

Submit comments by February 4, 1987 to:

Elaine W. Ballai, Esq.

Special Assistant for Legal Affairs

Department of Corrections

P.O. Box 7387

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules are part of the Department of Corrections effort to codify existing Standards. The proposed rules provide guidelines which govern the sending and receiving of mail, the approval and supervision of visits, and the access and use of the telephone by inmates.

Social Impact

The proposed new rules will have no new or additional social impact on the public or correctional facilities since they simply reflect a codification of the Standards into rules. These rules serve to implement procedures for processing incoming and outgoing mail; conducting visits; regulating telephone access and use.

Economic Impact

The proposed new rules have no new or additional economic impact on the public or correctional facilities because the facilities are currently adhering to these Standards and no additional costs are necessary to implement or maintain them.

Full text of the proposed new rule follows.

CHAPTER 18 MAIL, VISITS AND TELEPHONE

SUBCHAPTER 1. INTRODUCTION

10A:18-1.1 Purpose

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

1. Permitting inmates to correspond with persons or entities outside the correctional facility;
2. Processing legal correspondence in correctional facilities;
3. Inmates sending and receiving publications;
4. Inmates sending and receiving packages;
5. Contact and non-contact visits with inmates;
6. Bedside and funeral visits by an inmate to a dying or deceased relative; and
7. Inmate access to and use of the telephone.

10A:18-1.2 Scope

This chapter shall be applicable to the Division of Adult Institutions and the Division of Juvenile Services, within the Department of Corrections, unless the context clearly indicates otherwise.

10A:18-1.3 Definitions

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

"Correspondence" means communication by the exchange of letters.

"Inmate Liaison Committee" means a group of inmates representatives that meet with an official(s) of correctional facilities to discuss matters of concern to the staff and inmates.

"Inter-office correspondence" means the exchange of correspondence between offices within the Department of Corrections.

"Legal correspondence" means the exchange of letters between an inmate and

1. An attorney of this State or any other state when properly identified as such on the outside of the envelope;
2. A State Public Defender;
3. Office of the Public Advocate;
4. Attorney General's office;

(c) **Exempt resources:** Exempt resources are not subject to any requirement for liquidation and are not considered in determining the assistance grant. Any resource which is not or is no longer exempt shall be considered as either available income or a potential resource, according to its nature. The exempt resources are:

1.-9. (No change.)

10. **Agent Orange payments:** Money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange."

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

(f) The following are not subject to repayment to the MWD: retroactive Social Security (RSDI) payments, Veteran's benefits, workers' compensation, temporary disability benefits, and SSI payments not repayable to the DPW/MWD in accordance with a valid Form GA-30. However, when such monies are received, they shall be recognized as countable income and the client's eligibility shall immediately be re-determined.

1. **No repayment shall be sought from money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange."**

(g) (No change.)

(a)

General Assistance Manual Medical Insurance Payments

Proposed Amendment: N.J.A.C. 10:85-5.3

Authority: N.J.S.A. 44:8-122 and 124; N.J.S.A. 30:1-12.

Proposal Number: PRN 1987-23.

The agency proposal follows:

Summary

The proposed amendment authorizes payment of Blue Shield or other medical insurance premiums as part of the health care provisions in the General Assistance Program. The use of the provision would be optional with the municipal welfare director in order to allow for the use of discretion and judgment in its application. Authority is found in the health care authorization sections of the General Assistance Statute, N.J.S.A. 44:8-122 and 124.

Social Impact

Use of various medical insurance programs may make it easier for some recipients to receive the full spectrum of medical services by making the payment system more acceptable to some providers. In addition, payment of an insurance premium may provide continuity of health care coverage when a waiting period is involved upon accepting or resuming employment.

Economic Impact

Little or no net cost to the public treasury is expected in that payment of medical insurance premiums is only an indirect way of clients paying the medical costs themselves. It could produce a benefit to the public treasury in that a payment to continue an existing policy can produce more in paid bills than the cost of the premium. It can result in an economic benefit to the recipient because of the continuity of coverage. Also, continuation of group coverage is normally less expensive than individual coverage, an element which can produce a benefit to the agency, the client, or both, depending on whether the client is still on the rolls when the subsequent premium falls due.

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

10:85-5.3 Other medical payments

(a) The director of welfare shall authorize payment for medical care and professional practitioner services if such care and services are deemed necessary and appropriate.

1. **The director of welfare may authorize payment of Blue Shield or other medical insurance premiums.**

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

5. Federal and State courts;
6. Federal and State court judges;
7. Offices of Legal Services;
8. Legal assistance clinics run by accredited law schools of this or any other state;
9. Administrative Office of the Courts;
10. Prosecutors' offices;
11. Federal Public Defender;
12. Department of Corrections' Internal Affairs Unit; and
13. Department of Corrections' Ombudsmen.
"Legal material" means papers or documents that are required to be filed with the court and served upon opposing parties. These materials include:

1. An order required by its term to be served;
2. A pleading subsequent to the original complaint;
3. A paper relating to discovery which is required to be served;
4. A written notice;
5. A written motion;
6. A demand;
7. An offer of judgment;
8. A designation of record on appeal;
9. Briefs;
10. Petitions;
11. Summons; and
12. Complaints.

"Pat-frisk" means a search that is conducted while a person is fully clothed and includes both touching of the person's body through clothing and a thorough examination into his or her pockets, cuffs, seams, hair, dentures and personal property.

"Relative" means:

1. Father;
2. Mother;
3. Husband;
4. Wife;
5. Child;
6. Brother; or
7. Sister.

"Strip search" means a search conducted while a person is unclothed and includes a thorough and systematic examination of the person's body, orifices, clothing and personal possessions.

"Truck mail" means inter-office mail that is exchanged between correctional facilities and the Department of Corrections' Central Office. Truck mail does not include mail sent by the United States post office.

SUBCHAPTER 2. CORRESPONDENCE

10A:18-2.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding the mailing and receipt of correspondence by the posting of appropriate notices in each housing area and other areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding correspondence shall be given to each Inmate Liaison Committee. This Committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding correspondence.

(d) New or revised rules and procedures regarding correspondence shall be incorporated into the next revision of the inmate handbook.

10A:18-2.2 Limitation on number of correspondents

The number of approved correspondents and the amount of correspondence an inmate may receive or send shall be unlimited.

10A:18-2.3 Limitation on number of postage stamps

(a) Inmates may purchase or possess a maximum of 40 postage stamps at any one time.

(b) Each correctional facility shall establish a limit of stamps (40 or less) that inmates may possess that is consistent with the maintenance of security and the orderly operation of the correctional facility.

10A:18-2.4 Correspondence in language other than English

All State correctional facilities shall permit incoming and outgoing correspondence of the inmates or residents to be in a language other than English.

10A:18-2.5 Correspondence to or from other inmates

All correspondence to or from inmates housed in other correctional facilities within this State may be read to ensure that the correspondence does not contain any content prohibited by N.J.A.C. 10A:18-2.14.

10A:18-2.6 Inspection and identification of incoming correspondence

(a) Each piece of incoming correspondence shall be opened and inspected.

(b) The sender's name and address and the inmate's name and number shall appear legibly on the outside of all incoming correspondence.

(c) If the inmate's name and number do not appear on the outside of the incoming correspondence, it shall be returned to the sender.

(d) If it is necessary to return correspondence to a sender and the return address is incomplete, the correspondence shall be opened and examined to identify the sender so that the correspondence can be returned to the sender. If the sender cannot be identified, the correspondence shall be destroyed.

(e) Incoming correspondence shall be opened and inspected for contraband, but it shall not be read unless there is reason to believe that it contains disapproved content and then only upon the prior authorization of the Superintendent or his or her designee.

(f) A confidential list of the incoming correspondence which is read shall be established and maintained in the correctional facility's investigative unit or mail room, or wherever the confidentiality of the list can be maintained.

10A:18-2.7 Inspection of outgoing correspondence

(a) Outgoing correspondence shall be reviewed to determine the sender. If the sender of the correspondence cannot be identified, the correspondence shall be destroyed.

(b) Outgoing mail shall not be opened, read or censored if it is considered legal correspondence or if it is addressed to:

1. The Governor;
2. Members of the State Legislature;
3. Members of the Parole Board; or
4. The Commissioner.

(c) Any outgoing correspondence addressed to someone other than those cited in (b) above, shall not be opened, read or censored unless there is reason to believe that the correspondence contains disapproved content (see N.J.A.C. 10A:18-2.14) and then only with the prior approval of the Superintendent or his or her designee.

(d) Outgoing correspondence which is opened pursuant to this subchapter shall, once reviewed and approved, be resealed and mailed promptly.

(e) A confidential list of all correspondence which is read pursuant to this subchapter shall be maintained in the correctional facility's investigative unit or mail room, or wherever the confidentiality of the list can be maintained.

10A:18-2.8 Legal correspondence

Legal correspondence shall be processed in accordance with N.J.A.C.

10A:18-3 LEGAL CORRESPONDENCE

10A:18-2.9 Identification of sender of outgoing correspondence

(a) The inmate's name and number shall appear legibly on the outside of all outgoing correspondence.

(b) If an inmate's name and number do not appear on the outside of the correspondence, it shall be opened and examined to identify the sender so that the correspondence can be returned to the inmate.

(c) If the inmate cannot be identified, the correspondence shall be destroyed.

10A:18-2.10 Telegrams and mailgrams

(a) An inmate shall be permitted to send telegrams and mailgrams in an emergency. An emergency may include:

1. Death;
2. Critical illness;
3. Accident; or
4. When the inmate is paroled and no one has picked up the inmate as arranged.

10A:18-2.11 Registered, certified or special delivery mail

(a) All registered, certified or special delivery correspondence of a non-legal nature shall be processed as regular mail provided the mail room signs to acknowledge receipt of the correspondence. The inmate shall be required to sign an acknowledgment that he or she received the correspondence.

(b) In instances where the mail room does not sign for registered, certified or special delivery correspondence of a non-legal nature, the inmate shall be required to sign for the correspondence to acknowledge receipt.

10A:18-2.12 Correspondence processing

(a) Properly identified incoming correspondence (see N.J.A.C. 10A:18-2.6) shall be distributed to inmates, and outgoing properly identified correspondence (see N.J.A.C. 10A:18-2.9) shall be sent to the post

office within one day of receipt in the mail room, excluding weekends and holidays.

(b) Inmates shall not be involved in the processing of either incoming or outgoing correspondence.

10A:18-2.13 Receipt of funds

(a) Money orders and checks, other than personal checks and cash, shall be the only approved form of money received through the mail which can be accepted by the correctional facility for deposit in an inmate's account.

(b) When an inmate receives money orders and checks, other than personal checks, by mail, the inmate shall be given a receipt and the funds shall be deposited into the inmate's account.

(c) All cash and personal checks sent through the mail to an inmate shall be deemed contraband and processed in accordance with N.J.A.C. 10A:3-6.7.

10A:18-2.14 Disapproved correspondence

(a) Any incoming correspondence for an inmate may be withheld in the mail room or taken from an inmate's possession if it falls within one of the following categories:

1. The correspondence contains material which is detrimental to the security and/or order of the correctional facility because it incites violence based upon race, religion, creed or nationality and a reasonable inference can be drawn, based upon the experience and professional expertise of correctional administrators, that it may result in the outbreak of violence within the facility;

2. The correspondence contains information regarding the manufacture of:

- i. Explosives;
- ii. Weapons;
- iii. Controlled dangerous substances;
- iv. Escape plans;
- v. Lockpicking; or
- vi. Anything of a similar nature.

3. The correspondence contains information which appears to be written in code;

4. The correspondence contains information concerning activities within or outside the correctional facility which would be subject to criminal prosecution under the law of New Jersey or the United States;

5. The correspondence incites violence or destructive or disruptive behavior toward:

- i. Law enforcement officers;
- ii. Department of Corrections personnel; or,
- iii. Correctional facility programs or procedures; or,

6. The correspondence contains material which, based upon the experience and professional expertise of correctional administrators and judged in the context of a correctional facility and its paramount interest in security, order and rehabilitation;

- i. Taken as a whole, appeals to a prurient interest in sex;
- ii. Lacks, as a whole, serious literary, artistic, political or scientific value; and

- iii. Depicts, in a patently offensive way, sexual conduct including patently offensive representations or descriptions of ultimate sexual acts, masturbation, excretory functions, lewd exhibition of the genitals, sadism or masochism.

10A:18-2.15 Control of correspondence

(a) Incoming correspondence which is withheld from an inmate shall be returned to the sender, together with a notice that the material has been found to violate the Department of Corrections' rules governing correspondence.

(b) If the correspondence is withheld pursuant to N.J.A.C. 10A:18-2.14(a)4 for containing information which would be subject to criminal prosecution under the laws of New Jersey or the United States, the correspondence shall be turned over to the Internal Affairs or Control Unit of the correctional facility for further action.

(c) Possession of correspondence which is in violation of N.J.A.C. 10A:18-2.14(a)6 shall not form the basis for disciplinary action.

(d) Possession of correspondence found in violation of N.J.A.C. 10A:18-2.14(a)1 through 5 shall form the basis for disciplinary action.

10A:18-2.16 Procedures for handling withheld correspondence

(a) When correspondence violates one of the categories cited in N.J.A.C. 10A:18-2.14 and is withheld in the mail room, the following action shall be taken.

1. The correction officer who withholds the correspondence must submit a written report, no later than the end of the shift to the shift supervisor identifying:

- i. The correspondence withheld;
 - ii. The inmate's name and number to whom it was addressed;
 - iii. The time and date of withholding; and
 - iv. The category which the correspondence violates.
2. The decision of the correction officer shall be reviewed by the shift supervisor.

3. The correspondence shall be given to the inmate within 48 hours if the shift supervisor disagrees with the correction officer's determination.

4. The written report shall be initialed and returned to the correction officer if the shift supervisor agrees with the determination.

5. The correction officer shall provide the sender, within 72 hours of the withholding, with a written notice which identifies:

- i. The correspondence withheld;
- ii. The reason for withholding the correspondence; and
- iii. The right of the sender to appeal this decision within 10 days of the date of the notice.

6. The correction officer shall provide the inmate, within 72 hours of the withholding, with a written notice that correspondence has been withheld. The notice must contain:

- i. Name of the sender;
- ii. Date of the correspondence;
- iii. Date of the withholding; and
- iv. A statement that the sender has been notified of the withholding and of the right to appeal.

10A:18-2.17 Procedure for handling correspondence removed from the inmate's possession

(a) When correspondence violates one of the categories cited in N.J.A.C. 10A:18-2.14 and is removed from the inmate's possession, the following action shall be taken.

1. The correction officer who removes the correspondence from the inmate must submit a written report no later than the end of the shift to the shift supervisor identifying:

- i. The item removed;
- ii. The inmate's name and number from whom it was removed;
- iii. The time and date of removal; and
- iv. The category which the correspondence violates.

2. The decision of the correction officer shall be reviewed by the shift supervisor.

3. The correspondence shall be returned to the inmate within 48 hours if the shift supervisor disagrees with the correction officer's determination.

4. The written report shall be initialed and returned to the correction officer if the shift supervisor agrees with the determination.

5. The correction officer shall provide the inmate, within 72 hours of the removal, with a written notice which identifies:

- i. The correspondence removed;
- ii. The reason for removing it; and
- iii. The inmate's right to appeal the removal.

10A:18-2.18 Appeal and final disposition

(a) When correspondence has been withheld in the mail room or when correspondence has been removed from the inmate's possession, the sender or inmate may appeal the action of the shift supervisor to the Superintendent within 10 days of the date of the notice.

(b) The sender or inmate shall be permitted to argue in writing to the Superintendent that the challenged correspondence does not violate the category indicated in the correction officer's report.

(c) The Superintendent or his or her designee, whose title shall not be lower than Assistant Superintendent or Director of Custody Operations, shall consider the appeal.

(d) The Superintendent or his or her designee shall issue a written decision on the appeal and shall respond to the sender or inmate, as appropriate, within 72 hours of receipt of the written appeal. If the decision is to withhold the correspondence from the inmate, the decision shall contain a specific finding that the correspondence violates the category indicated in the correction officer's report.

(e) If a correspondence is found to be objectionable only in part and such part is easily separable from the rest of the correspondence, the sender or inmate, as appropriate, shall be given the choice of whether to allow the correctional facility to excise the offending portions or to forfeit the inmate's right to the correspondence.

10A:18-2.19 Forwarding correspondence to an inmate transferred to another correctional facility

(a) Whenever an inmate is transferred from one correctional facility to another, the inmate shall be responsible for notifying his or her cor-

respondents of the change of address.

(b) For a period not to exceed three months, the correctional facility from which the inmate is transferred shall forward all regular incoming correspondence facility to which the inmate has been transferred.

(c) Any correspondence received after the three month period shall be returned to the sender.

10A:18-2.20 Forwarding correspondence to an inmate released on parole or at expiration of maximum sentence

(a) The correctional facility shall obtain an inmate's forwarding address at or about the time of the inmate's release on parole or at the expiration of the inmate's maximum sentence.

(b) The inmate shall be asked whether correspondence received at the correctional facility should be forwarded to him or her.

(c) Upon the inmate's request, the correctional facility shall forward the correspondence to him or her.

(d) The correctional facility shall not forward certified or registered mail, but shall return it to the sender.

(e) Correspondence shall be forwarded for a maximum of three months from the date of the inmate's release. Correspondence received thereafter shall be returned to the sender.

10A:18-2.21 Forwarding correspondence to an inmate remanded to a detention facility

(a) When an inmate is remanded to a county jail or other facility in which he or she is temporarily detained to await trial for a prior offense or for any other reasons, correspondence received for the inmate at the correctional facility shall be forwarded to the other facility, upon the inmate's request.

(b) Written procedures shall be developed by the correctional facility for forwarding an inmate's correspondence when the inmate is remanded to a detention facility. These procedures shall include a form which the inmate shall sign before the inmate is transferred to the other facility indicating whether the inmate wishes correspondence forwarded.

10A:18-2.22 Forwarding correspondence of an inmate who has escaped

(a) All incoming correspondence addressed to an inmate who has escaped from a correctional facility shall be returned to the sender with an indication that the inmate is no longer in custody.

(b) If the incoming mail does not have a return address, it shall be opened to determine the sender.

(c) If the sender cannot be identified, the correspondence shall be destroyed.

10A:18-2.23 Correspondence by illiterate inmates

(a) If an inmate is unable to read or write, the social worker assigned to the inmate's housing unit shall, upon request, assist the inmate in maintaining community ties by:

1. Writing a letter as dictated by the inmate; and
2. Reading incoming correspondence to the inmate.

10A:18-2.24 Cost of mailing correspondence

(a) If an inmate has funds in his or her account, the inmate shall be charged for the cost of mailing correspondence.

(b) If the inmate has temporarily overdrawn the account or has a balance in the account, but the balance is not sufficient to pay the total cost of mailing the correspondence, the correctional facility shall:

1. Remove from the inmate's account the amount available;
2. Advance from the correctional facility's account the difference between the amount available and the total cost of mailing via regular mail;
3. Debit the inmate's account the amount owed the correctional facility; and
4. Advise the inmate in writing of the amount owed and the reason therefor.

(c) The business manager or his or her designee shall:

1. With the posting each month of an inmate's wages or funds from other sources, remove from the inmate's account any amount of funds in excess of a \$15.00 balance until the correctional facility has been reimbursed in full;
2. Note on the inmate's record each removal of funds from an inmate's account;
3. Note on the inmate's record each removal of funds from an inmate's account;
3. Inform the inmate in writing of each removal of funds from the inmate's account; and
4. Place a copy of the written notification in the inmate's classification folder.

(d) In the event an inmate is transferred to another correctional facility within the Department of Corrections, the business manager or his or her designee shall notify the receiving correctional facility in writing of

the remaining amount due. The notification shall also request that funds continue to be removed from the inmate's account until reimbursement has been made in full.

(e) Whenever an inmate's correctional facility business account is debited in excess of \$25.00, the debit shall be reported to the appropriate assistant commissioner.

(f) If an inmate is released prior to making full reimbursement, the correctional facility shall regard the debt as uncollectable and shall not deduct the debt from any financial aid given to the inmate by the Bureau of Parole.

10A:18-2.25 Cost of mailing correspondence by indigent inmates

(a) If an inmate has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances, and is has been verified that the inmate has no outside source, from which to obtain funds, the correctional facility shall provide letter writing materials and shall assume the cost of mailing not more than 12 letters per month so that the inmate can maintain community ties with family and personal friends.

(b) The correctional facility shall only assume the cost of first class postage and shall not assume the cost of postage on:

1. Registered mail;
2. Certified mail; or
3. Insured mail.

10A:18-2.26 Inmate use of inter-office correspondence

(a) Inmates shall not be permitted to use either the pink or the blue and white inter-office envelopes which are purchased for use by State employees.

(b) Inmates using or possession State inter-office envelopes shall be charged with Prohibited Act .210—Possession of anything not authorized for retention or receipt by an inmate or not issued to the inmate through regular correctional facility channels. (see N.J.A.C. 10A:4-4.1.)

(c) In instances where a correctional facility provides envelopes to inmate groups, plain white envelopes shall be provided.

(d) Inmates corresponding with Department Central Office staff, or with staff at other correctional facilities, or with the Parole Board, shall be permitted to use the facility's "truck mail" delivery service, but the inmates must use their own envelopes and mark the envelopes "INTER-OFFICE" or "TRUCK MAIL."

(e) Inmates shall not be permitted to use the "truck mail" delivery services to correspond with persons in other State Departments or Agencies or with inmates in other correctional facilities. Inmates attempting to do so shall be charged with Prohibited Act .709—Failure to comply with a written rule or regulation of the correctional facility. (See N.J.A.C. 10A:4-4.1.)

(f) Except as described in (d) above, all outgoing correspondence shall be sent through the regular mail and at the inmate's expense.

SUBCHAPTER 3. LEGAL CORRESPONDENCE

10A:18-3.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding the mailing and receipt of legal correspondence by the posting of appropriate notices in each housing area and other areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding legal correspondence shall also be given to each inmate liaison committee. The committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding legal correspondence.

(d) New or revised rules and procedures regarding legal correspondence shall be incorporated into the next revision of the inmate handbook.

10A:18-3.2 Identification of outgoing legal correspondence

(a) All outgoing legal correspondence shall be clearly marked with the inmate's name and number on the envelope.

(b) An inmate who is sending legal correspondence out of the correctional facility shall be responsible for clearly marking "legal mail" on the front and back of the envelope.

(c) The absence of the "legal mail" designation shall not mean that the correspondence may be treated as non-legal correspondence if the address on the envelope clearly indicates that it is being sent to a legal correspondent as enumerated in N.J.A.C. 10A:18-1.3.

10A:18-3.3 Identification of incoming legal correspondence

(a) The return address on the outside of an envelope should clearly indicate that the correspondence is being sent from a legal correspondent

as enumerated in N.J.A.C. 10A:18-1.3.

(b) Mail sent from a legal correspondent shall be considered legal correspondence and shall be handled in accordance with this subchapter.

(c) The absence of a particular name of an attorney or judge shall not preclude the correspondence from being treated as legal correspondence if the return address indicates an office or court as enumerated in N.J.A.C. 10A:18-1.3.

10A:18-3.4 Inspection of incoming legal correspondence

(a) Incoming legal correspondence shall be opened and inspected for contraband only.

(b) Incoming legal correspondence shall be opened and inspected only in the presence of the inmate to whom it is addressed.

(c) Incoming legal correspondence shall not be read or copied. The content of the envelope may be removed and shaken loose to ensure that no contraband is included. After the envelope has been inspected the correspondence shall be given to the inmate.

(d) The correctional facility may require that the inmate sign a slip acknowledging receipt of the incoming legal correspondence.

(e) Where there is substantial reason to believe that the incoming correspondence is not legal in nature or that it contains disapproved content pursuant to N.J.A.C. 10A:18-2.14, the superintendent shall immediately notify the appropriate assistant commissioner who shall immediately contact the Special Assistant for Legal Affairs, Office of the Deputy Commissioner. The incoming legal correspondence shall not be inspected in a manner other than as outlined in this subchapter without first obtaining instructions from the Special Assistant for Legal Affairs.

10A:18-3.5 Certified or registered mail

(a) Legal correspondence need not be sent by certified or registered mail.

(b) If an inmate has sufficient funds in his or her account to cover the costs of mailing and the inmate prefers to use certified or registered mail, the inmate shall be permitted to do so.

(c) The correctional facility shall not send the legal correspondence of indigent inmates via certified or registered mail.

10A:18-3.6 Proof of service

Inmates who have insufficient funds to send legal correspondence as certified or registered mail and who are concerned that they have no proof of service where regular mail is employed, shall be advised that under the rules of court, an affidavit of service filed with the clerk of the court shall be sufficient proof of service.

10A:18-3.7 Cost of mailing legal correspondence

(a) If an inmate has funds in his or her account, the inmate shall be charged for the total cost of mailing legal correspondence.

(b) If the inmate has temporarily overdrawn his or her account or has a balance in the account, but the balance is not sufficient to pay the total cost of mailing the correspondence, the correctional facility shall:

1. Remove from the inmate's account the amount available;
2. Advance from the correctional facility's account the difference between the amount available and the total cost of mailing via regular mail;
3. Debit in the inmate's account the amount owed the correctional facility; and
4. Advise the inmate in writing of the amount owed and the reason therefor.

(c) The business manager or his or her designee shall:

1. With the posting each month of an inmate's wages or funds from other sources, remove from the inmate's account any amount of funds in excess of a \$15.00 balance until the correctional facility has been reimbursed in full;

2. Note on the inmate's record each removal of funds from an inmate's account;

3. Inform the inmate in writing of each removal of funds from the inmate's account; and

4. Place a copy of the written notification in the inmate's classification folder.

(d) In the event an inmate is transferred to another correctional facility within the Department of Corrections, the business manager or his or her designee shall notify the receiving correctional facility in writing of the remaining amount due the correctional facility. The notification shall also request that funds continue to be removed from the inmate's account until reimbursement has been made in full.

(e) Whenever an inmate's correctional facility business account is debited in excess of \$25.00, the debit shall be reported to the appropriate assistant commissioner.

(f) If an inmate is released prior to making full reimbursement, the correctional facility shall regard the debt as uncollectable and shall not

deduct the debt from any financial aid given to the inmate by the Bureau of Parole.

10A:18-3.8 Cost of mailing legal correspondence by indigent inmates

(a) If an inmate has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances, and it has been verified that the inmate has no outside source from which to obtain funds, the correctional facility shall provide letter writing materials and shall assume the cost of mailing his or her legal correspondence.

(b) The cost of mailing legal correspondence shall extend only to first class postage and shall not include:

1. Registered mail;
2. Certified mail; or
3. Insured mail.

(c) An inmate shall not be considered as indigent if he or she has rejected a job that has been offered by the correctional facility. The rejection of a job offer shall be documented in the inmate's classification folder.

10A:18-3.9 Forwarding legal correspondence to an inmate transferred to another correctional facility

(a) Whenever an inmate is transferred from one correctional facility to another, the inmate shall be responsible for notifying his or her correspondents of the change of address.

(b) For a period not to exceed three months, the correctional facility from which the inmate is transferred shall forward all regular incoming legal correspondence to the correctional facility to which the inmate has been transferred.

(c) Any legal correspondence received after the three month period shall be returned to the sender.

10A:18-3.10 Forwarding legal correspondence to an inmate released on parole or released after expiration of maximum sentence

(a) The correctional facility shall obtain an inmate's forwarding address at or about the time of the inmate's release on parole or at the expiration of the inmate's maximum sentence.

(b) The inmate shall be asked whether legal correspondence received at the correctional facility should be forwarded to him or her.

(c) Upon the inmate's request, the correctional facility shall forward the legal correspondence to him or her.

(d) The correctional facility shall not forward certified or registered mail, but shall return it to the sender.

(e) Legal correspondence shall be forwarded for a maximum of three months from the date of the inmate's release. Legal correspondence received thereafter shall be returned to the sender.

10A:18-3.11 Forwarding legal correspondence to an inmate remanded to a detention facility

(a) When an inmate is remanded to a county jail or other facility in which he or she is temporarily detained to await trial for a prior offense or for any other reasons, legal correspondence received for the inmate at the correctional facility shall be forwarded to the other facility, upon the inmate's request.

(b) Written procedures shall be developed by the correctional facility for forwarding an inmate's legal correspondence when the inmate is remanded to a detention facility. These procedures shall include a form which the inmate shall sign before the inmate is transferred to the other facility indicating whether the inmate wishes the legal correspondence forwarded.

10A:18-3.12 Forwarding legal correspondence of an inmate who has escaped

(a) All incoming legal correspondence addressed to an inmate who has escaped from a correctional facility shall be returned to the sender with an indication that the inmate is no longer in custody.

(b) If the incoming legal correspondence does not have a return address, it shall be opened to determine the sender.

(c) If the sender cannot be identified, the correspondence shall be destroyed.

10A:18-3.13 Inmate use of inter-office correspondence

(a) Inmates shall not be permitted to use either the pink or the blue and white inter-office envelopes which are purchased for use by State employees.

(b) Inmates using or possessing State inter-office envelopes shall be charged with Prohibited Act .210—Possession of anything not authorized for retention or receipt by an inmate or not issued to the inmate through regular correctional facility channels. (See N.J.A.C. 10A:4-4.1.)

(c) In instances where a correctional facility provides envelopes to

inmate groups, plain white envelopes shall be provided.

(d) Inmates corresponding with Department Central Office staff, or with staff at other correctional facilities, or with the Parole Board, shall be permitted to use the facility's "truck mail" delivery service, but the inmates must use their own envelopes and mark the envelopes "INTER-OFFICE" or "TRUCK MAIL."

(e) Inmates shall not be permitted to use the "truck mail" delivery services to correspond with persons in other State Departments or Agencies or with inmates in other correctional facilities. Inmates attempting to do so shall be charged with Prohibited Act .709—Failure to comply with a written rule or regulation of the correctional facility. (See N.J.A.C. 10A:4-4.1.)

(f) Except as described in (d) above, all outgoing correspondence shall be sent through the regular mail and at the inmate's expense.

SUBCHAPTER 4. PUBLICATIONS

10A:18-4.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding the mailing and receipt of publications by the posting of appropriate notices in each housing area and other areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding publications shall be given to each inmate liaison committee. The committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding publications.

(d) New or revised rules and procedures regarding publications shall be incorporated into the next revision of the inmate handbook.

10A:18-4.2 Limitation on source of publications

(a) Inmates shall be permitted to receive hardcover books only if the books are mailed directly from the publisher or a bookstore.

(b) Inmates shall be permitted to receive paperback books, magazines and other soft-cover publications from any source.

(c) Inmates shall be permitted to receive newspapers only by subscription mailed directly from the publisher.

(d) There shall be no restriction on the number of publications an inmate may receive.

(e) All books, magazines, publications and newspapers must be prepaid by the inmate.

10A:18-4.3 Publications in a language other than English

All State correctional facilities shall permit incoming publications in a language other than English.

10A:18-4.4 Publications to or from other inmates

All publications to or from inmates housed in other correctional facilities within the State may be read to ensure that the publications do not contain any contents prohibited by N.J.A.C. 10A:18-4.9.

10A:18-4.5 Inspection of incoming publications

(a) Each incoming publication shall be opened and inspected for contraband, but shall not be read unless there is reason to believe that the publication disapproved content (see N.J.A.C. 10A:18-4.9) and then only upon the prior authorization of the Superintendent or his or her designee.

(b) A confidential list of the incoming publications that are read shall be maintained in the investigative unit or mailroom of the correctional facility, or wherever the confidentiality of the list can be maintained.

10A:18-4.6 Identification of sender of incoming publications

(a) The sender's name and address and the inmate's name and number shall appear legibly on the outside of all incoming publications.

(b) If the name and address do not appear on the outside of the publication, the publication shall be opened and examined to determine the identity of the sender.

(c) If the sender cannot be identified, the publication shall be destroyed.

10A:18-4.7 Inspection and identification of outgoing publications

(a) Outgoing publications shall be reviewed to determine the sender. If the sender cannot be identified, the outgoing publication shall be destroyed.

(b) The inmate's name and number or the name of the inmate group shall appear legibly on the outside of the publication.

(c) If the name and number of the sender do not appear on the outside of the outgoing publication, it shall be opened and examined to determine the sender so that it can be returned to the inmate or group.

(d) Outgoing publications shall not be opened, read or censored if addressed to:

1. The Governor;
2. Members of the State Legislature;
3. Members of the Parole Board;
4. Members of the Ombudsman Office; or
5. The Commissioner.

(e) Any outgoing publication addressed to someone other than those cited in (d) above shall not be opened, read or censored unless there is reason to believe that the publication contains disapproved content (see N.J.A.C. 10A:18-4.9) and then only with the prior approval of the Superintendent or his or her designee.

(f) Outgoing publications which are opened pursuant to this subchapter shall, once reviewed and approved, be resealed and mailed promptly.

(g) A confidential list of the outgoing publications that are read pursuant to this subchapter shall be maintained in the investigative unit or mail room of the correctional facility, or wherever the confidentiality of the list can be maintained.

10A:18-4.8 Processing of publications

(a) All properly identified and inspected incoming publications (see N.J.A.C. 10A:18-4.5 and N.J.A.C. 10A:18-4.6) shall be distributed to inmates within one day of their receipt in the mail room, excluding weekends and holidays.

(b) All properly identified outgoing publications (see N.J.A.C. 10A:18-4.7) shall be sent to the post office within one day of their receipt in the mail room, excluding weekends and holidays.

(c) Inmates shall not participate in the processing of either incoming or outgoing publications.

10A:18-4.9 Disapproved content in publications

(a) Any incoming publication may be withheld in the mailroom or taken from an inmates possession if it falls within one of the following categories:

1. The publication contains material that is detrimental to security and/or order of the correctional facility because it incites violence based upon race, religion, creed or nationality and a reasonable inference can be drawn, based upon the experience and professional expertise of correctional administrators, that it may result in the outbreak of violence within the facility;

2. The publication contains information regarding:

- i. Explosives;
- ii. Weapons;
- iii. Controlled dangerous substances;
- iv. Escape plans;
- v. Lockpicking; or
- vi. Anything of a similar nature.

3. The publication contains information which appears to be written in code;

4. The publication contains information concerning activities, within or outside the correctional facility, which would be subject to criminal prosecution under the law of New Jersey or the United States;

5. The publication incites violence, or destructive or disruptive behavior toward:

- i. Law enforcement officers;
- ii. Department of Corrections personnel; or
- iii. Correctional facility programs or procedures.

6. The publication contains material which, based upon the experience and professional expertise of correctional administrators and judged in the context of a correctional facility and its paramount interest in security, order and rehabilitation:

- i. Taken as a whole, appeals to a prurient interest in sex;
- ii. Lacks, as a whole, serious literary, artistic, political or scientific value; and
- iii. Depicts, in a patently offensive way, sexual conduct including patently offensive representations or descriptions of ultimate sex acts, masturbation, excretory functions, lewd exhibition of the genitals, sadism or masochism.

10A:18-4.10 Control of publications

(a) Publications which are withheld from an inmate shall be disposed of in a manner determined by the inmate and at his or her expense.

(b) If the publication is withheld pursuant to N.J.A.C. 10A:18-4.9(a)4, it shall be turned over to the Internal Affairs or Control Unit for further action.

(c) Possession of publications which are in violation of N.J.A.C. 10A:18-4.9(a)6 shall not form the basis for disciplinary action.

(d) Possession of publications found in violation of N.J.A.C. 10A:18-4.9(a)1 through 5 shall form the basis for disciplinary action.

10A:18-4.11 Procedure for handling withheld publications

(a) When a publication violates one of the categories cited in N.J.A.C. 10A:18-4.10 and is withheld in the mail room, the following action shall be taken:

1. The correction officer who withholds the publication must submit a written report, no later than the end of the shift to the shift supervisor identifying:

- i. The publication withheld;
- ii. The inmate's name and number to whom it was addressed;
- iii. The time and date of withholding; and
- iv. The category which the publication violates.

2. The decision of the correction officer shall be reviewed by the shift supervisor.

3. The publication shall be given to the inmate within 48 hours if the shift supervisor disagrees with the correction officer's determination.

4. The written report shall be initialed and returned to the correction officer if the shift supervisor agrees with the correction officer's determination.

5. The correction officer shall provide the sender, within 72 hours of the withholding, with a written notice which identifies:

- i. The publication withheld;
- ii. The reason for withholding the publication; and,
- iii. The right of the sender to appeal this decision within ten days of the date of the notice.

6. The correction officer shall provide the inmate, within 72 hours of the withholding, with a written notice that the publication has been withheld. The notice must contain:

- i. Name of the publication;
- ii. Date of the publication;
- iii. Date of the withholding; and,
- iv. A statement that the sender has been notified of the withholding and of the right to appeal.

10A:18-4.12 Procedure for handling publications removed from inmate's possession

(a) When a publication violates one of the categories cited in N.J.A.C. 10A:18-4.10 and is removed from the inmate's possession, the following action shall be taken:

1. The correction officer who removes the publication from the inmate must submit a written report no later than the end of the shift to the shift supervisor identifying:

- i. The publication removed;
- ii. The inmate's name and number from whom it was removed;
- iii. The time and date of the removal; and,
- iv. The category which the publication violates.

2. The decision of the correction officer shall be reviewed by the shift supervisor.

3. The publication shall be returned to the inmate within 48 hours if the shift supervisor disagrees with the correction officer's determination.

4. The written report shall be initialed and returned to the correction officer if the shift supervisor disagrees with the correction officer's determination.

5. The correction officer shall provide the inmate, within 72 hours of the removal, with a written notice which identifies:

- i. The publication removed;
- ii. The reason for removing the publication; and
- iii. The inmate's right to appeal the removal.

10A:18-4.13 Appeal and final disposition

(a) When a publication has been withheld in the mailroom or when a publication has been removed from the inmate's possession, the sender or inmate may appeal the action of the shift supervisor to the Superintendent within 10 days of the date of the notice.

(b) The sender or inmate shall be permitted to argue in writing to the Superintendent that the challenged publication does not violate the category indicated in the correction officer's report.

(c) The Superintendent or his or her designee, whose title shall not be lower than Assistant Superintendent or Director of Custody Operations, shall consider the appeal.

(d) The Superintendent or his or her designee shall issue a written decision on the appeal and respond to the sender or inmate, as appropriate, within 72 hours of receipt of the written appeal. If the decision is to withhold the publication from the inmate, the decision shall contain a specific finding that the publication violates the category indicated in the correction officer's report and a notification that the publication is being returned to the sender.

(e) If a publication is found to be objectionable only in part and such

part is easily separable from the rest of the publication (such as a magazine article, etc.) the inmate shall be given the choice of whether to allow the correctional facility to excise the offending portion(s) or to forfeit his or her right to the publication.

10A:18-4.14 Forwarding publications to an inmate transferred to another correctional facility

(a) Whenever an inmate is transferred from one correctional facility to another, the inmate shall be responsible for notifying the publishers of the change of address.

(b) For a period not to exceed three months, the correctional facility from which the inmate is transferred shall forward all publications to the correctional facility to which the inmate has been transferred.

(c) Any publications received after the three month period may be destroyed or placed in the library of the correctional facility from which the inmate was transferred.

10A:18-4.15 Forwarding publications to an inmate released on parole or at expiration of maximum sentence

(a) The correctional facility shall obtain an inmate's forwarding address at or about the time of the inmate's release on parole or at the expiration of the inmate's maximum sentence.

(b) The inmate shall be asked whether publications received at the correctional facility should be forwarded to him or her.

(c) Upon the inmate's request, the correctional facility shall forward the publications to him or her.

(d) Publications shall be forwarded for a maximum of three months from the date of the inmate's release. Publications received thereafter may be destroyed or placed in the library of the correctional facility.

10A:18-4.16 Forwarding publications to an inmate remanded to a detention facility

(a) When an inmate is remanded to a county jail or other facility in which he or she is temporarily detained to await trial for a prior offense or for any other reasons, publications received for the inmate at the correctional facility shall be forwarded to the other facility, upon the inmate's request.

(b) Written procedures shall be developed by the correctional facility for forwarding an inmate's publications when the inmate is remanded to a detention facility. These procedures shall include a form which the inmate shall sign before the inmate is transferred to the other facility indicating whether the inmate wishes publications forwarded.

10A:18-4.17 Return of publications addressed to an inmate who has escaped

(a) All publications addressed to an inmate who has escaped from a correctional facility shall be returned to the sender with an indication that the inmate is no longer in custody.

(b) If the publication does not have a return address, it shall be opened to determine the sender.

(c) If the sender cannot be identified, the publication may be destroyed or placed in the library of the correctional facility.

SUBCHAPTER 5. PACKAGES

10A:18-5.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding the mailing and receipt of packages by the posting of appropriate notices in each housing area and other areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding packages shall be given to each inmate liaison committee. The Committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding packages.

(d) New or revised rules and procedures regarding packages shall be incorporated into the next revision of the inmate handbook.

10A:18-5.2 Limitation on packages

(a) Each correctional facility shall promulgate:

1. A written list of items which may be received in a package; and,
2. A limit on the number and weight of packages which may be received by an inmate each month.

(b) Each inmate shall be given written notice of package limitations as established by (a) above.

(c) All packages received from a retail store must be prepaid.

(d) Inmates shall be permitted to send and receive packages from other inmates who are members of his or her immediate family and who are incarcerated in a correctional facility within the jurisdiction of the New

Jersey Department of Corrections. Such packages shall be subject to the provisions of this subchapter.

10A:18-5.3 Inspection of incoming packages

(a) Every incoming package shall be opened and searched for contraband.

(b) Any item of contraband which is found during a search shall be processed in accordance with N.J.A.C. 10A:3-6.

10A:18-5.4 Inspection and identification of outgoing packages

(a) Every outgoing package shall be opened and inspected.

(b) Every outgoing package shall be clearly marked with the inmate's name and number on the outside of the package.

(c) If the inmate's name and number do not appear on the outside of the outgoing package, when opened for inspection, it shall be examined to identify the sender so that it can be returned to the inmate for proper mailing.

(d) If the sender of an outgoing package cannot be identified, the content of the package shall be destroyed.

(e) The content of outgoing packages shall be limited to inmate personal property.

(f) Manuscripts and inventions of inmates shall be processed in accordance with N.J.A.C. 10A:12-3.

(g) Any item of contraband which is found during an inspection of outgoing packages shall be processed in accordance with N.J.A.C. 10A:3-6.

10A:18-5.5 Identification of incoming mailed packages

(a) Every incoming package shall be clearly marked with the sender's name and address and the inmate's name and number.

(b) If the inmate's name and number do not appear on the outside of incoming mailed package, it shall be returned to the sender.

(c) If the sender's name and address do not appear on the outside of the incoming mailed package, it shall be examined to identify the sender when it is opened. (See N.J.A.C. 10A:18-5.3.)

(d) If the sender of an incoming mailed package cannot be identified, the contents of the package shall be destroyed.

10A:18-5.6 Package processing

(a) All properly identified incoming packages (see N.J.A.C. 10A:15-5.5) shall be distributed to inmates as soon as possible to avoid spoilage of perishable items.

(b) All properly identified outgoing packages (see N.J.A.C. 10A:18-5.4) shall be sent to the post office within one day of their receipt in the mailroom excluding weekends and holidays.

(c) Inmates shall not be involved in the processing of either incoming or outgoing packages.

10A:18-5.7 Forwarding packages to an inmate transferred to another correctional facility

(a) Whenever an inmate is transferred from one correctional facility to another, the inmate shall be responsible for notifying his or her correspondents of the change of address.

(b) For a period not to exceed three months, the correctional facility from which the inmate is transferred shall forward all packages to the correctional facility to which the inmate has been transferred.

(c) Any packages received after the three month period shall be returned to the sender, if possible, or destroyed.

10A:18-5.8 Forwarding packages to an inmate released on parole or at expiration of maximum sentence

(a) The correctional facility shall obtain an inmate's forwarding address at or about the time of the inmate's release on parole or at the expiration of the inmate's maximum sentence.

(b) The inmate shall be asked whether packages received at the correctional facility should be forwarded to him or her.

(c) Upon the inmate's request, the correctional facility shall forward the packages to him or her.

(d) Packages shall be forwarded for a maximum of three months from the date of the inmate's release. Packages received thereafter shall be returned to the sender, if possible, or destroyed.

10A:18-5.9 Forwarding packages to an inmate remanded to a detention facility

(a) When an inmate is remanded to a county jail or other facility in which he or she is temporarily detained to await trial for a prior offense or for any other reasons, packages received for the inmate at the correctional facility shall be forwarded to the other facility, upon the inmate's request.

(b) Written procedures shall be developed by the correctional facility for forwarding packages to an inmate when the inmate is remanded to a detention facility. These procedures shall include a form which the

inmate shall sign before the inmate is transferred to the other facility indicating whether the inmate wishes packages forwarded.

10A:18-5.10 Forwarding packages of an inmate who has escaped

(a) All incoming packages addressed to an inmate who has escaped from a correctional facility shall be returned to the sender with an indication that the inmate is no longer in custody.

(b) If the package does not have a return address, the package shall be opened to determine the sender.

(c) If the sender cannot be identified, the package shall be destroyed.

SUBCHAPTER 6. VISITS

10A:18-6.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding visits by the posting of appropriate notices in each housing area and other appropriate areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding visits shall be given to each inmate liaison committee. The committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding visits.

(d) New or revised rules and procedures regarding visits shall be incorporated into the next revision of the inmate handbook.

10A:18-6.2 List of visitors

Upon admission, an inmate shall submit to a person as designated by the Superintendent a list of names and addresses of potential visitors.

10A:18-6.3 Approval of potential visitors

(a) The correctional facility may approve the following persons to visit an inmate:

1. Relatives (see N.J.A.C. 10A:18-1.3);

2. Close friends;

3. Clergy; and

4. Persons who may have a constructive influence on the inmate.

(b) Persons with criminal records shall not be automatically excluded from visiting an inmate. The nature and extent of an individual's criminal record, plus his or her history of recent criminal activity, shall be weighed against the benefits of visitation in determining visitation eligibility.

(c) Persons determined, by substantial evidence, to have a harmful influence upon the inmate or to constitute a threat to the security of the correctional facility shall not be granted visitation privileges.

(d) At the Superintendent's discretion, former employees of the Department of Corrections may be permitted to visit an inmate. The Superintendent's decision shall be made on a case-by-case basis after due consideration of the security interests involved, and after the Superintendent is satisfied that the visit will not pose a threat to the orderly operation of the correctional facility.

(e) Employees of the Department of Corrections who have relatives incarcerated in facilities under the jurisdiction of the New Jersey Department of Corrections shall be permitted to visit an inmate in accordance with N.J.A.C. 10A:18-6.4.

(f) Approval of special visits shall be in accordance with N.J.A.C. 10A:18-6.5.

(g) Approval of visits between incarcerated family members shall be in accordance with N.J.A.C. 10A:18-6.6.

(h) Approval of visits by attorneys and court related person shall be in accordance with N.J.A.C. 10A:18-6.7.

(i) Approval of visits by children shall be in accordance with N.J.A.C. 10A:18-6.8.

10A:18-6.4 Employee visits with incarcerated relatives

(a) Employees of the Department of Corrections who have relatives incarcerated in facilities under the jurisdiction of the New Jersey Department of Corrections shall be permitted to visit an inmate provided the Superintendent is satisfied that there is no threat to the orderly operation of the correctional facility.

(b) For the purpose of this subchapter, "relative" (see N.J.A.C. 10A:18-1.3) shall also include:

1. Grandparents;

2. Cousins;

3. Uncles; and

4. Aunts.

(c) The Assistant Commissioner of the Division that is responsible for the administration of the correctional facility at which an incarcerated relative is assigned shall be notified by the employee in writing that the employee wishes to visit the incarcerated relative.

(d) Before visits are authorized, the employee shall advise the Super-

intendent of the appropriate correctional facility that the employee wishes to visit the incarcerated relative. The Superintendent may schedule the visit during regular visiting hours or at special times, according to the orderly administration and staffing of the correctional facility.

(e) The Assistant Commissioner of the Division shall maintain a central file of employees of the Department who have incarcerated relatives.

10A:18-6.5 Special visits

(a) Special visits must be authorized by the correctional facility Superintendent or his or her designee. Special visits include:

1. Visits from persons who have come long distances;
2. Visits to hospitalized inmates;
3. Visits to inmates in disciplinary status; and,
4. Visits between inmates and:
 - i. Members of the clergy;
 - ii. Social service agency representatives;
 - iii. Prospective employers;
 - iv. Sponsors; and,
 - v. Parole advisors.

(b) The Superintendent or his or her designee may approve a visitor who accompanies a person on the approved list.

(c) Close custody visits shall be governed by N.J.A.C. 10A:5 CLOSE CUSTODY UNITS and N.J.A.C. 10A:4-10 DETENTION PROGRAM.

10A:18-6.6 Visits between incarcerated family members

(a) Visits shall be permitted between incarcerated family members that are incarcerated in facilities under the jurisdiction of the New Jersey Department of Corrections.

(b) Incarcerated family members mean:

1. Husband and wife;
2. Mother and child; and,
3. Father and child.

(c) The following requirements must be met before visits between incarcerated family members shall be permitted:

1. Family relationships must be substantiated by documentation found in the classification folder or from other appropriate resources;
2. Visits must be approved by the Classification Committee(s); and,
3. The cost of the visit shall be borne by the inmates involved.

(d) The business office of the correctional facility shall predetermine the expenses involved in arranging a visit between family members, and a detailed statement of expenses shall be prepared using the following to determine the amount due:

1. Number of correction officers required which depends on the inmate's custody classification. (See N.J.A.C. 10A:3-9 TRANSPORTATION OF INMATES.)

2. The fee per correction officer which is the maximum salary of a senior correction officer at time and a half.

3. State vehicle mileage cost which is established by the Director, Division of Budget and Accounting. The overall State vehicle cost shall be based on the mileage rate times double the number of miles to the destination.

4. Cost of meals;

i. The projected number of meals for inmates and escorts shall be established.

ii. The fee charged for each meal shall be based on the rate in the current State of New Jersey Travel Regulations.

iii. The cost of meals shall be the projected number of meals times the per meal fee established by the State of New Jersey Travel Regulations.

5. All tolls and parking expenses shall be charged to the inmate.

(c) The frequency, duration and time of the visits must be coordinated between the correctional facilities involved and shall be subject to the other section of this subchapter.

10A:18-6.7 Attorneys and court related personal visits

(a) Attorneys and representatives of attorneys shall be permitted contact visits during business hours when sufficient space and staff are available.

(b) Representatives of attorneys shall include, but not be limited to the following:

1. Investigators;
2. Investigative aides;
3. Paralegals; and
4. Law students.

(c) A written notice or telephone request from an attorney shall be required 24 hours in advance of an intended visit. The purpose of the advance notice is to insure the availability of:

1. Space;

2. Staff; and,

3. The inmate.

(d) Advance notice shall include the following information:

1. Name of the attorney or his or her representative;
2. Name of the inmate to be interviewed;
3. Name of the attorney for whom the representative is acting; and,
4. Date and time the interview is sought.

(e) Appropriate identification is required of attorneys and attorney representatives who visit the inmate at a correctional facility.

(f) Contact visits with attorneys or their representatives may be restricted or prohibited when, in the judgment of the correctional facility Superintendent, the inmate is acting up or is especially dangerous. Contact visits may also be denied where the attorney or his or her representative poses a threat to security or orderly operation of the correctional facility. In those cases in which contact visits have been denied, every effort shall be made to provide a non-contact visit consistent with the orderly operation of the correctional facility.

(g) The Superintendent or his or her designee may authorize a visit without prior written notice, under exceptional circumstances.

10A:18-6.8 Visits from children

(a) Children under the age of 18 shall not be permitted to visit unless accompanied by a family member defined as a "relative." (See N.J.A.C. 10A:18-1.3.)

(b) In unusual circumstances, exceptions to (a) above shall be made by special approval of the Superintendent or his or her designee.

10A:18-6.9 Notification of prospective visitors

(a) The correctional facility shall establish a letter of information, written in English and in Spanish, which spells out the pertinent regulations with which prospective visitors should be familiar regarding visiting inmates. This letter shall include, but it not limited to:

1. Visiting times;
2. Number of visitors;
3. Visits by children;
4. Identification required;
5. Directions to the correctional facility; and,
6. The provisions of N.J.S.A. 2C:29-6 which prescribe specific penalties for introducing contraband into a correctional facility.

(b) Copies of the letter of information shall be posted in the visiting areas of the correctional facility.

(c) An inmate may choose one household which shall be notified by the correctional facility as to the occupant's approval as visitors. The approved visitors shall receive a copy of the correctional facility's letter of information. Such notification shall be transmitted within five working days from the day the inmate is received at the correctional facility.

(d) When an individual is not approved as a visitor, notice of and reasons for the exclusion shall be given to the inmate who submitted the individual's name. The inmate may appeal the decision to the Superintendent who shall respond, in writing, within ten working days of receipt of the appeal.

(e) Procedures on how the inmate can change his or her list of approved visitors shall be incorporated into the Inmate Handbook.

10A:18-6.10 Visitor identification

(a) All visitors must have identification when visiting an inmate.

(b) Visitors may identify themselves through:

1. Automobile driver's license;
2. Welfare/medicaid card;
3. Employment photo I.D. card;
4. Passport;

5. A card bearing a signature of the visitor; or,

6. Joint Connection photo I.D. card. No other form of identification is needed with this card.

(d) Social Security cards shall not be used as a means of identification.

(e) Inability to establish identity should be reported to the Superintendent or his or her designee.

10A:18-6.11 Visiting schedule

(a) The Superintendent shall establish a visiting schedule which emphasizes visiting on Saturdays, Sundays and holidays.

(b) When the restriction of visiting on Saturdays, Sundays and holidays is a hardship to a visitor, arrangements for suitable hours on other days shall be made, if at all possible.

(c) Evening visit schedules shall be established where the number of staff permit.

(d) Limitation on the length or frequency of visits shall be imposed only to avoid overcrowded conditions in the visiting area(s).

10A:18-6.12 Number of visitors

(a) The Superintendent shall establish written regulations as to the maximum number of persons who may visit an inmate at one time.

(b) These regulations should be interpreted flexibly because their purpose is to prevent overcrowding in the visiting room or unusual difficulty in supervising a visit.

10A:18-6.13 Treatment of visitors

All correctional staff members shall treat visitors in a professional, dignified, courteous and respectful manner.

10A:18-6.14 Search of visitors

(a) Signs written in English and Spanish shall be posted in both the visiting area and visiting entrances stating that, as a condition of visitation, all visitors and their belongings are subject to search while on the premises of the correctional facility.

(b) All visitors may be required to submit to a search by a scanning device or by pat frisks.

(c) If a visitor refuses to submit to a search, and there is no reasonable suspicion that the visitor is in possession of contraband, the visitor shall be directed to leave the correctional facility grounds immediately. No visit shall be allowed.

(d) Male or female correctional officers may be assigned to conduct metal detector searches of visitors regardless of the sex of the visitors as long as no physical contact is required.

(e) In the event that a correction officer with the rank of Sergeant or above receives information sufficient to form reasonable suspicion that a visitor is carrying contraband, the visitor shall be pat-frisked in accordance with (g) below. If contraband is discovered during the pat-frisk of the visitor, the visitor shall be detained and the Internal Affairs Officer of the correctional facility shall be contacted.

(f) In the event a correctional facility staff member receives information which leads him or her to believe that a visitor will be concealing contraband, the Superintendent or his or her designee shall be contacted immediately. The Superintendent or his or her designee may ask the local magistrate to issue a search warrant so that the visitor may be strip searched in accordance with (g) below. The information given to the magistrate must establish probable cause to search. The Internal Affairs Officer of the correctional facility shall be contacted and shall be present at the correctional facility before the strip search is conducted.

(g) A pat-frisk or an approved strip search shall be conducted in privacy by a correction officer of the same sex as the visitor. No member of the opposite sex of the visitor shall be present in the room during the pat-frisk or approved strip search.

(h) All contraband discovered during the search of a visitor shall be confiscated by the correction officer performing the search, and a written report shall be submitted to the Superintendent.

(i) The written report shall specify:

1. The name of the correction officer who performed the search;
2. The name of the inmate who was to receive the visit;
3. The name and address of the visitor who was searched;
4. The time of the search;
5. The description of the items confiscated; and,
6. The specific reason for confiscating the items.

(j) All contraband and evidence seized shall be turned over to the Internal Affairs Investigator.

(k) The Superintendent shall decide whether the visitor shall continue to have visitation privileges.

(l) All searches shall be conducted in a professional and dignified manner, with maximum courtesy and respect for the visitor's person.

10A:18-6.15 Search of inmates

All inmates shall be subject to a pat-frisk before a visit and pat-frisk or a strip search after the visit in accordance with procedures established by N.J.A.C. 10A:3-5. SEARCH OF INMATES AND FACILITIES.

10A:18-6.16 Supervision of visits

(a) Visits shall be supervised to prevent the passage of contraband and to insure the security and welfare of the correctional facility.

(b) The staff member in charge of the visiting room shall be responsible to assure that all visits are conducted in a quiet, orderly and dignified manner.

(c) The staff member(s) supervising visits should be cognizant of any articles passed between the inmate and the visitor. If there is a substantial basis to conclude that articles are being passed which constitute contraband or are otherwise in violation of the law or regulations, the articles shall be confiscated and examined.

(d) Handshaking, embracing and kissing shall be permitted, within the bounds of good taste, at the beginning and end of the visit in order to

minimize the opportunity to introduce contraband into the correctional facility.

i. An inmate and visitor may hold hands during the visit.

ii. Contact restrictions shall not apply to small children.

10A:18-6.17 Play areas for children

If a correctional facility provides play areas for children of visitors, signs shall be posted in both English and Spanish stating that children who use the area must be supervised by the parents or a relative and that the area and equipment are used at their own risk.

10A:18-6.18 Cash gifts from visitors

(a) A visitor(s) may bring cash to the correctional facility for deposit in an inmate's account.

(b) When a visitor(s) brings cash for deposit in the inmate's account, the correctional facility shall:

1. Accept the funds;
2. Establish and/or maintain an appropriate record of cash received;
3. Issue a signed receipt to the visitor(s); and,
4. Retain a copy of the receipt.

(c) Each correctional facility may place a limit on the amount of cash which an inmate is permitted to receive, per day, from one visitor or a combination of visitors.

10A:18-6.19 Denial or termination of a visit

(a) An inmate's visiting privileges shall not be denied because of violation of correctional facility regulations, other than those regulations specifically related to or concerned with visiting privileges.

(b) A visit may be denied or terminated and a visiting privilege suspended under the following circumstances:

1. Visitor(s) is under the influence of drugs or alcohol;
2. Space is unavailable;
3. Visitor(s) refuses to submit to search procedures;
4. Visitor(s) refuses or fails to produce sufficient identification or falsifies identifying information;
5. Visiting rules of facility are violated by visitor, provided that such rules are posted;
6. Children are disturbing other persons in the visiting area;
7. Physical contact between the visitor and inmate which is in excess of N.J.A.C. 10A:18-6.16(d); or
8. Denial or termination of visiting privileges is necessary to preserve the security of the correctional facility and maintain order in the visiting room.

(c) Prior to the denial or termination of visiting privileges for any of the reasons in (b) above, less restrictive action should be instituted. Such action may include:

1. Warning the inmate and/or visitor of improper conduct; and/or,
2. Transferring the visit to a non-contact visiting area.

10A:18-6.20 Suspension of visiting program under emergency conditions

(a) The Superintendent of a correctional facility shall notify the Commissioner of the Department of Corrections whenever the safety, security and orderly operation of the correctional facility is seriously threatened.

(b) The Commissioner shall determine if an emergency exists at the correctional facility and shall make a public declaration to this effect through the Department's Office of Public Information.

(c) In order to return the correctional facility to safe, secure and orderly operation, the Superintendent may suspend any program for the duration of the emergency. The Superintendent shall consult with the Commissioner regarding the suspension of any program.

(d) The visiting program, including visits to inmates by attorneys and attorney representatives, may be suspended for the duration of an emergency. Information concerning such suspension shall be made part of the public announcement of the emergencies.

(e) A public declaration shall be made through the Department's Office of Public Information when the state of emergency has passed. The scheduling of visits by attorneys and attorney representatives shall be reinstated beginning no later than 24 hours from the public declaration. A statement to this effect shall be made in the public declaration.

(f) The public declaration that the state of emergency has passed shall also contain a statement as to whether the visiting program shall be reinstated. If the visiting program is not to be reinstated at the end of the state of emergency, a second public declaration shall be made announcing the date that the visiting program shall be reinstated.

(g) The scheduling of visiting, in terms of the number of visitors, times of visitation and frequency of visits, shall be subject to special conditions as determined by the Superintendent in consultation with the Commissioner. Efforts shall be made to supply all such pertinent information

in the public declaration announcing reinstatement of the visiting program.

SUBCHAPTER 7. BEDSIDE AND FUNERAL VISITS

10A:18-7.1 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding bedside and funeral visits by the posting of appropriate notices in each housing area and other appropriate areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding bedside and funeral visits shall be given to each Inmate Liaison Committee. The Committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding bedside and funeral visits.

(d) New or revised rules and procedures regarding bedside and funeral visits shall be incorporated to the next revision of the inmate handbook.

10A:18-7.2 Authority

(a) Pursuant to N.J.S.A. 30:4-8.1, the correctional facility Superintendent may, at his or her discretion, authorize and permit the attendance of an inmate at the bedside and/or funeral of a dying or deceased relative.

(b) A relative shall be as defined in N.J.A.C. 10A:18-1.3.

(c) During the bedside and/or funeral visit, the inmate shall at all times be in the custody of one or more correction officers or employees of the correctional facility wherein the inmate is confined.

(d) The inmate shall not be permitted to go outside the State of New Jersey to go on a bedside or funeral visit.

10A:18-7.3 Eligibility

(a) The correctional facility shall determine whether an inmate is eligible to go on a bedside or funeral visit. The correctional facility Superintendent is not required to permit bedside or funeral visits if:

1. The visit will interfere with the security or orderly operation of the correctional facility;
2. The inmate is an incorrigible criminal;
3. The inmate is a known escape risk;
4. The inmate has unusual disciplinary problems;
5. The inmate is recognized as untrustworthy; or,
6. The inmate is a highly publicized person whose reappearance in the community under any conditions other than strict compliance with the laws governing parole and release would cause a disturbance in the community.

(b) If the Superintendent is in doubt as to the propriety of permitting a particular inmate to leave the correctional facility under the circumstances enumerated in this subchapter, the Superintendent shall consult with the Assistant Commissioner of his or her Division.

(c) The burden is on the inmate to prove that the ill or deceased person is his or her relative as defined in N.J.A.C. 10A:18-1.3.

(d) The fact of illness or death shall be verified by the Superintendent or his or her designee.

10A:18-7.4 Court ordered funeral visits

(a) A correctional facility is not authorized to accept a court order for:

1. A temporary release of an inmate for a bedside or funeral visit of a person not included in the definition of "relative" in N.J.A.C. 10A:18-1.3; or,

2. A bedside or funeral visit destination other than within the State of New Jersey.

(b) All court orders for bedside or funeral visits shall be referred immediately to the Special Assistant for Legal Affairs, Office of the Deputy Commissioner, for visit authorization.

10A:18-7.5 Payment of visit expenses

(a) The inmate or the inmate's family shall reimburse the correctional facility for all travel and other necessary expenses.

(b) The Business Office of the correctional facility shall predetermine the expenses claimed for reimbursement upon the approval by the Superintendent.

(c) A detailed written statement of expenses shall be prepared using the following criteria to determine the amount of reimbursement due:

1. Number of correction officers required which depends on the inmate's custody classification. (See 10A:3-9 TRANSPORTATION OF INMATES.)

2. The fee per correction officer which is the maximum salary of a Senior Correction Officer at time and a half.

3. State vehicles mileage cost which is established by the Director, Division of Budget and Accounting. The overall State vehicle cost shall

be based on the mileage rate times double the number of miles to the destination;

4. Cost of meals;

i. The projected number of meals for inmates and escorts shall be established.

ii. The fee charged for each meal shall be based on the rate in the current State of New Jersey Travel Regulation.

iii. The cost of meals shall be the projected number of meals times the per meal fee established by the State of New Jersey Travel Regulation.

5. All tolls and parking expenses shall be charged to the inmate.

(d) The Superintendent may grant exceptions to payment of visit expenses if all other conditions of this subchapter are met and the Superintendent is satisfied that the family cannot meet the expenses of the visit.

10A:18-7.6 Notification of Central Office

All bedside and funeral visits shall be noted in the Superintendent's monthly report.

SUBCHAPTER 8. TELEPHONE

10A:18-8.1 Written procedures

(a) Each correctional facility shall develop and implement written procedures which provide inmates with reasonable and equitable access to public telephones. These procedures shall specify:

1. Hours of telephone availability;
2. Maximum length of telephone calls; and,
3. Any limitation on telephone calls.

10A:18-8.2 Notice to inmates

(a) Inmates shall be informed of new or revised rules and procedures regarding telephone calls by the posting of appropriate notices in each housing area and other areas of the correctional facility.

(b) Notice of new or revised rules and procedures regarding telephone calls shall be given to each Inmate Liaison Committee. The Committee shall be responsible for notifying the inmate population.

(c) During the admission orientation program, new inmates shall be given a description and explanation of the rules and procedures regarding telephone calls.

(d) New or revised rules and procedures regarding telephone calls shall be incorporated into the next revision of the inmate handbook.

10A:18-8.3 Monitoring of telephone calls

(a) Non-legal telephone calls shall not be monitored except in the following instances:

1. Where it is suspected that the inmate is using the telephone to harass or threaten someone;
2. Where it is suspected or determined that the inmate's conduct while placing a telephone call presents a danger to the safe, secure and orderly operation of the correctional facility;
3. When the call is in connection with investigations of violations of laws or Department rules; or
4. When the call must be monitored in those instances as set forth in this subchapter.

(b) All non-legal telephone calls by inmates in the Capital Sentence Unit (C.S.U.) shall be monitored.

(c) Legal telephone calls shall not be monitored, except to determine the identity of the party called.

10A:18-8.4 Cost of telephone calls

(a) Outgoing telephone calls made by inmates shall be collect calls, with the following exceptions:

1. The cost of outgoing telephone calls made by inmates at the Training School for Boys, Skillman shall be borne by that correctional facility; and,

2. Telephone calls between incarcerated family members shall be handled in accordance with N.J.A.C. 10A:18-8.7.

10A:18-8.5 Emergency telephone calls

(a) An inmate shall be permitted to make monitored telephone calls of reasonable length, as determined by the monitor, in emergencies such as:

1. Serious family illness;
2. Death; or,
3. Impending disaster related to the inmate's property which cannot be deferred until regular mail delivery.

(b) Whenever an emergency telephone call for an inmate is received by the correctional facility:

1. The telephone number and name of the calling party shall be taken;
2. The particulars of the telephone call shall be noted;
3. The Social Service Department shall check, to the extent possible, the validity of the telephone call;

4. Once the Social Service Department has validated the emergency telephone call, the inmate shall be advised within 24 hours from the time the call was received; and

5. The inmate shall be permitted to return the emergency telephone call.

(c) In the event emergency telephone calls are received and a social worker is not available to perform the duties in (b) above within 24 hours, a custody supervisor shall check the validity of the emergency telephone call and follow the procedures outlined in (b) above.

10A:18-8.6 Legal telephone calls

(a) The Superintendent of the correctional facility shall establish written rules and regulations by which legal telephone calls may be made by:

1. Inmates;
2. Inmate paralegals; and,
3. Professional staff.

(b) Legal telephone calls may be made to the following individuals or agencies for assistance in legal research and/or preparation of legal documents:

1. Office of the Public Advocate;
2. Office of the Public Defender;
3. Regional Legal Services;
4. Court Clerks;
5. Attorneys of Record;
6. Ombudsmen; and
7. The Legal Services Coordinator, Office of the Deputy Commissioner, Department of Corrections.

10A:18-8.7 Telephone calls between incarcerated family members

(a) Telephone calls shall be permitted between incarcerated family members. Family members are defined as:

1. Husband and wife;
2. Mother and child; or
3. Father and child.

(b) These telephone calls shall be permitted if:

1. The family relationship has been substantiated through documentation found in the classification folder or other appropriate resources;
2. The telephone calls have been approved by the Institutional Classification Committee (I.C.C.);
3. The full costs of the telephone calls are borne by the inmates involved; and,
4. The frequency, duration and time of the calls are coordinated between the correctional facilities involved, subject to other provisions of this subchapter.

10A:18-8.8 Telephone use by authorized inmate groups

(a) Correctional facilities are not obligated to provide direct telephone lines to inmate groups or organizations.

(b) Authorized inmate groups and organizations may be permitted to make telephone calls to achieve approved objectives of that group in accordance with written rules and regulations established by the Superintendent.

(c) Authorized groups and organizations shall assume the cost of telephone calls that are made in furtherance of their approved objectives.

(d) Calls may be monitored at the Superintendent's discretion.

10A:18-8.9 Telephone use in Close Custody Units

Inmate access to telephones in Close Custody Units shall be governed by N.J.A.C. 10A:5 **CLOSE CUSTODY UNITS**.

INSURANCE

DIVISION OF ADMINISTRATION

The following proposals are authorized by Kenneth D. Merin, Commissioner, Department of Insurance.

Submit comments by February 4, 1987 to:

Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

(a)

Automobile Insurance

Automobile Reparation Reform Act

Proposed Repeal and New Rule: N.J.A.C. 11:3-7

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 39:6A-1 et seq. and 39:6A-10.

Proposal Number: PRN 1987-24.

The agency proposal follows:

Summary

On January 21, 1986, Governor Kean signed into law P.L. 1985, c.520 (the "Act"). Section 16 of the Act amends N.J.S.A. 39:6A-10 to require that death benefits provided pursuant to that section are payable without regard to the period of time elapsing between the date of the accident and the date of death if death occurs within two years of the accident and results from bodily injury sustained in that accident.

The Department's regulation, N.J.A.C. 11:3-7 (Automobile Reparation Reform Act), at section 4, establishes a schedule outlining the minimum additional income continuation benefits, essential services benefits and death benefits which must be made available by insurers pursuant to N.J.S.A. 39:6A-10. N.J.A.C. 11:3-7.4(c)4, as amended by the Department effective August 16, 1982, presently provides that death benefits, as set forth in the schedule, shall be payable if death occurs within 90 days from the date of the accident. In view of the enactment of P.L. 1985, c.520, the Department finds it necessary to revise N.J.A.C. 11:3-7.1 et seq. to conform with the Act.

However, the provisions of section 16 of the Act became operative on April 21, 1986, thereby subjecting insurers to the revised requirements as of that date. Accordingly, the Department issued Bulletin No. 86-4, dated October 3, 1986, advising insurers of the enactment of the law and delineating actions to be taken to ensure immediate compliance therewith. This proposal is a follow up to Bulletin 86-4 and its specifications are drawn from, or expand upon, requirements set forth in that Bulletin.

While the main purpose of this proposal is to effect conformance with the Act, the Department is, at the same time, reorganizing the provisions of the subchapter and making other modifications which are both of a substantive and a technical or editorial nature. This results in a repeal of the existing rule and proposed promulgation of a new subchapter.

With respect to modifications arising from the Act, the proposal revises N.J.A.C. 11:3-7.4(c)4 to conform with section 16 of the Act by providing that death benefits shall now be payable if death occurs within two years of the accident, rather than within 90 days. The provision is recodified in the proposal to N.J.A.C. 11:3-7.2(f). Further, guidelines are established for implementing section 16 of the Act and provide that the two-year time limitation applies to any death occurring on or after the operative date of section 16. Standards for advising claimants of the applicability of additional death benefits pursuant to the Act and handling resulting claims are also set forth.

The proposal, at N.J.A.C. 11:3-7.3(c), requires that insurers revise policy forms and/or endorsements that provide additional personal injury protection benefits to reflect the change effected by the enactment of the law. The proposal further requires that written notice of the change be included in all new and renewal policies and provides that the buyer's guide and coverage selection form which must be furnished to new and renewal policyholders pursuant to N.J.S.A. 39:6A-23 shall reflect the change and shall meet this notice requirement. Finally, the proposal specifies that insurers must provide all personnel responsible for handling personal injury protection claims with copies of the rule and take appropriate steps to ensure that such personnel are conversant with its requirements.

With respect to other substantive modifications, N.J.S.A. 39:6A-10 provides that insurers shall make available to insureds additional coverage for income continuation benefits, essential services benefits, death benefits and funeral expense benefits. The existing rule did not include a minimum schedule for additional funeral expense benefits, although insurers typically provide such to their insureds along with the other additional personal injury protection benefits. Therefore, the proposal amends the minimum schedule of personal injury protection benefits set forth in the rule to incorporate a funeral expense benefit of \$2,000.

This proposal also includes several amendments to the final section of the rule concerning cancellation of automobile coverage for nonpayment of premium. For example, subsection (b) is being amended to clarify that an insurer's calculation of earned premium shall be net of any earned commission due to the producer of record. Further, references in the subsection to the "date of preparation of the cancellation notice" are being amended to refer to the actual date of the notice. In addition, existing subsection (e), concerning insufficient deposits under a residual market availability plan, is being recodified as a paragraph under subsection (b) to clarify its applicability. Finally, subsection (d) is being amended to provide 15 days minimum prior notice of cancellation.

With respect to organizational modifications, the section headings of N.J.A.C. 11:3-7.2, 7.3 and 7.4 are altered to more accurately reflect their contents. N.J.A.C. 11:3-7.2(c) and (d) are recodified, with modifications as indicated, to a new section, N.J.A.C. 11:3-7.5 entitled "Notice requirements." N.J.A.C. 11:3-7.3(a) and (b) remain intact, with only minor technical modifications. The minimum schedule of additional personal injury protection benefits is still located at N.J.A.C. 11:3-7.4(b); however, subsections (c)(1)-(4), (d) and (e) are recodified with modifications to N.J.A.C. 11:3-7.2, which is entitled "General requirements applicable to additional personal injury protection benefits." N.J.A.C. 11:3-7.5 is recodified to N.J.A.C. 11:3-7.6.

Social Impact

The proposed new rule implements the requirements of P.L. 1985, c.520, section 16, which has the effect of expanding the eligibility period for death benefits available through additional personal injury protection coverage, and provides clear guidelines on its applicability.

Economic Impact

Insurers may experience certain increased costs as a result of printing and distributing revised policy forms and/or endorsements reflecting the change effected by the enactment of the Act. However, since insurers were notified of the need to revise their forms and/or endorsements in Bulletin 86-4, necessary revisions may have already been made and, therefore, any additional costs arising from promulgation of this rule are expected to be minimal. Some insurers may also experience increased costs as a result of funeral expense benefits being added to the minimum schedule of additional personal injury protection benefits that each insurer must offer. However, most insurers already typically offer such benefits along with the other additional personal injury protection benefits, in which case there will be no additional costs incurred.

Insurer's costs also may be increased as a result of providing death benefits on all death occurring after the operative date of the Act and conducting any review necessary to determine if death benefits are payable pursuant to the revised statute. Again, because insurers already have been apprised of this requirement by Bulletin 86-4, it is not expected that substantial additional costs will be incurred. Finally, insurers may experience increased costs in meeting the notice requirements of the rule.

The Department will experience an increase in administrative costs as a result of having to review and approve insurers' policy forms and/or endorsements, but expects to absorb this increase in its existing budget.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 11:3-7.

Full text of the proposed new rule follows.

SUBCHAPTER 7. AUTOMOBILE REPARATION REFORM ACT

11:3-7.1 Purpose

This subchapter implements certain provisions of the Automobile Reparation Reform Act, N.J.S.A. 39:6A-1 et seq., including the Commissioner's authority to establish the amounts and terms of additional personal injury protection benefits which must be provided in policies covering automobiles as defined in N.J.S.A. 39:6A-2.

11:3-7.2 General requirements applicable to additional personal injury protection benefits

(a) In addition to the basic personal injury protection benefits which insurers must provide pursuant to N.J.S.A. 39:6A-4, insurers shall make available to the named insured, and, at his or her option, to any resident relatives in the named insured's household additional income continuation benefits, essential services benefits, death benefits and funeral expense benefits pursuant to N.J.S.A. 39:6A-10 and this subchapter.

(b) The additional benefit indicated in each option that an insurer may offer for income continuation benefits and essential services benefits represents the aggregate of the basic and additional personal injury protection benefits.

(c) Any additional income continuation benefits that an insurer may offer shall be limited to 75 percent of the insured's weekly income.

(d) The limits which are applicable to any additional personal injury protection benefits that an insurer may offer shall apply on a per person, per accident basis.

(e) Each insurer shall make available as an option additional income continuation benefits for as long as the disability persists.

1. Each insurer shall furnish rates for such benefits upon the request of the insured.

(f) Any additional death benefits which an insurer may offer shall be payable without regard to the period of time elapsing between the date of the accident and the date of death provided death occurs within two years of the accident and results from bodily injury from that accident.

1. The requirements of (f) above shall apply to any claim for additional death benefits where death occurs on or after April 21, 1986.

i. With respect to any claim presented on or after the effective date of this subchapter, each insurer shall disclose the availability of additional death benefits in conformance with the applicable provisions of N.J.A.C. 11:2-17.1 et seq.

ii. With respect to any claim initiated prior to the effective date of this subchapter, each insurer shall take appropriate steps to determine whether additional death benefits are payable, pursuant to (f) above. These steps shall include, but need not be limited to, review of claims closed on or after April 21, 1986 for the purpose of ascertaining the applicability of additional death benefits. Upon determining that such benefits are payable, each insurer shall provide written notice to eligible beneficiaries and process the claim in accord with N.J.S.A. 39:6A-5 and the applicable provisions of N.J.A.C. 11:2-17.1 et seq.

(g) In addition to the minimum schedule of additional personal injury protection benefits set forth at N.J.A.C. 11:3-7.4(b), any insurer may provide other additional personal injury protection benefit options subject to review and approval of its filing by the Department of Insurance. Any additional options offered by the insurer must be in compliance with the standards and requirements set forth in this subchapter.

11:3-7.3 Personal injury protection policy forms or endorsements

(a) All policy forms or endorsements that provide personal injury protection benefits required by N.J.S.A. 39:6A-4 shall specify that such benefits shall be afforded by the insurer of the injured person subject to any deductibles or exclusions elected by the policyholder pursuant to N.J.S.A. 39:6A-4.3. The required personal injury protection benefits are set forth below:

1. Medical expense benefits;
2. Income continuation benefits;
3. Essential services benefits;
4. Death benefits; and
5. Funeral expense benefits.

(b) Each policy form or endorsement covering an automobile as defined at N.J.S.A. 39:6A-2 shall include excess medical payments coverage, corresponding to Section II, Extended Medical Expense Benefits Coverage of the personal automobile policy. Insurers must include a minimum coverage of \$1,000 and may offer coverage of \$10,000.

(c) Each policy form or endorsement providing additional personal injury protection benefits shall specify that, pursuant to N.J.S.A. 39:6A-10, as amended by P.L. 1985, c.520, section 16, additional death benefits under the policy shall be payable without regard to the period of time elapsing between the date of the accident and the date of death provided death occurs within two years of the accident and results from bodily injury from that accident.

11:3-7.4 Minimum schedule of additional personal injury protection coverage benefits

(a) Every rate filer's schedule of rates for additional personal injury protection benefits shall provide at least the benefit schedules set forth in Table 1 in (b) below.

(b) The additional personal injury protection coverage table follows:

Table 1

Option	Income Weekly	Total	Essential Per Day	Services Total	Death	Funeral Expense
1	\$100	\$10,400	\$12	\$ 8,760	\$10,000	\$2,000
2	125	13,000	20	14,600	10,000	2,000
3	175	18,200	20	14,600	10,000	2,000
4	250	26,000	20	14,600	10,000	2,000
5	400	41,600	20	14,600	10,000	2,000
6	500	52,000	20	14,600	10,000	2,000
7	600	62,400	20	14,600	10,000	2,000
8	700	72,800	20	14,600	10,000	2,000
9	100	unlimited	12	8,760	10,000	2,000
10	125	unlimited	20	14,600	10,000	2,000
11	175	unlimited	20	14,600	10,000	2,000
12	250	unlimited	20	14,600	10,000	2,000
13	400	unlimited	20	14,600	10,000	2,000
14	500	unlimited	20	14,600	10,000	2,000
15	600	unlimited	20	14,600	10,000	2,000
16	700	unlimited	20	14,600	10,000	2,000

11:3-7.5 Notice requirements

(a) Additional personal injury protection benefits shall be offered by the insurer at least annually on a form prescribed by the Commissioner of Insurance.

1. The buyer's guide and coverage selection form specified at N.J.S.A. 39:6A-23 and any rules promulgated thereunder shall meet the requirements of (a) above.

(b) Insurers shall provide written notice advising policyholders of the change effected by the enactment of P.L. 1985, c.520, section 16 in all applications for an automobile insurance policy and notices of renewal of an automobile insurance policy that are issued on or after the effective date of this subchapter.

1. The buyer's guide specified at N.J.S.A. 39:6A-23 and any rules promulgated thereunder shall meet the requirements of (b) above.

(c) Each insurer shall distribute copies of this subchapter to every person responsible for the handling and settlement of claims subject to this subchapter. Every insurer shall satisfy itself that all such responsible persons are thoroughly conversant with and are complying with this subchapter.

11:3-7.6 Cancellation of automobile coverage for nonpayment of premium

(a) This rule applies to all automobile policies delivered or issued for delivery in this State, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:

1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others; or

2. Any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less which is not customarily used in the occupation, profession or business of insured, other than farming or ranching, provided, however, that this rule shall not apply to any policy insuring more than four automobiles, or to any policy covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards.

(b) The effective date of the cancellation of a policy for nonpayment of premium shall be not earlier than 10 days prior to the last full day for which premium received by the company prior to the date of the cancellation notice, net of any earned commission which may be due to the producer of record, would pay for coverage on a pro rata basis. In calculating the effective date of the cancellation as provided in this section, the premium applicable to the coverage provided by the policy and the premium received by the company at or prior to the date of the cancellation notice shall be the premium used for the calculation and determination of such effective date.

1. This subsection shall not apply to deposits accompanying New Jersey Automobile Insurance Plan applications which are insufficient under Plan rules or those of any succeeding residual market availability plan.

(c) Cancellation for nonpayment of premium does not include cancellation at the request of a premium finance company or of a producer of record under N.J.A.C. 11:1-3.1.

(d) No notice of cancellation for nonpayment of premium shall be valid unless it is mailed or delivered by the insurer to the insured not more than 30 days nor less than 15 days prior to the effective cancellation date.

(a)

Automobile Rate Filers: Deductibles for Private Passenger Automobile Collision and Comprehensive Coverages**Proposed Amendments: N.J.A.C. 11:3-13.1, 13.3, 13.4, 13.5 and 13.6**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29A-39.

Proposal Number: PRN 1987-16.

The agency proposal follows:

Summary

On October 4, 1983, N.J.S.A. 17:29A-39 was amended by P.L. 1983, c.359, section 1, to empower the Commissioner of Insurance to promulgate rules requiring insurers to offer a range of deductibles up to \$2,000 for private passenger automobile collision and comprehensive coverage and, further, to offer coinsurance options applicable separately to such coverages whereby the insured would be responsible for paying a percentage of a covered loss in excess of any applicable deductible. The statute established a minimum percentage of 10 percent and authorized the Commissioner to establish by rule a maximum limit. In accordance with this statutory mandate, the Department of Insurance promulgated N.J.A.C. 11:3-13 et seq.

On January 21, 1986, N.J.S.A. 17:29A-39 was amended by P.L. 1985, c.520, section 4 to eliminate the required offering of coinsurance options. As a result of this statutory change, it is necessary for the Department to amend N.J.A.C. 11:3-13 to conform to the law.

Accordingly, this proposal eliminates any reference to coinsurance options. Specifically, references to the coinsurance options in the title of the rule and at N.J.A.C. 11:3-13.2 are being deleted. N.J.A.C. 11:3-13.4, concerning coinsurance options, is deleted entirely. Also, N.J.A.C. 11:3-13.5 is recodified as N.J.A.C. 11:3-13.4 and is amended to remove any reference to coinsurance options. Finally, N.J.A.C. 11:3-13.6 is recodified as N.J.A.C. 11:3-13.5 and modified to eliminate any reference to coinsurance options.

Social Impact

This proposal implements the intent of the Legislature by eliminating the required offering of coinsurance options. Due to a limited selection of these options by consumers no significant social impact is anticipated.

Economic Impact

Again, since it appears that these options were infrequently selected by consumers, it is not expected that the statutory change and resulting modification of this rule will have significant economic impact on the insurance-buying public.

This proposal benefits insurers since they will no longer be required to offer coinsurance options.

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

SUBCHAPTER 13. AUTOMOBILE RATE FILERS: DEDUCTIBLES [AND COINSURANCE OPTIONS] FOR PRIVATE PASSENGER AUTOMOBILE COLLISION AND COMPREHENSIVE COVERAGES

11:3-13.1 Purpose

(a) The New Jersey Automobile Insurance Reform Act of 1982, as amended (P.L. 1983, c.65, P.L. 1983, c.359, [N.J.S.A. 17:29A-33 et seq.] N.J.S.A. 17:29A-39) requires that each insurer offer:

1. A ~~a~~ range of deductibles up to at least \$2,000 for private passenger automobile collision and comprehensive coverages[; and].

[2. Coinsurance options applicable separately to private passenger automobile collision and comprehensive coverages.

i. Under such coinsurance options, the insured is responsible for paying a percentage, in the amount of at least 10 percent but subject to a limit established by the Commissioner by regulation, of a loss covered by the policy in excess of applicable deductible.]

[(b)] This subchapter provides rules for the implementation of [these] **this** requirement[s].

11:3-13.2 Scope

(No change.)

11:3-13.3 Deductibles for private passenger automobile collision and comprehensive coverages

(a) (No change.)

(b) In addition to the required schedules in (a) above, an insurer may offer other intermediary ranges of deductibles as well as deductibles which are in excess of \$2,000.

1. The offering of such intermediary and additional deductibles shall be subject to the Commissioner's approval as set forth in N.J.A.C. 11:3-13.[5]4.

(c) (No change.)

[11:3-13.4 Coinsurance options applicable separately to private passenger automobile collision and comprehensive coverages

(a) Paragraphs 1 and 2 below set forth the schedules of coinsurance options, applicable separately to private passenger automobile collision and comprehensive coverages, which each insurer shall offer pursuant to N.J.S.A. 17:29A-39 whereby the named insurer may elect to be responsible for paying a percentage of a loss covered by the policy in excess of an applicable deductible.

1. Coinsurance options applicable to collision coverage:

- i. 10 percent of the covered loss in excess of the deductible.
- ii. 20 percent of the covered loss in excess of the deductible.

2. Coinsurance options applicable to comprehensive coverage:

- i. 10 percent of the covered loss in excess of the deductible.
- ii. 20 percent of the covered loss in excess of the deductible.

(b) Nothing in this rule shall be deemed to prohibit an insurer from offering, subject to the approval of the Commissioner pursuant to N.J.A.C. 11:3-13.5, other coinsurance options in addition to the minimum options set forth in (a) above.]

11:3-13.[5]4 Filing and reporting requirements

(a) Within 30 days of the effective date of this subchapter, every automobile filer shall submit to the Commissioner for approval filings of rates or manual rules which provide at least the minimum schedules of deductibles set forth at N.J.A.C. 11:3-13.3(a) [and the minimum schedules of coinsurance options in excess of an applicable deductible set forth in N.J.A.C. 11:3-13.4(a)].

(b) All filings of collision and comprehensive deductibles [and coinsurance options in excess of an applicable deductible submitted for approval pursuant to this subchapter,] and all changes and amendments thereto, shall be prepared in accordance with insurance laws and regulations, including the applicable provisions of N.J.S.A. 17:29A-1 et seq. and N.J.A.C. 11:1-2 and the Department's existing filing procedures.

(c) (No change.)

11:3-13.[6]5 Notice requirements

(a) Effective January 1, 1984, every insurer shall furnish an applicant for private passenger automobile insurance with a schedule of collision and comprehensive deductibles [and coinsurance options] on a form attached to or accompanying all applications.

(b) At least annually, every insurer shall furnish its insureds with a written notice of its schedule of collision and comprehensive deductibles [and coinsurance options].

(a)

Rating Organizations: Private Passenger Automobile Rate Filings

Proposed Amendments: N.J.A.C. 11:3-17.4 and 17.5

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29A-4, 17:29A-14.

Proposal Number: PRN 1987-25.

The agency proposal follows:

Summary

On September 16, 1986 the Department of Insurance adopted a new rule N.J.A.C. 11:3-17 (Rating Organizations: Private Passenger Automobile Rate Filings) with substantive and technical changes which did not require additional public notice and comment.

N.J.A.C. 11:3-17 was designed to promote price diversity and competition in the automobile marketplace where 80 percent of insurers are members or subscribers of a rating organization known as the Insurance Services Office (ISO) which files rates on their behalf. In general, N.J.A.C. 11:3-17 stimulates price diversity and competition by precluding large and medium size insurers that have a volume of business sufficient to engage in independent ratemaking from using an approved ISO rate level. Specifically, insurers with a two percent or greater share of New Jersey's voluntary private passenger automobile market found by the Commissioner to have independent rate levels "at least minus five percent"

from ISO's approved rate level are precluded from using this approved rate.

Upon further review of the filing requirements of the rule, the Department has determined that certain additional data must be submitted to ensure that the Commissioner has complete information upon which to make an appropriate decision with respect to the filing. Further, the rule must provide the Commissioner with greater latitude in determining whether an insurer is substantially different and what rate level is appropriate for the remaining members. Consequently, the Department is proposing amendments to N.J.A.C. 11:3-17 to accomplish these objectives.

A new subsection, N.J.A.C. 11:3-17.4(b), is being added. This subsection requires a rating organization to submit an aggregate filing for members and subscribers with less than two percent of New Jersey's voluntary private passenger automobile market. This filing must contain, at a minimum, the most recent three years of loss, expense, financial, statistical and other data of these members and subscribers. Also, the trend, loss development factors and other actuarial assumptions utilized by the rating organization in preparing this filing must arise from and reflect the data of these insurers.

The additional data required by new subsection (b) provides the Commissioner with more comprehensive information with respect to the filing. It enables the Commissioner to determine what the appropriate rate level should be for the member and subscriber companies that have less than two percent of the New Jersey private passenger automobile market. Subsections (b) and (c) are recodified to (c) and (d).

Under the review procedures of N.J.A.C. 11:3-17.5, subsection (a) has been amended to require the Commissioner to also determine whether the aggregate filing for the members and subscribers with less than a two percent market share is in accordance with the standards of N.J.S.A. 17:29A-14.

Social Impact

The proposed amendments benefit the public by promoting price diversity and renewed competition in the automobile insurance rate marketplace. The proposed amendments benefit the Department since more comprehensive information assists the Department in carrying out its statutory obligation to review rates and ensure that they meet statutory requirements. Rating organizations will experience an impact since they must submit more comprehensive data.

Economic Impact

The public benefits when a lower rate is deemed appropriate for a company seeking to utilize a rating organization's approved rate levels. A rating organization may experience an increase in expenses since it must make an additional filing. Any additional expenses incurred by the Department in evaluating the additional aggregate filing will be absorbed by the general operating budget.

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

11:3-17.4 Private passenger automobile rate filings

(a) (No change.)

(b) Upon filing a petition for the approval of private passenger automobile rates for all members and subscriber companies, the rating organization, in addition, shall submit simultaneously a rate filing based on the experience of its members and subscribers that have less than a two percent share of New Jersey's voluntary private passenger automobile market. The filing must contain, at a minimum, the most recent three years of loss, expense, financial, statistical and other data of these members and subscribers. The loss development factors, trend and other actuarial assumptions utilized by the rating organization in preparing this filing must arise from and reflect the data base of these insurers.

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

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

11:3-17.5 Review procedures

(a) The Commissioner shall review the rating organization's rate filing made on behalf of its members and subscribers and the rate filing that is based on members and subscribers that have less than a two percent share of New Jersey's voluntary private passenger automobile market to determine whether [this] these filings [is] are in accordance with the statutory standards of N.J.S.A. 17:29A-14.

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

LABOR

DIVISION OF WORKPLACE STANDARDS

The following proposals are authorized by Charles Serraino, Commissioner, Department of Labor.

Submit comments by February 4, 1987 to:
William J. Clark, Assistant Commissioner
Division of Workplace Standards
New Jersey Department of Labor
CN 054
Trenton, New Jersey 08625-0054

(a)

Safety and Health Standards for Public Employees Fire Protection Equipment

Proposed Amendments: N.J.A.C. 12:100-4.2

Authority: N.J.S.A. 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Proposal Number: PRN 1987-14.

The agency proposal follows:

Summary

The Public Employees Occupational Safety and Health Act, P.L. 1983, c.516, N.J.S.A. 34:6A-25 et seq., requires the Department of Labor to establish health and safety standards for public employees. These standards, which should be at least as stringent as those imposed under the Federal Occupational Safety and Health Act (OSHA), are effective against local government entities as of November 6, 1986. On November 5, 1984, rules were promulgated by the Department of Labor which, among other things, incorporated the Federal OSHA standards by reference (N.J.A.C. 12:100 et seq.).

The Federal standards regarding personal protective clothing, which were among those adopted by reference, included transition language providing that all new clothing purchased after July 1, 1981 must conform to OSHA standards and all clothing in use after July 1, 1985 must comply with OSHA standards. These effective dates, which were intended to phase in the Federal OSHA regulations promulgated in 1980, were never intended to apply to New Jersey under N.J.A.C. 12:100-4.2(b), which provides that only substantive rules relating to worker health and safety are adopted by reference. In addition, the Federal rules were obviously inapplicable to local governmental entities, which were not even subject to the Public Employees standards until November 6, 1986.

The Public Employees Occupational Safety and Health Act requires the Commissioner of Labor, in consultation with the Commissioner of Health and Community Affairs and with the advice and consent of the Public Employees Advisory Board, to provide for the adoption of all applicable Federal OSHA standards no sooner than 180 days after the effective date of the Act. On August 18, 1986, the Public Employees Advisory Board, in response to widespread confusion on the part of local government entities regarding the standards which they were required to comply with as of November 6, 1986, approved a resolution clarifying that all personal protective clothing ordered or purchased after November 6, 1986 must meet the Federal OSHA standards, but that clothing ordered or purchased prior to that date which does not comply with OSHA standards may continue in use until November 6, 1988. However, this extension applies only to existing clothing which does not, in the estimation of the Department of Labor, present an imminent hazard to the wearer.

Social Impact

The proposed amendment would clarify the considerable confusion regarding the effects of the November 6, 1986 effective date by providing clear, official notice to local governmental entities of their duties and responsibilities under the Public Employees Occupational Safety and Health Act. The amendment should also result in significant improvement in the protection of firefighters by clarifying to local public employers, firefighters, and personal protective clothing manufacturers the type of protective clothing required to be used in performing interior structural firefighting.

This standard for protective clothing should result in an important improvement in the protection of firemen performing interior structural fire-fighting. The use of the foot and leg protection, body protection, hand protection, and head, eye and face protection as specified in 29 CFR

1910.156(e)(1) should result in reduced frequency of injuries sustained in fire-fighting.

Economic Impact

The cost to the employers of firemen to bring their protective clothing inventory up to the specified standards will unquestionably involve significant financial considerations, especially for volunteer companies. Offsetting the considerable initial investment, however, will be the much desired results in fewer lost work days and increased fire-fighting effectiveness along with lower medical, worker's compensation, and liability expenses.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, are adopted as occupational safety and health standards for the protection of public employees engaged in general operations and shall include:

1.-8. (No change.)

9. Subpart L—Fire Protection except that:

i. **29 CFR Part 1910.156(e)(1)(i) is amended to read: The employer shall assure that protective clothing ordered or purchased after November 6, 1986, complies with paragraph (e). As the new protective clothing is provided, the employer shall assure that all fire brigade members wear the protective clothing when performing interior structural fire fighting. After November 6, 1988, the employer shall assure that all fire brigade members wear protective clothing meeting the requirements of paragraph (e) when performing interior structural fire fighting. All personal protective clothing required to be provided to members of a fire brigade pursuant to paragraph (e) shall be provided at no cost to the employee.**

10.-18. (No change.)

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

LAW AND PUBLIC SAFETY

(b)

Board of Accountancy

Applications for Reexamination

Proposed Repeal and New Rule: N.J.A.C. 13:29-1.7

Authorized By: Jerry Tobin, C.P.A., President, New Jersey State Board of Accountancy.

Authority: N.J.S.A. 45:2B-10.

Proposal Number: PRN 1987-26.

Submit comments by February 4, 1987 to:

John J. Meacie, Executive Secretary
State Board of Accountancy, Room 507A
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed new rule sets forth the procedures and requirements for obtaining conditional credits when one passes some but not all of the subjects of the Uniform Certified Public Accountants Exam. The proposed rule clarifies and restructures the existing Conditional Credit Rule, N.J.A.C. 13:29-1.7, which is proposed for repeal.

Social Impact

The proposed rule continues the existing practice of granting conditional credit to applicants for reexamination who have passed some, but not all of the Uniform Certified Public Accountant examination.

Economic Impact

There is no change in economic impact. The current impact is minimal and results from any record-keeping expenses which may be incurred by the board as a result of granting conditional credit.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 13:29-1.7.

Full text of the proposed new rule follows:

13:29-1.7 Applications for reexamination

(a) Applications for reexamination shall be allowed as follows in (b) below, and all fees must be paid by check or money order.

(b) Rules on conditional credit are as follows:

1. A candidate will be required to attain a grade of not less than 75 in each subject before he or she will be declared to have passed the examination.

2. A candidate who fails to pass all subjects, but who receives a passing grade in two or more subjects, or in accounting practice alone, shall receive conditional credit for such subjects provided the candidate attains an average grade of 50 for the subjects failed. This minimum grade requirement is waived if three subjects are passed at a single sitting.

3. To add to conditional status, the candidate must attain a grade of 75 or more in the subjects passed and an average grade of 50 in all subjects not passed. While an average grade of less than 50 prevents the candidate from adding to this conditional status, it alone does not remove or cancel conditional status previously attained.

4. In the event that a candidate fails to qualify in all examined subjects in accordance with paragraphs 2. and 3. above during the six examinations immediately following the first examination at which conditional credit was earned, the candidate shall forfeit all conditional credit, shall revert to the status of a new applicant at the next succeeding examination for which he or she sits, and shall be required to write the entire examination therefor.

5. The Board may, in the exercise of its discretion and under extenuating circumstances, extend the period within which conditional credits shall continue to be valid.

6. At every sitting, the candidate must sit for all subjects for which he or she has not yet received a passing grade. The failure of a candidate to submit a paper for any subject of an examination not yet passed will disqualify all papers submitted by that candidate at that examination unless the Board, in its discretion, finds good cause not to disqualify the papers submitted.

7. The conditional credit provided for in this rule shall be deemed to have commenced with the examination administered in November 1983.

8. Conditional credits granted by other jurisdictions may, upon proper application to the Board, be considered for transfer. Credits determined under the laws and regulations of the issuing jurisdiction may be recognized by the Board provided the issuing jurisdiction's requirements are substantially equivalent to the requirements set forth in this rule. In all cases, the duration of recognized conditional credit shall not be continued beyond the period determined by the rules of the Board.

(a)

BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

General Rules and Regulations

Proposed New Rules: N.J.A.C. 13:31-1.12, 1.13, 1.14 and 1.15

Authorized By: John Q. Larkin, Chairman, Board of Examiners of Electrical Contractors.

Authority: N.J.S.A. 45:5A-6.

Proposal Number: PRN 1987-32.

Submit comments by February 4, 1987 to:

Christine T. DeGregorio, Executive Secretary
Board of Examiners of Electrical Contractors
1100 Raymond Boulevard, Room 503
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Examiners of Electrical Contractors is proposing four new rules which it deems necessary for carrying out the purposes of the Electrical Contractors Licensing Act.

13:31-1.12 requires that all licensees shall attend a course of study relating to the provisions of the National Electrical Code (NEC) each time a new edition of the Code is published. Proof of completion of the course will be a condition for renewal of licensure. The Board's enabling legislation requires that all licensees demonstrate familiarity with "nationally recognized electrical installation safety standards" in order to obtain initial licensure by examination (N.J.S.A. 45:5A-12). These "nationally recognized" standards are contained in the NEC. The NEC is adopted by reference in the regulations of the Department of Community Affairs pursuant to the New Jersey Uniform Construction Code Act.

Thus knowledge of the NEC is necessary for all electrical contractors.

Therefore, since the Code is revised and updated periodically the Board has determined that applicants for renewal of licensure should be required to familiarize themselves with the changes in the Code and to generally review its provisions by taking a Board-approved course relating to the new Code, thus demonstrating that, pursuant to N.J.S.A. 45:5A-13, they have maintained the standards required for licensure and are entitled to renewal.

13:31-1.13 defines the supervisory obligations of the licensee whose license qualifies the holder of a business permit to engage in the business of electrical contracting. The licensee is obligated by the licensing act to be actively involved in the business and to assume full responsibility for the supervision and inspection of the electrical work performed by the business. The rule states that the licensee will be deemed not to have assumed his or her responsibility for supervision when he or she fails to render personal supervision and to inspect the electrical work performed by employees of the permit holder where necessary and appropriate. Where the permit holder maintains a New Jersey office the licensee's regular and continuous absence from that office will be deemed to be evidence of a failure to assume his or her supervisory responsibilities, and where no New Jersey office is maintained the regular and continuous absence from the New Jersey sites where electrical work is being performed by the permit holder will be deemed to be evidence of such failure.

13:31-1.14 requires notice to the Board of any change of address of a business permit holder within ten days of such change. The Board has found that prompt notice of a change in address is necessary to facilitate communication with licensees.

13:31-1.15 will inform licensees and business permit holders that where a joint venture is formed for the purpose of entering into contracts to perform electrical work, each party to the joint venture must hold a business permit. It has for many years been the position of the Board that this requirement flows logically from the requirement that any "person" contracting to do electrical work in New Jersey have a business permit. Moreover, to permit an unlicensed person to form a joint venture with a licensee, where, by definition, responsibility for the execution of contracts entered into by the joint venturers is to be shared with the unlicensed party, would create serious enforcement problems for the Board, since the unlicensed party would not be subject to the jurisdiction of the Board. New licensees have for some time been informed of the prohibition of joint ventures with unlicensed persons by means of a booklet issued at the time of initial licensure. The Board has now determined that a formally promulgated rule will better serve the purpose of ensuring that all licensees and business permit holders are informed that such joint ventures are unlawful.

Social Impact

The National Electrical Code is revised and updated approximately every three years. Thus the Code course that proposed new section 1.12 requires will have to be taken by licensees every three years. The length and content of the courses to be approved by the Board will, naturally, vary with the extent of the revisions in any particular new edition of the Code. It is not anticipated, however, that this requirement will be excessively burdensome for licensees, who have always had the implicit duty of keeping abreast of new or changed Code requirements. Consumers will of course benefit from the assurance that all licensees are aware of the latest safety standards.

Proposed new section 1.13 sets out guidelines for licensees and business permit holders concerning their supervisory responsibilities with regard to unlicensed electrical workers. The proposed rule will thus have the positive effect of informing both licensees and the public of the requirements of the state licensing scheme for electrical contractors that place responsibility for ensuring that all electrical work conforms with nationally recognized safety standards upon the licensee.

Proposed new section 1.14 simply imposes the duty of reporting address changes promptly and is expected to have little or no impact on licensees. It will, however, lessen the administrative burden on Board personnel by assuring that they will have current addresses for all licensees when responding to consumer inquiries and investigating consumer complaints.

Proposed new section 1.15 simply states in the form of a regulation the long-standing position of the Board that joint ventures between permittees and non-licensed firms, entered into for the purpose of jointly performing electrical work, are unlawful. Thus, it is expected that it will have little or no new impact on licensees, consumers or the Board.

Economic Impact

Proposed new section 1.12 requires all licensees to take a Board-approved course relating to the NEC every three years. The cost of these

courses will thus be a necessary business expense for licensees. The Board believes that the cost will be reasonable and that it will be more than repaid in increased efficiency in handling work that involves new or amended code provisions. The other proposed new rules are expected to have little or no economic impact.

Full text of the proposed new rules follows.

13:31-1.12 Continuing education

(a) At the time of publication of each new edition of the National Electrical Code, each licensee shall attend a course of study approved by the Board relating to the new Code.

(b) Proof of the completion of the Code course referred to in (a) above shall be provided to the Board by each licensee as a prerequisite to the renewal of his license.

13:31-1.13 Supervision of electrical work

(a) The licensee whose license qualifies the holder of a business permit to engage in the business of electrical contracting in the State of New Jersey shall assume full responsibility for the inspection and supervision of all electrical work to be performed by the permittee in compliance with recognized safety standards.

(b) The qualifying licensee shall be deemed not to have assumed such required responsibility where he engages in the following acts and practices:

1. Failure to personally inspect and supervise the work of employees where necessary and appropriate.
2. Failure to ensure that electrical workers are afforded the degree of personal on-site supervision commensurate with their level of competence and the complexity of the work to be performed.
3. Failure to be personally available on a reasonable basis where circumstances require personal availability.
4. Regular and continuous absence from the principal office of the permit holder where the permit holder maintains a New Jersey office; or the regular and continuous absence from the work sites of electrical work performed in New Jersey where the permit holder does not maintain a New Jersey office.

13:31-1.14 Notification of change of address

Every licensee and business permit holder shall give notice to the Board of any change of address within 10 days of such change.

13:31-1.15 Joint ventures

(a) Where two or more persons form a joint venture for the purpose of contracting to perform electrical work in New Jersey, each party to the joint venture shall hold a business permit issued by the Board to engage in electrical contracting in New Jersey.

(b) The term "persons," as used in (a) above, is defined to mean individuals, corporations, partnerships or other business entities.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Retail Dealers of Motor Fuel Retail Fuel Merchants

Proposed Amendments: 14A:11-4.2, 4.3, 4.4, 5.2, 5.3 and 5.4.

Authority: N.J.S.A. 52:27F-18

Proposal Number: PRN 1987-13.

Submit comments by February 4, 1987 to:

Edward J. Linky, Esq.
Chief Regulatory Officer
Division of Energy Planning and Conservation
Department of Commerce and Economic Development
101 Commerce Street
Newark, New Jersey 07102

Summary

The Division of Energy Planning and Conservation, transferred to the Department of Commerce by the Executive Reorganization Plan (001-1986, August 28, 1986, see 18 N.J.R. 1967), continues to recognize

the necessity of collecting certain types of energy data to monitor supplies of petroleum products in the State. N.J.S.A. 52:27F-18 requires the Division to collect the types of energy data listed in the rules. In proposing these amendments, the Department of Commerce is deferring certain previously existing reporting requirements, thereby attempting to minimize the reporting burden on the retail fuel merchant and retail dealers of motor fuel. The deferral is in recognition that this information may be needed during an energy emergency.

Social Impact

The proposed amendments require certain fuel merchants and retail dealers of motor fuels selected at random to report information to the Division. This information is necessary to track supply and price of home heating oils and motor fuels in the State. Home heating oil supplies over 50 percent of the residential market in New Jersey. Sudden supply shortfalls accompanied by sharp price escalation have, in the past, resulted in severe economic and social impacts on lower income groups. The information supplied can assist the Division in spotting trends which may lead to the above mentioned supply and price dislocation.

Economic Impact

The economic impact of these regulations is positive with respect to the lower income groups, who may be affected by supply shortfalls and the accompanying price escalation attending the supply problem. The data provided in these regulations may allow the Division to spot dangerous trends which could result in these supply disruptions. The administrative burden on the retail fuel merchant is lessened by deferring the reporting of two types of data, thus minimizing the economic impact on the fuel merchant and retail dealer of motor fuel.

Environmental Impact

There are no perceived environmental impacts, positive or negative, associated with these amendments.

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

14A:11-4.2 Definitions

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

"[Department] **Division**" means the [New Jersey Department of Energy] **Division of Energy Planning and Conservation within the Department of Commerce.**

...

14A:11-4.3 Reporting

(a) Upon request, each retail dealer who is selected by the [Department] **Division** shall report the following background information to the [Department] **Division**:

1.-6. (No change.)

7. Total sales by month for a base period to be specified by the [Department] **Division.**

(b) Upon request, each retail dealer who is selected by the [Department] **Division** shall report the following information to the [Department] **Division**:

1.-5. (No change.)

14A:11-4.4 Penalties

(a) (No change.)

(b) The [department] **Division** may compromise and settle any claim for a penalty under this section in such amount in the discretion of the [department] **Division** as may appear appropriate and equitable under all of the circumstances.

14A:11-5.2 Definitions

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

"[Department] **Division** means the [New Jersey Department of Energy] **Division of Energy Planning and Conservation within the New Jersey Department of Commerce and Economic Development.**

...

14A:11-5.3 Reporting

(a) Upon request, each retail fuel merchant who is selected by the [Department] **Division** shall report the following background information to the [Department] **Division**:

1.-2. (No change.)

3. Historical home heating oil inventory data as of the last day of the month for a base period to be specified by the [Department] **Division**;

4. Historical home heating oil monthly sales data for the company for a base period to be specified by the [Department] **Division**.

(b) Upon request, each retail fuel merchant who is selected by the [Department] **Division** shall report the following information to the [Department] **Division**:

1.-3. (No change.)

4. Total sales of home heating oil for the most recent month[.]. **This information shall only be required during periods of shortage or supply interruption;**

5. Average number of customers served during the most recent month. **This information shall only be required during periods of shortage or supply interruption.**

14A:11-5.4 Penalties

(a) (No change.)

(b) The [department] **Division** may compromise and settle any claim for a penalty under this section in such amount in the discretion of the [department] **Division** as may appear appropriate and equitable under all the circumstances.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes 10 in Essex County and 27 in Union County Proposed Amendments: N.J.A.C. 16:28A-1.8 and 1.18

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139, 39:4-199.

Proposal Number: PRN 1987-7.

Submit comments by February 4, 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 amendments will establish "no parking" and "time limit parking" zones along Route 27 in the City of Linden, Union County and delete a "no parking" zone along Route 10 in Livingston Township, Essex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking" and "time limit parking" zones along Route 27 and the deletion of a "no parking" zone along Route 10 in Essex County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.8 and 1.18, based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking" and "time limit parking" zones along Route 27 in the City of Linden, Union County and the deletion of a "no parking" zone along Route 10 in Livingston Township, Essex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

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

16:28A-1.8 Route 10

(a) The certain parts of State highway Route 10 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-2. (No change.)

3. No stopping or standing between the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M. in Livingston Township, Essex County:

i. Along the eastbound side:

(1) (No change.)

[(2) From the easterly curb line of Sherbrooke Parkway to the prolongation of the westerly curb line of Greenwood Court.]

4.-7. (No change.)

(b) (No change.)

16:28A-1.18 Route 27

(a) The certain parts of State [H]highway Route 27 described in this subsection shall be designated and established as "no parking" zones where stopping and standing are prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-16. (No change.)

17. **No stopping or standing in the City of Linden, Union County along the east side (East St. George Avenue), beginning at the northerly curb line of East Baltimore Avenue and extending to the southerly curb line of Chandler Avenue.**

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

(e) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established [t]Time [l]Limit Parking Zones:

1. (No change.)

2. **Along the east side on St. George Avenue in the City of Linden, Union County, two hour time limit parking from 8:00 A.M. to 6:00 P.M. Monday through Friday from Roselle Street to Lincoln Street.**

TREASURY-GENERAL

DIVISION OF PENSIONS

For the following proposals, submit comments by February 4, 1987 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

(b)

Pension Adjustments Retirees Returning to Public Employment Proposed New Rule: N.J.A.C. 17:1-7.4

Authorized By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1987-6.

The agency proposal follows:

Summary

The proposed new rule will alter the current method of calculating when a retiree, who has returned to public employment subsequent to his or her initial retirement, becomes eligible to receive pension adjustment benefits from his or her initial retirement. Currently, such a person has to wait for 24 months after retiring from the post-retirement employment to receive any pension adjustment benefits. The proposed new rule will treat each retirement and the pension adjustment benefits due from each retirement separately. Whenever the individual has received 24 monthly retirement allowances from the initial retirement, he or she will then be eligible to receive pension adjustment benefits based upon that retirement. The same will be true for the post-retirement employment retirement after the 24 month waiting period has been satisfied.

Social Impact

The proposed new rule will affect current and future retirees who obtain post-retirement employment and subsequently retire from such employment.

Economic Impact

The members who may be affected by this proposal will receive pension adjustment benefits sooner than they now do and will not experience any adverse effects from the new rule. Depending upon the extent of the number of retirees who seek and retire from post-retirement employment, there might be some additional costs as a result of the new rule that will have to be funded through legislative appropriations since all pension adjustment benefits are initially funded in this manner.

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

17:1-7.4 [(Reserved)] **Return to public employment; pension adjustments**

(a) When a retiree returns to public employment to a position covered by the same retirement system from which he or she retired and subsequently retires from the post-retirement employment, each retirement will be treated separately for pension adjustment purposes.

(b) The benefit year for each retirement will be the initial year in which the retirement is effective and the member shall satisfy the 24 month waiting period for each retirement before the pension adjustment benefits may be received for that retirement.

(c) If a member was receiving pension adjustment benefits at the time that the initial retirement was cancelled due to the post-retirement employment, he or she shall begin to receive pension adjustment benefits based upon the initial retirement immediately upon the reinstatement of the initial retirement.

(a)

Public Employees' Retirement System Election of Member-Trustee

Proposed Amendment: N.J.A.C. 17:2-1.4

Authorized By: Janice Nelson, Secretary, Public Employees' Retirement System.

Authority: N.J.S.A. 45:15A-17.

Proposal Number: PRN 1987-11.

The agency proposal follows:

Summary

The proposed amendment will provide for the distribution of biographical information about candidates for election as member-trustees of the Public Employees Retirement System.

Social Impact

The proposed amendment will improve the election process for member-trustee positions by providing the members of the retirement system with information about the candidates running for the positions.

Economic Impact

No significant economic impact on the retirement system is anticipated from the adoption of this proposal. There will be a small increase in the cost of the elections which the board feels is more than justified by the improvement in the election process which will result.

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

17:2-1.4 Election of member-trustee

(a) The election of the Board of Trustee members will include the use of nominating petitions.

1.-5. (No change.)

6. Biographical information on the candidates will be distributed to the certifying officer of each employing agency at the time of distribution of ballots or notices of election without balloting.

(b)-(g) (No change.)

(h) Rules concerning biographical information on candidates are as follows:

1. Each candidate may submit a statement of biographical information of no more than 200 words for inclusion in an informational sheet of biographical information on the candidates.

2. The board may edit any information submitted to correct spelling or grammatical errors, and may refuse to include any information from a candidate's statement in the informational sheet if the board determines that the information is other than biographical in nature.

3. Copies of the informational sheet shall be distributed to the certifying officer of each employing agency at the time of distribution of ballots or notices of election without balloting.

4. The informational sheets shall be posted at appropriate places throughout the workplace of each employing agency or be otherwise distributed so that the members of the retirement system will have reasonable opportunity to read and consider the biographical information on the candidates.

(b)

Teachers' Pension and Annuity Loan Tolerances

Proposed Repeal and New Rule: N.J.A.C. 17:3-4.4

Authorized By: Anthony Ferrazza, Secretary, Teachers' Pension and Annuity Fund.

Authority: N.J.S.A. 18A:66-56.

Proposal Number: PRN 1987-12.

The agency proposal follows:

Summary

The proposed new rule provides that interest will be charged upon a member's unpaid loan balance. Under the current rule, there is a grace period of eight months when no interest is charged if a member is off the payroll. The proposed new rule will impose interest upon the outstanding loan balance without the eight month grace period. If at the end of the scheduled loan period, there is a balance due of less than \$10.00, it will be written off; if the balance due is \$10.00 or more, the member will be assessed that amount.

Social Impact

The proposed new rule will affect members of the Teachers' Pension and Annuity Fund who go off the payroll with an outstanding loan balance.

Economic Impact

The proposed new rule will affect members of the Teachers' Pension and Annuity Fund who go off the payroll with an outstanding loan balance. Under the new rule, interest will accrue upon the outstanding loan balance immediately rather than having an eight month grace period as is the case under the current rule.

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

17:3-4.4 Loan [revaluation] **tolerance**

[(a) If a member is off the payroll and not contributing for a period of eight months or less, any outstanding obligation such as a loan or arrearage, will have the ending date of the obligation extended to cover the period off the payroll.

(b) In the event the member is off longer than eight months, the obligation will be revalued and an additional interest charge made.]

Interest will be calculated on a periodic basis on the unpaid loan balance. If scheduled payments are not paid timely, interest will be accrued and added to the remaining outstanding loan balance. If, at the end of the loan schedule, there is a balance of less than \$10.00, it will be written off. If the balance is equal to or greater than \$10.00, the member will be assessed.

(c)

Supplemental Annuity Collective Trust Deposits to Trust

Proposed Amendment: N.J.A.C. 17:8-3.7

Authorized By: Douglas R. Forrester, Secretary, Supplemental Annuity Collective Trust Council.

Authority: N.J.S.A. 52:18A-111.

Proposal Number: PRN 1987-9.

The agency proposal follows:

Summary

The proposed amendment eliminates the current requirement that a participant's contributions to the Supplemental Annuity Collective Trust program be maintained in a separate account until such balance equals or exceeds \$5,000 before such funds are invested. The amended procedure will provide more expedient investment of such funds which may result in a higher investment return for the Trust.

Social Impact

The proposed amendment will affect current and future participants in the Supplemental Annuity Collective Trust program in that the proceeds of the investment return may provide a greater return for the benefit of the participants.

Economic Impact

The proposed amendment will result in quicker investment of the participant's contributions which will hopefully provide for an opportunity to produce a better investment return upon such funds.

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

17:8-3.7 Separate pension accounts; [transfer] **deposits** to trust

(a) Contributions received by the various pension systems for participants shall be recorded in a separate account and [remitted to] **deposited** into the trust [whenever the balance in such account is \$5,000 or more].

(b) (No change.)

OTHER AGENCIES

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

The following proposals are authorized by the Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

(a)

District Zoning Regulations

Proposed Amendment: N.J.A.C. 19:4-6.28

Proposed Amendments: N.J.A.C. 19:4-4.152, 4.154, 4.155

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Proposal Number: PRN 1987-19.

A **public hearing** concerning this proposal will be held on:
January 22, 1987 at 10:00 A.M.
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit comments by March 8, 1987 to:
Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

The amendments to the commercial park zoning are being proposed to correct omissions and typographical errors in the existing regulations. Block 100 Lot 3 in the Town of Secaucus was erroneously omitted in the original zoning proposal, however, the change was made to the official zoning map. Additionally, the bulk requirement for minimum open space was previously omitted and is now being added.

The original commercial park regulations erroneously contained the environmental performance standards of the light industrial A zone; these have been corrected to reflect the nature of the commercial park designation.

Social Impact

The proposed Commercial Park Zone will eliminate uses in the subject properties which are inconsistent with present and planned zoning, and are incompatible with present and planned uses of the properties and of those properties in their vicinity. The general impact will be one which will greatly upgrade existing non-conformities and their resultant impact on surrounding development.

Economic Impact

The proposed rules will permit a substantial redevelopment of the subject properties with uses similar and compatible with adjacent and nearby development. The proposed rules and the resultant elimination

of the existing non-conformities will promote and foster continued growth in adjacent zones consistent with the Commission's overall Master Plan.

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

19:4-6.28 Official Zoning Map

The zoning designation of Block 100, Lots 1, [and] 2 and 3; Block 101, Lot 8; Block 110, Lot 1; Block 117, Lot 1; Block 118, Lots 2, 3, 4 and 5 in the Town of Secaucus, New Jersey, are changed from Waterfront Recreation to Commercial Park.

19:4-4.152 Commercial Park Zone: Bulk regulations

(a) The following are bulk regulations in the Commercial Park Zone:
1.-5. (No change.)

6. Minimum open space: 20 percent.

19:4-4.154 Commercial Park Zone: Environmental performance standards

(a) All uses in the [light industrial and distribution zone-A] **Commercial Park Zone** shall comply with the environmental performance categories of N.J.A.C. 19:4-6.1 through 19:4-6.16 as follows:

[1. All category-B environmental standards shall apply;]

1. Environmental performance standard category A for radioactive materials; fire and explosion hazards;

2. Environmental performance standard category B for noise; vibration; steam, airborne emissions and glare;

[2.]3. All water quality standards shall apply.

19:4-4.155 Commercial Park Zone: Design of structures and other improvements

The design of all structures and other improvements shall comply with the requirements [sign standards] of N.J.A.C. 19:4-6.18.

(b)

District Zoning Regulations Official Zoning Map

Proposed Amendment: N.J.A.C. 19:4-6.28

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Proposal Number: PRN 1987-18.

A **public hearing** concerning this proposal will be held on:
January 27, 1987 at 10:00 A.M.
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit comments by March 13, 1987 to:
Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

The proposed amendment to the Hackensack Meadowlands District Official Zoning Map consists of a change in zoning designation of Block 107, Lots 2A, 2B, 2C, 2D, 2F, 2G and 2J in Little Ferry, New Jersey from Light Industrial B to Low Density Residential.

Social Impact

The proposed rezoning of the aforementioned lots in Little Ferry, New Jersey will promote the PMDC mandates of orderly development and housing for the Meadowlands region.

Economic Impact

The proposed zoning amendment will permit development of the subject property consistent and compatible with adjacent lands.

Full text of the proposal follows:

19:4-6.28 Official zoning map

The zoning designation of Block 107, Lots 2A, 2B, 2C, 2D, 2F, 2G and 2J in Little Ferry, New Jersey, is changed from Light Industrial B to Low Density Residential.

OFFICE OF ADMINISTRATIVE LAW NOTE: A map showing the proposed change in zoning designation was submitted as part of the Commission's notice of proposed rule.

(a)

District Zoning Regulations Official Zoning Map

Proposed Amendment: N.J.A.C. 19:4-6.28

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and
N.J.A.C. 19:4-6.27.

Proposal Number: PRN 1987-20.

A **public hearing** concerning this proposal will be held on:
January 27, 1987 at 11:30 A.M.
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit comments by March 8, 1987 to:
Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

The proposed amendment to the Hackensack Meadowlands District Official Zoning Map consists of a change in zoning designation of Block 112, in Secaucus from Service Highway Commercial to Low Density Residential.

Social Impact

The proposed zoning change will allow for residential development in an area which is generally developed with residential uses which are currently non-conforming. The adjacent existing neighborhood in Secaucus, outside of the Meadowlands district, is predominantly residential in nature.

Economic Impact

The proposed rezoning of Block 112 in Secaucus, New Jersey will permit development of the subject property consistent and compatible with adjacent lands.

Full text of the proposal follows:

19:4-6.28 Official zoning map

The zoning designation of Block 112, Lots 1-7 in Secaucus, New Jersey, is changed from Service Highway Commercial to Low Density Residential.

OFFICE OF ADMINISTRATIVE LAW NOTE: A map showing the proposed change in zoning designation was submitted as part of the Commission's notice of proposed rule.

CASINO CONTROL COMMISSION

(b)

ACCOUNTING AND INTERNAL CONTROLS

Gaming Equipment

Rules of the Games

Proposed Amendments: N.J.A.C. 19:45-1.12;

19:46-1.12 and 19:47-7.7

Authorized By: Casino Control Commission,
Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and 5:12-70(f)

Proposal Number: PRN 1987-17.

Submit comments by February 4, 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 amendments to N.J.A.C. 19:45-1.12, 19:46-1.12 and 19:47-7.7 will clarify certain areas of the recently adopted minibaccarat

regulations. It should be noted that the currently approved procedures have yet to be implemented. Specifically, the combined effect of the proposed amendments would allow a floorperson to supervise two minibaccarat tables or a combination of one minibaccarat table and a blackjack, roulette or big six table, specify where marker buttons will be maintained at the gaming table, reduce the number of betting areas used for wagers from seven to six and change the required procedure for dealing the "Banker's Hand" (that is, second and fourth cards from the dealing shoe) at the game of minibaccarat.

Social Impact

The proposed amendments will not have an immediate impact on the public since minibaccarat has yet to be implemented in the casinos. However, when the regulations are implemented, these amendments will provide integrity over dealing procedures and will assure consistency throughout the industry.

Economic Impact

The reduction from seven players to six players is not expected to have an economic impact, as minibaccarat with seven players was not implemented in the casinos.

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) The following personnel shall be used to operate and conduct table games in an establishment:

1.-4. (No change.)

5. Floorman shall be:

i.-iii. (No change.)

iv. The first level supervisor assigned the responsibility for directly supervising the operation and conduct of gaming at not more than two minibaccarat tables[,] or a combination of one minibaccarat table and a blackjack, roulette or big six table.

6.-10. (No change.)

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

19:46-1.12 Baccarat and minibaccarat tables; physical characteristics

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

(c) Minibaccarat shall be played at a table having on one side places for the participants, and on the opposite side a place for the dealer.

1. The cloth covering the minibaccarat table shall have imprinted thereon the name of the casino, and shall have rectangular, circular, or oval areas to indicate boxes for the wagers on the "Banker's Hand" and "Player's Hand". Such boxes shall not exceed [seven] six in number

2. The following inscriptions shall appear on the cloth covering of the minibaccarat table:

i. (No change.)

ii. Boxes numbered one to [seven] six that correspond to the seat numbers for the purpose of marking "vigorish" or "commission"; and

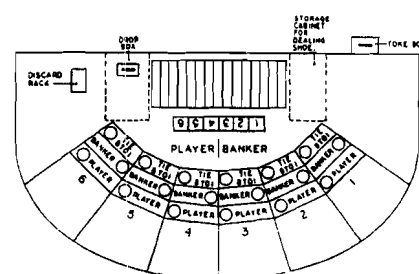
iii. (No change.)

3. If marker buttons are used for the purpose of marking "vigorish" or "commission," these marker buttons shall be placed in the table inventory float container or in a separate rack designed for the purpose of storing marker buttons and such rack shall be placed in front of the table inventory float container during gaming activity.

[3]4. Each minibaccarat table shall have a drop box and a tip box attached to it at approximately the locations depicted in the following diagram:

OAL NOTE: The current minibaccarat table diagram has not been reproduced here or in the New Jersey Administrative Code. The current diagram may be reviewed either at the Office of Administrative Law or the Casino Control Commission.

The proposed new minibaccarat table diagram follows:



19:47-7.7 Hands of player and banker; procedure for dealing initial two cards to each hand

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

(c) The dealer shall deal an initial four cards from the shoe face down. The first and third cards dealt shall be placed face down in the area on

the layout designated for the "Player's Hand". The second and fourth cards dealt shall be placed face down **underneath the right corner of the dealing shoe until the "Player's Hand" is called as provided for in N.J.A.C. 19:47-7.8(a) at which time the second and fourth cards shall be placed face up** in the area on the layout designated for the "Banker's Hand".

RULE ADOPTIONS

PERSONNEL

(a)

MERIT SYSTEM BOARD

Supplemental Compensation on Retirement Rules

Readoption: N.J.A.C. 4:5

Proposed: November 3, 1986, at 18 N.J.R. 2152(a).

Adopted: December 4, 1986 by the Merit System Board, Eugene

J. McCaffrey, Sr., Commissioner, Department of Personnel.

Filed: December 4, 1986 as R.1987 d.15, **without change**.

Authority: N.J.S.A. 11A:6-16 to N.J.S.A. 11A:6-23, P.L. 1986, c. 112.

Effective Date: December 4, 1986.

Expiration Date: December 4, 1991.

Summary of Comments and Agency Responses:

The Hearing Officer of the Merit System Board conducted a public hearing on November 20, 1986 to gather information regarding recodification and readoption with amendments to N.J.A.C. 4:5-1.1 et seq., Supplemental Compensation on Retirement.

As a technical procedure, the Board had proposed N.J.A.C. 4:5-1.1 et seq. for readoption so as to assure regulatory continuity while allowing interested parties the appropriate time to comment and the Board to deliberate on the proposed changes to the existing rules.

There was no testimony presented concerning the readoption of N.J.A.C. 4:5-1.1 et seq.

Since there was no testimony on the readoption of N.J.A.C. 4:5-1.1 et seq., the Board readopted the rules so that they do not lapse. Adoption of the remaining portions of the proposal may be found in a related Notice of Adoption in this Register.

Full text of the readopted rules appears in the New Jersey Administrative Code at N.J.A.C. 4:5-1.1 et seq.

MERIT SYSTEM BOARD

(b)

Supplemental Compensation on Retirement Rules

Adopted Amendments: N.J.A.C. 4:5-1.6, 2.1, 4.1,

4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 5.1, 5.2, 5.3, 6.1

Adopted Repeal: N.J.A.C. 4:5-1.1, 1.2, 1.3, 1.4, 1.5, 1.7, 6.2

Adopted Recodification: N.J.A.C. 4:5 to 4:2-26

Adopted New Rule: N.J.A.C. 4:1-26.1

Proposed: November 3, 1986, at 18 N.J.R. 2152(a).

Adopted: December 11, 1986 by the Merit System Board, Eugene

J. McCaffrey, Sr., Commissioner, Department of Personnel.

Filed: December 11, 1986 as R.1987 d.31, **with changes** not in violation of N.J.A.C. 1:30-4.3.

Authority: N.J.S.A. 11A:6-16 to N.J.S.A. 11A:6-23; P.L. 1986, c. 112.

Effective Date: January 5, 1987.

Expiration Date: January 28, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: A Department of Personnel representative presented a summary of the proposal. With the enactment of new legislation, N.J.S.A. 11A:1-1 et seq., rule making authority in this area now rests with the Merit System Board. The Board proposes to adopt rules codified at N.J.A.C. 4:1-26.1 and 4:2-26.1 et seq., which set forth the regulations regarding Supplemental Compensation. The Board also proposes existing

4:5-1 et seq. for readoption, as a technical procedure so as to assure regulatory continuity while allowing interested parties the appropriate time to comment and the Board to deliberate on any changes.

N.J.A.C. 4:2-26.2 reflects the statutory purpose of the program, which is a financial inducement and incentive for conscientious and efficient service that concludes upon a bona fide retirement. Thus, employees who are removed for cause after an opportunity for a hearing or who retire in lieu of removal, or under circumstances which warrant removal, will not be eligible to receive this benefit. This condition of eligibility is reflective of general public policy of a program payable from public funds, the cost of which is necessarily borne by the taxpayers. N.J.A.C. 4:2-26.10 provides for the increase in the maximum allowable payment from \$12,000 to \$15,000. Additionally, N.J.A.C. 4:2-26.7 reflects current practice regarding eligibility for supplemental compensation of retired employees if such employees reenter State employment.

Other non-substantive changes reflect grammatical construction and were also effected to avoid repetition, and to provide clarification through reorganization of the subject matter areas.

COMMENT: A CWA representative from Local 1033 disagreed with the provisions in N.J.A.C. 4:2-26.2(c). He indicated that if a person is removed for cause, that person should not be entirely stripped of his supplemental compensation. He suggested that a certain amount may be deducted subsequent to the misconduct of an employee, but that employee should be entitled to the amount of sick leave which he or she conscientiously earned up to the time of the misconduct. In many cases, long time employees have fallen victim to substance abuse or senility and they should not be penalized for the time they had earned under better circumstances. He questioned whether employees who are allowed to retire in lieu of removal would be eligible to receive supplemental compensation. He also questioned whether settlements, such as rehabilitation in lieu of removal, would cause ineligibility. In addition, he asserted that if an employee is denied supplemental compensation, that person will have no avenue of appeal.

COMMENT: The CWA Area Director objected to proposed N.J.A.C. 4:2-26.2(c) since supplemental compensation could be forfeited based on removal proceedings late in an employee's career whereas creditable unused sick leave is accumulated over many years of presumably productive service. He also stated that while verification of sick leave is discretionary under certain circumstances in N.J.A.C. 4:2-17.2(a), proposed N.J.A.C. 4:2-26.3(c)2 mandates such verification for an employee to be eligible for supplemental compensation if his or her title is not in the career service. Additionally, the commenter disagreed with the requirement that appointing authorities must request approval of eligibility of class titles not in the career service before supplemental compensation payment to employees in such titles is authorized.

COMMENT: A commenter from IFPTE, Local 195 supported the increase in the maximum allowable payment from \$12,000 to \$15,000. He also suggested that provisions be made for employees receiving a pension from another State to be eligible for supplemental compensation upon separation from New Jersey State employment.

COMMENT: A CWA representative from Local 1037 also objected to the ineligibility for supplemental compensation on retirement when the employee is removed under less than honorable conditions. He felt that such a rule was too broad at best and malicious at worst and would result in a denial of supplemental compensation on retirement despite years of faithful service.

RESPONSE: The primary area of concern with the proposal was the language of proposed N.J.A.C. 4:2-26.2(c) and its potential effect on employees who may be removed under conditions such as medical disability after many years of honorable service. Additionally, another concern raised was the lack of an administrative appeals procedure when an employee is found ineligible for supplemental compensation. Also, a question was raised as to the feasibility of awarding supplemental compensation benefits to employees who are receiving pensions from another state and who are thus unable to become a member of a New Jersey State administered retirement system.

The Board recognizes that proposed N.J.A.C. 4:2-26.2(c) may have resulted in denial of supplemental compensation under a variety of situations in which the employee has exhibited no fault or misconduct. This was not the intention of the proposal. Accordingly, the provision has been modified to allow the Commissioner of Personnel to exercise discretion in reviewing requests for supplemental compensation where removal was

based on circumstances such as a medical disability or where mitigating circumstances are present in those cases where an award of supplemental compensation might otherwise be barred.

Additionally, proposed N.J.A.C. 4:2-26.12 has been modified to provide for an appeal to the Commissioner of Personnel for an employee whose request for supplemental compensation has been initially disproved.

Since verification of sick leave is discretionary for career service employees, such verification requirement for employees in titles not in the career service has been deleted. However, employees in titles not in the career service must be granted sick leave under terms and conditions similar to career service employees to be eligible for supplemental compensation pursuant to N.J.S.A. 11A:6-16. Thus, title approval is required before payment is made to employees in titles not in the career service.

Also, supplemental compensation on retirement from a New Jersey State administered retirement program is statutorily derived and there is no discretion to expand this benefit to other pension programs. See N.J.S.A. 11A:6-16.

The Merit System Board adopted the rules with the changes referred to above.

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

CHAPTER 2

SUPPLEMENTAL COMPENSATION ON RETIREMENT RULES

Old Citation	New Citation	Old Citation	New Citation
4:5-1.1	Repealed	4:5-4.4	4:2-26.3
4:5-1.2	Repealed	4:5-4.5	4:2-26.4
4:5-1.3	Repealed	4:5-4.6	4:2-26.5
4:5-1.4	Repealed	4:5-4.7	4:2-26.6
4:5-1.5	Repealed	4:5-4.8	4:2-26.7
4:5-1.6	4:2-26.14	4:5-5.1	4:2-26.9
4:5-1.7	Repealed	4:5-5.2	4:2-26.10
4:5-2.1	4:2-26.1	4:5-5.3	4:2-26.11
4:5-4.1	4:2-26.2	4:5-6.1	4:2-26.12
4:5-4.2	4:2-26.8	4:5-6.2	Repealed
4:5-4.3	4:2-26.13		

SUBCHAPTER 26. SUPPLEMENTAL COMPENSATION ON RETIREMENT

4:1-26.1 General

(a) In State service, supplemental compensation on retirement shall be provided pursuant to N.J.A.C. 4:2-26.1 et seq.

(b) In local service, an appointing authority may establish and administer a supplemental compensation on retirement program.

4:2-26.14 Effect on other retirement benefits

Supplemental compensation for accumulated sick days shall in no way affect any pension or retirement benefits for which a retired employee is eligible under any other program.

CHAPTER 5

[LUMP SUM SICK LEAVE COMMITTEE RULES]

(RESERVED)

CHAPTER 2

STATE SERVICE

SUBCHAPTERS 24. AND 25. (RESERVED)

SUBCHAPTER 26. SUPPLEMENTAL COMPENSATION ON RETIREMENT

4:2-26.1 Words and phrases defined

(a) As used in this subchapter, the listed terms shall have the following meanings unless the context clearly indicates otherwise:

"Deferred retirement" means termination of service before a retirement benefit becomes payable where benefits are to be received at normal service retirement age.

"Layoff" means the separation of a permanent employee from employment for reasons other than delinquency or misconduct.

"Newark Employees' Retirement System" means those eligible employees of the University of Medicine and Dentistry of New Jersey only.

"State administered system" means those pension programs administered by the State of New Jersey.

4:2-26.2 General eligibility provisions

(a) Upon retirement from a State administered system or other system as defined in N.J.A.C. 4:2-26.1 and as authorized by N.J.S.A. 11A:6-16, State employees in the career service, and employees in the senior executive and unclassified services who have been granted sick leave under the terms and conditions similar to classified employees shall be eligible for supplemental compensation upon retirement ("SCOR").

(b) Employees of Rutgers, the State University; the New Jersey Institute of Technology; and the University of Medicine and Dentistry of New Jersey, who perform services similar to those performed by employees of the New Jersey State Colleges who are in the career service, or who have been granted or authorized sick leave under the terms and conditions similar to those provided to career service employees, including those employees of the University of Medicine and Dentistry of New Jersey who are members of the Newark Employees' Retirement System, shall be eligible for supplemental compensation upon retirement.

(c) Eligibility for supplemental compensation is conditioned on separation from State service based on retirement.

1. Employees removed for cause after an opportunity for a hearing shall not be eligible for supplemental compensation.

2. Employees who retire in lieu of removal, or under circumstances which would warrant removal, shall not be eligible for supplemental compensation.

3. The commissioner of Personnel may allow supplemental compensation in 1. and 2. above where such removal was based on a medical disability or where the Commissioner finds sufficient mitigating circumstances to warrant supplemental compensation.

4:2-26.8 Deferred retirement

Employees who elect a deferred retirement shall not be eligible for supplemental compensation.

4:2-26.13 Death of an employee

In the event of an employee's death within one year after the effective date of retirement but before payment of supplemental compensation is made, payment shall be made to the employee's estate. However, should an applicant die before his or her retirement allowance becomes due and payable, the determination of eligibility for supplemental compensation shall follow the procedures of his or her particular pension system.

4:2-26.3 Eligibility for employees in titles not in the career service

(a) Appointing authorities must request approval of eligibility of class titles of State employees not in the career service before payment to employees in such titles will be authorized. A request for title approval is to be filed on application form ***[CS-279]* *DPF-279***.

(b) The Department of Personnel, Division of Classification and Compensation, shall maintain a roster of class titles of employees not in the career service eligible for supplemental compensation.

(c) In order for a title not in the career service to be eligible for supplemental compensation, the following standards must have been met.

1. (No change in text.)

[2. Proof of need for sick leave usage was required when sick leave exceeded five consecutive work days or an aggregate of more than 15 days in a 12-month period.]

[3.]*2. Sick leave was not advanced against anticipated sick leave to be earned in the next or future calendar years.

[4.]*3. Sick leave or some other earned leave was charged for all compensable days when the employee was not working.

[5.]*4. All sick leave was reportable and reported accordingly.

[6.]*5. The timekeeping procedure required certification of the accuracy of the employees' pay time.

[7.]*6. Sick leave records for each employee were maintained from the original date of appointment at one or more central points under the jurisdiction of the appointing authority with proper security and verification of all use and accrual.

[8.]*7. All records are available for inspection.

[9.]*8. Where other types of leave with pay or holidays or days off with pay were granted which were in excess of leave provided to classified employees, a detailed explanation of the character and extent of such practices shall be provided.

4:2-26.4 Faculty members

Faculty members of the State Colleges, Rutgers University, the New Jersey Institute of Technology, and the University of Medicine and Dentistry of New Jersey are not eligible for supplemental compensation on retirement since they are not granted leave in a manner similar to em-

employees in the career service. Faculty members who have served in an administrative capacity may be eligible for supplemental compensation based on the time served in said administrative capacity. Such employees, deemed eligible, shall be entitled to payment based on sick leave earned while serving in an administrative title and the salary attendant thereto.

4:2-26.5 Ten month employees

All 10 month employees in State service will be eligible for supplemental compensation upon retirement if a reduction factor is applied or has been applied to the amount of accrued sick leave for which payment is requested. This reduction factor shall equal the number of days earned by these employees in excess of the amount of sick leave that would have been earned had the time been prorated on a 10-month basis.

4:2-26.6 Disability retirement

State employees who retire as a result of an accidental or ordinary disability retirement, and who meet all other applicable regulations will be considered eligible for supplemental compensation on retirement.

4:2-26.7 Return to service after retirement

(a) Employees who have retired and received supplemental compensation will be considered to have incurred a break-in-service if such employees reenter State employment. See N.J.A.C. 4:2-26.11.

1. Employees who have retired and received the maximum supplemental compensation payment shall not be eligible for further supplemental compensation upon reentering State employment.

2. Employees who have retired and received less than the maximum supplemental compensation payment shall be eligible for the difference between the payment received and the maximum payment upon reentering State employment.

4:2-26.9 Computation of payment

(a) Supplemental compensation shall be computed at the rate of one-half the employee's daily rate of pay for each day of earned and unused accumulated sick leave at the effective date of retirement based upon the average annual compensation received during the last full year of active employment prior to the effective date of retirement. Overtime pay or other supplemental pay shall not be included in the computation. The amount due shall be computed in accordance with application form *[CS-279]* *DPF-279*.

(b) Periods of leaves of absence without pay shall be excluded from the computation.

(c) If an employee changes from 12-month to 10-month employment during the last year of employment, the average annual compensation must be weighted accordingly.

(d) In calculating average annual compensation, the beginning date shall not be any earlier than one year prior to the effective date of retirement.

4:2-26.10 Maximum payment

No supplemental compensation shall exceed \$15,000.

4:2-26.11 Break in service

An employee who has or shall incur a break in service as a result of separation due to layoff shall be credited with sick leave accrued both before separation and after return to employment. An employee incurring a break in service for any other type of separation shall have sick leave computed only from the date of return to employment.

4:2-26.12 Procedures for processing

(a) When the employee receives a copy of the official notice of retirement approval issued by the appropriate pension board or authority, he or she may file an application form *[CS-279]* *DPF-279* requesting supplemental compensation.

1. An employee may defer a request for supplemental compensation but it must be submitted within one year of the effective date of retirement.

(b) The appointing authority shall not process the application form until it has received the employer's copy of the notice of retirement approval.

(c) After receipt of the employer's copy of the notice of retirement approval and application, the appointing authority shall within 45 days from the date of receipt of the application form forward to the Department of Personnel, Division of Classification and Compensation:

1. A personnel action request certifying the number of days earned and unused accumulated sick leave credited in accordance with N.J.S.A. 11A:6-5 or similarly credited in accordance with N.J.A.C. 11A:6-16 and the amount to be paid;

2. A copy of the notice of retirement approval;

3. A copy of the completed application form *[CS-279]* *DPF-279*.

(d) If the appointing authority has not received the employer's copy of the notice of retirement approval, it must, within 45 days after receipt of the employee's application form *[CS-279]* *DPF-279*.

***(e) The Director of Classification and Compensation shall review the request for supplemental compensation to ensure that eligibility criteria have been met.**

1. If eligibility criteria have been met, the request shall be forwarded to the Commissioner of Personnel for approval.

2. If eligibility criteria have not been met, the Director shall disapprove the request and shall advise the employee of the reasons why and afford the employee the right to appeal the disapproval to the Commissioner of Personnel.*

[(e)](f)*** Following approval of the application by the Commissioner of Personnel, payment shall be made by the appointing authority in accordance with established payroll procedures. The payroll should not be submitted to the centralized payroll section, Department of the Treasury, until 45 days after the effective date of retirement or until 45 days after the date of the employer's receipt of the notice of retirement approval for the individual, whichever is later, because of the possibility of the retirement being cancelled by the employee within 30 days and because under the statutes, retirement is contingent on the employee surviving 30 days after the effective date of retirement. The appointing authority shall be responsible for withholding payment should any contingencies occur.

NEW JERSEY EMPLOYEE AWARDS COMMITTEE

(a)

Employee Awards Program

Readoption with Amendments: N.J.A.C. 4:4

Proposed: September 8, 1986, at 18 N.J.R. 1766(a).

Adopted: December 5, 1986, by the New Jersey Employee

Awards Committee, William G. Scheuer, Executive Secretary.

Filed: December 5, 1986 as R.1987 d.20, 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. 11A:6-29 et seq.; 11A:6-31(a).

Effective Date: December 5, 1986 (Readoption).

January 5, 1987 (Amendments)

Expiration Date: December 5, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: A Department of Personnel spokesperson indicated that the New Jersey State Employees' Awards Committee proposed to readopt with amendments its rules regarding the State Awards Program which will expire on December 7, 1986, pursuant to Executive Order No. 66(1978). The Committee has reviewed the rules codified at N.J.A.C. 4:4-1 et seq.

The Program provides an opportunity for individual employees to receive extra compensation or other awards for suggestions to increase productivity, heroism, professional accomplishment, public service, years of service and retirement.

As part of the review process, revisions were made to Chapter 4. The principal changes involved clarification and reorganization. One substantive change provides the inclusion of awards for public service at N.J.A.C. 4:4-4.1(c) to reflect outstanding acts of public service above and beyond the duties of an employee's position in servicing the public. The Committee also proposed existing N.J.A.C. 4:4-4.1 et seq. for readoption, as a technical procedure so as to assure regulatory continuity while allowing interested parties the appropriate time to comment and the Committee to deliberate on any changes.

COMMENT: A CWA representative commented that, under N.J.A.C. 4:4-1.1(c)2, departmental committees may be established to assist in the administration of the program. The commenter suggested that such departmental committees be mandatory and meet monthly so that employee suggestions will be expeditiously processed. He maintained that the Awards Committee has no way to enforce decisions. Thus, if the departments decide not to pay an individual for an awardable suggestion, the employee presently has no redress. Further, he recommended that the Awards Committee be empowered to award something, even if it is a

token gift or plaque, if a suggestion is meritorious regardless of its implementation. In so doing, he believed that an employee would feel a real sense of self worth.

A Department of Corrections representative wanted to clarify the ineligibility standard which precluded a suggestion award for an employee whose responsibility it was to bring a suggestion to his or her supervisor. See N.J.S.A. 4:4-3.3. She suggested that the Chief Executive Officer rather than the Personnel Officer be notified of delinquent suggestions. Further, she suggested that the Committee notify the suggester when the award was approved as well as when it was disapproved. In addition, she presented language changes for consistency in N.J.A.C. 4:4-3.4 and 4:4-4.5.

RESPONSE: N.J.A.C. 4:4-2.3 provides for mandatory departmental awards committees which shall meet at least monthly and operate under the supervision of the rules of the State Employees' Awards Program.

N.J.S.A. 11A:6-30a provides awards for accomplishments promoting economy, productivity and efficiency in State government functions. Therefore, such awards necessarily have to be implemented.

Regarding the comment that the Awards Committee should have the power to enforce its actions, N.J.A.C. 4:4-3.4 provides that awards proposed by the Committee will be processed by the Secretary. Further, N.J.A.C. 4:4-3.9 provides that after Committee approval, a check to the Department of Personnel will be authorized by the State Treasurer and Budget Director. Any case in which an action is not enforced should be brought to the attention of the Committee.

With regard to the preclusion of a suggestion award for an employee whose responsibility it is to bring the suggestion to the supervisor's attention, N.J.A.C. 4:4-3.3 generally provides that such employees are ineligible if such a responsibility is in his or her normal job definition. For example, if an employee working in training makes a suggestion regarding the administration of examinations, he or she would be eligible for an award because the examination area is not a part of the employee's duties. In any case, such an interpretation that an employee's responsibility is a part of his or her job duties must be made on the basis of the particular facts presented.

The word "Committee" denotes the State Committee and is capitalized throughout, including N.J.A.C. 4:4-3.4 which was referenced by a speaker at the hearing. Another comment referred to N.J.A.C. 4:4-4.5; however, this provision was deleted. It should be noted that N.J.A.C. 4:4-3.4(f) provides that, when reconsideration or impasse occurs, the Committee will refer the suggestion directly to the chief executive officer of the referring departmental committee.

N.J.A.C. 4:4-3.4(c) does provide that the Committee shall issue its final decision and shall notify the suggester of the disposition of a suggestion within 60 days of receipt of the departmental committee's recommendation, unless there is a need for a trial period to test the suggestion.

Summary of Changes made between Proposal and Adoption:

Recently, N.J.S.A. 11A:6-29 to 32 was enacted, which provides for the newly named New Jersey Employee Awards Committee to be located in the newly established Department of Personnel. Accordingly, appropriate changes were made throughout the rule to reflect these name changes. (This includes changes from "President" to "Commissioner," from "Civil Service" to "Personnel.") Further, N.J.A.C. 4:4-1.1 and 4:4-2.2 reflect statutory modifications that provide for the Awards Committee to be composed of seven members each of whom shall be employed in a different department in the Executive Branch and no member shall serve more than two consecutive full terms. N.J.A.C. 4:4-1.2 reflects another statutory declaration which provides that the purpose of the Awards Program is to promote efficiency, productivity and economy by rewarding individual employees. N.J.A.C. 4:4-5.1 reflects statutory changes regarding classification in the career, senior executive or State unclassified service. In addition, clarifying language was added to N.J.A.C. 4:4-3.7(a)6 and 4:4-4.1(a).

The Committee adopted the rule recodification with changes as required by N.J.S.A. 11A:6-29 to 32, in addition to minor language clarifications.

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

NEW JERSEY STATE EMPLOYEES' AWARDS COMMITTEE RULES CROSS REFERENCE CHART

OLD CITATION	NEW CITATION
Subchapter 1	Subchapter 1
4:4-1.1	4:4-1.1
4:4-1.2	4:4-1.2
Subchapter 3	Subchapter 2
4:4-3.1	4:4-2.1
4:4-3.2	4:4-2.2
4:4-3.3	4:4-2.3
4:4-3.4	Repealed
Subchapter 4	Subchapter 3
4:4-4.1	4:4-3.1
4:4-4.2	4:4-3.2
4:4-4.3	4:4-3.3
4:4-4.4	Repealed
4:4-4.6	4:4-3.5
4:4-4.7	4:4-3.6
4:4-4.8	4:4-3.7
4:4-4.9	4:4-3.8
4:4-4.10	4:4-3.9
Subchapter 5 and 6	Subchapter 4
4:4-5.1	4:4-4.1
4:4-5.3	4:4-4.2
4:4-6.3	4:4-4.2
4:4-5.4	4:4-4.3
4:4-6.4	4:4-4.3
Subchapter 7 and 8	Subchapter 5
4:4-7.1	4:4-5.1
4:4-7.2	4:4-5.1
4:4-8.2	4:4-5.1
4:4-7.3	4:4-5.2
4:4-7.4	4:4-5.3
Subchapter 8	Repealed

CHAPTER 4 *NEW JERSEY* *[STATE]* EMPLOYEE*[S]* AWARDS PROGRAM

SUBCHAPTER 1. AUTHORITY AND PURPOSE

4:4-1.1 Authority

(a) The New Jersey ***[State]* Employee*[s]* Awards Committee** consists of ***[five]* *seven*** persons ***[who shall be State officers or employees]* *each of whom shall be employed in a different department in the Executive Branch*** and shall be established in the Department of ***[Civil Service]* *Personnel under the supervision of the Commissioner of Personnel (hereafter "Commissioner")**. The Committee shall determine awards for all State employees and adopt regulations. See N.J.S.A. 11:2C-1 et seq.

(b) In local service, the governing body may establish, by resolution, an Awards Program and provide for an advisory committee to assist in the administration of the program.

4:4-1.2 Purpose

(a) The purpose of the Awards Program is to promote efficiency*, **productivity*** and economy in State government by rewarding individual employees for meritorious performance and suggestions which improve State government operations. To accomplish this purpose, the following awards are hereby established:

- 1.-3. (No change.)
4. Awards for Public Service
5. Awards for Service
6. Retirement Recognition Awards

(b) The Awards Program applies to employees in the following State agencies:

1. Office of the Governor;
2. Department of Agriculture;
3. Department of Banking;
4. Department of Civil Service;
5. Department of Commerce and Economic Development;
6. Department of Community Affairs.
7. Department of Corrections;
8. Department of Defense;
9. Department of Education;

10. Department of Energy;
11. Department of Environmental Protection;
12. Department of Health;
13. Department of Higher Education;
14. Department of Human Services;
15. Department of Insurance;
16. The Judiciary;
17. Department of Labor;
18. Department of Law and Public Safety;
19. Department of the Public Advocate;
20. Department of State;
21. Department of Transportation
22. Department of the Treasury;
23. Office of Legislative Services;
24. Public Broadcasting Authority.

SUBCHAPTER 2. ADMINISTRATION AND ORGANIZATION OF THE AWARDS PROGRAMS

4:4-2.1 Administration

Individual award committees (hereinafter "departmental committees") shall be established in each agency operating under the Awards Program and shall be overseen by the New Jersey *[State]* Employee*[s]* Awards Committee (hereinafter "Committee"). Divisional and institutional award sub-committees may be established within agencies to assist departmental committees in the administration of the Awards Program within the agencies but the responsibility for the agencies' activities will remain with the departmental committees.

4:4-2.2 New Jersey *[State]* Employee*[s]* Awards Committee

(a) The Committee consists of *[five]* ***seven*** State officers or employees, no two of whom shall be employed by the same department *[or organization]*, appointed by the Governor upon nomination by the *[President of the Civil Service Commission (hereinafter "President")]* ***Commissioner***, for *[a]* ***staggered*** term*s* of three years or until their successors shall have been appointed and qualified. If a vacancy on the Committee occurs by reasons other than expiration of term, the vacancy shall be filled for the unexpired term. ***No member shall serve more than two consecutive full terms.***

(b) (No change.)

(c) The Committee shall meet and organize as soon as practicable after the annual appointment of new members and select a Chairperson from among its members. The Committee shall hold a regular meeting at least once each month and special meetings at the call of the Chairperson. All meetings will be open to the public and conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6.

(d) The Committee is responsible for the formulation of the Awards Program and for the supervision and direction of departmental level committees. It has the authority to adopt and promulgate rules and regulations for the conduct and operation of the Awards Program under the supervision and direction of the *[President]* ***Commissioner***. The Committee shall submit monthly reports to the *[President]* ***Commissioner*** concerning operations of the Awards Program which shall include data on the activity level, processing timeframes and the amount of benefits to the State resulting from the Program. This data will also be furnished to each agency's chief executive officer. The Committee shall submit an annual report to the Governor *[through the President]* ***from the Commissioner***.

(e) The administrative work of the Committee shall be performed by an Executive Secretary (hereinafter "Secretary") and other necessary staff *[assigned by the President]* ***designated by the Commissioner***. It shall be the duty of the Secretary to attend the regular and special meetings of the Committee, act as its secretary, record its official actions and maintain minutes of its official proceedings. The Secretary shall establish and maintain necessary records; implement the decisions of the Committee; establish and maintain an adequate employee and public relations program; investigate and make recommendations concerning the effect of the Awards Program and report the findings to the Chairperson; and shall perform such other related work as may be required.

(f) (No change.)

(g) The Secretary shall make the initial review of all proposed award recommendations from the departmental committees. When the recommendation from the department committee is for disapproval, the secretary shall, from the evidence presented, determine if the disapproval should be upheld.

(h) (No change.)

(i) (No change in text.)

4:4-2.3 Departmental awards committees

(a) Each agency operating under the Awards Program shall establish an award committee, which shall include at least three members, and which shall be known as the "Awards Committee" of the agency.*[']*

(b) The departmental committees shall be appointed by the chief executive officers of the agencies for a term of one year, effective each May 18; and the committees will assume responsibility for the conduct and operation of the Awards Program within their agencies.

(c) Each agency's chief executive officer will appoint as departmental committee members employees who are responsible for evaluation and analysis of the agency's programs.

(d) The chairperson of the departmental committee will be an individual who has direct access to the chief executive officer.

(e) The departmental committees will meet at least monthly and operate under the supervision and direction of, and in accordance with the rules and regulations promulgated by, the Committee. They shall establish rules and regulations for the processing of awards within their agencies with the approval of the Committee.

(f) The committees will be responsible for objectively and impartially investigating and evaluating each proposed award furnished to them by the Committee and returning a recommendation to the program staff of the Committee within prescribed timeframes. Documentation to support their conclusions should accompany their recommendation.

(g) The committees shall be responsible for suitable ceremonies for the presentation of awards to their employees and shall use available means, as the Committee may propose, to promote employee participation in the Program.

(h) The committees will report their activities to the Committee through their chairpersons. Each agency's chief executive officer will ensure that a suitable committee is maintained. The chairperson of the departmental committee will act as liaison between the Committee and the departmental committee to ensure that proposed awards are evaluated expeditiously and implementation is effected.

4.4-3.4 (RESERVED)

SUBCHAPTER 3. AWARDS FOR SUGGESTIONS

4:4-3.1 Suggestions Program

An award for a suggestion shall be made to any eligible employee whose constructive proposal has been implemented or ordered implemented by competent authority, in accordance with regulations established by the Committee and approved by the *[President]* ***Commissioner***.

4:4-3.2 Definition of a suggestion

(a) A suggestion is a written proposal which will produce notable economy or improvement in an operation of State government or one which will improve service to the public, employee safety, public safety or employee welfare. It must be original, or propose a new application of an old idea. There must be a causal relationship between the suggestion and the implementation of the improvement. If an organization maintains that there is no causal relationship between the suggestion and implementation, it is incumbent on the organization involved in the evaluation to substantiate the absence of a relationship. A suggestion shall include:

1.-4. (No change.)

4:4-3.3 Eligibility

(a) Suggestions which improve State government operations can be considered for an award except:

1. No award shall be made for a suggestion which represents a part of an employee's duties and which the employee has the authority to change or the responsibility to bring to the attention of his or her supervisor.

2. No award shall be made for a suggestion by an employee whose primary duty is research and planning unless the suggestion concerns a matter which is clearly unrelated to the employee's assignment or primary duty.

3. No award shall be made to any member of the Committee or a departmental committee, the Secretary, or the staff of the Awards Program. Under special circumstances, the Committee may authorize exceptions.

4. No award shall be made for a disapproved suggestion unless the idea is implemented as a result of the suggestion within two years from the date of notice of disapproval and is subsequently approved by the Committee.

5.-6. (No change.)

7. No award shall be made for a suggestion involving new structures, equipment, materials and procedures during the initial period of trial,

experiment or development, the length of which is considered reasonable by the Committee.

8. No award shall be made for a suggestion which simply involves instituting or raising fees or taxes levied by the State.

9. No award shall be made for a suggestion to transfer programs or activities from one level of government to another unless the transfer of the program or activity effectuates a savings or improvement of services, in which case the award would be based only on the saving or value of the improvement in having one level of government, as opposed to another, perform the program or activity.

10. No award shall be made for a suggestion to recoup owed funds from another agency or political subdivision of the State.

11. No award shall be made to anyone not employed at the time of submission in one of the State departments, offices, commissions, branches, or authorities or for any idea or improvement which these agencies are not authorized to perform.

(b) Subsection (a) above does not necessarily represent an exclusive or complete list concerning eligible employees or eligible suggestions.

4:4-4.4 (Reserved)

4:4-3.4 Procedure for processing suggestions

(a) Suggestions may be submitted through one of two options at the discretion of the suggester:

1. Option 1 suggestions are suggestions sent to the Committee which refers them to the appropriate departmental committee. The departmental committee makes a determination and forwards it to the Committee which may adopt, reject or modify this determination.

2. Option 2 suggestions are suggestions sent to the Committee to ensure that the suggestion is recorded as the suggester's property. Thereafter, the suggester directly works with the suggester's supervisor and the departmental committee to develop and to refine the suggestion. The departmental committee then makes a determination and forwards it to the Secretary or the Committee which may adopt, reject or modify this determination. These suggestions are only applicable to a suggester's own work duties in his or her particular organization.

(b) The Committee and the departmental committees shall utilize the following procedures in processing suggestions:

1. For Option 1, the departmental committee shall make, within 45 days of receipt of the suggestion from the Committee, an evaluation and a recommendation to the Committee which, by majority vote, may accept, reject or modify it.

2. For Option 2, the departmental committee shall make arrangements with the suggester and appropriate supervisory personnel to develop and refine the suggestion. This departmental committee shall, within a reasonable time, make an evaluation and recommendation to the Committee which, by majority vote, may accept, reject or modify it.

(c) The Committee shall notify the suggester of the disposition of the suggestion within 60 days of receipt of the departmental committee's recommendation, unless there is a need for a trial period to test the suggestion.

(d) If the Committee determines that it is necessary to use outside consultants in the development or evaluation of a suggestions, the costs may be offset against the benefits.

(e) Awards approved by the committee will be processed for payment by the Secretary of New Jersey State Employees Awards Committee.

(f) Suggestions which are disapproved by the departmental committee, may, for cause, be referred back for reconsideration and, in the event of an impasse, referred directly to the chief executive officer by the committee. If referred to the chief executive officer, the committee will include justification as to why the suggestion should be reconsidered.

4:4-4.5 (Reserved)

4:4-3.5 Maintenance of records

(a) The State Committee shall maintain the following records:

1. Official copies of the minutes of all meetings and all other official actions which shall be public information.

2. Copies of all suggestions received, with supporting documents and recommendations from departmental committees.

(b) The departmental committees shall maintain the following records:

1. Official copies of the minutes of all meetings and all other official actions which shall be public information.

2. Copies of each suggestion referred by the Committee, with supporting documentation and the recommendation of the departmental committee.

3. Records of all transactions and supportive documentation for Option No. 2 suggestions.

(c) Records will be retained after final action by the Committee in accordance with the Bureau of Archives Records Retention Schedule.

4:4-3.6 Appeals procedure

(a) A suggester may appeal a determinations of the Secretary by writing to the Committee within 20 calendar days from the notice of action and shall submit any new or expanded information to support the appeal.

(b) The Secretary will acknowledge the appeal and request the departmental committee involved to review its initial recommendation, considering the new information. The departmental committee will then furnish its recommendation and all supportive data to the Committee.

(c) The re-evaluation from the departmental committees will be reviewed by the Secretary. If the suggestion is not implemented and the disapproval is upheld, the suggester will be notified of the disapproval. If the suggestion is implemented and the original disapproval is reaffirmed, the suggestion will be placed on the agenda for the next regular meeting of the committee. The Committee will notify the suggester of the time and place of the meeting and afford him or her an opportunity to appear in person.

(d) (No change in text.)

(e) (No change in text.)

(f) If a suggestion is disapproved, and within the two year period from notice of disapproval the suggestion appears to be implemented, the suggester may appeal the original determination and maintain eligibility.

(g) (No change in text.)

(h) (No change in text.)

(i) (No change in text.)

(j) (No change in text.)

(k) The ***[Civil Service Commission]* *Merit System Board*** does not exercise jurisdiction in these appeals.

4:4-3.8 Evaluation of intangible benefits of a suggestion

(a) Where the value of a suggestion cannot be measured entirely or precisely in actual dollar savings, the following factors may be considered to set a dollar amount:

1. Effectiveness of solution offered by suggester;
2. Seriousness of present problem in terms of money or other factors;
3. Extent of problem;
4. Probability of problem actually happening; and
5. Ingenuity of the solution.

(b) Awards of up to \$100.00 may generally be made for such suggestions. However, in exceptional situations, an award for a suggestion with an intangible value may exceed \$100.00 provided sufficient justification is supplied. (It is possible that an intangible award would be of such importance that it would warrant an award up to the maximum award limit.)

4:4-3.7 Awards

(a) The following regulations will apply to awards for those employees in salary range 29 and below at the time of submission:

1. Awards for suggestions shall be in cash or additional paid vacation time off in lieu of cash under certain circumstances.

2. Cash awards will be no less than \$25 nor more than \$10,000 for each approved suggestion.

4. When a suggestion is determined to be meritorious and is adopted solely or primarily because it will result or has resulted in the savings of money, the amount of the award shall be ***[ten %]* *10 percent*** of the estimated net annual savings in the first year of operation. Under exceptional conditions the Committee may select a typical year, or may average several years to determine a fair award.

5. (No change.)

6. When a suggestion is adopted primarily upon the basis of improvements in such areas as safety, health, welfare, morale, etc. or it is otherwise impossible to determine a dollar savings, the Committee, after consideration of the departmental committee's recommendations, shall determine the amount of the award commensurate with the benefits anticipated from the suggestion. The ***[guide]* *factors*** shown in ***N.J.A.C.* 4:4-3.8** will be used by the Committee to determine the award for intangible suggestions. In certain exceptional cases, the Committee may authorize an award which exceeds the guidelines. An award may be made, when justified, on the basis of both monetary savings and intangible benefits.

(b) The following regulations will apply to awards for those employees in salary range 30 and above at the time of submission:

1. There will be no cash award for suggestions covering savings of less than \$10,000 for the first year of implementation. In those cases, the Committee may authorize some other form of recognition.

2. For those suggestions involving first-year savings to the State of \$10,000 to \$100,000, the award will be \$500.

3. For those suggestions involving first-year savings to the State of over \$100,000, the award will be \$1,000.

(c) The following regulations apply to employees in all salary ranges:

1. A suggester shall receive the full amount of the award, after deductions for taxes, when the suggestion is implemented. Where implementation is not complete but specific steps have been taken, a token, partial or full award may be paid at the Committee's discretion. It shall be the responsibility of the departmental committee to inform the Secretary when a suggestion has been placed into operation. When there is a question regarding the date of implementation, the Committee shall make the final determination.

2. A cash or other award shall be in addition to the regular compensation of the recipient. The acceptance of such award shall constitute an agreement that the use of the suggestion by the State or its subdivisions or independent authorities shall not form the basis of a further claim of any additional award upon the State of New Jersey by the employee, his or her heirs, or assignees.

3. Persons who leave State service after having submitted a suggestion are still eligible for an award. In case of death, the award will be paid to the next of kin or estate.

4. Departmental awards consisting of plaques may be presented to the department, office, commission, branch or authority with the best record of employee participation during the fiscal year for the:

i. Highest number of suggestions approved per one hundred employees.

ii. (No change.)

5-6. (No change.)

7. Departmental "Suggester of the Year" may be nominated by each department, office, commission, branch or authority. The nomination of one individual from each participating agency will be made by the departmental committee with confirmation of the chief executive officer. The nomination must be approved by the Committee which will designate a uniform award and arrange for its procurement and presentation. Standards in selecting the nomination will be:

i. (No change.)

ii. The suggestions must be of importance or value to the department.

iii. (No change.)

4:4-3.9 Procedure for making awards

(a) After approval by the Committee or Secretary, a check will be authorized by the State Treasurer and Budget Director to be drawn upon the funds appropriated to the Department of *[Civil Service]* ***Personnel*** for the payment of awards and prepared to the order of the suggester for the net amount of the award.

(b) (No change.)

(c) Awards involving "vacation options" will be arranged between the employee's Personnel Officer and the Secretary on a case by case basis.

(d) (No change.)

SUBCHAPTER 4. AWARDS FOR HEROISM, PROFESSIONAL ACCOMPLISHMENT AND PUBLIC SERVICE

4:4-4.1 Heroism, Professional Accomplishment and Public Services Awards Programs

(a) Awards for heroism may be made to an employee who performs an act of bravery or heroism which is above and beyond the duties or responsibilities of the employee's *[position]* ***title*** and which reflects credit upon the State of New Jersey.

1. Any State employee, or group of State employees, is eligible for this award whether or not the act was performed during working hours.

(b) Awards for professional accomplishment may be made to an employee in recognition of meritorious or distinguished accomplishments. The accomplishments need not fall entirely within the scope of normal duties but shall be in the nature of a major contribution in a specific field, vocation or profession, or a personal outstanding act such as conduct reflecting credit on the individual and the State service.

1. Any State employee, or group of State employees, is eligible for this award if one or more of the following conditions are met:

i. An employee has through study and investigation initiated and successfully established new and outstanding methods, practices, plans or designs having fundamental values, such as pioneering or research and development work in administration, engineering, law, medicine, natural resources or the social sciences;

ii. An employee has, through unselfish devotion to duty far and above normal requirements, contributed significantly to the advancement of the

State service on a professional or sub-professional level, such as organization, employee relations, humanities or vocation;

iii. An employee has achieved honors from professional societies, institutions for learning or recognized groups for outstanding performance in his or her field;

iv. An employee has assisted and been intimately associated with the recipient of an award. Such award shall be a letter of commendation or a citation, presented at the time of the award for professional accomplishment.

(c) Awards for public service may be made to an employee for an outstanding act of public service which is above and beyond the duties or responsibilities of the employee's position and which reflects credit on the State of New Jersey.

1. Any State employee, or group of State employees, is eligible for this award whether or not the act was performed during working hours.

4:4-4.2 Procedure for processing

(a) A nomination for an award for heroism or public service may be made by an employee or by any resident of New Jersey within one year from the day the act was performed. There is no time limitation on nomination for professional accomplishment awards. The nomination shall be submitted in writing to the Committee and shall include data substantiating the proposal. When the nomination is received by the Committee it will be reviewed by the Secretary and a letter of acknowledgement sent to the nominator. Copies of the nomination shall then be forwarded to the appropriate departmental committee(s) for investigation and recommendation.

(b) The departmental committee shall make a thorough investigation of the nomination. Following investigation, the departmental committee shall meet and, by majority vote, recommend approval or disapproval. If the recommendation is for disapproval, the original nomination shall be forwarded to the Secretary with an explanation of the reasons for disapproval, along with any supporting documents. If the recommendation is for approval, the original nomination with recommendations and supporting documentation shall be forwarded to the department's chief executive officer for endorsement. The original nomination with recommendations and supporting documents shall then be forwarded to the Secretary for action by the Committee.

(c) The Committee shall consider the nomination and the departmental committee's recommendations and decide, by majority vote, whether or not an award should be made and the type of award. The Secretary shall advise the nominator, in writing, of the action of the Committee.

4:4-4.3 Awards

(a) Awards for heroism, professional accomplishment and public service may be letters of commendation, certificates, citations, plaques, medals or such other awards as the Committee shall from time to time determine. In certain cases of exceptional and unusual nature, the departmental committees may recommend that a non-monetary or monetary gift accompany the award. Non-monetary gifts may include, but are not limited to, granting "time off" vacation day(s), up to two days as prescribed in 4:4-3.7(a)3.

(b) The Committee shall determine the type of awards in each case and shall be responsible for the design and procurement of the awards.

(c) Presentation ceremonies shall be arranged by the Secretary.

SUBCHAPTER 5. AWARDS FOR SERVICE AND RETIREMENT RECOGNITION

4:4-5.1 Service and Retirement Recognition Awards Program

(a) Awards for service shall be given to all employees upon completion of each five years of employment.

1. Service shall include employment in the *[classified]* ***career, senior executive*** or unclassified service in either a regular, provisional or temporary capacity.

2. In determining years of employment, the same basis will be used as is used for computing annual vacation leave (N.J.S.A. *[11:14-1]* ***11A:6-2*** and N.J.A.C. 4:1-17.3).

3. Any dispute or question regarding eligible service shall be referred to the Committee for resolution.

4. It shall be the responsibility of each agency to determine the employees who will be eligible for awards.

(b) Awards for retiring State employees shall be given at the time of retirement to all those who have retired with pension from the State regardless of the amount of service time. Only one Retirement Recognition Award will be presented to any employee.

1. Service shall include employment in the *[classified]* *career, senior executive* or unclassified service. Any dispute or question regarding eligible service shall be referred to the Committee for resolution.

2. It shall be the responsibility of each agency to determine the employees who will be eligible for awards.

4:4-5.2 Procedure for processing

(a) The departmental committees shall review personnel records prior to the fiscal year to determine employees who will be eligible for service and/or retirement recognition awards in the coming fiscal year.

(b) The departmental committees shall request from the Secretary the required amount of awards needed.

4:4-5.3 Awards

(a) Service may consist of letters of commendation, certificates, citations, plaques, medals, gift items, or such other awards as the Committee shall from time to time determine. The Committee shall determine the type of awards in each case and shall be responsible for the design and procurement of the awards.

(b) Retirement recognition awards shall consist of a "Certificate of Appreciation" for service to the State and another award as the Committee shall from time to time determine. The Committee shall determine the type of awards in each case and shall be responsible for the design and procurement of the awards.

(c) Presentation ceremonies shall be the responsibility of the departmental committees and shall be conducted at least on a yearly basis.

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

(a)

Uniform Construction Code Mechanical Subcode

Adopted Amendments: N.J.A.C. 5:23-3.4 and 3.20

Proposed: October 20, 1986 at 18 N.J.R. 2083(a).

Adopted: December 1, 1986, by Leonard S. Coleman, Jr.,

Commissioner, Department of Community Affairs.

Filed: December 3, 1986 as R.1987 d.14, **without change**.

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

Effective Date: January 5, 1987.

Expiration Date: April 1, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

5:23-3.4 Responsibility

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

(f) Responsibility for enforcement of specific provisions of the Mechanical Subcode shall be as follows:

1. Articles 3, 12, and 14, Plan Review functions shall be enforced jointly by the building and fire subcode officials. Construction inspection functions shall be enforced exclusively by the Building subcode official.

2.-3. (No change.)

4. Article 11 Plan review functions shall be enforced jointly by the building and fire protection subcode officials; construction inspection functions shall be enforced exclusively by the fire protection subcode official.

Renumber 4.-6. as 5.-7. (No change in text.)

5:23-3.20 Mechanical subcode

(a) (No change.)

(b) The following articles, sections or pages of the BOCA Basic/National Mechanical Code/1984 are amended as follows:

1.-4. (No change.)

5. Article 5. of the mechanical subcode, entitled "Kitchen Exhaust Equipment" is amended as follows:

i.-iii. (No change.)

iv. Section M-508.1 "Inspection and cleaning" is deleted.

6.-19. (No change.)

(c) (No change.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Barrier Free Subcode

Notice of Correction: N.J.A.C. 5:23-7.9 and 5:23-7.20

Take notice that errors appeared in the November 3, 1986 issue of the New Jersey Register at 18 N.J.R. 2197 and 2198 concerning the adoption of the Barrier Free Subcode. Text at N.J.A.C. 5:23-7.9, Use Group I, and N.J.A.C. 5:23-7.20, Accessible routes: protruding objects, should have appeared as follows:

5:23-7.9 Use Group I

(a) (No change in text.)

(b) Buildings or portions thereof of Use Group I-2 shall be made accessible as follows:

1.-3. (No change in text.)

4. Outpatient Facilities licensed by the Department of Health shall be made accessible as follows:

i. (No change in text.)

*ii. Ten percent of the parking spaces, but not less than two, shall be accessible.

5. All other buildings or portions thereof of Use Group I-2 shall be made fully accessible.

(c) Buildings or portions thereof of Use Group I-3 shall be made accessible as follows:

1. All public or common areas and employee areas, including toilet or bathing facilities associated with these areas, shall be made accessible.*

5:23-7.20 Accessible routes: protruding objects

(a) No protruding objects shall reduce the clear width of an accessible route or maneuvering space below the minimums required by N.J.A.C. 5:23-7.19. See Figure 7.20a.

1. Objects less than 2 feet long that are fixed to wall surfaces shall not project into accessible routes more than 4 inches if mounted with their leading edges between 2 feet 3 inches and 6 feet 8 inches above the finished floor. See Figure 7.20b.

2.-3. (No change in text.)

EDUCATION

STATE BOARD OF EDUCATION

(c)

Thorough and Efficient System of Free Public Schools

Adopted New Rule: N.J.A.C. 6:8

Proposed: October 6, 1986 at 18 N.J.R. 1984(a).

Adopted: December 3, 1986 by State Board of Education, Saul Cooperman, Secretary.

Filed: December 11, 1986 as R.1987 d.32, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 4-15, as supplemented and amended by N.J.S.A. 18A:7A-1 et seq.

Effective Date: January 5, 1987.

Expiration Date: January 5, 1992.

Summary of Public Comments and Agency Responses:

The Department received five letters of comments from interested individuals. The following concerns were expressed:

COMMENT: The term "remedial program" poses problems in interpretation. What the proposed code defines as remedial program in reality is nothing more than a coaching effort.

RESPONSE: The Department has revised the definition of "remedial program."

COMMENT: The commenter suggests that "remedial program" and "state compensatory education pupil" be more strictly defined so as not to unduly expand eligibility.

RESPONSE: Preventive and remedial program plans are reviewed by county office staff in cooperation with the Division of Com-

pensatory/Bilingual Education staff. The county superintendent approved remedial plans as a result of the coordinated review. Remedial programs are monitored by county office staff in cooperation with Division of Compensatory/Bilingual Education staff for compliance with the Administrative Code.

COMMENT: The term "disaffected pupil" is a judgemental definition which in the view of the commenter would be a blank check for schools to label students. Commenter urges the department to eliminate the use of the term "disaffected pupil."

The term "disruptive pupil" is seen as a labeling device at a time when there is a move away from such classifications, i.e., special education. The department is urged to eliminate the use of the term "disruptive pupil."

RESPONSE: The intent of these definitions is not to classify or label students but rather to have districts make provisions for identifying those students experiencing difficulty with behavior or learning and for providing them with appropriate educational programs and services.

COMMENT: Special Education is being extended into the regular classroom through the expansion of "Individual Comprehensive Assessment." The commenter urges the elimination of individual comprehensive assessment.

RESPONSE: The commenter is mistaken. Based upon a departmental review, this section refers to compensatory education and not special education.

COMMENT: Expansion of the requirement for board approval of district curriculum to include the kindergarten and pre-kindergarten levels is an undesirable expansion of authority over preschool programs. The commenter states that such expansion will encourage an earlier entrance to formalized learning and questions the validity or wisdom of investing in such programs.

RESPONSE: The code as proposed would not/cannot mandate that districts offer pre-kindergarten programs. The code would assure that, if districts do offer such programs, they are included in the annual elementary and/or secondary curriculum plan for local board approval.

It is appropriate for the department to extend explicit requirements for pre-kindergarten since state funding helps to support the programs.

COMMENT: The requirement to provide all pupils with guidance and counseling is an unwarranted expansion of power. Guidance and counseling should be limited to the secondary level.

RESPONSE: The intent of the proposed guidance and counseling provision is not based on a clinical/pathology model but rather is intended to address the developmental demands of students and to help them acquire the skills needed for effective independent functioning.

COMMENT: There appears to be conflict in the fact that districts must make plans for identifying and providing appropriate programs for disaffected pupils. However, in monitoring these requirements for evaluation and certification, such requirements appear to be optional. The commenter suggests that "disaffected students" definition be dropped.

RESPONSE: There is nothing optional about the requirement for districts to make provisions for identifying disaffected pupils and providing them with an appropriate educational program and services. The requirement is one of the seven required indicators, all of which must be met to receive an acceptable rating for the comprehensive curriculum and instruction element.

COMMENT: The commenter questions the effect on a school district if only half its students have the capacity to pass the 9th grade test.

RESPONSE: The Department believes that all students have the capability to pass the High School Proficiency Test (HSPT). Students who do not pass the HSPT the first time will have three more opportunities to pass the test. For those students who have not passed the test by the 12th grade, a Special Review Assessment (SRA) may be conducted to determine if students who have satisfactorily fulfilled all other high school graduation requirements can demonstrate mastery of basic ninth grade skills in activities outside the test.

Skills, test items and passing scores are determined with input from the business, industry and educational communities which is based on their experience as to what skills are necessary for students to master in order to function as productive members of our society.

COMMENT: The fact that the State is now providing guidelines for local proficiencies is seen by the commenter as weakening local district control.

RESPONSE: Curriculum proficiency guidelines for each subject are not mandatory. Such recommended guidelines were identified by New Jersey educators as important for students to master and were meant to serve as a sample for those districts that needed help in developing curriculum proficiencies.

COMMENT: The commenter agreed with the two-year requirement for science. However, the commenter recommends that the language be changed to two years of science or technology.

RESPONSE: The proposed code language requiring two years of science does not preclude districts from including technology as part of the science requirement.

COMMENT: The increased graduation requirements will stifle the opportunities of those high school students seeking vocationally oriented futures.

The increase in graduation requirements would have an adverse effect on the non-academic student.

RESPONSE: The increase from 92 to 110 in the number of credits required for graduation, along with the addition of three required courses, maintains the same proportion of required to elective courses as currently exists. Therefore, students will maintain the opportunity to use elective courses to pursue a vocational education program. Some shared time facilities, however, may experience scheduling difficulties depending on the schedules maintained by the sending districts.

COMMENT: Inadequate funding and defeated budget process cause inequality in public education.

RESPONSE: Funding and the election process are not addressed in N.J.A.C. 6:8. Both items are statutory provisions and any change to either section must result from legislative action.

Full text of the adopted new rule follows.

N.J.A.C. 6:8
THOROUGH AND EFFICIENT
SYSTEM OF FREE PUBLIC SCHOOLS
Recodification Chart

OLD CITATION	NEW CITATION
6:8-1.1	6:8-1.1
6:8-2.1	6:8-2.1
6:8-2.2	6:8-2.2
6:8-2.3	6:8-2.3
6:8-3.1—Repealed	
6:8-3.2(a), (b) and (c)	6:8-4.3(a)Ii, (1) and (2)
6:8-3.2(a) and (b)	6:8-4.3(a)Iii
6:8-3.3(c) and (d)—Repealed	
6:8-3.3(e)	6:8-4.3(a)Iii(1)
6:8-3.3(f)	6:8-4.3(a)Iii(2)
6:8-3.3(f)1, 2 and (g)—Repealed	
6:8-3.4—Repealed	
6:8-3.5(a)1, 2, 4, 5, 6, 7, 8, 9, 10, 11—Repealed	
6:8-3.5(a)3	6:8-4.3(a)Ii(2)
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 6:8-7.2(a)4
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CHAPTER 8 THOROUGH AND EFFICIENT SYSTEM OF FREE PUBLIC SCHOOLS

SUBCHAPTER 1. DEFINITIONS

6:8-1-1 Words and phrases defined

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

"Action plan" means a written document describing how the district will organize and act to achieve its objectives.

"Affirmative action plan" means the school/classroom practice plan and the employment/contract practices plan submitted by each district for approval by the Department of Education, Office of Equal Educational Opportunity.

"Annual education plan" means the plan submitted by each district by September 30 of its priority need areas, related objectives, action plans, and supporting information for review and approval of the county superintendent of schools by October 31.

"Annual special education plan" means the annual plan for education of all handicapped children submitted each year.

"Articulation" means continuity, consistency and interdependence in the curricular offerings of the successive divisions of the school system.

"Assessment" means a written analysis of the current status of an educational system in terms of achieving its goals and objectives.

"Basic Skills Improvement (BSI) Plan" means a plan submitted by districts to the department which outlines the provisions of services to all pupils in need of assistance in communications and computation skills.

"Bilingual/ESL education program plan" means a plan submitted by districts to the department which outlines the provisions of appropriate educational programs for pupils who are limited English proficient.

"Bilingual/ESL education program" means a full time program of instruction given in both the native language of a pupil of limited English proficiency and in English in all courses which a pupil is required by law or rule to receive.

"Certification" means an acceptable rating in all required indicators as prescribed for all 10 essential elements in the educational process of the district.

"Commissioner" means the Commissioner of the Department of Education.

"Communications" means reading and/or writing.

"Community" means the community at large, including, but not limited to, the parents of students.

"Computation" means mathematics.

"Disaffected pupil" means the pupil who has instructional needs that are not being met by the regular instructional program and who is performing well below his or her social or academic capacity.

"Disruptive pupil" means the pupil who has difficulty establishing good relationships with peers and adult authority figures and who exhibits a pattern of conduct which is in defiance of school rules or regulations and which hinders academic success for other pupils as well as for himself or herself.

"District average daily attendance" means that figure of average daily attendance for the year computed annually in June and submitted by districts to the department as part of a district data report.

"Element" means one of the ten essential components of the educational process reviewed during monitoring for the purpose of certifying school districts.

"Evaluation" means procedures used to determine the success of programs, projects, techniques and materials in relation to the achievement of goals, objectives and standards; that is, the act of making judgment based upon the data gathered.

"Goals" means a written statement of educational aspirations for learner achievement and the educational process stated in general terms.

"Indicator" means one of the 43 subsections of the 10 essential elements that contains specific criteria reviewed during the monitoring process and rated as either acceptable or unacceptable.

"Individual Comprehensive Assessment" means the analysis of pupil proficiency on the basis of procedures which may include, but are not limited to, teacher observation, parental or guardian interview, formal and informal evaluation techniques, cumulative pupil records, student performance data collected through local testing programs which meet state criteria, state testing results, and visual, auditory and/or medical examination.

"Limited English proficient pupil" means a pupil whose native language is other than English and who has sufficient difficulty speaking, reading, writing or understanding the English language he or she will be denied the opportunity to learn successfully in classrooms where the language of instruction is English. This term means a child of limited English speaking ability, as the term is used in State law.

"Maintenance of effort" means that a district's combined fiscal effort per student or aggregate expenditures of State and local funds with respect to the provision of free public education for the preceding fiscal year was not less than the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

"Mandated State programs and services" means specific educational offerings required by New Jersey Statute or Administrative Code (for example, high school graduation requirements, family life education, kindergarten, pre-school handicapped education, courses and services in physical education, health and safety and drug and alcohol education).

"Minimum level of pupil proficiency" means passing scores on the State test established pursuant to N.J.S.A. 18A:7A-6 and the State approved minimum levels of pupil proficiency (MLP) in grades where State testing does not take place.

"Monitoring" means the process whereby the Commissioner of Education evaluates the status of each school district every five years for the purpose of certification. Monitoring also pertains to any evaluation of school districts by the New Jersey State Department of Education.

"Objective" means a written statement of the intended outcome of a specific educational process.

"Occasional staff absenteeism" means all professional staff absences exclusive of approved professional days and extended illness in excess of five consecutive work days.

"Preventive and remedial program" means any program which is designed to prevent regression and to improve the level of pupil proficiency in the areas of communications and computation for students below the State minimum levels of proficiency.

"Proficiency" means an explicitly stated and demonstrable knowledge and/or skill used to define a desired learning outcome.

"Regular school program" means curriculum and materials, instructional activities, services and staff training designed to address the learning needs of all pupils, which are adopted annually by each district board of education and funded by local resources and/or State equalization aid.

"Standards" means the stated levels of proficiency used in determining the extent to which indicators in Subchapter 4 are being met and also means both State and local levels of pupil proficiencies as required in Subchapter 7.

"State compensatory education pupil" means a pupil who is enrolled on September 30 in an approved preventive and remedial program, and who:

1. Is in grades K-3 and does not meet locally established, State approved standards of proficiency in communications and/or computation; or

2. Is in grades 4-9 and does not meet the State minimum levels of pupil proficiency in communications and/or computation; or

3. Is in grades 10-12 and does not pass the ninth grade State test in communications and/or computation.

"State endorsed diploma" means a diploma signifying successful completion of a high school program containing the minimum curricular, programmatic and proficiency requirements as set forth by State law and rule and by district board of education policies and procedures.

"Supplemental program for State compensatory education" means instructional or related services provided over and above the regular school program which are funded in whole or in part by State compensatory education funds.

"Teaching staff members" means all teachers, principals, assistant principals, vice principals, superintendents, assistant superintendents, school nurses and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners and are serving in any school district or under any board of education.

SUBCHAPTER 2. STATE EDUCATIONAL GOALS AND STANDARDS

6:8-2.1 State educational goals

(a) The State educational goals shall be the following outcome and process goals and shall be applicable to all public school districts and schools in the State.

(b) The public schools in New Jersey shall help every pupil in the State:

1. To acquire basic skills in obtaining information, solving problems, thinking critically and communicating effectively;

2. To acquire a stock of basic information concerning the principles of the physical, biological and social sciences, the historical record of human achievement and failures, and current social issues;

3. To become an effective and responsible contributor to decision-making processes of the political and other institutions of the community, State, country and world;

4. To acquire the knowledge, skills and understanding that permit him or her to play a satisfying and responsible role as both producer and consumer;

5. To acquire job entry level skills and also to acquire knowledge necessary for further education;

6. To acquire the understanding of and the ability to form responsible relations with a wide range of other people including, but not limited to, those with social and cultural characteristics different from his or her own;

7. To acquire the capacities for playing satisfying and responsible roles in family life;

8. To acquire the knowledge, habits and attitudes that promote personal and public health, both physical and mental;

9. To acquire the ability and the desire to express himself or herself creatively in one or more of the arts and to appreciate the aesthetic expressions of other people;

10. To acquire an understanding of ethical principles and values and the ability to apply them to his or her own life;

11. To develop an understanding of his or her own worth, abilities, potentialities and limitations;

12. To learn to enjoy the process of learning and to acquire the skills necessary for a lifetime of continuous learning and adaptation to change.

(c) The public schools in New Jersey shall provide:

1. Instruction which bears a meaningful relationship to the present and future needs and/or interests of pupils;

2. Significant opportunities, consistent with the age of the pupil, for helping to determine the nature of the educational experiences of the pupil;

3. Specialized and individualized kinds of educational experiences to meet the needs of each pupil;

4. Opportunities for teaching staff members and pupils to make recommendations concerning the operation of the schools;

5. Comprehensive guidance facilities and services for each pupil;

6. An environment in which any competition among pupils is positive;

7. Resources for education, used with maximum efficiency;

8. Teaching staff members of high quality;

9. Diverse forms of constructive cooperation with parents and community groups.

6:8-2.2 State educational standards

The State educational standards shall be those set forth in N.J.A.C. 6:8-4.3 which shall be used for the implementation of a thorough and efficient system of free public schools in accordance with N.J.S.A. 18A:7A-1 et seq. and the New Jersey Constitution.

6:8-2.3 Review of State educational goals and standards

(a) The State Board of Education, after consultation with the commissioner and review by the Joint Committee on the Public Schools, shall, from time to time but at least once every five years, review and update the State goals and standards.

(b) In reviewing and updating these goals and standards, the State Board shall consult with the Commissioner of Labor, the Chancellor of Higher Education, the Commissioner of Health, the Commissioner of Human Services and such other State employees and officers as deemed necessary.

SUBCHAPTER 3. ANNUAL REPORTING AND STAFFING OF SCHOOL DISTRICTS

6:8-3.1 July 1 report

Each district board of education shall submit by July 1 a report describing progress of the district in achieving its objectives.

6:8-3.2 Annual reports

(a) Each district board of education shall, on approved forms and at specified times, submit annually a report on:

1. Demographic data relative to each school;
2. Number and reasons for school dropouts;
3. Results of district and school assessment programs of pupil achievement in basic skills in the basic skills application;
4. Plans and programs for professional improvement; and
5. All required annual fiscal reports pursuant to law and rule.

6:8-3.3 Staffing

(a) Teaching staff members shall be employed by the district board of education based upon the specific instructional needs of pupils of the district and each school within the district. The district board of education shall provide certified personnel needed to implement a thorough and efficient system of free public schools.

(b) Each school shall be assigned the services of a fulltime nonteaching principal to be responsible for administration and supervision of the school.

1. A district board of education, upon advice of the chief school administrator, may request from the Commissioner of Education an exception to this subsection.

SUBCHAPTER 4. PROCEDURES FOR THE EVALUATION OF THE PERFORMANCE OF EACH PUBLIC SCHOOL DISTRICT

6:8-4.1 General requirements

(a) The Commissioner of Education shall evaluate each school district in implementing the standards required by this chapter.

(b) Based upon the evaluation, the commissioner shall recommend to the State Board of Education the certification of each district meeting the criteria established in this chapter.

(c) The State Board of Education shall determine the certification of each district.

(d) A district certified pursuant to this chapter shall not be required to be formally evaluated for five years.

(e) The commissioner reserves the right to recommend that the State Board of Education rescind the certification of any district which may fall into noncompliance with the standards set forth in this chapter.

6:8-4.2 Evaluation procedures

(a) Each school district within a county shall be monitored between July 1, 1988 and June 30, 1993 and, if certified, every five years thereafter by a team of persons from the county office under the supervision of the county superintendent of schools.

1. The county superintendent of schools shall establish a monitoring schedule with the approval of the assistant commissioner, Division of County and Regional Services.

2. Each district scheduled for monitoring shall be notified in advance by the county superintendent of schools. The dates for such monitoring visits to the district shall be established in consultation with the chief school administrator of the district.

3. A representative of the county superintendent of schools shall conduct a pre-monitoring conference with a representative of the district to establish the monitoring format.

4. Prior to the monitoring visit, the county office representative shall request that the district representative provide such documentation materials that are unavailable at the county office. The district representative shall be directed to either forward the documentation materials or make them available at the time of the monitoring visit.

(b) During the monitoring visit, the team shall evaluate the school district pursuant to the elements and standards set forth in N.J.A.C. 6:8-4.3.

6:8-4.3 Evaluation of elements and standards

(a) The following ten essential elements and the prescribed indicators of standards of acceptable performance shall be evaluated by the monitoring team under the supervision of the county superintendent of schools as specified in this section.

1. The annual educational planning element of the district shall be rated acceptable upon demonstration of performance in three indicators as follows:

i. Written educational goals, based on district educational needs and consistent with the intent of State educational goals, shall be developed and shall serve as the basis for the educational program (curriculum) of the district. Goals shall be developed in consultation with teaching staff members, pupils, parents or guardians of pupils and other district residents, under the direction of the chief school administrator.

(1) The district board of education shall give public notice of the proposed goals or revisions thereof and shall provide opportunity for comment at a public meeting.

(2) District educational goals shall be reviewed, updated and adopted by the district board of education at least once every five years.

ii. Three or more written educational objectives which shall include standards of pupil achievement and action plans based upon district needs shall be developed annually in consultation with teaching staff members and the community under the direction of the chief school administrator in accordance with requirements established by the commissioner.

(1) The district board of education shall review, discuss and adopt the annually developed objectives and action plans at a public meeting prior to September 30.

(2) The objectives and action plans of the district shall be submitted by September 30 to the county superintendent of schools who shall review and approve them no later than October 31.

(3) The district shall submit a report on the attainment of objectives to the county superintendent of schools by July 1. The county superintendent of schools shall by August 15 submit a written analysis on the district's attainment of objectives to the chief school administrator and board secretary.

iii. A long range plan containing a five-year written schedule and procedure for evaluation and improvement of all curriculum and educational services shall be developed and implemented.

2. The school and community relations element of the district shall be rated acceptable upon documentation of performance in five indicators as follows:

i. The district board of education shall share information with the community.

ii. The district board of education shall provide parents or guardians as well as other district residents and teaching staff members opportunities for discussion regarding State rules and local school procedures for implementation of district goals, objectives and standards through one or more public meetings of the district board of education. The initial meeting shall be held prior to September 30 of each year. The district board shall publish a special notice 10 days in advance of each meeting describing the purpose, listing the items to be discussed and indicating the availability of material relative to such items. The discussion at such meeting(s) shall include, but not be limited to:

(1) The annual reports of the district submitted to the Commissioner of Education, pursuant to N.J.S.A. 18A:7A-11, N.J.A.C. 6:8-3.1 and 6:8-3.2;

(2) The result of:

(A) The annual evaluation of the district's objectives and action plans;

(B) The statewide and district testing programs including analysis and interpretation of schools and district performance;

(C) The objectives and action plans to be implemented to remediate needs identified through district needs assessment.

(3) The documents listed in (1) and (2) above shall be accessible to the public for inspection at such meetings and shall be available upon request at the earliest possible time in accordance with the provisions of the public records law, N.J.S.A. 47:1A-1 et seq.;

iii. The district board of education shall provide opportunity for comment by the public at its regularly scheduled meetings.

iv. The district shall involve business, industry and other community resources in the schools.

v. The district shall involve the community as advisors in the decision-making process.

3. The comprehensive curriculum and instruction element of the district shall be rated acceptable upon documentation of performance in seven indicators as follows:

i. The district board of education shall approve annually a curriculum for all grades from pre-kindergarten through grade 12 for all subjects including all State mandated programs and services.

(1) The district shall implement the curriculum which was adopted by the district board of education.

(2) The district shall provide for articulation of the curriculum.

ii. The district shall make provisions for identifying pupils with exceptional abilities and for providing them with an educational program and services.

iii. The instructional program shall provide all pupils with guidance and counseling.

iv. The instructional program of the district shall provide all pupils with a library skills program.

v. The district shall introduce instruction in effective study and work skills early in the curriculum and reinforce such instruction throughout the curriculum.

vi. The district shall make provisions for identifying disruptive pupils and for providing them with an appropriate educational program and services.

vii. The district shall make provisions for identifying disaffected pupils and for providing them with an educational program and services.

4. The pupil attendance element of the district shall be rated acceptable upon documentation of performance in three indicators as follows:

i. The average daily attendance rate for each district shall be 90 percent or higher as calculated for the school year immediately prior to the school year in which the district is monitored.

(1) The district shall develop and implement an attendance improvement plan when the average daily attendance rate is between 85 and 89.9 percent.

(2) If the attendance rate for the district is less than 85 percent, performance for this element shall be rated unacceptable.

ii. The average daily attendance rate for each school within the district shall be 85 percent or higher.

(1) The district shall develop and implement an attendance improvement plan for each school within the district that has an average daily attendance rate between 80 and 84.9 percent.

(2) If the attendance rate for any school is less than 80 percent, performance for this element shall be rated unacceptable.

iii. The district shall develop and implement an improvement plan to reduce the rate of pupils who drop out after completion of eighth grade.

5. The facilities element of the district shall be rated acceptable by documentation of performance in four indicators as follows:

i. The district board of education shall develop and implement a five-year comprehensive maintenance plan.

ii. The district shall perform an annual inspection of buildings to insure adherence to health and safety laws.

iii. The district board of education shall approve and implement a plan to upgrade or eliminate all substandard classrooms pursuant to law and rule.

iv. The district board of education shall review and revise, as necessary, the long-range facilities plan of the district at least every five years.

6. The staff element of the district shall be rated acceptable by documentation of performance in seven indicators as follows:

i. All professional staff members shall be certified in their area(s) of assignment pursuant to law and rule.

ii. All substitute teachers and aides shall be employed pursuant to law and rule.

iii. The annual rate of occasional professional staff absenteeism, including teachers and administrators, shall not exceed five percent; or

iv. The district shall develop and implement an attendance improvement plan approved by the board of education when the annual rate of occasional professional staff absenteeism exceeds 3.5 percent.

v. The district shall observe and evaluate tenured and nontenured teaching and administrative staff pursuant to law and rule.

vi. The district shall adopt and implement a staff development program based on the assessed needs of the district.

vii. The chief school administrator shall recommend to the district board of education formal appointment of all teaching staff members.

7. The mandated programs element of the district shall be rated acceptable upon documentation of performance in three indicators as follows:

i. The district shall implement a basic skills improvement plan pursuant to N.J.A.C. 6:8-6.3.

(1) The basic skills improvement plan shall be approved by the county superintendent of schools.

(2) The district shall communicate a description of the basic skills improvement plan to the public.

ii. The district shall implement the bilingual and English-as-a-second language (ESL) education plan pursuant to N.J.A.C. 6:31.

(1) The bilingual and ESL education plan shall be approved by the county superintendent of schools.

(2) The district shall communicate a description of the bilingual and ESL plan to the public.

iii. The district shall implement the special education plan pursuant to N.J.A.C. 6:28.

(1) The special education plan shall be approved by the county superintendent of schools.

(2) The district shall communicate a description of the special education plan to the public.

8. The mandated basic skills test element of the district shall be rated acceptable upon documentation of achievement in two indicators as follows:

i. Seventy-five percent of the pupils in grade nine of each school shall have passed the State mandated High School Proficiency Test pursuant to N.J.A.C. 6:39-1.2(a) and (b).

ii. Seventy-five percent of the pupils in grade three and 75 percent of the pupils in grade six in each school of the district shall score at or above the minimum level of proficiency established by the State Board of Education for commercially published tests or district criterion-referenced tests.

9. The equal educational opportunity and affirmative action element of the district shall be rated acceptable by documentation of performance in three indicators as follows:

i. Where applicable, the district shall implement a desegregation plan approved by the Commissioner of Education.

ii. Annually, the district shall review progress toward the objectives of the State approved affirmative action plans for classroom and employment practices of the district.

iii. Annually, the district shall implement the affirmative action plans, including inservice training.

10. The financial element of the district shall be rated acceptable upon documentation of performance in six indicators as follows:

i. The chief school administrator shall present to the district board of education accurate and timely fiscal and statistical reports of the district pursuant to law and rule.

ii. The fiscal and statistical reports of the district shall be accurate and timely in transmittal to county, State and Federal offices pursuant to law and rule.

iii. The annual budget for the district shall be developed, approved and presented to the public pursuant to law and rule.

(1) The district board of education shall submit a proposed budget to the county superintendent of schools on or before January 15 in an authorized budget format.

(2) The proposed budget shall be reviewed and approved by the county superintendent of schools prior to its advertisement.

iv. The district shall have an annual audit of accounts and financial transactions pursuant to law and rule and State audits as determined by the Commissioner of Education.

(1) Within 30 days of receipt, the district board of education shall accept and discuss the annual or State audit at a regularly scheduled board meeting.

(2) The district board of education shall implement the recommendations cited in the annual or State audit and shall report such implementation to the Commissioner of Education.

v. The district shall not incur a deficit pursuant to N.J.A.C. 6:20-2.13.

vi. All pupil transportation costs shall be reviewed and recommended for approval of State aid by the county superintendent of schools.

6:8-4.4 Findings

(a) The monitoring team shall record its findings on each element required by this chapter, using worksheets prescribed by the Commissioner of Education.

1. The monitoring team shall meet with the chief school administrator and board secretary at an exit conference to review its findings and outline future directions for the district.

2. The county superintendent of schools shall send a formal notification of the findings to the chief school administrator and board secretary within 20 workdays of the completion of the monitoring visit.

3. The notification shall include:
 - i. Copies of the completed worksheets;
 - ii. A copy of the recommendation to the commissioner of the certification status of the districts; and
 - iii. If necessary, a statement of future actions to be taken by the district.
4. The district shall, within 60 days of the receipt of formal notification, discuss the findings of the monitoring team at a regular or special meeting of the board of education.

6:8-4.5 Certification

(a) Certification of a district shall be based on an acceptable rating of all indicators in the 10 essential elements required by this chapter.

1. For each district that receives an acceptable rating on all indicators in the 10 essential elements, the county superintendent of schools shall submit a recommendation for certification and a summary report of the findings to the Commissioner of Education. The commissioner, with approval of the State Board of Education, shall notify the district of State certification.

2. For each district that receives an unacceptable rating on any required indicator(s) in the 10 essential elements, the county superintendent of schools shall submit a summary report of the findings and a recommendation to the commissioner that the district not be certified. The district will then implement the Level II process, pursuant to N.J.A.C. 6:8-5.1 et seq.

(b) A district rated as unacceptable may, with approval of the district board of education, petition the county superintendent of schools to rescind the rating by presenting written documentation of its performance on indicators rated as unacceptable. The assistant commissioner, Division of County and Regional Services, shall rule on petitions when there is lack of agreement on acceptable performance.

6:8-4.6 Failure of a certified district to meet the State mandated High School Proficiency Test standards

(a) A district which falls below the passing standards for the State mandated High School Proficiency Test (HSPT) pursuant to N.J.A.C. 6:8-8.3(b)8i and has been determined by the Commissioner of Education to be in danger of not meeting the HSPT standard within the district's five-year certification period shall be required to develop a local planning objective and improvement plan to bring the district's performance to the prescribed standard.

1. The objective and improvement plan shall be approved by the district board of education and submitted to the county superintendent for review and approval.

2. The county superintendent shall periodically review the progress of the district in meeting the objective and in implementing the improvement plan.

(b) The district shall have two school years to achieve an interim standard of a minimum of 60 percent of ninth grade students passing the High School Proficiency Test.

(c) If a district fails to implement the improvement plan and/or fails to achieve the interim standard, the county superintendent shall recommend to the Commissioner of Education that the district's certification be rescinded.

(d) As a result of the county superintendent's recommendation, the commissioner may issue an order requiring the district to show cause as to why the State Board of Education should not rescind the district's certification.

(e) Upon rescission of the district's certification, the district shall be required to undergo the Level II corrective action process pursuant to N.J.A.C. 6:8-5.1.

SUBCHAPTER 5. CORRECTIVE PLANS

6:8-5.1 Level II review process

(a) A Level II review process shall be implemented when a local school district is formally notified by the county superintendent of schools after monitoring that the district is not certified.

1. The chief school administrator shall organize a self-study team within one month of notification, according to established procedures.

i. The chief school administrator shall inform the county superintendent of schools that a team has been formed.

ii. The county superintendent of schools shall acknowledge formation of the team, confirm its task and establish a deadline for submission of the improvement plan.

2. The team shall analyze the nature and causes of the problem identified by the monitoring team and within three months develop an improvement plan to correct the problem. The improvement plan shall contain the following components:

- i. Objective(s);
- ii. Activities;
- iii. Person(s) responsible;
- iv. Timelines; and
- vi. Documentation/evaluation of completed activity.

3. The plan shall be submitted to the district board of education for approval.

(b) The approved plan shall be submitted to the county superintendent of schools.

1. The county superintendent of schools, after reviewing the improvement plan with the assistant commissioner, Division of County and Regional Services, shall approve or disapprove the plan within one month of receipt.

2. If the plan is approved, the chief school administrator shall be authorized to implement the plan.

3. If the plan is unacceptable, it shall be referred back to the chief school administrator with recommendations.

4. The district shall have one month to make the necessary revisions and resubmit the plan to the county superintendent of schools for approval.

(c) The district shall correct the deficiency(ies) in accordance with the approved improvement plan.

(d) The district's chief school administrator shall make periodic progress reports at district board of education public meetings.

(e) The county superintendent of schools shall monitor progress and conduct interim reviews at least once every three months by reviewing the chief school administrator's reports to the board of education, by conducting onsite visits or both.

(f) At the completion of the improvement plan activities, the county superintendent of schools, in consultation with the assistant commissioner, Division of County and Regional Services, shall determine the scope of the required reassessment of the district's current status with regard to all elements and indicators.

(g) The county superintendent of school shall monitor the district to determine that all elements and required indicators have been achieved.

1. A formal notification of the findings shall be sent by the county superintendent of schools to the chief school administrator and board secretary within 20 workdays of the completion of the monitoring visit.

i. The notification shall include:

(1) Copies of the revised worksheets;

(2) A copy of the recommendation to the Commissioner of Education of the certification status of the district; and

(3) If necessary, a statement of future actions to be taken by the district.

2. The district shall, within 60 days of the receipt of formal notification, discuss the findings of the monitoring team at a regular or special meeting of the district board of education.

3. If the district has achieved an acceptable rating on all elements and indicators, the county superintendent of schools shall submit a recommendation for certification and a summary report of the findings to the Commissioner of Education.

i. The commissioner, with approval of the State Board of Education, shall notify the district of State certification.

4. If the district receives an unacceptable rating on any element(s) and required indicator(s), the county superintendent of schools shall recommend to the commissioner that the district not be certified.

6:8-5.2 Level III corrective action

(a) A district which fails to become certified as a result of its own corrective action pursuant to N.J.A.C. 6:8-5.1 shall be examined by a review team consisting of an external committee appointed by the county superintendent of schools from among qualified staff of other districts and supplemented by the Department of Education's compliance unit.

1. The review team shall review the identified deficiencies of the district.

2. Prior to the team's review of the district, the county superintendent shall provide the team with background information about the district, results of Level I monitoring, recommendations of the Level II self-study team and the Level II monitoring report of findings.

3. The team shall assess the reasons for the inability of the district to correct the identified deficiencies.

(b) The team shall prepare a report of the identified deficiencies of the district and submit the report to the assistant commissioner, Division of County and Regional Services, within 15 calendar days after completion of the team's review of the district. The report shall include two primary components:

1. Specific findings and directives for correcting programmatic deficiencies.

2. An assessment of potential causative factors that contribute to the district's deficiencies.

(c) The assistant commissioner, Division of County and Regional Services, in consultation with the county superintendent, chairperson of the review team, coordinating county superintendent and director of compliance, shall review the team's report to determine if the district shall begin implementation of a corrective action plan or, if conditions within the district warrant, the initiation of a comprehensive compliance investigation, pursuant to N.J.A.C. 6:8-5.3.

1. If it is determined that the district can resolve the deficiencies through the implementation of a corrective action plan, the assistant commissioner shall require the county superintendent to transmit, within seven days, the team's findings and directives to the chief school administrator of the district.

2. Upon receiving the findings and directives, the chief school administrator of the district shall develop a corrective action plan to implement the directives.

3. Within 45 days of receipt of the findings and directives, the chief school administrator shall submit a corrective action plan approved by the district board of education to the county superintendent for approval.

(d) The district shall complete the approved corrective action plan activities within one year.

1. Monthly, until the district is certified, the county superintendent shall monitor and assess the progress of the district in implementing the corrective action plan and shall submit quarterly reports to the assistant commissioner, Division of County and Regional Services.

2. The county superintendent, upon the completion of the district's corrective action plan activities shall determine whether the standards for certification have been achieved and shall recommend to the assistant commissioner, Division of County and Regional Services, that the district be certified.

3. The assistant commissioner, Division of County and Regional Services, shall submit to the Commissioner of Education a formal report evaluating the corrected deficiencies and recommending certification of the district.

(e) If a district fails to achieve certification after completion of a Level III corrective action plan, but demonstrates reasonable progress in correcting its deficiencies, corrective action plan activities and timelines may be extended by the assistant commissioner, Division of County and Regional Services. However, if the district does not demonstrate reasonable progress toward meeting certification standards, a comprehensive compliance investigation will be initiated, pursuant to this chapter.

6:8-5.3 Compliance investigation

(a) A comprehensive compliance investigation will be conducted under the supervision of the assistant commissioner, Division of County and Regional Services, under one of the following circumstances:

1. The review team's report indicates that conditions exist within the district that may preclude the successful implementation of a corrective action plan.

2. After completion of the corrective action plan activities, a district fails to achieve certification and does not demonstrate reasonable progress toward meeting certification standards, pursuant to N.J.A.C. 6:8-5.2(e).

(b) The director of the Department of Education's compliance unit shall organize and supervise an investigatory team to assess conditions in the district.

1. A comprehensive audit of the district's governance, management and fiscal operations shall be conducted by a private auditing agency under contract to the Department of Education.

2. The compliance unit shall conduct a thorough investigation of the district's programmatic, fiscal and management activities.

(c) The director of the Department of Education's compliance unit shall submit a report of investigatory findings to the assistant commissioner, Division of County and Regional Services.

(d) Based on the report of investigatory findings, the assistant commissioner shall submit to the Commissioner of Education a recommended administrative order outlining such corrective action as is deemed necessary.

(e) The Commissioner of Education, after a plenary hearing, may order the implementation of an administrative order requiring the district to implement the corrective action.

6:8-5.4 Corrective action by Commissioner of Education

Any noncertified district which does not demonstrate reasonable progress toward compliance with the provisions of N.J.S.A. 18A:7A-1 et seq. (Public School Education Act of 1975) and New Jersey Administrative Code Title 6, Education and toward the resolution of major problems shall be submitted to further intervention by the Commissioner of Education, as provided by law.

SUBCHAPTER 6. PREVENTIVE AND REMEDIAL PROGRAMS IN COMMUNICATIONS AND COMPUTATION

6:8-6.1 Assessment procedures

(a) Each pupil shall be assessed, upon entrance into the educational system and annually thereafter, to identify pupils not meeting state minimum levels of proficiency. Pupils so identified shall be provided with an individual comprehensive assessment. In instances of pupil transfers, assessment records shall be forwarded from the previous school or district to the school or district in which the pupil is newly enrolled.

(b) Limited English proficient students shall be assessed to identify pupils not meeting state proficiency levels.

6:8-6.2 Individual Student Improvement Plans

(a) For pupils performing below state minimum levels of proficiency after completion of three academic years of instruction beyond kindergarten, the district board of education shall develop procedures for the development and implementation of Individual Student Improvement Plans. These procedures shall include but not be limited to:

1. A process for the development of the Individual Student Improvement Plan including those persons responsible for the development and implementation of the plan;

2. Identification of a teaching staff member responsible for monitoring the development, implementation and evaluation of the Individual Student Improvement Plan; and

3. A process for notifying the pupil and the parent(s) or guardian(s) of the need for a content of the Individual Student Improvement Plan in the language or mode of communication which is understood by the pupil and the parent(s) or guardian(s).

6:8-6.3 State compensatory education preventive and remedial programs

(a) State compensatory education preventive and remedial programs, supplemental to the regular school programs, shall be established by the district board of education. Application for and approval of these State compensatory education programs shall be based upon the following:

1. Enrollment in appropriate preventive and remedial programs of all pupils who have academic needs that prevent them from succeeding in the regular school program, and who are:

i. In grades K-3 and do not meet locally established, State approved standards of proficiency in communications and/or computation; or

ii. Are in grades 4-9 and do not meet the State minimum levels of pupil proficiency in communications and/or computation; or

iii. Are in grades 10-12 and do not pass the State mandated High School Proficiency Test in communications and/or computation.

2. Procedures for the screening of currently and newly enrolled pupils to determine whether they should be enrolled in preventive and remedial programs. Screening procedures shall be completed within one month of the date of enrollment. These procedures should include those diagnostic measures which are used to predict the relevant learning difficulties and needs;

3. Instructional and related activities and services which are supplemental to the regular school program and based upon identified priority pupil needs and designed to meet the academic, social, economic and environmental needs of enrolled pupils.

4. Procedures to provide ongoing communications between teaching staff members and parents or guardians of pupils who are participating in State compensatory education preventive and remedial programs;

5. Evaluation procedures which measure pupil gains in basic skills proficiency which are related to preventive and remedial program objectives and to State minimum levels of pupil proficiency in communications and computation;

6. Evaluation of the effectiveness of State compensatory education preventive and remedial programs in terms of pupil gains in basic skills proficiency and other relevant indicators;

7. A detailed budget for administration, instructional personnel, paraprofessional and clerical personnel, instructional materials and supplies, equipment, staff training, health and community services;

8. Assurance of maintenance of effort in the provision of the regular school program.

(b) The commissioner shall determine annually, on or before August 15, which applications for compensatory education programs are approved and so notify each district board of education.

(c) State compensatory education funds shall be calculated and distributed on the basis of actual enrollment in approved programs as of the last school day of September.

(d) The Department of Education shall conduct studies and evaluate findings annually after the effective date of this chapter in order to report the status of progress toward the attainment of State minimum levels of pupil proficiency in communications and computation skills.

SUBCHAPTER 7. PROMOTION AND HIGH SCHOOL GRADUATION REQUIREMENTS AND PROCEDURES

6:8-7.1 Promotion, remediation and graduation procedures

(a) District boards of education shall adopt policies and procedures for:

1. Pupil promotion, related to district goals, objectives and pupil proficiency;

2. Remediation opportunities for pupils to satisfy any failed proficiencies;

3. High school graduation requirements, pursuant to law and rule, which are consistent with the achievements of State and district goals, objectives and pupil proficiency with particular reference to reading, writing and mathematics skills as specified in (b), (c), (d) and (e) below;

4. Annual notification to pupils and parent(s) or guardian(s) of the policies and procedures for pupil promotion, remediation and the high school graduation requirements;

5. Notification to each entering ninth grade pupil and his or her parent(s) or guardian(s) of all State and local high school graduation requirements. In addition, at the beginning of each course required for graduation, each district board of education shall distribute a list of proficiencies required for successful completion of that course to all pupils and their parent(s) or guardian(s);

6. Notification to each pupil and parent(s) or guardian(s) at appropriate times during the school year of the pupil's progress in meeting the promotion proficiencies and the high school graduation requirements;

7. Immediate consultation, not longer than 10 school days after the local school district becomes aware of the pupil's deficiencies, with the pupil's parent(s) or guardian(s);

8. Appeal of promotion/retention decision by parent(s) or guardian(s) and adult pupils; and

9. Participation of parent(s) or guardian(s), teachers, and students, where appropriate, in the development of pupil promotion and remediation policies.

(b) District boards of education shall adopt policies and procedures for high school graduation of all pupils pursuant to law and rule which shall include, but not be limited to, performing at or above the State minimum levels of pupil proficiency on the State mandated High School Proficiency Test in reading, writing, and mathematics skills.

1. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State mandated High School Proficiency Test shall be provided with an individual comprehensive assessment as specified in N.J.A.C. 6:8-6.1. Based on the individual comprehensive assessment, the pupil shall receive the necessary services to remedy the identified deficiencies. Such services shall include but not be limited to the development and implementation of an Individual Student Improvement Plan. This individual plan may be carried out through the regular program or through an extended school day, extended school week or extended school year. Comprehensive pupil assessment and re-evaluation of the individual plans shall take place at least once each year until all identified deficiencies have been remediated.

2. Each local school district shall develop procedures for the development of Individual Student Improvement Plans. These procedures shall include, but not be limited to, those procedures set forth in N.J.A.C. 6:8-6.2.

3. Pupils who perform below State levels of pupil proficiency on one or more areas of the State mandated High School Proficiency Test shall be provided an opportunity to demonstrate mastery in each academic year.

4. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State mandated High School Proficiency Test and have satisfied all other State and local graduation requirements shall be provided an additional evaluation during the twelfth year which

is based on the Individual Student Improvement Plan required under paragraph (b)1 above. This evaluation, the Special Review Assessment, may include but is not limited to:

- i. Performance on State tests, including all retests;
- ii. Performance on locally selected tests;
- iii. Performance on course work;
- iv. Practical demonstrations of specific skill mastery which occur either in or outside of school but which are not part of regular course work;
- v. Formal interview with the parent(s);
- vi. Formal interview with the teaching staff;
- vii. Guidance counselor and/or psychologist review, as appropriate;
- viii. Visual, auditory and/or medical data, as appropriate;
- ix. Examination of credit and curriculum performance; and
- x. Examination of pupil proficiencies in other areas;

5. The findings of the evaluation required in (b)4 above shall be recorded on a Special Review Assessment Student Profile Form developed by the Department of Education. An independent evaluation of these data must be made by a local district review panel comprised of at least three teaching staff members not currently instructing the pupil. On the basis of the evidence listed in (b)4 above and the recommendations of the review panel, the building principal and the chief school administrator may certify satisfactory attainment of the State minimum levels of pupil proficiency in reading, writing and/or mathematics. Whether or not such certification occurs, the district must retain the Student Profile Form including all attachments for one year after the pupil's class graduates. If such certification occurs, the Special Review Assessment Student Profile Form must be forwarded to the county superintendent of schools by March 1 of the regularly scheduled graduation year. Based upon the documentation provided by the local district, the county superintendent of schools must certify whether or not the State minimum levels of pupil proficiency have been achieved and notify, in writing, the chief school administrator of this decision.

6. Pupils classified pursuant to N.J.S.A. 18A:46-1 may be exempted from the State minimum levels of pupil proficiency requirement based on the recommendation of the child study team, as noted in the pupil's Individualized Education Program and with the approval of the chief school administrator.

7. Any out-of-school youth or adult age 18 or older who has otherwise met all State and local graduation requirements but has failed to pass the State mandated High School Proficiency Test may return at times which have been scheduled and publicly announced by the district for the purpose of taking the necessary test. Upon certification of passing the test, a State endorsed diploma will be granted by the high school of record.

(c) Minimum high school graduation requirements include the following:

1. District boards of education providing high school diplomas, in cooperation with any sending district(s), shall adopt policies and procedures for defining minimum high school curriculum requirements and locally determined proficiencies therein, pursuant to law and rule, which shall include but not be limited to:

i. Requiring the successful completion of a program of study in grades nine through 12, effective with the September, 1987 grade nine class, which shall include, but not be limited to:

(1) One credit year of English for each year of enrollment, up to four credit years;

(2) Two credit years of mathematics effective through August, 1990; three credit years of mathematics effective with the September, 1990 grade nine class;

(3) Two credits of social studies and history as required by N.J.S.A. 18A:35-1 through August 1988, and one additional credit year of world history/cultures effective with the September, 1988 grade nine class;

(4) One credit year of natural or physical science through August, 1989; two credit years of natural or physical science effective with the September, 1989 grade nine class;

(5) One credit year of physical education, health and safety for each year of enrollment as required by N.J.S.A. 18A:35-7.

(6) One credit year of fine, practical, and/or performing arts until August, 1988; and

(7) One-half credit year of career education until August, 1988.

ii. Pupils may meet the curriculum requirements set forth in (c)1i above through demonstration of mastery of the locally determined proficiencies in each of the above curriculum areas or through program completion procedures noted in (d) below. This determination shall be made by the district board of education.

2. Pupil proficiencies in (c)li above shall be developed as follows:
i. The Commissioner of Education shall provide guidelines to district boards of education for the development of local proficiencies for each curriculum area.

ii. District boards of education shall establish proficiency requirements in each curriculum area. Upon approval of these proficiencies by the district board of education, demonstration of mastery will be required as a condition of graduation.

(d) Subject to approval of the State Board of Education:

1. Each district board of education shall establish graduation requirements on the basis of either course credits, program completion or a combination of course credits and program completion.

i. Course credit requirements shall be established as follows:

(1) Each four-year high school shall establish a minimum number of not less than 92 credits to be required for graduation effective with the September, 1987 grade nine class; not less than 110 credits effective with the September, 1988 grade nine class.

(2) Each three year high school shall establish a minimum number of not less than 69 credits to be completed in grades 10 to 12 inclusive, effective with the September, 1987 grade ten class; not less than 82.5 credits effective with the September, 1989 grade ten class.

(3) Six-year schools may base their graduation requirements on formal completion of grades nine to 12 or 10 to 12 within the credit limits established for four-year or three-year high schools, respectively.

(4) Credit toward graduation shall be awarded by the following method:

(A) Credit shall be assigned on the same basis to all high school courses offered by the district board of education. One credit is awarded for a class period of instruction which meets one time per week during the school year. A class period of instruction is a minimum of 40 minutes. A credit year is awarded for a class period of instruction which meets daily for the school year and equals five credits.

(B) Credit may be assigned by each district board of education for curricular activities as defined in N.J.A.C. 6:27-1.13.

(C) Approved cooperative education program credits shall not exceed 15 credits per year.

ii. Credit year requirements set forth in (c) above may be met in whole or in part through program completion as follows:

(1) District boards of education may determine and establish a set number of curricular activities or programs for promotion and graduation purposes.

(2) Programs shall be planned for individuals and/or a group based on specific instructional objectives.

(3) The principal shall certify completion of curricular activities or programs based upon specified instructional objectives.

(4) Group programs based on specific instructional objectives shall be approved in the same manner as other approved courses. Individual programs shall be on file in the local district and subject to review by the commissioner or his or her designee.

3. District boards of education shall establish pupil attendance requirements appropriate to each of the particular educational programs.

(e) Successful completion of the requirements set forth in (b), (c), and (d) above and any local requirements shall be required as conditions for awarding a State endorsed diploma, except as provided for seniors entering military or naval service pursuant to N.J.S.A. 18A:36-17. No district board of education may issue a high school diploma without State endorsement.

(f) Review and reporting rules include the following:

1. Annually, not later than September 30, the chief school administrator shall report at a public meeting to the district board of education and the Commissioner of Education the number of pupils graduated and the number of pupils denied graduation from the prior 12th grade class based on the provision of this chapter. The chief school administrator shall include in the annual report the number of pupils graduated under the special education and special review assessment procedures noted in this subsection;

2. The Commissioner of Education, in accordance with law and rule, shall report to the State Board of Education on the status and outcomes of the promotion and graduation procedures;

3. District boards of education shall submit their graduation requirements on forms provided by the State Department of Education to the commissioner or his or her designee. District boards of education shall update this filed copy as their graduation policies are revised;

4. The Commissioner of Education or his or her designee shall review and approve the district board of education policies and procedures for pupil promotion, remediation and high school graduation requirements;

5. The Commissioner of Education or his or her designee shall monitor the implementation of the promotion, remediation and high school graduation policies and procedures; and

6. From time to time, but at least once every five years, the State Board of Education and district boards of education shall review and update their promotion and graduation requirement policies as a result of the State and local goal review processes noted in N.J.S.A. 18A:7A-8 and N.J.A.C. 6:8-2.3 and 6:8-4.3(a)li.

SUBCHAPTER 8. INTERIM RULES FOR THE EVALUATION OF ELEMENTS AND STANDARDS FOR SCHOOL DISTRICTS MONITORED BETWEEN JANUARY 1, 1984 AND DECEMBER 31, 1986

6:8-8.1 Conditions

(a) This subchapter shall apply to school districts monitored between January 1, 1984 and December 31, 1986.

1. Any district that failed to become certified during that period shall be required to take corrective action as described in N.J.A.C. 6:8-5.

2. The corrective action shall address deficiencies identified during monitoring of the elements and standards described in N.J.A.C. 6:8-8.3.

(b) This subchapter shall become operative January 1, 1987 and expire June 30, 1988.

6:8-8.2 Monitoring categories

(a) The following are definitions of monitoring categories of non-certified districts:

1. Monitoring Category A—Local school districts for which the county office completed monitoring before January 1, 1986 that did not achieve the minimum basic skills (MBS) standard.

2. Monitoring Category B—Local school districts for which the county office completed monitoring before January 1, 1986 that achieved the minimum basic skills (MBS) standard.

3. Monitoring Category C—Local school districts for which the county office completed monitoring before July 1, 1986 and on or after January 1, 1986.

4. Monitoring category D—Local school districts for which the county office completed monitoring before January 1, 1987 and on or after July 1, 1986.

6:8-8.3 Procedures for evaluation and certification

(a) Each school district within a county shall be monitored between January 1, 1984 and December 31, 1986 and, if certified, every five years thereafter by a team of persons from the county office under the supervision of the county superintendent of schools.

1. The county superintendent of schools shall establish a monitoring schedule with the approval of the assistant commissioner, Division of County and Regional Services.

2. Each district scheduled for monitoring shall be notified in advance by the county superintendent of schools. The dates for such monitoring visits to the district shall be established in consultation with the chief school administrator of the district.

3. A pre-monitoring conference shall be conducted by a representative of the county superintendent of schools with a representative of the district to establish the monitoring format.

4. Prior to the monitoring visit, the county office representative shall request that the district representative provide such documentation materials that are not available at the county office. The district representative shall be directed to either forward the documentation materials or make them available at the time of the monitoring visit.

(b) During the monitoring visit, the team shall examine 10 essential elements of the educational process of the district using prescribed indicators of acceptable performance and documentation as follows:

1. The planning element of the district pursuant to N.J.A.C. 6:8-1.1 shall be rated acceptable upon documentation of performance in five indicators as follows:

i. The district board of education shall approve the objectives of the district after community participation and develop plans of action under the direction of the chief school administrator in consultation with teaching staff members. Documentation of these actions shall include, but not be limited to, the minutes of district board of education meetings, receipt of objectives and plans of action by the county superintendent of schools, and evidence of staff consultation and community participation.

ii. The county superintendent of schools shall approve the objectives and plans of action of the district pursuant to N.J.A.C. 6:8-1.1. The assistant commissioner, Division of County and Regional Services, shall approve the objectives and plans of action in the event of appeal.

Documentation of these respective actions shall be a letter of approval from the county superintendent or the assistant commissioner.

iii. The district board shall review and discuss the annually developed objectives and plans of action at a public meeting prior to September 30. Documentation of this action shall include, but not be limited to, minutes of meetings of the district board, news releases or other evidence of dissemination.

iv. The plans of action of the district shall indicate who was involved in developing the plans and the method of involvement. Documentation shall consist of a list of persons involved and their responsibilities.

v. The plans of action of the district shall contain a long-range schedule for program evaluation. Documentation of such program shall be a written schedule and procedure for evaluating programs.

2. The school and community relations element of the district shall be rated acceptable upon documentation of performance in (b)2i below and one of the remaining three indicators as follows:

i. The district board of education shall share information with the community. Documentation of this shall include, but not be limited to, letters, newsletters or other media.

ii. The district board of education shall provide opportunity for comment by the public at regularly scheduled monthly meetings of the district board. Documentation of this opportunity shall be agenda of meetings, reports of ad hoc committees, reports of community surveys and other similar evidence.

iii. The district shall involve business, industry and other community resources in the schools. Documentation of this involvement shall be resource files, cooperative programs, industry loan of materials and/or services, field trips to business and industry and other similar evidence.

iv. The district shall involve the community as advisors in the decision-making process of the district. Documentation shall be by reports of community surveys, ad hoc committees or advisory councils, and other similar evidence.

3. The comprehensive curriculum and instruction element of the district shall be rated acceptable upon documentation of performance in eight indicators as follows:

i. The district board of education shall approve a curriculum for all grades from kindergarten through grade 12 for all subjects including all State mandated programs and services. Documentation of the existence of the curriculum shall include a written or printed curriculum formally cited in the minutes of the meeting at which such curriculum was adopted by the district board.

ii. The district shall implement the curriculum which was adopted by the district board of education. Documentation shall include, but not be limited to, a written program of studies, a master schedule or reports of program evaluation.

iii. The instructional program of the district shall recognize the individual talents, interests, needs and exceptional abilities of pupils. Documentation of such recognition shall include, but not be limited to, a written program of studies, a master schedule or reports of program evaluation.

iv. The instructional program of the district shall provide all pupils with guidance and counseling. Documentation shall be a written plan to provide guidance and counseling services for all pupils from kindergarten through grade 12.

v. The instructional program of the district shall provide all pupils with a library skills program. Documentation shall be a written description of a library skills program.

vi. The district shall introduce instruction in effective study and work skills early in the curriculum and reinforce such instruction throughout the curriculum of the district. Documentation of these efforts shall be a written description of the sequential introduction and reinforcement of study skills and work habits through the curriculum.

vii. The district shall make provisions for identifying disruptive pupils and providing them with an educational program and services. Documentation of these provisions shall be a written description of the identification process, the results of needs assessment including out-of-school suspension and expulsion rates, and the year-end violence and vandalism report. If the district board of education deems the implementation of an improvement program as necessary for disruptive pupils, a written description shall be made available as documentation of the district program.

viii. The district board of education shall have the option of making provisions for identifying and provide for disaffected pupils. Documentation of these provisions shall include, but not be limited to, a description of the identification process, the results of a needs assessment and a statement of the program provisions.

4. The pupil attendance element of the district shall be rated acceptable upon documentation of performance in at least two of five indicators as follows:

i. The average daily attendance rate for the district shall be 90 percent or higher as calculated for the school year immediately prior to the school year in which monitored. Documentation shall be provided using district attendance data to divide total pupil days present for all pupils by total possible pupils days for all pupils and multiplying by 100. The resultant quantity subtracted from 100 shall be the attendance rate.

ii. The district shall implement an attendance improvement plan when the average daily attendance rate is calculated to be between 85 and 89.9 percent for the immediate prior school year. If the rate for the district is less than 85 percent, performance for this element shall be rated unacceptable. Documentation shall be written attendance improvement plan based on the calculated average daily attendance rate of the district.

iii. Performance in the pupil attendance element shall be acceptable if the average daily attendance rate for each school within the district is at least 85 percent. Documentation shall be calculated using attendance data for the immediate prior school year for each school.

iv. The district shall implement an attendance improvement plan for each school within the district that has an average daily attendance rate for the immediate prior school year of 84.9 percent or below. If the rate is less than 80 percent, performance for this element shall be rated unacceptable.

v. The district shall implement an improvement plan to reduce the rate of pupil dropouts. Documentation shall be a written plan to reduce the dropout rate based on an analysis of pupils who drop out of school after completion of the eighth grade.

5. The facilities element of the district shall be rated acceptable by documentation of performance in (b)5iv below and one of the remaining three indicators as follows:

i. The district board of education shall implement a multi-year comprehensive maintenance plan. Documentation shall be a written maintenance plan, budget appropriation and other such records of facilities maintenance.

ii. The district shall perform an inspection of buildings to ensure adherence to health and safety laws. Documentation shall be checklists and certificates issued within the last 12 months.

iii. The district shall approve a plan to upgrade or eliminate all substandard classrooms. Documentation shall be a substandard classroom facility plan.

iv. The district shall review and revise, as necessary, the long-range facilities plan of the district every five years. Documentation shall be an updated written facilities plan.

6. The professional staff element of the district shall be rated acceptable by documentation of performance in the first five of six indicators as follows:

i. The district board of education shall ensure that all professional staff members are certified for the position to which assigned. Documentation shall be obtained by comparison of data of the New Jersey State Department of Education Fall Report and certification records of the Department of Education.

ii. The annual rate of occasional absenteeism for district staff (including teachers and administrators) shall not exceed five percent. Documentation shall be calculated from district staff attendance data for the immediate prior school year by dividing total days of staff occasional absences by total possible days of attendance for all staff and multiplying by 100.

iii. The district board of education shall adopt a review and improvement process to address staff absenteeism, if the annual rate of occasional staff absenteeism exceeds 3.5 percent. Documentation shall be a written description of the review process and improvement plan based on district staff attendance records.

iv. The district shall observe and evaluate tenured and nontenured teaching and administrative staff pursuant to law and rule. Documentation shall be a written plan including a schedule of staff observation and evaluation dates, including the name(s) of person(s) responsible to conduct the evaluations.

v. The district shall adopt a staff development program based on the assessed needs of the district. Documentation shall show that school and individual development programs have been developed in consultation with teaching staff members and evaluated for demonstrable results.

vi. Minutes of meetings of the district board of education may be reviewed to determine that the chief school administrator has recommended to the district board formal appointment of all teaching staff members.

7. The mandated programs element of the district shall be rated acceptable upon documentation of performance in six indicators as follows:

i. The county superintendent of schools shall approve the basic skills improvement plan of the district. Documentation shall be a letter of approval from the county superintendent.

ii. The district board of education shall communicate a description of the basic skills improvement plan to the public. Documentation shall be an agenda and/or minutes of meetings of the district board of education indicating that the plan was described to the public or newsletters and/or other media were used.

iii. The county superintendent of schools shall approve the bilingual and English-as a second language (ESL) education plan of the district. Documentation shall be a letter of approval from the county superintendent.

iv. The district board of education shall communicate a description of the bilingual and ESL education plan to the public. Documentation shall be an agenda and/or minutes of meetings of the district board indicating that the plan was described to the public or newsletters and/or other media were used.

v. The county superintendent of schools shall approve the annual special education plan of the district. Documentation shall be a letter of approval from the county superintendent.

vi. The district board of education shall communicate a description of the annual special education plan to the public. Documentation of this communication shall be an agenda and/or minutes of meetings of the district board indicating that the plan was described to the public or newsletters and/or other media were used.

8. The mandated basic skills test (high school proficiency test) element of the district shall be rated acceptable upon documentation of achievement in the two indicators as follows:

i. Seventy-five percent of the pupils in grade nine of each school shall have passed the State mandated High School Proficiency Test pursuant to N.J.A.C. 6:39-1.2(a) and (b).

ii. Seventy-five percent of the pupils in grade three and 75 percent of the pupils in grade six of each school of the district shall score at or above the minimum level of proficiency established by the State Board of Education for commercially published tests or district criterion-referenced tests.

iii. On the effective date of N.J.A.C. 6:8-8, this section shall only apply to local school districts in Monitoring Category A and Monitoring Category B. This section shall not apply to local school districts in Monitoring Category C until July 1, 1987. This section shall not apply to local school districts in Monitoring Category D until January 1, 1988.

9. The mandated basic skills (minimum basic skills test) element of the district shall be rated acceptable upon documentation of achievement in the first two of the four indicators as follows:

i. Seventy-five percent of the pupils in grade nine of the district for the immediate prior school year shall have passed the State mandated minimum basic skills test pursuant to N.J.A.C. 6:39-1.2(a) and (b). Documentation shall be obtained by calculation using test results or data from the basic skills improvement application and/or plan of the district.

ii. Test scores of 75 percent of the pupils in grades three and six of each school of the district shall equal or exceed scores prescribed by the State Board of Education for commercially published tests or district criterion-referenced tests approved by the State Board of Education. Documentation shall be obtained from calculations using test results or data in the basic skills improvement application and/or plan of the district.

iii. The district shall develop a basic skills improvement plan pursuant to N.J.A.C. 6:8-6.3(a) for each school within the district that did not have 75 percent of the pupils in grade nine scoring at or above the State standard in the immediate prior school year. Documentation of the improvement plan shall be a written basic skills improvement plan and the test results for grade nine of each school of the district for the immediate prior school year.

iv. The district shall develop a basic skills improvement plan pursuant to N.J.A.C. 6:8-6.3(a) for each school within the district that did not have 75 percent of the pupils in each of grades three and six in the immediate prior school year score at or above the State standards for reading, writing and mathematics on standardized commercially published tests or State approved district criterion-referenced tests. Documentation of the improvement plan shall be a written basic skills improvement plan and the test results for grades three and six for each school of the district for the immediate prior school year.

v. On the effective date of N.J.A.C. 6:8-8, this section shall only apply to local school districts in Monitoring Category C and Monitoring Category D. This section shall not apply to Monitoring Category C after June 30, 1987. This section shall not apply to Monitoring Category D after December 31, 1987. This subsection (N.J.A.C. 6:8-8.3(b)) shall expire on December 31, 1987.

10. The equal educational opportunity and affirmative action element of the district shall be rated acceptable by documentation of performance in three indicators as follows:

i. The district shall have approved desegregation plan where required by the Commissioner of Education. Documentation of an approved desegregation plan shall be a written plan and a letter from the commissioner approving such plan.

ii. The district shall review annually progress in the objectives of the State approved affirmative action plans for classroom and employment practices of the district as developed pursuant to N.J.A.C. 6:4-1.3(b). Documentation of annual review shall be a statement by the district of progress in each plan.

iii. The district shall annually implement the affirmative action plans, including inservice training pursuant to N.J.A.C. 6:4-1.3(d), and the desegregation plan, if applicable. Documentation of the implementation of the plans shall be a written statement of objectives and activities for the district and a description of inservice training for personnel of the district.

11. The financial element of the district shall be rated acceptable upon documentation of performance in six indicators as follows:

i. The district board of education shall receive accurate and timely fiscal and statistical reports of the district pursuant to law and rule. Documentation shall be the recorded submission for the immediate prior school year of the financial reports of the secretary to the district board of education and the financial reports of the treasurer of school monies.

ii. The fiscal and statistical reports of the district shall be accurate and timely in transmittal to county, state and federal offices pursuant to law and rule. Documentation shall be the record of submission of applications and reports.

iii. The annual budget for the district shall be developed and presented to the public pursuant to law and rule. Documentation shall be the proposed budget as submitted to the public.

iv. The district shall have an annual audit of accounts and financial transactions pursuant to law and rule. Documentation shall be the completed audit of accounts and financial transactions for the immediate prior school year as accepted by the district board of education.

v. The district board of education shall implement recommendations cited in audit reports of the district and shall report such implementation to the commissioner. Documentation of implementation of the recommendations contained in the audit report shall be minutes of meetings of the district board of education and a letter of acknowledgment from the commissioner.

vi. The county superintendent of schools shall approve the cost of pupil transportation for the district. Documentation shall include, but not be limited to, approved transportation contracts and agreements, transportation route reports and reports of pupil transportation program costs for the district.

(c) The monitoring team shall record its findings on each element using worksheets prescribed by the commissioner.

1. The monitoring team shall review its findings and outline future directions for the district with the chief school administrator at an exit conference.

2. A formal notification of the findings shall be sent to the chief school administrator and board secretary within 10 workdays of the completion of the monitoring visit.

3. The notification shall include:

i. Copies of the completed worksheets;

ii. A copy of the recommendation to the commissioner of the certification status of the district; and

iii. If necessary, a statement of future actions to be taken by the district.

(d) Certification of a district shall be based on an acceptable rating of all required indicators in the 10 essential elements, as cited in this chapter.

1. For each district that receives an acceptable rating on the required indicators in the ten essential elements, the county superintendent shall submit a nomination for certification and a summary report of the findings to the commissioner.

2. The commissioner, with approval of the State Board of Education, shall notify the district of State certification.

(e) A district which is certified and is given an unacceptable rating in an indicator(s) which is not required for certification shall include, pursuant to N.J.A.C. 6:8-1.1, the unacceptable indicator(s) as an objective(s) in the annual educational plan of the district for the succeeding year.

(f) A district rated as unacceptable may petition the county superintendent to rescind the ratings by presenting written documentation of its performance on indicators previously rated as unacceptable.

(g) The assistant commissioner, Division of County and Regional Services, shall rule on petitions when there is lack of agreement on acceptable performance.

(a)

Teacher Preparation and Certification New Jersey Educational Services Supplement to Standards for State Approval of Teacher Education

Adopted Repeal and New Rule: N.J.A.C. 6:11-12.11

Proposed: October 6, 1986 at 18 N.J.R. 1994(a).

Adopted: December 3, 1986, by Saul Cooperman, Secretary,
State Board of Education.

Filed: December 11, 1986 as R.1987 d.35, **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. 18A:1-1, 4-15, 6-38.

Effective Date: January 5, 1987.

Expiration Date: December 12, 1990.

Summary of Public Comments and Agency Responses:

One letter with comments was received. The organization expressed support for the rules with a few suggestions. The suggestions were as follows:

COMMENT: Add a statement in code language to include all students who are matriculated in an approved speech correctionist program on the date of final adoption of these regulations.

RESPONSE: The statement could not be added because it would require changing the effective date.

COMMENT: Delete the word "graduate" to retain flexibility in covering particular areas.

RESPONSE: The code language could not be deleted because core courses in Speech-language Pathology must be graduate level coursework.

COMMENT: Add the language "in Speech-language Pathology" for consistency.

RESPONSE: The Department agreed with the change and made the necessary change in the code language.

One other organization gave testimony in support of the proposed regulations.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*.)

6:11-12.11 Speech-language specialist

(a) The speech-language specialist endorsement is required to provide service as a speech-language specialist in all public schools. The speech-language specialist must possess the professional preparation and experience to:

1. Make assessments, analyses and classifications of students' communication competencies and characteristics;
2. Plan, prepare and deliver treatment programs for children with speech and language deficiencies;
3. Serve as a resource person in the area of speech and language development and disorders to classroom teachers, parents, administrators and the child study team; and
4. Participate in the planning of educational programs for children with communication handicaps.

(b) Requirements for the speech-language specialist endorsement become operative September 1, 1988 and do not affect those individuals who already possess the endorsement or whose official applications have been received *[in]* ***and validated by*** the Office of Certification prior to that date.

(c) The requirements for the speech-language specialist endorsement are as follows:

1. A Master's degree in Speech-language Pathology from an accredited institution. Graduate preparation must include coursework in a coherent sequence covering the following areas:

- i. Basic processes of normal human communication;
- ii. Nature of disorders of human communication;
- iii. Principles underlying assessment, treatment and prevention of speech, language and hearing disorders;
- iv. Applications of speech-language pathology to the school setting; and
- v. Extensive supervised field experience;

2. Graduate or undergraduate coursework in the areas listed below which is taken within or in addition to the Master's program. Job candidates who possess Master's degrees ***in speech language pathology*** and meet all other requirements for certification except the following three study areas may be employed provisionally for a period of two years until these requirements are met.

i. Speech and language development in the preschool child, including such topics as Speech and Language Acquisition, Early Childhood Development and Infant Communication;

ii. Special education and learning disabilities, including such topics as Language and Learning Disabilities, A Survey of Special Education and Education of the Exceptional Child;

iii. Applications of speech-language pathology to the school settings, including such topics as Speech Program Development, Clinical Problems in the Public Schools and Administration of Speech and Hearing Programs in the Public Schools;

3. A minimum of 300 clock hours of supervised practicum experience with individuals who present a variety of communication disorders. This experience must be obtained within a speech-language pathology program of an accredited institution or in one of its cooperating programs. At least 100 of the 300 hours must be earned in work with children; and

4. Demonstrated comprehensive knowledge in the field of speech-language pathology through the achievement of a passing score on an examination as approved by the State Department of Education.

(b)

Teacher Preparation and Certification New Jersey Educational Services Supplement to Standards for State Approval of Teacher Education

Adopted Amendment: N.J.A.C. 6:11-12.24

Proposed: October 6, 1986 at 18 N.J.R. 1995(a).

Adopted: December 3, 1986 by State Board of Education, Saul
Cooperman, Secretary.

Filed: December 11, 1986 as R.1987 d.34, **without change**.

Effective Date: January 5, 1987.

Expiration Date: December 12, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

6:11-12.24 Teacher-coordinator of cooperative vocational-technical education program

(a) An endorsement shall be required for the position of teacher-coordinator of cooperative vocational-technical education in the occupational area(s) of agriculture education, distributive education, health occupations, home economics education, business education and work experience career exploration program (W.E.C.E.P.). The specific area(s) in which the holder may serve as teacher-coordinator will be designated on the endorsement. Such endorsement shall also entitle the holder to teach related vocational-technical subjects in the appropriate occupational area(s) designated on the endorsement and to act as liaison between the school and the co-operating employer's training station in the respective subject area(s).

(b) The prerequisites for a teacher-coordinator's endorsement are:

1. A regular New Jersey instructional certificate in the appropriate occupational area to be coordinated.

2. Successful completion of one of the following:

- i. Two years of teaching in the occupational area to be coordinated, plus two years of approved occupational experience; or

- ii. A combination of:
 - (1)-(2) (No change.)
 - (3) A program of directed occupational field experience offered as part of a college curriculum directly related to the area to be coordinated.
- 3. A program of college studies including one of the following:
 - i. (No change.)
 - ii. A program of college studies including at least one course in each of the following areas:
 - (1)-(2) (No change.)
 - (3) Curriculum construction in vocational-technical education; and
 - (4) (No change.)
 - (c) The requirements for a W.E.C.E.P. teacher-coordinator endorsement are as follows:
 - 1. A regular New Jersey instructional endorsement;
 - 2. Two years of full-time teaching experience under a valid instructional certificate; and
 - 3. A program of college studies including at least one course in each of the areas as specified in (b)3ii above.

(a)

Special Education

Adopted Amendments: N.J.A.C. 6:28-3.4 and 3.5

Proposed: September 8, 1986 at 18 N.J.R. 1771(a).

Adopted: December 3, 1986 by State Board of Education,
Saul Cooperman, Secretary.

Filed: December 11, 1986 as R.1987 d.36, **without change**.

Effective Date: January 5, 1987.

Expiration Date: June 1, 1989.

Summary of Public Comments and Agency Responses:

The department received written comments from one citizen and the New Jersey Department of the Public Advocate.

COMMENT: The citizen expressed concern that the proposed amendment to the definition of "preschool handicapped" was too broad and young children would be needlessly labeled as handicapped. The New Jersey Department of the Public Advocate suggested a change in the proposed amendment to the definition of "preschool handicapped" that would have allowed the provision of related services in the absence of any education program.

RESPONSE: The Department disagreed with both suggestions. In response to the citizen's concern, the proposed definition of "preschool handicapped" incorporates a change required by the court. In response to the Public Advocate, 20 U.S.C. 1401 (17) requires related services to be delivered in support of a pupil's education program.

Full text of the adoption follows.

6:28-3.4 Comprehensive evaluation

- (a)-(i) (No change.)
- (j) A reevaluation to determine the status of each educationally handicapped pupil shall be conducted at least every three years. Reevaluation shall be conducted sooner if conditions warrant.
 - 1.-3. (No change.)
 - 4. Reevaluation shall be conducted prior to the termination of services.
- (k) (No change.)

6:28-3.5 Determination of eligibility

- (a)-(c) (No change.)
- (d) Classification of pupils determined to be eligible for special education and/or related services shall be based on the evaluations of the child study team, the school physician and such other specialists as noted and shall be according to the following definitions:
 - 1.-7. (No change.)
 - 8. "Preschool handicapped" means those children between the ages of three and five who have an identified handicapping condition and/or a measurable developmental impairment who require and would benefit from special education and related services.
 - 9.-11. (No change.)

(b)

Health, Safety and Physical Education Audiometric Screening

Adopted Amendments: N.J.A.C. 6:29-8.1 and 8.2

Proposed: October 6, 1986 at 18 N.J.R. 1996(a).

Adopted: December 3, 1986, by Saul Cooperman, Secretary,
State Board of Education.

Filed: December 11, 1986 as R.1987 d.33, 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. 18A:1-1, 4-15, 40-4.

Effective Date: January 5, 1987.

Expiration Date: March 25, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: The Department received written comments regarding the proposed amendment to N.J.A.C. 6:29-8.2(e), Audiometric Screening, from four interested persons and organizations. Three commenters expressed support for this proposal; the fourth offered suggestions for additional screening methods.

RESPONSE: The Department did not agree with the suggestion for additional screening because it is felt that current procedures are adequate and increased methods would be costly and could lead to over-referral.

The definitions of "audiometric screening," "health care personnel," "pupils at risk for hearing impairment" and "screening room" which were inadvertently omitted in the proposal have been added upon adoption.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*.)

6:29-8.1 Definitions

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

"Audiometer" means an electroacoustical generator which provides pure tones at selected frequencies of output through calibrated earphones mounted in MX41/AR earmuffs. Audiometers shall be calibrated annually in accordance with ANSI S3.6-1969, American National Standard Specifications for Audiometers, which with all subsequent amendments and supplements is hereby adopted as a rule. This document may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York*, New York* 10018.

*"Audiometric screening" means a procedure used to determine a pupil's response to an auditory signal at a given frequency and decibel level.

"Health care personnel" means a certified school nurse or an employee of the district board of education who is trained in audiometric screening and working under the immediate direction of the medical inspector, including but not limited to speech correctionists and audiologists.

"Pupils at risk for hearing impairment" means pupils with communication disorders, pupils with cleft palate, pupils with allergies, pupils with frequent upper respiratory or middle ear infections, pupils taking ototoxic medication, pupils who are exposed to sudden or continuous loud noises.

"Screening room" means any environment in which an adult with normal hearing can hear a 20db HL signal at the frequencies of 500Hz, 1000Hz, 2000Hz, 3000Hz, and 4000Hz.*

6:29-8.2 Screening procedures

- (a) (No change.)
- (b) Auditory screening shall be conducted for pupils who are:
 - 1.-5. (No change.)
 - 6. Referred to the child study team for evaluation; or
 - 7. (No change.)
- (c) The medical inspector, certified school nurse or the health care personnel shall conduct the hearing screening. All screening shall be conducted in cooperation with the school nurse.
- (d) (No change.)
- (e) If a pupil fails the first screening, the school nurse, using an otoscope, may look into the external ear canal and identify any condition which could interfere with the hearing. If there is a possible problem, the pupil and parent shall be notified and a recommendation made for a medical examination.
- (f) A pupil who fails to respond to any one frequency in either ear shall be given a second screening in four to six weeks.

(g) If a pupil fails to respond to the same frequency or frequencies in the same ear on the second screening, the pupil shall be considered to have failed the screening and shall be referred for further evaluation.

(h) (No change in text.)

(i) A pupil who fails to respond at any one frequency on the third screening shall be considered to have failed the screening and shall be referred for further evaluation.

(j) The school nurse shall notify in writing the parent or guardian of pupils failing auditory screening of the necessity for additional evaluation by a physician or family health care provider.

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

(a)

Construction Grants and Loans for Wastewater Treatment Facilities

Matching Grant Procedure Requirements; Standards of Conduct

Adopted Repeal: N.J.A.C. 7:22-1 and 2

Adopted New Rules: N.J.A.C. 7:22-2 and 8

Proposed: September 22, 1986 at 18 N.J.R. 1869(a).

Adopted: December 5, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: December 12, 1986 as R.1987 d.38, with substantive and technical changes not requiring additional public notice and comment. (See N.J.A.C. 1:30-4.3).

Authority: Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:11A-1 et seq.; N.J.S.A. 58:11B-1; and any appropriations to the Department of Environmental Protection for the purpose of providing a State Matching Share to projects funded under the Federal Clean Water Act and its subsequent amendments; and the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329).

Effective Date: January 5, 1987.

Expiration Date: January 5, 1992.

DEP Docket No. 038-86-08.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("the Department") is adopting N.J.A.C. 7:22-2 ("Subchapter 2") to provide a State matching share to projects funded by the Federal government under the Federal Clean Water Act, and N.J.A.C. 7:22-8 ("Subchapter 8") to establish the minimum standards of conduct for persons participating in any State or Federal wastewater treatment facility construction grant or loan program.

Public hearings were held on October 6, 8 and 10, 1986 to provide interested parties the opportunity to present testimony on the proposed amendments. The comment period closed on October 22, 1986. Six people testified at the hearings and written comments were received from fourteen people.

Comments on this subchapter which apply to the adoption of N.J.A.C. 7:22-3 and 4 published elsewhere in this issue of the N.J.R. are signified by a + symbol.

COMMENT: What is the status of the proposed matching loan regulations that were the subject of a public hearing held on February 26, 1986? Was a responsiveness summary ever developed?

RESPONSE: The matching loan regulations proposed on February 3, 1986 at 18 N.J.R. 243(a) were never adopted. Thus, a responsiveness summary was never published. Subchapter 2 of the regulations currently being adopted replaces the February regulations. The major difference between the two subchapters was the decision to permit the award of matching grant moneys rather than the award of State matching assistance in the form of loans. Please note that the Department agreed with certain comments made at the February public hearing and included these changes within the revised Subchapter 2.

COMMENT: Has consideration been given to extending the cutoff date beyond September 30, 1983 for conversion of matching grants to matching loans?

RESPONSE: Since N.J.A.C. 7:22-2 provides for the continuation of matching grants (if moneys are appropriated or otherwise received for this purpose) and does not refer to loans, there is no longer a grant/loan cutoff date in the regulations.

COMMENT: Is a separate application required for award of State matching grant moneys or will the Federal grant application suffice?

RESPONSE: Specific application forms are required for the State matching grant program. The Department will forward the necessary applications directly to eligible municipalities.

COMMENT: One respondent stated his support of the eight percent matching grant from the New Jersey Wastewater Treatment Trust Fund.

RESPONSE: As clarified at the public hearing, the eight percent State grant to match Federal grant awards comes from existing bond issues or from supplemental appropriations from the New Jersey Legislature. This matching grant program is separate and distinct from both the New Jersey Wastewater Treatment Trust Fund and the Wastewater Treatment Fund program.

COMMENT: These regulations should be adopted pursuant to the New Jersey Water Pollution Control Act since the Department may wish to utilize an administrative order issued pursuant to this Act for violations of these regulations.

RESPONSE: The Water Pollution Control Act authorizes the Department to issue administrative orders regardless of whether or not this statute is listed as the "Authority" for these rules. The only statutory authority required to promulgate these rules is that which authorizes the Department to make loans pursuant to Subchapters 3, 4 and 6, and grants pursuant to Subchapter 2, to local government units to build wastewater treatment facilities.

COMMENT: Is it possible to get the eight percent additional grant even if a project was already certified for a Federal grant?

RESPONSE: Yes. Projects that have received a recent Federal grant award would be eligible for State matching assistance. State grant disbursements would not occur until the Legislature's action on the appropriations bill and the processing of the State matching grant applications. As indicated previously, the award of State matching grants is conditioned upon the availability of sufficient appropriations for this purpose.

7:22-2.2 Definitions

COMMENT: + Rather than requiring certified mail, return receipt requested, as the only acceptable form of written notification, other means of notification such as hand deliveries which are signed for upon receipt, or deliveries utilizing an overnight mail service for which proof of delivery can be obtained should be acceptable.

RESPONSE: The Department agrees that such means of delivery, where proof of receipt is obtained, is acceptable. The definitions section of this subchapter (as well as under N.J.A.C. 7:22-3 and 4) has been revised to include a definition of certified mail that permits these alternative delivery methods.

COMMENT: The definition of "substantial alteration" should be revised to allow some tolerance of change in project cost such as plus or minus 5 percent of the total project cost.

RESPONSE: Funding is awarded to match Federal grants. The recommended change to Subchapter 2 would be inconsistent because these grants are limited to the actual low bid building cost, and specifically exclude eligibility for subsequent cost overruns. Thus, this change will not be included in the regulations.

7:22-2.3 State matching grants

COMMENT: The word "maximum" should be deleted from N.J.A.C. 7:22-2.3(b)(3), as maximum implies that the State has the latitude to award less than an eight percent grant.

RESPONSE: The Department has included the word maximum in order to clearly establish that the eight percent grant level is a ceiling for matching grant assistance available from the State and feels that this language should be retained within the regulations. It should also be noted that since these grant awards are limited to the low bid building cost and do not include change orders, the State's grant award may be less than eight percent of the final building cost.

7:22-2.5 Application procedures

COMMENT: Requiring both an administrative and a technical review of the project is a duplication of efforts already performed by the State under the delegation agreement to certify the project to the USEPA. It is recommended that projects which receive Federal funding be allowed

to submit a State grant application on the basis of the Federal award in order to expedite the process through both the NJDEP and the Legislature.

RESPONSE: While there are specific administrative functions that must be performed in order to assure compliance with State requirements, the Department does not intend to use the technical project review that has been completed for Federal grant processing. Thus, the Department is not proposing a duplication of efforts.

In response to the suggestion that municipalities be allowed an opportunity to expedite the processing of State grant applications, the Department encourages municipalities to submit their applications at the earliest possible time. However, the executed Federal grant agreement as well as all necessary agreements and subagreements is required as part of the State matching grant application process, and thus certain delays are inevitable. The Department will, however, attempt to process all complete matching grant applications within the 60 day period as identified in the regulations, provided sufficient funding is available.

7:22-2.9 Department approval/disapproval

COMMENT: N.J.A.C. 7:22-2.9(a)(2), which allows the State to defer an application where no State appropriation has been made, should be revised to read "defer, but approved, pending legislative appropriations."

RESPONSE: The Department is specifically prohibited from approving a matching grant application until a legislative appropriation has been made. Thus, the suggested language cannot be included in the regulations.

7:22-2.15 Allowable project costs

COMMENT: The Department should permit administrative costs to exceed a one percent level.

RESPONSE: The limit mentioned by the commenter refers to the one percent eligibility limit of administrative, legal and fiscal costs as contained in the State's Priority System for the award of Federal Construction Grant funds in New Jersey. As Subchapter 2 provides for the award of State grant assistance to match Federal grant awards, the same provisions of the Priority System for the Federal program would apply.

7:22-2.16 Unused funds

COMMENT: A deobligation by the Legislature is required for unused funds and the regulations should note this. In addition, the deobligation of funds does not allow cost savings incurred by authorities to be used to offset change orders or other cost overruns.

RESPONSE: The deobligation of State grant funds requires a legislative action but it is not necessary for the regulations to reflect this. In response to the issue regarding the use of excess funds, grant awards in excess of the low bid building cost would be deobligated and retained by the State. However, both the Federal and State matching grant program permit limited line item adjustments to be made where cost savings occur under portions of the project to cover cost overruns incurred on other portions.

7:22-2.18 Grant conditions

COMMENT: The State should provide a definition of "sufficient qualified operating and management personnel" to avoid questions of interpretation.

RESPONSE: As these terms vary significantly from project to project, depending on the complexity of the treatment facility, the definition must be flexible so as to be amenable to the various situations. The intent of this section, however, is to avoid situations where a treatment plant may come on-line without a licensed operator on board, where personnel are not receiving training, or other instances of inadequate plant operation and management. No change has been made to the definition.

COMMENT: The requirements of N.J.A.C. 7:22-2.18(a)(2), to "certify and assure" contractor's financial records is onerous.

RESPONSE: The Department requires municipalities to certify that their financial records are being maintained in accordance with generally accepted accounting principles and auditing standards for governments. In the event that questions arise regarding the costs incurred by contractors and subcontractors, it is to the local government unit's advantage that these parties also maintain their records in accordance with these accounting standards in order to minimize record-keeping discrepancies and thus this "assurance" is required.

COMMENT: The provisions of N.J.A.C. 7:22-2.18(a)(15) are very restrictive.

RESPONSE: This section indicates that no State matching funds will be disbursed to a local government unit which has defaulted on any State loan. While some municipalities may be impacted by this, the Department has determined that delinquent loan recipients should not be entitled to additional funds, regardless of the funding programs involved.

7:22-2.21 State payment

COMMENT: A specific interval (such as once a month) should be included under N.J.A.C. 7:22-2.21 regarding State payments.

RESPONSE: The State has historically provided regular progress payments for projects that have received State matching grant awards, although many municipalities request payments much less frequently than on a monthly basis. Other municipalities have requested a State payment in a shorter period of time than once a month where significant costs have been incurred. The Department has not identified a specific payment interval in order to permit this flexibility. It should be noted, however, that the major reason for progress payment delays has been in the inadequacies of back-up information to justify the payment request.

7:22-2.22 Assignment

COMMENT: Prohibiting the assignment of grant payments will prevent an Authority from undertaking certain types of financing (specifically grant anticipation notes); therefore an exception should be made for such purposes.

RESPONSE: This provision advises municipalities that the Department will make grant payments only to the recipient identified in the matching grant agreement. The provision regarding assignment of grant payments has historically been included under the Federal and State regulations. The Department is not aware of circumstances in which this provision would preclude utilization of grant anticipation notes, as such means are currently used by municipalities under the State and Federal grant program.

7:22-2.24 Debarment

COMMENT: The clause required by N.J.A.C. 7:22-2.24(b) might not be included in a project's existing contracts and such contracts should be grandfathered in under these regulations.

RESPONSE: The Department recognizes that existing contracts for Federal grant projects may not include this clause, since this provision was not in the earlier regulations of the Department for State matching grants. In order to preserve their eligibility, this section has been modified to indicate that this is required to be included in all contracts that are let (that is, executed) after January 5, 1987.

7:22-2.27 Administrative grant changes

COMMENT: The provisions of this section would allow the Department to make a unilateral change in a recipient's payment schedule and this would affect the substantive rights of the recipient. Thus, such a situation should not be considered an administrative change but rather a change requiring a formal grant amendment.

RESPONSE: Payment schedules provided under grant agreements are developed based upon the estimated dates for which construction would be completed. In many cases, construction may be more rapid or delayed beyond the dates originally estimated, often due to circumstances beyond the municipality's or the contractor's control. The intent of this section was to allow the Department to proceed with the distribution of State grant payments that are not fully in conformance with the estimated construction completion dates identified in the grant agreement.

In recognition of this commenter's concerns, appropriate changes have been included in N.J.A.C. 7:22-2.27 in order to clarify this situation. Thus, if significant changes to a project schedule occurs (i.e., greater than 90 days from the scheduled dates in the grant agreement), execution of a formal grant amendment will be required. However, minor changes in the construction schedule will still be considered to be administrative grant changes so that flexibility in providing State matching grant payment can be maintained.

7:22-2.30 Notices of noncompliance

COMMENT: The first and last sentences of N.J.A.C. 7:22-2.30 are contradictory in intent.

RESPONSE: Section 2.30 presents the provisions regarding the Department's issuance of a notice of noncompliance to the local government unit, the engineer and/or contractor, and requires correction of the inadequacies within 10 working days of receipt of the notice. The last sentence of this section indicates that the Department may issue a stop-work order or withhold payments without issuing a notice of noncompliance. While the Department intends to issue notices of noncompliance as the first step towards correction of project inadequacies in most cases, the issuance of a stop-work order or withholding of funds without first issuing the notice of noncompliance may be necessary in certain circumstances, such as in cases where the immediate suspension of work on the project is important, where repeated project management deficiencies are occurring, and other similar situations.

7:22-2.32 Stop-work orders

COMMENT: The Department should be made financially accountable for the issuance of stop-work orders issued pursuant to N.J.A.C. 7:22-2.32 such that if it is determined that its stop-work order was not warranted, additional project costs resulting from the unwarranted work order would be grant eligible.

RESPONSE: The Department issues stop-work orders under extreme circumstances, with the protection of the public health and safety being primary concerns. Therefore, such costs will not be grant eligible under either the Federal or the State matching grant program, as this would be inconsistent with the low bid building cost limitation policy under these grant programs.

7:22-2.36 Administrative hearing

COMMENT: This section should be modified to note that after the Division conducts the hearings on the dispute and renders its decision that it shall be considered a final agency action for purposes of the Administrative Procedures Act.

RESPONSE: A final agency action is the determination made by the Commissioner after a hearing is held by the Office of Administrative Law and an initial decision is made by the Administrative Law Judge. The Commissioner then enters an order, or final decision accepting, rejecting, or modifying the initial decision. That final decision of the Commissioner, not the decision of the Division of Water Resources, becomes the final agency action.

7:22-8.5 Disclosure by other persons providing services

COMMENT: N.J.A.C. 7:22-8.5 should further define the persons required to submit a disclosure statement, because it is unclear whether it is the principals of the firms or any and all employees connected with the firm or the firms themselves who are covered under this provision.

RESPONSE: As indicated in N.J.A.C. 7:22-8.5, *all* persons providing professional services to an Authority shall be required to disclose any business, financial or personal interest which might conflict with the interest of the Authority. In addition, the definition of "person" under this subchapter specifically includes individuals, associations, partnerships and corporations, and thus disclosure statements would be required from principals as well.

N.J.A.C. 7:22-2.18(a) has been deleted and reserved upon adoption to permit the Department to consider whether the cited Environmental Guidelines and Construction Requirements were regulatory in nature and, if so, to be promulgated as rules.

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

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. MATCHING GRANT PROCEDURES AND REQUIREMENTS

7:22-2.1 Scope and construction

(a) This subchapter shall constitute the rules governing disposition of appropriations for the purposes of planning, design, and construction of wastewater treatment facilities. State matching grants (to match Federal grant awards) shall be made pursuant to the Clean Waters Bond Act of 1976 (P.L. 1976, c. 92); the Water Conservation Bond Act of 1969 (P.L. 1969, c. 127); the Natural Resources Bond Act of 1980 (P.L. 1980 c. 70); N.J.S.A. 13:1D-1 et seq.; and N.J.S.A. 58:11A-1 et seq., and any appropriations to the Department of Environmental Protection for the purpose of providing a State matching share to projects funded under the Federal Clean Water Act and its subsequent amendments.

(b) These rules shall be liberally construed to permit the Department to effectuate the purposes of the law.

(c) The rules in this subchapter are promulgated for the following purposes:

1. To implement the purposes and objectives of the Clean Waters Bond Act of 1976 (P.L. 1976, c. 92); the Water Conservation Bond Act of 1969 (P.L. 1969, c. 127); the Natural Resources Bond Act of 1980 (P.L. 1980, c. 70); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:11A-1 et seq., and any appropriations to the Department of Environmental Protection for the purpose of providing a State matching share to projects funded under the Federal Clean Water Act and its subsequent amendments;
2. To establish policies and procedures for distribution of funds for the planning, design and construction of wastewater treatment facilities;
3. To protect the public and the State of New Jersey by insuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of funds are consistent with the laws and policies of the State of New Jersey;

5. To establish accounting procedures for the administration of grants; and

6. To establish standards for the construction of wastewater treatment facilities.

7:22-2.2 Definitions

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

"Applicant" means any political subdivision or special district of the State or agency thereof having jurisdiction over disposal of sewage, industrial waste or other wastes, or a designated and approved management agency under Section 208 of the Federal Act that applies for a grant pursuant to the provisions of this subchapter.

"Assistant Director" means the Assistant Director, Construction Grants Administration Element, Division of Water Resources, New Jersey Department of Environmental Protection.

"Certified mail" means any means of delivery where proof of receipt is obtained and date of receipt is recorded.*

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection.

"Construction" means the preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary to the construction of wastewater treatment facilities; the erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater treatment facilities; and the inspection and supervision of the construction of wastewater treatment facilities.

"Department" means the New Jersey Department of Environmental Protection.

"Director" means the Director of the Division of Water Resources of the Department of Environmental Protection.

"Division" means the Division of Water Resources, New Jersey Department of Environmental Protection.

"Eligible costs" means costs which are determined under regulations of the United States Environmental Protection Agency to be eligible for Federal grant funds.

"Federal Act" means the Clean Water Act (33 U.S.C. 1251 et al.) and any amendatory or supplementary acts thereto.

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Act.

"Final building cost" means the actual eligible cost of the final work in place for the project, the scope of which is defined in the grant agreement.

"Grant" means a State matching grant of the eligible costs of a project receiving a Federal grant.

"Grant agreement" means the legal instrument executed between the State of New Jersey and the recipient for the construction of wastewater treatment facilities. The agreement will specify: budget and project periods; the State share of eligible project costs; a description of the project scope of services to be performed; and any special conditions.

"Low bid building cost" means the actual eligible cost associated with the award of all contracts within a project scope to the lowest responsible and responsive bidder(s).

"N.J.P.D.E.S." means the New Jersey Pollutant Discharge Elimination System, N.J.A.C. 7:14A-1 et seq.

"Project" means the defined scope of services for the construction of specified facilities as approved by the Department in the grant agreement.

"Recipient" means an applicant who has received a State grant.

"Substantial alteration" means any change which results in an alteration of the project costs or a change of 90 days or more in the project schedule.

"Step 3" means the Step 3 activities as defined in 40 C.F.R. 35.2005.

"Wastewater treatment facilities" includes, but is not limited to, the plants, structures and personal property acquired, constructed or operated, or to be acquired, constructed or operated in whole or in part by or on behalf of the State or a political subdivision or subdivisions thereof, including pumping and ventilating stations, sewage treatment systems, plants and works, connections, outfalls, combined sewer overflows, interceptors, trunklines, collection systems and other personal property and appurtenances necessary or useful and convenient for the treatment, purification, or disposal in a sanitary manner of any sewage liquid or solid wastes, night soil, or industrial wastes to preserve and protect natural water resources and facilities.

7:22-2.3 State matching grants

(a) The Department shall request that the Legislature appropriate funds for the purpose of awarding matching grants under the Clean Waters Bond Act of 1976 (P.L. 1976, c. 92), the Water Conservation Bond Act of 1969 (P.L. 1969, c. 127), and the Natural Resources Bond Act of 1980 (P.L. 1980, c. 70).

(b) The Department shall award State matching grants pursuant to N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:11A-1 et seq., and any appropriations bills providing funds to the Department for the purposes of this subchapter.

1. No project that is eligible for a State matching grant pursuant to this section is eligible for State assistance from the Wastewater Treatment Fund (P.L. 1985, c. 329) pursuant to N.J.A.C. 7:22-3 or from the Wastewater Treatment Trust Fund (N.J.A.C. 58:11B-1 et seq.) pursuant to N.J.A.C. 7:22-4 or from the Pinelands Infrastructure Trust Fund (P.L. 1985, c. 302) pursuant to N.J.A.C. 7:22-6.

2. Projects shall receive priority based on the date on which the Federal grant was made.

3. The maximum amount for each project receiving a State matching grant shall be eight percent of the costs which are determined under regulations of the United States Environmental Protection Agency (USEPA) to be eligible for Federal grant funds.

7:22-2.4 Pre-application procedures

The Department encourages informal inquiries by potential State grant applicants prior to application submission in order to expedite preparation and evaluation of the grant application documents. Such inquiries may relate to procedural or substantive matters and may range from informal telephone advice to pre-arranged briefings of potential applicants. Questions should be directed to: Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN-029, Trenton, New Jersey 08625; Telephone: (609) 292-8961.

7:22-2.5 Application procedures

(a) A grant application shall include the completed application forms, technical documents, and supplementary materials furnished by the applicant. It is the responsibility of the applicant to ensure that the Department has received all necessary documentation in a timely manner. Submissions which do not substantially comply with this subchapter shall not be processed further. Applications shall comply with the following standards:

1. Applications shall be signed by the applicant or a person authorized by resolution to obligate the applicant to the terms and conditions of the grant.

2. Each grant shall constitute an offer to accept the requirements of this subchapter and the terms and conditions of the grant agreement.

3. Applications shall be submitted well in advance of the desired grant award date. Generally, processing of a grant application by the Division requires 60 calendar days after receipt of a complete application by the Division where a Federal grant has been awarded. A State grant shall not be made until a Federal grant has been awarded. Nor shall a grant be made until a State appropriation is made therefor.

4. Applications shall be sent to: Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN-029, Trenton, New Jersey 08625.

5. The following documents shall be submitted when applying for a State grant:

- i. Application for State assistance for wastewater treatment facilities;
 - ii. Resolution authorizing the filing of an application for State assistance;
 - iii. Statement of assurances;
 - iv. Assurance of compliance with Federal and State civil rights conditions;
 - v. An executed Federal grant agreement; and
 - vi. Such other forms as the Department may require.
6. Applications shall be accompanied by all necessary agreements and subagreements.

7:22-2.6 Use and disclosure of information

All grant applications, pre-applications, and other submittals, when received by the Department, constitute public records of the Department. The Department shall make them available to persons who request their release to the extent required by New Jersey and Federal law.

7:22-2.7 Evaluation of application

(a) The Department shall notify the applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application;

2. Program, technical, and scientific evaluation to determine the merit and relevance of the project to the Department's program objectives;

3. Budget evaluation to determine whether proposed project costs are eligible, reasonable, applicable, and allowable; and

4. Final administrative evaluation to determine if all items pursuant to N.J.A.C. 7:22-2.4 were submitted in an acceptable form to the satisfaction of the Department.

7:22-2.8 Supplemental information

At any stage during the evaluation process, the Department may request the applicant to furnish documents or information required by this subchapter and necessary to complete a full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

7:22-2.9 Department approval/disapproval

(a) After a full review and evaluation of an application, the Department shall take one of the following actions:

1. Approve for grant award;
2. Defer, where no State appropriation has been made; or
3. Disapprove the application.

(b) The Department shall not approve an application unless a State appropriation has been made therefor. The applicant shall be promptly notified in writing of any approval, deferral, or disapproval. A deferral or disapproval of an application shall not preclude its reconsideration or resubmittal.

7:22-2.10 Amount of a grant

The amount of a grant shall be determined at the time of grant award. The amount of the grant shall be based upon eligible project costs for which a Federal grant has been awarded. In no event shall the amount of the grant exceed the amount appropriated by the Legislature for the recipient's project. In addition, in no event shall the amount of the grant exceed the amount for which the project is eligible or the amount available for the award of grants.

7:22-2.11 State share

The State share shall be set forth in the grant agreement expressed both as a dollar amount and as a percentage of eligible project costs for which a Federal grant has been awarded. Such dollar amount shall represent the grant ceiling. The State share shall not exceed eight percent of the eligible costs.

7:22-2.12 Grant agreement

Upon execution of the grant agreement by the Department, the Department shall transmit the grant agreement (certified mail, return receipt requested) to the applicant for execution. The applicant shall execute it and return it within 30 calendar days after receipt. The Department may, at its discretion, extend the time for execution. The grant agreement shall set forth the approved project scope, budget (including the federal and State shares) and project periods, and total project costs. The grant agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

7:22-2.13 Effect of the grant award

(a) A grant shall constitute an obligation of the Water Conservation Bond Act, Clean Waters Bond Act, Natural Resources Bond Act or the Fund established pursuant to the act of legislature appropriating moneys for the purposes of this subchapter in the amount and for the purposes stated in the grant agreement. A grant shall become effective immediately after its execution by the Department and the applicant.

(b) Neither the approval of a project nor the award of any grant shall commit or obligate the Department to award any continuation grant to enter into any grant agreement, including grant increases to cover cost overruns, with respect to any approved project or portion thereof.

(c) Nor shall the Department's approval be used as a defense, by the applicant, to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates.

7:22-2.14 Eligibility and criteria

An applicant is eligible for a State grant if the applicant has been awarded a Federal grant pursuant to section 201 of the Federal Act. A project shall receive priority for State assistance based upon the date on which a Federal grant has been awarded.

7:22-2.15 Allowable project costs

(a) Project costs shall be allowed to the extent permitted by 40 C.F.R. 35.2250 or any amendments thereto under the Federal grant program pursuant to section 201 of the Federal Act, and to the extent permitted by this subchapter.

(b) Project costs shall be computed as directed by 40 C.F.R. Parts 30 and 33 et seq. and amendments thereto.

(c) Notwithstanding (a) and (b) above, the Department shall not allow costs for work that the Department determines is not in compliance with specifications or requirements of project contracts.

7:22-2.16 Unused funds

Where the total amount paid under a grant or grant amendments for the final building costs is less than the amount appropriated by the Legislature for the grantee's project, the difference in amount shall be debilitated and retained by the State for a reallocation pursuant to the Clean Waters Bond Act (P.L. 1976, c. 92), the Water Conservation Bond Act of 1969 (P.L. 1969, c. 127), the Natural Resources Bond Act of 1980 (P.L. 1980, c. 70), or any act of legislature appropriating monies for the purposes of this subchapter as appropriate.

7:22-2.17 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer grants, acquire property pursuant to the grant agreement, and award contracts and subcontracts under those grants free from bribery, graft, kickbacks, and other corrupt practices. The recipient bears the primary responsibility for the prevention, detection, and cooperation in the prosecution of any such conduct. The State shall also have the right to pursue administrative or other legally available remedies.

(b) The recipient shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Director when such allegation or evidence comes to its attention, and shall periodically advise the Director of the status and ultimate disposition of any matter.

7:22-2.18 Grant conditions

(a) The following requirements, in addition to such statutes and regulations as may be applicable to particular grants, are conditions to each grant and conditions to each payment under a grant award.

1. The recipient shall comply with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

2. The recipient shall certify that it and assure that its contractors and subcontractors are maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions.

3. The recipient shall comply with the Department's standards of conduct. (See: N.J.A.C. 7:22-8)

4. The recipient shall provide a copy of the N.J.P.D.E.S. permit or otherwise provide an identification of effluent discharge limitations.

5. The recipient shall comply with the Civil Rights Act of 1964 (P.L. 88-352) as well as the New Jersey Law Against Discrimination, (N.J.S.A. 10:5-1 et seq.), as amended.

6. The recipient shall adopt a system of user charges and a sewer use ordinance consistent with 40 C.F.R. 35.2208 and other applicable laws and regulations.

7. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 et seq. and enforce pretreatment standards which comply with 40 C.F.R. 403.

8. The recipient shall comply with all pertinent requirements of Federal, State and local environmental laws.

9. The recipient shall pay the non-State and non-federal costs of the construction (that is, facilities planning, design, building and related costs) which are associated with the project. The recipient shall be responsible to complete the construction of the project.

10. The recipient shall comply with the requirements governing Federal grants under the Federal Act, including 40 C.F.R. 30.100 et seq., 40 C.F.R. 33.001 et seq., and 40 C.F.R. 35.2000 et seq. Failure of the recipient to comply with Federal requirements shall constitute non-compliance with these regulations and shall give rise to the remedies provided in N.J.A.C. 7:22-2.29 to 7:22-2.35.

11. The grant agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project or Department objectives. The recipient shall comply with any special conditions which the Department requires in the grant agreement or any amendment thereto.

12. Qualified personnel and chief operating officer:

i. The recipient shall retain sufficient qualified operating and management personnel from the time of completion of construction or commencement of operation, whichever is earlier, until such time as the operation of the facility is discontinued; and

ii. The recipient shall retain a qualified chief operating officer or executive director.

13. Construction of the project, including letting of contracts in connection therewith, shall conform to applicable requirements of Federal, State, and local laws, ordinances, rules and regulations and to contract specifications and requirements.

14. (Reserved).

15. No State funds shall be disbursed to a local government unit which has defaulted on any State loan. In order to facilitate full or partial payment of such defaulted loan obligation the Department may, at its discretion, make a grant payment where it simultaneously receives from the local government unit an amount in repayment of the defaulted loan obligation at least equal to the grant payment. Nothing in this paragraph shall in any way limit any right or duty of the Department to demand and collect at any time the total due under any such past loan.

16. *[The recipient shall comply with the following guidelines of the Department: "Environmental Guidelines for the Planning, Designing, and Construction of Wastewater Treatment Facilities" and "Construction Requirements for the Construction of Sewerage Facilities". The guidelines can be obtained from the Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN-029, Trenton, N.J. 08625.]* *(Reserved)*

17. The recipient shall certify that it has not and will not enter into any contract with nor has any subcontract been or will be awarded to any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5 for any services within the scope of work.

(b) The recipient shall certify that it is in compliance with all requirements and conditions of the grant agreement.

7:22-2.19 Administration and performance of grants

The recipient bears primary responsibility for the administration and success of the grant project, including any subagreements made by the recipient for accomplishing grant objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the recipient to the Department. The primary concern of the Department is that grant funds awarded pursuant to this subchapter be used in conformance with applicable Federal and State requirements to achieve grant and program objectives to promote the most efficient use of public funds, and to make optimum contributions to the betterment of the environment.

7:22-2.20 Access

(a) The recipient and its contractor and subcontractors shall provide to Department personnel and any authorized representative of the Department access to the facilities, premises and records related to the project.

(b) The recipient shall submit to the Department such documents and information as requested by the Department.

1. All recipients, contractors and subcontractors may be subject to a financial audit.

2. Records shall be retained and available to the Department for a minimum of three years after issuance of the final grant payment by the Department. If litigation, a claim, an appeal, or an audit is begun prior to the end of the three year period, records shall be retained and available until the three years have passed or until the action is completed and resolved, whichever is longer.

7:22-2.21 State payment

Payment of State funds shall be made at intervals as work progresses and expenses are incurred, but in no event shall payment exceed eight percent of the eligible costs which have been incurred to that time. Each payment shall be signed and approved by the Commissioner or his authorized representative.

7:22-2.22 Assignment

The right to receive payment under a grant may not be assigned, nor may payments due under a grant be similarly encumbered.

7:22-2.23 Publicity and signs

(a) Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge State grant support.

(b) A project identification sign shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project and State grant support.

7:22-2.24 Debarment

(a) No recipient shall enter into a contract for work on a wastewater treatment project with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.

(b) Recipients shall insert in every contract for work on a project ***advertised after January 5, 1987*** a clause stating that the contractor may be debarred, suspended or disqualified from contracting with the State and the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) The recipient, prior to acceptance of State funds, shall certify that no contractor or subcontractor is included on the State Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a State agency other than the Department of Environmental Protection. If State funds are used for payment to a debarred firm, the Department reserves the right to take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the recipient may take into account the loss of State funds under these regulations which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsive, responsible bidder pursuant to law; and the recipient may advise prospective bidders that these procedures will be followed.

(e) Any person included on the Treasurer's List as a result of action by a State agency other than the Department, who is or may become a bidder on any contract which is or will be funded under this subchapter may present information to the Department why this section should not apply to such person. If the Commissioner determines that it is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-2.25 Project changes and grant modifications

(a) A grant modification means any written alteration of the grant amount, grant terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) The recipient shall promptly notify the Assistant Director, Construction Grants Administration Element, Division of Water Resources, in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant modification, including but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objectives of a project;
4. Significant, changed conditions at the project site;
5. Acceleration or deceleration in the time for performance of the project or any major phase thereof;
6. Changes which may increase or substantially decrease the total cost of a project;
7. Changes in key personnel identified in the grant agreement or a reduction in time of effort devoted to the project by such personnel; or
8. Changes in construction contracts.

(c) If the Department decides a formal grant amendment is necessary, it shall notify the recipient and a formal grant amendment shall be prepared in accordance with N.J.A.C. 7:22-2.26. If the Department decides a formal grant amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:22-2.27 or 2.28, as applicable.

7:22-2.26 Formal grant amendments

(a) The Department shall require a formal grant amendment to change principal provisions of a grant where project changes substantially alter the cost or time of performance of the project or any major phase thereof; or substantially alter the objective or scope of the project by key personnel.

(b) The Department and recipient shall effect a formal grant amendment only by a written amendment to the grant agreement.

7:22-2.27 Administrative grant changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the recipient, or a ***[change in]*** ***nonsubstantial alteration of*** the payment schedule for grants for construction of wastewater treatment facilities, constitute changes to the grant agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the recipient.

7:22-2.28 Other changes

All other project changes, which do not require formal grant amendment, require written approval of the Assistant Director.

7:22-2.29 Noncompliance

(a) In addition to other remedies as may be provided by law, in the event of noncompliance with any grant condition, requirement of this subchapter, or contract requirement or specification, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:22-2.30;
2. Withhold grant funds pursuant to N.J.A.C. 7:22-2.31;
3. Order suspension of project work pursuant to N.J.A.C. 7:22-2.32;
4. Terminate or rescind a grant pursuant to N.J.A.C. 7:22-2.33 and 7:22-2.34; or
5. Issue administrative orders of enforcement pursuant to the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.).

7:22-2.30 Notice of noncompliance

Where the Department determines that the recipient is in non-compliance with any condition or requirement of these rules or with any contract specification or requirement, it shall notify the recipient, its engineer, and/or the contractor of the noncompliance. The Department may require the recipient, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the recipient, its engineer, and/or contractor fails to take corrective action or if the action taken is inadequate, then the Department may issue a stop-work order or withhold payment. The Department may, however, issue a stop-work order or withhold payment pursuant to N.J.A.C. 7:22-2.31 and 2.32 without issuing a notice pursuant to this section.

7:22-2.31 Withholding of funds

The Department may withhold a grant payment or any portion thereof where it determines in writing that a recipient has failed to comply with any grant condition, provision of this subchapter, or contract specification or requirement.

7:22-2.32 Stop-work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, noncompliance with the terms and conditions of the grant. The Department shall limit use of a stop-work order to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) Prior to issuance, the Department shall afford the recipient an opportunity to discuss the stop-work order with the Department personnel. The Department shall consider such discussions in preparing the order. Stop-work orders shall contain:

1. The reasons for issuance of the stop-work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the recipient for materials or services;
4. Guidance as to action being taken on sub-agreements; and
5. Other suggestions to the recipient for minimizing costs.

(c) The Department may, by written order to the recipient (certified mail, return receipt requested), require the recipient to stop all, or any part of, the project work for a period of not more than 45 days after the recipient receives the order, and for any further period to which the parties may agree.

(d) The effects of a stop-work order are as follows:

1. Upon receipt of a stop-work order, the recipient shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:

- i. Rescind the stop-work order, in full or in part;
- ii. Terminate the Grant allocable to the work covered by such order as provided in N.J.A.C. 7:22-2.33; or
- iii. Authorize resumption of work.

2. If a stop-work order is cancelled or the period of the order or any extension thereof expires, the recipient shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant period, and the grant agreement shall be modified accordingly within the discretion of the Department. However, any additional project costs as a result of this action shall be the responsibility of the recipient.

7:22-2.33 Termination of grants

(a) The Department may terminate a grant for good cause subject to negotiation and payment of appropriate termination settlement costs. The

term "good cause" shall include, but not be limited to, substantial failure to comply with the terms and conditions of the grant.

1. The Department shall give written notice to the recipient (certified mail, return receipt requested) of intent to terminate a grant in whole or in part at least 10 days prior to the intended date of termination.

2. The Department shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested), terminate the grant in whole or in part.

(b) A recipient shall not unilaterally terminate the project work for which a grant has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the director of any complete or partial termination of the project work by the recipient. If the Department determines that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, the Department may enter into a termination agreement or unilaterally terminate the grant effective with the date of cessation of the project work by the recipient. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the grant pursuant to this section or rescind the grant pursuant to N.J.A.C. 7:22-2.34.

(c) The Department and recipient may enter into an agreement to terminate the grant at any time pursuant to terms which are consistent with this subchapter. The agreement shall establish the effective date of termination of the project and grant, basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party. The Department has the right to determine the schedule for repayment by the recipient under a termination action.

(d) Upon termination, the recipient shall refund or credit to the State or the Department that portion of grant funds paid to the recipient and allocable to the terminated project work. The recipient shall make no new commitments without the Department's approval.

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Director the uncommitted balance of funds awarded under the grant. The Department shall make the final determination of the allowability of termination costs.

7:22-2.34 Rescission of grants

(a) The Department may, in writing, rescind the grant if it determines that:

1. Without good cause therefor, substantial performance of the project work has not occurred;
2. The grant was obtained by fraud; or
3. Gross abuse or corrupt practices in the administration of the project have occurred.

(b) At least 10 days prior to the intended date of rescission, the Department shall give written notice to the recipient (certified mail, return receipt requested) of intent to rescind the grant. The Department shall afford the recipient an opportunity for consultation prior to rescission of the grant. Upon rescission of the grant, the recipient shall return all grant funds previously paid to the recipient. The Department shall make no further payments to the recipient. In addition, the Department retains the right to pursue such remedies as may be available under Federal, State and local law.

7:22-2.35 Administrative order of enforcement

(a) Under the authority of N.J.S.A. 58:10A-5d and N.J.S.A. 58:10A-6b, the Department may:

1. Issue an order to "cease and desist" unpermitted construction, pursuant to N.J.S.A. 58:10A-10b;
2. Issue an order revoking the permit to operate, pursuant to N.J.S.A. 58:10A-106 and N.J.A.C. 7:14-2.7;
3. Issue an order to "cease and desist" combined with an assessment of a civil administrative penalty, pursuant to N.J.A.C. 7:14-8.

7:22-2.36 Administrative hearings

(a) The Director shall attempt to decide all disputes arising under a grant. When a recipient so requests, the Division shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the recipient.

(b) A recipient may request a hearing within 15 days of a decision by the Director. Where required by law, the Division shall grant an administrative hearing based upon such request and file the matter with the Office of Administrative Law. Administrative hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14D-1 et seq., N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq., promulgated pursuant to those acts.

7:22-2.37 Severability

If any provision of these rules or the application thereof is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the provisions of these rules.

SUBCHAPTER 8. MINIMUM STANDARDS OF CONDUCT FOR OFFICERS, EMPLOYEES, AGENTS AND MEMBERS OF WASTEWATER UTILITIES

7:22-8.1 Scope and purpose

This subchapter establishes the minimum standards of conduct for persons participating in any State or Federal wastewater treatment facility construction grant or loan program.

7:22-8.2 Definitions

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

"Agent" means any person hired to act for an Authority in the conduct of its business.

"Associated party" means any employee, officer, agent, or members of an Authority.

"Authority" means a public body or utility created pursuant to New Jersey to treat sewage within the identified territorial boundaries of a service area.

"Employee" means an individual employed on a regular basis by an Authority.

"Governing body" means the governmental unit(s) having the statutory authority and responsibility for the establishment of an Authority and/or the appointment of its members.

"Members" means those individuals appointed by a governing body to an Authority. The powers of an Authority are vested in these individuals.

"Officers" means those individuals selected by the members to serve in official capacities, such as chairman, vice chairman, secretary or treasurer. In some organizations, some full-time employees may be considered officers; for example, the executive director or chief engineer.

"Person" means any individual, association, partnership or corporation.

"Responsible associated party" means any associated party who by reason of the individual's position has, directly or indirectly through subordinates, the authority and responsibility for initiating, reviewing, approving, or disapproving policy, financial, personnel, or procurement actions of an Authority.

"Supervisor" means an employee responsible for planning, directing, or supervising the work of others in accomplishing the administration, construction, or operation and maintenance activities of an Authority, including, but not limited to:

1. Any individual serving in the capacity of executive director, chief engineer, and/or chief administrative officer, and members of their executive staffs; and
2. Any employee responsible for key administrative functions such as personnel, procurement, finance and accounting.

7:22-8.3 Public accountability

(a) Each responsible associated party shall establish controls to safeguard the use of public funds and assure that such funds are not diverted to anyone's personal use.

(b) Each responsible associated party shall act to assure that qualified individuals are employed to operate the facilities of the Authority in accordance with established personnel procedures and practices or otherwise mandated by law.

(c) Each responsible associated party shall avoid noncompetitive procurement practices which restrict or eliminate competition or otherwise restrain trade, except where such noncompetitive practice is specifically and publicly declared by the members to be in the best interest of the public with reasons set forth. They shall review procurement actions to determine whether services and materials are needed, to assure adherence to applicable State and local procurement laws and procedures, and to confirm the adequacy and acceptability of the materials and services provided before authorizing payment.

(d) No associated party shall directly or indirectly use, or allow the use of, real or personal property of an Authority without property authority. In addition, each associated party has a positive duty to protect and conserve all property, including equipment, materials and supplies entrusted to the individual.

7:22-8.4 Disclosure

(a) All supervisors, officers and members of an Authority shall prepare annually, on or before the required date of submission, an individual statement of financial interests. The statements of supervisors and officers shall be submitted to the members. Each member's statement shall be submitted to the governing body. Each statement prepared by one of these individuals shall disclose, at a minimum, the following:

1. All business interests held by the individual or others on the individual's account. Such interests would include ownership or partnership in a business, the holding of an office or directorship in a business, or the ownership of more than 10 percent of the stock of a corporation. No percentage of interest need be given.

2. All real property, other than the individual's personal residence, held directly or indirectly by the individual or others on the individual's account which is located within the area served by their employing Authority. No value of property need be identified.

3. All sources contributing to annual income. No amounts need be given.

7:22-8.5 Disclosure by other persons providing services

Any other person providing professional services to an Authority shall be required to disclose in writing any business, financial or personal interests which might conflict in any way with the interests of that Authority, with regard to the services being rendered.

7:22-8.6 Conduct in office

(a) No associated party, other than agents, shall knowingly, themselves or by others on their account, be a party to a sale of materials, supplies, property or services to their employing Authority except for their own contract of personal equipment.

(b) No associated party may solicit or accept any compensation from anyone other than their employing Authority for any service, advice, assistance or other matter relating to their official duties.

(c) No associated party may be employed or act in any other capacity which would involve the acceptance of a fee, compensation or gift which could reasonably result in a conflict of interest or interfere with the efficient performance of their duties.

(d) No associated party shall, directly or indirectly by other persons, use information which comes to them as part of their duties, in any manner for personal or pecuniary gain; nor shall they violate any confidentiality with regard to such information.

7:22-8.7 Representations

(a) No associated party shall, directly or indirectly by others, appear before or negotiate with their employing Authority on behalf of any other person in connection with the following:

1. The acquisition or sale of any interest in real or personal property by their employing Authority.

2. Any cause, proceeding, application or other matter before their employing Authority.

(b) Subsequent to employment, no associated party shall, directly or indirectly by others, act as attorney, agent or representative for anyone other than their employing Authority in connection with any proceeding, application, contract, claim or other particular matter in which they participated personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, during their period of employment.

7:22-8.8 Gifts and gratuities

(a) No associated party shall solicit or accept, whether directly or indirectly or through their spouse or any member of their family, any compensation, gift, favor, or service of value which they know or should know is offered or obtained to influence them in the performance of their public duties and responsibilities. The acceptance of infrequent business meals of nominal value does not fall in such a category.

(b) Any gift or gratuity, prohibited by paragraph (a) of this section, received by any associated party from any person or firm should immediately be returned. The associated party shall promptly report the receipt of such gift to the members of the Authority. If the gift is perishable or for some reason cannot be returned, it shall be turned over to a charitable or public institution. In such instances, the associated party should notify the donor in writing that they are not permitted to accept such gifts and have contributed the gift to a charitable institution. A copy of this notification shall be provided to the Authority.

7:22-8.9 Administration of code of conduct

(a) Rules on the review of allegations of misconduct are as follows:

1. Persons desiring to make complaints concerning violations of the code of conduct or other misconduct should be requested to make such allegations in writing, to present information or evidence in support of

their allegations and be available to meet representatives of the Authority in question in person.

2. All allegations of violations or misconduct on the part of employees, officers or agents shall be referred to the members. Allegations of misconduct of members shall be referred to the governing body which appointed those members. All investigations and proceedings related to resolution of the alleged misconduct shall be handled on a confidential basis.

3. Upon receiving such complaints, the members or governing body shall initially review the apparent merits of the allegations. Where the complaint is deemed completely frivolous and without merit, no further action need be taken. If, however, the allegation may have merit, the members or governing body shall initiate an investigation to gather facts and evidence upon which to base a conclusion as to the validity of the allegations made.

4. Upon completing its investigation, the members or governing body shall prepare a written report containing its findings and conclusions. This report shall provide the basis for the members or governing body to take appropriate action with respect to the allegations. The members shall have the responsibility for judging any allegations related to misconduct by its employees, officers, and agents. Allegations of misconduct on the part of a member shall be handled by the governing body in the manner set forth in law.

5. In instances where the allegations have been substantiated and a violation of State or local law may have had occurred, copies of the report shall be provided to the applicable county prosecutor or to the Attorney General. In instances where substantiated allegations involve a State or federal grant or loan project, copies of the report shall be provided to responsible officials of the applicable federal or State agencies.

(b) Whenever an associated party is found to have violated the ethical standards in this subchapter, the members or governing body shall take appropriate disciplinary action. Such action may range from a letter of reprimand to the discharge of involved employees, officers, and agents. Where misconduct resulted in increased costs to the employing Authority, it shall take appropriate action to terminate any related contract or purchase order and initiate appropriate litigation to recover such monies.

7:22-8.10 Effective date of code of conduct

Upon its promulgation, this code of conduct shall apply immediately to all actions of existing and future associated parties.

(a)

**Construction Grants and Loans for Wastewater
Treatment Facilities
Wastewater Treatment Fund Procedures and
Requirements**

Adopted New Rule: N.J.A.C. 7:22-3

Proposed: September 22, 1986 at 18 N.J.R. 1875(a).

Adopted: December 5, 1986 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: December 12, 1986 as R.1987 d.37 **with substantive and technical changes** not requiring additional public notice and comment. (See N.J.A.C. 1:30-4.3.)

Authority: Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329).

Effective Date: January 5, 1987.

Expiration Date: January 5, 1992.

DEP Docket No. 037-86-08.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting N.J.A.C. 7:22-3 ("Subchapter 3") to prescribe procedures for the application for loans from the Wastewater Treatment Fund established pursuant to the New Jersey Wastewater Treatment Bond Act of 1985, P.L. 1985, c.329. This rule was proposed on September 22, 1986 at 18 N.J.R. 1875(a).

Public hearings were held on October 6, 8 and 10, 1986 to provide interested parties the opportunity to present testimony. The comment period closed on October 22, 1986.

Some of the comments made on provisions of N.J.A.C. 7:22-3 also apply to identical provisions of N.J.A.C. 7:22-4. These comments have been marked with a plus sign ("+"). See also the comments to N.J.A.C. 7:22-2 appearing in this issue of the N.J.R. for changes appropriate to this adoption.

7:22-3.6 Terms of the loans from the Wastewater Treatment Fund

COMMENT:+ Regarding the availability of options, the potential exists for different recipients to be treated significantly differently. Specific controls should be placed on the term, the interest rate and the level of loan funding within the regulations. Also, the interest rate is not defined in the regulations as being the rate in effect at the time that the local government unit files its application and the interest should not accrue until the project is completed.

RESPONSE: The Department intends to make the same basic loan terms available to all municipalities pursuing State loans within a given fiscal year. Currently, loans from the Fund are to be offered for 50 percent of the eligible project costs, at 0 percent interest, and for a term of generally 20 years. The balance of the eligible project costs are to receive a loan from the New Jersey Wastewater Treatment Trust Fund (pursuant to N.J.A.C. 7:22-4). The specific loan terms are not identified in the regulations in order to provide maximum flexibility for administration of the program. Thus, if the Department determines that loan terms, the interest rate, or other provisions should be modified in future fiscal years, amending the regulations would not be necessary.

In reference to the questions regarding the period when interest would accrue on the loans, interest accrues from the date that each loan payment is disbursed to the municipality. In regard to the recommendation that interest not begin to accrue until one month after the date of the initiation of operation or final inspection, it should be noted that the municipality receives benefit from the date of receipt of funds and thus, the payment of interest during the period of construction is considered to be appropriate. N.J.A.C. 7:22-3.6 has been modified to reflect when interest accrues on State loan awards.

COMMENT:+ Requiring security from the local government unit to the Department for its loan will cause additional costs to be incurred. The ability to collect sewer fees for the provision of sewer service, as well as a pledge of those fees, should be sufficient security.

RESPONSE: While it is recognized that the provision of security as required by this section would result in additional cost to the municipality, such security is important in order to insure repayment of the loan. Such security is particularly important to loans made by the Trust, as the bonds that are sold through leveraging would take into consideration this additional security mechanism. As a result, the Trust's bonds could be sold at a more favorable interest rate (which would be reflected in the form of a lower interest rate being charged to the municipality on the loan).

COMMENT:+ The length of the interval for the distribution of funds under N.J.A.C. 7:22-3.6(d) should be defined.

RESPONSE: A period of time for loan payments to the local government unit is not specified so that maximum flexibility could be maintained. Some municipalities request monthly progress payments, whereas others may pursue quarterly payments instead. Where particularly high costs are incurred, municipalities may request a loan payment more frequently. Thus, a specific period of time will not be identified in the regulations for loan payments.

7:22-3.8 State and Federal funding

COMMENT: In regard to N.J.A.C. 7:22-3.8(a), if a community receives a grant from the Federal government, no loan money should be provided to further subsidize the project.

RESPONSE: As identified under the referenced section, local government units receiving funding through a Federal grant are specifically ineligible for a loan from the Fund for the same scope of work. It should be noted that while a municipality may have received a Federal grant for planning and/or design, it would still be eligible to receive a loan from the Fund for construction of the project. However, an allowance for the planning and design would not be awarded.

COMMENT: The Fund should vary the percentage of loan money to be used on a project by considering the bond rating of each community, and require a community with a higher rating to use a larger portion of its bonding capability than an unrated or a lower rated community.

RESPONSE: While the intent of this commenter's suggestion is understandable, the administration of such a policy on an equitable basis would be difficult if not impossible to achieve. In addition, while a community's bond rating has some significance, this rating would not reflect the extent of other municipal works projects for the community which have not yet had bonds sold. In addition, many of the agencies pursuing State funding are municipal utility authorities or sewerage authorities. The bond rating of these agencies could not be evaluated under the same criteria as that of municipalities, which have far more comprehensive bonding needs. In

view of the above, the Department does not believe that the inclusion of a bond rating criteria is appropriate at this time to determine the amount of loan funds to be available for a project.

COMMENT: The 1987 Fiscal Year Priority List should not be used for eligibility under the State loan program since the last date for public comment was September 18, 1986 while the hearing notice for the loan program regulations was not published until September 22, 1986. Communities could not respond in time to be eligible for the loan program without having advance knowledge of the proposed regulations.

RESPONSE: In conjunction with the extensive public hearing/public participation program conducted for the 1987 Priority System and Project Priority List, municipalities were required to submit their request to be included on the State Funding List by the close of the public comment period (September 18, 1986). Such an initial request by a municipality does not bind them to pursue a State loan nor to waive their right to a Federal grant. While it is unfortunate that the regulations for the loan program were not available at an earlier date, the Department believes that municipalities have been afforded a sufficient period of time to respond in recognition of the significant public information efforts conducted by the Department, both for the Federal Priority System/Priority List and the State's loan program. The use of the FY88 Fiscal Year Priority List instead, as suggested by the commenter, is not acceptable in that this would simply serve to delay the availability of loans from the Fund and the Trust for another year. It should be noted that many municipalities responded to the Department prior to the September 18 deadline, and 87 projects have been included on the State Funding List for potential loan receipt in the upcoming State fiscal year.

COMMENT:+ N.J.A.C. 7:22-3.8(b) should be expanded to allow an applicant to remove its project from consideration under the State loan program at any time prior to the approval of the appropriations bill, without jeopardizing its eligibility for Federal grants.

RESPONSE: As indicated within the regulations, municipalities are required to waive their right to a Federal grant for the current and the following Federal fiscal year in order for their project to be included on the Legislative Appropriations Bill. This policy has been adopted to ensure that those municipalities requesting their projects to be included within the Legislative Appropriations Bill are sincere in their desire to receive a State loan, rather than simply trying to keep all possible funding options open until the latest possible time (i.e., so that municipalities are not simply buying time to see whether they would be able to receive a Federal grant instead). This is unacceptable, since the opportunity for other municipalities to receive funding would be adversely affected.

This policy is also important in that projects pursuing State funding are reviewed under a different set of criteria than those to receive Federal grants, since Federal requirements would not apply. Thus, a commitment to pursue a State loan is required for a project to be included on the Legislative Appropriations Bill.

7:22-3.9 Notice of project eligibility

COMMENT:+ A preliminary application should be acceptable to demonstrate the recipient's intent, with a reasonable time frame permitted for the final submission of documents (not just 45 days).

RESPONSE: The Department recognizes that a significant volume of material is required to be submitted and reviewed in conjunction with the completed application. While the municipality will be required to indicate within the 45 day period their intent to pursue State funding during the fiscal year, the notices of project eligibility for FY88 awards indicated that submittals will be required by May 1, 1987 (for the receipt of all planning and design information) and June 30, 1987 (for all loan application documents). The Department believes that these May and June dates reflect the realistic time frame requested by the commenter.

7:22-3.11 Application procedures

COMMENT:+ The submittal of two separate application, one for the Trust and one for the Fund, complete with back-up material, is not only excessive but extremely costly to provide. One reviewing agency within the Department should be established and only one application should be required to cover both loan programs.

RESPONSE: Two separate loan applications are necessary, as loan awards and record-keeping are separate and distinct between the Fund and the Trust. However, where loan application back-up material overlaps between that of the Fund and the Trust, only one set of these documents are required for submittal.

The Construction Grants Administration Element has the responsibility for the technical review and processing of loan application packages, both for the Trust and the Fund, (similar to project processing under the Federal Construction Grants Program). The responsibility for the

processing of permit applications, of course, rests with the appropriate agency within the State. A new section (N.J.A.C. 7:22-4.46) has been added to indicate that the Trust may utilize the Department's resources for various functions.

COMMENT: N.J.A.C. 7:22-3.11(d)17 should only apply to firms on the list at the time that services are initiated. Can an Authority be required to terminate a firm or else lose a loan if the firm subsequently commits an act on a different project?

RESPONSE: This section only requires a statement from the applicant to indicate if the services for planning or design of the project included anyone whose name appears on the State Treasurers list of debarments, suspensions and voluntary exclusions.

Any services received by a municipality from someone found on the State Treasurer's list should be identified by the municipality, whether or not the firm was on the List at the time services were initiated or subsequent to that date. After review of the situation, it may be determined that the allowance or a portion thereof for the planning and/or design may not be awarded for that project. In addition, if the technical merits of the project are in question, other actions may be required by the Department prior to loan award.

COMMENT: The requirements of the project report/facility plan (N.J.A.C. 7:22-3.11(d)(5)) should be provided. If the Department intends to apply 201 facilities planning to the loan program this is an excessive requirement.

RESPONSE: The Department does not require municipalities to create complete facilities plans for projects to receive State loan awards. However, where a facilities plan has been developed pursuant to the Federal program, this document would be acceptable for the planning portion of their project. In the event that the facilities plan has not been developed, planning requirements should be included within a project report, a less-detailed planning document, which would include evidence of compliance with the appropriate Water Quality Management Plans and Environmental Assessment Guidelines.

COMMENT: N.J.A.C. 7:22-3.11(d)15 should be revised to allow the recipient to submit a certification that the required permits have been applied for, rather than requiring that all permits and approvals have been received. Since permits contain expiration dates, it is impracticable to apply for these permits until funding for the project is approved and the loan recipient is assured that the project will proceed. In certain cases local building permits cannot be obtained until after an award of the construction contract (such as county and municipal road opening permits) as the contractor must be named on the permit and bonds must be posted by the contractor.

RESPONSE: The Department requires the receipt of applicable permits for the project prior to the approval of loan awards in order to ensure that the project that is receiving approval will be able to proceed with a minimum of delay, particularly in view of the long lead times that may be associated with permit processing. In addition, there have been cases where a project has been significantly modified as a result of conditions that were required for receipt of the permit. As the documents for the loan agreement must reflect the actual project to be built, almost all permits must be received prior to execution of loans.

The Department does, however, agree that there are certain permits and approvals that cannot be received prior to the award of the loan. N.J.A.C. 7:22-3.11(e) has been modified to reflect this issue. It should also be noted that the Department includes, under subsection (e), a provision that allows the Department to award a loan in cases where certain permits have not been received, if the receipt of such permits would not significantly affect the loan award.

COMMENT: All permit fees payable to the State of New Jersey for permits listed in N.J.A.C. 7:22-3.11 should be waived for projects being funded by these loan programs.

RESPONSE: Permit fees are established primarily to cover the administration costs for processing of the permits. The waiver of the permit fees would result in increased costs to the permitting agencies. It is felt that the payment of permit fees by the municipality is an appropriate condition for the receipt of the loan. A waiver of permit fees (which would be an additional subsidy under the State's Wastewater Treatment Financing Program) will not be included in the regulations.

7:22-3.16 Effect of loan award

COMMENT: N.J.A.C. 7:22-3.16(b) should include eligibility for cost overruns under the loan program, and at least a five to ten percent contingency should be allowed.

RESPONSE: As with New Jersey's Construction Grants Program, loan awards through the State's Wastewater Financing Program are limited

to the low bid building amount. The reason for this policy is to encourage municipalities to more closely monitor the requirements and associated costs of their project. It has been the experience of the Department that the implementation of the "low-bid building cost limitation" policy has been successful in reducing the extent of project cost overruns. In addition, this policy has been adopted so that lower-ranked projects on the Funding List would be able to better assess the date on which they may be eligible to qualify for State loan assistance.

7:22-3.17 Loan conditions

COMMENT: N.J.A.C. 7:22-3.17(a)5 requires that the recipient adopt a sewer use ordinance consistent with the requirements of the Department, but no citation in this regard is given.

RESPONSE: The requirements of the Department for sewer use ordinances is contained within the Department's "Technical Design Report Requirements," a document which is referenced in N.J.A.C. 7:22-3.17(a)16. See the following Comment and Response.

COMMENT: Two commenters objected to the Department's requirement in N.J.A.C. 7:22-3.17(a)15 that recipients comply with the "Environmental Guidelines for the Planning, Design and Construction of Wastewater Treatment Facilities" and the "Construction Requirements for the Construction of Sewage Facilities," as these guidelines cannot acquire the force of regulations simply by reference.

RESPONSE: N.J.A.C. 7:22-2.18(a)15 and 16 have been deleted and reserved, and amended, respectively, upon adoption to permit the Department to consider whether the cited Environmental Guidelines, Construction Requirements and Technical Requirements were regulatory in nature and, if so, to be promulgated as rules.

COMMENT: Each State funding recipient should identify an Affirmative Action project officer or responsible reporting agent.

RESPONSE: A new paragraph has been added to the regulations at N.J.A.C. 7:22-3.17(a)22 which indicates that State funding recipients shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer.

COMMENT: Where local jurisdictions have Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent, the local jurisdiction goals should take precedence over State goals.

RESPONSE: A new paragraph has been added at N.J.A.C. 7:22-3.17(a)24, requiring that when a local government unit has MBE/WBE goals which exceed 10 percent of the amount of any contract, that the local government unit's goals should take precedence over the State's goals.

COMMENT: An affirmative action plan should be submitted to the State for review during the application stage and MBE/WBE goals must be established in each contract between the recipient and prime contractor.

RESPONSE: Approval from the Office of Equal Opportunity and Public Contract Assistance is required under the regulations at N.J.A.C. 7:22-3.17(a)23 prior to the filing of an application for a grant or a loan. As part of the approved process, an affirmative action plan and the contract documents will be reviewed.

COMMENT: Affirmative Action and MBE/WBE requirements should be an agenda item at the pre-award conference.

RESPONSE: It is not the intent of these regulations to detail all the items to be covered during pre-award conferences. Affirmative Action and MBE/WBE requirements are presently included in the agenda for pre-award conferences under the Federal Grants Program and will continue to be included under the Loan Program.

COMMENT: The 10 percent MBE/WBE participation requirements should apply to the planning and design of a project.

RESPONSE: Based upon an opinion by the Attorney General interpreting the New Jersey Wastewater Trust Act, N.J.S.A. 58:11B-26(a), as requiring not less than 10 percent of the total amount of all contracts for construction, materials or services for a project to be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals, the Department has changed N.J.A.C. 7:22-3.17(a)24 accordingly. It will therefore be up to the local government unit whether or not this 10 percent will include contracts for planning and design services for the project, or whether the 10 percent will be reached entirely through contracts for other building, materials and services.

COMMENT: Bidder notices should include MBE/WBE participation goals and actual MBE/WBE project participation should be reported regularly.

RESPONSE: It is not the intent of the regulations to address advertising or reporting requirements. However, bidder notices must have the approval of the Office of Equal Opportunity prior to publishing. Reporting requirements will be included as part of a guidance document from that office.

COMMENT:+ The terms "socially and economically disadvantaged contractors and vendors" could be interpreted as to not include minority-owned businesses.

RESPONSE: To alleviate this concern definitions for economically disadvantaged and socially disadvantaged individuals have been added to the regulations at N.J.A.C. 7:22-3.4.

COMMENT:+ The Affirmative Action program section of the regulations is obscure and should be strengthened. One commenter submitted a recommended format for an Affirmative Action section with definitions, categories of services and products, procurement, advertising etc.

RESPONSE: It is not the intention of these regulations to republish existing Affirmative Action regulations but to require recipients of State assistance to comply with existing Affirmative Action laws. The regulations will be expanded at N.J.A.C. 7:22-3.17(a)22 to include references to N.J.A.C. 17:27-1 et seq., the Affirmative Action Procedures and Requirements.

COMMENT: The regulations should establish a 15 percent MBE contractor/subcontractor goal, a separate 10 percent MBE vendor/supplier goal and a 10 percent small business goal separate from MBE goals. Another commenter indicated that there exists no basis in the enabling legislation for the requirements of N.J.A.C. 7:22-3.17(a)21 and 7:22-6.17(a)21 (and that they may be unconstitutional under the provisions of New Jersey's Local Public Contracts Law).

RESPONSE: The regulations have been changed in accordance with an opinion from the Attorney General to require that "not less than 10 percent of the total amount of all contracts . . . be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals. . ." The Department feels that this requirement is a fair and realistic proposal statewide. As previously indicated, should the goals of a local government unit exceed those of the State, the goals of the local unit shall take precedence. The authority for establishing these goals can be found in N.J.S.A. 10:5-36 and in N.J.S.A. 40A:11-41 et seq. Not only does this requirement not conflict with the Local Public Contracts Law, but N.J.S.A. 40A:11-41 et seq. is the part of the Local Public Contracts Law which authorizes such set asides.

7:22-3.26 Unused funds

COMMENT:+ Unused funds (due to the final building costs being less than the low bid building cost) should be allowed to be used by the loan recipient to off-set the increased cost of change orders on other portions of the project.

RESPONSE: The Department intends to allow such line item adjustments to be made, as indicated in N.J.A.C. 7:22-5. However, N.J.A.C. 7:22-3.26 was unclear on this policy and has been modified to clarify the Department's position.

7:22-3.29 Project initiation

COMMENT:+ Bid prices are only good for 60 days after bids are open, so the Department should ensure that authorization to award will be given within this time period.

RESPONSE: The Department attempts to provide a timely response to municipalities to provide authorization to award the contract upon receipt and review of bids. Unless extenuating circumstances are involved, the Department has been able to provide this authorization within the 60 day time frame.

7:22-3.32 Preaward costs

COMMENT: There is no specified time period for governmental review once the local government unit submits its documentation.

RESPONSE: The Department intends to process documentation for preaward costs within a 60 day period. However, in view of the significant number of projects that may attempt to pursue an approval for preaward costs, as well as the processing of loan applications and Federal grant application documents for receipt of State or Federal assistance, approval for preaward costs may on occasion require a period in excess of 60 days.

7:22-3.35 Infiltration/inflow

COMMENT:+ Regional authorities may not be able to perform sewer system evaluation studies (SSES) or yearly rehabilitation programs on local collection systems.

RESPONSE: The provisions regarding SSES and rehabilitation programs are requirements that are associated only with rehabilitation projects. Thus, if a regional authority is the loan recipient for rehabilitation work, they would be required to perform such work.

7:22-3.36 Reserve capacity

COMMENT:+ A minimal amount of additional capacity for anticipated system growth during the life of the project should be included within the loan.

RESPONSE: The Department has no objections to municipalities including reserve capacity within their project. In fact, a certain amount may be required in order to receive a permit. However, as the intent of this program is to address current wastewater treatment needs, such incremental cost difference will be required to be borne by the municipality itself.

7:22-3.39 Debarment

COMMENT: The provisions of N.J.A.C. 7:22-3.39(a) seems to be a mechanism intended to remove a low bidder.

RESPONSE: The section in question indicates that no recipient shall enter into a contract for work on a wastewater treatment project with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5. This section does not exclude low bidders unless they are debarred.

7:22-3.43 Stop-work orders

COMMENT:+ The Department should be made financially accountable for the issuance of stop-work orders issued pursuant to N.J.A.C. 7:22-3.43 such that if it is determined that their stop-work order was not warranted, additional project costs resulting from the unwarranted work order would be grant eligible.

RESPONSE: The Department issues stop-work orders under extreme circumstances, with the protection of the public health and safety and the environment being primary concerns. Therefore, such costs will not be grant eligible under either the Federal or the State grant program, as this would be inconsistent with the low bid building cost limitation policy under these grant programs.

COMMENT:+ The regulations should indicate that subcontractors will not be required to bond prime contractors on contracts less than \$500,000 in value and that plans and specifications should be made available to contractors at a fee not to exceed \$25.

RESPONSE: The existing Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., establishes bonding requirements for contracts and also indicates that specifications shall be drafted in a manner to encourage free and open competitive bidding. Should the fee for plans and specifications be unaffordable a protest to the issuing agency would be in order.

N.J.A.C. 7:22-3.5 has been changed to require the proceeds from bond sales be deposited in a separate interest bearing account. The Department's intent was always to require the account to be interest bearing, but the actual language was inadvertently omitted from the proposal.

+ N.J.A.C. 7:22-3.6(d) and 7:22-3.24 have been amended by the Department to ensure the allowability of construction costs incurred prior to the execution of a formal loan agreement.

+ N.J.A.C. 7:22-3.9(a) has been amended to allow local government units to be eligible for loans but not able to contract for the loan without curing State loan defaults. This change increases the units eligible and provides an impetus for curing defaults. N.J.A.C. 7:22-3.9(d) was deleted as unnecessary.

N.J.A.C. 7:22-3.17(a)20 has been amended to include a citation to applicable anti-discrimination regulations.

N.J.A.C. 7:22-3.17(a)21 has been changed to comply with an opinion by the Attorney General interpreting the New Jersey Wastewater Trust Act, N.J.S.A. 58:11B-26(a), to require not less than 10 percent of the total amount of all contracts for construction, materials or services for a project to be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals. The proposal had required 10 percent of "the amount of any contract" to be so awarded. N.J.A.C. 7:22-3.17(a)22, 23 and 24 have been added to further this compliance and clarify the anti-discrimination requirements.

+ N.J.A.C. 7:22-3.29(e) has been amended to clarify the time requirement for awarding subagreements.

N.J.A.C. 7:22-3.32, Preaward costs, was changed to include all projects receiving a notice of project eligibility as well as those ranking from one to 70 on the Project Priority List. These projects are eligible to receive loan assistance for building costs incurred prior to the award of the loan. The amendment to N.J.A.C. 7:22-3.32(a) was for clarification purposes, as "costs" cannot be performed.

N.J.A.C. 7:22-3.39(b) has been amended to more properly express the intent of the Department to be reflected in the required contractual debarment clause.

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

SUBCHAPTER 3. WASTEWATER TREATMENT FUND PROCEDURES AND REQUIREMENTS

7:22-3.1 Scope

This chapter shall constitute the rules of the New Jersey Department of Environmental Protection governing the disposition of appropriations pursuant to P.L. 1985, c.329 or other monies appropriated to the Wastewater Treatment Fund.

7:22-3.2 Construction of rules

This subchapter shall be construed so as to permit the Department to discharge its statutory functions and to effectuate the purpose of the law.

7:22-3.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329);
2. To establish policies and procedures for the distribution of funds appropriated pursuant to the Bond Act and other moneys appropriated to the Wastewater Treatment Fund, for the purpose of providing financial assistance to local government units through the issuance of Fund loans for paying the costs of the construction of wastewater treatment facilities;
3. To protect the public and the State by ensuring that Fund monies appropriated are spent in a proper manner and for the intended purposes;
4. To assure that the distribution and use of Fund monies is consistent with the laws and policies of the State;
5. To establish minimum standards of conduct to prevent conflicts of interest and to ensure proper administration of Fund moneys;
6. To establish accounting procedures for the administration of Fund monies;
7. To establish Fund loan repayment requirements; and
8. To establish standards for the construction of wastewater treatment facilities.

7:22-3.4 Definitions

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

"Allowable costs" means those costs that are eligible, reasonable, necessary, and allocable to the project; permitted by generally accepted accounting principles; and approved by the Department in the Fund loan agreement. Allowable costs shall be determined on a project specified basis in accordance with N.J.A.C. 7:22-5.1 through 5.11.

"Allowance" means a loan amount for planning and design costs based on a percentage of the project's allowable building cost, computed in accordance with N.J.A.C. 7:22-5.12, and awarded in conjunction with the Fund loan to build the project.

"Applicant" means any local government unit that applies for a Fund loan pursuant to the provisions of these rules and regulations.

"Assistant Director" means the Assistant Director, Construction Grants Administration Element, Division of Water Resources, New Jersey Department of Environmental Protection.

"Bond Act" means the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329).

"Bonds" means the bonds authorized to be issued, or issued, under the Bond Act.

"Building cost" means the cost for the acquisition, erection, alteration, remodeling, improvement or extension of wastewater treatment facilities. This definition excludes administration, legal, fiscal and engineering costs and costs associated with the planning and design of the project.

"Certified mail" means any means of delivery where proof of receipt is obtained and date of receipt is recorded.*

"Collection system" means the common lateral sewers, which are primarily installed to receive wastewaters directly from individual systems or from private property and which include service "Y" connections designed for connection with those facilities when owned, operated and maintained by or on behalf of the local government unit. Included in this definition are crossover sewers connecting more than one property on one side of a major street, road or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective. This definition excludes other facilities which convey wastewater from individual structures from private property to the lateral sewer or its equivalent.

"Commission" means the New Jersey Commission on Capital Budgeting and Planning.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his designated representatives.

"Construction" includes, but is not limited to, the preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary for the construction of wastewater treatment facilities; the purchase of land that shall be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment; the erection, building, alteration, remodeling, improvement, or extension of wastewater treatment facilities; and the inspection and supervision of the construction of wastewater treatment facilities.

"Department" means the New Jersey Department of Environmental Protection.

"Director" means the Director of the Division of Water Resources of the Department.

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which shall result in a discharge to surface water or a substantial modification in a discharge to surface water pursuant to the New Jersey Pollutant Discharge Elimination System (N.J.P.D.E.S.) (N.J.A.C. 7:14A-1.1 et seq.).

"Division" means the Division of Water Resources, New Jersey Department of Environmental Protection.

"Economically disadvantaged individuals" as defined in 15 U.S.C. 637(a)(6) means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.*

"Excessive infiltration/inflow" means the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et al.) and any amendments or supplements thereto.

"Final building cost" means the total actual allowable cost of the final work in place for the project, in accordance with the scope as defined in the Fund loan agreement.

"Force account work" means the use of the recipient's own employees or equipment for construction, construction related activities, or for repair or improvements to a facility.

"Fund" or "Wastewater Treatment Fund" means the Wastewater Treatment Fund established pursuant to the Bond Act.

"Fund loan" means a loan from the Wastewater Treatment Fund for the allowable costs of a project.

"Fund loan agreement" means the legal instrument executed between the State of New Jersey and the local government unit for the construction of wastewater treatment facilities.

"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.

"Initiation of operation" means the date specified by the recipient in the Fund loan agreement on which use of the project begins for the purposes that it was planned, designed and built.

"Local government unit" means a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint meeting or other political subdivision of the State authorized to construct and/or operate wastewater treatment facilities.

"Low bid building cost" means the total actual allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s).

"Priority System and Project Priority List" means the mechanism by which projects are ranked and a subsequent list developed by the State in conformance with the Federal Water Pollution Control Act Amend-

nents of 1972 (33 U.S.C. 1251 et al.), and any amendatory or supplementary acts thereto, and State law.

"Project" means the defined services for the construction of specified operable facilities as approved by the Department in the Fund loan agreement.

"Recipient" means any local government unit which has received a Fund loan pursuant to this subchapter.

"Scope of work" means the detailed description of the extent of services required to construct the wastewater treatment facilities.

"Socially disadvantaged individuals" as defined in 15 U.S.C. 637(a)(5) means those individuals who have been subjected to racial and ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. 15 U.S.C. 637(d)(3) presumes that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities.*

"State Funding List" means the list of projects developed by the Department from the Project Priority List, for approval by the Legislature, which identifies the local government units to receive Fund loans.

"Substantial alteration" means any change which results in an alteration of the project costs or a change of 90 days or more in the project schedule.*

"Trust" or "New Jersey Wastewater Treatment Trust" means the New Jersey Wastewater Treatment Trust created pursuant to the New Jersey Wastewater Treatment Trust Act, or its duly authorized agent.

"Trust Act" means the New Jersey Wastewater Treatment Act (N.J.S.A. 58:11B-1 et seq.).

"Trust loan" means a loan from the New Jersey Wastewater Treatment Trust for the allowable costs of a project.

"Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high costs in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

"Wastewater" means residential, commercial, industrial or agricultural liquid waste, sewage, septage, stormwater runoff or any combination thereof, or other residue discharged or collected into a sewer system, stormwater runoff system or any combination thereof.

"Wastewater treatment facilities" includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, land that shall be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, required, used, constructed or operated by or on behalf of a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater effluents, septage or industrial wastes, including but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections, extensions, outfall sewers, combined sewer overflows, intercepting sewers, trunklines, sewage collection systems, stormwater runoff collection systems, and other equipment, personal property and appurtenances necessary thereto.

"Water Quality Management Plans" means the plans prepared pursuant to Sections 208 and 303 of the Clean Water Act (33 U.S.C. 1251 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

22-3.5 Wastewater Treatment Fund

(a) The proceeds from the sale of bonds, allocated and issued pursuant to Section 6.a of the Bond Act shall be paid to the State Treasurer and held thereby in a separate ***interest bearing*** account specifically dedicated to making zero or low interest Fund loans to local government units for financing the cost of the construction of wastewater treatment facilities.

(b) Any federal or State funds which may be made available to the State for loans to local government units for the construction of wastewater treatment systems may be appropriated to the Wastewater Treatment Fund.

(c) The moneys in the Fund are specifically dedicated and have been appropriated for the purposes identified in N.J.A.C. 7:22-3.3; however, no moneys shall be expended from the Fund for those purposes without a specific appropriation thereof by the Legislature.

(d) Payments of principal and interest on loans awarded from the Fund shall be made to the Fund.

22-3.6 Terms of the loans from the Wastewater Treatment Fund

(a) The Fund may offer loans for up to 100 percent of allowable project costs for the construction of wastewater treatment facilities but may offer a range of options regarding the term, interest rate and level of loan funding.

(b) The total term of the loans shall be generally 20 years. Repayments shall begin no later than one month after the date of the initiation of

operation or final inspection of the wastewater treatment facilities, or four years from date of loan award, whichever occurs first or as indicated in the Fund loan agreement. Thereafter, loan repayments shall be made in accordance with the repayment schedule indicated in the Fund loan agreement. Principal and accrued interest with respect to a particular Fund loan may, however, be prepaid in accordance with the provisions of the relevant Fund loan agreement. ***Interest shall accrue from the date of the Fund loan disbursement.***

(c) Local government units shall secure all Fund loans in a manner acceptable to the Department. Acceptable security arrangements include but are not limited to general obligation bonds of the local government unit, service/deficiency agreement(s) with government units with general taxing power, municipal bond insurance, surety bonds and other arrangements acceptable to the Department.

(d) Fund loan proceeds will be disbursed to recipients at intervals as work progresses and expenses are incurred and approved*, **unless the Fund loan is awarded on a retroactive basis for the reimbursement of prior expenditures. In this case, Fund loan disbursements shall be made as indicated in the Fund loan agreement.***

(e) The specific terms and conditions of the Fund loan shall be incorporated in the Fund loan agreement to be executed by the recipient and the State.

7:22-3.7 Criteria for project loan priority

(a) Each year, the Division shall develop a Priority System and Project Priority List under the federal grant program for the forthcoming federal Fiscal Year. The Priority System evaluates wastewater treatment projects individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions. Each year, the Priority System and Project Priority List shall be the subject of public hearings, including a public comment period. Local government units desiring to be placed on the Project Priority List shall make their request for placement before or during this time. Concurrently, all local government units listed or eligible for listing on the Project Priority List shall be required to advise the Division whether they will continue to pursue federal funding only, or exercise their option to become eligible for a Fund loan. Those local government units opting for a Fund loan will be ranked in accordance with the Priority System and placed on the State Funding List in accordance with N.J.A.C. 7:22-3.8. The following shall be submitted by the authorized representative of the local government unit when requesting placement on the Project Priority List:

1. Brief description of the project indicating category of need (for example, secondary treatment, advanced treatment, collection system, etc.);
2. Brief description of existing water quality deficiencies; and
3. Estimated costs associated with building the project excluding planning and design expenses.

All requests shall be sent to:

Bureau Chief
Bureau of Design and Technical Services
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

7:22-3.8 State and federal funding

(a) Local government units receiving funding through a federal grant shall be ineligible for a Fund loan for the same step work (planning, design or building) for which they received a federal grant for the wastewater treatment facilities project. Further, local government units receiving a Fund loan pursuant to this subchapter shall be ineligible to receive a federal grant or State matching funds pursuant to N.J.A.C. 7:22-2.1 et seq. for the same scope of work for the planning, design or building of a wastewater treatment facilities project.

(b) Each year local government units shall be required to advise the Division whether they intend to become eligible for a Fund loan or to continue being considered for a federal grant only. Those local government units exercising their option for a Fund loan shall have their project ranked in accordance with the Priority System and placed on the State Funding List upon the submittal of their decision. As part of their decision, local government units shall waive and lose their discretion to accept a federal grant for the two forthcoming federal fiscal years for their project ranked on the State Funding List contingent upon the passage of the legislative appropriations act containing the specific project of concern. Failure of the local government unit to advise the Division of their decision by the close of the comment period for the proposed

Priority System and Project Priority List shall be interpreted as a decision by the local government unit to continue being considered for a federal grant only.

(c) Each year those local government units whose project is ranked within the fundable range of the State Funding List shall receive a Notice of Project Eligibility in accordance with N.J.A.C. 7:22-3.9. The Department reserves the right to send a Notice of Project Eligibility to the next highest ranked local government unit(s) as a contingency project(s) in the event the project(s) within the fundable range not proceed as planned. The decision, whereby local government units waive and lose their discretion to accepting a federal grant for the projects for which they exercise their option for a Fund loan, shall become effective only upon receiving legislative approval in the form of an appropriations act. A local government unit whose project is on the State Funding List, but is not part of a legislative appropriations act, remains eligible to receive a federal grant for that project.

7:22-3.9 Notice of project eligibility

(a) The Department shall send a Notice of Project Eligibility to those local government units whose projects rank high enough ***[to]* *on*** the State Fund List to receive funds. The Department reserves the right to send a Notice of Project Eligibility to the next highest ranked project(s) outside the fundable range to act as a contingency project(s) should the project(s) within the fundable range not proceed as planned. This notice shall not constitute an obligation to provide State funding for the project. However, it shall bind the Department to support the passage of the appropriations legislation including funds for the project. The Notice of Project Eligibility ***[shall not]* *may*** be sent to any local government unit who is in current default on any State loan. *** *However,*** unless the Department determines that repayment of the defaulted loan will be received ***[.] * *, a Fund loan agreement will not be executed between the Department and the local government unit.***

(b) Local government units receiving a Notice of Project Eligibility shall notify the Department within 45 days of receipt as to their intent to proceed with the project and shall submit to the Department a complete Fund loan application in conformance with N.J.A.C. 7:22-3.11 within the time period specified in the Notice of Project Eligibility. Failure of the local government unit to respond to the Notice of Project Eligibility within 45 days shall be interpreted as a decision by the local government unit to not apply for a Fund loan and shall result in that project being bypassed on the State Funding List. Failure to submit the complete application within the time period specified in the Notice of Project Eligibility shall result in the Department's disapproval of the local government unit's Fund loan application unless the Department, at its discretion approves, for good cause, an extension to this period.

(c) Written notice of a bypass or disapproval action shall be forwarded to the local government unit by certified mail. As a result of such an action, the project shall be bypassed on the State Funding List which may allow the next highest ranked contingency project to be within the fundable range on the State Funding List.

[(d) Applicants pursuing a Fund loan shall be obligated to proceed with the project.]

7:22-3.10 Pre-application procedures

(a) Local government units are urged to be familiar with the requirements of this subchapter and to contact the Department early in the planning process so that their projects are in a position to proceed (that is planning and design completed) at time of Notice of Project Eligibility. Local government units should be aware that Department approvable plans and specifications are required as part of the application for a Fund loan.

(b) The Department requires a pre-application conference with potential applicants prior to submission of a formal application for a Fund loan. During the conference the Department shall identify and explain all loan application documents. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Department.

(c) Questions concerning the program and requests for a pre-application conference should be directed to:

Assistant Director
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

7:22-3.11 Application procedures

(a) Each application for a Fund loan shall be submitted to the Department in conformance with the time period specified in the Notice of Project Eligibility or as otherwise extended by the Department and shall include full and complete documentation and any supplementary materials that an applicant is required to furnish.

(b) Submissions which do not substantially comply with this subchapter shall not be processed further and shall be returned to the applicant.

(c) Processing of a Fund loan application generally requires 60 calendar days after receipt of a complete application by the Division.

(d) The following shall be submitted when applying for a Fund loan:

1. An application for a Fund loan pursuant to this subchapter for construction of wastewater treatment facilities. Each application shall constitute an offer to accept the requirements of this subchapter and, upon execution of the agreement by the State and the applicant, acceptance of the terms and conditions of the Fund loan agreement;

2. A resolution passed by the local government unit authorizing the filing of an application for a Fund loan, specifying the individual authorized to sign the Fund loan application on behalf of the local government unit. If two or more local government units are involved in the project a resolution is required from each, indicating the lead applicant and the authorized representative;

3. Statement of assurances (CGA Form LP-4);

4. Assurance of compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) (CGA Form LP-5);

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans and Environmental Assessment Guidelines;

6. Sewer System Evaluation Survey (for Rehabilitation projects only);

7. Department-approvable plans, specifications and technical design report;

8. A description of the public participation process to date;

9. A statement indicating small, minority and women's business enterprise participation during planning and design;

10. Project cost breakdown;

11. Projected cash flow schedule;

12. Project construction schedule. Should the anticipated date of the initiation of operation occur after July 1, 1988, a court-sanctioned order specifying a compliance schedule shall be required where applicable;

13. Department-approvable sewer use ordinance and user charge system;

14. Certificate (legal opinion) from counsel as to title or mechanism to obtain title necessary for project sites and easements;

15. A certification that required permits and approvals, if applicable for building the wastewater treatment facilities, were received from the following agencies:

i. Monitoring and Planning Element within the Division;

ii. Water Quality Management Element within the Division;

iii. Water Supply and Watershed Management Element within the Division;

iv. Division of Environmental Quality within the Department;

v. Division of Waste Management within the Department;

vi. Division of Fish and Game within the Department;

vii. Division of Coastal Resources within the Department;

viii. Office of Equal Opportunity and Public Contract Assistance within the Department;

ix. Office of New Jersey Heritage within the Division of Parks and Forestry;

x. New Jersey Department of Community Affairs;

xi. U.S. Army Corps of Engineers;

xii. New Jersey Pinelands Commission;

xiii. Hackensack Meadowlands Development Commission;

xiv. Delaware and Raritan Canal Commission;

xv. Delaware River Basin Commission;

xvi. Interstate Sanitation Commission;

xvii. Local Soil Conservation District Office;

16. A statement from the applicant indicating that it has not violated any federal, State or local law pertaining to fraud, bribery, graft, kick-back, collusion or conflicts of interest relating to or in connection with the planning and design of the project;

17. A statement from the applicant which indicates if it used the services of a person for planning or design of the project whose name appears on the State Treasurer's list of debarments, suspensions and voluntary exclusions;

18. Executed intermunicipal agreements, if required;

19. Draft engineering agreements for building services;

20. A statement by the applicant waiving its discretion to accept a federal grant for two consecutive federal fiscal years (pursuant to N.J.A.C. 7:22-3.8);

21. A description of how the applicant plans to repay the Fund loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the Fund loan that shall guarantee that at the time of the signing of the Fund loan agreement it shall be irrevocably committed to repay the Fund loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The description shall include: pro forma projections of the applicant's financial operations during the construction period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the project to be financed by the Fund loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all Fund loans in a manner acceptable to the State, pledging to provide funds to repay the debt, even if the Fund loan is terminated pursuant to N.J.A.C. 7:22-3.44. Acceptable security arrangements include but are not limited to general obligation bonds of the local government unit, service/deficiency agreement(s) with government units with general taxing power, municipal bond insurance and surety bonds.

22. Such other information as the Department may require.

(e) Applicants ***shall obtain*** [are advised that]* all necessary federal, State and local permits and approvals [must be obtained]* prior to the award of a loan unless prior approval for an extension for one or more specific permits has been granted by the Division that does not significantly affect the loan award. ***Excluded from prior acquisition are permits and approvals which are impractical to obtain prior to the loan award (e.g., road opening permit, blasting permit, etc.).***

(f) All [applicants]* ***applications*** shall be sent to:

Assistant Director
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN-029
Trenton, New Jersey 08625

7:22-3.12 Use and disclosure of information

All loan applications and other submissions, when received by the Department, constitute public records. The Department shall make them available to persons who request their release to the extent required by New Jersey and/or federal law.

7:22-3.13 Evaluation of application

(a) The Division shall notify the applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;

2. Programmatic, technical, and scientific evaluation to determine the merit and relevance of the project to the Department's program objectives;

3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable; and

4. Final administrative evaluation.

(b) Upon the completion of a full review and evaluation of each application, the Division shall either approve the application or make its determination that the Fund loan award shall be deferred.

(c) The Division shall promptly notify applicants in writing of any deferral action, indicating the reasons for the deferral and a time frame for the resolution of any outstanding issues. A deferral action shall result in one of the following:

1. An approval of the application if the outstanding issues are addressed to the satisfaction of the Division within the specified time frame; or

2. A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the Division within the specified time frame.

(d) The Division shall promptly notify applicants in writing of any disapproval. A disapproval of an application shall not preclude its reconsideration if resubmitted by the applicant. However, reconsideration of a revised Fund loan application and/or processing of a Fund loan agreement for the project within the current fiscal year may be bypassed, including funding of the project until a future fiscal year. Affected

applicants shall be notified in writing of such action. As a result of a disapproval and project bypass action, the next highest ranked contingency project on the State Funding List may fall within the fundable range.

7:22-3.14 Supplemental information

At any stage during the evaluation process, the Division may require supplemental documents or information necessary to complete full review of the application. The Division may suspend its evaluation until such additional information or documents have been received.

7:22-3.15 Fund loan agreement

(a) The Department shall prepare and transmit the Fund loan agreement to the applicant.

1. The applicant shall execute the Fund loan agreement and return it within 45 calendar days after receipt. The Department may, at its discretion, extend the time for execution. The Fund loan agreement shall be signed by a person authorized by resolution to obligate the applicant to the terms and conditions of the Fund loan agreement being executed. The authorizing resolution shall also be submitted at this time.

2. The Fund loan agreement shall set forth the terms and conditions of the Fund loan, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

3. The Fund loan agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Division in the application process.

4. The Fund loan agreement shall not be executed by the State if the applicant is in current default on any State loan.

5. After the State has completed its internal processing* of the Fund loan agreement, it shall transmit a copy of the executed Fund loan agreement to the recipient.

7:22-3.16 Effect of loan award

(a) At the time of execution of the Fund loan agreement by the State and the recipient, the loan shall become effective and shall constitute an obligation of the Wastewater Treatment Fund in the amount and for the purposes stated in the Fund loan agreement.

(b) The award of the Fund loan shall not commit or obligate the State to award any continuation Fund loan to cover cost overruns of the project. Cost overruns for any project or portion thereof shall be the sole responsibility of the recipient.

(c) The award of a Fund loan by the State shall not be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates for its respective project.

7:22-3.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-3.18 through 3.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Fund loan, and conditions to each disbursement under a Fund loan agreement:

1. The recipient shall comply with the Local Public Contracts Law, (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.);

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions;

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8.1 et seq.);

4. The recipient shall comply with the requirements of the N.J.P.D.E.S. permit pursuant to N.J.A.C. 7:14A-1 et seq.;

5. The recipient shall adopt a sewer use ordinance consistent with the requirements of the Department;

6. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pretreatment standards which comply with 40 C.F.R. 403;

7. The recipient shall comply with all applicable requirements of federal, State and local laws;

8. The recipient shall pay the unallowable costs of the construction of the project (that is, facilities planning, design, building and related costs);

9. The Fund loan agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project objectives or Department requirements. The recipient shall comply with any special conditions which the Department requires in the agreement or any amendment thereto;

10. The recipient shall retain sufficient qualified operating and management personnel including a qualified chief operating officer or executive director, from the time of completion of construction or initiation of operation, whichever is earlier, until such time as the operation of the facility is discontinued;

11. Construction of the project, including letting of contracts in connection therewith, shall conform to applicable requirements of federal, State, and local laws, ordinances, rules and regulations and to contract specifications and requirements;

12. No Fund loan moneys shall be disbursed to a local government unit who is in current default on any Fund loan or Trust loan. The Department may, at its discretion, make a Fund loan disbursement where it determines that the local government unit will repay the defaulted loan obligation and associated penalties. Nothing in this paragraph shall in any way limit any right or duty of the Department to demand and collect at any time the total due under any such defaulted loan;

13. An amount of any Fund loan disbursement equal to 50 percent of any unpaid portion of a State assessed penalty pursuant to N.J.A.C. 7:14-8.1 et seq., Assessment of Civil Administrative Penalties, shall be held in escrow until said penalty is paid in full;

14. The Department may assess penalties to late loan repayments as appropriate as specified in the Fund loan agreements;

15. ***[The recipient shall comply with the following guidelines of the Department: "Environmental Guidelines for the Planning, Design, and Construction of Wastewater Treatment Facilities" and "Construction Requirements for the Construction of Sewage Facilities" which can be obtained from the Assistant Director, Construction Grants Administration Element of Water Resources, CN-029, Trenton, New Jersey 08625.]** * **(Reserved)**

16. The recipient shall have an operations and maintenance manual developed ***[in accordance with the Department's "Technical Design Report Requirements" which can be obtained from Director at the address listed in paragraph (a)15]** *.

17. The recipient shall certify that it has not and shall not enter into any contract with, nor has any subcontract been or shall be awarded to, any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5 for any services within the scope of project work;

18. The recipient shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the Fund loan agreement;

19. The recipient must submit proof that it and its contractors and subcontractors shall comply with all insurance requirements of the Fund loan agreement and that it shall be able to certify that the insurance is in full force and effect and that the premiums have been paid;

20. The recipient shall certify that it and its contractors and their subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules and regulations promulgated pursuant thereto***[;]** * **, including but not limited to N.J.A.C. 17:27-1 et seq.;** *

21. The recipient shall establish an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project and to establish a program to provide opportunities for socially and economically disadvantaged contractors and vendors to supply materials and services for the contract, consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.). ***[Not less than 10 percent of the amount of any contract for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in sections 637(a) and 637(d) of the Small Business Act (15 U.S.C. 637(a) and (d)), and any regulations promulgated pursuant thereto; and]** *

***22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5;** *

***23. The recipient shall submit its affirmative action program, the name of its designated compliance officer, and its procurement plan for implementing 21 above with its application;** *

***24. Not less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in section 637(a) and 637(d) of the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals**

which exceed 10 percent of the total amount of all contracts, the local government unit's goals shall take precedence over State goals. Procedures to be followed in implementing this paragraph shall be found in the Local Public Contracts Law, N.J.S.A. 40A:11-41 et seq., and in guidelines to be published by the Department to assist recipients in complying with statutory and regulatory reporting requirements; and*

[22.]* *25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any construction contract for that project, in accordance with the rate determined by the Commissioner of Labor pursuant to N.J.S.A. 34:11-56.25 et seq.

(b) The recipient shall certify that it is in compliance with all other requirements and conditions of the Fund loan agreement.

(c) The Department may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Bond Act.

7:22-3.18 Administration and performance of loan

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing the Fund loan objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the recipient to the Department. The primary concern of the Department is that Fund loan monies be used in conformance with these rules and the Fund loan agreement to achieve the Fund loan objectives and to ensure that the purposes set forth in the Bond act are fully executed.

7:22-3.19 Project changes and loan modifications

(a) A loan modification means any written alteration of the Fund loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) There shall be no Fund loan modification increasing the funding amount beyond adjustments to cover the low bid building costs. Adjustments due to the low bid building costs will be made only after a subsequent passage of a legislative appropriations act containing the specific project of concern. All other increased costs shall be the responsibility of the recipient.

(c) The recipient shall promptly notify the Assistant Director, Construction Grants Administration Element, Division of Water Resources in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification, including but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objectives of the project;
4. Significant, changed conditions at the project site;
5. Acceleration or deceleration in the time for performance of the project or any major phase thereof; and
6. Changes which may increase or substantially decrease the total cost of a project.

(d) If the Department and the Trust decide a formal Fund loan amendment is necessary, the recipient shall be notified and a formal Fund loan amendment shall be processed in accordance with N.J.A.C. 7:22-3.20. If the Department decides a formal Fund loan amendment is not necessary it shall follow the procedures of N.J.A.C. 7:22-3.21 or 3.22, as applicable

7:22-3.20 Formal loan amendments

(a) The Department shall require a formal Fund loan amendment to change principal provisions of a Fund loan where project change substantially alter the cost or time of performance of the project or any major phase thereof, or substantially alter the objective or scope of the project.

(b) The State and recipient shall effect a formal Fund loan amendment only by a written amendment to the Fund loan agreement executed by the State and the recipient.

7:22-3.21 Administrative loan changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which report is to be transmitted by the recipient, or a ***[change in]** * ***not substantial alteration of*** the disbursement schedule for Fund loans for construction of wastewater treatment facilities, constitute changes to the Fund loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the recipient.

7:22-3.22 Other changes

All other project changes, which do not require a formal Fund loan amendment as stated in N.J.A.C. 7:22-3.20, shall be undertaken only upon written approval of the Assistant Director, Construction Grants Administration Element.

7:22-3.23 Access

(a) The recipient and its contractor and subcontractors shall provide to Department personnel and any authorized representative of the Department access to the facilities, premises and records related to the project.

(b) The recipient shall submit to the Department such documents and information as requested by the Department.

(c) The recipient, and all contractors and subcontractors which contract directly with the recipient or receive a portion of State monies, may be subject to a financial audit.

(d) Records shall be retained and available to the Department until the final Fund loan repayment has been made by the recipient.

7:22-3.24 State disbursement

Disbursement of Fund loan **[monies]* *moneys** shall be made at intervals as work progresses and expenses are incurred ***and approved***, but in no event shall disbursement exceed the allowable costs which have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which shall include all forms and information required by the Department and completed in a manner satisfactory to the Department. ***Should the recipient be receiving Fund loan moneys for expenditures incurred prior to the award of the Fund loan, the disbursement schedule shall be as indicated in the Fund loan agreement.***

7:22-3.25 Assignment

The right of a recipient to receive disbursements from the State under a Fund loan may not be assigned, nor may repayments due under a Fund loan be similarly encumbered.

7:22-3.26 Unused funds

Where the total amount disbursed under a Fund loan due to the low bid building cost is less than the initial loan award, and/or where the total amount disbursed under a Fund loan due to the final building cost is less than the low bid building cost, the Fund loan agreement shall be adjusted and the difference shall be retained by the Fund to be re-allocated, pursuant to subsequent legislative appropriations acts, to other wastewater treatment facilities projects. ***However, where allowable cost overruns occur, Fund moneys may be used to cover these cost overruns up to the loan amount adjusted due to the low bid building cost.***

7:22-3.27 Publicity and signs

(a) Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge State loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the Department shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Division.

7:22-3.28 Land acquisition

Land that shall be an integral part of the treatment process is eligible for Fund loan moneys in accordance with N.J.A.C. 7:22-5.7.

7:22-3.29 Project initiation

(a) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the Fund loan agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions included in this subchapter.

(b) The recipient shall not advertise any contract until authorization to advertise has been granted by the Department.

(c) Once bids for building the project are received, the recipient shall not award the subagreement(s) until authorization to award has been given by the Department.

(d) The recipient and the contractor to whom the subagreement(s) has been awarded shall attend a preconstruction conference with Department personnel prior to the issuance of a notice to proceed.

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all ***significant*** elements of the project ***[within]* *no later than* *[twelve]* *12* months *[of]* *after*** the loan award, unless a specific extension has been approved by the Department.

(f) Failure to promptly award all subagreement(s) for building the project shall result in a limitation on allowable costs in accordance with N.J.A.C. 7:22-5.4*[(6)5.]* ***(b)5.***

7:22-3.30 Project performance

(a) Within 30 days of the actual date of initiation of operation of the project, the recipient shall, in writing, notify the Assistant Director.

(b) For the wastewater treatment process portion of the project, on the date one year after the initiation of operation, the recipient shall certify to the Assistant Director the performance record of the project. If the Department or the recipient concludes that the project does not meet the wastewater treatment facilities' performance standards as specified in the Fund loan agreement, the recipient shall submit the following:

1. A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;

2. The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

3. The scheduled date for certifying to the Assistant Director that the project is meeting the specified performance standards.

(c) The recipient shall take corrective action necessary to bring a project into compliance with the specified performance standards at its own expense.

(d) Nothing in this section:

1. Prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or

2. Affects the Department's right to take remedial action, including enforcement, against a recipient that fails to carry out its obligations.

7:22-3.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by N.J.A.C. 7:22-5.1 through 5.11.

(b) Notwithstanding (a) above, the Department shall not provide Fund loan moneys for costs of work that the Department determines is not in compliance with specifications or requirements of project contracts or the Fund loan agreement. Costs for work not in compliance with the contracts or agreement shall be unallowable.

7:22-3.32 Preaward costs

(a) The Department shall not award loan assistance for ***[building]* costs *incurred for building*** performed prior to the award of the loan for the project, except:

1. Where the local government unit's project is ranked within and including projects one through 70 on the most currently approved Project Priority List ***or has received a Notice of Project Eligibility*** and has met the following conditions:

i. The local government unit has submitted items three through nineteen of N.J.A.C. 7:22-3.11(d) to the Department prior to the advertisement of any contract for which cost reimbursement is being sought;

ii. The local government unit has not advertised any contract, for which cost reimbursement is being sought, without the authorization to advertise the contracts being given by the Department; ***and***

iii. The local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department***[.] * ; or***

iv. The local government unit has complied with i above and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

2. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Assistant Director, Construction Grants Administration Element, may approve preliminary building activities such as procurement of major equipment requiring long lead times, minor sewer rehabilitation, acquisition of allowable land or advance building of minor portions of wastewater treatment facilities. However, advance approval shall not be given until after the Department reviews and approves an environmental assessment and any specific documents necessary to adequately evaluate the proposed action.

(b) If the Assistant Director approves preliminary building activities, such approval is not an actual or implied commitment of Fund loan moneys and the local government unit proceeds at its own financial risk. The local government unit shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act for the project in concern.

(c) Any procurement is subject to the requirements of the Local Public Contracts Law, (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

7:22-3.33 Force account work

(a) A recipient must secure the Assistant Director's prior written approval for use of force account work for construction, construction-related activities or for repairs or improvements to a facility where costs exceed \$25,000.

(b) The recipient shall demonstrate that:

1. The work can be accomplished cost effectively by the use of force account; or
2. Emergency circumstances necessitate its use.

7:22-3.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are not eligible for reimbursement from the Wastewater Treatment Fund. However, an allowance to assist in defraying the planning and design costs shall be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12.

7:22-3.35 Infiltration/Inflow

(a) This section stipulates the requirements for proposed sewer system rehabilitation projects only.

(b) The applicant shall demonstrate to the Assistant Director's satisfaction that the project area is subject to excessive infiltration/inflow and that an adequate rehabilitation plan has been developed. For combined sewer overflow projects, inflow is not considered excessive in any event.

(c) If the rainfall induced peak inflow rate results in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

(d) If the applicant can demonstrate that its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis and shall propose a rehabilitation program to eliminate the excess infiltration.

7:22-3.36 Reserve capacity

(a) The Department shall limit the recipient's Fund loan assistance to the cost of the project with a capacity based upon flow records, existing unsewered needs and flows anticipated prior to the date of initiation of operation as established in the Fund loan agreement. In no case, however, shall the allowable capacity for existing systems exceed 120 gallons per capita per day. Design flows of 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, shall be allowable for existing unsewered needs and for collection systems being built between the date of the Fund loan award and the date of initiation of operation.

(b) For any project providing for capacity in excess of that provided by this section, all incremental costs shall be paid by the recipient. Incremental costs include all costs which would not have been incurred but for the additional excess capacity (that is, any cost in addition to the most cost effective alternative with allowable capacity as described in paragraph (a) of this section.)

7:22-3.37 Value engineering

(a) If the applicant has not received federal grant assistance for the design of the project, the applicant shall conduct value engineering if the total estimated building cost exceeds \$10 million.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.

7:22-3.38 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer Fund loans, acquire property pursuant to the award documents, and award contracts and subcontracts pursuant to those loans free from bribery, graft, and other corrupt practices. The recipient bears the primary responsibility for the prevention, detection and cooperation in the "[prosecution]" ***prosecution*** of any such conduct. The State shall also have the right to pursue administrative or other legally available remedies.

(b) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Assistant Director, Construction grants Administration Element, when such allegation or evidence comes to its attention, and shall periodically advise the Assistant Director of the status and ultimate disposition of any related matter.

7:22-3.39 Debarment

(a) No recipient shall enter into a contract for work on a wastewater treatment project with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.

(b) Recipients shall insert in every contract for work on a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting "[with the]" ***on any project financially assisted by the State [and] *or* the Department** if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) The recipient, prior to acceptance of Fund loan moneys, shall certify that no contractor or subcontractor is included on the State Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a State agency in addition to that of the Department. If Fund loan moneys are used for disbursement to a debarred firm, the Department reserves the right to immediately terminate (N.J.A.C. 7:22-3.44) the Fund loan and/or take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended, or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the recipient may take into account the loss of Fund loan moneys under these regulations which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsive and responsible bidder pursuant to laws, and the recipient may advise prospective bidders that these procedures shall be followed.

(e) Any person included on the State Treasurer's list as a result of action by a State agency, who is or may become a bidder on any contract which is or shall be funded by a Fund loan under this subchapter, may present information to the Department why this section shall not apply to such person. If the Commissioner determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the Commissioner may grant an exception from the Application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-3.40 Noncompliance

(a) In addition to any other remedies as may be provided by law or in the Fund loan agreement, in the event of noncompliance with any loan condition, requirement of this subchapter, or contract requirement or specification, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:22-3.41;
2. Withhold Fund loan moneys pursuant to N.J.A.C. 7:22-3.42;
3. Order suspension of project work pursuant to N.J.A.C. 7:22-3.43;
4. Terminate the Fund loan pursuant to N.J.A.C. 7:22-3.44; and/or
5. Issue administrative orders of enforcement pursuant to the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.).

7:22-3.41 Notice of noncompliance

Where the Department determines that the recipient is in non-compliance with any condition or requirement of these rules or with any contract specification or requirement, it shall notify the recipient, its engineer, and/or the contractor of the noncompliance. The Department may require the recipient, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the recipient, its engineer, and/or contractor fails to take corrective action or if the action taken is inadequate, then the Department may issue a stop-work order or withhold disbursement. The Department may, however, withhold disbursement or issue a stop-work order pursuant to N.J.A.C. 7:22-3.423 and 3.43 without issuing a notice pursuant to this section.

7:22-3.42 Withholding of funds

The Department may withhold, upon written notice to the recipient a Fund loan disbursement or any portion thereof where it determines that a recipient has failed to comply with any loan condition, provision of this subchapter, or contract specification or requirement.

7:22-3.43 Stop-work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the recipient or noncompliance with the terms and conditions of the Fund loan. The Department shall limit use of stop-work orders to those situations when it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) Prior to issuance, the Department shall afford the recipient an opportunity to discuss the stop-work order with Department personnel

The Department shall consider such discussions in preparing the order. Stop-work orders shall contain:

1. The reasons for issuance of the stop-work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the recipient for materials or services;
4. Guidance as to action being taken on subagreements; and
5. Other suggestions to the recipient for minimizing costs.

(c) The Department may, by written order to the recipient (certified mail, return receipt requested), require the recipient to stop all, or any part of, the project work for a period of not more than 45 days after the recipient receives the order, and for any further period to which the parties may agree.

(d) The effects of a stop-work order are as follows:

1. Upon receipt of a stop-work order, the recipient shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:

- i. Rescind the stop-work order, in full or in part;
- ii. Terminate the work covered by such order as provided in N.J.A.C. 7:22-3.44; or
- iii. Authorize resumption of work.

2. If a stop-work order is cancelled or the period of the order or any extension thereof expires, the recipient shall promptly resume the previously suspended work. An equitable adjustment shall be made in the Fund loan period, and/or the project, and the Fund loan agreement shall be modified if necessary. However, additional project costs as a result of this action shall be the responsibility of the recipient.

7:22-3.44 Termination of loans

(a) Termination of loans by the Department shall be conducted as follows:

1. The Department may terminate a Fund loan in whole or in part for good cause. The term "good cause" shall include but not be limited to:

- i. Substantial failure to comply with the terms and conditions of the Fund loan agreement;
- ii. Default by the recipient;
- iii. A determination that the Fund loan was obtained by fraud;
- iv. Without good cause therefor, substantial performance of the project work has not occurred;
- v. Gross abuse or corrupt practices in the administration of the project have occurred; or
- vi. Fund moneys have been used for non-allowable costs.

2. The Department shall give written notice to the recipient (certified mail, return receipt requested) of its intent to terminate a Fund loan, in whole or in part, at least 30 days prior to the intended date of termination.

3. The Department shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested), terminate the Fund loan in whole or in part.

(b) Project termination by the recipient shall be subject to the following:

1. A recipient shall not unilaterally terminate the project work for which a Fund loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Director of any complete or partial termination of the project work by the recipient.

2. If the Department determines that there is good cause for the termination of all or any portion of a project for which the Fund loan has been awarded, the Department may enter into a termination agreement or unilaterally terminate the Fund loan effective with the date of cessation of the project work by the recipient. The determination to terminate the Fund loan shall be solely within the discretion of the Department. If the Department determines not to terminate, the recipient shall remain bound by the terms and conditions of the Fund loan agreement.

3. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the Fund loan pursuant to this section.

(c) The Department and recipient may enter into a mutual agreement to terminate at any time pursuant to terms which are consistent with this subchapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of the Fund loan.

(d) Upon termination, the recipient may be required to immediately refund or repay to the State the entire amount of the Fund loan moneys received. If the loan is guaranteed by a security/deficiency agreement, such agreement may have to be brought into effect to ensure the entire repayment of the Fund loan. The Department may, at its discretion, authorize the immediate repayment of a specific portion of the Fund loan and allow the remaining balance to be repaid in accordance with a revised Fund loan repayment schedule.

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Assistant Director the uncommitted balance of Fund moneys awarded under the Fund loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

(f) In addition to any termination action, the Department retains the right to pursue other legal remedies as may be available under federal, State and local law as warranted.

7:22-3.45 Administrative hearings

(a) The Director shall make the initial decision regarding all disputes arising under a loan. The recipient shall specifically detail in writing the basis for its appeal. When a recipient so requests, the Division shall produce a decision in writing and mail or otherwise furnish a copy thereof to the recipient.

(b) A recipient may request an administrative hearing within 15 days of a decision by the Director. The request for an administrative hearing shall specify in detail the basis for the appeal.

(c) Following receipt of a request for a hearing pursuant to (b) above, the Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(d) If the recipient raises a substantial and meritorious issue and such efforts at settlement fail, the Department shall file the request for an administrative hearing with the Office of Administrative Law. Administrative hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1H et seq. promulgated pursuant to those Act.

7:22-3.46 Severability

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

(a)

Construction Grants and Loans for Wastewater Treatment Facilities Wastewater Treatment Trust Procedures and Requirements

Adopted Repeal: N.J.A.C. 7:22-4

Adopted New Rule: N.J.A.C. 7:22-4

Proposed: September 22, 1986 at 18 N.J.R. 1883(a).

Adopted: December 11, 1986 by Robert Mulreany, Chairman,
New Jersey Wastewater Treatment Trust.

Filed: December 12, 1986 as R.1987 d.40 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. 58:11B-1 et seq.

Effective Date: January 5, 1987.

Expiration Date: January 5, 1992.

DEP Docket No. 035-86-08.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting N.J.A.C. 7:22-4 ("Subchapter 4") to prescribe the procedures to be followed by an applicant for a loan from the New Jersey Wastewater Treatment Trust Fund established pursuant to the New Jersey Wastewater Trust Act, N.J.S.A. 58:11B-1 et seq.

Public hearings on this rule were held on October 6, 8, and 10, 1986 to provide interested parties the opportunity to present testimony. The comment period closed on October 22, 1986. Please see the public com-

ment section for the rules adopted at N.J.A.C. 7:22-2 and 3 in this issue of the N.J.R. for additional comments which apply to this subchapter as well. These comments are marked by a plus sign ("+").

COMMENT: Several commenters requested the opportunity to review the "Statement of Assurances" form, and/or to review the "Environmental Guidelines for the Planning, Design, and Construction of Wastewater Treatment Facilities" and the "Construction Requirements for the Construction of Sewage Facilities" documents.

RESPONSE: These documents are available for review by the public at their request. Address requests to Assistant Director, Construction Grants Administration Element, Division of Water Resources, New Jersey Department of Environmental Protection, CN-029, Trenton, New Jersey 08625.

COMMENT: Is the submittal of a single application sufficient for both the Wastewater Treatment Fund (the Fund) and the New Jersey Wastewater Treatment Trust Fund (the Trust)?

RESPONSE: The Fund (handled by the Department) and the Trust are two distinct entities. The moneys from these two programs will be awarded independently and will have to be repaid separately as well. Thus, two separate loan applications will be necessary. It should be noted, however, that many of the administrative functions will be performed by the Department for both the Fund and the Trust, such as project review and approval, and permitting.

COMMENT: When will the interest for repayment of the loan begin to accrue?

RESPONSE: The regulations at N.J.A.C. 7:22-4.6(b) have been amended to clarify that the interest accrues from the date that each loan payment is awarded to the municipality.

COMMENT: How will innovative/alternative ("I/A") projects be ranked for the receipt of State funds?

RESPONSE: As indicated in the Federal Priority System, I/A projects can be ranked under the general section (rather than the I/A section) of the Priority List using the "new system" category. As there is no mandatory I/A funding requirement under New Jersey's funding program, municipalities with I/A projects that are pursuing State loans would be re-ranked by the Department on the general list in order to determine their ranking for State funds.

COMMENT: When will the first loans be available to a municipality?

RESPONSE: July of 1987 would be the earliest date that the first loan will be available. However, this is the culmination of many preliminary efforts, particularly for the projects to receive funds from the Trust, including submittal of the Trust's Priority List to the Legislature for their review by January 15 of the fiscal year; approval by the Legislature of the appropriations act for the listed projects by April 1 of the fiscal year; submittal of the financial plan by May 15 of the fiscal year; and approval of the financial plan by the Legislature by July 1. In addition, the Department would be working concurrently with municipalities through the Notice of Project Eligibility stage and in the review and approval of the project application and supporting documentation, so that the municipality would be in a position to proceed with the project with a minimum of delay once loan funds are available by July 1 of the State fiscal year.

COMMENT: What will the effective interest rate be of a combination Fund/Trust loan and what would the grant equivalency be?

RESPONSE: While the Trust will charge interest on their loans, loans from the Fund would have an interest rate of 0 percent. With a 50/50 Fund/Trust combination loan, the effective interest rate would be slightly less than 50 percent of the market rate. In regard to the effective grant equivalency, such calculations are different to determine for all projects on a generic basis since certain costs may not be incurred or the level of required detail may be different under the State program in comparison to the requirements of the Federal program (such as detailed environmental mapping, compliance with Federal wage rates, etc.). In addition, since the State program includes eligibility for sewer system rehabilitation, combined sewer overflow and collection systems, the comparable grant rate is actually a project-specific item.

COMMENT: The Federal Priority System ranking criteria for the State's loan program encourages municipalities to do nothing until Federal or State funds are forthcoming.

RESPONSE: The Trust Act (N.J.S.A. 58:11B-1 et seq.) mandates that the Priority List developed pursuant to the Federal Clean Water Act be used for those projects to receive moneys from the Trust. The ranking criteria used to develop the current Priority List, however, has been developed to give the highest points for the elimination of those discharges that are causing significant water quality problems including primary treatment discharges, inadequate secondary treatment discharges and severe infiltration/inflow problems. It is the goal of the Department

to correct these problems as expeditiously as possible, in order to restore the ambient quality of the State's water bodies, as well as to achieve and maintain the uses that have been designated for these stream segments.

It should also be noted that the issue of funding is separate and distinct from that of enforcement. Municipalities in recent years have been extremely hesitant to pursue correction of their wastewater treatment problems until Federal funds could be obtained since only those costs incurred after grant award would be reimbursed by the Federal government. The courts have historically recognized this situation and have not mandated plant upgrade until a Federal grant could be secured. This posture has been changing, and compliance with the Clean Water Act (33 U.S.C. 1251 et seq.) and the July 1, 1988 deadline will be required regardless of the availability of Federal (or State) funding.

7:22-4.7 Criteria for project loan priority

COMMENT: Section 7:22-4.7 implies that there will be three separate lists (for Federal grant, the Fund and the Trust) although elsewhere two are indicated. Must the applicant decide which loan program they are pursuing?

RESPONSE: While two project funding lists are involved, only the ranking criteria of the Federal Priority System are used for the development of both of these lists. The Federal Priority List is a comprehensive listing of projects that are pursuing Federal Construction Grant assistance. Municipalities wishing to pursue funding through the Fund and the Trust are required to submit their requests to the Department. Their projects would then be placed on the State Funding List in the same relative order in which their projects appear on the Federal Priority List. However, applicants are not required to decide whether they wish to pursue a loan through the Fund or the Trust since only combination loans from the Fund and the Trust are available.

COMMENT: Why are 60 days required to review the loan application? Is the application form the same as that of the Federal grant program? The evaluation of the loan applications should be broken down according to the review time for specific portions of the applications (i.e., preliminary review within 14 days, etc.).

RESPONSE: The 60 day period has been established as a reasonable period of time in which to satisfactorily review the loan application and supporting documentation required for project approval. This 60 day period is consistent with that of the current Federal program. Municipalities wishing to proceed with their projects without delay are advised that they may submit their project documentation to the Department earlier than the dates specified within their Notice of Project Eligibility.

The application forms for the Trust and the Fund loans are different from that of the Federal grant program and will be provided to municipalities as needed. In response to the suggestion to identify specific periods of time for the Department's processing of loan application items, it should be noted that the review of the various supporting documents are interrelated. Thus, it would not be practical to identify specific time periods for each of the items required within the loan application package. The Department does, however, intend to perform a preliminary review for completeness shortly after receipt of loan application packages so that municipalities may be advised as soon as possible of deficiencies in their application packages.

COMMENT: What does a municipality have to do during the period between the receipt of a Notice of Project Eligibility (in early November) and the submittal of the Priority List/appropriations bill to the Legislature for State loans (in January)?

RESPONSE: The Department will require submittal of a written statement from the local government unit of its decision whether to pursue funding through either a State loan for the upcoming fiscal year or a Federal grant. It should be noted that municipalities choosing to be placed on the appropriations bill for submittal to the Legislature must waive their right to receive a Federal grant for their project within the current and following fiscal years (i.e., a two year period).

7:22-4.17 Loan conditions

COMMENT: Has the State reviewed the various conditions under N.J.A.C. 7:22-4.17 to assure the applicant that none of the provisions are in conflict with each other?

RESPONSE: The Department has reviewed this section carefully and feels that inconsistencies are not included under this section.

7:22-4.18 Administration and performance of loan

COMMENT: What assurance does the recipient have that the State will act in a timely fashion and make deliberate decisions and ruling regarding the administration and performance of loans? This question also applies to N.J.A.C. 7:22-4.19 through 4.22, sections relating to project changes, loan amendments, administrative changes and other project changes.

RESPONSE: The Department attempts to act on all project submittals in as timely a fashion as possible. However, delays often occur as a result of inadequate project information, failure to submit certain documentation, permit and other regulatory agency coordination, etc. It should be noted, however, that the Department is in the process of increasing staff in order to adequately handle the additional projected workload resulting from administration of the State's Wastewater Treatment Financing Program.

7:22-4.24 Trust disbursement

COMMENT: What assurances are there that project consultants and contractors will be paid in a timely fashion for work that was done and for which the local government unit has been paid by the State or Federal government?

RESPONSE: N.J.A.C. 7:22-2, Construction of Wastewater Treatment Facilities in the Water Pollution Control Act indicates that the owner (local government unit) shall review partial payment estimates at its next regularly scheduled meeting and if approved, payment shall be made available to the contractor within five days. This section goes on to indicate that the owner shall not retain more than two percent of the amount of each payment claimed. In addition, specific time periods regarding the provision of equipment materials for services and the payment thereof are included under this subsection. While consultants are not specifically referenced, these regulations may be liberally construed to apply to their prompt payment as well.

7:22-4.25 Assignment

COMMENT: How are consultants and contractors protected when Trust moneys that support their project contracts are assigned to another entity?

RESPONSE: As indicated in N.J.A.C. 7:22-4.25 regarding assignment, "The right of a recipient to receive disbursement from the Trust under a Trust loan may not be assigned, nor may repayment due under a Trust loan be similarly encumbered unless such assignment or encumbrance shall have been approved in writing pursuant to the conditions set forth in the Trust loan agreement." The conditions set forth in the Trust loan agreement, and the written agreement that must be approved, will have to satisfactorily ensure that consultants and contractors are properly protected.

N.J.A.C. 7:22-4.6(d) and 7:22-4.24 have been amended by the Department to ensure the allowability of construction costs incurred prior to the execution of a formal loan agreement.

N.J.A.C. 7:22-4.46 was added by the Department pursuant to the New Jersey Wastewater Treatment Trust Act, N.J.S.A. 58:11B-5(f), which authorizes the Trust to accept help given to it by the Department. This new provision will allow the Trust to rely upon the expertise of the Department and it will prevent a duplication of efforts when money from the Trust and the Fund are used on the same project.

N.J.A.C. 7:22-4.17(a)15 and 16 have been deleted and reserved, and amended, respectively, upon adoption to permit the Department to consider whether the cited Environmental Guidelines, Construction Requirements and Technical Requirements were regulatory in nature and, if so, to be promulgated as rules.

N.J.A.C. 7:22-4.17(a)20 has been amended to include a citation to applicable anti-discrimination regulations.

N.J.A.C. 7:22-4.17(a)21 has been changed to comply with an opinion by the Attorney General interpreting the New Jersey Wastewater Trust Act, N.J.S.A. 58:11B-26(a), to require not less than 10 percent of the total amount of all contracts for construction, materials or services for a project to be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals. The proposal had required 10 percent of "the amount of any contract" to be so awarded. N.J.A.C. 7:22-4.17(a)22, 23 and 24 have been added to further his compliance and clarify the anti-discrimination requirements.

N.J.A.C. 7:22-4.21 has been amended to include the phrase, "for construction of wastewater treatment facilities" which was inadvertently omitted from the proposal.

N.J.A.C. 7:22-4.32, Preaward costs, was changed to include all projects receiving a notice of project eligibility as well as those ranking from one to seventy on the Project Priority List. These projects are eligible to receive loan assistance for building costs incurred prior to the award of the loan. The amendment to N.J.A.C. 7:22-4.32(a) was for clarification purposes, as "costs" cannot be performed.

N.J.A.C. 7:22-4.39(b) has been amended to more properly express the intent of the Department to be reflected in the required contractual laborment clause.

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

SUBCHAPTER 4: WASTEWATER TREATMENT TRUST PROCEDURES AND REQUIREMENTS

7:22-4.1 Scope

This subchapter shall constitute the rules of the New Jersey Wastewater Treatment Trust established pursuant to the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) governing the disposition of appropriations made available pursuant to the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) or other moneys appropriated to the New Jersey Wastewater Treatment Trust.

7:22-4.2 Construction of rules

This subchapter shall be construed so as to permit the Trust to discharge its statutory functions and to effectuate the purposes of the law.

7:22-4.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.)
2. To establish policies and procedures for the distribution of funds appropriated to the New Jersey Wastewater Treatment Trust for the purpose of providing financial assistance to local government units through the issuance of Trust loans for paying the costs of the construction of Wastewater Treatment Facilities;
3. To protect the public, the State and the Trust's bondholders by ensuring that Trust moneys appropriated are spent in a proper manner and for the intended purposes;
4. To assure that the distribution and use of Trust moneys is consistent with the laws and policies of the State;
5. To establish minimum standards of conduct to prevent conflicts of interest and to ensure proper administration of funds;
6. To establish accounting procedures for the administration of Trust moneys;
7. To establish Trust loan repayment requirements; and
8. To establish standards for the construction of wastewater treatment facilities.

7:22-4.4 Definitions

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

"Allowable costs" means those costs that are eligible, reasonable, necessary, and allocable to the project; permitted by generally accepted accounting principles; and approved by the Trust in the Trust loan agreement. Allowable costs shall be determined on a project specific basis in accordance with N.J.A.C. 7:22-5.1 through 5.11.

"Allowance" means a loan amount for planning and design costs based on a percentage of the project's allowable building cost, computed in accordance with N.J.A.C. 7:22-5.12, and awarded in conjunction with the Trust loan to build the project.

"Applicant" means any local government unit that applies for a Trust loan pursuant to the provisions of these rules and regulations.

"Assistant Director" means the Assistant Director, Construction Grants Administration Element, Division of Water Resources, New Jersey Department of Environmental Protection.

"Bond Act" means the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329).

"Bonds" means the bonds authorized to be issued, or issued, under the Trust Act.

"Building cost" means the cost for the acquisition, erection, alteration, remodeling, improvement or extension of wastewater treatment facilities. This definition excludes administration, legal, fiscal and engineering costs and costs associated with the planning and design of the project.

"Certified mail" means any means of delivery where proof of receipt is obtained and date of receipt is recorded.*

"Collection system" means the common lateral sewers, which are primarily installed to receive wastewater directly from individual systems or from private property and which include service "Y" connections designed for connection with those facilities when owned, operated and maintained by or on behalf of the local government unit. Included in this definition are crossover sewers connecting more than one property on one side of a major street, road or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and pumping units and pressurized lines serving individual structures or groups of

structures when such units are cost effective. This definition excludes other facilities which convey wastewater from individual structures from private property to the lateral sewer or its equivalent.

"Commission" means the New Jersey Commission on Capital Budgeting and Planning.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his designated representative.

"Construction" includes, but is not limited to, the preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary for the construction of wastewater treatment facilities; the purchase of land that shall be an integral part of the treatment process or used for the ultimate disposal of residues from such treatment; the erection, building, alteration, remodeling, improvement, or extension of wastewater treatment facilities; and the inspection and supervision of the construction of wastewater treatment facilities.

"Department" means the New Jersey Department of Environmental Protection, duly authorized agent of the Trust.

"Director" means the Director of the Division of Water Resources of the Department.

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which shall result in a discharge to surface water or a substantial modification in a discharge to surface water pursuant to the New Jersey Pollutant Discharge Elimination System (N.J.P.D.E.S.), N.J.A.C. 7:14A-1.1 et seq.

"Division" means the Division of Water Resources, New Jersey Department of Environmental Protection.

"Economically disadvantaged individuals" as defined in 15 U.S.C. 637(a)(6) means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.*

"Excessive infiltration/inflow" means the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

"Executive Director" means the Executive Director of the Trust.

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1251 et al.) and any amendments or supplements thereto.

"Final building cost" means the total actual allowable cost of the final work in place for the project, in accordance with the scope as defined in the Trust loan agreement.

"Force account work" means the use of the recipient's own employees or equipment for construction, construction related activities, or for repair or improvements to a facility.

"Fund" or "Wastewater Treatment Fund" means the Wastewater Treatment Fund established pursuant to the Bond Act.

"Fund loan" means a loan from the Wastewater Treatment Fund for the allowable costs of a project.

"Fund loan agreement" means the legal instrument executed between the State of New Jersey and the local government unit for the construction of wastewater treatment facilities.

"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.

"Initiation of operation" means the date specified by the recipient in the Trust loan agreement on which use of the project begins for the purposes that it was planned, designed and built.

"Local government unit" means a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint

meeting, or any other political subdivision of the State authorized to construct and/or operate wastewater treatment facilities.

"Low bid building cost" means the total actual allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s).

"Notes" means notes issued by the Trust pursuant to the Act.

"Priority System and Project Priority List" means the mechanism by which projects are ranked and a subsequent list developed by the State in conformance with the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et al.), and any amendatory or supplementary acts thereto, the State law.

"Project" means the defined services for the construction of specific operable facilities as approved by the Trust in the Trust loan agreement.

"Recipient" means any local government unit which has received a Trust Loan pursuant to this subchapter.

"Scope of work" means the detailed description of the extent of service required to construct the wastewater treatment facilities.

"Socially disadvantaged individuals" as defined in 15 U.S.C. 637(a)(5) means those individuals who have been subjected to racial and ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. 15 U.S.C. 637(d)(3) presumes that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities.*

"State Funding List" means the list of projects developed by the Department from the Project Priority List for approval by the Legislature which identifies the local government units to receive Trust loans.

"Substantial alteration" means any change which results in an alteration of the project costs or a change of 90 days or more in the project schedule.

"Trust" or "New Jersey Wastewater Treatment Trust" means the New Jersey Wastewater Treatment Trust created pursuant to the New Jersey Wastewater Treatment Trust Act or its duly authorized agent.

"Trust Act" means the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.).

"Trust Fund" means the New Jersey Wastewater Treatment Fund created pursuant to the "Wastewater Treatment Bond Act" of 1985 (P.L. 1985, c.329).

"Trust loan" means a loan from the New Jersey Wastewater Treatment Trust for the allowable cost of a project.

"Trust loan agreement" means a legal instrument executed between the Trust and the local government unit for the construction of wastewater treatment facilities.

"Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high costs in a project in order to arrive at a cost savings without sacrificing the reliability or efficiency of the project.

"Wastewater" means residential, commercial, industrial or agricultural liquid waste, sewage, septage, stormwater runoff or any combination thereof, or other residue discharged or collected into a sewer system, stormwater runoff system or any combination thereof.

"Wastewater treatment facilities" includes, but is not limited to, all equipment, plants, structures, machinery, apparatus, or land that shall be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater sludges, septage or industrial wastes, including but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections extensions, outfall sewers, combined sewer overflows, intercepting sewers, trunklines, sewage collection systems, stormwater runoff collection systems and other equipment, personal property and appurtenances necessary thereto.

"Water Quality Management Plans" means the plans prepared pursuant to Sections 208 and 303 of the Clean Water Act (33 U.S.C. 12 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq. 7:22-4.5 New Jersey Wastewater Treatment Trust

(a) The Trust shall establish a general loan fund into which may be deposited all revenues and receipts of the Trust, including moneys received as payment of principal and interest on loans made by the Trust, earnings on the moneys in any fund or account of the Trust, any grants or appropriations, other than those specified in (b) below, and all other moneys from any source available for the purpose of making Trust loans to local government units for the construction of wastewater treatment facilities.

(b) The Trust shall establish reserve and guarantee funds into which shall be deposited the proceeds from any State bonds issued pursuant to section 6.b. of the Bond Act authorized for deposit in the Trust or other funds appropriated by law to the Trust for deposit in the reserve and guarantee funds. The reserve fund shall be used by the Trust to secure debt issued by the Trust. The guarantee fund shall be used by the Trust to secure debt issued by a local government unit.

(c) The Trust shall not expend any moneys for loans during a fiscal year unless the expenditure is authorized pursuant to a project specific appropriations act by the Legislature in accordance with the Trust Act.

7:22-4.6 Terms of the loans from the New Jersey Wastewater Treatment Trust

(a) The Trust may offer loans for up to 100 percent of allowable project costs for the construction of wastewater treatment facilities but may offer a range of options regarding the term, interest rate and level of loan funding.

(b) The total term of the Trust loans shall not exceed 20 years. Repayments shall begin no later than one month after the date of the initiation of operation or final inspection of the wastewater treatment facilities, or four years from date of loan award, whichever occurs first or as indicated in the Trust loan agreement. Thereafter, Trust loan repayments shall be made in accordance with the repayment schedule indicated in the Trust loan agreement. Principal and accrued interest with respect to a particular Trust loan may, however, be prepaid in accordance with the provisions of the relevant Trust loan agreement. ***Interest shall accrue from the date of the Trust loan disbursement.***

(c) Local government units shall secure all Trust loans in a manner acceptable to the Trust. Acceptable security arrangements include but are not limited to general obligation bonds of the local government unit, service/deficiency agreement(s) with other local government units with general taxing power, municipal bond insurance, surety bonds and other arrangements acceptable to the Department and the Trust.

(d) Trust loan proceeds will be disbursed to recipients at intervals as work progresses and expenses are incurred and approved***[.]***, **unless the Trust loan is awarded on a retroactive basis for the reimbursement of prior expenditures. In this case, Trust loan disbursements shall be made as indicated in the Trust loan agreement.***

(e) The specific terms and conditions of the Trust loan shall be incorporated in the Trust loan agreement to be executed by the Trust and recipient.

7:22-4.7 Criteria for project loan priority

Each year, a Priority System and Project Priority List is developed under the federal grant program for the forthcoming federal Fiscal Year. The Priority System evaluates wastewater treatment projects individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions. Each year, the Priority System and Project Priority List is the subject of public hearings, including a public comment period. Local government units desiring to be placed on the Project Priority List shall make their request for placement in accordance with N.J.A.C. 7:22-3.7 before or during this time. Concurrently, all local government units listed or eligible for listing on the Project Priority List shall be required to advise the Trust whether they will continue to pursue federal funding only, or exercise their option to become eligible for a Trust loan. Those local government units opting for a Trust loan will be ranked in accordance with the Priority System and placed on the State Funding List in accordance with N.J.A.C. 7:22-4.8.

7:22-4.8 State and federal funding

(a) Local government units receiving funding through a federal grant shall be ineligible for a Trust loan for the same step work (planning, design or building) for which they received a federal grant for the wastewater treatment facilities project. Further, local government units receiving a Trust loan pursuant to this subchapter, shall be ineligible to receive a federal grant or State matching funds pursuant to N.J.A.C. 7:22-2.1 et seq. for the same scope of work for the planning, design or building of a wastewater treatment facilities project.

(b) Each year local government units shall be required to advise the Trust whether they intend to become eligible for a Trust loan or to continue being considered for a federal grant only. Those local government units exercising their option for a Trust loan shall have their project ranked in accordance with the Priority System and placed on the State Funding List upon the submittal of their decision. As part of their decision, local government units shall waive and lose their discretion to accept a federal grant for the two forthcoming federal fiscal years for their project ranked on the State Funding List contingent upon the

passage of the legislative appropriations act containing the specific project of concern. Failure of the local government unit to advise the Division of their decision by the close of the comment period for the proposed Priority System and Project Priority List shall be interpreted as a decision by the local government unit to continue being considered for a federal grant only.

(c) Each year those local government units whose project is ranked within the fundable range of the State Funding List shall receive a Notice of Project Eligibility in accordance with N.J.A.C. 7:22-4.9. The Trust reserves the right to send a Notice of Project Eligibility to the next highest ranked local government unit(s) as a contingency project(s) in the event the project(s) within the fundable range not proceed as planned. The decision, whereby local government units waive and lose their discretion to accept a federal grant for the projects for which they exercise their option for a Trust loan, shall become effective only upon receiving legislative approval in the form of an appropriations act. A local government unit whose project is on the State Funding List, but is not part of a legislative appropriations act, remains eligible to receive a federal grant for that project.

7:22-4.9 Notice of project eligibility

(a) The Trust shall send a Notice of Project Eligibility to those local government units whose projects rank high enough on the State Funding List to receive funds. The Trust reserves the right to send a Notice of Project Eligibility to the next highest ranked project(s) outside the fundable range to act as a contingency project(s) should the project(s) within the fundable range not proceed as planned. This notice shall not constitute an obligation to provide State funding for the project. However, it shall bind the Trust to support the passage of the appropriations legislation including funds for the project. The Notice of Project Eligibility shall not be sent to any local government unit who is in current default on any State loan*. **However,*** unless the Trust determines that repayment of the defaulted loan will be received ***a Trust loan agreement will not be executed between the Trust and the local government unit*.**

(b) Local government units receiving a Notice of Project Eligibility shall notify the Trust within 45 days of receipt as to their intent to proceed with the project and shall submit to the Trust a complete Trust loan application in conformance with N.J.A.C. 7:22-4.11 within the time period specified in the Notice of Project Eligibility. Failure of the local government unit to respond to the Notice of Project Eligibility within 45 days shall be interpreted as a decision by the local government unit to not apply for a Trust loan and shall result in that project being bypassed on the State Funding List. Failure to submit the complete application within the time period specified in the Notice of Project Eligibility shall result in the Trust's disapproval of the local government unit's Trust loan application unless the Trust, at its discretion approves, for good cause, an extension to this period.

(c) Written notice of a bypass or disapproval action shall be forwarded to the local government unit by certified mail. As a result of such an action, the project shall be bypassed on the State Funding List which may allow the next highest ranked contingency project to be within the fundable range on the State Funding List.

[(d) Applicants pursuing a Trust loan shall be obligated to proceed with the project.]

7:22-4.10 Pre-application procedures

(a) Local government units are urged to be familiar with the requirements of this subchapter and to contact the Trust early in the planning process so that their projects are in a position to proceed (that is, planning and design completed) at time of Notice of Project Eligibility. Local government units should be aware that Department approval plans and specifications are required as part of the application for a Trust loan.

(b) The Trust requires a pre-application conference with potential applicants prior to submission of a formal application for a Trust loan. During the conference the Trust shall identify and explain all loan application documents. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Trust.

(c) Questions concerning the program and requests for a pre-application conference should be directed to:

Executive Director
New Jersey Wastewater Treatment Trust
CN-029
Trenton, New Jersey 08625

7:22-4.11 Application procedures

(a) Each application for a Trust loan shall be submitted to the Trust in conformance with the time period specified in the Notice of Project

Eligibility or as otherwise extended by the Trust and shall include full and complete documentation and any supplementary materials that an applicant is required to furnish.

(b) Submissions which do not substantially comply with this subchapter shall not be processed further and shall be returned to the applicant.

(c) Processing of a Trust loan application generally requires 60 calendar days after receipt of a complete application by the Trust.

(d) The following shall be submitted when applying for a Trust loan:

1. An application for a Trust loan pursuant to this subchapter for construction of wastewater treatment facilities. Each application shall constitute an offer to accept the requirements of this subchapter and, upon execution of the agreement by the Trust and the applicant, acceptance of the terms and conditions of the Trust loan agreement;

2. A resolution passed by the local government unit authorizing the filing of an application for a Trust loan, specifying the individual authorized to sign the Trust loan application on behalf of the local government unit. If two or more local government units are involved in the project a resolution is required from each, indicating the lead applicant and the authorized representative;

3. Statement of assurances (CGA Form LP-4);

4. Assurance of compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) (CGA Form LP-5);

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans and Environmental Assessment Guidelines;

6. Sewer System Evaluation Survey (for Rehabilitation projects only);

7. Department approvable plans, specifications and technical design report;

8. A description of the public participation process to date;

9. A statement indicating small, minority and women's business enterprise participation during planning and design;

10. Project cost breakdown;

11. Projected cash flow schedule;

12. Project construction schedule. Should the anticipated date of the initiation of operation occur after July 1, 1988, a court-sanctioned order specifying a compliance schedule shall be required, where applicable;

13. Department-approvable sewer use ordinance and user charge system;

14. Certificate (legal opinion) from counsel as to title or mechanism to obtain title necessary for project sites and easements;

15. A certification that required permits and approvals, if applicable for building the wastewater treatment facilities, were received from the following agencies:

i. Monitoring and Planning Element within the Division;

ii. Water Quality Management Element within the Division;

iii. Water Supply and Watershed Management Element within the Division;

iv. Division of Environmental Quality within the Department;

v. Division of Waste Management within the Department;

vi. Division of Fish and Game within the Department;

vii. Division of Coastal Resources within the Department;

viii. Office of Equal Opportunity and Public Contract Assistance within the Department;

ix. Office of New Jersey Heritage within the Division of Parks and Forestry.

x. New Jersey Department of Community Affairs;

xi. U.S. Army Corps of Engineers;

xii. New Jersey Pinelands Commission;

xiii. Hackensack Meadowlands Development Commission;

xiv. Delaware and Raritan Canal Commission;

xv. Delaware River Basin Commission;

xvi. Interstate Sanitation Commission;

xvii. Local Soil Conservation District Office;

16. A statement from the applicant indicating that it has not violated any federal, State or local law pertaining to fraud, bribery, graft, kick-back, collusion or conflicts of interest relating to or in connection with the planning and design of the project;

17. A statement from the applicant which indicates if it used the services of a person for planning or design of the project whose name appears on the State Treasurer's list of debarments, suspensions and voluntary exclusions;

18. Executed intermunicipal agreements, if required;

19. Draft engineering agreements for building services;

20. A statement by the applicant waiving its discretion to accept a federal grant for two consecutive federal fiscal years (pursuant to N.J.A.C. 7:22-4.8);

21. A description of how the applicant plans to repay the Trust loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the Trust loan that shall guarantee that at the time of the signing of the Trust loan agreement it shall be irrevocably committed to repay the Trust loan and pay other expense necessary to fully complete, implement, operate and maintain the project. The description shall include: pro forma projections of the applicant's financial operations during the construction period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the project to be financed by the Trust loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all Trust loans in a manner acceptable to the Trust pledging to provide funds to repay the debt, even if the Trust loan is terminated pursuant to N.J.A.C. 7:22-4.44. Acceptable security arrangements include but are not limited to general obligation bonds of the local government unit, service/deficiency agreement(s) with government unit with general taxing power, municipal bond insurance and surety bonds.

22. Such other information as the Trust may require.

(e) Applicants *{are advised that}* ***shall obtain*** all necessary Federal State and local permits and approvals must be obtained prior to the award of a loan unless prior approval for an extension for one or more specific permits has been granted by the Trust that does not significantly affect the loan award. ***Excluded from prior acquisition are permits and approval which are impractical to obtain prior to the loan award (e.g., road opening permit, blasting permit, etc.).***

(f) All applications shall be sent to:

Executive Director

New Jersey Wastewater Treatment Trust

CN-029

Trenton, New Jersey 08625

7:22-4.12 Use and disclosure of information

All loan applications and other submissions, when received by the Trust, constitute public records. The Trust shall make them available to persons who request their release to the extent required by New Jersey and/or federal law.

7:22-4.13 Evaluation of application

(a) The Trust shall notify the applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;

2. Programmatic, technical, and scientific evaluation to determine the merit and relevance of the project to the Trust project objectives;

3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable; and

4. Final administrative evaluation.

(b) Upon the completion of a full review and evaluation of each application, the Trust shall either approve the application or make the determination that the Trust loan award shall be deferred.

(c) The Trust shall promptly notify applicants in writing of any deferral action, indicating the reasons for the deferral and a time frame for the resolution of any outstanding issues. A deferral action shall result in one of the following:

1. An approval of the application if the outstanding issues are addressed to the satisfaction of the Trust within the specified time frame or

2. A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the Trust within the specified time frame

(d) The Trust shall promptly notify applicants in writing of any disapproval. A disapproval of an application shall not preclude its reconsideration if resubmitted by the applicant. However, reconsideration of a revised Trust loan application and/or processing of a Trust loan agreement for the project within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected applicants shall be notified in writing of such action. As a result of a disapproval and project bypass action, the next highest ranked contingency project on the State Funding List may fall within the fundable range.

7:22-4.14 Supplemental information

At any stage during the evaluation process, the Trust may require supplemental documents or information necessary to complete full review

of the application. The Trust may suspend its evaluation until such additional information or documents have been received.

7:22-4.15 Trust loan agreement

(a) The Trust shall prepare and transmit the Trust loan agreement to the applicant.

1. The applicant shall execute the Trust loan agreement and return it within 45 calendar days after receipt. The Trust may, at its discretion, extend the time for execution. The Trust loan agreement shall be signed by a person authorized by resolution to obligate the recipient to the terms and conditions of the Trust loan agreement being executed. The authorizing resolution shall also be submitted at this time.

2. The Trust loan agreement shall set forth the terms and conditions of the Trust loan, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

3. The Trust loan agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Trust in the application process.

4. The Trust loan agreement shall not be executed by the Trust if the applicant is in current default on any State loan.

5. After the Trust has completed its internal processing of the Trust loan agreement, it shall transmit a copy of the executed Trust loan agreement to the recipient.

7:22-4.16 Effect of loan award

(a) At the time of execution of the Trust loan agreement by the Trust and the recipient, the loan shall become effective and shall constitute an obligation of the Trust in the amount and for the purposes stated in the Trust loan agreement.

(b) The award of the Trust loan shall not commit or obligate the Trust to award any continuation Trust loan to cover cost overruns of the project. Cost overruns for any project or portion thereof shall be the sole responsibility of the recipient.

(c) The award of a loan by the Trust shall not be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates for its respective project.

7:22-4.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-4.18 through 4.30, as well as such statutes, rules, terms and conditions which may be applicable to particular Trust loans, are conditions to each Trust loan, and conditions to each disbursement under a Trust loan agreement:

1. The recipient shall comply with the Local Public Contracts Law, (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.);

2. The recipient shall certify that it is, and shall assure its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions;

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8.1 et seq.);

4. The recipient shall comply with the requirements of the N.J.P.D.E.S. permit pursuant to N.J.A.C. 7:14A-1 et seq.;

5. The recipient shall adopt a sewer use ordinance consistent with the requirements of the Trust;

6. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pretreatment standards which comply with 50 C.F.R. 403;

7. The recipient shall comply with all applicable requirements of federal, State and local laws;

8. The recipient shall pay the unallowable costs of the construction of the project (that is, facilities planning, design, building and related costs);

9. The Trust loan agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project objectives or Trust requirements. The recipient shall comply with any special conditions which the Trust requires in the Trust loan agreement or any amendment thereto;

10. The recipient shall retain sufficient qualified operating and management personnel including a qualified chief operating officer or executive director, from the time of completion of construction or initiation of operation, whichever is earlier, until such time as the operation of the facility is discontinued;

11. Construction of the project, including letting of contracts in connection therewith, shall conform to applicable requirements of federal,

State, and local laws, ordinances, rules and regulations and to contract specifications and requirements;

12. No Trust loan moneys shall be disbursed to a local government unit who is in current default on any Trust loan. The Trust may, at its discretion, make a Trust loan disbursement where it determines that the local government unit will repay the defaulted loan obligation and associated penalties. Nothing in this paragraph shall in any way limit any right or duty of the Trust to demand and collect at any time the total due under any such defaulted loan;

13. An amount of any Trust loan disbursement equal to fifty percent any unpaid portion of a State assessed penalty pursuant to N.J.A.C. 7:14-8.1 et seq., Assessment of Civil Administrative Penalties, shall be held in escrow until said penalty is paid in full;

14. The Trust may assess penalties to late loan repayments as appropriate as specified in the Trust loan agreement;

15. *The recipient shall comply with the following guidelines of the Department: "Environmental Guidelines for the Planning, Design, and Construction of Wastewater Treatment Facilities" and "Construction Requirements for the Construction of Sewerage Facilities" which can be obtained from the Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN-029, Trenton, New Jersey, 08625.]* ***(Reserved)***

16. The recipient shall have an operations and maintenance manual developed *[in accordance with the Department's "Technical Design Report Requirements" which can be obtained from the Assistant Director at the address listed in paragraph (a)15]*.

17. The recipient shall certify that it has not and shall not enter into any contract with nor has any subcontract been or shall be awarded to any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5 for any services within the scope of project work;

18. The recipient shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the Trust loan agreement;

19. The recipient must submit proof that it and its contractors and subcontractors shall comply with all insurance requirements of the Trust loan agreement and that it shall be able to certify that the insurance is in full force and effect and that the premiums have been paid;

20. The recipient shall certify that it and its contractors and their subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules and regulations promulgated pursuant thereto ***including but not limited to N.J.A.C. 17:27-1 et seq.***;

21. The recipient shall establish an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project and to establish a program to provide opportunities for socially and economically disadvantaged contractors and vendors to supply materials and services for the contract, consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.). ***[Not less than 10 percent of the amount of any contract for construction, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in sections 637(a) and 637(d) of the Small Business Act (15 U.S.C. 637(a) and (d)), and any regulations promulgated pursuant thereto; and]***

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5;

23. The recipient shall submit its affirmative action program, the name of its designated compliance officer, and its procurement plan for implementing 21 above with its application;

***24. Not less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in section 637(a) and 637(d) of the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals shall take precedence over State goals. It is within the sole discretion of the Trust to determine what sanctions should be applied in the event of noncompliance with this section. Procedures to be followed in implementing this paragraph shall be found in the Local Public Contracts Law, N.J.S.A. 40A:11-41 et seq., and in guidelines to be published by the**

Department to assist recipients in complying with statutory and regulatory reporting requirements; and*

*[22.]***25.*** The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any construction contract for that project, in accordance with the rate determined by the Commissioner of Labor pursuant to N.J.S.A. 34:11-56.25 et seq.

(b) The recipient shall certify that it is in compliance with all other requirements and conditions of the Trust loan agreement.

(c) The Trust may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Trust Act.

7:22-4.18 Administration and performance of loan

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing the Trust loan objectives. Although recipients are encouraged to seek the advice and opinion of the Trust on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the recipient to the Trust. The primary concern of the Trust is that Trust moneys be used in conformance with these rules and the Trust loan agreements to achieve the Trust loan objectives and to ensure that the purposes set forth in the Trust Act are fully executed.

7:22-4.19 Project changes and loan modifications

(a) A Trust loan modification means any written alteration of the Trust loan terms of conditions, budget or project method or other administrative, technical or financial agreements.

(b) There shall be no Trust loan modification increasing the funding amount beyond adjustments to cover the low bid building costs. Adjustments due to the low bid building costs will be made after a subsequent passage of a legislative appropriations act containing the specific project of concern. All other increased costs shall be the responsibility of the recipient. No Trust loan modifications may be entered into which materially adversely affect the right of the holders of the Trust bonds.

(c) The recipients shall promptly notify the Assistant Director, Construction Grants Administration Element, Division of Water Resources in writing (certified mail, return receipt requested) of events or proposed changes which may require a Trust loan modification, including but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objectives of the project;
4. Significant, changed conditions at the project site;
5. Acceleration or deceleration in the time for performance of the project or any major phase thereof; and
6. Changes which may increase or substantially decrease the total cost of a project.

(d) The Department shall evaluate the need for any change or modification and shall recommend to the Trust an approval or disapproval of the proposed action.

(e) If the Trust decides a formal Trust loan amendment is necessary, the recipient shall be notified and a formal Trust loan amendment shall be with N.J.A.C. 7:22-4.20. If the Trust decides a formal loan amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:22-4.21 or 4.22, as applicable.

7:22-4.20 Formal loan amendments

(a) The Trust shall require a formal Trust loan amendment to change principal provisions of a Trust loan where project changes substantially alter the cost or time of performance of the project or any major phase thereof, or substantially alter the objective or scope of the project.

(b) The Trust and recipient shall effect a formal Trust loan amendment only by a written amendment to the Trust loan agreement executed by the Trust and the recipient.

7:22-4.21 Administrative loan changes

Administrative changes by the Trust, such as a change in the designation of key Trust personnel or of the office to which a report is to be transmitted by the recipient, or a *[change in]* ***non-substantial alteration of*** the disbursement schedule for Trust loans ***for construction of wastewater treatment facilities,*** constitute changes to the Trust loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Trust or the recipient. The Trust may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the recipient.

7:22-4.22 Other changes

All other project changes, which do not require a formal Trust loan amendment as stated in N.J.A.C. 7:22-4.20, shall be undertaken only upon written approval of the Trust.

7:22-4.23 Access

(a) The recipient and its contractor and subcontractors shall provide to Trust personnel and any authorized representative of the Trust access to the facilities, premises and records related to the project.

(b) The recipient shall submit to the Trust such documents and information as requested by the Trust.

(c) The recipient, and all contractors and subcontractors which contract directly with the recipient or receive a portion of Trust moneys, may be subject to a financial audit.

(d) Records shall be retained and available to the Trust until the final Trust loan repayment has been made by the recipient.

7:22-4.24 Trust disbursement

Disbursement of Trust loan moneys shall be made at intervals as work progresses and expenses are incurred, but in no event shall disbursement exceed the allowable costs which have been incurred at that time. No disbursement shall be made until the Trust receives satisfactory cost documentation which shall include all forms and information required by the Trust and completed in a manner satisfactory to the Trust. ***Should the recipient be receiving Trust loan moneys for expenditures incurred prior to the award of the Trust loan, the disbursement schedule shall be as indicated in the Trust loan agreement.***

7:22-4.25 Assignment

The right of a recipient to receive disbursements from the Trust under a Trust loan may not be assigned, nor may repayments due under a Trust loan be similarly encumbered unless such assignment or encumbrance shall have been approved in writing pursuant to the conditions set forth in the Trust loan agreement.

7:22-4.26 Unused funds

Where the total amount disbursed under a Trust loan due to the low bid building cost is less than the initial Trust loan award, and/or where the total amount disbursed *[paid]* under a ***Trust*** loan due to the final building cost is less than the low bid building cost, the Trust loan agreement shall be adjusted and the difference shall be retained by the Trust ***[and may]* *to* be reallocated*,*** pursuant to subsequent Legislative appropriations acts to other wastewater treatment facilities projects or used for other corporate purposes of the Trust. ***However, where allowable cost overruns occur, Trust moneys may be used to cover these cost overruns up to the loan amount adjusted due to the low bid building cost.***

7:22-4.27 Publicity and signs

(a) Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge Trust loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the New Jersey Wastewater Treatment Trust, shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, Trust loan support, and other information as required by the Trust.

7:22-4.28 Land acquisition

Land that shall be an integral part of the treatment process is eligible for Trust loan moneys in accordance with N.J.A.C. 7:22-5.7.

7:22-4.29 Project initiation

(a) The recipient shall expeditiously initiate and complete the project in accordance with the project scheduled contained in the Trust loan agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions included in this subchapter.

(b) The recipient shall not advertise any contract until authorization to advertise said contract has been granted by the Trust.

(c) Once bids for building the project are received, the recipient shall not award the subagreement(s) until authorization to award has been given by the Trust.

(d) The recipient and the contractor to whom the subagreement(s) has been awarded shall attend a preconstruction conference with Trust personnel prior to the issuance of a notice to proceed.

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all ***significant*** elements of the project ***[within]* *no later than* *twelve* *12* months [of]* *after*** the loan award, unless a specific extension has been approved by the Trust.

(f) Failure to promptly award all subagreement(s) for building the project shall result in a limitation on allowable costs in accordance with N.J.A.C. 7:22-5.4(b)5.

7:22-4.30 Project performance

(a) Within 30 days of the actual date of initiation of operation of the project the recipient shall, in writing, notify the Trust.

(b) For the wastewater treatment process portion of the project, on the date one year after the initiation of operation, the recipient shall certify to the Trust the performance record of the project. If the Trust or the recipient concludes that the project does not meet the wastewater treatment facilities' performance standards as specified in the Trust loan agreement, the recipient shall submit the following:

1. A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;

2. The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

3. The scheduled date for certifying to the Trust that the project is meeting the specified performance standards.

(c) The recipient shall take corrective action necessary to bring a project into compliance with the specified performance standards at its own expense.

(d) Nothing in this section:

1. Prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or

2. Affects the Trust's right to take remedial action, including enforcement, against a recipient that fails to carry out its obligations.

7:22-4.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by N.J.A.C. 7:22-5.1 through 5.11.

(b) Notwithstanding (a) above, the Trust shall not provide Trust loan moneys for costs of work that the Trust determines is not in compliance with specifications or requirements of project contracts or Trust loan agreements. Costs for work not in compliance with the contracts or agreement unallowable.

7:22-4.32 Preaward costs

(a) The Trust shall not award loan assistance for ***[building]* costs incurred for building*** performed prior to the award of the loan for the project, except:

1. Where the local government unit's project is ranked within ***and including*** projects one through ***[seventy]* *70*** on the most currently approved Project Priority List ***or has received a Notice of Project Eligibility*** and has met the following conditions:

i. The local government unit has submitted items three through ***[nine-teen]* *19*** of N.J.A.C. 7:22-4.11(d), to the Trust prior to the advertisement of any contract for which cost reimbursement is being sought;

ii. The local government unit has not advertised any contract, for which cost reimbursement is being sought, without the authorization to advertise the contracts being given by the Trust; and

iii. The local government unit has not awarded any contract, for which cost reimbursement is being sought, without the authorization to award the contracts being given by the Trust⁽¹⁾ ***; or***

iv. The local government unit has complied with i. above and has met the provisions of the New Jersey Wastewater Treatment Privatization Act N.J.S.A. 58:27-1 et seq.

2. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Trust may approve preliminary building activities such as procurement of major equipment requiring long lead times, minor sewer rehabilitation, acquisition of allowable land or advance building of minor portions of wastewater treatment facilities. However, advance approval shall not be given until after the Trust reviews and approves an environmental assessment and any specific documents necessary to adequately evaluate the proposed action.

(b) If the Trust approves preliminary building activities, such approval is not an actual or implied commitment of Trust loan moneys and the local government unit proceeds at its own financial risk. The local government unit shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act or the project in concern.

(c) Any procurement is subject to the requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

7:22-4.33 Force amount work

(a) A recipient must secure the Trust's prior written approval for use of force account work for construction, construction-related activities or for repairs or improvements to a facility where costs exceed \$25,000.

(b) The recipient shall demonstrate that:

1. The work can be accomplished cost effectively by the use of force account; or

2. Emergency circumstances necessitate its use.

7:22-4.34 Planning and design

The costs associated with the planning and design of the project are not eligible for reimbursement from the Trust. However, an allowance to assist in defraying the planning and design costs shall be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12.

7:22-4.35 Infiltration/inflow

(a) This section stipulates the requirements for proposed sewer system rehabilitation projects only.

(b) The applicant shall demonstrate to the Trust's satisfaction that the project area is subject to excessive infiltration/inflow and that an adequate rehabilitation plan has been developed. For combined sewer overflow projects, inflow is not considered excessive in any event.

(c) If the rainfall induced peak inflow rate results in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

(d) If the applicant can demonstrate that its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis and propose a rehabilitation program to eliminate the excessive infiltration.

7:22-4.36 Reserve capacity

(a) The Trust shall limit the recipient's Trust loan assistance to the cost of the project with a capacity based upon flow records, existing unsewered needs and flows anticipated prior to the date of initiation of operation as established in the Trust loan agreement. In no case, however, shall the allowable capacity for existing systems exceed 120 gallons per capita per day. Design flows of 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, shall be allowable for existing unsewered needs and for collection systems being built between the date of the Trust loan award and the date of initiation of operation.

(b) For any project providing for capacity in excess of that provided by this section, all incremental costs shall be paid by the recipient. Incremental costs include all costs which would not have been incurred but for the additional excess capacity (that is, any cost in addition to the most cost effective alternative with allowable capacity as described in (a) above).

7:22-4.37 Value engineering

(a) If the applicant has not received federal grant assistance for the design of the project, the applicant shall conduct value engineering if the total estimated building cost exceeds \$10 million.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.

7:22-4.38 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer Trust loans, acquire property pursuant to the award documents, and award contracts and subcontracts pursuant to those loans free from bribery, graft, and other corrupt practices. The recipient bears the primary responsibility for the prevention, detection, and cooperation in the prosecution of any such conduct. The Trust shall also have the right to pursue administrative or other legally available remedies.

(b) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Trust when such allegation or evidence comes to its attention, and shall periodically advise the Trust of the status and ultimate disposition of any related matter.

7:22-4.39 Debarment

(a) No recipient shall enter into a contract for work on a wastewater treatment project with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.

(b) Recipients shall insert in every contract for work on a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting *[with the]* ***on any project financially assisted by the State *and]* *or*** the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) The recipient, prior to acceptance of Trust loan moneys, shall certify that no contractor or subcontractor is included on the State Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a State agency in addition to that of the Department of Environmental Protection. If Trust loan moneys are used for disbursement to a debarred firm, the Trust reserves the right to immediately terminate (N.J.A.C. 7:22-4.44) the Trust loan and/or take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the recipient may take into account the loss of Trust loan moneys under these regulations which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsive and responsible bidder pursuant to law, and the recipient may advise prospective bidders that these procedures shall be followed.

(e) Any person included on the State Treasurer's list as a result of action by a State agency, who is or may become a bidder on any contract which is or shall be funded by a Trust loan under this subchapter, may present information to the Trust why this section should not apply to such person. If the Trust determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the Trust may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Trust may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-4.40 Noncompliance

(a) In addition to any other remedies as may be provided by law or in the Trust loan agreement, in the event of noncompliance with any loan condition, requirement of this subchapter, or contract requirement or specification, the Trust may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:22-4.41;
2. Withhold Trust loan moneys pursuant to N.J.A.C. 7:22-4.42;
3. Order suspension of project work pursuant to N.J.A.C. 7:22-4.43;
4. Terminate the Trust loan pursuant to N.J.A.C. 7:22-4.44; and/or
5. Issue administrative orders of enforcement pursuant to the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.).

7:22-4.41 Notice of noncompliance

Where the Trust determines that the recipient is in noncompliance with any condition or requirement of these rules or with any contract specification or requirement, it shall notify the recipient, its engineer, and/or the contractor of the noncompliance. The Trust may require the recipient, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the recipient, its engineer, and/or contractor fails to take corrective action or if the action taken is inadequate, then the Trust may issue a stop-work order or withhold disbursement. The Trust may, however, withhold disbursement or issue a stop-work order pursuant to N.J.A.C. 7:22-4.42 and 4.43 without issuing a notice pursuant to this section.

7:22-4.42 Withholding of funds

The Trust may withhold, upon written notice to the recipient, a Trust loan disbursement or any portion thereof where it determines that a recipient has failed to comply with any loan condition, provision of this subchapter, or contract specification or requirements.

7:22-4.43 Stop-work orders

(a) The Trust may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the recipient or noncompliance with the terms and conditions of the loan. The Trust shall limit use of stop-work orders to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Trust considerations.

(b) Prior to issuance, the Trust shall afford the recipient an opportunity to discuss the stop-work order with Trust personnel. The Trust shall consider such discussions in preparing the order. Stop-work orders shall contain:

1. The reasons for issuance of the stop-work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the recipient for materials or services;

4. Guidance as to action being taken on subagreements; and

5. Other suggestions to the recipient for minimizing costs.

(c) The Trust may, by written order to the recipient (certified mail return receipt requested), require the recipient to stop all, or any part of, the project work for a period of not more than 45 days after the recipient receives the order, and for any further period to which the parties may agree.

(d) The effects of a stop-work order are as follows:

1. Upon receipt of a stop-work order, the recipient shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within an extension of that period to which the parties shall have agreed, the Trust shall either:

i. Rescind the stop-work order, in full or in part;

ii. Terminate the work covered by such order as provided in N.J.A.C. 7:22-4.44; or

iii. Authorize resumption of work.

2. If a stop-work order is cancelled or the period of the order or an extension thereof expires, the recipient shall promptly resume the previously suspended work. An equitable adjustment shall be made in the Trust loan period, and/or the project, and the Trust loan agreement shall be modified if necessary. However, additional project costs as a result of this action shall be the responsibility of the recipient.

7:22-4.44 Termination of loans

(a) Termination of Trust loans by the Trust shall be conducted as follows:

1. The Trust may terminate a Trust loan in whole or in part for good cause. The term "good cause" shall include but not be limited to:

i. Substantial failure to comply with the terms and conditions of the Trust loan agreement;

ii. Default by the recipient;

iii. A determination that the Trust loan was obtained by fraud;

iv. Without good cause therefor, substantial performance of the project work has not occurred;

v. Gross abuse or corrupt practices in the administration of the project have occurred; or

vi. Trust funds have been used for non-allowable costs.

2. The Trust shall give written notice to the recipient (certified mail return receipt requested) of its intent to terminate a Trust loan, in whole or in part, at least 30 days prior to the intended date of termination.

3. The Trust shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Trust may, in writing (certified mail, return receipt requested), terminate the Trust loan in whole or in part.

(b) Project termination by the recipient shall be subject to the following:

1. A recipient shall not unilaterally terminate the project work for which a Trust loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Trust of any complete or partial termination of the project work by the recipient.

2. If the Trust determines that there is good cause for the termination of all or any portion of a project for which the Trust loan has been awarded, the Trust may enter into a termination agreement or unilaterally terminate the Trust loan effective with the date of cessation of the project work by the recipient. The determination to terminate the Trust loan shall be solely within the discretion of the Trust. If the Trust determines not to terminate, the recipient shall remain bound by the terms and conditions of the Trust loan agreement.

3. If the Trust determines that a recipient has ceased work on a project without good cause, the Trust may unilaterally terminate the Trust loan pursuant to this section.

(c) The Trust and recipient may enter into a mutual agreement to terminate at any time pursuant to terms which are consistent with this subchapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of the Trust loan.

(d) Upon termination, the recipient may be required to immediately refund or repay the entire amount of the Trust loan moneys received from the Trust. If the Trust loan is guaranteed by a security/deficiency agreement, such agreement may have to be brought into effect to ensure the entire repayment of the Trust loan. The Trust may, at its discretion, authorize the immediate repayment of a specific portion of the Trust loan and allow the remaining balance to be repaid in accordance with a revised Trust loan repayment schedule.

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report the Trust the uncommitted balance of funds awarded under the Trust loan. The recipient shall make no new commitments without the Trust's specific approval thereof. The Trust shall make the final determination of the allowability of termination costs.

(f) In addition to any termination action, the Trust retains the right to pursue other legal remedies as may be available under federal, State and local law as warranted.

7:22-4.45 Administrative hearings

(a) The Trust shall make the initial decision regarding all disputes arising under a Trust loan. The recipient shall specifically detail in writing the basis for its appeal. When a recipient so requests, the Trust shall produce a decision in writing and mail or otherwise furnish a copy thereof to the recipient.

(b) A recipient may request an administrative hearing within 15 days of a decision by the Trust. The request for an administrative hearing shall specify in detail the basis for the appeal.

(c) Following receipt of a request for a hearing pursuant to (b) above, the Trust may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(d) If the recipient raises a substantial and meritorious issue and such efforts at settlement fail, the Trust shall file the request for an administrative hearing with the Office of Administrative Law. Administrative hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. promulgated pursuant to those Acts.

*7:22-4.46 Assistance in the administration of trust rules

In evaluating whether a project has complied with or satisfied any requirement or criteria under these New Jersey Wastewater Treatment Rules, including but not limited to N.J.A.C. 7:22-4.11, 4.13, 4.17, 4.29, 4.31, 4.35, 4.36, 4.37, or 4.43, or in determining what course of action the Trust may decide upon regarding those sections, the Trust shall be entitled to rely upon any advice, certifications or opinions which may be provided to it by the engineering, professional or legal staff of the Department or of any other State governmental unit to which it may call upon for assistance pursuant to N.J.S.A. 58:11B-5(f) of the Trust Act.*

7:22-4.4*[6]**7* Severability

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

(a)

Construction Grants and Loans for Wastewater Treatment Facilities

Determination of Allowable Costs

Adopted New Rule: N.J.A.C. 7:22-5

Proposed: September 22, 1986 at 18 N.J.R. 1891(a).

Adopted: December 5, 1986 by Richard T. Dewling,
Commissioner, Department of Environmental Protection;
Robert Mulreany, Chairman, New Jersey Wastewater
Treatment Trust.

Filed: December 12, 1986 as R.1987 d.39 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. 58:11B-1 et seq. and the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329).

Effective Date: January 5, 1987.

Expiration Date: January 5, 1992.

DEP Docket No. 035-86-08.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and the New Jersey Wastewater Treatment Trust are adopting N.J.A.C. 7:22-5 ("Subchapter 5") to set forth the policies and procedures for determining the allowability of project costs for loans either from the New Jersey Wastewater Treatment Fund (N.J.A.C. 7:22-3) or from the New Jersey Wastewater Treatment Trust (N.J.A.C. 7:22-4).

Public hearings were held on this subchapter on October 6, 8, and 10, 1986 to provide interested parties the opportunity to present testimony on this proposal.

COMMENT: The cost of collection systems should be an eligible cost category.

RESPONSE: While collection systems are not eligible under the Federal Construction Grant Program (except under the Governor's Discretionary Fund), collection systems are an eligible cost category under the State loan program.

7:22-5.4 Costs related to subagreements

COMMENT: This section should be modified because a formal loan amendment cannot be executed prior to all costs being incurred for negotiating and/or settling claims.

RESPONSE: The Department has reviewed this procedures and agrees that in such cases a formal loan amendment cannot be executed prior to the costs being incurred. N.J.A.C. 7:22-5.4(a) has been modified to require formal Department or Trust approval rather than loan amendment execution prior to the costs being incurred, and, further, to require expeditious resolution of meritorious claims.

COMMENT: N.J.A.C. 7:22-5.4(a)iv and 5.4(b)3 leave too much discretion to the Assistant Director or the Trust to determine if there is a significant State interest in the issues involved in a claim.

RESPONSE: Such discretion is necessary as project specific conditions may warrant State intervention in some cases but not in others. The terminology under this section is consistent with that of the Federal program, which has been administered in a reasonable fashion.

COMMENT: The Department should allow eligibility for change orders under the State loan program or at least include a contingency. In addition, regulatory agency changes to the project that increase costs after award of a loan should be eligible and allowed to exceed the low bid building cost.

RESPONSE: Loans under the State's Wastewater Financing Program are limited to the low bid building cost, and a change to this policy is not considered appropriate. With the exception of minor permits (such as road opening permits), all required permits and approvals as well as all project-related information required under the loan application documents must be submitted and approved prior to the Department's or the Trust's execution of the loan agreements. Thus, project changes as a result of permit conditions should be minimal.

COMMENT: The costs of the value engineering ("VE") studies for projects should be a loan eligible subagreement cost or at least the allowance table should be modified to provide additional moneys for projects that have to perform VE studies.

RESPONSE: The award of additional funds for performance of value engineering is not considered appropriate for several reasons. Value engineering is already required under the Federal program. The allowance tables provided in N.J.A.C. 7:22-5 are consistent with those that the Federal government currently uses. (See 40 CFR Part 35, Appendix B). In addition, municipalities may benefit significantly from the results of the value engineering study as significant cost savings may be identified.

COMMENT: The costs resulting from defects in plans, etc. should be allowable to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free from defects, and these additional costs should be allowed over and above the low bid building costs.

RESPONSE: While such cost increases will be eligible in the event that the cost of the final work in place is less than that of the low bid building cost, any increases in cost beyond this level will be required to be borne by the recipient. Thus, it is extremely important that municipalities attempt, to the best of their ability, to ensure that project documents are free from defects.

COMMENT: The State should be required to complete the review of change orders within 30 to 60 days for both technical and fundability determinations.

RESPONSE: The Department does, in fact, complete the review of change orders within a 60 day period where complete documentation is provided. In regard to the issue of fundability, since loan awards are limited to the low bid building cost, change orders are generally not fundable unless the final work in place is less than the low bid building cost.

COMMENT: The policy to limit loan awards to the low bid building cost results in bid documents that contain more funded work items "just in case" or increased bid prices by contractors.

RESPONSE: Municipalities are required to develop plans and specifications and related project documents in order that the project can be constructed satisfactorily. This may include certain appropriate "just in

case" provisions (even under the Construction Grant program) in order to ensure that project construction progresses with a minimum of delay and/or confusion. Also, while some contractors may be tempted to increase their bid prices, competition among contractors should result in the low bid contract being a reasonable cost for construction of the project.

7:22-5.7 Real property

COMMENT: Under N.J.A.C. 7:22-5.7(a)4ii, wastewater treatment facilities that have exceeded their useful design life should be allowed to be acquired through a State loan even if they were built with previous State and/or Federal funding.

RESPONSE: It is the policy of the State (and Federal government) that wastewater treatment facilities that have been constructed through the benefit of State or Federal funding should not be eligible for State loan assistance for acquisition either during or beyond the useful life of the facility. Thus, this change will not be included under the regulations.

7:22-5.11 Miscellaneous costs

COMMENT: Allowable miscellaneous costs identified under N.J.A.C. 7:22-5.11 should be expanded to include other necessary items and services, such as office equipment, safety equipment, cameras, reproduction of construction documents, testing laboratories, geotechnical exploration services, etc. In addition, the cost of preparation of permit applications and permit fees required by Federal, State or local regulations should be eligible since the Trust and the Fund requirements mandate the submittal of these permits.

RESPONSE: Certain of the referenced costs are generally ineligible regardless of project circumstances, such as office equipment, reproduction of construction documents, etc. However, upon review of the project-specific circumstances, certain of the other referenced costs may be determined to be eligible for a loan award, such as safety equipment, geotechnical exploration services (if conducted during the phase of construction), etc. In regard to eligibility for preparation of applications and permit fees, these costs historically have not been reimbursed by the State nor by the Federal government under the Construction Grants Program. Therefore, the preparation of permit applications and permit fees should be the sole financial responsibility of the local government unit.

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

SUBCHAPTER 5. DETERMINATION OF ALLOWABLE COSTS FOR WASTEWATER TREATMENT FUND AND WASTEWATER TREATMENT TRUST FINANCIAL ASSISTANCE

7:22-5.1 Purpose

The rules in this subchapter represent the policies and procedures for determining the allowability of project costs based on Department and Trust policy, appropriate State cost principles and reasonableness.

7:22-5.2 Applicability

The cost information contained in this subchapter applies to Fund Loan and Trust loan assistance awarded on or after the effective date of this subchapter. Project cost determination are not limited to the items listed in this subchapter. Additional cost determination based on applicable law and regulations not otherwise addressed herein shall be made on a project-by-project basis.

7:22-5.3 Definitions

Terms used in this subchapter are defined in accordance with N.J.A.C. 7:22-3.4 and 7:22-4.4, as appropriate.

7:22-5.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

1. The costs of subagreements for building the project;
2. The costs for establishing or using small, minority and women's business liaison services;
3. The costs of services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications;
4. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement, provided that:
 - i. The claim arises from work within the scope of the loan;
 - ii. ***[A formal loan amendment is executed specifically]* *Department and Trust approval has been received*** covering the costs before they are incurred;

iii. The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the recipient ***[and]***

iv. The Assistant Director or Trust, as appropriate, determines that there is a significant State interest in the issues involved in the claim ***[.]** ***; and***

v. Meritorious claims are resolved in an expeditious manner.

5. Change orders for increased costs under subagreements as follows:

i. Change orders provided the costs are:

- (1) Within the scope of the project;
- (2) Not caused by the recipient's mismanagement;
- (3) Not caused by the recipient's vicarious liability for the improper action of others; and
- (4) The cost of which when added to the final building cost, does not exceed the low bid building cost.

ii. Provided the requirements of paragraph (a)5i are met, the following is an example of allowable change orders and contractor claim costs:

(1) Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects.

iii. Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the Assistant Director or the Trust, as appropriate, and shall be allowable only to the extent that they meet the requirements of (a)5i above, are reasonable, and do not attempt to pass on to the Department or the Trust the cost of events that were the responsibility of the recipient, the contractor, or others.

6. The costs of the services of the prime engineer required by N.J.A.C. 7:22-3.30 or N.J.A.C. 7:22-4.30, as applicable, during the first year following initiation of operation of the project;

7. The cost of development of a plan of operation including an operation and maintenance manual;

8. Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.

(b) Unallowable costs related to subagreements include:

1. The costs of architectural or engineering services or other services incurred in the planning and design of a project;

2. Except as provided in paragraph (a)5 above, architectural or engineering services or other services necessary to correct defects in a planning document, design drawings and specifications, or other subagreement documents;

3. The costs (including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

i. The claim arises from work within the scope of the loan;

ii. ***[A formal loan amendment is executed specifically]* *Department and Trust approval has been received*** covering the costs before they are incurred;

iii. The claim cannot be settled without arbitration or litigation;

iv. The claim does not result from the recipient's mismanagement;

v. The Assistant Director or the Trust, as appropriate, determines that there is a significant State interest in the issues involved in the claim; and

vi. In the case of defending against a contractor claim, the claim does not result from the recipient's responsibility for the improper action of others.

4. Bonus payments for completion of building before a contractual completion date;

5. All costs associated with the award of any subagreement for building significant elements of the project more than 12 months after the Fund or Trust loan award, unless an extension is specified in the project schedule approved by the Assistant Director or the Trust, as appropriate, at the time of the Fund or Trust loan award.

7:22-5.5 Mitigation

(a) Allowable costs related to mitigation include:

1. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the wastewater treatment facilities;

2. The costs of site screening necessary to comply with State Environmental Guidelines, to complete related studies and plans, or necessary to screen adjacent properties;

3. The cost of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project.

(6) Unallowable costs related to mitigation include:

1. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the wastewater treatment facilities nor reflect regional architectural tradition; and

2. The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under State Environmental Guidelines.

7:22-5.6 Privately or publicly owned small and onsite systems

(a) Allowable costs for small and onsite systems serving residences and small commercial establishments include:

1. The cost of major rehabilitation, upgrading, enlarging and installing small and onsite systems, but in the case of privately owned systems, only for principal residences;

2. Conveyance pipes from property line to offsite treatment unit which serves a cluster of buildings;

3. Treatment and treatment residue disposal portions of toilets with composting tanks, oil flush mechanisms, or similar in-house devices;

4. Treatment or pumping units from the incoming flange when located on private property and conveyance pipes, if any, to the collector sewer;

5. The cost of restoring individual system building sites to their original conditions.

(b) Unallowable costs for small and onsite systems include:

1. Modification to physical structure of homes or commercial establishments;

2. Conveyance pipes from the house to the treatment unit located on user's property or from the house to the property line if the treatment unit is not located on that user's property;

3. Wastewater generating fixtures such as commodes, sinks, tubs, and drains.

7:22-5.7 Real property

(a) Allowable costs for land and rights-of-way include:

1. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment provided the Assistant Director or the Trust, as appropriate, approves it and it is identified as such in the Fund or Trust loan agreement. These costs include:

i. The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;

ii. The cost of land acquired for a soil absorption system for a group of two or more homes;

iii. The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment;

iv. The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

2. The cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services;

3. The cost associated with the preparation of the wastewater treatment facilities site before, during and, to the extent agreed on in the loan agreement, after building. These costs include:

i. The cost of demolition of existing structures on the wastewater treatment facilities site (including rights-of-way) if building cannot be undertaken without such demolition;

ii. The cost (considering such factors as betterment, cost of contracting and useful life) of removal, relocation or replacement of utilities, provided the recipient is legally obligated to pay under State or local law; and

iii. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench.

4. The cost of acquiring all or part of existing publicly or privately owned wastewater treatment facilities provided all the following criteria are met:

i. The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;

ii. The acquired wastewater treatment facilities were not built with previous State, federal, New Jersey Wastewater Treatment Trust or Pinelands Infrastructure Trust financial assistance;

iii. The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and

iv. The acquisition does not circumvent the requirements of these regulations, or other federal, State or local requirements.

(b) Unallowable costs for land and rights-of-way include:

1. The costs of acquisition (including associated legal, administrative and engineering, etc.) of sewer rights-of-way, wastewater treatment plant sites (including small system sites), sanitary landfill sites and sludge disposal areas except as provided in (a)1 above.

2. Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, the recipient's record of negotiation or any condemnation proceeding, as determined by the Assistant Director or the Trust, as appropriate.

3. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

7:22-5.8 Equipment, materials and supplies

(a) Allowable costs of equipment, materials and supplies include:

1. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation;

2. The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation;

3. Cost of shop equipment installed at the wastewater treatment facility necessary to the operation of the facility;

4. The costs of necessary safety equipment, provided the equipment meets applicable federal, State, local or industry safety requirements;

5. A portion of the costs of collection system maintenance equipment. The portion of allowable costs shall be the total equipment cost less the cost attributable to the equipment's anticipated use on existing collection sewers not funded by the Fund or Trust loan. This calculation shall be based on:

i. The portion of the total collection system paid for by the loan;

ii. A demonstrable frequency of need; and

iii. The need for the requirement to preclude the discharge or bypassing of untreated wastewater.

6. The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:

i. Portable stand-by generators;

ii. Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and

iii. Septage tankers, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site.

7. Replacement parts identified and approved in advance by the Assistant Director or the Trust, as appropriate, as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

i. Not immediately available and/or whose procurement involves an extended "lead-time";

ii. Identified as critical by the equipment supplier(s); or

iii. Critical but not included in the inventory provided by the equipment supplier(s).

(b) Unallowable costs of equipment, materials and supplies include:

1. The costs of equipment or material procured in violation of the procurement requirements;

2. The cost of furnishings including draperies, furniture and office equipment;

3. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers;

4. The cost of vehicles for the transportation of the recipient's employees;

5. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc.

7:22-5.9 Industrial and federal users

(a) Except as provided in (b)1 below, allowable costs for wastewater treatment facilities serving industrial and federal facilities include development of a municipal pretreatment program approvable under 40 C.F.R. Part 403 and N.J.S.A. 58:10A-6 et seq. and purchase of monitor-

ing equipment and construction of facilities to be used by the municipal wastewater treatment facilities in the pretreatment program.

(b) Unallowable costs for wastewater treatment facilities serving industrial and federal facilities include:

1. The cost of developing an approvable municipal pretreatment program when performed solely for the purpose of seeking an allowance for removal of pollutants under 40 C.F.R. Part 403 and N.J.S.A. 58:10A-6 et seq.;

2. The cost of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal wastewater treatment facilities;

3. All incremental costs for sludge management incurred as a result of the recipient providing removal credits to industrial users beyond those sludge management costs that would otherwise be incurred in the absence of such removal credits.

7:22-5.10 Infiltration/inflow

(a) Allowable costs related to infiltration/inflow include:

1. The cost of the wastewater treatment facilities capacity adequate to transport and treat nonexcessive infiltration/inflow under N.J.A.C. 7:22-3.35 or 7:22-4.35, as applicable.

2. The cost of sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system evaluation survey under N.J.A.C. 7:22-3.35 or 7:22-4.35, as applicable.

(b) Unallowable costs related to infiltration/inflow include:

1. The incremental cost of the wastewater treatment facilities capacity which is more than 120 gallons per capita per day for existing systems and 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, for existing unsewered needs and for collection systems being built between the date of loan award and the date of initiation of operation as identified in the Fund or Trust loan agreement.

7:22-5.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. The costs of salaries, benefits and expendable materials the recipient incurs for the project;

2. The costs of additions to wastewater treatment facilities that were assisted under the federal Water Pollution Control Act of 1956 (Pub. L. 84-660) or its amendments, or the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) or its amendments, or the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) or its amendments, or the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments, and that fails to meet its performance standards as specified in the Fund or Trust loan agreement, provided:

i. The project is identified on the State Funding List as a project for additions to wastewater treatment facilities that has received previous State or federal funds;

ii. The loan application for the additions includes an analysis of why the wastewater treatment facilities cannot meet its specified performance standards; and

iii. The additions could have been included in the original grant or loan award; and

(1) Are the result of one of the following:

(A) A change in the specified performance standards required by the State or the United States Environmental Protection Agency (EPA);

(B) A written understanding between the Regional Administrator of EPA and grantee prior to or included in the original federal grant award;

(C) A written understanding between the Assistant Director and the recipient prior to or included in the original Fund loan award;

(D) A written understanding between the Trust and the recipient prior to or included in the original Trust loan award;

(E) A written understanding between the Pinelands Commission and the recipient prior to or included in the original Pinelands grant or loan award;

(F) A written direction by the Regional Administrator of EPA or the Assistant Director or the Pinelands Commission or the Trust to delay building part of the wastewater treatment facilities; or

(G) A major change in the wastewater treatment facilities' design criteria that the recipient cannot control; or

(2) Meet all of the following conditions:

(A) The wastewater treatment facilities have not completed its first full year of operation;

(B) The additions are not caused by the recipient's mismanagement or the improper actions of others;

(C) The costs of rework, delay, acceleration or disruption that are a result of building the additions are not included in the loan; and

(D) The loan does not include an allowance for facilities planning or design of the additions.

iv. This provision applies to failures that occur either before or after the initiation of operation. This provision does not cover wastewater treatment facilities that fail at the end of its design life.

3. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Assistant Director or the Trust, as appropriate.

4. Costs of recipient's employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the wastewater treatment facilities, if approved in advance by the Assistant Director or the Trust, as appropriate.

(b) Unallowable miscellaneous costs include:

1. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies;

2. Preparation of applications and permits required by federal, State or local regulations or procedures;

3. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government;

4. Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them;

5. The costs of replacing, through reconstruction or substitution, wastewater treatment facilities that were assisted under the federal Water Pollution Control Act of 1956 (Pub. L. 84-660) or its amendments, or the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) or its amendments, or the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) or its amendments, or the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985 c.302) or its amendments, and that fail to meet its project performance standards. This provision applies to failures to occur either before or after the initiation of operation but does not apply to wastewater treatment facilities that fail at the end of its design life;

6. Personal injury compensation or damages arising out of the project;

7. Fines and penalties due to violations of, or failure to comply with, federal, State or local laws, regulations or procedures;

8. Costs outside the scope of the approved project;

9. Costs for which grant or loan payment has been or will be received from another federal or State agency for the project;

10. Costs of wastewater treatment facilities for control of pollutant discharges from a separate stormwater sewer system;

11. The cost of wastewater treatment facilities that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land such as wetlands or floodplains;

12. The costs of preparing a corrective action report required by N.J.A.C. 7:22-3.30(b)(1) or 7:22-4.30(b)(1), as applicable.

7:22-5.12 Allowance for planning and design

(a) This section provides the method the Department and the Trust will use to determine both the estimated and final allowance under N.J.A.C. 7:22-3.34 and 7:22-4.34, planning and design. The Fund or Trust loan agreement will include an estimate of the allowance.

(b) The Fund or Trust share of the allowance may be up to 100 percent of the allowance and shall be based upon the percentage of the Fund or Trust share of the allowable building cost.

(c) The allowance is not intended to reimburse the recipient for costs actually incurred for planning or design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity (that is, reimbursement on a dollar-for-dollar basis) will not be appropriate.

(d) The estimated and final allowance will be determined in accordance with this section and Tables 1 and 2. Table 2 is to be used in the event that the recipient received a federal grant or a Pinelands funding for facilities planning. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.

(e) The initial allowable building cost is the initial allowable cost of erecting, altering, remodeling, improving, or extending wastewater treatment facilities, whether accomplished through subagreement or force account. Specifically, the initial allowable building cost is the allowable cost of the following:

1. The initial award amount of all prime subagreements for building the project;

2. The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project;

3. The purchase price of eligible real property.

(f) The estimated allowance is to be based on the estimate of the initial allowable building cost.

(g) The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

(h) The recipient may request payment of 50 percent of the Fund or Trust share of the estimated allowance immediately after the Fund or Trust loan award. Final payment of the Fund or Trust share of the allowance may be requested in the first disbursement after the recipient has awarded all prime subagreements for building the project, received the Assistant Director's or the Trust's approval, as appropriate, for force account work, and completed the acquisition of all eligible real property.

(i) The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs subject to this regulation and the Local Public Contracts Law, (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

TABLE 1.—ALLOWANCE FOR FACILITIES PLANNING
AND DESIGN

Building Cost	Allowance as a percentage of building cost†
\$ 100,000 or less	14.4945
120,000	14.1146
150,000	13.6631
175,000	13.3597
200,000	13.1023
250,000	12.6832
300,000	12.3507
350,000	12.0764
400,000	11.8438
500,000	11.4649
600,000	11.1644
700,000	10.9165
800,000	10.7062
900,000	10.5240
1,000,000	10.3637
1,200,000	10.0920
1,500,000	9.7692
1,750,000	9.5523
2,000,000	9.3682
2,500,000	9.0686
3,000,000	8.8309
3,500,000	8.6348
4,000,000	8.4684
5,000,000	8.1975
6,000,000	7.9827
7,000,000	7.8054
8,000,000	7.6550
9,000,000	7.5248
10,000,000	7.4101
12,000,000	7.2159
15,000,000	6.9851
17,500,000	6.8300
20,000,000	6.6984
25,000,000	6.4841
30,000,000	6.3142
35,000,000	6.1739
40,000,000	6.0550
50,000,000	5.8613
60,000,000	5.7077
70,000,000	5.5809
80,000,000	5.4734
90,000,000	5.3803
100,000,000	5.2983
120,000,000	5.1594
150,000,000	4.9944
175,000,000	4.8835
200,000,000	4.7894

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

†Interpolate between values.

TABLE 2.—ALLOWANCE FOR DESIGN ONLY

Building Cost	Allowance as a percentage of building cost†
\$ 100,000 or less	8.5683
120,000	8.3808
150,000	8.1570
175,000	8.0059
200,000	7.8772
250,000	7.6668
300,000	7.4991
350,000	7.3602
400,000	7.2419
500,000	7.0485
600,000	6.8943
700,000	6.7666
800,000	6.6578
900,000	6.5634
1,000,000	6.4300
1,200,000	6.3383
1,500,000	6.1690
1,750,000	6.0547
2,000,000	5.9574
2,500,000	5.7983
3,000,000	5.6714
3,500,000	5.5664
4,000,000	5.4769
5,000,000	5.3306
6,000,000	5.2140
7,000,000	5.1174
8,000,000	5.0352
9,000,000	4.9637
10,000,000	4.9007
12,000,000	4.7935
15,000,000	4.6655
17,500,000	4.5790
20,000,000	4.5054
25,000,000	4.3851
30,000,000	4.2892
35,000,000	4.2097
40,000,000	4.1421
50,000,000	4.0314
60,000,000	3.9432
70,000,000	3.8702
80,000,000	3.8080
90,000,000	3.7540
100,000,000	3.7063
120,000,000	3.6252
150,000,000	3.5284
175,000,000	3.4630
200,000,000	3.4074

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables shall not be used to determine the compensation for facilities planning or design services. The compensation for facilities planning or design services should be based upon the nature, scope and complexity of the services required by the community.

†Interpolate between values.

(a)

**DIVISION OF FISH, GAME AND WILDLIFE
Fish and Game Council**

1987-88 Fish Code

Adopted Amendments: N.J.A.C. 7:25-6

Proposed: August 19, 1986 at 18 N.J.R. 1644(a).

Adopted: December 10, 1986 by Fish and Game Council,
Anthony E. DiGiovanni, Chairman.

Filed: December 12, 1986 as R.1987 d.41, with technical and
substantive changes not requiring additional public notice and
comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: January 5, 1987.

Expiration Date: February 18, 1991.

DEP Docket No. 032-86-07.

Summary of Public Comments and Agency Responses:

A public hearing concerning the proposal was held on September 9, 1986 at the office of the Division of Fish, Game and Wildlife, 363 Pennington Avenue, Trenton, New Jersey. Twelve verbal comments were offered at this hearing. In addition, 56 written comments were received during the public comment period which closed on September 17, 1986.

COMMENT: There is no scientific basis for affording increased protection to largemouth bass during their spawning period, April 1 through June 15, by establishment of a reduced harvest regulation.

RESPONSE: Largemouth bass are extremely vulnerable while they are guarding their nests and the majority of the harvest occurs during this limited period of time. The objective of the proposal was to improve the quality of largemouth bass fishing throughout the remainder of the year by protecting these adult bass at the time they were most vulnerable, thereby increasing the supply of bass through the rest of the year. Sufficient data exists to support the belief of the Fish and Game Council (the "Council") that this objective can be achieved by affording increased protection to largemouth bass. No claim, however, was made that the restriction would improve spawning success. The Council noted that the opposition to the regulation came entirely from within one organization, the B.A.S.S. federation. This organization holds bass fishing tournaments in New Jersey during the spawning periods (both New York and Pennsylvania have closed seasons for largemouth bass at this time) and adoption of the proposal would disrupt their traditional format for these tournaments. The Council also noted that the proposal did not prohibit fishing for largemouth bass but merely increased the minimum size and decreased the daily bag and possession limit. Further, the Council noted that procedures could be instituted which would allow the B.A.S.S. federation to conduct its tournaments and still comply with the regulation.

COMMENT: Trout should not be stocked in the Clinton Reservoir and Canistota Reservoir because of the fee charged by the Newark Watershed to fish these impoundments. The fact that the fee for non-residents of Newark was greater than that for Newark residents aggravated the situation.

RESPONSE: The Division's trout stocking policy allows for the imposition of fees if it can be shown that the revenue collected from the fees will be used to improve or maintain access to the stocked waters for fishermen. This result from revenue collection was adequately demonstrated by the Newark Watershed's administration. It was further determined that since Newark residents are also being taxed by the city of Newark to maintain the watershed, while the non-residents are not, the difference in fees was acceptable. The potential high quality trout fishery that would be created by these stockings was also noted by the Council.

COMMENT: Creation of the "Pequest River Trout Conservation Area," where only artificial lures and flies may be used and a 15-inch minimum size limit and a one-trout daily bag govern, constitutes setting aside public waters and trout for the exclusive use of a special interest group.

RESPONSE: The Council has determined not to adopt the proposal concerning the "Pequest River Trout Conservation Area" (see proposed N.J.A.C. 7:26-6.2(a) and 6.5). The Council felt that the opposition represented the "will" of the majority of the State's trout anglers. It was noted that this proposal did not involve a scientific interpretation, but rather a choice of angling philosophies for which no right or wrong answer existed. The Council chose to select the option which they felt represented the desires of the majority.

COMMENT: The Den Brook, in Morris County, should not be deleted from the list of trout stocked waters.

RESPONSE: Den Brook was one of the number of waters investigated by Bureau of Freshwater Fisheries biologists of the Department of Environmental Protection to determine their value to the trout program. Notwithstanding state stocking activities, this stream was found to be devoid of both anglers and trout on the opening day of the trout season. Consequently, it is clear that the stocked portion of the stream failed to provide for a legal trout fishery.

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. 1987-88 FISH CODE

7:25-6.1 General provisions

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

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

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

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

(b) It shall be unlawful to fish for any species of fish from midnight of the 15th of March to 8:00 A.M. on April 4, 1987 in ponds, lakes or those portions of streams that are listed herein for stocking during 1987. (See separate regulations for Lake Hopatcong, Spruce Run Reservoir, Swartswood Lake and Wawayanda Lake.)

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

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

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April 10, 17, 24; May 1, 8, 15, 22;

2. Black River—Route 206, Chester to Dam to lower end of Hacklebarney State Park—April 9, 16, 23, 30; May 7, 14, 21;

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April 6, 13, 20, 27; May 4, 11, 18;

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April 6, 13, 20, 27; May 4, 11, 18;

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April 6, 13, 20, 27; May 4, 11, 18;

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April 10, 17, 24; May 1, 8, 15, 22;

7. Paulinskill River—Limecrest Railroad Spur Bridge, Sparta Township, to Columbia Lake dam—April 9, 16, 23, 30; May 7, 14, 21;

8. Pequest River—Source to Delaware River—April 10, 17, 24; May 1, 8, 15, 22;

9. Pohatcong Creek—Route 31 to Delaware River—April 7, 14, 21, 28; May 5, 12, 19;

10. Ramapo River—State line to Pompton Lake—April 9, 16, 23, 30; May 7, 14;

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April 8, 15, 22, 29; May 6, 13, 20;

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April 7, 14, 21, 28; May 5, 12, 19;

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April 6, 13, 20, 27; May 4, 11, 18;

14. Toms River—Ocean County Route 528, Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571—April 6, 13, 20, 27; May 4, 11, 18.

15. Walkkill River—W. Mt. Road to Route 23, Hamburg—April 6, 13, 20, 27; May 4, 11, 18; and

16. Wanaque River—Greenwood Lake dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez—April 10, 17, 24; May 1, 8, 15, 22;

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

(e) (No change.)

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

1.-9. (No change.)

10. Hunterdon County

Amwell Lake—Linvale—(4)

Beaver Brook—Clinton Township, entire length—(2)

Capoolong Creek—Pittstown, entire length—(6)

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

Everittstown Brook—Everittstown, entire length—(2)

Frenchtown Brook—Frenchtown, entire length—(1)

Hakihohake Creek—Milford, entire length—(2)

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

Lokatcong Creek—Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal—(2)

Milford Brook—Milford, entire length—(1)

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

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

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

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

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

Round Valley Reservoir—Lebanon—(1)

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

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

Spruce Run Reservoir—Clinton—(6)

Sydney Brook—Sydney, entire length—(0)

Tetertown Brook—Tetertown, entire length—(0)

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

11.-12. (No change.)

13. Monmouth County

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

Englishtown Mill Pond—Englishtown—(2)

Garvey's Pond—Navesink—(2)

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

Holmdel Park Pond—Holmdel—(2)

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

Mohawk Pond—Red Bank—(1)

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

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

Spring Lake—Spring Lake—(2)

Takanassee Lake—Long Branch—(2)

Topenemus Lake—Freehold—(2)

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

14. Morris County

Beaver Brook—Rockaway, entire length—(3)

Burnett Brook—Ralston, entire length—(2)

Burnham Park Pond—Morristown—(1)

Drakes Brook—Flanders, entire length—(1)

Flanders Brook—Mt. Olive, entire length—(3)

Hibernia Brook—Hibernia, entire length—(4)

India Brook—Mt. Freedom to Rt. 24, Ralston, entire length—(2)

India Brook Impoundment—Colemans Hollow—(2)

Lake Hopatcong—Lake Hopatcong—(2)

Lake Musconetcong—Netcong—(2)

Ledgewood Brook—Ledgewood—(2)

Mill Brook—Center Grove, entire length—(2)

Mt. Hope Pond—Mt. Hope—(2)

Passaic River—White Bridge to Dead River—(6)

Pompton River—Pequannock Township (see Passaic Co.)—(6)

Rhinehart's Brook—Hacklebarney State Park, entire length—(2)

Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—(3)

Speedwell Lake—Morristown—(2)

Trout Brook—Hacklebarney State Park, entire length—(2)

Washington Valley Brook—Morristown, entire length—(3)

15. Ocean County

Lake Shenandoah—Lakewood, Ocean County Park—(2)

Prosperstown Lake—Prosperstown—(2)

16. Passaic County

Barbour's Pond—West Paterson—(2)

Clinton Reservoir—Newark Watershed—(2)

Greenwood Lake—West Milford—(3)

Oldham Pond—North Haledon—(2)

Pequannock River—Route 23, Smoke Rise to North Main Street, Butler—(3)

Pompton Lake—Pompton Lakes—(2)

Pompton River—Pompton Lake to Newark-Paterson Turnpike—(6)

Ringwood Brook—State line to Sally's Pond, Ringwood Park—(4)

Sheppard's Lake—Thunder Mountain, Ringwood Borough—(3)

17. (No change.)

18. Somerset County

Harrison Brook—Liberty Corner, entire length—(0)

Lamington River—Rt. 523 (Lamington Road) at Burnt Mills to Jct. with North Branch of Raritan River—(6)

Passaic River—White Bridge to Dead River—(6)

Peapack Brook—Peapack, entire length—(5)

Raritan River—Jct. of Raritan River N/Br and S/Br to dam at Edgewater Road—(4)

Rock Brook—Zion, entire length—(2)

Middle Brook; E/Br.—Martinsville, entire length—(0)

19. Sussex County

Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)

Andover Junction Brook—Andover, entire length—(3)

Beaver Run Brook—Beaver Run, entire length—(1)

Bier's Kill—Shaytown, entire length—(2)

Big Flat Brook, Upper—Saw Mill Lake, High Point State Park to 100 ft. above Steam Mill Bridge on Crigger Road—(1)

Canistear Reservoir—Newark Watershed—(2)

Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(3)

Cranberry Lake—Byram Township—(2)

Culver's Lake Brook—Frankford Township, entire length—(2)

Dry Brook—Branchville, entire length—(0)

Franklin Pond Creek—Hamburg Mt. W.M.A., entire length—(3)

Glenwood Brook—Lake Glenwood to Stateline—(1)

Hardystonville Brook—Hardystonville, entire length—(1)

Iliff Lake—Andover Township—(3)

Kymer's Brook—Andover, entire length—(2)

Lake Musconetcong—Netcong—(2)

Lake Hopatcong—Lake Hopatcong—(2)

Lake Ocquittunk—Stokes State Forest—(6)

Little Flat Brook—Sandyston Township, entire length—(3)

Little Swartwood Lake—Swartwood—(2)

Lubbers Run—Byram Township, entire length—(3)

Neldon Brook—Swartwood, entire length—(2)

Papakating Creek—Plains Road bridge to Route 565 Lewisburg—(2)

Papakating Creek, W. Br.—Libertyville, entire length—(2)

Parker Brook—Stokes State Forest, entire length—(1)

Pond Brook—Middleville, entire length—(2)

Roy Spring Brook—Stillwater, entire length—(2)

Saw Mill Lake—High Point State Park—(6)

Shimers Brook—Montague Township, entire length—(1)

Stony Brook—Stokes State Forest, entire length—(2)

Stony Lake—Stokes State Forest—(3)

Swartwood Lake—Swartwood—(4)

Trout Brook—Middleville, entire length—(2)

Tuttles Corner Brook—Tuttles Corner, entire length—(2)

Wawayanda Lake—Highland Lakes—(4)

20. (No change.)

21. Warren County

Barker's Mill Brook—Vienna, entire length—(2)

Bear Creek—Southtown, entire length—(2)

Beaver Brook—Silver Lake Dam to Pequest River—(2)

Blair Creek—Hardwick Center to Blair Lake—(2)

Blair Lake—Blairstown—(0)

Buckhorn Creek—Roxburg, entire length—(2)
Dark Moon Brook—Johnsonburg, entire length—(1)
Dunnfield Creek—Delaware Water Gap National Recreation Area, entire length—(3)
Furnace Brook—Oxford, entire length—(2)
Furnace Lake—Oxford—(5)
Honey Run—Swayze's Mill Road to Route 519, Hope Township—(2)
Jacksonburg Creek—Jacksonburg, entire length—(3)
Lopatcong Creek—Route 519 to South Main Street, Phillipsburg—(3)
Merrill Creek—Stewartsville, entire length—(2)
Mountain Lake—Butttsville—(5)
Pohatcong Creek—Mt. Bethel to Route 31—(2)
Pophandusing Creek—Oxford Road, Hazen to Delaware River—(1)
Roaring Rock Brook—Brass Castle, entire length—(2)
Trout Brook—Hackettstown, entire length—(3)
Trout Brook—Hope, entire length—(2)
Yards Creek—Mount Vernon to Paulinskill River—(2)

(g) (No change.)

(h) No person shall take, kill, or have in possession in one day more than six in the aggregate of brook trout, brown trout, rainbow trout, or hybrids thereof, during the period extending from 8:00 A.M. April 4, 1987 until midnight May 31, 1987, or more than four of these species during the periods of January 1, 1987 to midnight March 15, 1987 and June 1, 1987 through midnight March 20, 1988 except as designated for specially designated trout fishing areas.

(i) Lake Hopatcong in Morris County, Spruce Run Reservoir in Hunterdon County, Swartwood Lake and Wawayanda Lake in Sussex County will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March 15, 1987 and extending to 8:00 A.M., April 4, 1987, must be returned to the water immediately and unharmed.

7:25-6.3 Fly-fishing waters

(a) From 5:00 A.M. on Monday, April 13, 1987 to and including November 30, 1987 the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1.-2. (No change.)

(b) Beginning January 1, 1987 at midnight to March 15, 1987 and from 8:00 A.M. on April 4, 1987 to midnight, March 20, 1988, the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:

1. (No change.)

(c) (No change.)

(d) The following regulations shall apply to the above designated fly-fishing waters:

1. (No change.)

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

i. (No change.)

3.-5. (No change.)

7:25-6.4 Natural trout fishing areas

(a) (No change.)

(b) The following regulations apply to the above-designated Natural Trout Fishing Area:

1.-2. (No change.)

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

4. No person may kill or have in possession while fishing any trout less than ten inches in total length.

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

*[7:25-6.5 Pequest River Trout Conservation Area

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

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

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

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

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

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

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

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

7:25-6.5 Round Valley Reservoir

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

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

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

(e) (No change.)

7:25-6.6 Baitfish

(a) (No change.)

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

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

7:25-6.7 Nets

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

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

1.-2. (No change.)

3. It shall be legal to take foodfish as defined in N.J.A.C. 7:25-[6.18(k)]**6.17* by the following means.

i.-iv. (No change.)

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

1.-2. (No change.)

3. It shall be legal to take foodfish as defined in N.J.A.C. 7:25-[6.18(k)]**6.17* by means of a seine, gill net, eelpot or fyke net, each without wings, or a parallel net at the edge of low water.

4.-7. (No change.)

(d) (No change.)

7:25-6.8 Snagging prohibited

(a) The foul hooking of largemouth bass, smallmouth bass, striped bass or any hybrid thereof, chain pickerel, northern pike, muskellunge or any hybrid thereof, walleye, and brook trout, lake trout, brown trout and rainbow trout, or any of the hybrids thereof, shall be prohibited in open waters. Any of the aforementioned fish so hooked must be immediately returned to the water. This shall not apply to fish so taken through the ice during the ice fishing season. (See separate regulations for Greenwood Lake, and for the Delaware River between New Jersey and Pennsylvania.)

7:25-6.9 Warmwater fish

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

(b) The size limits on rock bass, black crappie, white crappie, redbfin pickerel and chain pickerel are hereby eliminated in all waters except in Lake Hopatcong, Swartwood Lake (Sussex County), Farrington Lake (Middlesex County), and Hammonton Lake (Atlantic County) where there shall be a minimum size of 15 inches for chain pickerel. (See separate regulations for Greenwood Lake.)

(c) (No change.)

(d) The minimum size of smallmouth bass shall be nine inches—except on Monksville Reservoir (Passaic County), where the minimum size shall be 13 inches. (See separate regulations for Greenwood Lake, and the Delaware River between New Jersey and Pennsylvania, and Round Valley Reservoir.)

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

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

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

(h) (No change.)

(i) Eels may not be taken from non-tidal waters of this state by use of eel baskets, fykes, or traps of any kind, except that eel weirs may be operated under permit of the division in accordance with N.J.S.A. 13:3-55.

(j) The minimum length on northern pike shall be 24 inches and 30 inches for the muskellunge and tiger muskie. The daily bag and possession limit for these species shall be two in aggregate.

(k) (No change.)

(l) Daily bag and possession limit for chain pickerel and walleye shall be not more than five of each.

(m) The minimum length on walleye shall be 15 inches.

(n) The minimum length for striped bass shall be 33 inches and the minimum length for their hybrids shall be 18 inches. The daily bag and possession limit for either shall be two.

7:25-6.11 Bow and arrow fishing

It shall be legal to take any species of fish except brook trout, lake trout, brown trout, rainbow trout, landlocked Atlantic salmon, largemouth bass, smallmouth bass, striped bass or any hybrid thereof, chain pickerel, northern pike, muskellunge or any hybrid thereof, or walleye, at any time by use of longbow and arrow with line attached, provided a person has a proper fishing license. (See separate regulations for Greenwood Lake, for the Delaware River between New Jersey and Pennsylvania, and for the waters listed for trout stocking during the current season.)

7:25-6.14 Greenwood Lake

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

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

2.-5. (No change.)

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

(a) In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Penn-

sylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

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

2.-7. (No change.)

7:25-6.16 Fresh tidal tributaries of the Delaware River and Bay

The minimum length on Atlantic sturgeon shall be 60 inches with no daily bag limit.

7:25-6.17 Definitions

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

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

1.-18. (No change.)

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

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

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

Renumber 2.-12. as 1.-13. (No change in text.)

(a)

DIVISION OF WASTE MANAGEMENT

Hazardous Waste Management

Adopted Amendments: N.J.A.C. 7:26-8.1, 8.2, 9.3, 9.7

Adopted New Rule: N.J.A.C. 7:26-8.19

Proposed: December 16, 1985 at 17 N.J.R. 2941(a).

Adopted: December 4, 1986, by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: December 5, 1986 as R.1987 d.18, with substantive and

technical changes not requiring additional public notice or comment, and with portions of the proposal not adopted.

(N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-6; 13:D-9 and 58:10A-4.

Effective Date: January 5, 1987.

Expiration Date: November 4, 1990.

DEP Docket No. 064-85-11

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("Department"), received written comments from the Department of the Public Advocate, the Department of Criminal Justice, Jersey City Power and Light Company, the New Jersey Petroleum Council, Mobil Oil Corporation and the New Jersey Department of Defense. The comments are summarized as follows:

1. COMMENT: N.J.A.C. 7:26-8.1: The proposed amendment requires further clarification of the definition of "wastewater" and "discharge." Furthermore, the proposed language at N.J.A.C. 7:26-8.1(a)2iii can be illegally circumvented.

RESPONSE: The intent of this provision is to limit N.J.A.C. 7:26-8.1(a)2ii (commonly referred to as the "mixture rule"), as it applies to classifying certain wastewaters as hazardous wastes solely because they contain minor quantities of discarded commercial products or manufacturing intermediates.

The Department agrees that the proposed wording may be misinterpreted. Therefore, the term "process wastewater" which is defined in the New Jersey Pollutant Discharge Elimination System Regulations ("NJPDES"), (N.J.A.C. 7:14A-1.9) has been added for clarity along with an amended stipulation that the discharge, which is also defined in N.J.A.C. 7:14A-1.9, be "... specified and limited in a permit issued pursuant to N.J.A.C. 7:14A et seq. or Section 402 or 307(b) of the Clean Water Act." The Department's intention is that generators may not increase or otherwise manipulate their outflows to allow for increased pollutant loading. To do so may cause the generator to be in violation of its discharge permit.

A requirement has also been added to N.J.A.C. 7:26-8.1(a)2iii, directing generators to notify the Division of Water Resources when claiming this exemption for their process wastewater. This will provide for an effective record keeping system—an essential element for Departmental enforcement programs.

2. COMMENT: N.J.A.C. 7:26-8.1(a)2iii: The phrase "... if the generator can demonstrate that the mixture consists of wastewater. ..." needs clarification. When or at what point, does the generator have to make this demonstration? What is meant by the word demonstrate?

RESPONSE: The generator must show compliance either through direct measurements, or through calculations based on pertinent operating records such as solvent purchases and wastewater flow rates. All information regarding this determination must be made available to the State or Federal representative upon inspection, or whenever requested. The wastewater influent will remain a hazardous waste, and will continue to be subject to all applicable hazardous waste regulations, if the generator declines to make this demonstration or fails to provide adequate documentation. Falsification of relevant records will consequently subject the generator to civil or criminal sanctions. For further information regarding this provision refer to 46 FR 56585.

3. COMMENT: N.J.A.C. 7:26-8.1(a)2iii: What does "... including wastewater at facilities which have eliminated the discharge of wastewater" mean?

RESPONSE: The phrase refers to those facilities which have ceased their discharge either by connection to a publicly owned wastewater treatment plant or by means of in-plant process changes. After reconsideration, the Department has deleted this provision in order to maintain consistency with the Departmental intent that the mixture rule exemption will apply only to discharges being regulated pursuant to NJPDES and the Clean Water Act (33 U.S.C. 1251 et seq.).

4. COMMENT: N.J.A.C. 7:26-8.1(a)2iii(3): Why is "bundle cleaning sludge" exempted?

RESPONSE: The Department is in agreement with the United States Environmental Protection Agency ("USEPA") in that the mixture resulting from heat exchanger bundle cleaning sludge (Hazardous Waste No. K050) being released into a petroleum refiner's process wastewater should be exempt from the hazardous waste regulations.

These sludges were listed as hazardous wastes because of their hexavalent chromium content. The American Petroleum Institute, however, presented the USEPA with data demonstrating that the total chromium content of wastewater is increased by much less than one part per million when bundle cleaning sludge is discharged, almost as low as the National Primary Drinking Water Standard of 0.05 ppm. After evaluating this information, the Department concluded that such a mixture of bundle cleaning sludge in process wastewater should not be a hazardous waste.

5. COMMENT: N.J.A.C. 7:26-8.1(a)2iii(4): How is "de minimis" defined? The language may create a loophole leading to negligence or abuse.

RESPONSE: This provision exempts from the presumption of hazardousness process wastewaters containing minor losses of only those materials actually utilized in the production process, as discussed previously herein. Such minor losses are only those which are incidentally presented by virtue of the manufacturing process—not by any intentional introduction into the waste stream.

"De minimis losses" do not include the following materials: discarded off-specification materials, discarded material from abnormal manufacturing operations (e.g. plant shutdowns, operation malfunctions that result in substantial spills, leaks, or other releases), discarded materials not being manufactured as intermediate or final products, or any other release of waste materials not inherent in the manufacturing process.

6. COMMENT: N.J.A.C. 7:26-8.1(a)2iii(5): The phrase "wastewater resulting from laboratory operations. ..." needs clarification. Does it include laboratory waste chemicals or just "wastewater"?

RESPONSE: The commenter has taken this provision out of context. This provision relates back to N.J.A.C. 7:26-8.1(a)2iii, which describes the process wastewater discharges to be those regulated by N.J.A.C.

7:14A et seq. or Section 402 or 307(b) of the Clean Water Act. The mixture rule is defined in that a wastewater discharge may be considered nonhazardous if the generator can demonstrate, by measuring or conservatively calculating, that the annual average discharge from the laboratory does not exceed one percent of the total annual average flow entering the wastewater treatment system.

The alternate compliance test described in N.J.A.C. 7:26-8.1(a)2iii(5) provides for those facilities whose laboratory wastewater discharge accounts for more than one percent of the total annual average flow into their wastewater treatment system. In this case, the generator may demonstrate, through either calculation or analysis, that the combined average concentration of hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15 resulting in the laboratory wastewater discharge does not exceed one part per million in the treatment facility's headwaters. A generator may show compliance through laboratory purchases, an estimate of the total amount of listed substances utilized, and operating records including the wastewater flow into the treatment facility. As the USEPA regulations provide at 46 FR 56587: "Facilities must make the worst case assumption that all listed hazardous wastes used in the laboratories will be discarded to wastewater unless they can demonstrate through appropriate records that those materials were disposed of elsewhere. The data should be averaged on a yearly basis."

7. COMMENT: 7:26-8.2(a)12i(6): A revision should be made to provide that: "The sample is being stored temporarily in the laboratory or by the sample collector after testing for a specific purpose. ..." The final phrase "... where further testing of the sample may be necessary ..." should be deleted.

RESPONSE: The purpose of N.J.A.C. 7:26-8.2(a)12i(1)-(6) is to remove unnecessary barriers from the storage and transportation of samples of waste material collected for the sole purpose of determining their characteristics or composition. The Department agreed with the Chemical Industry Council's petition to adopt the September 25, 1981 Federal regulation (46 FR 47427 and 40 CFR 261.4(d) i-xi), that exempts these samples from storage and transportation regulations, from the time of collection to when they are discarded by the laboratory or returned to the collector. The premise is that these activities do not represent a significant environmental or public health hazard which would warrant such regulation.

There are several incentives for the safe storage and transportation of the samples: the sample collector has invested the resources to collect the sample and has a need for the analysis; the laboratory must carefully preserve the sample prior to performing the work and while temporarily storing it prior to further analysis, and the laboratory may have an agreement to return the sample to the collection. When the laboratory has completed the analysis and there is no reason to store the sample, or has no agreement to return it to the collector, there no longer remains an incentive to treat the leftover material differently than any other waste. Similarly, there are no acceptable incentives for sample collectors to handle these materials any differently from their other wastes. Therefore, the storage and transportation exemptions for certain samples are necessarily limited to those conditions as proposed at N.J.A.C. 7:26-8.2(a)12i(1)-(6).

8. COMMENT: N.J.A.C. 7:26-8.2(a)12ii(2): Exclusionary language is required to provide for the shipping of samples which are involved in a law enforcement case.

RESPONSE: There is no need to provide an exclusion here for samples involved in a law enforcement case. The information required at N.J.A.C. 7:26-8.2(a)12ii(2) is no more detailed than that of the standard "chain of custody" form used by the Department, which is routinely utilized in enforcement cases.

AGENCY NOTE: The addition upon adoption of N.J.A.C. 7:26-8.19(a) regarding testing requirements is necessary for the Department's regulations to remain equivalent to USEPA regulations, as required under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq.

The addition of "Hazardous" in N.J.A.C. 7:26-9.2(b)i and the deletion of "and Field Operations" in N.J.A.C. 7:26-9.3(b)iii is necessary to reflect changes in the organization of the Department since the proposal was published.

The Department has determined not to adopt the proposed text at N.J.A.C. 7:26-12.2, (permit application), and has reevaluated and proposed text in light of comments received. A new proposed amendment for N.J.A.C. 7:26-12.2 and accompanying discussion appear in this issue of the New Jersey Register. Pending adoption of the new proposal, the current text of N.J.A.C. 7:26-12.2 which appears in the New Jersey Administrative Code remains in effect.

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

7:26-8.1 Definition of hazardous waste

(a) A solid waste, as defined in N.J.A.C. 7:26-1.6, is a hazardous waste if:

1. (No change.)
2. It meets any of the following criteria:
 - i.-ii. (No change.)
 - iii. It is a mixture of solid waste and one or more hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, or 8.15; however, the following mixtures of solid and hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, and 8.15 are not hazardous (except by application of paragraphs 2i or ii above, or iv or v below) if the generator can demonstrate that the mixture consists of ***process*** wastewater, the discharge of which is ***[subject to regulation under either]*** ***specified and limited in a permit issued pursuant to N.J.A.C. 7:14A et seq. or* Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et al, (and consequently N.J.S.A. 58:10A-1 et seq. or N.J.S.A. 58:11.49 et seq.)** ***[including wastewater at facilities which have eliminated the discharge of wastewater:]** ***and the generator has notified the Division of Water Resources when claiming exemption pursuant to (1), (2), (3) or (5) below.***

(1) One or more of the following spent solvents listed in N.J.A.C. 7:26-8.13: carbon tetrachloride, tetrachloroethylene, trichloroethylene, provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed one part per million; or

(2) One or more of the following spent solvents listed in N.J.A.C. 7:26-8.13: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater), divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(3) The following wastes listed in N.J.A.C. 7:26-8.14: heat exchanger bundle cleaning sludge from the petroleum refining industry (Hazardous Waste No. K050); or

(4) A discarded commercial chemical product, or chemical intermediate listed in N.J.A.C. 7:26-8.15, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph "de minimis" losses include those from normal material handling operations including but not limited to: spills from the unloading or transfer of materials from bins or other containers, leaks from valves or other devices used to transfer materials; minor leaks from process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinse from empty containers or from containers that are rendered empty by that rinsing; or

(5) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in N.J.A.C. 7:26-8.13, 8.14, 8.15, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes' combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.

iv.-v. (No change.)

(b) (No change.)

7:26-8.2 Exclusions

(a) The following materials are not hazardous wastes for the purpose of this subchapter:

1.-11. (No change.)

12. Samples of solid waste or water, soil, or air, which are collected for the sole purpose of testing to determine their characteristics or composition.

i. This exemption is only applicable when:

(1) The sample is being transported to a laboratory for the purpose of testing;

(2) The sample is being transported back to the sample collector after testing;

(3) The sample is being stored by the sample collector before transport to a laboratory for testing;

(4) The sample is being stored in a laboratory before testing;

(5) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(6) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

ii. In order to qualify for this exemption, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(1) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(2) If these shipping requirements do not apply, include with the shipment the sample collector's name, mailing address, and telephone number; the laboratory's name, mailing address, and telephone number; a description of the sample and its quantity; the date of the shipment; and

(3) Package the sample so that it does not leak, spill, or vaporize from its packaging.

iii. This exemption does not apply if the laboratory determines that the waste is a hazardous waste pursuant to this chapter but the laboratory is no longer meeting any of the conditions of this paragraph.

(b) (No change.)

7:26-8.19 Incorporation by reference

*** (a) When testing is performed it shall be conducted in accordance with the procedures and methods contained herein and as set forth in 40 CFR Part 261 Appendices III and X, or as otherwise required by the Department.***

[(a)]** (b) The most current versions of the following publications are incorporated by reference into this chapter whenever or wherever mentioned herein:

1. "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester," ASTM Standard D-3278, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

2. "ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester," ASTM Standard D-93-79 or D-93-80, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

3. "Flammable and Combustible Liquids Code" available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210.

4. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. The second edition of SW-846 and Update I are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238 on a subscription basis.

[(b)]** (c) The references listed in paragraph (a) of this section are also available for inspection at the New Jersey State Library, 185 West State Street, Trenton, New Jersey and the Newark Public Library, 5 Washington Street, Newark, New Jersey.

7:26-9.3 Accumulation of hazardous waste for 90 days or less

(a) (No change.)

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to all applicable standards and requirements of this subchapter, and the permit requirements of N.J.A.C. 7:26-12.1 et seq. unless the generator has been granted a temporary extension to the 90 day period.

i. An extension established in (b) above may be granted in writing by the Department's Division of ***Hazardous*** Waste Management if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances.

ii. An extension of up to 30 days may be granted at the discretion of the Division Director on a case-by-case basis.

iii. Persons seeking such an extension shall contact in writing the Assistant Director for Enforcement ***[and Field Operations]*** prior to exceeding the 90 day storage period, in order to initiate the approval process.

(c) (No change in text.)

7:26-9.7 Contingency plan and emergency procedures

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

(d) If the owner or operator has already prepared a Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with 40 CFR 112 or 40 CFR 300, or a Discharge Prevention, Containment and Countermeasure (DPCC) plan in accordance with N.J.A.C. 7:1E-4, the owner or operator needs only to amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this section.

(e)-(1) (No change.)

HEALTH

(a)

HEALTH FACILITIES EVALUATION

Plans Review Fee Schedule

Adopted Amendment: N.J.A.C. 8:31-30.1

Proposed: April 21, 1986 at 18 N.J.R. 795(a).

Adopted: December 4, 1986 by Molly J. Coye, M.D.,

Commissioner, Department of Health.

Filed: December 8, 1986 as R.1987 d.24, **without change**.

Authority: N.J.S.A. 26:2H-5, N.J.A.C. 5:23-11(2), 5:23-4.20(b) and 5:23-4.9(c).

Effective Date: January 5, 1987.

Expiration Date: November 5, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

8:31-30.1 Architectural and mechanical plan review fee

(a) (No change.)

(b) The Department of Health will utilize the fee schedule outlined in N.J.A.C. 5:23-4.20 of the Uniform Construction Code using a multiplier of 4.0.

(c) (No change.)

DRUG UTILIZATION REVIEW COUNCIL

(b)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: June 2, 1986 at 18 N.J.R. 1167(a).

Adopted: December 5, 1986 by Sanford Luger, Chairman, Drug Utilization Review Council.

Filed: December 8, 1986 as R.1987 d.21, **with portions of the proposal not adopted and portions not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: January 5, 1987.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

REGARDING VERAPAMIL:

COMMENT: Searle Laboratories commented that their patent on verapamil expired on September 25, 1986, thus requesting no action until after that date.

RESPONSE: The Council agreed and takes its action after September 25, 1986.

REGARDING TRAZODONE:

COMMENT: Mead-Johnson noted that no generic products had FDA approval.

RESPONSE: The Council agreed and takes its action after the involved products have received FDA approval.

The following products and their respective manufacturers were **ADOPTED**:

Haloperidol tabs 0.5, 1, 2, 5 mg
Ibuprofen tabs 300, 400, 600 mg

Purepac
Purepac

Ibuprofen tabs 800 mg

Methyldopa/HCTZ 250/15

Methyldopa/HCTZ tabs 500/30

Propranolol HCl tabs 10, 20, 40, 80 mg

Tolazamide tabs 100, 250, 500 mg

Trazodone HCl tabs 50, 100 mg

Verapamil HCl tabs 80, 120 mg

Boots

Purepac

Purepac

Watson

Bolar

Danbury

Danbury

The following products and their manufacturers were **NOT ADOPTED**:

Chlorthalidone tabs 25 mg

Purepac

Chlorthalidone tabs 50 mg

Purepac

The following products were **not adopted but are still pending**:

Cholestyramine for susp 4 g/packet

Pharm. Basics

Clonidine HCl tabs 0.1, 0.2, 0.3 mg

Purepac

Clonidine tablets 0.1, 0.2, 0.3 mg

Bolar

Dexchlorpheniramine maleate tabs 2 mg

Sidmak

Estropipate tabs 1.5, 3.0 mg

Pharm. Basics

Furosemide tabs 80 mg

Roxane

Haloperidol tabs 10 mg

Purepac

Hydromorphone tabs 2 mg, 4 mg

Roxane

Hydroxyzine HCl tabs 10, 25, 50 mg

Sidmak

Indomethacin caps 25, 50 mg

Purepac

Lactulose syrup 10 g/1.5 ml

Alra

Lithium carbonate caps 300 mg

Bolar

Lorazepam tabs 0.5, 1.0, 2.0 mg

Duramed

Lorazepam tabs 0.5, 1.0, 2.0 mg

Par

Lorazepam tabs 1 mg, 2 mg

Pharm. Basics

Lorazepam tabs 2 mg

Bolar

Lorazepam tabs 2 mg

Purepac

Methyldopa tabs 250, 500 mg

Duramed

Metoclopramide tabs 10 mg

Bolar

Metoclopramide tabs 10 mg

Watson

Metronidazole tabs 250, 500 mg

Watson

Nitrofurantoin macrocrs. caps 50, 100 mg

Bolar

Potassium Cl extend. rel. tabs 8, 10 mEq

Alra

Potassium Cl extended rel tabs 8 mEq

Copley

Potassium Cl powder 20 mEq/packet

Alra

Potassium bicarb efferves tab 25 mEq

Alra

Potassium bicarb. effervescent tab 25 mEq

Altergon

Propoxyphene naps/APAP tabs 100/650

Purepac

Propranolol HCl tabs 10, 20, 40, 60, 80

Purepac

Propranolol tabs 10, 20, 40, 60, 80 mg

Bolar

Sucralfat tabs 1.0 g

Pharm. Basics

Temazepam caps 15, 30 mg

Bolar

Tolazamide tabs 250, 500 mg

Cord

Tolbutamide tabs 250, 500 mg

Bolar

Trifluoperazine tabs 5 mg

Bolar

Valproic acid syrup 250 mg/5 ml

Alra

Verapamil tabs 80, 120 mg

Bolar

Verapamil tabs 80, 120 mg

Purepac

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption appear at: 18 N.J.R. 1955(b) and 2208(b).

(c)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: September 8, 1986 at 18 N.J.R. 1775(a).

Adopted: December 5, 1986 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: December 8, 1986 as R.1987 d.22, **with portions of the proposal not adopted and portions not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: January 5, 1987.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

REGARDING TRANSDERMAL NITROGLYCERIN:

COMMENT: Three brand-name manufacturers, Key Pharmaceuticals, CIBA-Geigy, and Searle, all objected to the proposed transdermal nitroglycerin products for the same reasons: no direct comparison of the generic to a brand-name patch product, differences in patch technology (adhesiveness, etc.), and lack of an FDA therapeutic equivalency code.

RESPONSE: The Council agrees with the criticism that the generic patch was not tested against a branded patch, but compared to an ointment, and therefore rejected the generic transdermal nitroglycerin products. All other objections were rendered moot by this action.

REGARDING HALOPERIDOL:

COMMENT: McNeil Laboratories objected to the proposed generics, alleging inadequacies in the pharmacokinetic studies which compared the generics to McNeil's brand, Haldol.

RESPONSE: The Council disagrees with the contention that the pharmacokinetic study on the low strength haloperidols was inadequate. All the parameters usually considered were highly acceptable (within 10 percent of the brand) and the statistical "power" of the test was high (0.91). In addition, the Council's technical experts concluded that the generic was equivalent to the brand.

The following products and their respective manufacturers were **ADOPTED:**

Allopurinol tabs 100 mg	Cord
Bacitracin/polymyxin/neomycin ophth oint	Pharmafair
Brompheniramine/pseudoephed/DM liquid	My-K
Chlorothiazide tabs 500 mg	West-Ward
Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Amer. Ther.
Clonidine tabs 0.1, 0.2, 0.3 mg	Duramed
Dipyridamole tabs 25, 50, 75 mg	Cord
Disopyramide phos caps 100, 150 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
Flurazepam caps 15, 30 mg	Par
Gentamicin oint 0.1%	Altana/Foug.
Gentamicin oint 0.1%	Altana/PHDRM
Gentamicin sulfate 0.3% ophth. solution	Allergan
Haloperidol oral solution 2 mg/ml	Barre-National
Haloperidol oral solution 2 mg/ml	My-K
Haloperidol oral solution 2 mg/ml	Searle
Haloperidol tabs 0.5, 1, 2, 5 mg	Searle
Hydralazine HCl tabs 25, 50 mg	Mutual
Hydroxyzine HCl syrup 10 mg/5 ml	My-K
Hydroxyzine HCl tabs 10, 25, 50 mg	Mutual
Iodinated glycerol/DM liquid	My-K
Iodinated glycerol/codeine 30 mg+10 mg/5ml	My-K
Iodinated glycerol/codeine 30 mg+10 mg/5 ml	Barre-National
Multivit. drops/flouride 0.5 mg	My-K
Neomycin/polymyxin/HC otic susp	Carter-Glogau
Perphenazine/amitrip 2/10, 2/25, 4/10, 4/25, 4/50	Par
Promethazine/dextromethorphan oral liq.	My-K
Thioridazine HCl conc 30 mg, 100 mg/ml	Roxane
Triamcinolone acetonide lotion 0.1%	Thames

The following products and their manufacturers were **NOT ADOPTED:**

Doxepin caps 25, 50, 75 mg	Cord
Iodinated glycerol liquid 60 mg/5 ml	My-K
Lidocaine HCl oral solution 2%, 4%	My-K
Nitroglycerin transdermal 5 mg, 15 mg	Hercon
Potassium Iodide saturated solution	My-K
Thioridazine susp 25 mg/5 ml, 100 mg/5 ml	Sandoz

The following products were **not adopted but are still pending:**

Acetaminophen/codeine elix 120/12	Naska
Allopurinol tabs 300 mg	Cord
Amiloride/HCTZ 5 mg/50 mg tabs	Chelsea
Aminophylline tabs 100, 200 mg	West-Ward
Amitriptyline tabs 10, 25, 50, 75, 100 mg	Zenith
Amitriptyline/perphenazine 10/2, 25/2 tab	Chelsea
Amitriptyline/perphenazine 10/4, 25/4 tab	Chelsea
Amitriptyline/perphenazine 50/4 tabs	Chelsea
Carbamazepine tabs 200 mg	Teva
Cephadroxil caps 500 mg	Zenith
Cephadroxil tabs 1 g	Zenith
Cephalexin caps 250, 500 mg	Zenith
Cephadrine caps 250, 500 mg	Zenith
Chlorothiazide tabs 250 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	Watson

Clonidine HCl tabs 0.1, 0.2 mg	Cord
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Clonidine tabs 0.1, 0.2, 0.3 mg	Zenith
Cyproheptadine syrup 2 mg/5 ml	Naska
Dexamethasone elixir 0.5 mg/5 ml	Naska
Disopyramide phosphate caps 100, 150 mg	Chelsea
Ergoloid mesylates oral tabs 1 mg	Sandoz
Erythromycin ethylsuccinate susp 400/5 ml	Naska
Erythromycin ethylsuccinate 200 mg/5 ml	Naska
Flurazepam caps 15, 30 mg	Zenith
Furosemide tabs 80 mg	Zenith
Gentamicin cream 0.1%	Altana/Foug.
Gentamicin cream 0.1%	Altana/PHDRM
Haloperidol tabs 10 mg	Searle
Haloperidol tabs 0.5, 1, 2, 5, 10 mg	Zenith
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Duramed
Hydralazine/HCTZ caps 25/25, 50/50	Reid-Rowell
Hydrocodone/homatropine 5/1.5 mg/5 ml	Naska
Hydroxyzine HCl syrup 10 mg/5 ml	Naska
Ibuprofen tabs 200, 300, 400, 600 mg	Cord
Ibuprofen tabs 200, 300, 400, 600 mg	Zenith
Ibuprofen tabs 300 mg	Chelsea
Indomethacin caps 25, 50 mg	Cord
Indomethacin sustained rel caps 75 mg	Zenith
Isosorbide dinitrate tabs 20, 30 mg	Chelsea
Lidocaine viscous liquid 2%	Naska
Lithium carbonate caps 300 mg	Reid-Rowell
Lorazepam tabs 0.5, 1.0, 2.0 mg	Watson
Lorazepam tabs 0.5, 1.0, 2.0 mg	Zenith
Meclofenamate caps 50, 100 mg	Chelsea
Methyclothiazide tabs 5 mg	Pharm. Basics
Methyldopa tabs 250, 500 mg	Danbury
Methyldopa tabs 250, 500 mg	Parke-Davis
Methyldopa/HCTZ 250/15 tabs	Bolar
Methyldopa/HCTZ 250/15, 250/25	Zenith
Methyldopa/HCTZ 500/30 tabs	Bolar
Methyldopa/HCTZ 500/30, 500/50 tabs	Zenith
Methyldopa/HCTZ tabs 250/25, 500/50	Bolar
Metoclopramide tabs 10 mg	Beecham
Metoclopramide tabs 10 mg	Chelsea
Oxazepam caps 10, 15, 30 mg	Zenith
Perphenazine tabs 2, 4, 8, 16 mg	Zenith
Perphenazine/amitrip 2/10, 2/25, 4/25, 4/10, 4/50	Zenith
Potassium Cl mod rel 8 mEq and 10 mEq	Upsher-Smith
Prednisolone tabs 5 mg	PFI
Prednisone tabs 5, 10, 20 mg	Mutual
Prednisone tabs 5, 10, 20, 50 mg	Chelsea
Procainamide HCl ER tabs 250, 500, 750 mg	Cord
Procainamide caps 250, 375, 500 mg	Cord
Prochlorperazine maleate tabs 5, 10, 25 mg	Duramed
Promethazine VC syrup 6.25/5 per 5 ml	Naska
Promethazine VC/cod syrup 6.25/5/10/5 ml	Naska
Promethazine syrups 6.25 mg/25 mg/5 ml	Naska
Promethazine/DM syrup 6.25/15 per 5 ml	Naska
Promethazine/codeine syrup 6.25/10/5 ml	Naska
Propoxyphene naps/APAP 50/325, 100/650	Chelsea
Propranolol HCl tabs 20, 40 mg	Lemmon
Propranolol HCl tabs 60 mg	Chelsea
Propranolol HCl tabs 60 mg	Schering
Propranolol HCl/HCTZ tabs 40/25, 80/25	Chelsea
Propranolol tabs 10, 20, 40, 60, 80 mg	Cord
Propranolol tabs 10, 20, 40, 80 mg	Zenith
Propranolol tabs 60, 90 mg	Duramed
Propranolol/HCTZ tabs 40/25	Zenith
Propranolol/HCTZ tabs 40/25, 80/25	Duramed
Spironolactone/HCTZ 25/25 tabs	Danbury
Sulfamethoxazole/trimethoprim 400/80, 800/160	Cord
Temazepam caps 15, 30 mg	Mylan
Theophylline elixir 80 mg/15 ml	Naska
Thioridazine 10, 15, 25, 50, 100, 150, 200 mg	Sandoz
Thioridazine HCl tabs 10, 15, 25, 50 mg	Danbury
Thioridazine conc. 30 mg/ml, 100 mg/ml	Sandoz
Thioridazine tabs 150, 200 mg	Cord
Thiothixene caps 2, 5, 10 mg	Chelsea
Tolbutamide tabs 500 mg	Danbury
Triamtereme/HCTZ caps 50/25	Zenith

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

Zenith
Chelsea
BASF
Zenith
Watson

(a)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: March 17, 1986 at 18 N.J.R. 537(a).

Adopted: December 5, 1986 by Sanford Luger, Chairman of the Drug Utilization Review Council.

Filed: December 8, 1986 as R.1987 d.23, with portions of the proposal not adopted and portions not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: January 5, 1987.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following product and its manufacturer were Adopted:

Tolazamide tabs 250, 500 mg

Superpharm

The following products were not adopted but are still pending:

Aminophylline oral soln 105 mg/5 ml

Roxane

Chlorzoxazone 250 mg/Acetaminophen 300 mg

Amer. Ther.

Flurazepam HCl caps 15, 30 mg

West-Ward

Isosorbide dinitrate oral tabs 20 mg

West-Ward

Lithium carbonate caps and tabs, 300 mg

Roxane

Methyldopa tabs 125, 250, 500 mg

Par

Methyldopa tabs 250, 500 mg

Superpharm

Methyldopa/HCTZ 250/150, 250/250 mg

Par

Methyldopa/HCTZ 250/25, 500/30, 500/50 mg

Par

SMZ/TMP Susp. 200 mg + 40 mg/5 ml

Naska

Sulfasalazine tabs 500 mg

Superpharm

Trazodone HCl tabs 50, 100 mg

Pharm. Basics

Trazodone tabs 50 mg, 100 mg

Chelsea

Verapamil tabs 80 mg, 120 mg

Chelsea

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption may be found at 18 N.J.R. 1381(a), 1463(b), 1957(a) and 2015(a).

HIGHER EDUCATION

(b)

BOARD OF HIGHER EDUCATION

Management of Computerized Information

Adopted New Rules: N.J.A.C. 9:2-5

Proposed: April 21, 1986 at 18 N.J.R. 799(a).

Adopted: December 5, 1986 by Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: December 5, 1986, as R.1987 d.19, 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. 18A:3-13, 18A:3-14(1) and 18A:3-15.

Effective Date: January 5, 1987.

Expiration Date: June 17, 1990.

Summary of Public Comments and Agency Responses:

The Department received comments from Rutgers, The State University of New Jersey, providing several recommendations regarding the language and content of the proposed new rules. The particular comments and agency responses thereto are set forth below.

COMMENT: The University recommended separately identifying data relating to employees and data relating to students and that the provisions in Section 9:2-5.6 distinguish what information of each kind may be released in a personally identifiable form to parties who are neither officers, employees, nor agents of the Department of Higher Education.

RESPONSE: The Department does not concur with this recommendation. The Department will not disclose personally identifiable information or permit access to a computer record containing such, except as required under state or federal law. This is the Department's policy whether the record stored in the computer data files contains information on a student or an employee or any other information.

COMMENT: The University suggested that Section 9:2-5.1 affirmatively state that consent of the subject or the institution should be required for researchers and parties who are neither officers, employees nor agents of the Department of Higher Education to obtain access to personally identifiable information.

RESPONSE: The Department does not concur with this recommendation. The Department will not release personally identifiable information to anyone unless required by law to do so and in such circumstances, under existing laws, consent of the subject of the record is not a precondition. There are no laws or statutes currently requiring an institution's prior consent. The Department believes this suggested change would give the impression that the Department of Higher Education might disclose personally identifiable information without legal mandates to do so.

COMMENT: The University was concerned that the Department's computer data files will be accessible to other instrumentalities and agencies of government and recommended an amendment prohibiting access.

RESPONSE: The Department agrees with this concern and added subsection (f) to N.J.A.C. 9:2-5.3 which prohibits the release of the Department's computer data files with information on personal identifiers to external agencies.

COMMENT: The University recommended that Department staff be required to prepare research protocols prior to tabulating or analyzing any data whatsoever and that a review board be empaneled to authorize the conduct of studies using computer based records.

RESPONSE: The Department does not concur and did not amend Section 9:2-5.3 because there is no justification for requesting prior approval of study objectives and methodology from a review board in order to perform data tabulations or undertake any research project.

COMMENT: The University suggested that Section 9:2-5.3 require all data tabulations that the Department of Higher Education might generate from information an institution submits to be reviewed by the institution prior to disclosure of any aggregate figures.

RESPONSE: The Department believes such a requirement would inappropriately assign an oversight role to the institutions. The responsibility for determining what tabulations need to be reviewed by the institutions should rest with Department staff. Staff have traditionally scrutinized tabulations prior to their release, performed careful audits and internal consistency checks of data that institutions supply and sought institutional review when necessary.

COMMENT: The University recommended vesting institutions that supply information to the Department with the power and/or authority to determine what research may be published and what inferences are legitimate.

RESPONSE: The Department did not agree to amend Section 9:2-5.3 to incorporate this change because it would impede the interchange of information between the Department of Higher Education staff and the Board.

COMMENT: The University recommended that the Department list all data elements to be initially acquired from institutions and add a provision which binds the Department of Higher Education to Publish and make available on a regular basis, or prior to the collection of other additional data elements, a public notice of these elements and the reasons for acquisition and maintenance of these data elements.

RESPONSE: These suggestions have not been incorporated in Section 9:2-5.3 because the Department of Higher Education could not operate efficiently if public notice were required prior to the collection of data that may be needed to address the issues affecting higher education in New Jersey. It is unreasonable and burdensome to require that a list of all data elements which are maintained in computers be compiled and incorporated in these regulations. The Office of Telecommunications and Information Systems (OTIS) does maintain a comprehensive inventory on computerized data maintained by all state agencies.

COMMENT: The University recommended amending Section 9:2-5.3 to add a statement regarding subpoenaed records stating that in the case of subpoenas for individual records or institutional records the Department of Higher Education shall make a reasonable effort to notify the subject of the record or the institution that the record has been subpoenaed and will do so if possible in advance of complying with the subpoena.

RESPONSE: The Department does not concur with the recommendations to amend Section 9:2-5.3. The regulations stipulate that the Department will comply with all applicable state and federal laws relating to disclosure of information (Section 9:2-5.2). Subpoenas for the production of information generally request hard copy paper and documents, whereas these regulations relate to information that the Department maintains in computers and generally the names of individuals are not stored in computer records. Every effort will be made to inform the appropriate individual prior to responding to a subpoena. However, the Department believes it would be inappropriate to address this issue in these regulations which have been formulated to inform the public of the practices that it has established to safeguard computer records from unauthorized access.

COMMENT: The University recommends changing Section 9:2-5.6 to prevent an affected individual from gaining access to "any" record maintained by the Department. The University suggests access to only "those records to which a student or employee ordinarily has rights of access at the institution which creates the record" and "to give affected individuals a list of the types of records and in the case of medical or psychological data allow the individual to designate a licensed medical doctor or psychologist to inspect the records on behalf of the subject of the record."

RESPONSE: The Department does not maintain in its computers any information about an individual that he or she has no right to personally inspect and therefore does not concur with the University's suggestion.

COMMENT: The University suggested amending Section 9:2-5.8(d) to prevent data from being released by telephone.

RESPONSE: The Department believes there are circumstances which would permit the disclosure of information from individual records when the request is made by phone and proper identification of the caller is provided. The Department does and will abide by all applicable laws when responding to telephone requests for data from individualized records.

COMMENT: The University suggests that the Department specify in Section 9:2-5.10 which records are public records and to make a public announcement of this list.

RESPONSE: The Department does not concur with this suggestion. A presumption exists that the Department's records, which are required to be made, maintained or kept on file, are public. Relevant statutes dictate that those records that are not public be identified.

COMMENT: The University recommends changing the definitions of "data" and "record" in Section 9:2-5.1 to include any information on paper or hard copy.

RESPONSE: The Department's regulations have been formulated to address the protection of computerized information. The security of other information that is maintained on paper or cards in file cabinets is kept in conformance with security procedures at the physical facilities where Department of Higher Education offices are located. The policy with respect to access and disclosure of information from paper or hard copy is described by other applicable Federal and State laws.

COMMENT: The University recommends defining sensitive student data by stating that everything other than what colleges describe as "Directory Information" is sensitive. They believe the definition could otherwise mean any information in the institution's possession.

RESPONSE: The Department believes the suggested change would permit the release of a student's name, address, date of birth and other information. The Department wants the flexibility to determine what "sensitive" information is on a case-by-case basis. The definition in Section 9:2-5.1(j) has been expanded to increase flexibility. Ethnic identifiers and information on academic performance including test scores are among some of the data that may be considered sensitive under some circumstances.

COMMENT: The University suggests including a definition of language used in Section 9:2-5.3 to describe personally identifiable information. They would like the regulations to define "items required for accountability of the expenditure of public funds" and "legitimate reports." In addition, the University suggests that the Department list the state agencies or officials who, "by specific provision of law," are entitled to access records containing personally identifiable information.

RESPONSE: The Department does not agree with the University. Extensive research would be required to comprehensively provide the level of detail that these suggestions seek. The primary purpose of these regulations is to give institutions and the public effective notice as to the precautions and standards to be followed in maintaining computerized information so that the risk of unauthorized or accidental access to data which should remain confidential is minimized.

COMMENT: The University suggests modifying Section 9:2-5.3(b) to define the "statutorily authorized" persons who are entitled to access to records although they are not Department of Higher Education officials.

RESPONSE: The Department has elected not to attempt to define the term because under various laws different people might be entitled to access records containing personally identifiable information. The Department wishes to maintain its flexibility to examine and respond to each request for information on a case-by-case basis, since one person could be legitimately denied access to information that another person could obtain due to different circumstances surrounding the request.

COMMENT: The University recommends clarifying that an individual be permitted access to a record containing personally identifiable information on that individual and on someone other than himself or herself only if the other individual has provided his or her written consent to disclose the information.

RESPONSE: Section 9:2-5.6(b) has been changed to reflect this possibility.

COMMENT: The University recommends modifying these regulations to clarify that a subject be granted access to only that part of a record which pertains to him or her and not to personally identifiable data about another person where information on that person is a part of a "group" record.

RESPONSE: The Department agrees that the regulations should restrict a subject's access to that part of a computer record which contains information on that person only. Because the wording of 9:2-5.6(b) did not make the Department's position apparent, a sentence has been incorporated in 9:2-5.6(b) pursuant to the suggestion.

COMMENT: The University recommended defining the term "third party" as used in four sections of these regulations; namely, 9:2-5.7(a), 9:2-5.7(d), 9:2-5.8(c) and 9:2-5.8(e). Their recommendation was to define "third parties" as "anyone who is not an employee of the Department of Higher Education with a legitimate educational interest in having access to the information."

RESPONSE: The Department, to avoid further misconstructions, has eliminated the term from Sections 9:2-5.7(a) and 9:2-5.7(d). Also, it has added a parenthetical phrase to 9:2-5.3 to clarify the Department's intention to limit access to records containing personally identifiable information to Department of Higher Education employees with a legitimate educational interest in having access to such information—which was a second concern that the redefinition of "third party" was intended to address.

COMMENT: The University suggested allowing the institutions fifteen, rather than ten, days from receipt of edited data to review and verify it for accuracy.

RESPONSE: An increase in the time allotted for institutions to review data is reasonable, and the University's suggestion that fifteen rather than ten working days be permitted has been incorporated in Section 9:2-5.8(b).

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

SUBCHAPTER 5. MANAGEMENT OF COMPUTERIZED INFORMATION

9:2-5.1 Definitions

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

"Affected individual" means the person who is the subject of the information contained in a record.

"Chancellor" means the Chancellor of the New Jersey Department of Higher Education, also sometimes referred to in these rules as DHE.

"Computer" means an electronic device or another similar device capable of executing a computer program, including arithmetic, logic, memory or input-output operations, by the manipulation of electronic or magnetic impulses and includes all computer equipment connected to such a device.

"Data" are facts expressed in numerical form or categorical information that is encoded.

"DHE Statistical Office" is any office in the New Jersey Department of Higher Education designated by the Chancellor which maintains on a computer individualized records or record files containing personally identifiable information.

"Individualized records" are all records that contain sensitive data relating to individual students, faculty members, administrative employees or other staff.

"Institution" means an institution of collegiate level in New Jersey which is approved or licensed by the State Board of Higher Education.

"Personally identifiable information" means facts, features or traits that uniquely identify a person and includes, but is not limited to name, social security number, date of birth, place of birth, race, sex and any computer representation of these items.

"Record" shall mean a group of related facts, elements or fields of information that are treated as a unit and stored in a computer for processing.

"Sensitive data" are information that may affect a person's reputation or value in the eyes of others or that may be an invasion of privacy if disclosed. The term includes salary, income and financial status, but is not limited to these three items. Marital status ***[may also be deemed] * , ethnic identifiers, and information on academic performance including test scores are among the data that may be considered*** sensitive under some circumstances.

"Third party" shall mean any person or persons who are neither employees of the Department of Higher Education nor of any New Jersey public or independent institutions of higher education.

9:2-5.2 Compliance with Federal and State laws

(a) The records management practices of the Department of Higher Education (DHE) shall comply with all applicable State and Federal laws relating to disclosure of information.

(b) The Department of Higher Education shall protect and retain records in computerized data files that support decision making and operational functions in a manner which is consistent with State and Federal law.

(c) To the extent that anything contained in this subchapter is inconsistent with Federal law, Federal law shall prevail.

9:2-5.3 Protection of privacy rights

(a) Any personally identifiable information on records maintained by the Department of Higher Education will consist only of items required for accountability of the expenditure of public funds, legitimate reports, and research studies by the Board of Higher Education.

(b) All records containing personally identifiable information collected by the Department of Higher Education shall be protected in such a manner that affected individuals shall not be identifiable by persons other than appropriate DHE officials ***(that is, those with a legitimate need to access the information)***, and other persons who, by specific provision of law, are entitled to access to such records.

(c) The Chancellor or his designee shall not disclose to the public or any Federal, State or local agency individualized records except as required under State and Federal law.

(d) Upon written application to the Chancellor, individualized student records may be made available to statutorily authorized non-DHE staff with legitimate educational interests. Such application shall summarize the objectives of the research, methodology and projected date for completion. An agreement that the applicant will not permit any other party to have access to such information without the written consent of the student and that a report on the study results will be forwarded to DHE must be provided. Individualized records that are made available to non-DHE staff shall not contain the student's name, social security number, and zip code of home address.

(e) The Department of Higher Education shall destroy all individualized records, protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. Section 1232g, as amended, within 10 years of the record's creation or when such information is no longer necessary in connection with the audit or evaluation of any program, whichever is shorter. Other individualized records shall be destroyed in accordance with State law concerning records retention.

(f) Any organization, institution, commission or body that does not act for or on behalf of the Department of Higher Education shall be denied access to DHE files with personal identifiers for the purpose of linking subfiles to separate files maintained by external agencies unless State or Federal law so requires.

9:2-5.4 Security of computer files

(a) Record files shall reside on computers with operating security systems that allow DHE officials to explicitly control access to data records.

(b) To control the potential harm that could result from deliberate or inadvertent privacy breaches of records containing personally identifiable information, name and social security numbers shall not be maintained in the same record unless the file is principally utilized for the accountability of the expenditure of public funds.

9:2-5.5 Prevention of statistical disclosure

(a) Data will not be disseminated outside the DHE statistical offices in a form that permits the identification of data relating to any individual, unless specific provision of State or Federal law requires disclosure.

(b) When information is distributed in tabular form by DHE statistical offices the generally accepted practice of suppressing information based on fewer than three individuals shall be followed, especially when cross-classifications involve income, parental marital status or other sensitive data.

9:2-5.6 Access rights of affected individuals

(a) Specific description of the data possessed by the DHE relating to an affected individual will be provided to the affected individual upon request. Inquiries should be addressed to the Chancellor at the Department of Higher Education's offices in Trenton.

(b) Any affected individual may, upon application to the Chancellor or his designee, inspect, review or seek correction of any records of that individual maintained by the department. ***When the record which the affected individual seeks to inspect, review or correct contains information about another person or other persons, the affected individual shall only be granted access to that part of the record which pertains to him or her and unless the affected individual has obtained written consent from the other person or persons, access to the entire record will be denied.*** Copies of such records will be provided for a fee equal to the actual reproduction or computer processing costs.

(c) An affected individual shall have the opportunity for a hearing to challenge the content of the record related to that individual. The Chancellor shall designate an appropriate person to act as hearing officer. The process shall be conducted in accordance with Federal regulations (34 CFR 99.21 and 34 CFR 99.22).

(d) The Department of Higher Education shall not disclose to an affected individual the content of records related to that individual, if a waiver of access to the same records was given by the individual to a New Jersey institution of higher education pursuant to State or Federal law.

(e) The Department of Higher Education shall provide access to the records which relate to an affected individual within a reasonable period of time after receiving a request to review such records but in no case later than 30 days after the request has been made.

9:2-5.7 Accounting of certain disclosures

(a) Where the Department of Higher Education is required by State or Federal law to provide access to records containing personally identifiable information, it shall maintain a log of all individuals, agencies or organizations which have requested or obtained access to any such records indicating the legitimate interest under State or Federal law that each such person, agency, or organization has in obtaining this information. All such information transferred to ***[a third party]* *an individual, agency or organization pursuant to the requirements of State or Federal law*** shall include a written statement indicating that such ***[party]* *individual, agency or organization*** shall not permit any other party to have access to such information without the written consent of the person to whom those records relate.

(b) The Department of Higher Education shall retain the log made under (a) above for at least five years after the disclosure for which the log entry is made, or the life of the record, whichever is longer.

(c) Except for disclosures made under 20 U.S.C. Section 1232g(b)(1)(A) to teachers and other officials within the institution in which the student is enrolled, the Department of Higher Education shall make the particularized log entries under (a) above available to the individual named in the record at his request.

(d) DHE shall inform any ***[third party]* *individual, agency or organization provided information under (a) above*** about any correction or notation of dispute to any record that has been disclosed to the third party.

9:2-5.8 Modes of information release

(a) Data that has not been verified and reviewed for accuracy by the submitting institution will be considered preliminary and not subject to disclosure.

(b) Institutions will be given ***[10]* *15*** working days from receipt of edited data to verify and review it for accuracy. After the review period, or when the data has been re-edited, it will be considered final and subject to disclosure.

(c) A third party who requests that a DHE statistical office prepare data in tabular form may be assessed costs of production, including the costs of programming and computer time. When such a statistical report identifies a New Jersey institution of higher education and reveals data

about that institution's operation, a copy of the tabulations will be forwarded to the institution.

(d) Data from individualized records that New Jersey colleges furnish DHE statistical offices may not be released by telephone, except upon proper identification of the caller as someone who is entitled access to such records.

(e) Aggregate data compiled from individualized records that New Jersey institutions of higher education may furnish a DHE statistical office may be released by telephone to a third party.

1:2-5.9 Nonpublic records

(a) The following records shall not be deemed to be "public" records subject to inspection and examination and available for copying pursuant to the provisions of The Right to Know Law, N.J.S.A. 47:1A-1 et seq:

1. Any record containing accumulated grade point averages, test scores, grades or other examination data for an individual student;
2. Any record containing income for a student or parents of a student;
3. Any record containing the name or social security number of an individual;
4. Any record containing data which were made available under the condition that the information shall be considered private and confidential.

1:2-5.10 Information accessible to the public

(a) Information that characterizes a New Jersey institution of higher education and is stored as aggregate data in computers are "public" records.

(b) Access to "public" records shall be granted in accordance with all applicable Federal and State laws concerning a citizen's right to inspect and copy official records of government.

(c) All requests to obtain or copy certain "public" records shall be made in writing and shall specify under what authority the information is sought.

(d) Any denial of a written request for a copy of a "public" record shall be made in writing, within 10 business days of receipt of such request.

(e) Any person aggrieved by a decision to deny or to grant a request or access to a "public" record may request that the Chancellor review that decision.

(f) Fees for copies of "public" records may be assessed in accordance with the maximums established in State statute.

(g) Whenever any "public" record contains personally identifiable information, the release of which would constitute an unwarranted invasion of privacy or violate State or Federal law, the "public" record shall be made available with such identifying detail deleted unless release without these details would still constitute an unwarranted invasion of privacy or violate a State or Federal law. A statement indicating that identifying details have been deleted or disguised shall accompany the release of such data.

(h) Except as required by statute or directive of the Board of Higher Education, or the Chancellor, requests for information shall not require that the DHE create records by compiling selected items from already available "public" records. In addition, new records are not required to be created, in response to a request, with such information as ratios, proportions, percentages, per capita, frequency distributions, trends, correlations, comparisons or other descriptive or analytic statistics.

HUMAN SERVICES

(a)

OFFICE OF THE COMMISSIONER

County Human Services Advisory Councils and the State Human Services Advisory Council

Adopted New Rules: N.J.A.C 10:2

Proposed: September 8, 1986 at 18 N.J.R. 1777(b).

Adopted: December 4, 1986 by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: December 5, 1986 as R.1987 d.17, **without change**.

Authority: N.J.S.A. 30:1-12.

Effective Date: January 5, 1987.

Expiration Date: January 5, 1992.

Summary of Public Comments and Agency Responses:

Nineteen letters with comments were received by the deadline of October 8. Six letters solely expressed support for the new rules. The other comments are summarized as follows:

COMMENT: The original guidelines provided two options in the appointment of the County Human Services Advisory Council (CHSAC) by county government: (1) appointment by county government, (2) designation of a non-county government body to serve as the council.

RESPONSE: The Department's policy has not changed in regard to the two options. The guidelines are not intended to negate the existence of any private non profit agency or any non-county government body designated by county government to serve as the council.

COMMENT: Coordination and joint planning must be accomplished at the state level in order to effect consolidation.

RESPONSE: The Department supports coordinated, joint planning and service delivery on a department as well as on a county level and are taking steps to achieve this end. This regulation refers to local planning efforts.

COMMENT: Concerns were expressed, particularly from the Mental Health Boards, regarding the role and scope of the CHSACs in relation to other local planning bodies.

RESPONSE: These guidelines are intended to legitimize a process which has been operational since 1983. Although the Department supports joint, coordinated, and comprehensive planning, the functional scope of the CHSACs do not negate or usurp the authority or responsibilities of other planning bodies mandated by legislation, regulation or freeholder resolution.

COMMENT: Funding for mental health services would be threatened and services to the severely mentally ill would be negatively impacted if recommendations were made directly by the CHSAC.

RESPONSE: These guidelines do not abrogate the role and responsibility of the mental health boards in planning for and making funding recommendations for mental health services.

COMMENT: The advisory nature of the CHSACs to county government should be underscored.

RESPONSE: The CHSACs, since their inception, have always served in an advisory capacity to county government.

COMMENT: Adoption of the guidelines should be delayed to allow for further study.

RESPONSE: The Department disagrees, on the basis that the guidelines as written have been successfully operative since 1983.

COMMENT: The review, monitoring, or evaluation of contracts should be the sole responsibility of the funding source.

RESPONSE: The funding source has the responsibility to review, monitor and evaluate contracts. However, CHSACs are requested to review contracts in order to carry out their responsibility to make informed recommendations for contract renewal.

COMMENT: The CHSAC primary function should be one of advocacy.

RESPONSE: The Department disagrees, in that the primary focus of the CHSACs are to provide an ongoing forum for public input and participation in Department decision making and resource allocation on a county level. Advocacy should be one of the functions in relation to identified client needs, as developed through the comprehensive planning process.

COMMENT: The present composition of the CHSACs and eligibility requirements are in need of study. Provider representation on the CHSAC presents a real potential for conflict of interest. Consumer membership should be increased.

RESPONSE: The Department elects not to change the present membership requirements at this time. The present requirement of no more than 49 percent provider representation insures at least 25 percent consumer representation, half of which must be former or current recipients of service, on the CHSAC. The parameters of the membership requirements represent a revision instituted in 1984, subsequent to public comment. Since that time, the constituency has produced effective planning bodies throughout the state. In addition, each council instituted a conflict of interest policy in their bylaws.

COMMENT: The CHSAC funding priorities may depend on which members have the most influence.

RESPONSE: Priorities are identified on the basis of county comprehensive plans, which are developed with significant community input. In addition, the Department Representatives closely monitor the activities of the CHSACs to insure their objectivity, especially in making funding recommendations.

COMMENT: It is essential that meetings be held after work or on weekends.

RESPONSE: Meetings are held at a time which is accommodating to the membership of each individual council. Overall attendance has not been problematic.

COMMENT: The proposed rule for the CHSACs lacks specificity and clarity.

RESPONSE: The guidelines were developed to provide a basic structure, as well as to allow for a degree of flexibility, in order to respond to the differences inherent within each of the counties.

COMMENT: CHSAC activities should consist of activities mutually agreed upon in Annex A of the CHSAC contract and not as it relates to projects assigned by the Department of Human Services.

RESPONSE: Annex A of the CHSAC contract, which is negotiated with the CHSACs, presently includes the provision "assignment of projects by the Department of Human Services." The contract is written to allow for flexibility in the implementation of mutually agreed upon assignments.

COMMENT: Concerns were expressed regarding the statement in N.J.A.C. 10:2-1.4 indicating that other human services planning or advisory groups may function as satellites or subcommittees of the CHSAC with a member of the existing group sitting on the CHSAC.

RESPONSE: This section is not meant to imply that other county planning bodies or advisory groups should be subsumed by the CHSAC as satellites or subcommittees. This section should not be interpreted as a change in the existing interrelationships between county planning bodies. Any such change would be made under direction of county government or the sponsor funding agent.

COMMENT: The membership of the State Human Services Advisory Council (SHSAC) should be required to include comprehensive consumer representation and should also be representative of the population of the State. The membership of the SHSAC should mirror the demographics and service requirements placed on the CHSACs and should include at least one representative of county government that should be designated by the New Jersey Association of Counties and its affiliate, the Association of County Human Services Directors.

RESPONSE: The Department elects not to change the membership requirements of the SHSAC. The purpose, scope and activities of the SHSAC are different from that of the County Human Services Advisory Councils and thus its membership requirements reflect this difference. Due to its statewide focus, and in its capacity as a high level advisory body to the Commissioner of the Department, membership categories were developed to meet the information needs, and represent the clientele of, the Department. In addition, these requirements were developed to allow involvement from the broadest possible community of human service interests and leadership necessary for statewide policy, legislative and budgetary review, while at the same time, maintaining a workable membership size. Additionally, it has been the policy of the Department, and the SHSAC, that no organization, committee, or agency have sanctioned representation. It should be noted, however, that there has been at least one member from county government (a county freeholder) in an at large capacity on the Council since its inception in 1984.

COMMENT: The SHSAC membership requirements for CHSAC Chairpersons should be amended to state that in the absence of the chair of the CHSAC, their designee has voting privileges.

RESPONSE: The Department, in keeping with a process voted upon by the SHSAC in March 1985, elects not to amend the guidelines. Currently, any person asked by a SHSAC member to attend a meeting in their absence is not authorized by the SHSAC to vote as a proxy. The present SHSAC policy, however, allows the CHSACs greater latitude. A CHSAC may vote to elect, and send to full SHSAC meetings, an official representative of that body in the regular absence of the Chair. This policy was established to allow the CHSACs the ability to choose, and be knowledgeable of, the individual voting on recommendations on their behalf.

COMMENT: All meetings of the SHSAC should be advertised and opened to the public.

RESPONSE: The SHSAC was established as an advisory body. As such, the meetings are not subject to the requirements of the Open Public Meetings Law.

Full text of the adoption follows.

CHAPTER 2 COUNTY HUMAN SERVICES ADVISORY COUNCILS AND THE STATE HUMAN SERVICES ADVISORY COUNCIL

SUBCHAPTER 1. COUNTY HUMAN SERVICES ADVISORY COUNCILS

10:2-1.1 Purpose and Scope

(a) County Human Services Advisory Councils are appointed by the government of each county to review county-level human service activities and to serve as the primary vehicle for local public input into New Jersey Department of Human Services' decision making.

(b) County Human Services Advisory Councils' activities include but are not limited to:

1. Review and comment on human service proposals;
2. Preparation of allocation plans;
3. Review of existing purchase of service contracts; and
4. Coordination and consolidation of the local human services delivery systems.

(c) County Human Services Advisory Councils shall be comprised of providers and consumers of human services and shall be generally reflective of the demographic characteristics of their respective county populations.

(d) The functioning of the Councils shall be evaluated annually for the period January 1 to December 31, by the Department Representative to assess the functioning of the Councils as it relates to the projects assigned by the Department of Human Services, and to ensure that they are a broad-based, representative body within their community, as required in N.J.A.C. 10:2-1.3.

10:2-1.2 Definitions

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

"Consumer" means a person who is, or has been, a recipient of public or private human services; or, a recipient's family member (that is, a parent, guardian, or sibling); or a consumer advocate (that is, a concerned citizen, volunteer, or member of an advocacy group).

"Contracting process" means the written action by which the New Jersey Department of Human Services enters into a written agreement with the Human Services Advisory Councils to perform specific levels of service, planning objectives, and to receive funding as set forth by the Department.

"Department" means New Jersey Department of Human Services.

"Department representative" means the individual employed by the New Jersey Department of Human Services who is responsible for serving as the Department's policy representative to County government, providers, and consumer groups. This person is also responsible for the overall management of a coordinated County-based Human Services system, which consists of multiple private and public social service agencies and programs.

"Minority interest" means interested members of major minority groups such as the aged (over 60), females, blacks, or Hispanics.

"Target" populations means those populations currently under the purview of the New Jersey Department of Human Services, such as children, family and adult services, mental health, developmental disabilities, low income and/or public assistance recipients, veterans, blind and vision impaired, disabled elderly, and other disabled and underserved populations.

10:2-1.3 Membership requirements

(a) County Human Services Advisory Councils shall contain the following membership for certification by the Department.

1. Public and Private: Provider Representation Councils shall be comprised of both public and private human service providers. Provider membership shall not exceed 49 percent of the total membership. Representation shall include:

- i. County freeholder or county executive, or a designee;
- ii. The county welfare agency director or designee;
- iii. The county Division of Youth and Family Services District Office Manager, or another Division of Youth and Family Services designee;
- iv. The Department of Human Services Department Representative as an ex-officio, non-voting member; and
- v. State representatives, as indicated by the meeting agenda, of the Divisions of Youth and Family Services, Public Welfare, Medical Assistance and Health Services, Veterans Programs and Special Services, Mental Health and Hospitals, Developmental Disabilities, and the Commission for the Blind and Visually Impaired. Participation by these departmental employees shall be in an ex-officio, non-voting, capacity. The

Department Representative shall be responsible for ensuring coordination and participation from these divisions when necessary.

2. Consumer Representation: Consumer participation shall be at least 25 percent of the total membership. Current or former recipients of service shall constitute one-half of consumer membership. Consumers shall represent a cross-section of the human services community, as described in 4 below.

3. Demographic Representation: The CHSAC shall reflect a county's demographic make-up in terms of age, ethnicity and sex, according to the latest census data. Minority interests must be proportionate to the minority composition of the county. Where other minorities represent a high proportion of the population counties shall recognize this in council composition.

4. Target Population Representation: County Human Services Advisory Councils shall be representative of target populations and service areas.

5. Non-Human Services representation, may include Employment, Elderly (Area Agency on Aging), Health (county and local health officer), Substance Abuse, Education Community Action Program, Legal Aid, and Vocational Rehabilitation.

6. Voluntary sector representation: May include private planning councils for example, United Way who are major donors or funders of local human services.

7. Major geographic sub-divisions (for example, cities) should be encouraged to participate in County Human Services Advisory Councils.

8. Juvenile Justice Representative should include a representative of the County Youth Services Commission as a voting member of the County Human Services Advisory Council.

9. Other Representation should include those representatives who the county believes would provide a valuable contribution to human services planning (for example, labor union, private business, foundation).

10:2-1.4 Relationship to other county advisory groups

In its relation to other county advisory groups, the County Human Services Advisory Council shall be the principal human services advisory body. Other human services related planning or advisory groups may function as satellites or subcommittees, with a member of the existing group sitting on the County Human Services Advisory Council.

10:2-1.5 Required subcommittees

(a) Each County Human Services Advisory Council shall establish a Comprehensive Emergency Assistance System (CEAS) Committee as a standing subcommittee. This standing subcommittee, which shall serve as the primary vehicle for insuring the delivery of emergency food and shelter within a county, shall:

1. Maintain and annually update a comprehensive county plan for homeless individuals and families;

2. Develop resource allocation plans for State of New Jersey appropriations of funds for homeless families and individuals; and

3. Maintain a core membership standard and include, at a minimum, but not be limited to: County Welfare Agency Director (as chairperson) or a designee of his/her choice; County Department of Human Services Representative; a Division of Youth and Family Services and Division of Mental Health and Hospitals Representative; a representative from the municipal welfare sector; public and private not-for-profit provider agencies serving the homeless population, and consumers of emergency food and shelter services; and/or consumer advocacy organizations. Other State Department representatives (that is, Departments of Community Affairs, Health and Labor), and private planning councils (that is, United Way) should be strongly encouraged to coordinate related services through participation on the CEAS Committee.

10:2-1.6 Waiver requests

Membership requirements may be waived by the Department. Waiver requests shall be presented in writing from the County Human Services Advisory Council to the Department representative. Waiver requests which violate the policy goal of protection of vulnerable and disabled populations shall not be approved.

10:2-1.7 Minimum procedural requirements

(a) County Human Services Advisory Councils shall:

1. Have a clearly identified structure and operational procedures specified in by-laws, including an appeals process and conflict of interest policy. The appeals process should, at a minimum, be sent to each applicant agency responding to a CHSAC's Request for Proposal for Department of Human Services funding. The appeals committee should consist of membership that is separate from those who participated in the agency review and allocation process. Each CHSAC should have a

written conflict of interest policy. At a minimum, this policy should preclude CHSAC members from voting or using their membership to influence council decision making on the funding or programs for which they are employed, serve as a board member or have a financial interest;

2. Be fully representative of their local human services community; and,

3. Maintain liaison with other related planning and/or advisory groups.

10:2-1.8 Minimum Planning Requirements

(a) County Human Services Advisory Councils shall:

1. Complete a needs assessment of their county, identifying the human service needs and resources available to meet those needs;

2. Develop programmatic and resource allocation objectives consistent with county needs and state policy;

3. Develop a recommended action plan to achieve goals and objectives;

4. Provide public review of the proposed plan;

5. Submit a recommended plan to county government and the Department of Human Services.

6. Utilize the comprehensive human services plan to coordinate major provider functions, and to facilitate an integrated county-wide social services delivery system. In addition, CHSACs should integrate related human service plans.

7. Update the comprehensive human services plan, and other related plans as required pursuant to guidelines provided by the New Jersey Department of Human Services. (Guidelines for Family Court Services Plan 1987-1990; Guidelines for the Comprehensive County Plan for the Homeless for Fiscal year 1987; Minimum Comprehensive Planning Guidelines for Counties/Standardized Planning Formats for Counties.)

8. Maintain a contract review process for all Purchase of Service contracts funded through the Human Services Advisory Council allocation recommendation process, to determined continued compliance with comprehensive human services plan priorities and assess qualitative aspects of the contracts. Recommendation shall be submitted to the area regional office of the contracting Division and, when appropriate, to county government and other funding sources.

9. Ensure ongoing compliance with Department rules regarding by-laws, representative council membership, minimum attendance requirements for members, selection of standing committees, and contract and reporting requirements.

10. Maintain an allocation process, which at a minimum, includes a request for proposals, a proposal review process, an appeals process, and conflict of interest policy. County Human Services Advisory Councils must prepare allocation plans based on Department and county priorities. The plans shall be communicated to the Department Representative.

SUBCHAPTER 2. STATE HUMAN SERVICES ADVISORY COUNCIL

10:2-2.1 Purpose and scope

(a) The purpose of the State Human Services Advisory Council is to provide a forum for public leaders to have input into New Jersey Department of Human Services policy on statewide human services issues and to work with the New Jersey Department of Human Services toward the achievement of statewide human services goals.

(b) The State Human Services Advisory Council shall be organized to:

1. Respond and react to information received from the New Jersey Department of Human Services;

2. Communicate and share such information with the County Human Services Advisory Council and the human services community at large;

3. Share the community response with the Department and;

4. Identify statewide trends and priorities and share with the Department.

10:2-2.2 Membership requirements

(a) The State Human Services Advisory Council shall consist of:

1. Twenty at-large members who are recognized leaders in human services and who represent a wide and varied cross section of the human services community statewide;

2. The Chairpersons of the 21 County Human Services Advisory Councils or a representative officially designated by the Council Human Services Advisory Council to vote and attend regular meetings;

3. Eighteen non-state employees representatives designated by the Divisions of Public Welfare, Youth and Family Services, Developmental Disabilities, Mental Health and Hospitals, Medical Assistance and Health Services, Veterans Programs and Special Services, and the Commission for the Blind and Visually Impaired. The 18 representatives may be members of a Division Advisory Group.

4. Representatives from various State of New Jersey Departments and Committees who are non-voting members, including not limited to the Governor's Committee on Children's Services Planning and the Departments of Health, Education, Labor, Corrections, Community Affairs, and the Public Advocate.

10:2-2.3 Administration

(a) The Chairperson of the State Human Services Advisory Council shall be selected by the Commissioner of the Department and shall serve at the discretion of the Commissioner.

(b) The State Human Services Advisory Council shall meet at least quarterly throughout the year.

(c) The State Human Services Advisory Council shall be staffed by employees of the Department. Resources and assistance to the Council will be provided by the Department.

10:2-2.4 Standing Committees

(a) The Chairperson of the State Human Services Advisory Council and the Commissioner of the New Jersey Department of Human Services shall establish such standing committees and ad hoc committees as are required to carry out the goals of the Council. The chairperson and the commissioner shall determine size, membership and mandate of each committee.

(b) The State Human Services Advisory Council shall have, at a minimum, the following four standing committees:

1. Executive Committee: Composed of the Chairperson and the standing committee chairpersons, as well as the chairperson of any ad hoc committee or task force. This committee is responsible for setting the agenda of each full State Human Services Advisory Council meeting. Other responsibilities include but are not limited to the proposal of guidelines for the management of SHSAC and committee meetings, the review of recommendations for membership which are forwarded to the Commissioner of the Department of Human Services, and the provision of direction for the overall administration of the State Human Services Advisory Council.

2. Legislative and Policy Committee: Responsibilities include but are not limited to:

- i. The development of a mechanism for channeling support of important human service legislation and policy; and
- ii. The proposition of recommendations regarding future human service legislation and policy.

3. Operations Committee: Responsibilities include but are not limited to:

i. An ongoing review of the interrelationships of Department of Human Services' Divisions and other State of New Jersey Departments with the intent of channeling any problems, concerns or ideas for improvement to the Commissioner of the Department of Human Services; and

ii. Identification and communication of problems or issues relating to the implementation of Department of Human Services policy on local communities and/or clients.

4. Finance and Budget Committee: Responsibilities include but are not limited to:

i. The development of a mechanism for channeling support of important human services funding initiatives (that is, Department of Human Services fiscal year budget and/or supplemental appropriations); and

ii. The identification of issues surrounding the acquisition, allocation and implementation of funding and/or contracts, and the identification and possible recommendation of instruments which would ease statewide human services financial circumstances.

(a)

OFFICE OF THE COMMISSIONER

Referral of Handicapped Students for Adult Educational Services

Adopted New Rule: N.J.A.C. 10:12-3

Proposed: October 6, 1986 at 18 N.J.R. 1997(a).

Adopted: December 2, 1986, by Drew Altman, Ph.D.,
Commissioner, Department of Human Services.

Filed: December 3, 1986 as R.1987 d.13, **without change**.

Authority: N.J.S.A. 30:1-12; N.J.S.A. 18A:46-18.2 et seq. (P.L. 1986, c. 32).

Effective Date: January 5, 1987.

Operative Date: March 1, 1987.

Expiration Date: January 5, 1992.

Summary of Public Comments and Agency Responses:

The Department of Human Services afforded all interested persons the opportunity to comment on the proposed new rule concerning the referral of handicapped students for adult educational services. Announcement of this opportunity to comment was given in the *New Jersey Register* on October 6, 1986. Announcements were also forwarded to each state facility within the Department of Human Services. The following comments were received from three individuals.

COMMENT: There is no specific mention of the community agencies to which the students may be referred.

RESPONSE: As indicated, the referral process will identify and recommend appropriate educational programs operated or approved by the Department of Human Services, Department of Education or other agencies. The nature and variety of existing programs will be examined to ascertain the current level of services available and develop recommendations to address the programmatic needs of these students.

COMMENT: Will these particular rules concern only the process for continuing a student who has reached the age of 21 and continues to need educational services?

RESPONSE: The referral process will be initiated at the age of 18 to determine whether the student will need educational services after the age of 21.

COMMENT: There is no indication of how this process will affect those facilities whose clients are admitted for an indefinite, temporary or short period of time.

RESPONSE: Time limits will be established in divisional policies and procedures, where the unique situations presented by the clients in individual state facilities will be acknowledged.

COMMENT: Is the timing and referral process feasible, or will they need to be separated because both cannot be satisfied if the evaluation starts at the last possible time?

RESPONSE: Divisional policies and procedures will be developed which will require that the evaluation process be initiated in sufficient time to allow for the evaluation and notification "no later than" six months before the students attains the age of 21.

Full text of the adoption follows.

CHAPTER 12
REFERRAL OF HANDICAPPED STUDENTS FOR
ADULT EDUCATIONAL SERVICES

SUBCHAPTER 3. GENERAL PROCEDURES

10:12-3.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Age 21" means the attainment of the 21st birthday before July 1

"Learning disability teacher consultant" means an individual who possesses a learning disability teacher consultant certificate issued by the New Jersey Department of Education.

"Multidisciplinary treatment team" means an evaluation team consisting of a psychologist; a learning disability teacher consultant; a social worker and any other professional who may be involved in the evaluation or treatment of a child in a State facility.

"Psychologist" means an individual who possesses a school psychologist certificate issued by the New Jersey Department of Education.

"Relevant information" means that information in the possession of and used by the multidisciplinary treatment team to ascertain the physi

cal, mental, emotional and cultural-educational factors which contribute to the child's handicapping condition, including but not limited to:

1. Results of physical and psychological examinations performed by private and school district physicians and psychologists;
2. Relevant information presented by the parent or legal guardian and teacher;
3. School data which bear on the child's progress including the child's most recent individualized education program;
4. Results of the most recent examinations and evaluations performed; and
5. Results of other suitable evaluations and examinations possessed by the team.

"Social worker" means an individual who possesses a school social worker certificate issued by the New Jersey Department of Education.

"State facility" means a state facility for the retarded; a day training center which is operated by or under contract with the state and in which all the children have been placed by the state including a private school approved by the Department of Education which is operated under contract with the Bureau of Special Residential Services in the Division of Developmental Disabilities in the Department of Human Services; a state residential youth center; a state training school or correctional facility; a state child treatment center or psychiatric hospital.

"Student" means those individuals between the ages of 18 and 21 years, residing in a state facility which is operated by, or under contract with the state, who have not received a high school diploma and who have been determined eligible for special education.

10:12-3.2 Referral process

(a) The multidisciplinary treatment team at a state facility shall provide written notice to the parent or legal guardian of a student who is placed in a facility when the student attains the age of 18, or, if the student is over the age of 18 when placed in a facility, that the student is not entitled to receive tuition free education services after the age of 21.

1. Written notice shall describe in detail the parent's or guardian's opportunity to consent to having the student's name or other relevant information forwarded in a report to the Office of Education in the Department of Human Services and the Commissioner of Human Services for the purpose of determining whether the student will likely need educational services after the age of 21 and, if so, recommending possible adult educational services consistent with N.J.A.C. 6:28.

(b) The multidisciplinary treatment team shall be composed of those State facility professionals routinely involved in the educational evaluation of school-age students.

1. The multidisciplinary treatment team shall evaluate students no later than six months before the student attains the age of 21.

2. The multidisciplinary treatment team shall act in consultation with any other professional staff member(s) or consultant(s) deemed appropriate by the multidisciplinary treatment team.

(c) Upon the written consent of the parent or legal guardian, the multidisciplinary treatment team shall forward the student's name and other relevant information in a report to the Office of Education, Department of Human Services, for the development of a recommendation for adult educational services. A copy of this report shall be forwarded, by the Office of Education, to the Commissioner of Human Services and the Commissioner of Education.

(d) The report shall contain such information as defined in N.J.A.C. 6:28, which contributes to the evaluation of the student's handicapping condition, including, but not limited to:

1. Results of physical and psychological examinations;
2. Relevant information presented by the parent or legal guardian and teacher;
3. Most recent individualized education plan;
4. Results of most recent examinations and evaluations performed.

(e) The multidisciplinary treatment team is not required to perform any examinations or evaluations not otherwise required by law.

(f) The Office of Education, Department of Human Services, in consultation with the Commissioner of Education or his designee, shall determine whether a student may need adult educational services and, if the need exists, shall recommend appropriate educational programs operated or approved by the Departments of Human Services and Education which may be available when the student attains the age of 21.

(g) The Commissioner of Human Services may conduct an additional evaluation of the student to determine if adult educational services will be needed.

(h) The program recommendations for each individual student shall be made available to the parent or guardian of the student no later than six months before the student attains the age of 21.

(i) If it is determined that a student will not require educational services beyond the age of 21, the Commissioner of Human Services, or his designee, shall notify the student's parent or guardian, in writing, of the determination no later than six months before the student attains the age of 21.

(j) The Office of Education, Department of Human Services, shall compile and submit an annual report to the Departments of Human Services and Education on October 1, 1987 and thereafter on or before October 1 of each year.

1. The annual report shall contain the number of cases submitted to the Office of Education and the type and severity of the handicapping condition involved in each case.

2. The annual report shall not contain any information which particularly identifies a student.

(k) N.J.A.C. 1:1-1.1 et seq. requires that issues in dispute determined to be contested matters by the Division Director (that is, agency head) shall be referred for an Administrative Hearing by the Office of Administrative Law.

(l) N.J.A.C. 10:6-2.1 provides that disputed matters determined to be non-contested shall be entitled to review only at the discretion of the Division Director and to the extent that such is consistent with Federal and State Law.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

(a)

Pharmaceutical Services Manual Appendices B, C

Adopted Amendment: N.J.A.C. 10:51-1, Appendices B, C

Proposed: September 8, 1986 at 18 N.J.R. 1780(a).

Adopted: November 26, 1986, by Drew Altman, Ph.D.,
Commissioner, Department of Human Services.

Filed: November 26, 1986 as R.1987 d.7, **with substantive changes**
not in violation of N.J.A.C. 1:30-4.3.

Authority: N.J.S.A. 30:4D-6b(6), g(1)(2), 7, 7a, 7b, 7c, 30:4D-22, 24.

Effective Date: January 5, 1987.

Expiration Date: October 28, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Changes between Proposal and Adoption:

The Division is deleting three drugs and drug products from Appendix B. The three products are Betadine Vaginal Gel, Bronkoxir, and Tedral Suspension. The first product appeared in the proposal; the other two products (Bronkoxir and Tedral Suspension) are being deleted upon adoption.

The reason for the deletion is that these three products have been placed on the DESI (Drug Efficacy Study Implementation) list by the Federal Food and Drug Administration (FDA). Pursuant to N.J.A.C. 10:51-1.14, the Division of Medical Assistance and Health Services is precluded from paying for drugs and/or drug products that appear on the DESI list.

Full text of the adoption follows (deletions from proposal are indicated in brackets with asterisks *[thus]*).

SUMMARIZED LISTING OF DRUG ADDITIONS APPENDIX B

General Non-Legend

PRODUCT	SIZE	R.U.	NDC
Anafed Syrup	120cc	CC	0000642-0091-04
Apatate Liquid	120cc	CC	0000482-0130-13
Betadine Douche	240cc	EACH	0000034-2320-80
Betadine Ointment	30gm	EACH	0000034-2340-10
Betadine Skin Cleanser	120cc	EACH	0000034-2350-40
Betadine Solution	240cc	EACH	0000034-2100-80
Betadine Solution	480cc	EACH	0000034-2100-88
[Betadine Vag. Gel	90gm	EACH	0000034-2371-30]
Citruclol Fiber Laxative	480gm	EACH	0000068-0418-16

Citracel Fiber Laxative	900gm	EACH	0000068-0418-30
Delsym Liquid	90cc	CC	0000045-0288-03
Dermacort Lotion 0.5%	120cc	EACH	0000032-6006-74
Duolube Ointment	3.5gm	EACH	0000451-2020-38
Gastrolyte Packets	6	EACH	0000075-2900-06
Murocel Solution	15cc	EACH	0000451-3510-85
Muro Tears Solution	15cc	EACH	0000451-3515-85
Naldecon-DX Adult Liq.	120cc	CC	0000015-5668-40
Naldecon-DX Ped. Drops	30cc	EACH	0000015-5667-30
Naldecon-DX Child Syrup	120cc	CC	0000015-5663-40
Pediacare Drops	15cc	EACH	0000045-0286-15
Penntuss Susp.	480cc	CC	0000018-0818-67
Refresh Artificial Tears	30cc	EACH	0000023-0506-01
Salinex Nasal Drops	15cc	EACH	0000451-4500-85
Salinex Nasal Mist	50cc	EACH	0000451-4500-50
Tempra Chewable	30	TAB	0000087-0738-01
Ze Caps	60	CAP	0000642-0101-60

Diabetic Testing Material

PRODUCT	SIZE	R.U.	NDC
Autolet Combo Pac (USI)		EACH	0000999-3100-01
Autolet Kit (USI)		EACH	0000999-3000-01
Autolet Lancets (USI)	200	EACH	0000999-3300-01
Autolet Platforms Orange (USI)	200	EACH	0000999-3600-01
Autolet Platforms Yellow (USI)	200	EACH	0000999-3500-01
BiLi-Labstix SG Reagent Strips	100	EACH	0000193-2742-21
Glucostix Reagent Strips	50	EACH	0000193-2627-50
Glucostix Reagent Strips	100	EACH	0000193-2628-21
Multistix 10 SG Reagent Strips	100	EACH	0000193-2300-21
Multistix 9 SG Reagent Strips	100	EACH	0000193-2302-21
Multistix 9 Reagent Strips	100	EACH	0000193-2301-21
Multistix 8 Reagent Strips	100	EACH	0000193-2304-21
Multistix Reagent Strips	100	EACH	0000193-2820-21
N-Multistix Reagent Strips	100	EACH	0000193-2829-21
N-Multistix SG Reagent Strips	100	EACH	0000193-2740-21
N-Multistix-C Reagent Strips	100	EACH	0000193-2862-21
N-Uristix Reagent Strips	100	EACH	0000193-2854-21
Trendstrips Reagent Strips	25	EACH	0000503-2526-05
Trendstrips Reagent Strips	50	EACH	0000503-5026-05
Unilet Lancets (USI)	200	EACH	0000999-3400-01
Uristix 4 Reagent Strips	100	EACH	0000193-2307-21

SUMMARIZED LISTING OF DRUG CHANGES
APPENDIX B

General Non-Legend Drugs

PRODUCT	CHANGE
Balneol Lotion	0000032-1960-70
Bonine Tabs	0000662-2010-66
[Bronkolixir 480 cc	CC 0000024-1004-16]
Conar Expectorant	0000029-1749-34
Conar Liquid Susp/Sugarless	0000029-1739-34
Conar-A Tabs	0000029-1729-30
Demazin Syrup	0000085-0513-01
Demazin Tabs	0000085-0751-04
Dimacol Capsules	0000031-1652-63
Dimacol Liquid	0000031-1662-25
Dulcolax Tabs	0000597-0012-00
Fiogesic Tablets	0000078-0225-05
Isopto Frin	0000998-0406-15
Kolantyl Wafers	0000068-0387-36
Liquifilm Tears	0011980-0025-15
Liquifilm Tears	0011980-0025-30
Mol-Iron Tabs	0000085-0297-02
Mol-Iron Tabs W/Vit C	0000085-0418-02
Mycitracin Oint	0000009-0700-04
Mycitracin Oint	0000009-0700-05
Mylanta II Liq	0000038-0652-12
Mylanta II Tabs	0000038-0651-60
Neo-Calglucon	0000078-0056-33
Neo-Synephrine .125%	0000024-1345-05
Neo-Synephrine .25%	0000024-1347-05
Neo-Synephrine .5%	0000024-1351-05
Neo-Synephrine 1%	0000024-1355-05
[Tedral Suspension 480 cc	CC 00000710-2237-23]
Theragran Tabs	0000003-0141-50
Unicap Senior	0000009-3340-01

Unicap Tabs	0000009-3342-01
Unicap-M Tabs	0000009-3336-01
Unicap-T Tabs	0000009-3338-01
Ursinus Inlay Tabs	0000043-0109-51

PRODUCT NAME

Sudafed 12-Hour Caps	0000081-0876-40
Diabetic Testing Materials	0000193-2128-01
Clinitest Reagent Set Pkg	
Clinitest Reagent Tabs 36*	0000193-2127-36
Clinitest Reagent Tabs	
(2-Drop Method) 36*	
Clinitest Reagent Tabs 100*	0000193-2126-21
Clinitest Reagent Tabs 100*	
Without Child Resistant Closure	

*Products have been combined as a single package and bear the NDC indicated.

SUMMARIZED LISTING OF DRUG CHANGES
APPENDIX C

PRODUCT	CHANGE
Insulin, U100 Micro-fine	
1/2cc Lodose	0000293-8465-01

(a)

Long Term Care Services Manual
Cost Study, Rate Review Guidelines and Reporting
System—Peer GroupingAdopted Amendments: N.J.A.C. 10:63-3.2, 3.4, 3.5,
3.6, 3.8, 3.10 through 3.15, 3.17, 3.18, 3.19

Proposed: February 3, 1986 at 18 N.J.R. 257(a).

Adopted: November 26, 1986 by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: November 26, 1986 as R.1987 d.6, **without change**.

Authority: N.J.S.A. 30:4D-6a(4)(a), b(14), 7, 7a, 7b, 7t.

Effective Date: January 5, 1987.

Expiration Date: November 29, 1989.

Summary of Public Comments and Agency Responses:

There were several comments on the proposal. The commentators, who included administrators of governmental long-term care facilities (LTCFs), supported the proposal. James E. Cunningham, President, New Jersey Health Care Facilities, suggested a better approach would be to establish a separate reimbursement rate for all patients who require more intense care regardless of whether they reside in a governmental or private LTCF. The Division's response is that the rule is being adopted without change in order to establish the governmental peer grouping system for state and county administered LTCFs, in accordance with recently enacted legislation.

Summary of Changes between Proposal and Adoption:

There is no change in the text of the rule upon adoption. However, the Division wishes to expand the summary statement and amend the economic impact statements that appeared with the proposal.

The summary referred to New Jersey Assembly Bill 3811. The Bill has been enacted into law as L. 1985, c. 474, and codified as N.J.S.A. 10:4D-7t.

The economic impact statement contains a sentence which indicates a portion of the additional federal dollars will be used by the counties to provide expanded home-based care services. The words "federal dollars" should be deleted from this sentence. The word "savings" should be added so that the sentence now reads as follows: A portion of the additional savings will be used by the counties to provide expanded home-based care services.

Full text of the adoption follows.

10:63-3.2 Rate components

(a) The prospective rates will be "screened" CFA rates per day calculated by applying standards and reasonableness criteria ("screens") for two classes of LTCFs:

1. Class I Proprietary and Voluntary LTCFs;
2. Class II Governmental LTCFs;

i. To qualify as a Class II Governmental LTCF, the LTCF must meet all of the contractual requirements of the Division of Medical Assistance and Health Services and be a governmental operation.

(b) The "screens" will be applied to the following five rate components as identified on reporting Schedule A:

1. Raw Food Costs;
2. General Service Expenses;
3. Property-Operating Costs;
4. Patient Care Expenses;
5. Property-Capital Costs (including return on investment).

(c) (No change in text.)

(d) (No change in text.)

i. (No change.)

i. (No change.)

(1) (No change.)

(2) Which has an equity interest of 10 percent or more in any business entity which is related by the definition in (d)ii(1) above or which has an equity interest of 10 percent or more in any business entity related by (d)ii(2) of this section; or

(3) (No change.)

ii. (No change.)

(1) (No change.)

(2) Who has a beneficial interest of 10 percent or more in an entity related by (d)ii(2) or (3) above; or

(3) Who is a relative of an individual who is related by definition (d)iii(1) or (2) above;

(4) Beneficial interest is cumulative, if it relates to spouse, parent or children.

(e) (No change in text.)

10:63-3.4 Raw food costs

(a) (No change.)

1. Governmental LTCFs which provide their own food service and which had over 20 percent Medicaid patient days in the base period will be ranked separately and the reasonableness limit will be set at 120 percent of their median cost per day.

(b) (No change.)

(c) For LTCFs above this limit, the excess of actual raw food costs will be added to other general service expenses and subjected to a screen of the combined total as described in N.J.A.C. 10:63-3.5. Accordingly, a credit may be applied to excess raw food costs if non-food general service costs are below the reasonable limit. Any such credit is limited to the amount of raw food cost excess.

10:63-3.5 General service expenses

(a) For purposes of screening reported base period costs, the general services category will be segregated into the following cost components:

1.-4. (No change.)

i. Reasonableness limits will be developed for each of these components of cost. Reimbursement rates will include the lower of actual costs or reasonable limits developed for each component. No trade-offs among cost components will be allowed with the exception of raw food (see N.J.A.C. 10:63-3.4).

(b) (No change.)

1. (No change.)

2. Administrator: Reasonable compensation of unrelated administrators as determined by the regression analysis formula utilized by the Department of Health, Division of Facilities Rate Setting.

i.-iv. (No change.)

3.-4. (No change.)

5. Reasonableness limits for the other general services category will be established at:

i. 105 percent of median costs as reported by proprietary and voluntary facilities which had over 20 percent Medicaid patient days, and
ii. 105 percent of median costs as reported by governmental facilities which had over 20 percent Medicaid patient days.

6. The level of reasonableness for legal fees will be established at:
i. 250 percent of median costs of proprietary and voluntary facilities which had over 20 percent Medicaid patient days or that per diem value which recognized no greater than 80 percent of reporting proprietary and voluntary long term care facilities which had over 20 percent Medicaid days, and
ii. 250 percent of median reported costs of governmental facilities which had over 20 percent Medicaid patient days or that per diem value which recognizes no greater than 80 percent of reporting governmental long term care facilities which had over 20 percent Medicaid days.

7.-8. (No change.)

10:63-3.6 Property-operating expenses

(a) Property operating expenses include property taxes and utilities.

1. (No change.)

2. For this purpose, reasonable plant square feet (and related property taxes) for voluntary and proprietary LTCFs will be determined as follows:

i. (No change.)

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

(A) Reasonable plant square feet for governmental LTCFs will be determined separately as in N.J.A.C. 10:63(a)1. above.

ii. (No change.)

iii. The reasonableness limit for each LTCFs plant square feet will be established at 110 percent of the norm for its class and licensed beds. (See N.J.A.C. 10:63-3.10) for LTCFs with residential or sheltered care patients.)

3. (No change.)

4. For LTCFs whose Department of Transportation (D.O.T.) appraised value per plant square foot is greater than 110 percent of the median construction costs at 1977 price levels, the property taxes attributable to the excess will be excluded from the rate base unless the owners can demonstrate unusual circumstances. For screening new LTCFs, this figure will be revised each year for inflation and for effects of standards changes upon construction cost. (See N.J.A.C. 10:63-3.10 for the methodology for calculating this limit at 1977 price levels.)

5. (No change.)

i.-ii. (No change.)

iii. For this purpose, a city, town, and so forth is considered "urban" if its population exceeds 25,000 and its average population exceeds 7,000 per square mile. All other areas are considered "nonurban" or "rural".

6.-8. (No change.)

(b) (No change.)

(c) (No change.)

1. Base period utility costs per bed will be deemed apparently unreasonable to the extent that they exceed 150 percent of the Statewide median cost per bed as determined for each class of LTCF indicated in N.J.A.C. 10:63-3.2.

i. The Department will upon request review any inequities which owners believe are brought about by unusual circumstances.

10:63-3.8 Routine and special patient care expenses

(a) (No change.)

(b) (No change.)

1. (No change.)

2. The percentage of hours paid for vacations, holidays, illness, and so forth (hours paid but not worked) to hours worked, will be ranked in descending order for all proprietary and voluntary LTCFs in the State. A separate ranking will be developed for governmental LTCFs. The percentage for the medical LTCF for each class of facility will be selected as the Statewide norm for the percentage of hours paid but not worked for that class of facility.

3.-4. (No change.)

i. The average equalized compensation rate for the median LTCF for each class of LTCF will be selected as the norm for the State.

ii. A separate calculation will be made for governmental facilities.

5. The compensation rates for each class of facility will be multiplied by the paid hours developed in (b)3 above for each class of nurse and aggregated for all three classes. This total will be adjusted for timing differences to each LTCFs base period.

6. (No change.)

(c) Reasonableness limits for the below listed special patient care services other than nursing will be established for each class of LTCF.

1. Those items which are considered special patient care services are:

- i. Medical Director;
- ii. Patient activities;
- iii. Pharmaceutical consultant;
- iv. Non-legend drugs;
- v. Medical supplies;
- vi. Social services;
- vii. Oxygen.

(d) Reasonableness limits for medical supplies and patient activities will be established at 150 percent of the median per diem cost for each class of LTCF which had over 20 percent Medicaid days in the base period.

(e) Reasonableness limits for special patient care services other than medical supplies and patient activities will be established at 110 percent of the median per diem cost for each class of LTCF which had over 20 percent Medicaid days in the base period.

(f) (No change in text.)

10:63-3.9 Property-capital costs (including Return on Investment (ROI))

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

10:63-3.10 Buildings

(a) The CFA for buildings and fixed equipment will be based upon appraised 1977 replacement costs less wear and tear, subject to reasonableness limits as described in (c), (d) and (e) below.

(b) (No change.)

(c) Reasonableness limits on plant square feet will be set at 110 percent of the median plant square feet per available bed of all proprietary and voluntary LTCFs which had over 20 percent Medicaid patient days in the base period. Separate reasonableness limits will be developed for governmental LTCFs by the same method. LTCFs not substantially complying with current State and Federal space requirements or carrying space waivers will be excluded from this calculation.

(d) A reasonableness limit on appraised value per square foot will be established at 110 percent of the median appraised values, at 1977 price levels, of proprietary and voluntary LTCFs which had over 20 percent Medicaid days in the base period. A separate reasonableness limit will be developed for governmental LTCFs by the same method.

(e) The reasonable limits as described above will be combined to allow for square feet in excess of that established limit where value per square foot is less than that limit for each class of long term care facility.

(f)-(i) (No change.)

(j) For LTCFs with residential and/or sheltered care patients, data relative to common areas will be apportioned to nursing patients based upon base period licensed beds. After making such apportionments, appraised values will be subject to the reasonableness screens described in (c), (d) and (e) above and, where applicable, to the weighted average year of construction calculations described in (i) above. This proration will not be redetermined for subsequent years in the absence of significant changes in facilities or in patient mix.

(k)-(p) (No change.)

10:63-3.11 Land

(a) (No change.)

1.-2. (No change.)

(b) The interest rate developed per N.J.A.C. 10:63-3.10(f) will be applied to the reasonable 1977 appraised value.

(c) (No change.)

(d) For LTCFs providing residential or sheltered care, reasonable appraised values for land will be prorated to nursing care patients based upon their proportion of base period total beds. This proportion will not be redetermined in the absence of significant changes in patient mix.

10:63-3.12 Moveable equipment

(a) (No change.)

(b) The allowance per licensed bed will be determined by applying to this median cost the interest rate developed per N.J.A.C. 10:63-3.10(f), (l), (m).

(c) (No change.)

10:63-3.13 Maintenance and replacements (excluding motor vehicles)

(a) (No change.)

1. Expenditures for this purpose in the base period for each class of LTCF which had over 20 percent Medicaid days in the base period will be adjusted to price levels at the midpoint of the base period through the application of the inflation factor to reported costs for fiscal years ending prior to December.

2. (No change.)

3. For the remaining LTCFs, maintenance and replacement costs per plant square foot at base period price levels will be calculated for each class of LTCF. Mathematical techniques will be used to determine a general formula describing the relationships between expenditures per plant square foot for maintenance and replacements and factors such as age of buildings, estimated building replacement costs, and so forth.

4. The 15 percent highest and 15 percent lowest extremes in actual expenditures compared with this general formula will then be removed from further calculations. The same mathematical techniques will then be applied to the remaining 70 percent of the data to develop the formula to be used to calculate a reasonable allowance for each class of LTCF for maintenance and replacement.

5. (No change.)

6. Each LTCFs maximum total allowance per reasonable plant square foot for any one year will be developed by applying this formula to its particular factors and incrementing the result by 10 percent. No allowance will be provided for plant square feet considered unreasonable per N.J.A.C. 10:63-3.6(a)1.-2.

7. (No change.)

i. Actual expenditures that are below the limits for the base period, may be carried and applied to excess expenditures in subsequent years. The following example illustrates how two typical LTCFs would be affected.

(No change in chart.)

8. (No change.)

10:63-3.14 Property insurance

(a) (No change.)

1. Base period property insurance costs per dollar of appraised value and per dollar of estimated 1977 replacement costs will be calculated for all voluntary and proprietary LTCFs. A separate calculation will be made for governmental facilities.

2. (No change.)

3. The procedures described in N.J.A.C. 10:63-3.13 of the preceding section will be used to eliminate extremes and to develop the formula to be used to calculate the reasonableness limit for property insurance.

4. Each LTCFs reasonableness limit per reasonable plant square foot will be developed by applying this formula to its particular factors and incrementing the result by 10 percent. No allowance will be provided for plant square feet considered unreasonable per N.J.A.C. 10:63-3.6(a)1.-2.

10:63-3.15 Target occupancy levels

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

(d) If base period patient days exceed licensed bed days calculated per (a) above, then the target occupancy will be entered at 95 percent of actual base period patient days.

10:63-3.17 Adjustments to base period data

(a) (No change.)

1.-3. (No change.)

4. Where legal and management changes have been approved and the approved costs are not expended in the prospective rate period, the unspent amount will be recovered from the LTCF.

Renumber 4. as 5. (No change.)

10:63-3.18 Inflation

(a) (No change.)

1. Average hourly earnings of manufacturing employees in New Jersey as published by the Bureau of Labor Statistics (weighted 60 percent);

2. (No change.)

(b) This inflation factor will be developed jointly by the Division of Medical Assistance and Health Services and the Department of Health, Division of Facilities Rate Setting.

Recodify (b) through (e) as (c) through (f) (No change in text.)

10:63-3.19 Working capital provision and total rates

(a) (No change.)

1.-2. (No change.)

i. (No change.)

ii. Multiplied by the Medicare return on equity rate for the 12 month period ending December, 1976;

iii. (No change.)

3.-4. (No change.)

5. Rates will be limited to the certified lowest semi-private rate charged to private patients as reported to the Division of Medical Assistance and Health Services.

DIVISION OF PUBLIC WELFARE**(a)****Food Stamp Program
Revised Income Deductions, Utility Allowances,
Uniform Telephone Allowance and Maximum
Coupon Allotments****Adoption of Concurrent Proposal: N.J.A.C.
10:87-12.1 and 12.2**

Proposed: October 20, 1986 at 18 N.J.R. 2137(a).

Adopted: November 26, 1986, by Drew Altman, Ph.D.,
Commissioner, Department of Human Services.Filed: November 26, 1986 as R.1987 d.5, **without change**.Authority: N.J.S.A. 30:4B-2; the Food Stamp Act of 1977 as
amended (7 USC 2014); 7 CFR 273.9(d)(4), (6), (7), and (8);
and 7 CFR 273.10(e)(4).

Effective Date: November 26, 1986.

Expiration Date: March 1, 1989.

**Summary of Public Comments and Agency Responses:
No comments received.****Full text** of the adoption follows.

10:87-12.1 Income deduction table

**TABLE I
Income Deductions**

Standard Deduction	\$ 99.00
Shelter Deduction	\$149.00
Dependent Care Deduction (elderly/disabled)	\$149.00
Dependent Care Deduction (nonelderly/nondisabled)	\$160.00
Uniform Telephone Allowance	\$ 13.20
Standard Utility Allowance	\$101.00
Heating Utility Allowance	\$168.00

10:87-12.2 Maximum coupon allotment table

**TABLE II
Maximum Coupon Allotment (MCA)**

Household Size	MCA
1	\$ 81
2	\$149
3	\$214
4	\$271
5	\$322
6	\$387
7	\$428
8	\$489
9	\$550
10	\$611
Each Additional Member	+61

DIVISION OF YOUTH AND FAMILY SERVICES**(b)****Adoptions****Adoption Subsidy****Adopted Amendments: N.J.A.C. 10:121-2.1 through
2.5**

Proposed: January 6, 1986 at 18 N.J.R. 24(a).

Adopted: December 12, 1986 by Drew Altman, Ph.D.,
Commissioner, Department of Human Services.Filed: December 12, 1986 as R.1987, d.45, **without change**.Authority: N.J.S.A. 30:4C-45 through 49, 30:4C-31 and P.L.
96-272.

Effective Date: January 5, 1987.

Expiration Date: March 13, 1989.

Summary of Public Comments and Agency Responses:

The Division of Youth and Family Services (Division) received two written comments concerning the proposed amendments. The New Jersey Developmental Disabilities Council through Gretchen Jacobs and Catherine Rowan expressed its support for the proposal.

The Association for Children of New Jersey (A.C.N.J.) through Ciro Scalera and Cecilia Zalkind, expressed concern over the terms of N.J.A.C. 10:121-2.2(d), which addresses subsidy payments for hard-to-place children in the care of adoption agencies other than the Division. The proposed language provided that subsidy payments for those children would not begin until finalization of the adoption, as opposed to subsidy payments for children in the care of the Division, which would begin at the time of placement. The A.C.N.J. commented that requiring a private agency to bear the cost of the child's support, especially if there are serious medical problems involved, could be a hardship on the agency and a disincentive to adoption.

Oral comments were also received by telephone from John Boyne, Director of Spaulding for Children of New Jersey, who made the same points as the A.C.N.J.

The Division has given serious consideration to these concerns. While the Division's policy continues to be one of facilitating this class of adoptions to the greatest extent possible, the Division has determined it must retain the terms of N.J.A.C. 10:121-2.2(d) as originally proposed. The Division will not be able to secure federal reimbursement for private agency subsidies for the period between placement and judicial finalization of the adoption. For this period, for all private agency adoptions receiving subsidy, payment would have to be made exclusively out of state funds.

Adoption subsidy payments made in private agency placements prior to court order are not eligible for federal financial participation under federal law. For the purpose of federal reimbursement, DYFS does not "begin" subsidy payments for hard-to-place children already under its care, but simply continues foster care payments. Children placed by the Division are foster care payment eligible; children placed by private agencies are not.

Medicaid issues, particularly whether the Medicaid costs of children, not eligible for funding through Title IV-E of the Social Security Act, and placed by private adoption agencies, qualify for federal financial participation, have not yet been resolved by the federal Department of Health and Human Services (HHS). The Division is anticipating that it can make appropriate adjustment to these rules after HHS has interpreted the changes in the federal law. Amendments will be made if they are warranted and fiscally responsible.

Full text of the adoption follows.**SUBCHAPTER 2. ADOPTION SUBSIDY****10:121-2.1 Definitions**

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

"Adoptive family for hard-to-place child" means any person or persons eligible to adopt a child who agree to adopt a hard-to-place child regardless of the income of the adoptive parent(s) and who meet conditions which include but are not limited to:

1. Age: The adoptive parent(s) must attain the age of 18 before the adoption has been finalized and shall be at least 10 years older than the person(s) sought to be adopted unless either of these limitations is waived by the court. There is no maximum age.

2. (No change.)

3. Residence: The adoptive parent(s) must be residents of New Jersey and/or any other state if approved for adoption by a licensed agency in that state and all interstate requirements can be met. N.J.S.A. 9:7-1 et seq.

4.-6. (No change.)

"Board rate" means the rate paid to the foster family for the child currently or that which would have been paid for the child if the child was in foster care, including clothing allowances but excluding any other payments.

"80 percent Board rate" means 80 percent of the rate which was or would have been paid for the child if the child was in foster care, excluding clothing allowance and other payments. 80 percent Board rate includes any additional board increases granted by the Division as provided by law.

"Child" means any person under the age of 18.

"Division" means the Division of Youth and Family Services in the Department of Human Services.

"Hard-to-place child" means any child who the State of New Jersey has the legal right to place for adoption but who is reasonably expected not to be placed for adoption due to the lack of a prospective adoptive home for any of the following reasons:

1. Any medical or dental condition which will require repeated or frequent hospitalization, or treatment;

2. Any physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for remunerative occupation;

3. Any substantial disfigurement, such as the loss or deformation of facial features, torso or extremities;

4. A diagnosed emotional or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his peers or authority figures, including but not limited to a developmental disability;

5. The child is one of a group of three or more siblings (including half-siblings) and it is considered necessary that the group be placed together, or the child is one of two siblings (including half-siblings) one of whom meets the hard-to-place criteria, and it is considered most appropriate that the children be placed together;

6. The child is 10 years old or older;

7. The child is over five years of age and a member of an ethnic group for whom adoptive homes are not readily available. Information regarding availability of homes may be obtained from the Adoption Service Unit of the Division.

8. Any other condition which may be approved by the Director; or

9. The child has been living with foster parents for at least 12 months and adoption by the foster parents would be the most appropriate plan for the child.

10:121-2.2 Payments for the care and maintenance of a hard-to-place child (adoption subsidy)

(a) The Division shall make payments for the care and maintenance of a hard-to-place child to the person(s) with whom the child has been placed for adoption or by whom the child has been adopted when such payments are applied for prior to adoption according to such forms and procedures as may be established by the Division.

(b) The Division shall determine and approve the qualifications for subsidy payments prior to the completion of an adoption proceeding. In order to qualify for subsidy a child must meet the definition of a hard-to-place child in N.J.A.C. 10:121-2.1. The failure of the Division to complete its determination and approval of qualifications prior to the finalization of adoption shall not prevent qualification for adoption subsidy, if application for such subsidy was made in a timely manner. Eligibility for subsidy shall be subject to an annual review and re-determination as described in paragraph (g) below.

(c) No payments shall be made for any child who the Division has determined was brought into this State for the sole purpose of qualifying for adoption subsidy.

(d) Payments shall be made on behalf of a child placed for adoption by the Division except that whenever a child who would otherwise be eligible for subsidy payments is in the care of any approved New Jersey adoption agency other than the Division pursuant to P.L. 1977, c.367 (N.J.S.A. 9:3-37 et seq.) that child shall, upon application by the agency and satisfaction of the regular requirements of the adoption subsidy program, be approved for participation in the adoption subsidy program. Subsidy payments for children in private agency adoptions do not begin until the order of adoption is signed by the court. The private agency placing the child for adoption must bear the cost of any pre-adoptive maintenance while the child is still in their legal custody. A determination as to the child's eligibility to receive subsidy may be made by the Division. However, such determination must be made prior to the child's adoptive placement, in order to assist the prospective adoptive parents in making a decision as to their ability to accept the child into their home. The Division is responsible for monitoring the adoption subsidy to the private agency. The Division may approve adoption subsidy payments for a child without legal transfer of care or custody of the child to the Division.

(e) Payments shall be made only pursuant to a written Adoption Assistance Agreement between the Division and the adoptive parent(s), which shall include:

1.-10. (No change.)

(f) Except in situations involving adoption by a child's foster parents, a reasonable effort will be made to place the child in an adoptive setting without providing a subsidy, except where the Division determines that such efforts should not be made because of the special needs of the child or the special qualifications of the adoptive parents.

(g) The written agreement covering subsidy payments shall remain in effect regardless of adoptive parent(s) income until the child's 18th birthday, provided that the adoptive parents remain legally responsible for the support of the child and the child continues to receive support from such parents. On an annual basis the Division will determine that the adoptive parents continue to be legally responsible for the support of the child and that the child continues to receive support from the adoptive parents or the subsidy payments will be terminated.

(h) The income of the adoptive parent shall not be considered by the Division in determining whether or not to enter into such an agreement.

(i) The amount of monthly payment for care and maintenance will be 100 percent of the applicable foster care board rate, except that families who adopted prior to January 17, 1984 will continue to receive at the 80 percent board rate. Those families who were receiving a partial subsidy prior to January 17, 1984 will now receive subsidy at the 80 percent board rate.

(j) The medical costs of children determined to be "hard-to-place" will be covered through the New Jersey Medicaid Program.

(k) (No change in text.)

(l) (No change in text.)

10:121-2.3 Variations

(a) The requirements and standards prescribed in this subchapter may be subject to exceptions as provided in (b) below in specific cases where the Division determines that strict compliance would result in undue hardship or jeopardize the health, safety and welfare of the prospective adoptive parent or child, or the public generally, except that no exception to these regulations may exceed the limitations provided by Federal or State law.

(b) Exceptions to the provisions of this chapter may be made upon request for:

1. Families who are funded below the 100 percent board rate whose cases were approved prior to January 17, 1984 as that their level of funding may be increased to the applicable 100 percent rate, if documentation shows a dramatic decrease in their financial circumstances; or

2. Medical coverage for families whose subsidy cases were approved prior to January 17, 1984 when there is documentation of the development of a severe and permanent physical or mental handicap under the hard-to-place guidelines, and there is no third party medical insurance or where inadequate third party medical insurance is available to provide for the needs of the child.

3. The continuation of subsidy payment for all cases at an 80 percent foster care board rate for those children between the ages of 18 to 21 years of age who are enrolled in a curriculum directed toward gainful employment at any educational level below college.

10:121-2.4 Administrative Hearings

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

10:121-2.5 Adoption Resource Exchange

(No change in text.)

DIVISION OF YOUTH AND FAMILY SERVICES

(a)

Court Actions and Proceedings

Adopted New Rule: N.J.A.C. 10:132

Proposed: September 22, 1986 at 18 N.J.R. 1924(a).

Adopted: December 4, 1986, by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: December 5, 1986 as R.1987 d.16, **without change.**

Authority: N.J.S.A. 30:1A-1; 30:4C-4(c) and (h); 30:4C-4.1; 30:4C-4.2.

Effective Date: January 5, 1987.

Expiration Date: January 5, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the expired rules adopted as new appears in the New Jersey Administrative Code at N.J.A.C. 10:132.

LAW AND PUBLIC SAFETY**(a)****DIVISION OF CONSUMER AFFAIRS****Board of Architects****Rules of the Board of Architects****Adopted Repeal: N.J.A.C. 13:27-1, 2, 3, 4, 5 and 7****Adopted New Rules: N.J.A.C. 13:27-1, 2, 5, 7 and 9**

Proposed: December 2, 1985 at 17 N.J.R. 2851(b).

Adopted: November 17, 1986 by New Jersey Board of Architects,
James Gaspari, President.

Filed: December 1, 1986 as R.1987 d.12 **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:3-3, -7, N.J.S.A. 45:1-3.2.

Effective Date: January 5, 1987.

Expiration Date: April 1, 1990.

Summary of Public Comments and Agency Responses:

On October 23, 1986 the Board of Architects voted to repeal N.J.A.C. 13:27-1, 2, 3, 4, 5 and 7 and adopt the proposed new rules excluding those proposed for subchapters 3 and 4. The entire summary of public comments and agency responses to the proposal is included herein. In view of the number of comments, and continuing discussion with the Board of Professional Engineers and Land Surveyors, proposed new subchapters 3 and 4 are still under consideration. The responses to comments referring to any of the provisions of proposed new subchapters 3 and 4 are provided solely for informational purposes and as an aid to further consideration of the subject matter. Proposed rules with revisions regarding the subject matter contained in the original proposals for subchapters 3 and 4 will be published at a later date and subject to additional public comment.

As of January 23, 1986, 162 written comments were received by the Board. Three of those comments were from New Jersey State Assemblymen. Eight comments were from professional groups or societies involved in engineering. Two were from the New Jersey Professional Society of Architects. Two were from the State Board of Professional Engineers and Land Surveyors. One was from the State Board of Professional Planners. One was from the Director, Division of Consumer Affairs. Forty comments were received from licensed architects, two from individuals licensed as both a professional engineer and an architect, and the rest were from licensed professional engineers. Ten of the comments received specifically requested an extension of the comment period of up to 60 days, due to the original publication of the rules during the holiday period. The original comment period ended on January 2, 1986. The Board of Architects' next regularly scheduled meeting was held on January 9, 1986. At that time, the Board voted to extend the comment period until their next regularly scheduled meeting of January 23, 1986. This would include all comments received up until 10:00 a.m. on that date. Retroactively applied, this amounted to a three-week extension to the comment period. Three comments requested a public hearing. The Board denied this request. Pursuant to a written request dated March 5, 1986 from Attorney General W. Cary Edwards, the Board of Architects withheld final adoption of these rules pending further interdisciplinary review.

An initial review of the comments revealed that a majority of responses were from Engineers, with almost identical phrases, expressing concern relative to the practice of engineering. These responses appeared to the Board to be a repetition of statements, emanating from a single source, which may have conveyed an interpretation of part of the rules out of context with the rules when read as a whole.

It is the Board's intent that under these rules, an engineer may continue to practice in the various fields of engineering including the design of engineering systems for architectural projects under the Secondary Seal Provision, N.J.A.C. 13:27-4.9. The rules will only affect those engineers who desire to expand their practice into the field of architecture without qualifying under the provisions of N.J.S.A. 45:3-5.1. The rules further clarify that an engineer may design certain buildings or building alterations as exemptions to the practice of Architecture, and thus would not fall under the jurisdiction of the Board of Architects.

These exemptions were, in addition, objected to in many of the responses from Architects, because they believe that Engineers are not qualified by background, education or training to design buildings. The

Board of Architects, however, does not intend to limit the present statutory privileges of Engineers and believes these exemptions serve as a clarification for the benefit of both professions.

The Board proceeded to address the individual comments on a rule-by-rule basis.

One comment was received regarding N.J.A.C. 13:27-2.7, which describes the contents of the periodically published Board Roster. This comment requested that said rosters be disseminated to all local building officials and members of zoning and planning boards. To the extent possible, the Board has in the past distributed these rosters to appropriate government officials, and intends to do so in the future. In addition, any interested party, upon request and payment of a fee, may receive a copy of the Board Roster when available. This is provided in N.J.A.C. 13:27-5.8(k).

A greater number of comments were received regarding the definition of "architecture" found in N.J.A.C. 13:27-3.1. Most of these comments objected to the use of the words "engineering systems" in the definition. Many felt that the use of this term implied that architects could practice engineering without a Professional Engineering license. Another comment stated that the phrase "to accomplish a coherent and comprehensive unity of structure and site" was improper, because while the "concept" is within the realm of architecture, execution of that concept is engineering. The phrase "human use or habitation" was objected to by both professions, as each felt it could be limiting to their areas of practice.

In responding to these comments, the Board of Architects explained that their use of the term "engineering systems" does not prevent an engineer from designing the engineering portions of a building, nor does it permit such design work by an architect beyond his/her competency. The Board's intent by the use of the term "engineering systems" is to ensure that an architect is the one who determines the direction of the project; the architect will do the work he is qualified to do and, as necessary, engage the assistance of professional engineers for specialized portions of the project. In response to the next point, the Board agrees that the concept regarding a total building project is architecture, and does not dispute that execution of various portions of the project may be performed by an engineer within the context of that particular individual's chosen field of engineering.

The Board noted that the term "human use or habitation" was one which is nationally recognized in definitions regarding architecture. Among other sources, this term is found in the various documents disseminated by the National Council of Architectural Registration Boards (NCARB) and in most dictionaries.

One comment was received regarding N.J.A.C. 13:27-3.1, the definition of "architect of record." The comment stated that use of this definition could prohibit a licensed architect from being employed as a principal or employee of an engineering firm. The Board's reply is that this result is exactly what they intended. The reasoning of the Board is that by signing and sealing plans an architect is responsible for the project and therefore the architect should have controls commensurate to this responsibility. In the interests of the public, the Board has always discouraged undue influence by a party to a project with control over the architect, other than the owner/client. This definition, however, is not meant to prohibit the employment of an architect by an engineer to do any work which is incidental or supplemental to an engineering project.

A number of comments were received concerning the definition of "human habitation or use" found in N.J.A.C. 13:27-3.1. The basic thrust of these comments was that the phrase was so broad that it would virtually eliminate design work for anyone who is not a licensed architect. The Board's response is that it is not their intent to eliminate all design work by professional engineers, but to limit engineering work to engineering and industrial projects as stated in N.J.S.A. 45:8-28(b).

A great number of comments were also received concerning the definition of the "practice of architecture" found in N.J.A.C. 13:27-3.1. The objections concerned the wording which states that the practice of architecture consists of "... utilization of space within and surrounding such structures. The services referred to in the previous sentence include planning, providing preliminary studies, site and building designs, drawings, specifications, and administration of construction contracts." The main concern with this terminology was that it appeared to be in conflict with the site plan rule which is found in N.J.A.C. 13:27-6 and sets out the division of responsibility for providing a site plan among various professions. The Board had no intention of superseding this rule and stated that this definition must be read in conjunction with the site plan rule. The Board in no way intended to prohibit any other professionals from preparing or submitting various elements of a site plan which they are qualified and licensed to do.

Other concerns were voiced about the inclusion of "administration of construction contracts" as being in the province of an architect's profession.

An additional comment questioned the applicability of the definition in relation to the design-build arrangements, where you would have architectural services provided. The Board's answer to this comment was that in a design-building situation, there must be an architect of record.

One comment was received which requested the deletion of the definition of "principal architect" found in N.J.A.C. 13:27-3.1 because it appeared to prohibit a licensed architect who is not a principal from practicing architecture. The Board stated that this definition must be read in conjunction with the definition of "architect of record." The latter definition explains that a licensed architect can practice either individually or as a principal.

Several comments were received regarding the definition of "uses incidental to" found in N.J.A.C. 13:27-3.1. The objections were that this definition did not clearly contemplate what an engineering project would include and that the definition of an engineering project is to be found in the practice of engineering. This section is to be read in conjunction with N.J.A.C. 13:27-4.3.

One comment was received concerning the omission of former rule N.J.A.C. 13:27-3.9 which provided for mandatory oral interviews for each applicant for licensure. The Board has ascertained over the years that this procedure has become outdated and unnecessary.

The vast majority of the comments objected to various provisions found in the proposed new subchapter 4. The Board generally explained that this subchapter was developed after a careful examination of the content of both N.J.S.A. 45:3-1 et seq. and N.J.S.A. 45:8-27 et seq. The Board does not intend to restrict the areas in which professional engineers may practice but rather intends to clarify the policies which the Board of Architects have always followed.

Specifically, N.J.A.C. 13:27-4.1 delineates the practice of architecture as stated in N.J.S.A. 45:3-10. N.J.A.C. 13:27-4.2 is an attempt to clarify the various portions of the Uniform Construction Code (N.J.A.C. 5:23-1.1 et seq.) which refers to numerous aspects of work involved with building projects that need the seal and signature of a licensed professional engineer or architect, without clarifying which professional seal is required.

N.J.A.C. 13:27-4.3(c) is a list of examples of what might be an engineering project. The Board did not view this as an exclusive list. N.J.A.C. 13:27-4.3(d) is meant to be further clarification of terminology (that is, "incidental to an engineering project") which is included in both the architects' and engineers' statutes.

N.J.A.C. 13:27-4.4 is the Board's interpretation of the term "industrial project" as mentioned in N.J.S.A. 45:8-23(b), although this phrase is not included in the wording of the architectural statute. The inclusion of buildings such as those classified in Use Group (H), High Hazard Buildings and Use Group (F), Factory and Industrial Buildings, as defined in the Building Officials and Code Administrators (BOCA) building subcode, is recognition by the Board of Architects of the types of projects which may fall within the engineering definitions found in N.J.S.A. 45:8-28.

In response to a comment received, the Board has decided to add to the list in N.J.A.C. 13:27-4.4(a) the newly adopted Use Group (U), Utility and Miscellaneous Uses. This group includes fences, tanks, cooling towers, retaining walls, and the like.

With regard to N.J.A.C. 13:27-4.5, several comments disapproved any limitation which would prevent professional engineers from designating single family residences, particularly since any person may design that person's own home whether or not that person is qualified or licensed to do such work. The Board noted that professional engineers have never been permitted to design single family residences, and that both the State Board of Architects as well as the State Board of Professional Engineers and Land Surveyors have agreed that the design of single family residences constitutes the practice of architecture. Furthermore, individuals are permitted to design their own homes pursuant to N.J.S.A. 45:3-10.

One comment was received regarding N.J.A.C. 13:27-4.6, which states the requirements for title blocks on drawings. The comment inquired as to whether the architect's title block must be placed on all drawings, including surveys, borings, and the like. The Board responded that, as stated in the rule, all drawings which are prepared by the architect require the placement of that architect's title block. Furthermore, secondary seals/title blocks are required, as necessary, by other licensed professionals.

A few comments concerning N.J.A.C. 13:27-4.7 were received. One of these comments questioned what the required title block contents would

be for a firm that hires a licensed architect, or for a general corporation. The Board explained that historically, architects in New Jersey have not been permitted to practice as a general corporation or for a general corporation. Corporate practice has been limited to professional service corporations, which are organized under N.J.S.A. 14A:17-1 et seq.

Another comment sought clarification as to whether the architect's name had to be the largest in the title block. The Board's response was in the affirmative.

One comment, addressing N.J.A.C. 13:27-4.9, requested the deletion of the terms "sub-" and "secondary" when referring to additional title blocks for professionals doing work which is only a "portion" of another professional's project.

Several comments were received regarding N.J.A.C. 13:27-4.10. Clarification was sought as to which drawings and specifications shall be signed and sealed by the Architect. The Board stated that any public agency is entitled to have the verification of the architect's seal and signature on all submissions.

A number of comments expressed disagreement with the future requirement, as stated in N.J.A.C. 13:27-5.2(c)1., that all candidates for examination possess an approved degree in Architecture or Board-approved alternative education. One comment specifically agreed with this degree requirement. The Board stated that it is not unreasonable, and is in fact necessary, due to technological advances, to require some kind of college degree in the future. In the past, post-high school education was not always accessible, so experience may have been the only possible route at that time. Today, college education is more readily available and this requirement should not prevent individuals from taking the architectural examination. This section also conforms with the national trend which requires college education as a prerequisite to architectural licensure. The Board stressed that "alternative education criteria" may still provide for exceptional cases.

Numerous comments were received in opposition to N.J.A.C. 13:27-5.3. The general feeling was that engineers should take the entire written examination unless an individual could substantiate to the Board adequate experience to exempt said individual from taking parts D, E, F or G. The Board's response to these comments is that this rule, formerly N.J.A.C. 13:27-5.3, is not new. Additionally, this rule is based on the statutory provision of N.J.S.A. 45:3-5.1, which was promulgated in 1952. Any change regarding this limited examination for professional engineer would have to be accomplished through the legislative process, not through the regulatory enactments of the Board.

One comment was received concerning N.J.A.C. 13:27-7.2(d) in that it appeared to the writer to be unconstitutional to refuse reinstatement to an architect while any charges are pending against that architect in any state where registered. The Board noted that this is not a new rule it was formerly designated as N.J.A.C. 13:27-4.2(c).

Several comments applauded the inclusion of N.J.A.C. 13:27-9.1 et seq. which promulgates Rules of Conduct. These comments questioned, however, the enforcement powers and penalty provisions that would apply to these rules. The Board explained that the Uniform Enforcement Act which is found in N.J.S.A. 45:1-14 et seq., provides for the enforcement of all professional licensing board regulations. Some of the comment offered suggestions for additions, deletions, or alterations to the Rule of Conduct. The Board decided not to alter this section, which was taken from national guidelines, and which, in particular, applies to the interest of the public in New Jersey.

Summary of Changes Between Proposal and Adoption

In view of the number of comments, and continuing discussion with the Board of Professional Engineers and Land Surveyors, proposed new subchapters 3 and 4 are still under consideration.

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 1. PURPOSE AND SCOPE

13:27-1.1 Purpose

These rules define and establish guidelines for the practice of *[A]* *a*rchitecture in the State of New Jersey.

13:27-1.2 Scope

The practice of *[A]* *a*rchitecture is regulated by P.L. 1902, c. 29, p. 54 as amended and supplemented (N.J.S.A. 45:3-1 et seq.) and by rules and regulations adopted in accordance with the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).

SUBCHAPTER 2. ADMINISTRATION

13:27-2.1 Establishing board name

In accordance with P.L. 1902, c. 29, p. 54 as amended and supplemented (N.J.S.A. 45:3-1 et seq.) the name of this Board shall be the New Jersey State Board of Architects and shall be hereafter referred to as the "Board."

13:27-2.2 Office location

The offices of the Board are located at 1100 Raymond Boulevard, Newark, New Jersey 07102.

13:27-2.3 Meetings of board; quorum

(a) The Board shall hold an annual meeting at the Board office in July of each year.

(b) The meetings of the Board shall be held as scheduled and notice hereof shall be filed in accordance with the Open Public Meetings Law P.L. 1975, c. 231).

(c) A majority of the appointed membership of the Board shall constitute a quorum (N.J.S.A. 45:1-2.2(d)).

(d) Chronic absence and/or lack of participation by a member in Board activities, as documented by Board records, may be the basis for the submission of a request for replacement to the appropriate authority, as determined by a majority vote of the Board.

13:27-2.4 Election of officers; term; vacancies

(a) At its annual meeting, the Board shall elect from its members a President and a Vice President. These officers shall be elected by a quorum of the Board.

(b) The term of each officer so elected shall be for one year, but shall continue until a successor has been elected and qualified, unless such officer is removed for cause by vote of a quorum of the Board. In the event of a vacancy in an office, an officer shall be elected by a quorum of the Board to fill the unexpired term.

13:27-2.5 Duties of officers: committee appointments

(a) The President of the Board shall preside at all meetings, appoint all committees and chairpersons and shall perform all other duties ordinarily pertaining to the Office of the President as herein described, or as may be directed by the Board.

(b) The Vice President shall perform the duties of the President during the absence or incapacity of the President. In the absence of both the President and Vice President, the Board member with seniority shall preside.

13:27-2.6 Secretary-Director; duties

(a) A Secretary-Director shall be chosen by the Board to serve as chief administrative officer and official custodian of the records of the Board.

(b) The Secretary-Director shall, in a thorough and efficient manner, fulfill administrative duties as established by the Board, including but not limited to duties in connection with the keeping of minutes of meetings, examinations, correspondence, staff and records.

13:27-2.7 Roster; dissemination of statutes, rules and code data*[s]*

A roster of architects licensed to practice in New Jersey shall be issued every two years. The roster shall also include the laws and regulations pertaining to the practice of architecture and shall list other appropriate codes relating to practice in New Jersey.

SUBCHAPTER 3. *[DEFINITIONS]* *(RESERVED)*

*[13:27-3.1 Words and phrases defined]

The following are definitions of words or terms as used within the meaning and intent of these rules.

"Aesthetic principles" include the concepts of balance, color, harmony, proportion, scale, rhythm, texture, light, mass, and shape.

"Architect" means an individual who, through education, training, and experience, is skilled in the art and science of building design and has been licensed by the State Board of Architects to practice architecture in the State of New Jersey.

"Architect of record" means the licensed architect who signs and seals plans and specifications and assumes responsibility for the project. The architect of record assumes overall responsibility for the project as an individual in practice or as a principal of a firm with more than one owner.

"Architecture" means the art and science of building design and particularly the design of any structure for human use or habitation. Architecture, further, is the art of applying human values and aesthetic principles to the science and technology of building methods, materials, and engineering systems required to comprise a total building project and to accomplish a coherent and comprehensive unity of structure and site.

"Human habitation or use" pertains to the activities of living, including but not necessarily limited to, housing, learning, working, playing, worshipping, assembling, shopping, convalescing and providing health care.

"Human values" include the social, cultural, historical, economic, and environmental influences that impact on the quality of life.

"Practice of architecture", within the meaning and intent of the licensing statute, consists of the rendering or offering to render architectural services in connection with the design and construction of structures which have as their principal purpose human habitation or use, and utilization of space within and surrounding such structures. The services referred to in the previous sentence include planning, providing preliminary studies, site and building designs, drawings, specifications, and administration of construction contracts. No person, unless licensed to practice, shall be permitted to use the title "architect" or otherwise represent to the public that he or she is registered to practice architecture in New Jersey.

"Principal architect" means an architect who is a partner or a shareholder in a firm with more than one licensed professional.

"Uses incidental to" architectural projects and engineering projects are defined by the following provisions:

1. When the principal purpose of a building or structure is to enclose or accommodate human habitation or use, the engineering of building systems is considered incidental to an architectural project.

2. When the principal purpose of a design is to provide an engineering project, a building to enclose or accommodate the project is considered incidental to an engineering project.]*

SUBCHAPTER 4. *[ARCHITECTURAL PRACTICE AND RESPONSIBILITY; EXEMPTIONS, TITLE BLOCKS]* *(RESERVED)*

*[13:27-4.1 Scope]

N.J.S.A. 45:3-1 et seq. regulates the practice of architecture and licensure of architects to prepare plans, specifications and preliminary data for the erection or alteration of any building.

13:27-4.2 Preparation of building plans

Plans and specifications for any building classified by the New Jersey Uniform Construction Code must be prepared by and contain the title block, seal and signature of an architect of record, unless exempted by the following provisions.

13:27-4.3 Engineering project exemption

(a) Pursuant to N.J.S.A. 45:3-10 a licensed professional engineer may engage in the business of preparing plans, specifications and preliminary data for the erection or alteration of buildings incidental or supplemental to engineering projects.

(b) Engineering projects are facilities or systems which require the application of special knowledge of mathematical, physical and engineering sciences and which would not be classified for human occupancy.

(c) By way of example, engineering projects would generally include the following:

1. Water and conservation facilities, storm and flood control systems, sanitary systems, power facilities, transportation systems, communication systems and harbor and shore facilities.

(d) Building alterations may be considered incidental to an engineering project when the purpose is to install or modify mechanical, electric or structural components rather than to change the arrangement or use of space.

13:27-4.4 Industrial building exemption

(a) Plans for industrial projects may be prepared, signed and sealed by a licensed professional engineer. Industrial projects include buildings such as those classified as Use Group (H), High Hazard Buildings and Use Group (F), Factory and Industrial Buildings, as defined in the Building Officials and Code Administrators (BOCA) building sub-code adopted as part of the Uniform New Jersey Construction Code pursuant to N.J.A.C. 5:23-3.14.

(b) A secondary use to such buildings may also be designed by a licensed professional engineer when it meets the requirements for an incidental use as defined in the BOCA subcode of the New Jersey Uniform Construction Code.

13:27-4.5 Single family exemption

(a) In accord with N.J.S.A. 45:3-10, any person in this State may act as a designer of a detached dwelling and appurtenances thereto to be constructed by that person solely as a residence for that person or member of that person's immediate family.

(b) The person may design the dwelling and all appurtenances thereto, prepare the plans, then file the plans with an affidavit indicating that that person drew the plans.

(c) In lieu of personally preparing the plans, the person may utilize pre-prepared (commercially published, available to the public) plans which bear a certification that they were originally drawn by an architect licensed in any United States jurisdiction, provided that these plans are reviewed, signed, sealed and adapted to the specific site by a New Jersey licensed architect. By signing and sealing these plans, the New Jersey licensed architect assumes full responsibility, just as if the plans were prepared under the architect's direct supervision.

(d) The person, in lieu of personally constructing the residence, may engage others to perform the work.

13:27-4.6 Title block on drawings; form; removal

(a) Every architect shall provide a title block on all drawings (except renderings), and similar information on the title page of all specifications which are prepared and sealed by the architect.

(b) Such title block shall be in such form as the Board may adopt or approve.

(c) Such title block shall be distinct and separate from any other title block, box, plaque or any similar device of illustration or lettering.

(d) The title block shall be lettered on the drawing in such a manner as to reproduce clearly on all prints and reproductions thereof.

(e) No person shall remove a title block from any print or reproduction.

13:27-4.7 Title block contents

(a) When the architect practices as an individual, the title block shall contain:

1. The name and location of the project;
2. The full name of the architect;
3. The title "architect";
4. Certificate number and handwritten signature of the architect;
5. The date when signed.

(b) When two or more licensed architects practice architecture as a firm or partnership, the title block shall contain:

1. The name and location of the project;
2. The firm name;
3. The title "architects";
4. The full name and certificate number of each partner named in the title block;
5. The handwritten signature of at least one of the partners;
6. The date when signed.

(c) When professionals in affiliated professions practice architecture as a professional service corporation organized under N.J.S.A. 14A:17-1 et seq. the title block shall contain:

1. The name and location of the project;
2. The professional service corporation name;
3. The full name and certificate number of the architect of record;
4. The handwritten signature of the architect of record;
5. The date when signed.

(d) A similar title block shall be provided on a site plan which shall be included in any set of drawings of a building project.

(e) The title block may contain the initials of the draftsmen or checker, and dates, drawing numbers, revision numbers and such similar incidental items as is customary in architects offices; provided, however, the name of the architect, whether for an individual firm, partnership or corporation, shall be the major size lettering within the heavy borderline of the title block.

13:27-4.8 Submission of title block form for approval

Any architect may submit a proposed form of title block to the State Board of Architects for approval.

13:27-4.9 Secondary seal/title block

(a) An architect may provide a sub-title block and then apply a secondary seal and signature for the architectural portion of an engineering or industrial project.

(b) An engineer may provide a sub-title block and then apply a secondary seal and signature for the engineering portion of any building project.

13:27-4.10 Sealing documents

All working drawings and specifications prepared by the architect or under his or her supervision shall be signed on the original with the personal signature of the architect. Thereafter, all copies of such drawings and specifications shall be dated and sealed prior to submission to the client or filing with a public agency.]*

SUBCHAPTER 5. LICENSING; FEES

13:27-5.1 Eligibility for licensure

Every applicant for a license to practice architecture in this State shall be required to take the written examination prescribed by the State Board of Architects, except as may be provided in this subchapter.

13:27-5.2 Eligibility for admission to examinations

(a) Only individuals are eligible for registration to practice architecture in this State.

(b) An applicant shall present evidence to the satisfaction of the Board that he or she is:

1. More than 18 years of age; and
2. Of good moral character, as established by references from individuals, schools and other records acceptable to the Board.

(c) An applicant shall present evidence, to the satisfaction of the Board that he or she possesses the following qualifications:

1. After June 30, 1987, all candidates for examination must hold a National Architectural Accrediting Board (NAAB) approved degree in [A]*a*rchitecture or meet the alternate education criteria adopted by the New Jersey State Board of Architects. In addition to the educational qualifications, an applicant shall present to the satisfaction of the Board that he or she has acquired three years of experience as set out in N.J.A.C. 13:27-5.6. This experience shall be subsequent to the completion of the third full year of the educational requirement.

2. On or before June 30, 1987, in lieu of the above educational requirements, the candidate may present for consideration by the Board a record of 13 years experience or experience and partial education as the equivalent of a full course in architecture as described in N.J.A.C. 13:27-5.5, Table 1 and/or as evaluated and required by the Board.

(d) Such experience as required by these rules shall be accomplished in:

1. The office of a reputable registered architect in private practice; or
2. Public employment under the supervision of a registered architect where his or her activities are comparable in scope, in the opinion of the Board, to those of private practice; or
3. Such other professional practice as the Board may approve in accordance with N.J.A.C. 13:27-5.6, Table 2, Training requirements.

(e) No applicant shall be entitled to consideration for admission to the examination for license or shall be permitted to take said examination while a complaint is pending in which the individual is charged with the illegal practice of architecture or while penalties imposed pursuant to law remain unsatisfied.

13:27-5.3 Eligibility of professional engineers for admission to examination; limited examinations

An applicant who is licensed to practice professional engineering in the State, is in good standing and is without restriction of complaint or charge of illegal practice of architecture, as described in N.J.S.A. 45:3-5 shall be admitted to the written examinations, which shall be limited solely to Site Design and Building Design.

13:27-5.4 Registration of a person holding an architecture certificate from another jurisdiction

(a) Any person registered to practice architecture in another jurisdiction of the United States, and applying for registration to practice architecture in this State may be granted a certificate under the following conditions:

1. That the applicant is more than 18 years of age and of good moral character, as established by references from individuals, schools, and other records acceptable to the Board.
2. That the applicant is not charged by the Board with a violation of any law relating to the practice of architecture or any violation which would indicate a lack of good character as required by statute; or, having been found guilty of violation, has not satisfied the penalty imposed.
3. That the qualifications required in such other jurisdiction are substantially equal to those now required in this State, and as required under current law.

4. That the applicant has provided satisfactory evidence of competency as the Board, in its discretion, may require.

i. Such evidence may consist of, but not be limited to, exhibits of three major projects illustrated in drawings and specifications and photographs and may include oral examinations.

ii. The board may require the applicant to take such portion(s) of the examination as it deems necessary.

(b) In those cases in which the applicant shall have been granted certification in such other state, territory or possession following a period of preregistration experience less than that required for registration in

his State, the board in its discretion, may accept, in lieu of such deficiency, equal periods of experience gained by the applicant in his or her own office or in the offices of registered and practicing architects while the applicant held a current, valid certificate of license as an architect in such other state, territory or possession.

(c) In those cases where the applicant shall have been granted registration in such other state, territory or possession on education and experience qualifications not substantially equal to the requirements of his State, the Board may grant registration upon presentation by the applicant of evidence satisfactory to the Board of at least five years of responsible practice of architecture while holding a valid license as an architect. This five years of responsible practice is defined as five years of practice as a principal architect signing and sealing plans for those years in the state of registration.

3:27-5.5 Education and experience equivalents; Table I

(a) The table below sets out education and experience equivalents referred to in N.J.A.C. 13:27-5.2(c)2.

(b) Credits from a college or university which is located within the United States will not be accepted unless the institution is accredited by the regional association of colleges having jurisdiction, or is approved by the Board.

(c) Credits from a foreign college or university will be evaluated by the Board or by a NAAB accredited school of *[*A]**a*rchitecture on the same basis as they would be evaluated for credit toward graduation by that school, but the cost of translation and evaluation must be borne by the applicant.

(d) When credits are submitted from more than one college or university they will be evaluated on the same basis as by the school last attended.

(e) Periods of practical training will be measured in (12 month) calendar years.

(f) Under 1.5 the maximum of two years credit will be allowed only after full completion of any other Bachelor Degree program. No credit is allowed for partial completion of a Bachelor Degree program.

TABLE I

Item	Description	Percentage Credit Allowed for Each Year Completed	Percentage Credit Allowed for Each Succeeding year	Maximum Allowable Credit in Education	Experience Equivalent to Education	Required Additional Experience	Total Experience Equivalent
		First two years	Succeeding years	Years	Years	Years	Years
1.	Architectural Program accredited by National Architectural Accrediting Board	75	100	5	10	3	13
2.	Non-accredited approved by Board	75	75	3-1/2	7	6	13
3.	Architectural Engineering School accredited	50	75	3-1/2	7	6	13
4.	Non-accredited approved by Board	50	75	3-1/2	7	6	13
5.	Any other Bachelor Degree	—	—	2	4	9	13
6.	Practical training as an employee in the office of a registered architect as a principal. This training must be after graduation from high school.	50	50	5	10	3	13

13:27-5.6 Training requirements; Table II

(a) To satisfy the three-year minimum experience requirement, an applicant must have at least three years of training credits or have completed an equivalent established training program recognized by the Board. The table below sets forth the ways in which training credits can be acquired.

(b) No training credits may be earned prior to satisfactory completion of:

1. Three years in an NAAB accredited bachelor degree program; or
2. The third year of a four year pre-professional degree program in architecture accepted for direct entry to an NAAB accredited master's degree program; or
3. One year in an NAAB accredited master's degree program or such education as, in the opinion of the Board, is substantially equivalent to the above.

(c) No experience used to meet education requirements may be used to earn training credits.

(d) Every applicant must earn at least one year of training credit under 2.1.

(e) To earn training credits, an applicant must work at least 35 hours per week for a minimum period of 10 consecutive weeks under 2.1 or six consecutive months under 2.2, 2.3, 2.4 or 2.5. An applicant may earn one-half of the credits specified under 2.1 for work of at least 20 hours per week in periods of six or more consecutive months. No credits will be given for part-time work in any category other than 2.1.

(f) To earn credit under 2.6 or 2.7, an applicant's credit hours must be in subjects evaluated by the State Board as directly related to architecture. Twenty semester hours or 30 quarter credit hours of teaching or equivalent time in research will equal 1 year.

(g) An organization will be considered to be "an office of a registered architect" if the architectural practice of the organization in which the applicant works is in the charge of a person practicing as a principal and the applicant works under the direct supervision of a registered architect.

TABLE II

Type of Experience	Percent Credit Allowed	Maximum Credit Allowed
2.1 Diversified experience in architecture as an employee in the office of a registered architect.	100%	No Limit
2.2 Diversified experience in architecture as a principal practicing in the office of a registered architect with a verified record of substantial practice.	100%	No Limit
2.3 Diversified experience in architecture as an employee of an organization (other than offices of registered architects) when the experience is under the direct supervision of a registered architect.	100%	2 years
2.4 Experience directly related to architecture, when under the direct supervision of a registered architect but not qualifying as diversified experience or when under the direct supervision of a professional engineer, landscape architect, planner or interior designer.	50%	1 year
2.5 Experience, other than 2.1, 2.2, 2.3 and 2.4 above, experience directly related to on-site building construction operations or experience involving physical analyses of existing buildings.	50%	6 months
2.6 A master's or doctoral degree in architecture (except where the degree is the first professional degree).	100%	1 year
2.7 Teaching or research in an NAAB accredited architectural program.	100%	1 year

13:27-5.7 Written examinations; subjects covered; passing required

(a) The subjects covered in the written examination are based on the examinations recommended by the National Council of Architectural Registration Boards and reviewed and approved by the Board as follows:

Division A	Pre-Design
Division B	Site Design
Division C	Building Design
Division D	Structural: General
Division E	Structural: Lateral Forces
Division F	Structural: Long Span
Division G	Mechanical, Plumbing, Electrical and Life Safety Systems
Division H	Materials and Methods
Division I	Construction Documents and Services

(b) Each division successfully passed will be credited to the candidate's record and may be carried over without limitation.

13:27-5.8 Fees

(a) The fees in this section shall be charged by the Board of Architects:

(b) Applicants for examinations or license shall pay a fee of \$25.00 for processing their applications.

- (c) The fees for the licensing examination are as follows:
 - i. Entire Architectural Registration Examination—\$260.00;
 - ii. Section I: Pre Design \$40.00;
 - iii. Sections II and III: Site and Building Design \$100.00;
 - iv. Section IV:
 - (1) Structural General \$20.00;
 - (2) Structural Lateral Forces \$14.50;
 - (3) Structural Long Span \$10.50;
 - (4) Mechanical, Plumbing, Electrical *[Health]* and *Life* Safety *Systems* \$20.00;
 - (5) Material*s* and Methods \$25.00.
 - v. Section V: Construction Documents and Services \$30.00;
 - vi. The fee for retake of any part of the exam is the same as listed above.
- 2. If awarded a certificate of license a further charge of \$30.00 is made for issuing it, and of \$25.00 for a seal press and filing it with the Secretary of State. This provides registration to the end of the licensing period in which the license is issued.
- (d) Applicants already licensed by another state shall pay an application fee of \$25.00. If awarded a certificate of license, the charge is \$75.00 plus \$25.00 for a seal press and filing with the Secretary of State. This provides registration to the end of the licensing period in which the license is issued.
- (e) The fee for reissuing a certificate of license shall be \$15.00.
- (f) The renewal registration fee shall be \$100.00, payable during the month of July on a biennial basis. When registrations occur within the second year of a biennial period, the fee shall be \$50.00 for that single year or portion thereof, and thereafter \$100.00 for a full biennial period.
- (g) The charge for reinstatement of certificate of license shall be \$50.00 if applied for within two years of forfeiture or cancellation. In addition thereto, the applicant shall pay the biennial registration fee or part thereof as the circumstances may require.
- (h) The charge for the new seal press shall be \$25.00.
- (i) The fee for transmittal of grades, or certification as to registration and status thereof, to other State boards, or to the National Council of Architectural Registration Boards, or to governmental agencies or governments, shall be \$15.00.
- (j) The charge for late payment of biennial registration fees between August 1 and the date of forfeiture shall be \$10.00.
- (k) A charge of \$8.00 shall be required for a copy of the "Roster of Architects," except that it shall be issued free to State, county and municipal government agencies and to all architects listed therein.
- (l) The following fees shall be charged by the Board of Architects for Landscape Architect Certification matters. Unless otherwise provided herein, all fees are non-refundable.
 - 1. Application for certification under the grandfather clause of L. 1983, c. 337, §17: \$50.00. If an applicant under the grandfather clause is found not qualified for certification under that provision, the \$50.00 fee may be applied toward the examination fee in 3, below.
 - 2. Application to sit for examination: \$100.00.
 - 3. Examination fee: Such fee as is charged by the Council of Landscape Architectural Review Board*s* (CLARB) for the Uniform National Examination. Such proportion of the examination fee as may be established by CLARB shall be subject to refund, upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.
 - 4. License fee for newly certified landscape architects (New Jersey residents), including seal and certificate: \$140.00. Such fee shall be subject to refund upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.
 - 5. License fee for newly certified landscape architects (non-New Jersey residents), including seal and certificates: \$140.00. Such fee shall be subject to refund upon request, if the applicant is determined to be ineligible for examination, withdraws his application, or fails to appear for examination.
 - 6. The fee for biennial renewal of certification shall be \$100.00.
 - 7. The fee for reinstatement of certification shall be \$50.00 in addition to the fee for biennial renewal of certification.
 - 8. A fee for late registration: \$10.00.
 - 9. The fee for reissuing a certificate to any certified landscape architect who attests that the original certificate has been lost, mislaid or destroyed shall be \$15.00.
 - 10. The fee for reissuing a seal to any certified landscape architect who attests that the original has been lost, mislaid or destroyed shall be \$25.00.
 - 11. The fee for transmittal of an applicant or certificate holder's examination grades to another state shall be \$15.00.
 - 12. The fee for a roster of certified landscape architects shall be \$8.00.

SUBCHAPTER 7. CERTIFICATES; SEALS

13:27-7.1 Issuance of certificates

When a certificate is granted to an applicant by the Board, the certificate must be accepted by the applicant and all fees paid within 90 days, or a new application will be required.

13:27-7.2 Reinstatement of certificates

(a) Prior to being considered for reinstatement of licensure, any architect whose registration has lapsed or expired shall provide a written statement to the Board delineating the professional activities in which he or she has engaged since his or her license became inactive. In the event that the architect has been found to have practiced architecture in the State of New Jersey during such period of lapsed licensure, he or she may be subject to penalty for the unlicensed practice of architecture in accordance with N.J.S.A. 45:3-10.

(b) An architect whose certificate has been cancelled by request or forfeited for non-payment of the annual fee may have it reinstated or his or her written request within two years of the date of the cancellation and upon payment of the back fees which would have been paid had the certificate not been withdrawn from active status. In addition to the back fees, there will be a reinstatement fee.

(c) Any architect applying for renewal of a certificate after a lapse of more than two years from the date of the cancellation shall resubmit all application material to the Board in the same manner as a new applicant.

(d) No architect shall be reinstated while any charges of violation are pending against him or her in any state where he or she is or has been registered.

13:27-7.3 Seals

(a) Only seal presses purchased or exchanged through the Board are authorized for use in sealing architectural documents by registrants or the Board. No rubber stamp may be used for such a purpose.

(b) Upon the death of a registrant or the forfeiture of a certificate the seal shall be returned to the Board. Failure to return a seal renders invalid by non-payment of renewal fees shall subject the individual to such penalties as provided by law and may be grounds for refusal of the Board to reinstate a license.

SUBCHAPTER 9. RULES OF CONDUCT

13:27-9.1 Competence

(a) In practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.

(b) In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (for example, attorneys, engineers, and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulations.

(c) An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.

(d) No person shall practice architecture if such person's professional competence is substantially impaired by medical or other reasons.

13:27-9.2 Conflict of interest

(a) An architect shall not accept compensation for his or her services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties.

(b) If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his or her judgment in connection with his or her performance of professional services, the architect shall fully disclose in writing to his or her client or employer the nature of the business association or financial interest. If the client or employer objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

(c) An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

(d) When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

13:27-9.3 Full disclosure

(a) An architect, making public statements on architectural questions, shall disclose when he or she is being compensated for making such statements.

(b) An architect shall accurately represent to a prospective or existing client or employer his or her qualifications and the scope of his or her responsibility in connection with work for which he or she is claiming credit.

(c) If, in the course of his or her work on a project, an architect becomes aware of a decision taken by his or her employer or client, against the architect's advice, which violates applicable state or municipal building laws and regulations and which would, in the architect's exercise of reasonable judgment, materially affect adversely the safety to the public of the finished project, the architect shall:

1. Report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations;

2. Refuse to consent to the decision; and

3. In circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his objection, terminate his services with reference to the project.

(d) An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his or her application for registration or renewal.

(e) An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience, or character.

(f) An architect possessing knowledge of a violation by another architect of these rules or any act administered by the Board shall report such knowledge to the Board where such violation appears to constitute a threat of harm to the public health, safety and welfare.

13:27-9.4 Professional conduct

(a) Each office maintained for the preparation of drawings, specifications, reports, or other professional work shall have an architect resident and regularly employed in that office having direct knowledge and supervisory control of such work.

(b) An architect shall not sign or seal drawings, specifications, reports or other professional work for which he or she does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of such professional work prepared by the architect's consultants, registered under this or another professional registration law of this jurisdiction, the architect may sign or seal that portion of the professional work if the architect has reviewed such portion, has coordinated its preparation, and intends to be responsible for its adequacy.

(c) An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

DIVISION OF CONSUMER AFFAIRS**(a)****Board of Examiners of Electrical Contractors****General Rules and Regulations****Readoptions: N.J.A.C. 13:31-1.5, 1.6, 1.8, 1.11****Readoptions With Amendments: N.J.A.C. 13:31-1.2, 1.4, 1.7, 1.9, 1.10****Adopted Repeal and New Rules: N.J.A.C. 13:31-1.1, 1.3**

Proposed: October 20, 1986 at 18 N.J.R. 2113(d).

Adopted: November 19, 1986 by John Q. Larkin, Chairman,

Board of Examiners of Electrical Contractors.

Filed: December 12, 1986 as R.1986 d.44, **without change**.

Authority: N.J.S.A. 45:5A-6.

Effective Date: (Readoption) December 12, 1986.

Effective Date: (Amendments, Adopted New Rules) January 5, 1987.

Expiration Date: December 12, 1991.

Summary of Public Comments and Agency Responses:**No comments received.****Full text of the adoption follows.**

13:31-1.1 Board meetings; quorum

(Delete text of N.J.A.C. 13:31-1.1 and replace with new text as follows:)

(a) Regular Board meetings shall be held in accordance with a schedule that is published yearly and filed with the Secretary of State.

(b) Special meetings may be held at the request of a Board member or called by the Chairman with publication of appropriate notice pursuant to the requirements of the Open Public Meetings Act.

(c) A majority of the voting members of the Board shall constitute a quorum thereof and no action of the Board shall be taken except on the affirmative vote of a majority of the members of the entire Board.

(d) In the absence of the chairman, members shall select one of the members attending the meeting to serve as chairman for that meeting.

13:31-1.2 Qualifications of applicants

(a) Applicants for examination for a license as an electrical contractor shall be over the age of 21 years and shall have had preceding the making of the application at least five years practical experience working with tools in the installation, alteration or repair of wiring for electric light, heat or power. The required term of practical experience shall not include time spent in supervising, engineering, estimating and other managerial tasks.

(b) An applicant having a bachelor's degree in electrical engineering shall require only two years of practical experience and applicants holding a certificate from an approved technical school shall require only 3-1/2 years of practical experience.

13:31-1.3 Examinations

(Delete text of N.J.A.C. 13:31-1.3 and replace with new text as follows:)

(a) The Board examination shall be the Multistate Electrical Licensing Test (MELT) developed by the Educational Testing Service, Princeton, New Jersey.

(b) An applicant must obtain a passing grade on the MELT examination. Any applicant who fails to pass the Board examination shall not be eligible to retake the examination for six months from the date of such failure.

(c) An applicant shall complete all required application forms and questionnaires supplied by the Board. Examinations will be held at least four times a year. Information about scheduled examinations and deadlines for submissions of completed applications including appropriate fees may be obtained from the Board offices at 1100 Raymond Boulevard, Newark, New Jersey 07102.

13:31-1.4 Minor repair work

Minor repair work within the meaning of N.J.S.A. 45:5A-18(a) shall include, without limitation, the replacement of lamps and fuses operating at less than 150 volts to ground with a like or similar item.

13:31-1.5 Bonds

(No change.)

13:31-1.6 Familiarity with laws

(No change.)

13:31-1.7 Worker's compensation

Business permit holders shall obtain the worker's compensation insurance required by the laws of this State covering employees employed by the business permit holder or his subcontractor.

13:31-1.8 Work standards and inspections

(No change.)

13:31-1.9 Identification of licensees and permittees

(a) (No change.)

(b) All business correspondence and advertising shall display the license or business permit number.

(c) (No change.)

13:31-1.10 Requirement of pressure seal defined

(a) (No change.)

(b) No person, other than the electrical contractor to whom the license and business permit shall have been issued by this board, shall have the right to use the aforesaid seal. Any violation of this provision shall subject, first, the person wrongfully using the seal, and secondly, the licensee who willfully or negligently allows such unlicensed and unauthorized person to use said seal to such penalties and sanctions as shall be imposed by the board pursuant to authority granted by N.J.S.A. 45:5A-1 et seq. and N.J.S.A. 45:1-14 et seq.

13:31-1.11 Fees for application and examination

(No change.)

NEW JERSEY RACING COMMISSION

(a)

Thoroughbred Rule: Certificate of Compliance

Adopted Amendment: N.J.A.C. 13:70-3.42

Proposed: October 20, 1986 at 18 N.J.R. 2116(b).

Adopted: December 11, 1986, by Bruce H. Garland, Director,
New Jersey Racing Commission.

Filed: December 12, 1986 as R.1987 d.42, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: January 5, 1987.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:70-3.42 Certificate of compliance on file

Effective January 1, 1969, a certificate of compliance with N.J.A.C. 13:70-3.41 issued by an insurance company authorized to do business in the State of New Jersey, must be on file with the race secretary.

(b)

Harness Rule: Compensation Insurance

Adopted Amendment: N.J.A.C. 13:71-6.1

Proposed: October 20, 1986 at 18 N.J.R. 2117(a).

Adopted: December 11, 1986, by Bruce H. Garland, Director,
New Jersey Racing Commission.

Filed: December 12, 1986 as R.1987 d.43, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: January 5, 1987.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-6.1 Compensation insurance

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

(d) A certificate of compliance with this rule, issued by an insurance company authorized to do business in the State of New Jersey, must be on file with the race secretary.

(e)-(f) (No change.)

TRANSPORTATION

TRANSPORTATION OPERATIONS

(c)

Speed Limits

Route US 46 including Route U.S. 9 and U.S. 46 in Rockaway Borough and Denville Township, Morris County

Adopted Amendment: N.J.A.C. 16:28-1.10

Proposed: October 20, 1986 at 18 N.J.R. 2117(b).

Adopted: November 20, 1986, by John F. Dunn, Jr., Assistant
Chief Engineer, Traffic and Local Road Design.

Filed: November 24, 1986 as R.1987 d.1 **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Effective Date: January 5, 1987.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.10 Route U.S. 46 including Route U.S. 1, 9 and 46

(a) The rate of speed designated for the certain parts of State highway Route U.S. 46 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1.-3. (No change.)

4. For both direction of traffic:

i.-xii. (No change.)

xiii. Zone 23: 40 mph between Maple Avenue and the Rockaway Township line (George Street) (milepost 38.77 to 39.5), thence.

(1) (No change.)

(2) 40 mph in Rockaway Township, Morris County (milepost 39.5 to 39.9); thence

(3) 40 mph between Rockaway Township line and Mannino Street, Rockaway Borough, Morris County (milepost 39.9 to 40.6); thence

xiv. Zone 24: 40 mph between Mannino Street and the Denville Township line (New Main Street), Rockaway Borough, Morris County (milepost 40.6 to 42.0); thence

(1) 40 mph within the corporate limits of Rockaway Borough, Morris County (milepost 39.95 to 41.95); thence

(2) 40 mph between the Rockaway Borough-Denville Township line and 500 feet east of Route 53, Morris County (milepost 41.95 to 43.20); thence

(3) School Zone: 25 mph in the Saint Mary 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.

xv. Zone 26: 50 mph between 500 feet east of Route 53 and the Denville Township-Mountain Lakes Borough line (New Lakewood Drive); (milepost 43.20 to 43.80); thence

(1) 50 mph between the Denville Township line and the Montville Township line (Rockaway River) Mountain Lakes Borough and Parsippany Troy-Hills Township, Morris County (milepost 43.8 to 50.35); thence

(2) 50 mph between the Parsippany Troy-Hills line (Rockaway River) and the Passaic River Bridge (Morris County-Essex County line) (milepost 50.35 to 51.82); thence

5. (No change.)

6. For westbound traffic in zone 27: 40 mph from Route 53, Denville Township (milepost 43.04) to Broad Street, Denville Township (milepost 42.12).

(b) (No change.)

(d)

Speed Limits

Route Frontage Road Number 1 and Number 2 in Passaic County

Adopted New Rule: N.J.A.C. 16:28-1.24

Proposed: November 3, 1986 at 18 N.J.R. 2190(a).

Adopted: December 4, 1986, by John F. Dunn, Jr., Assistant
Chief Engineer, Traffic and Local Road Design.

Filed: December 9, 1986 as R.1987 d.25 **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Effective Date: January 5, 1987.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.24 Frontage Road Number 1 and Number 2

(a) The rate of speed designated for the certain part of Frontage Road Number 1 and Number 2 under State jurisdiction described in this section shall be established and adopted as the maximum legal rate of speed for the counterclockwise direction of traffic in the City of Paterson, Passaic County:

1. Frontage Road Number 1:

i. 35 miles per hour between 23rd Street and Beckwith Avenue.

2. Frontage Road Number 2:

i. 40 miles per hour between Beckwith Avenue and Kentucky Avenue.

(a)**Speed Limits****Route 27 in Middlesex County****Adopted Amendment: N.J.A.C. 16:28-1.44**

Proposed: October 20, 1986 at 18 N.J.R. 2117(c).
 Adopted: November 20, 1986, by John F. Dunn, Jr., Assistant
 Chief Engineer, Traffic and Local Road Design.
 Filed: November 24, 1986 as R.1987 d.2 **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.
 Effective Date: January 5, 1987.
 Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.44 Route 27

(a) The rate of speed designated for certain parts of State Highway
 Route 27 described in this section shall be established and adopted as
 the maximum legal rate of speed thereat:

1. For both directions of traffic:
 - i.-xi. (No change.)
 - xii. 30 miles per hour between the southerly end of the Bridge over
 the Raritan River and Bridge Street, Highland Park Borough, Edison
 Township and Metuchen Borough, Middlesex County; (mileposts 16.71
 to 20.94) thence,
 - xiii. 35 miles per hour between Bridge Street and Kentnor Street,
 Borough of Metuchen, Middlesex County; (mileposts 20.94 to 21.28)
 thence,
 - xiv. 30 miles per hour between Kentnor Street and Oak Street,
 Borough of Metuchen, Middlesex County; (mileposts 21.28 to 22.33)
 thence,
 - xv. 35 miles per hour between Oak Street and Wakefield Drive,
 Borough of Metuchen, Middlesex County (mileposts 22.33 to 22.94)
 thence,
 - xvi. 40 miles per hour between Oak Street and Frederic Street, Edison
 Township and Borough of Metuchen, Middlesex County; (mileposts
 2.94 to 23.86) thence,
- Renumber xvi.-xx. as xvii.-xxi. (No change in text.)

(b)**Speed Limits****Route 52 in Cape May and Atlantic Counties****Adopted Amendment: N.J.A.C. 16:28-1.98**

Proposed: October 20, 1986 at 18 N.J.R. 2118(a).
 Adopted: November 20, 1986, by John F. Dunn, Jr., Assistant
 Chief Engineer, Traffic and Local Road Design.
 Filed: November 24, 1986 as R.1987 d.3 **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.
 Effective Date: January 5, 1987.
 Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.98 Route 52

(a) The rate of speed designated for state highway Route 52 described
 in this section shall be established and adopted as the maximum legal
 rate of speed thereat:

1. For both directions of traffic:
 - i. In Ocean City, Cape May County:
 - (1) Zone 1: 35 mph between Palen Avenue and 750 feet north of the
 northerly end of the Beach Thorofare Bridge (mileposts 0.0 to 0.36);
 thence
 - (2) Zone 2: 40 mph between 750 feet north of the northerly end of
 Beach Thorofare Bridge and the center of the Ship Channel Bridge
 (mileposts 0.36 to 1.92); thence

ii. In Somers Point City, Atlantic County:

- (1) 40 mph between the center of the Ship Channel Bridge and Route
 U.S. 9 (mileposts 1.92 to 2.74).

(c)**Restricted Parking and Stopping****Routes U.S. 46 in Morris County and Route 175 in Mercer County****Adopted Amendment: N.J.A.C. 16:28A-1.32****Adopted New Rule: N.J.A.C. 16:28A-1.107**

Proposed: November 3, 1986 at 18 N.J.R. 2190(b).
 Adopted: December 4, 1986, by John F. Dunn, Jr., Assistant
 Chief Engineer, Traffic and Local Road Design.
 Filed: December 9, 1986 as R.1987 d.26 **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-199.
 Effective Date: January 5, 1987.
 Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.32 Route U.S. 46

(a) (No change.)
 (b) The certain parts of State highway Route U.S. 46 described in this
 section shall be designated and established as "no parking" zones where
 parking is prohibited at all times. In accordance with the provisions of
 N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the
 following established bus stops:

- 1.-11. (No change.)
12. Within Mountain Lakes Borough, Morris County:
 - i. Along the eastbound (southerly) side:
 - (1) Near side bus stop beginning at the prolongation of the westerly
 curb line of the Boulevard and extending 105 feet westerly therefrom.

16:28A-1.107 Route 175

(a) The certain parts of State highway Route 175 described in this
 section shall be designated and established as "no parking" zones where
 parking is prohibited at all times. In accordance with the provisions of
 N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the
 following established bus stops within Ewing Township, Mercer County:

1. Along (River Road) southbound on the westerly side:
 - i. Far side bus stops:
 - (1) W. Upper Ferry Road beginning at the southerly curb line of W.
 Upper Ferry Road and extending 200 feet southerly therefrom.
 - (2) Mathew Drive beginning at the southerly curb line of Mathew
 Drive and extending 100 feet southerly therefrom.
 - ii. Near side bus stop:
 - (1) Lower Ferry Road beginning at the northerly curb line of Lower
 Ferry Road and extending 105 feet northerly therefrom.
2. Along (River Road) northbound on the easterly side:
 - i. Near side bus stop:
 - (1) Mathew Drive beginning at the southerly curb line of Mathew
 Drive and extending 105 feet southerly therefrom.

(d)**Restricted Parking and Stopping****Route 147 in Cape May County****Adopted Amendment: N.J.A.C. 16:28A-1.47**

Proposed: October 20, 1986 at 18 N.J.R. 2118(b).
 Adopted: November 24, 1986, by John F. Dunn, Jr., Assistant
 Chief Engineer, Traffic and Local Road Design.
 Filed: November 24, 1986 as R.1987 d.4 **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139.
 Effective Date: January 5, 1987.
 Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.47 Route 147

(a) The certain parts of State highway Route 147 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in Middle Township, Cape May County:

i. Along the southbound side from the westerly end of the Bridge over Grassy Sound Channel to a point 135 feet westerly therefrom.

ii. Along both sides for the entire length within the corporate limits of the Township of Middle, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

(a)

**Traffic and Parking on DOT Property
Route 52 in Cape May County**

Adopted New Rule: N.J.A.C. 16:30-5.3

Proposed: November 3, 1986 at 18 N.J.R. 2191(a).

Adopted: December 4, 1986, by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: December 9, 1986 as R.1987 d.27 **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-208.

Effective Date: January 5, 1987.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:30-5.3 Route 52, Beach Thorofare Bridge parking lot

(a) The following certain parts of State property along State highway Route 52 described in this section shall be designated and established as a Department of Transportation parking lot and restricted to the use of Department of Transportation personnel in the performance of their duty.

1. Along the northbound side, Beach Thorofare Bridge, Ocean City, Cape May County, beginning at the Thorofare Bridge northerly bulk head extending to a point 100 feet northerly therefrom and at a point eight feet east of the easterly lateral line of Route 52 and extending easterly to the adjacent right-of-way line.

TREASURY-GENERAL

DIVISION OF PENSIONS

(b)

**Teachers' Pension and Annuity Fund
Retirement Applications**

Adopted Amendment: N.J.A.C. 17:3-6.1

Proposed: August 4, 1986 at 18 N.J.R. 1519(b).

Adopted: November 21, 1986 by Anthony Ferrazza, Secretary, Board of Trustees, Teachers' Pension and Annuity Fund.

Filed: December 1, 1986 as R.1987 d.10, **without change**.

Authority: N.J.S.A. 18A:66-56.

Effective Date: January 5, 1987.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:3-6.1 Applications

(a) Applications for retirement must be made on forms prescribed by the Fund. Such forms must be completed in all respects and filed with the Fund before the requested date of retirement.

(b) In the event a member files an incomplete application, the deficiency shall be brought to his or her attention and he or she will be required to file a completed application with the Fund to enable acceptance for processing.

(c) Before an application for retirement may be accepted for processing, it must be supported by a certificate from the employer setting forth the employment termination date, the salaries reported for contributions in the member's final years of employment and proof of age, if none is already in the member's record.

(d) In addition to the foregoing requirements, an application for disability retirement must be supported by a report of the member's personal or attending physician and a statement from the employer regarding the member's incapacity for further duty.

(c)

**Police and Firemen's Retirement System
Retirement Applications**

Adopted Amendment: N.J.A.C. 17:4-6.1

Proposed: September 8, 1986 at 18 N.J.R. 1795(a).

Adopted: November 21, 1986 by Anthony Ferrazza, Secretary, Board of Trustees, Police and Firemen's Retirement System.

Filed: December 1, 1986 as R.1987 d.11, **without change**.

Authority: N.J.S.A. 43:16A-13(7).

Effective Date: January 5, 1987.

Expiration Date: July 1, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:4-6.1 Applications

(a) Applications for retirement must be made on forms prescribed by the system. Such forms must be completed in all respects and filed with the system before the requested date of retirement.

(b) In the event a member files an incomplete application, the deficiency shall be brought to his or her attention and he or she will be required to file a completed application with the system to enable acceptance for processing.

(c) Before an application for retirement may be accepted for processing, it must be supported by a certificate from the employer setting forth the employment termination date and the salaries reported for contributions in the member's final years of employment.

(d) In addition to the foregoing requirements, an application for disability retirement must be supported by a report of the member's personal or attending physician and a statement from the employer regarding the member's incapacity for further duty.

(d)

**Prison Officers' Pension Fund
Election of Commission Members**

Adopted Amendment: N.J.A.C. 17:7-1.4

Proposed: July 7, 1986 at 18 N.J.R. 1352(b).

Adopted: December 3, 1986 by John F. Young, Secretary, Prison Officers' Pension Fund Commission.

Filed: December 9, 1986 as R.1987 d.28, **without change**.

Authority: N.J.S.A. 43:7-19.

Effective Date: January 5, 1987.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:7-1.4 Election of member-commission

(a) The procedure for the election of a prison officer representative to the commission will involve:

1.-2. (No change.)

3. Ballots will be printed for each eligible member.

- i-viii. (No change.)
- ix. If only one candidate is nominated for a position, the candidate is deemed elected to the position without balloting.

(a)

Prison Officers' Pension Fund Retirement Applications

Adopted Amendments: N.J.A.C. 17:7-3.1

Proposed: September 8, 1986 at 18 N.J.R. 1796(a).
Adopted: December 3, 1986 by John F. Young, Secretary, Prison Officers' Pension Fund Commission.
Filed: December 9, 1986 as R.1987 d.29, **without change**.
Authority: N.J.S.A. 43:7-19.
Effective Date: January 5, 1987.
Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

7:7-3.1 Applications

(a) Applications for retirement must be made on forms prescribed by the fund. Such forms must be completed in all respects and filed with the fund before the requested date of retirement.

(b) In the event a member files an incomplete application, the deficiency shall be brought to his or her attention and he or she will be required to file a completed application with the system to enable acceptance for processing.

(c) Before an application for retirement may be accepted for processing, it must be supported by a certificate from the employer setting forth the employment termination date and the salaries reported for contributions in the member's final years of employment.

(d) In addition to the foregoing requirements, the application for disability retirement must be supported by a report of the member's personal or attending physician and a statement from the employer regarding the member's incapacity for further duty.

OTHER AGENCIES

NEW JERSEY HIGHWAY AUTHORITY

(b)

Garden State Parkway Parking, Standing or Stopping on Parkway Prohibited Except in Emergency

Adopted Amendment: N.J.A.C. 19:8-1.8

Proposed: October 20, 1986 at 18 N.J.R. 2120(b).
Adopted: November 24, 1986, by George P. Zilocchi, Executive Director, New Jersey Highway Authority.
Filed: December 1, 1986 as R.1987 d.8, **without change**.
Authority: N.J.S.A. 27:12B-5(j) and (s), 27:12B-18, and 27:12B-24.
Effective Date: January 5, 1987.
Expiration Date: June 1, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:8-1.8 Parking, standing or stopping on Parkway prohibited except in emergency

- (a)-(c) (No change.)
- Renumber (e)-(i) as (d)-(h) (No change in text.)

(c)

Garden State Parkway Emergency Service

Adopted Amendment: N.J.A.C. 19:8-2.12

Proposed: October 20, 1986 at 18 N.J.R. 2120(c).
Adopted: November 24, 1986, by George P. Zilocchi, Executive Director, New Jersey Highway Authority.
Filed: December 1, 1986 as R.1987 d.9, **without change**.
Authority: N.J.S.A. 27:12B-5(j) and (s), 27:12B-18, and 27:12B-24.
Effective Date: January 5, 1987.
Expiration Date: June 1, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:8-2.12 Emergency service

- (a) (No change.)
- (b) Rules on road service for all vehicles are as follows:
 - 1. Service charge, 24 hours per day: \$12.00;
 - 2.-3. (No change.)
- (c) Rules on towing cars and campers up to a registered maximum gross weight of 6,999 lbs. are as follows:
 - 1. Towing charge: \$30.00 plus \$2.00 per mile or fraction thereof;
- (d) Rules on towing trucks and buses (two-axle) and cars and campers registered gross weight 7,000 lbs. to 14,999 lbs. are as follows:
 - 1. Towing charge: \$45.00 plus \$2.25 per mile or fraction thereof.
- (e) Rules on towing trucks, with or without trailers, and buses (three-axle or more) or with a registered gross weight exceeding 14,999 lbs. are:
 - 1. Towing charge: \$75.00 plus \$3.00 per mile or fraction thereof.
 - 2. The charge for use of a Land All Trailer (Low Boy) is \$100.00 for the first hour, with an additional \$50.00 charge for each additional hour used. In addition, there will be a towing charge of \$4.00 per mile.
- (f) (No change.)

ELECTION LAW ENFORCEMENT COMMISSION

(d)

Surplus Campaign Funds

Adopted Amendments: N.J.A.C. 19:25-1.7, 7.2

Adopted Repeal and New Rules: N.J.A.C. 19:25-7.3 and 7.4

Proposed: July 7, 1986 at 18 N.J.R. 1359(a).
Adopted: December 10, 1986 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
Filed: December 11, 1986, as R.1987 d.30, **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. 19:44A-6.
Effective Date: January 5, 1987.
Expiration Date: January 9, 1991.

Summary of Public Comments and Agency Responses:

The Commission received a two-page letter from Ed McCool, Executive Director, New Jersey Common Cause, concerning the use of surplus campaign funds for legislative district offices.

COMMENT: The commenter expressed agreement with the list of permitted uses of surplus campaign funds set forth in N.J.A.C. 19:25-7.4. However, the commenter objected that the proposal did not specifically discuss the use of surplus campaign funds by members of the Legislature for the operation and staffing of legislative district offices and urged the Commission to address this use, either by specifically allowing or prohibiting it.

RESPONSE: The Commission concluded it lacked jurisdiction to permit or prohibit the use of surplus funds for legislative district offices, and added N.J.A.C. 19:25-7.4(c) to the text of the regulation to state speci-

cally that it lacks jurisdiction. The addition of this subsection does not enlarge or curtail who or what will be affected, does not affect what is being mandated and does not enlarge or curtail the scope of the rule or the burden it imposes. Therefore, the Commission does not believe reproposal is necessary or desirable.

COMMENT: The commenter suggested that the Commission has the authority to regulate the use of surplus campaign funds because it has the authority to regulate campaign contributions.

RESPONSE: The Commission believes that "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq., does not vest jurisdiction in the Commission to regulate the funding of legislative district offices. The Commission believes that the Joint Legislative Committee on Ethical Standards, established pursuant to N.J.S.A. 52:13D-12 et seq., "New Jersey Conflicts of Interest Law," has the jurisdictional authority to determine what funds may or may not be applied towards legislative district office expenses. Furthermore, the Commission believes that an attempt by it to exercise jurisdictional authority over members of the Legislature in the funding of their legislative district offices may be violative of the separation of powers doctrine and of the right of the Legislature to regulate its members; see, N.J. Const. (1947), Art. III, par. 1.; N.J. Const. (1947), Art. IV, §4, par. 9; N.J. Const. (1947), Art. IV, §4, par. 2.

COMMENT: The commenter urged the Commission to prohibit legislators from using surplus campaign funds for the operation of their legislative offices. The commenter noted that public funds are currently provided to legislators for constituent services, and the public should reasonably expect to receive equal and objective service regardless of the particular legislative district in which they live. The commenter expressed concern that if surplus campaign funds were used for legislative offices and staff, the quality of constituent services would depend on how successful the representative is at fund raising.

RESPONSE: As noted previously, the Commission believes it lacks jurisdiction to prohibit the use of surplus campaign funds for the purpose of operating and staffing legislative district offices. Moreover, the Commission is not able to agree or disagree with the commenter's conclusions drawn from the fact that public moneys are provided to legislators to establish and operate district legislative offices, and deemed that question to be a matter more properly addressed by the Joint Legislative Commission on Ethical Standards, or by the Legislature itself.

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

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the context.

"Surplus campaign funds" means amounts received by contributions to a candidate, political committee, or continuing political committee serving as the campaign committee of a candidate, and remaining after the filing of the final report or, if no final report has been filed, after the termination of the candidacy.

SUBCHAPTER 7. USE OR TRANSMITTAL OF DEPOSITED FUNDS; SURPLUS CAMPAIGN FUNDS

19:25-7.2 Use of funds; general

Funds so deposited may be used in accordance with the provisions of the act and of these regulations for any lawful purpose. Such funds shall not be converted to any personal use by the candidate or any other person.

19:25-7.3 Transmittal of funds to another candidate, political committee, or continuing political committee

Funds received by contributions to a candidate, political committee, or continuing political committee may be transferred before or after deposit to another candidate, political committee, or continuing political committee for any lawful purpose of such other candidate or committee, provided there is no express or implied prohibition by the original contributor against such transmittal.

19:25-7.4 Use or disposition of surplus campaign funds, including surplus campaign funds of gubernatorial candidates who elect not to seek public funding

(a) Surplus campaign funds shall not be converted to any personal use by the candidate or any other person.

(b) The Act does not prohibit the use of surplus campaign funds for any of the following purposes or any other lawful purpose not involving conversion for personal use:

1. The payment of outstanding campaign expenses;
2. Transmittal to another candidate, political committee, or continuing political committee for the lawful purpose of such other candidate or committee;
3. The pro rata repayment of contributors, except that contributors of less than \$100.00 may be excluded from repayment;
4. The repayment of loans made by a candidate to his campaign where the loan is documented and reported as such at the time it is made;
5. Donation to any organization described in section 170(c) of the Internal Revenue Code of 1954;
6. Retention by a candidate, political committee, or continuing political committee serving as the campaign committee of a candidate, in a separate campaign account established pursuant to N.J.S.A. 19:44A-12 for a future election campaign of such candidate, political committee, or continuing political committee serving as the campaign committee of a candidate.

*** (c) The commission has no jurisdiction over the question whether or not surplus campaign funds may be used for the operation and staffing of legislative district offices.***

(a)

ATLANTIC COUNTY TRANSPORTATION AUTHORITY

Rules of Operation

Bus Management Regulation Booklet

Adopted Amendments: N.J.A.C. 19:75-1.1, 2.1, 2.2, 2.3, 3.1, 5.4, 6.1, 6.2, 7.1, 7.2, 7.4, 9.2, 9.4

Proposed: August 18, 1986 at N.J.R. 1688(a).

Adopted: November 6, 1986 by Helen W. Walsh, Executive Director, Atlantic County Transportation Authority.

Filed: November 18, 1986 as R.1986 d.472, 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. 40:35B-15(h).

Effective Date: January 5, 1987.

Expiration Date: January 17, 1989.

Summary of Public Comments and Agency Responses:

On September 4, 1986, the Atlantic County Transportation Authority, under the procedures of the Office of Administrative Law held a public hearing regarding the intent to amend certain portions of N.J.A.C. 19:75. The following steps were taken to insure adequate opportunity for public comment.

1. Publication of the intended changes in the New Jersey Register of August 18, 1986.
2. On August 19, 1986 a mass mailing of letters announcing the intended changes in N.J.A.C. 19:75 were sent out to some 100 community leaders, elected officials and business entities.
3. The letter indicated what time and place the public hearing would be held and the five locations in the county where copies of the existing regulations and copies of the full text of the proposed changes could be reviewed by interested parties. The August 19th letters also indicated that written comments would be received by the Atlantic County Transportation Authority up to September 17, 1986 and indicated the official and address to which these written comments should be forwarded.
4. On August 20, 1986, the Atlantic County Transportation Authority placed a legal ad in the *Atlantic City Press* regarding the September 4, 1986 public hearing on this matter.
5. At the beginning of the week in which the public hearing was held on Thursday, September 4, 1986, public service announcements were placed with several local radio stations; again, publicizing the hearing and the invitation to comment at the public hearing or to submit written comments which were being received until September 17, 1986. These public service announcements also indicated where interested parties could review both the existing regulations and the proposed changes.
6. On Wednesday, September 3, 1986, an article was published by the *Atlantic City Press* announcing the public hearing, the reasons why the public hearing was being held and where the public hearing will be held and how to submit written comments if necessary.

On September 4, 1986 the public hearing was held as advertised. There were 22 participants present, but only five elected to make oral statements at this public hearing.

No written comments were received by the Atlantic County Transportation Authority by the cut-off date of September 17, 1986.

Presented below are the comments and responses received at the public hearing on September 4, 1986 by the Atlantic County Transportation Authority:

COMMENT: The Director of the B.G. Rosin Senior Center, Jewish Adult Services, raised questions as to what will happen to Virginia Avenue regarding the continuance of using this particular roadway as a bus route in Atlantic City and as it relates to the Resorts International Hotel Casino developments in that area around the boardwalk.

RESPONSE: Prior to and after both the Resorts and Showboat developments, the use of Virginia Avenue as a bus route will be discontinued and instead Pennsylvania Avenue will be the bus route for servicing this area of the City. Furthermore, this change is consistent with the attempt by the Bus Management Program to protect the interests and health of high residential areas of the City.

COMMENT: The issue of the use of Providence Avenue to access the Golden Nugget Garage, which had been proposed by representatives of the Golden Nugget, was raised. Golden Nugget representatives questioned why their suggested change had not been considered as part of this proposal.

RESPONSE: Golden Nugget was advised that their suggestion has been prepared for and will be submitted to the ACTA for its consideration. The current proposal is in the final stage of adoption. The subject matter of the Golden Nugget suggestion may not ultimately be adopted, but it will be considered by the Authority. If the Authority recommends the change in question, it will be proposed and adopted through the administrative process.

COMMENT: A representative from a senior citizen residential high-rise unit questioned when buses would be prohibited from using Virginia Avenue.

RESPONSE: Once these amendments are adopted and become effective, the change from using Virginia Avenue to using Pennsylvania Avenue as access to Resorts development at the Boardwalk will be implemented and enforced.

COMMENT: A Chelsea Neighborhood Association representative questioned the number of buses the parking lots were capable of accommodating. The representative maintained that about 95 percent of the buses go to parking lots located on Albany Avenue in the Chelsea area. The representative requested that the ACTA attempt to distribute bus traffic and bus parking zones in relation to routes going in and out of the city.

RESPONSE: The comments, although beyond the scope of the proposal, were taken under advisement and the Authority will look into what can be done to protecting the Chelsea Neighborhood as well as other neighborhoods within Atlantic City.

COMMENT: Another Chelsea Neighborhood representative was concerned about the State Department of Transportation proposed widening of Albany Avenue and the effect on the single lane of traffic in either direction. Also, what, if any, discussions had occurred between the Authority and DOT and when would the renovation begin.

RESPONSE: Actual construction will begin in 1988. Meetings have been and will continue to be held to plan for and mitigate the flow of traffic during construction. A plan which outlines what will occur during reconstruction of Albany Avenue will be issued shortly.

COMMENT: The Chelsea Neighborhood Association believed that the Authority should have the police power to deal with complaints and enforcement of driving and pedestrian traffic safety. There was also a concern that the Michigan Avenue bus parking lot should not be in the center of the city because it causes traffic hazards.

RESPONSE: The Association's comments will be taken into consideration as the Authority proceeds with the bus management issues and problems in Atlantic City.

COMMENT: A question was raised concerning the opening of the Showboat Casino and the bus routes that will be involved. The Resorts Bus Management program requires a tunnel to be constructed in order to avoid the continued use of Virginia Avenue. However, what impact will the Resorts Bus Program have on the Showboat bus routes in the area between Pacific Avenue and the Boardwalk and will the tunnel be completed when the Showboat opens.

RESPONSE: Both the Showboat and Resorts International have two different bus programs in different stages of development. Neither program has been finalized, therefore, none of the routes have been officially

identified. The Authority will continue to discuss and negotiate with Showboat and Resorts on what routes are appropriate and what will be the best bus management program for each facility. (A representative from Resorts stated that to the best of his knowledge, the underground tunnel is not for Showboat.)

COMMENT: A commenter questioned whether there were any regulations concerning the movement of buses in the inlet area of Atlantic City. Since that area has a large senior citizen population there is a concern for their safety given the large volume of buses that travel there.

RESPONSE: The number of buses that both the Showboat and Resorts can have on-site have been determined with the intent to mitigate the amount of bus traffic going through the inlet area. The Authority will assure that the community will be involved in the final discussions.

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

19:75-1.1 Definitions

"Activity Center" means all such land uses, other than the Atlantic City Municipal Bus Terminal, whose activities generate bus traffic from outside Atlantic County and at whose site bus passengers are loaded or discharged. ***[Included in this definition, but not limited thereto, are the following facilities: Golden Nugget Hotel Casino, Tropicana Hotel Casino, Playboy Hotel Casino, Bally's Park Place Hotel Casino, Claridge Hotel Casino, Sands Hotel Casino, Resorts International Hotel Casino, Harrah's Marina Hotel Casino, World International Hotel, Atlantic City Convention Center and Gardner's Basin.]***

"Bus" means all multi-passenger vehicles ***[including but not limited to vehicles commonly known as vans and mini buses]*** engaged in motor-bus regular route service and motor bus charter service as defined by N.J.S.A. 40:35B-3(h) and (j) respectively, **which vehicles include but are not limited to vehicles known as buses, minibuses and vans*.**

"Manifest" means a record of daily bus arrivals by ***an*** activity center, ***[to]*** ***which*** include ***s,*** at a minimum, ***a*** bus company ***names***, bus number ***s***, arrival and departure times, and ***the*** presence of ACTA permit.

"Permit" means ***[a]*** ***the*** receipt issued by ACTA confirming proof of payment of the Bus Management fee.

19:75-2.1 Routes of travel: generally

(a) (No change.)

(b) Except for Atlantic City, bus routes in Atlantic County are US Route 30, US Route 40/322 and the Atlantic City Expressway. All other routes are considered to be feeder routes to these major access roadways. The major access roadway is designed to enable the bus to enter the city in the zone where its destination is located.

1.-2. (No change.)

3. All other county roadway networks approved for bus travel are for local feeder purposes and are described as follows:

i.-vi. (No change.)

vii. Route 52 McArthur Boulevard/Laurel Drive from the Atlantic County boundary to the Garden State Parkway at Interchange (30N) and Mays Landing-Somers Point Road between U.S. Route 9 and Shore Road and U.S. Route 9 between Mays Landing-Somers Point Road and Garden State Parkway at Interchange 29S.

viii. New York Avenue from Route 30/Absecon Boulevard to Huron Avenue.

ix. Chelsea Avenue from the Atlantic City Boardwalk to Atlantic Avenue.

x. Huron Avenue from Route 30/Absecon Boulevard to its eastward termination.

xi. Egg Harbor Road from Route 54 to Route 30.

xii. Pacific Avenue from Kentucky Avenue to South Carolina Avenue.

19:75-2.2 Atlantic City access routes

(a) (No change.)

(b) All buses entering or exiting Atlantic City shall do so ***[only]*** ***either*** on routes prescribed for the zone in which ***the bus destination*** is located ***[the destination]*** or ***at the*** point ***[of]*** ***for*** departure of such buses, as the case may be, as set forth below:

ZONES ENTRY/EXIT ROUTE

Zone 1 Route 40

Zone 2 Atlantic City Expressway

Zone 3 Route 30†
Zone 4 Route 30

†Buses entering or leaving Zone 3 may use Atlantic City Expressway via Atlantic Avenue.

(c) (No change.)

19:75-2.3 Routes of travel to and from casino hotels

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

(c) Atlantis:

1. Arrival: via Atlantic Avenue to Missouri Avenue to Pacific Avenue to the Atlantis site or Convention Hall. In the event that*[*, due to the severity of]* traffic conditions*[*,]* ***make*** inbound Missouri Avenue and Pacific Avenue *[are]* unavailable for ***bus travel to*** Atlantis, the alternate route will be Albany Avenue to Atlantic Avenue to Iowa Avenue to Pacific Avenue to Florida Avenue to Casino. This alternate route will only be available to Atlantis buses when, in the opinion of ACTA and appropriate representatives of the Atlantic City Police Department, ***there*** exists a traffic condition on the primary route that constitutes an imminent threat to public safety.

(d) (No change.)

(f) (No change in text.)

(e) Harrah's Trump Hotel Casino:

1. Arrival: via Atlantic City Expressway to Missouri Avenue to Casino bus lot.

2. Departure: from the casino via Mississippi Avenue to Atlantic Avenue to Arkansas Avenue to Atlantic City Expressway.

(g) Resorts:

1. Arrival: Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue to New Jersey Avenue for intercept to Atlantic Avenue to Pennsylvania Avenue.

2. Departure: U-turn Pennsylvania Avenue to Absecon Boulevard (Route 30). When constructed: Pennsylvania Avenue into tunnel to New Roadway to Atlantic Avenue to Pennsylvania Avenue to Route 30: alternate to Atlantic Avenue to Arkansas Avenue to Atlantic City Expressway.

(h) Harrah's:

1. (No change.)

2. Departure: From the casino via Brigantine Boulevard to Huron Avenue to Absecon Boulevard.

(i) Trump Castle:

1. Arrival: via Absecon Boulevard to Huron Avenue to Casino.

2. Departure: from the Casino via Huron Avenue to Absecon Boulevard.

19:75-3.1 Conditions requiring intercept

Buses traveling to activity centers shall be subject to intercept.

19:75-5.4 Dumping of waste

Buses shall dump waste only at locations and into receptacles approved by ACTA.

19:75-6.1 Approved parking lots; exceptions

(a) The following bus parking lots have been and are hereby approved for the parking of buses:

1. Authority lots located at:

i.-ii. (No change.)

iii. Huron Avenue in the City of Atlantic City.

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

(d) A list of Authority operated and approved bus parking lots is available from the Authority upon request.

19:75-6.2 Bus parking lot approvals and renewals

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

(g) All approvals granted by the Authority pursuant to this subchapter shall be for a period of one year. Any renewal or extension of any approval shall only be granted pursuant to the provisions of (h) below. Such approval may be earlier terminated by the Authority in the event that:

1. The use of the property as a bus parking lot is terminated within such one year period; or

2. The approval by the Authority is withdrawn pursuant to (f) above.

(h) Renewals: 120 days prior to the expiration of the approval period provided for herein, the owner of a bus parking lot shall file with the Authority a written request for a one year renewal of the approval. Such written request shall contain certification by the owner that the bus parking lot complies with all the terms and conditions set forth in this subchapter governing the granting of bus parking lot approval, including any amendments to this subchapter taking effect prior to the expiration of the term of the original approval. The request for renewal shall be processed by the Authority pursuant to the provision of 19:75-9.4. Failure

to apply for renewal of a bus parking lot approval within the time provided for herein shall result in the expiration of such approval at the end of one year from the date of issuance. The owner whose bus parking lot approval has expired may file a new application for approval pursuant to the provisions of (a) through (g) above at any time.

(i) The Authority is specifically empowered to consider the application of any amendment to this subchapter which will take effect prior to the expiration date of a bus parking lot approval ***[in]* *when*** determining ***whether*** to grant or deny renewal thereof.

19:75-7.2 Modes of payment

(a) Bus operators or owners required to pay the fee provided for in this subchapter shall do so in accordance with the following:

1. (No change.)

2. Payment of the fee shall be made ***no later than the time of first intercept or at the time of arrival at an activity center, whichever is sooner.*** ***Payment shall be made*** at the following Authority locations:

i. Albany Avenue (Two Guys) bus parking and intercept lot;

ii. (No change.)

iii. Huron Avenue bus parking and intercept lot and such other locations as the Authority shall designate.

19:75-7.4 Activity center and licensed parking lot manifests

The Authority will require each activity center to maintain a daily bus activity manifest, such manifest to be completed and made available to the Authority on a weekly basis.

19:75-9.2 Application for minor variance; determination by Executive Director; appeal to board

(a) (No change.)

(b) All applications must be filed in duplicate with the Executive Director of the Authority and an additional copy with the police department of the municipality or municipalities ***[effected]* *affected*** by the variance, no later than three business days prior to the date for which the variance is requested. Proof of service of the application on the ***affected*** police department ***s*** ***[or police departments affected]*** must be filed with the Authority by way of affidavit or certified mail return receipt ***requested*** prior to a determination on the application.

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

19:75-9.4 Hearing procedure for major variances, bus parking lot approvals, additional activity center on-site approvals, and other hearings

(a) All applications for major variances (N.J.A.C. 19:75-9.1(b) and 9.3), bus parking lot approvals (N.J.A.C. 19:75-6.2), and additional site approvals (N.J.A.C. 19:75-4.3) shall be reviewed by the Development Division of the Authority.

1. Within 30 days following receipt of application, the Authority ***,*** through the Development Division, shall notify the applicant in writing by certified mail regarding ***[its]* *the*** completeness ***[for]* *of the*** filing. The Authority may declare the application to be complete for filing or shall notify the applicant of specific deficiencies. The Authority ***shall***, within 15 days following the receipt of additional information to correct ***[the]* *filing* deficiencies*,* shall notify the applicant of the completeness ***[for]* *of the amended applications*** filing ***[of the amended applications]***, or shall specify the unaddressed deficiencies. ***[The]* *An*** application shall not be considered ***[to be]* *duly*** filed until it has been declared complete ***[for filing]*** by the Authority.**

2. The Development Division of the Authority shall recommend approval or disapproval of all completed applications to the Executive Director who shall grant or deny the application within 15 days of the recommendation of the Development Division. The determination ***[to]* *of*** the Executive Director, setting forth the reasons for the grant or denial of the ***[application]* *applicant***, shall be ***[forthwith forwarded]* *forwarded forthwith*** to the applicant by certified mail, return receipt requested.

3. In the event of an adverse determination by the Executive Director, the applicant may request a hearing within 10 days of receipt of ***the*** determination ***,*** which request shall be in writing to the Executive Director sent registered mail, return receipt requested. Such hearing shall be held within 45 days of the receipt of the request therefor and notice of the hearing shall be mailed to the applicant.

4. The hearing shall be conducted by a hearing officer appointed by Chairperson of the Board of the Authority. The applicant may appear in person, with or without counsel, and may present testimony or other evidence in support of the application. The Authority shall appear through the Executive Director or his designee. The New Jersey Rules of Evidence shall not apply at such hearing, but the hearing officer shall

limit all evidence to that which is material and relevant to the application. The hearing shall be recorded and the tapes of each hearing shall be retained by the Authority for a period of one year following the hearing. ***A transcript of any hearing shall be prepared by the Authority upon written request and at the sole cost of the party requesting such transcript. The Authority may require payment in advance.***

5. After the conclusion of any hearing held pursuant to this subchapter, the hearing officer shall render a written decision setting forth in detail all findings of fact and conclusions of law as shall be necessary to support the decision. The hearing officer's decision shall be filed with the applicant and the Secretary of the Board of the Authority within 30 days of the conclusion of the hearing. The applicant may file a written comment to the hearing officer's decision within 10 days of the date of such decision.

6. The Board of the Authority shall affirm, reverse or modify the hearing officer's decision no later than the second regularly scheduled Board meeting following the date of the hearing officer's decision. ***Failure by the Board to act within the time prescribed herein shall constitute in affirmation of the hearing officer's decision.*** The applicant shall be notified in writing of the date, time and place of the Board meeting at which the Board shall act upon the decision of the hearing officer. Except in the case of major variances under N.J.A.C. 19:75-9.3 the Authority shall affirm, reverse or modify the decision of the hearing officer by a vote of the majority of the Board pursuant to the By-Laws of the Authority. In the case of major variances*,* approval shall require an

affirmative vote of five members of the Board of the Authority.

7. Any applicant who fails to obtain Authority approval may resubmit a revised application at any time.

(b) (No change.)

(c) All police departments affected by the application determined pursuant to the procedure set forth in this subchapter shall receive prior written notice of any hearing at which such applications shall be heard. Representatives of such police departments may appear and give testimony pertinent to the applications. All police departments will be notified immediately in writing of the decision of the hearing officer and Board of the Authority.

AGENCY NOTE: Two maps identifying the proposed amendments for the new approved routes of travel accompany this proposal. The maps for the existing routes of travel are on file at:

Office of Administrative Law
Rules and Publications
9 Quakerbridge Plaza
Trenton, N.J. 08625; and
Atlantic County Transportation Authority
[19-21 South New York Avenue]
1625 Atlantic Avenue—4th Floor
Atlantic City, New Jersey 08401

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

(a)

Amendment to the Cape May County Water Quality Management Plan

Public Notice

Take notice that on October 23, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Cape May County Water Quality Management Plan was adopted by the Department. This amendment will provide for the construction and operation of a spray irrigation system to dispose of treated wastewater generated by the Woodbine Development Center. The spray irrigation system consists of storage lagoons, a pumping station, and spray irrigation fields located in the Borough of Woodbine.

(b)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would provide for the expansion of the sewer service area for Burlington Township to include the proposed Neck Road development, Block 142, Lot 3.06. The project site will be served by an existing sewer main.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan

Public Notice

Take notice that Middlesex County has submitted for consideration an amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan. This amendment would revise the sewer service area delineation of the Lower Raritan/Middlesex County WQM Plan to indicate that the Monroe Life Care Center ("The Meadows") would be in the sewer service area of the Forsgate Sewage Treatment Plant. This amendment is being considered at this time due to the compelling public need of the facility.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed

amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, N.J. 08901, and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the NJDEP during its review. The NJDEP thereafter may approve and adopt this amendment without further notice.

INSURANCE

(d)

THE COMMISSIONER

Adjustment of \$1,700 Tort Threshold Option Amount Public Notice

Take notice that Kenneth D. Merin, Commissioner of Insurance, pursuant to the authority of N.J.S.A. 39:6A-8(b), announces that the tort threshold option amount will be increased from \$1,700 to \$1,800. This change becomes effective January 1, 1987, to apply to any claim for noneconomic loss arising from any automobile accident occurring on or after January 1, 1987, for those insureds who have selected the tort option.

The adjustment is based on the 6.6 percent increase in the professional services component of medical care services costs reflected in the Consumer Price Index for all urban consumers, United States city average, from October, 1985 to October, 1986. This percentage is determined by the United States Department of Labor, Bureau of Labor Statistics.

(e)

Listing of New Jersey Municipalities that have adopted ordinances pursuant to P.L. 1978, c.184, as amended by P.L. 1979, c.369.

Public Notice

Take notice that Kenneth D. Merin, Commissioner of Insurance, in accordance with the provisions of N.J.S.A. 17:36-9, announces the publication of New Jersey municipalities that have adopted ordinances pursuant to the aforementioned statute. Those municipalities which have adopted said ordinances since the previous date of publication are shown in boldface.

LIST OF MUNICIPALITIES REQUIRING PAYMENT OF LIENS BY COMPANIES WRITING FIRE INSURANCE

The following is a list of municipalities that have passed an ordinance requiring companies writing fire insurance on risks located in that municipality to pay unpaid liens out of any claimed payments in excess of \$2,500.

	Date Filed With The Department of Insurance
City of Paterson 07050 (Passaic County)	February 16, 1979
City of East Orange 07019 (Essex County)	February 20, 1979
City of Jersey City 07302 (Hudson County)	February 23, 1979
Town of West Orange 07052 (Essex County)	February 26, 1979
Township of Jackson 08527 (Ocean County)	March 7, 1979
City of Bayonne 07002 (Hudson County)	March 12, 1979
Township of Washington 08214 (Burlington County)	March 12, 1979
Town of West New York 07093 (Hudson County)	March 16, 1979
Borough of South River 08882 (Middlesex County)	March 16, 1979

City of Newark 07102 (Essex County)	March 16, 1979	City of Hackensack 07602 (Bergen County)	April 22, 1980
City of Atlantic City 08401 (Atlantic County)	March 19, 1979	Township of Willingboro 08046 (Burlington County)	April 17, 1980
Town of Irvington 07111 (Essex County)	March 20, 1979	Township of Brick 08723 (Ocean County)	May 2, 1980
Township of Howell 07731 (Monmouth County)	March 23, 1979	Township of Mount Laurel 08054 (Burlington County)	May 27, 1980
Borough of Eatontown 07724 (Monmouth County)	March 23, 1979	City of Trenton 08608 (Mercer County)	June 12, 1980
Borough of Somerville 08876 (Somerset County)	March 23, 1979	Borough of Tenafly 07670 (Bergen County)	June 17, 1980
Town of Bloomfield 07003 (Essex County)	March 26, 1979	Township of Franklin 07826 (Somerset County)	June 20, 1980
Township of Maplewood 07040 (Essex County)	April 4, 1979	Township of Tinton Falls 07724 (Monmouth County)	June 20, 1980
Town of Montclair 07042 (Essex County)	April 5, 1979	Township of Readington 08889 (Hunterdon County)	June 23, 1980
City of Plainfield 07061 (Union County)	April 5, 1979	Borough of Princeton 08540 (Mercer County)	July 16, 1980
Borough of Sea Bright 07760 (Monmouth County)	April 10, 1979	Township of Maple Shade 08052 (Burlington County)	July 18, 1980
City of Millville 08332 (Cumberland County)	April 10, 1979	Township of South Orange Village 07079 (Essex County)	August 19, 1980
City of Union City 07087 (Hudson County)	April 23, 1979	Township of Fairfield 07006 (Essex County)	August 21, 1980
Township of Lawrence 08648 (Mercer County)	April 24, 1979	Town of Kearny 07032 (Hudson County)	August 26, 1980
Borough of Florham Park 07932 (Morris County)	April 25, 1979	Borough of Hightstown 08520 (Mercer County)	September 3, 1980
City of Elizabeth 07201 (Union County)	April 30, 1979	City of Passaic 07055 (Passaic County)	September 4, 1980
City of Bridgeton 08302 (Cumberland County)	April 30, 1979	Township of Aberdeen 07747 (Monmouth County)	September 8, 1980
City of Camden 08101 (Camden County)	May 4, 1979	Borough of Red Bank 07701 (Monmouth County)	September 9, 1980
Township of Randolph 07801 (Morris County)	May 10, 1979	Township of Princeton 08540 (Mercer County)	September 25, 1980
Township of Riverside 08075 (Burlington County)	May 10, 1979	Borough of South Plainfield 07080 (Middlesex County)	September 26, 1980
Township of Mannington 08079 (Salem County)	May 17, 1979	Township of Maurice River 08332 (Cumberland County)	September 26, 1980
Township of Berkeley 08721 (Ocean County)	May 22, 1979	Township of Byram 07860 (Sussex County)	October 9, 1980
City of Cape May 08204 (Cape May County)	May 22, 1979	Township of Fredon 07860 (Sussex County)	October 28, 1980
City of Asbury Park 07712 (Monmouth County)	May 25, 1979	Township of Winslow 08037 (Camden County)	November 13, 1980
Township of Washington 07853 (Morris County)	May 30, 1979	Borough of Butler 07405 (Morris County)	November 14, 1980
Township of Westhampton 08060 (Burlington County)	June 4, 1979	Borough of Roselle Park 07204 (Union County)	March 5, 1981
Township of Hillside 07205 (Union County)	June 4, 1979	Township of Piscataway 08854 (Middlesex County)	March 20, 1981
City of Salem 08079 (Salem County)	June 20, 1979	Borough of Paulsboro 08066 (Gloucester County)	May 7, 1981
Township of Lower 08024 (Cape May County)	June 25, 1979	Borough of Farmingdale 07727 (Monmouth County)	May 18, 1981
Borough of Fanwood 07023 (Union County)	June 29, 1979	Township of Millburn 07041 (Essex County)	May 19, 1981
City of Orange 07050 (Essex County)	July 2, 1979	City of Egg Harbor 08215 (Atlantic County)	May 21, 1981
Township of Carneys Point 08069 (Salem County)	July 2, 1979	Borough of Spotswood 08884 (Middlesex County)	June 19, 1981
City of Vineland 08360 (Cumberland County)	July 6, 1979	Borough of Matawan 07747 (Monmouth County)	June 19, 1981
Borough of Penns Grove 08069 (Salem County)	July 9, 1979	Township of Lacey 08731 (Ocean County)	August 18, 1981
Town of Phillipsburg 08865 (Warren County)	July 13, 1979	Township of Ewing 08618 (Mercer County)	November 10, 1981
Borough of Westwood 07675 (Bergen County)	July 13, 1979	Township of Clinton 08801 (Hunterdon County)	December 10, 1981
Township of Pohatcong 08865 (Warren County)	July 20, 1979	Borough of Eatontown 07724 (Monmouth County)	December 15, 1981
Township of Edgewater Park 08010 (Burlington County)	July 24, 1979	Township of Neptune 07753 (Monmouth County)	January 4, 1982
Town of Hammonton 08037 (Atlantic County)	August 3, 1979	Borough of Pine Hill 08021 (Camden County)	March 2, 1982
Borough of Roselle 07203 (Union County)	August 8, 1979	Borough of Belmar 07719 (Monmouth County)	March 5, 1982
Township of Cedar Grove 07009 (Essex County)	August 10, 1979	City of Ventnor City 08401 (Atlantic County)	March 30, 1982
Borough of Keyport 07735 (Monmouth County)	August 15, 1979	Borough of Runnemede 08078 (Camden County)	May 6, 1982
Borough of Victory Gardens 07801 (Morris County)	August 15, 1979	Borough of Woodlynne 08107 (Camden County)	June 7, 1982
Township of Scotch Plains 07076 (Union County)	August 22, 1979	Township of Green 07821 (Sussex County)	July 20, 1982
City of North Wildwood 08260 (Cape May County)	August 24, 1979	Borough of Somerdale 08083 (Camden County)	July 28, 1982
Borough of Fort Lee 07024 (Bergen County)	August 27, 1979	Borough of Barrington 08007 (Camden County)	September 17, 1982
Township of Cinnaminson 08077 (Burlington County)	August 30, 1979	Township of Manchester 08733 (Ocean County)	September 21, 1982
Township of Delran 08075 (Burlington County)	August 30, 1979	City of Brigantine 08203 (Atlantic County)	October 14, 1982
Township of Lopatcong 08865 (Warren County)	August 30, 1979	Borough of Buena 08341 (Atlantic County)	November 1, 1982
Borough of Fair View 07022 (Bergen County)	September 5, 1979	Township of Hamilton 08330 (Atlantic County)	November 18, 1982
Borough of Sayreville 08872 (Middlesex County)	September 19, 1979	Borough of Neptune City 07712 (Monmouth County)	December 2, 1982
Township of Egg Harbor 08221 (Atlantic County)	September 24, 1979	Borough of Jamesburg 08831 (Middlesex County)	March 2, 1983
Township of Hopewell 08302 (Cumberland County)	September 26, 1979	Township of Jefferson 07981 (Morris County)	April 19, 1983
Township of Dover 08753 (Ocean County)	September 26, 1979	City of Absecon City 08201 (Atlantic County)	July 5, 1983
City of Hoboken 07030 (Hudson County)	October 15, 1979	Borough of Woodstown 08079 (Salem County)	September 8, 1983
Township of Upper Pittsgrove 08318 (Salem County)	October 15, 1979	Township of Verona (Essex County)	February 23, 1984
Borough of Berlin 08009 (Camden County)	October 18, 1979	Borough of Kearsburg 07734 (Monmouth County)	April 5, 1984
Borough of Sussex 07461 (Sussex County)	October 24, 1979	Borough of Little Silver 07739 (Monmouth County)	April 5, 1984
Township of Ocean 07755 (Monmouth County)	November 27, 1979	Borough of Wood-Ridge 07075 (Bergen County)	July 9, 1984
Borough of Lavallette 08735 (Ocean County)	December 11, 1979	Township of Waterford 08004 (Camden County)	July 9, 1984
City of Rahway 07065 (Union County)	December 18, 1979	City of South Amboy 08879 (Middlesex County)	July 12, 1984
City of Pleasantville 08232 (Atlantic County)	December 27, 1979		
Township of Mount Holly 08060 (Burlington County)	January 29, 1980		
Town of Secaucus 07094 (Hudson County)	March 5, 1980		
Township of Berlin 08091 (Camden County)	March 20, 1980		
City of Asbury Park 07712 (Monmouth County)	April 1, 1980		
Town of Dover 07801 (Morris County)	April 16, 1980		

City of Wildwood 08260 (Cape May County)	December 5, 1984
Township of Alloway 08079 (Salem County)	December 20, 1984
Township of Mendham 07949 (Morris County)	January 16, 1985
Township of Stafford 08050 (Ocean County)	May 2, 1985
Township of Ocean 08758 (Ocean County)	May 29, 1985
Borough of North Plainfield 07060 (Somerset County)	July 1, 1985
Township of Irvington 07111 (Essex County)	July 1, 1985
Township of Howell 07731 (Monmouth County)	July 1, 1985
Borough of Wenonah 08090 (Gloucester County)	July 1, 1985
Township of Hanover 07981 (Morris County)	January 7, 1986
City of Woodbury 08086 (Gloucester County)	January 7, 1986
City of New Brunswick 08903 (Middlesex County)	January 30, 1986
Township of Chatham 07928 (Morris County)	June 4, 1986
Borough of Kinnelon 07405 (Morris County)	June 4, 1986
Borough of Washington 07882 (Warren County)	June 24, 1986
Township of South Orange Village (Essex County)	July 31, 1986
Township of Weehawken 07087 (Hudson County)	August 14, 1986
Township of Wayne 07470 (Passaic County)	October 6, 1986
City of Burlington 08016 (Burlington County)	December 9, 1986

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Contract Carrier Applications

Public Notice

Take notice that Glenn R. Paulsen, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E.11 hereby lists the names and addresses of the applicants who have filed an application for a Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER)
M.J.O. Contract Haulers, Inc.
7 River Road
Highbridge, NJ 08829
Dan Junior Trucking, Inc.
P.O. Box 10
Augusta, NJ 07822

Protests in writing and verified under oath may be presented by interested parties to the Director of Motor Vehicles within 20 days following the publication date of an application.

TREASURY-GENERAL

(b)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments—Month of November

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

The following assignments have been made:

DBC NO.	PROJECT	A/E	CCE
H885	Window Repair/Replacement Vaughn-Eames and Administrative Service Buildings Kean College of New Jersey Union, NJ	Mylan Architectural Group	\$180,000

M711	Smoke Dampers-Cottages Hunterdon Developmental Center Clinton, NJ	M. Benton & Associates	\$ 90,000
A312	Three Elements Sculpture General State Office Building Trenton, NJ	Kerk Van Tongren	\$110,000 (Artist Services)
A313	Land, Sea and Sky Sculpture Annex Office Building Dept. of Transportation Trenton, NJ	Isaac Witkin	\$110,000 (Artist Services)
M716	Renovations to Wastewater Treatment Plant Hagedorn Center for Geriatrics Glen Gardner, NJ	Keller & Kirkpatrick	\$127,000
M686	Closure of Landfill No. Princeton Developmental Center Skillman, NJ	Lippincott Engineers	\$ 60,000
E169	Barrier Free Renovations Various Buildings Marie H. Katzenbach School for the Deaf West Trenton, NJ	Matthew L. Rue, AIA	\$ 35,000
P520	Rehabilitation of Stony Lake Dam Stokes State Forest	Woodward Clyde Consultants	\$150,000
H884	Steam Line Repair/Replacement Kean College of NJ Union, NJ	Brownworth, Mosher & Doran	\$100,000
P514	Sanitary Facilities Lake Ocquittunk Cabins Stokes State Forest	RBA Group	\$180,000
R011	Facility Consultant-FY 87 Dept. of Human Services	Vincent E. Paolicelli	\$ 10,000 Services
J017	Facility Consultant-FY 87 Division of Purchase & Property	Franklyn B. Spiegle AIA	\$ 10,000 Services
P523	New Maintenance Complex Fort Mott State Park Salem County, NJ	Armbruster/Grana Associates	\$220,000

COMPETITIVE PROPOSALS

	Armbruster/Grana Associates	8.94%	
	Lammy & Giorgio, PA	12.4%	
	Kolbe & Poponi, PA	12.94%	
P524	New Entrance Road Study	Kupper Associates	\$ 22,000
	Cheesequake State Park		Services
	Middlesex County, NJ		

COMPETITIVE PROPOSALS

	Kupper Associates	\$22,000 Lump Sum	
	PRC Engineering	\$32,000 Lump Sum	
	Dames & Moore	\$35,000 Lump Sum	
P525	Phase III Rehabilitation Lake Ocquittunk Dam Stokes State Forest	Woodward-Clyde Consultants	\$ 23,400 Services

COMPETITIVE PROPOSALS

	*Converse Consultants	\$ 8,699	Lump Sum
	Woodward-Clyde Consultants	\$23,400	Lump Sum
	James P. Purcell Associates	\$33,725	Lump Sum
P526	New Entrance Road Study	Howard-Needles-Tammen	\$ 23,000
	Ringwood State Park	Bergendoff	Services
	Passaic County, NJ		

COMPETITIVE PROPOSALS

	Howard-Needles-Tammen-Bergendoff	\$23,000 Lump Sum	
	James P. Purcell Associates	\$35,300 Lump Sum	
	VEP Associates	\$44,222 Lump Sum	
P511	Green & Fairway Improvements Spring Meadow Golf Course Farmingdale, NJ	Bernard R. Berson & Associates	\$ 22,625 Services

COMPETITIVE PROPOSALS

	Bernard R. Berson & Associates	\$22,625 Lump Sum
	Keller & Kirkpatrick	\$54,200 Lump Sum

*Qualified Proposal—Not Accepted

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/15/90
1:2	5/15/90
1:5	10/20/91
1:6	8/18/91
1:6A	1/1/88
1:7	8/9/90
1:10	3/4/90
1:10A	9/16/90
1:10B	10/6/91
1:11	3/4/90
1:20	8/1/88
1:21	7/15/90
1:30	2/14/91
1:31	8/12/87

N.J.A.C.	Expiration Date
(Except for 3:6-8 which expired 4/9/85)	
3:7	9/16/90
3:11	3/19/89
(Except for 3:11-2 which expired 6/3/85)	
3:13	11/17/91
3:17	6/18/91
3:19	3/17/91
3:21	11/2/86
(Except for 3:21-1 which expired 2/2/84)	
3:22	5/21/89
3:23	5/3/87
3:24	8/20/89
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:38	9/7/87
3:41	10/16/90

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
(Except for 2:2-9 which expired 6/11/84)	
2:3	6/18/89
(Except for 2:3-4 which expired 1/8/86)	
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	1/18/87
2:23	6/6/88
2:24	2/11/90
2:32	2/3/91
2:48	11/27/90
2:50	7/15/87
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	8/1/88
2:69	10/3/88
2:70	5/7/90
2:71	9/1/88
2:72	9/1/88
2:73	7/18/88
2:74	9/1/88
2:76	8/29/89
2:90	6/24/90

CIVIL SERVICE—TITLE 4

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:3	9/1/88
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	1/1/88
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:22	12/1/90
5:23	4/1/88
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/1/88
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:51	9/1/88
5:70	8/16/87
5:71	3/1/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91

N.J.A.C.	Expiration Date
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/7/89

DEPARTMENT OF DEFENSE—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	3/1/89
6:3	8/18/88
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	8/31/88
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	12/1/87
6:53	9/1/87
6:64	5/1/88
6:68	4/12/90
6:70	1/25/90
6:79	2/1/88

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1 (Except for 7:1-3 which expired 3/5/87)	9/16/90
7:1A	6/7/87
7:1C	6/17/90
7:1D	12/1/88
7:1E	7/15/90
7:1F	3/27/87 (Governor's Waiver)
7:1G	10/1/89
7:1H	7/24/90
7:1I	11/18/88
7:2	7/19/88
7:4	Expired 8/16/84
7:6	12/19/88
7:7	5/7/89
7:7E	7/24/90
7:7F	12/6/87
7:8	2/7/88
7:9 (Except for 7:9-1 which expired 4/25/85)	1/21/91
7:10	9/4/89
7:11	6/6/88
7:12	6/6/88
7:13	5/4/89
7:14 (Except for 7:14-5 which expired 6/23/85)	4/27/89
7:14A	6/4/89
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90

N.J.A.C.	Expiration Date
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/19/88
7:22	12/7/86
7:23	6/18/89
7:24	5/19/91
7:25 (Except for 7:25-1 which expired 9/17/85)	2/18/91
7:25A	5/6/90
7:26 (Except for 7:26-5 which expired 10/7/85)	11/4/90
7:27	Exempt
7:27A	Expired 10/7/85
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	4/5/87
7:30	12/6/87
7:36-1	8/5/90
7:36-2	Expired 1/9/86
7:36-3	Expired 1/9/86
7:36-4	8/5/90
7:36-5	Expired 1/9/86
7:36-6	Expired 1/9/86
7:36-7	8/5/90
7:37	Exempt
7:38	9/18/90
7:45	Expired 1/11/85

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	8/2/87
8:19	6/28/90
8:20	3/4/90
8:21 (Except for 8:21-1 which expired 5/15/85; 8:21-4 which expired 7/21/83; 8:21-6 which expired 9/18/85)	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	4/4/88
8:25	5/20/88
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B (Except for 8:31B-1 which expired 7/19/84)	10/15/90
8:32	Expired 3/12/85
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	2/4/90
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	5/17/89
8:33K	4/16/89
8:34	11/18/88
8:39	6/20/88
8:40	4/15/90
8:42	3/18/90

N.J.A.C.	Expiration Date
8:42A	6/12/91
8:42B	8/1/88
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	1/17/88
8:43F	3/18/90
8:43G	9/8/91
8:44	11/7/88
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:58	Expired 5/1/84
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	9/17/88
8:71	4/2/89

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	10/17/88
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:7	4/13/88
9:8	11/4/90
9:9	10/3/88
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	5/6/88
10:2	1/5/92
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91

N.J.A.C.	Expiration Date
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91
10:69A	4/26/88
10:69B	11/21/88
10:70	6/16/91
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	11/15/87
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:98	7/12/87
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	8/6/87
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	7/19/87
10:125	7/16/89
10:127	9/19/88
10:129	10/11/89
10:130	9/19/88
10:131	9/20/87
10:132	1/5/92
10:140	12/31/86
10:141	2/21/89

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:17	12/15/91
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	7/7/88
11:1-22	7/7/88
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:10	7/15/90
11:12	10/27/91
11:13	12/6/87
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:20	11/5/89
12:35	8/5/90
12:45	5/2/88
12:46	5/2/88
12:47	5/2/88
12:48	5/2/88
12:49	5/2/88
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:120	5/3/90
12:175	12/9/88
12:190	9/5/87
12:195	9/6/88
12:200	8/5/90
12:235	5/5/91

**COMMERCE AND ECONOMIC
DEVELOPMENT—TITLE 12A**

N.J.A.C.	Expiration Date
12A:100-1	9/8/91

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/19/88
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	8/1/88
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:27A	11/1/87
13:28	9/3/90
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	11/1/87
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/8/88
13:44	8/20/89
13:44A	Expired 5/17/84
13:44B	5/3/87

N.J.A.C.	Expiration Date
13:44C	6/2/91
13:45A	12/16/90
13:46	6/3/90
13:47A	8/16/87
(Except for 13:47A-25 which expired 8/14/83)	
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	6/21/87
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	9/6/88

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:11	2/1/87
14:10	9/8/91
14:17	5/7/89
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
(Except for 14A:3-10 which expired 9/1/85)	
14A:4	10/19/88
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:9	Expired 4/27/84
14A:11	9/20/89
14A:12	2/7/88
14A:13	11/2/86
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	3/7/88
15:3	7/7/91
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90

N.J.A.C.	Expiration Date
6:21A	8/20/89
6:22	2/3/91
6:25-12	Expired 2/5/84
6:25-13	Expired 2/5/84
6:26	8/6/89
6:27	9/8/91
6:28	11/7/88
6:28A	11/7/88
6:29	11/7/88
6:30	11/7/88
6:31	11/7/88
6:31A	10/20/88
6:32	4/15/90
6:33	9/3/90
6:41	11/15/87
6:41A	2/19/90
6:41B	3/4/90
6:43	9/3/90
6:44	10/3/88
6:49	3/18/90
6:53	3/19/89
6:53A	4/15/90
6:53B	Expired 8/21/84
6:53C	9/19/88
6:53D	5/7/89
6:54	4/7/91
6:55	11/7/88
6:56	6/4/89
6:60	11/7/88
6:61	11/7/88
6:62	4/15/90
6:72	3/31/91
6:73	2/16/87
6:75	6/6/88
6:76	12/19/88
6:77	1/21/90
6:78	10/7/90
6:79	10/20/91

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
7:1	6/6/88
7:2	12/17/89
7:3	6/6/88
7:4	7/1/90
7:5	12/2/90
7:6	2/19/89
7:7	6/6/88
7:8	6/27/90
7:9	6/6/88
7:10	6/6/88
7:12	8/15/89
7:16	12/2/90
7:19	3/18/90
Except for 17:19-10 which expired 3/3/85)	
7:19A	Expired 2/1/84
7:20	11/7/88
7:25	6/18/89
7:27	11/7/88
7:28	9/13/90
7:29	10/18/90

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	8/12/88
18:12	8/12/88
18:12A	8/12/88
18:14	8/12/88
18:15	8/12/88
18:16	8/12/88
18:17	8/12/88
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	8/12/88
18:25	1/6/91
18:26	8/12/88
18:30	4/2/89
18:35	8/12/88
18:36	2/4/90
18:37	8/5/90

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	6/19/88
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	11/7/88
19:4A	5/2/88
19:8	6/1/88
19:9	7/13/88
19:12	8/7/91
19:16	8/7/91
19:17	7/15/88
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/17/88
19:42	5/17/88
19:43	4/27/89
19:44	10/13/88
19:45	4/7/88
19:46	5/4/88
19:47	5/4/88
19:48	10/13/88
19:49	3/29/88
19:50	5/23/88
19:51	8/14/91
19:52	9/25/91
19:53	5/4/88
19:54	4/15/88
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

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 November 3, 1986 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1987 d.1 means the first rule adopted in 1987.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: OCTOBER 20, 1986.

NEXT UPDATE WILL BE DATED NOVEMBER 17, 1986.

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
18 N.J.R. 1 and 128	January 6, 1986	18 N.J.R. 1433 and 1504	July 21, 1986
18 N.J.R. 129 and 234	January 21, 1986	18 N.J.R. 1505 and 1640	August 4, 1986
18 N.J.R. 235 and 376	February 3, 1986	18 N.J.R. 1641 and 1726	August 18, 1986
18 N.J.R. 377 and 446	February 18, 1986	18 N.J.R. 1727 and 1862	September 8, 1986
18 N.J.R. 447 and 506	March 3, 1986	18 N.J.R. 1863 and 1978	September 22, 1986
18 N.J.R. 507 and 582	March 17, 1986	18 N.J.R. 1979 and 2078	October 6, 1986
18 N.J.R. 583 and 726	April 7, 1986	18 N.J.R. 2069 and 2148	October 20, 1986
18 N.J.R. 727 and 868	April 21, 1986	18 N.J.R. 2149 and 2234	November 3, 1986
18 N.J.R. 869 and 1018	May 5, 1986	18 N.J.R. 2235 and 2344	November 17, 1986
18 N.J.R. 1019 and 1122	May 19, 1986	18 N.J.R. 2345 and 2408	December 1, 1986
18 N.J.R. 1123 and 1222	June 2, 1986	18 N.J.R. 2409 and 2472	December 15, 1986
18 N.J.R. 1223 and 1326	June 16, 1986	19 N.J.R. 1 and 164	January 5, 1987
18 N.J.R. 1327 and 1432	July 7, 1986		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:1, 1:2—1:21	Administrative hearings
1:1-15.10	Prior transcribed testimony

PROPOSAL NOTICE (N.J.R. CITATION)

18 N.J.R. 1728(a)
18 N.J.R. 1865(a)

DOCUMENT NUMBER

R.1986 d.468

ADOPTION NOTICE (N.J.R. CITATION)

18 N.J.R. 2381(a)

(TRANSMITTAL 24, dated October 20, 1986)

AGRICULTURE—TITLE 2

2:6-1	Sale and use of animal biologics	18 N.J.R. 2151(a)
2:71-2.2—2.7	Jersey Fresh Quality Grading Program	18 N.J.R. 2347(a)
2:76-5.3	Cost-share assistance for soil and water conservation projects	18 N.J.R. 1981(a)
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(a)
2:90-1.3	Soil erosion and sedimentation control	18 N.J.R. 2081(a)

(TRANSMITTAL 44, dated October 20, 1986)

BANKING—TITLE 3

3:11-11.13	Leeway investments: confidentiality of approval process	18 N.J.R. 1224(a)		
3:13-1	Registration of bank holding companies	18 N.J.R. 1434(a)	R.1986 d.459	18 N.J.R. 2324(a)
3:13-2, 3	Bank holding company: reporting requirements and examination charges	18 N.J.R. 1763(a)	R.1986 d.458	18 N.J.R. 2325(a)
3:13-4	Bank holding companies: interstate acquisitions	18 N.J.R. 1982(a)	R.1986 d.475	18 N.J.R. 2441(a)
3:21-2.1	Credit union parity	18 N.J.R. 2237(a)		
3:41	Cemeteries: disinterment and reinterment of human remains	18 N.J.R. 1642(a)		

(TRANSMITTAL 34, dated July 21, 1986)

PERSONNEL (CIVIL SERVICE)—TITLE 4

4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals	18 N.J.R. 450(a)		
4:1-8.4	Promotional examinations	18 N.J.R. 591(a)	R.1986 d.469	18 N.J.R. 2381(b)
4:1-12.18	Disposition of certification by appointing authority	18 N.J.R. 1642(b)		
4:1-15	Assignments and transfers	18 N.J.R. 592(a)		
4:1-18	Workweek programs	18 N.J.R. 1764(a)		
4:1-26	Supplemental compensation on retirement	18 N.J.R. 2152(a)	R.1987 d.31	19 N.J.R. 56(b)
4:2-15.1	Assignments and transfers	18 N.J.R. 592(a)		
4:2-16	Separations and demotions	18 N.J.R. 450(a)		
4:2-18	Workweek programs	18 N.J.R. 1764(a)		
4:2-26	Supplemental compensation on retirement	18 N.J.R. 2152(a)	R.1987 d.31	19 N.J.R. 56(b)
4:3-16	Separations and demotions	18 N.J.R. 450(a)		
4:4	State employees' awards program	18 N.J.R. 1766(a)	R.1987 d.20	19 N.J.R. 58(a)
4:5	Supplemental compensation on retirement	18 N.J.R. 2152(a)	R.1987 d.15	19 N.J.R. 56(a)
4:5	Supplemental compensation on retirement: readoption	18 N.J.R. 2152(a)	R.1987 d.31	19 N.J.R. 56(a)

(TRANSMITTAL 31, dated June 16, 1986)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)	Expired	
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)		
5:23-2.23, 7.57	Barrier-Free Subcode	18 N.J.R. 2348(a)		
5:23-3.2	Subcode exceptions	18 N.J.R. 757(a)	R.1986 d.448	18 N.J.R. 2194(a)
5:23-3.4, 3.20	Uniform Construction Code: mechanical subcode	18 N.J.R. 2083(a)	R. 1987 d.14	19 N.J.R. 63(a)
5:23-3.15	Plumbing subcode	18 N.J.R. 2237(b)		
5:23-7	Barrier Free Subcode: access for physically handicapped and aged	18 N.J.R. 757(a)	R.1986 d.448	18 N.J.R. 2194(a)
5:23-7.9, 7.20	Barrier Free Subcode: correction	18 N.J.R. 757(a)	R.1986 d.448	19 N.J.R. 63(b)
5:91-1.2, 1.3, 2.1, 3.1, 5.1, 7.1, 13.3, 13.4	Council on Affordable Housing: procedural rules	18 N.J.R. 1643(a)		
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)		
5:92-1.3, 10.4, 14, 15	Council on Affordable Housing: inclusionary development and affirmative marketing	18 N.J.R. 2083(b)	R.1986 d.479	18 N.J.R. 2442(a)

(TRANSMITTAL 45, dated September 22, 1986)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:8	Thorough and Efficient System of Free Public Schools	18 N.J.R. 1984(a)	R.1987 d.32	19 N.J.R. 63(b)
6:11-12.11	Speech-language specialist endorsement	18 N.J.R. 1994(a)	R.1987 d.35	19 N.J.R. 75(a)
6:11-12.24	Teacher-coordinator certification in Work Experience Career Exploration Program	18 N.J.R. 1995(a)	R.1987 d.34	19 N.J.R. 75(b)
6:21-10	Pupil transportation in small private vehicles	18 N.J.R. 2155(a)		
6:28-3.4, 3.5	Special education	18 N.J.R. 1771(a)	R.1987 d.36	19 N.J.R. 76(a)
6:29-4.4	Children with HIV infection and school attendance	18 N.J.R. 1509(a)	R.1986 d.445	18 N.J.R. 2206(a)
6:29-8.1, 8.2	Audiometric screening	18 N.J.R. 1996(a)	R.1987 d.33	19 N.J.R. 76(b)
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		

(TRANSMITTAL 45, dated October 20, 1986)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:2-11	Natural Areas System	18 N.J.R. 2349(b)		
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:7-1, 2, 3, 4, 6	Coastal Permit Program	18 N.J.R. 2156(a)		
7:7-2.1	CAFRA facilities	18 N.J.R. 1772(a)	R.1986 d.461	18 N.J.R. 2326(a)
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)		
7:9-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:9-13	Sewer connection bans	18 N.J.R. 2163(a)		
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)		
7:13-7.1	Floodway delineations along East Branch of Stony Brook, South Branch of Rockaway Creek, and Whale Pond Brook	18 N.J.R. 1239(a)		
7:13-7.1	Floodway delineations in Montgomery Township and Rocky Hill	18 N.J.R. 1334(a)	R.1986 d.460	18 N.J.R. 2327(a)
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:13-7.1(d)	Redelineation of Wolf Creek in Hackensack Basin	18 N.J.R. 2355(a)		
7:13-7.1(d)	Redelineation of Holland Brook in Somerset County	18 N.J.R. 1866(a)		
7:13-7.1(d)	Redelineation of North Branch Raritan River in Somerset County	18 N.J.R. 1866(b)		
7:13-7.1(e)	Redelineation of Henderson Brook in Passaic River	18 N.J.R. 2169(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System: comment period extended	18 N.J.R. 2411(a)		
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:22-1, 2, 8	Wastewater treatment facilities: State matching grants	18 N.J.R. 1869(a)	R.1987 d.38	19 N.J.R. 77(a)
7:22-3	Wastewater Treatment Fund procedures	18 N.J.R. 1875(a)	R.1987 d.37	19 N.J.R. 84(a)
7:22-4	Wastewater Treatment Trust procedures	18 N.J.R. 1883(a)	R.1987 d.40	19 N.J.R. 95(a)
7:22-5	Determination of allowable costs: Wastewater Treatment Fund and Trust	18 N.J.R. 1891(a)	R.1987 d.39	19 N.J.R. 105(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:22-6	Pinelands Infrastructure Trust Fund procedures	18 N.J.R. 1896(a)		
7:22-7	Determination of allowable costs: Pinelands	18 N.J.R. 1904(a)		
7:25-6	1987-88 Fish Code	18 N.J.R. 1644(a)	R.1987 d.41	19 N.J.R. 110(a)
7:25-18A.4	Sale of striped bass	18 N.J.R. 2170(a)		
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)		
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 924(a)		
7:26-2.9	Closure and post-closure care of sanitary landfills	18 N.J.R. 2170(b)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	18 N.J.R. 1773(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	18 N.J.R. 2171(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)	R.1987 d.18	19 N.J.R. 113(a)
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:26-8.14, 8.15, 8.16	Hazardous waste criteria, identification and listing	18 N.J.R. 1037(a)	R.1986 d.474	18 N.J.R. 2445(a)
7:26-8.17	Hazardous waste delisting procedure	18 N.J.R. 1335(a)	R.1986 d.473	18 N.J.R. 2446(a)
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management	18 N.J.R. 2356(a)		
7:26-15	Recycling Grants and Loans Program	18 N.J.R. 2358(a)		
7:26-16A.1, 16A.2	Filing of disclosure statements by solid and hazardous waste licensees subject to A-901	18 N.J.R. 2172(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-19.2, 19.3, 19.4, 19.6, 19.9, 19.10, 19.12	Licensure of orthopedic and urologic x-ray technologists	18 N.J.R. 2361(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)		
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		

(TRANSMITTAL 47, dated October 20, 1986)

HEALTH—TITLE 8

8:2-1	Birth certificates	18 N.J.R. 2278(a)		
8:8-1.2, 5.5, 6.2	Screening of human blood	18 N.J.R. 2280(a)		
8:21-2.41	Sale of striped bass	18 N.J.R. 2174(a)		
8:21-4	Control of new drugs and Laetrile use	18 N.J.R. 2363(a)		
8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:21-5	Order to remove from sale and recall of foods, drugs, cosmetics, and devices: extension of proposal comment period	18 N.J.R. 1715(b)		
8:26-3.9, 5.6, 5.7, 5.9, 7.6, App.	Public recreational bathing	18 N.J.R. 2281(a)		
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-26.3, 26.4	Home health agencies: employee physicals; child abuse and neglect	18 N.J.R. 2283(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)	R.1987 d.24	19 N.J.R. 116(a)
8:31B-2.2, 3.51, 3.57, 3.73, 4.40	Hospital reimbursement: Same Day Surgery services	18 N.J.R. 1908(a)		
8:31B-3.27, 4.42	Hospital reimbursement: capital facilities allowance	18 N.J.R. 1912(a)		
8:31B-3.38, 3.58, App. II, 4.66	Hospital reimbursement: malpractice costs	18 N.J.R. 1911(a)	R.1986 d.477	18 N.J.R. 2447(a)
8:31B-3.41, 4.15, 4.38, 4.39	Hospital reimbursement: uncompensated care	18 N.J.R. 2283(b)		
8:31B-3.72	Hospital reimbursement: periodic adjustments	18 N.J.R. 1917(a)		
8:31B-3.73, App. IX	Hospital reimbursement: cost/volume methodology	18 N.J.R. 2284(a)		
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	18 N.J.R. 1918(a)		
8:33H-2.1, 3.2, 3.3, 3.5, 3.8, 3.10	Long-Term Care Policy Manual	18 N.J.R. 2095(a)		
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:42	Licensure of home health agencies	18 N.J.R. 2287(a)		
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:51-1—6	Standards for local boards of health	18 N.J.R. 1690(a)	R.1986 d.476	18 N.J.R. 2448(a)
8:52	Standards for local boards of health	18 N.J.R. 1690(a)	R.1986 d.476	18 N.J.R. 2448(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)	R.1986 d.149	18 N.J.R. 986(a)
8:65-10	Publication notice of Controlled Dangerous Substances list	_____	_____	18 N.J.R. 2463(a)
8:65-10.1, 10.2	Reschedule Dronabinol from Schedule I to II	18 N.J.R. 1774(a)	R.1986 d.457	18 N.J.R. 2327(b)
8:71	Generic drug list additions (see 18 N.J.R. 417(a), 984(b), 1102(b), 1382(a), 1463(a), 1957(b))	17 N.J.R. 2842(a)	R.1986 d.442	18 N.J.R. 2208(a)
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a), 1463(b), 1957(a), 2015(a))	18 N.J.R. 537(a)	R.1987 d.23	19 N.J.R. 118(a)
8:71	Generic drug list additions (see 18 N.J.R. 1955(b), 2208(b))	18 N.J.R. 1167(a)	R.1987 d.21	19 N.J.R. 116(b)
8:71	Generic drug additions	18 N.J.R. 1775(a)	R.1987 d.22	19 N.J.R. 116(c)
8:71	Interchangeable drug products	18 N.J.R. 2100(a)		
8:71	Interchangeable drug products	18 N.J.R. 2101(a)		

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HIGHER EDUCATION—TITLE 9

9:1-1.4	Submission of financial statements by independent special purpose and theological institutions	18 N.J.R. 2364(a)		
9:1-6.1	Approval of courses-for-credit offered by out-of-state institutions	18 N.J.R. 2365(a)		
9:2-5	Management of computerized information	18 N.J.R. 799(a)	R.1987 d.19	19 N.J.R. 118(b)
9:4	Policies and procedures for community colleges	18 N.J.R. 1439(a)	R.1986 d.466	18 N.J.R. 2382(a)
9:7-9	Carl D. Perkins Scholarship Program	18 N.J.R. 2174(b)		
9:11-1.2	Student residency	18 N.J.R. 1777(a)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

(TRANSMITTAL 34, dated October 20, 1986)

HUMAN SERVICES—TITLE 10

10:2	County Human Services Advisory Councils	18 N.J.R. 1777(b)	R.1987 d.17	19 N.J.R. 121(a)
10:12-3	Referral of handicapped students for adult educational services	18 N.J.R. 1997(a)	R.1987 d.13	19 N.J.R. 124(a)
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)	R.1986 d.449	18 N.J.R. 2209(a)
10:49-1.5	Records retention by long-term care facilities	18 N.J.R. 2411(c)		
10:51-1, App. B, C	Pharmaceutical services manual	18 N.J.R. 1780(a)	R.1987 d.7	19 N.J.R. 125(a)
10:51-2.2, 2.3, 2.6	Pharmaceutical Services Manual: pharmacy claims	18 N.J.R. 1674(a)	R.1986 d.465	18 N.J.R. 2387(a)
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:60-2.2, 2.3, 3.1	Personal care assistant services	18 N.J.R. 2365(b)		
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:63-1.14	Records retention by long-term care facilities	18 N.J.R. 2411(c)		
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)	R.1987 d.6	19 N.J.R. 126(a)
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:81-3.17, 3.18, 5.9, 5.10	PAM: AFDC eligibility, WIN status, LLR reevaluation	18 N.J.R. 1513(a)	R.1986 d.440	18 N.J.R. 2211(a)
10:81-3.18	PAM: exemption from WIN registration	18 N.J.R. 2301(a)		
10:81-3.34	PAM: temporary absence of child from home	18 N.J.R. 1675(a)		
10:81-7.29	Retroactive funeral payments	18 N.J.R. 2176(a)		
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, 5.10	ASH: conformity with Federal regulations	18 N.J.R. 260(a)	R.1986 d.471	18 N.J.R. 2388(a)
10:82-2.3, 2.4, 4.3	ASH: AFDC eligibility requirements	18 N.J.R. 928(a)	R.1986 d.470	18 N.J.R. 2388(b)
10:85-3.2	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)		
10:85-4.9	Retroactive funeral payments	18 N.J.R. 2176(a)		
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:87-2.21	Mandatory verification: correction	_____	_____	18 N.J.R. 2391(b)
10:87-12.1, 12.2	Food Stamp Program: income deductions and maximum coupon allotments	18 N.J.R. 2137(a)	R.1987 d.5	19 N.J.R. 129(a)
10:89-2.2, 2.3, 3.4	Home Energy Assistance	18 N.J.R. 1676(a)	R.1986 d.450	18 N.J.R. 2328(a)
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)	R.1986 d.481	18 N.J.R. 2457(a)
10:100-3.10	Retroactive funeral payments	18 N.J.R. 2176(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:121-2	Adoption subsidy	18 N.J.R. 24(a)	R.1987 d.45	19 N.J.R. 129(b)
10:121A-2.2	Certification period for adoption agencies	18 N.J.R. 1923(a)		
10:132	Youth and Family Services: court actions and proceedings	18 N.J.R. 1924(a)	R.1987 d.16	19 N.J.R. 130(a)

(TRANSMITTAL 45, dated October 20, 1986)

CORRECTIONS—TITLE 10A

10A:5-5.2	Involuntary placement to Protective Custody: correction to adopted rule	_____	_____	18 N.J.R. 2218(a)
10A:9	Classification of inmates	18 N.J.R. 1649(a)		
10A:16	Medical and health services	18 N.J.R. 1662(a)		
10A:17-9	Referral of handicapped children for adult educational services	18 N.J.R. 2102(a)	R.1986 d.480	18 N.J.R. 2457(b)
10A:34-2	Municipal detention facilities	18 N.J.R. 2412(a)		

(TRANSMITTAL 14, dated October 20, 1986)

INSURANCE—TITLE 11

11:1-16	Filing of rate decreases	18 N.J.R. 1998(a)	R.1986 d.478	18 N.J.R. 2458(a)
11:1-20, 22	Cancellation and nonrenewal of commercial policies	18 N.J.R. 2301(b)		
11:1-22.3	Reinstatement of commercial lines policies	18 N.J.R. 2414(a)		
11:1-24	Credit cards and payment of insurance premiums	18 N.J.R. 1999(a)		
11:2-17.11, 17.14	Settlement of automobile damage claims	18 N.J.R. 2415(a)		
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)	Expired	
11:3-10.3, 10.10	Settlement of automobile damage claims	18 N.J.R. 2415(a)		
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:3-22	Automobile coverage option survey	18 N.J.R. 1344(b)	R.1986 d.463	18 N.J.R. 2329(a)
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-16.8	Medicare information brochure	18 N.J.R. 2103(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-21	Limited death benefit policies	18 N.J.R. 1085(a)		
11:4-23.8	Medicare information brochure	18 N.J.R. 2107(a)		
11:5-1.3	Real estate licensing qualifications	18 N.J.R. 1782(a)		
11:5-1.15	Advertising by real estate licensees	18 N.J.R. 1679(a)		
11:5-1.16	Obligations of real estate licensees	18 N.J.R. 1677(a)		
11:5-1.16, 1.23	Public hearing: Obligations of real estate licensees	18 N.J.R. 2113(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 2112(a)		
11:5-1.25	Sales of interstate properties	18 N.J.R. 2416(a)		
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:5-1.30	Transfer of real estate licenses	18 N.J.R. 2418(a)		
11:12	Legal services insurance	18 N.J.R. 1782(b)	R.1986 d.462	18 N.J.R. 2330(a)
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1783(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

(TRANSMITTAL 41, dated October 20, 1986)

LABOR—TITLE 12

12:15-1.3	Unemployment compensation and temporary disability: 1987 maximum weekly benefits	18 N.J.R. 1787(a)	R.1986 d.451	18 N.J.R. 2330(b)
12:15-1.4	Unemployment compensation: 1987 taxable wage base	18 N.J.R. 1787(b)	R.1986 d.452	18 N.J.R. 2330(c)
12:15-1.5	Unemployment compensation: 1987 contribution rate for governmental entities	18 N.J.R. 1788(c)	R.1986 d.456	18 N.J.R. 2331(a)
12:15-1.6	Base week earnings for claim eligibility	18 N.J.R. 1787(c)	R.1986 d.453	18 N.J.R. 2331(b)
12:15-1.7	Alternate earnings test	18 N.J.R. 1788(a)	R.1986 d.454	18 N.J.R. 2331(c)
12:16-19.1	Charging of unemployment benefits to employer's account	18 N.J.R. 1682(a)		
12:16-20.1	Work relief and work training programs: exempt employment	18 N.J.R. 1683(a)		
12:17-2.2, 2.4	Unemployment compensation claims and verification of Social Security numbers	18 N.J.R. 1683(b)		
12:17-3.1, 4.1, 4.2	"Week of partial unemployment" defined	18 N.J.R. 1684(a)		
12:235-1.6	Workers' compensation: 1987 maximum weekly benefit	18 N.J.R. 1788(b)	R.1986 d.455	18 N.J.R. 2331(d)

(TRANSMITTAL 33, dated October 20, 1986)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10-1	Award of contracts to small, female-owned and minority businesses	18 N.J.R. 2306(a)		
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(TRANSMITTAL 1, dated September 22, 1986)

LAW AND PUBLIC SAFETY—TITLE 13

13:27	Rules of Board of Architects	17 N.J.R. 2851(b)	R.1987 d.12	19 N.J.R. 131(a)
13:27-8.12	Continuing education in landscape architecture	18 N.J.R. 2367(a)		
13:30-2.16	Continuing education in dental hygiene and dental assisting	18 N.J.R. 2113(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
13:30-8.6, 8.15	Practice of dentistry and referral fees	18 N.J.R. 2419(a)		
13:30-8.16	Dental X-rays and use of lead shield	18 N.J.R. 2113(c)		
13:31-1	Board of Examiners of Electrical Contractors	18 N.J.R. 2113(d)	R.1987 d.44	19 N.J.R. 137(a)
13:35-1.5	Practice by medical school graduates in hospital residency programs	18 N.J.R. 2184(a)		
13:35-6.10	Ambulatory care facilities: advertising and solicitation practices	18 N.J.R. 1788(d)	R.1986 d.467	18 N.J.R. 2390(a)
13:36-1.9	Itemization of funeral expenses	18 N.J.R. 2186(a)		
13:37-6.3	Nursing procedures: administration of renal dialysis treatment	18 N.J.R. 398(b)		
13:39A-1.4	Licensure of physical therapists: fees and charges	18 N.J.R. 1177(a)		
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13:39A-2.2, 3.3	Electromyographic testing by licensed physical therapist: public hearing	18 N.J.R. 1684(b)		
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13:40-5.1	Preparation of land surveys	18 N.J.R. 2367(b)		
13:45A-2	Motor vehicle advertising practices	18 N.J.R. 2419(b)		
13:45A-6.2	Unlawful automobile sales practices	18 N.J.R. 2115(a)		
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13:46-3.1	Bandage specifications for boxer's hands	18 N.J.R. 1924(b)		
13:46-4.7, 4.25	Licensure of boxers	18 N.J.R. 1924(c)		
13:46-5.23	Boxing: time between bouts	18 N.J.R. 2423(a)		
13:46-8.14	Boxing: three knockdown rule	18 N.J.R. 2424(a)		
13:46-8.19	Point system scoring in boxing contests	18 N.J.R. 1515(c)	R.1986 d.444	18 N.J.R. 2211(b)
13:46-8.25, 11.10	Compensation for boxing referees, judges and timekeepers	18 N.J.R. 1925(a)		
13:46-21.2	Compensation of wrestling referees	18 N.J.R. 1790(a)		
13:47-6.19	Prohibited prizes in games of chance	18 N.J.R. 1180(a)		
13:47-14.3	Rental of premises for bingo	18 N.J.R. 1180(b)		
13:47B-1.22	Approaches for vehicle scales	18 N.J.R. 2116(a)		
13:60	Motor carrier safety	18 N.J.R. 2311(a)		
13:70-3.42	Thoroughbred racing: workmen's compensation insurance	18 N.J.R. 2116(b)	R.1987 d.42	19 N.J.R. 138(a)
13:70-3.47	Thoroughbred racing: Coggins test	18 N.J.R. 401(a)		
13:70-29.29—29.34	Thoroughbred racing: refunds of advance wagers	18 N.J.R. 2368(a)		
13:71-6.1	Harness racing: workmen's compensation insurance	18 N.J.R. 2117(a)	R.1987 d.43	19 N.J.R. 138(b)
13:71-6.24	Harness racing: Coggins test	18 N.J.R. 402(b)		
13:71-21.8	Harness racing: purse deductions	18 N.J.R. 1516(a)		

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14:3-7.12A	Residential electric and gas service during heating season	18 N.J.R. 2315(a)		
14:11	Board of Public Utilities: administrative orders	18 N.J.R. 2425(b)		
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14A:3-4.4	Energy subcode: thermal efficiency standards	18 N.J.R. 2349(a)		
14A:13	Energy conservation in State buildings	18 N.J.R. 2187(a)		
14A:21-1.2, 2.2, 2.3, 3.4—3.7, 5.2, 6.1, 6.2, 7.1, 7.2, 7.5—7.7, 8.1—8.3, 9.4, 10.1, 11.2, 11.3	Home Energy Savings Program	18 N.J.R. 2001(a)		

(TRANSMITTAL 21, dated September 22, 1986)

STATE—TITLE 15

15:5	State Museum	18 N.J.R. 2368(b)		
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(TRANSMITTAL 18, dated October 20, 1986)

PUBLIC ADVOCATE—TITLE 15A

(TRANSMITTAL 1, dated March 20, 1978)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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16:28-1.10	Speed limits on U.S. 46 in Morris County	18 N.J.R. 2117(b)	R.1987 d.1	19 N.J.R. 138(c)
16:28-1.24	Speed rates on Frontage Roads 1 and 2 in Paterson	18 N.J.R. 2190(a)	R.1987 d.25	19 N.J.R. 138(d)
16:28-1.44	Speed limits on Route 27 in Middlesex County	18 N.J.R. 2117(c)	R.1987 d.2	19 N.J.R. 139(a)
16:28-1.92	Speed limits on Route 169	18 N.J.R. 1790(b)	R.1986 d.446	18 N.J.R. 2212(a)
16:28-1.98	Speed limits on Route 52 in Cape May and Atlantic Counties	18 N.J.R. 2118(a)	R.1987 d.3	19 N.J.R. 139(b)
16:28A-1.7, 1.25, 1.47, 1.71, 1.97	No parking zones along U.S. 9, Routes 35, 147, 67, and U.S. 1 Alternate	18 N.J.R. 2316(a)		
16:28A-1.22, 1.104	No parking zones along Route 31 and U.S. 40-322	18 N.J.R. 2318(a)		
16:28A-1.32, 1.107	Bus stops along U.S. 46 in Mountain Lakes and Route 175 in Ewing Township	18 N.J.R. 2190(b)	R.1987 d.26	19 N.J.R. 139(c)
16:28A-1.45, 1.57, 1.58	No parking zones along Route 94, U.S. 206 and U.S. 206-94 in Newton	18 N.J.R. 2319(a)		
16:28A-1.47	Parking on Route 147 in Cape May County	18 N.J.R. 2118(b)	R.1987 d.4	19 N.J.R. 139(d)
16:29-1.26, 1.63	No passing zones on Route 72, Ocean County, and Route 45, Gloucester County	18 N.J.R. 2119(a)		
16:29-1.36	No passing zones on Route 147 in Cape May County	18 N.J.R. 2119(b)		
16:29-1.65	No passing zones on Route 166 in Ocean County	18 N.J.R. 2119(c)		
16:30-1.9	One-way traffic on U.S. 206-94 in Newton	18 N.J.R. 2319(b)		
16:30-5.3	DOT parking along Route 52 in Ocean City	18 N.J.R. 2191(a)	R.1987 d.27	19 N.J.R. 140(a)
16:31-1.23	No left turn on Route 38 in Mount Laurel	18 N.J.R. 2319(c)		
16:32-1.1, 1.2, 1.3, 3	Designated routes for double trailers and wide trucks	18 N.J.R. 2428(a)		
16:32-1.2, 1.3, 3	Designated routes for double trailers and wide trucks	18 N.J.R. 1184(b)	Withdrawn	
16:49-1.3	Transportation of hazardous materials	18 N.J.R. 933(a)		
16:49-1.3, 1.4, 1.5, 1.6, 2.1	Transportation of hazardous materials	18 N.J.R. 1791(a)	R.1986 d.447	18 N.J.R. 2212(b)
16:53D-1.1	Zone of rate freedom	18 N.J.R. 2376(a)		
16:73	NJ TRANSIT: Reduced Fare Program for Elderly and Handicapped	18 N.J.R. 2437(a)		

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17:1-2.37	Alternate Benefit Program: transmittal of employee contributions	18 N.J.R. 1256(a)		
17:1-4.4	Enrollment schedule for State-administered retirement systems	18 N.J.R. 2320(a)		
17:2-2.4, 3.1, 5.2	Enrollment in PERS	18 N.J.R. 2320(b)		
17:2-3.7	PERS contributory coverage termination: correction			18 N.J.R. 2391(c)
17:3-5.5	Teachers' Pension and Annuity Fund: optional purchases of eligible service	18 N.J.R. 2120(a)		
17:3-6.1	Teachers' Pension and Annuity Fund: filing of retirement application	18 N.J.R. 1519(b)	R.1987 d.10	19 N.J.R. 140(b)
17:4-2.6, 5.1, 5.2	Enrollment in Police and Firemen's Retirement System	18 N.J.R. 2321(a)		
17:4-4.4	Police and Firemen's Retirement System: loan interest	18 N.J.R. 2437(b)		
17:4-6.1	Police and Firemen's Retirement System: retirement applications	18 N.J.R. 1795(a)	R.1987 d.11	19 N.J.R. 140(c)
17:5-5.1	State Police Retirement System: filing of retirement application	18 N.J.R. 1520(a)	R.1986 d.439	18 N.J.R. 2216(a)
17:7-1.4	Prison Officers' Pension Fund: election of commission members	18 N.J.R. 1352(b)	R.1987 d.28	19 N.J.R. 140(d)
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17:16-36.11	Common Pension Fund B: distribution of realized appreciation	18 N.J.R. 2378(a)		
17:16-38	Common Pension Fund C	18 N.J.R. 2438(a)		
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17:30	Urban Enterprise Zone Authority	18 N.J.R. 2191(b)		

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8:24-1.1	Sales and use tax forms	18 N.J.R. 2192(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
18:24-1.2	Sales and Use Tax: "periodicals"	18 N.J.R. 1928(a)		
18:26-8.7	Transfer inheritance tax waiver	18 N.J.R. 1520(b)	R.1986 d.441	18 N.J.R. 2216(b)
18:26-12.2	Representation of estates	18 N.J.R. 2321(b)		

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19:8-2.12	Emergency service rates on Parkway	18 N.J.R. 2120(c)	R.1987 d.9	19 N.J.R. 141(c)
19:17-2.1, 3.1-4.5	PERC: Appeal Board procedure	18 N.J.R. 1521(a)		
19:25-1.7, 7.2, 7.3, 7.4	Surplus campaign funds	18 N.J.R. 1359(a)	R.1987 d.30	19 N.J.R. 141(d)
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19:41-9.7	Fee for casino hotel alcoholic beverage license	18 N.J.R. 1687(a)		
19:41-9.7	Alcoholic beverage licenses	18 N.J.R. 2379(a)		
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19:50-1.3	Alcoholic beverage licensees	18 N.J.R. 2379(a)		
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