

NEW JERSEY REGISTER



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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 21, 1986.
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE WILL BE DATED AUGUST 18, 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 **October 22, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals. On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

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

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Prior Transcribed Testimony

Reproposed New Rule: N.J.A.C. 1:1-15.10

Authorized By: Ronald I. Parker, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1986-393.

Submit comments by October 22, 1986 to:

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

The agency proposal follows:

Summary

The following rule was proposed on May 19, 1986 at 18 N.J.R. 1020(a). Because significant changes are being considered, the OAL has decided to repropose the rule instead of adopting it with amendments.

As originally proposed, the rule said prior transcribed testimony could be offered "unless otherwise precluded by law." This was intended in part to deal with an anticipated conflict in Civil Service cases; it has been held that Civil Service appeals cannot be based entirely on transcripts of the proceeding below, when the credibility of witnesses must be assessed. *Township of Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965). After further consideration, the OAL has decided that the rule should refer more specifically to situations where prior testimony may not be used. Therefore, the repropose rule would prohibit it when "the judge determines that it is necessary to observe the witness' demeanor in order to evaluate the testimony." This would apply to all types of cases where prior testimony might be referred, not just in Civil Service cases.

During the comment period following the proposal, the OAL received one comment from the Department of Civil Service. In addition to being concerned that the rule would conflict with the law related to their cases, the Department suggested that the use of prior testimony be limited to cases where the witness is unavailable. However, in cases of witness unavailability, prior testimony would be admissible at any rate under the exception to the hearsay rule, as described in Evidence Rule 63(3). Hearsay is admissible in OAL proceedings. Subsection (e) has been added to the repropose 1:1-15.10 to make clear that the rule applies primarily to testimony of witnesses who would otherwise be available, and is not meant to be used only when a witness is unavailable. For example, a transcript might be offered for reasons of party convenience, fiscal economy or greater expedition.

Social Impact

The proposed procedure has been utilized by several agencies and, when appropriately used, can shorten the hearing process, eliminate the necessity for a witness to reappear and save the parties and agency time and money.

Economic Impact

By eliminating the need for producing witnesses under appropriate circumstances, the proposal will result in some savings to the parties and to the Office of Administrative Law.

Full text of the proposed rule follows:

1:1-15.10 Prior transcribed testimony

(a) If there was a previous proceeding in the same matter which was electronically or stenographically recorded, a party may, unless the judge determines that it is necessary to observe the witness' demeanor in order to evaluate the testimony, offer the transcript of a witness in lieu of producing the witness at the hearing provided that the witness' testimony was taken under oath, all parties were present at the proceeding and were afforded a full opportunity to cross-examine the witness.

(b) A party who intends to offer a witness' transcribed testimony at the hearing must give all other parties and the judge at least five days notice of that intention.

(c) Opposing parties may subpoena the witness to appear personally. Any party may produce additional witnesses and other relevant evidence at the hearing.

(d) Provided the requirements in (a) above are satisfied, the entire controversy may be presented solely upon transcribed testimony if all parties agree and the judge approves.

(e) Prior transcribed testimony that would be admissible as an exception to the hearsay rule under Evidence Rule 63(3) is not subject to the requirements of this section.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Mechanical Subcode

Proposed Amendment: N.J.A.C. 5:23-3.20

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

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

Proposal Number: PRN 1986-375.

Submit comments by October 22, 1986 to:

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

The agency proposal follows:

Summary

Under N.J.A.C. 5:23-3.20(b), section M-508.1, "Inspection and cleaning," is being added as a deletion from the Mechanical Subcode as adopted. This amendment replaces the current provision deleting all of Section M-508.0, "Maintenance and test," of which Section M-508.1 is a part. The net result is to adopt Section M-508.2, which authorizes the subcode official to require full-scale tests of commercial kitchen exhaust systems to assure conformance to the requirements of Article 5 of the Mechanical Subcode. Also, delineation of plan review functions has been further specified.

Social Impact

Periodic testing of commercial kitchen exhaust systems can prevent fires and thereby save lives and property. The amendment will make it clear that such testing may be required.

Economic Impact

It is already the general practice of enforcement officials to require testing of commercial kitchen exhaust systems as a special inspection, so no substantial change in economic impact is likely.

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

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.-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.

Re-number existing 4 as 5. (No change in text.)

[5]6. Article 5 of the mechanical subcode, entitled "Kitchen Exhaust Equipment," is amended as follows.

i.-iii. (No change.)

iv. Section[M-508, "Maintenance and Test,"] M-580.1, "Inspection and cleaning," is deleted [in its entirety].

Re-number existing 6-19 as 7-20. (No change in text.)

(c) (No change.)

ENVIRONMENTAL PROTECTION

The following proposals are authorized by Richard T. Dewling, Commissioner, Department of Environmental Protection.

DIVISION OF WATER RESOURCES

For proposals numbered PRN 1986-389 and 390, a **public hearing** will be held on:

October 22, 1986 at 1:00 P.M.
Conference Room
Bureau of Radiation Protection
380 Scotch Road
Trenton, N.J.

Submit comments by November 5, 1986 to:

Robert L. Vincent
Hearing Officer
DEP/DWR
P.O. Box CN-029
Trenton, N.J. 08625

(a)

Flood Hazard Area Delineation Redelineation of Holland Brook in the Raritan Basin in Branchburg Township, Somerset County

Proposed Amendment: N.J.A.C. 7:13-7.1(d) (Plate No. HB-1)

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

DEP Docket No. 040-86-08.

Proposal Number: PRN 1986-389.

The agency proposal follows:

Summary

The proposed amendment provides for the application of rules and regulations concerning the development and use of land in designated floodways and flood hazard areas to a portion of Holland Brook located in Branchburg Township, Somerset County. Regulations of delineated flood hazard areas are designed to reserve the flood carrying capacity and to minimize the threat to the public safety, health and general welfare. The proposed redelineation is based on more accurate field data and optimization of the original HEC-2 computer model of Holland Brook. The proposed revision was requested by Van Cleef Engineering Associates on behalf of the County of Somerset and the Bellemead Development Corporation to allow the construction of West County Drive.

The regulations are to be amended by revising the floodway of Holland Brook from 170 feet downstream of South Branch Road, Route 567, upstream to a point 1,418 feet upstream of Route 567 in Branchburg Township, Somerset County.

The hydraulic model revisions were performed by Elson T. Killam Associates, Inc. for Van Cleef Engineering Associates. The revised model consisted of additional channel and flood plain cross sections in the revised reach, as well as an updated modeling of the existing South Branch Road bridge. These revisions were made from surveys performed by the Somerset County Engineering Department. This study change is a prerequisite for a stream encroachment permit.

Social Impact

The proposed delineation indicates floodways and flood hazard areas where added flood protection will apply within the Raritan River Basin along Holland Brook in Branchburg Township.

Economic Impact

The proposed amendment will have only a minor economic impact. The delineation clearly defines the flood hazard areas, thus reductions in property value could result by restricting future development in the floodway and requiring elevated construction in flood fringe areas. However, minor property diminution would be offset by the savings to governmental bodies and private homeowners due to little or no future rehabilitation and rescue expenditures from flood damage in the delineated areas.

All relevant information and documents are available for inspection during normal working hours at the Office of the Bureau of Flood Plain Management, 1911 Princeton Avenue, Trenton, New Jersey.

In addition, maps of the proposed delineations have been sent to Clerks of the affected municipalities listed above and to the Planning Boards of the affected Counties. Review of the maps prior to the hearing is invited.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Floodway and Flood Hazard Area Delineation Map and corresponding flood profile plates, which depict the proposed redelineation of Holland Brook (see N.J.A.C. 7:13-7.1(d)), are available for review at the Office of Administrative Law at Quakerbridge Plaza, Building Number 9, Quakerbridge Road, Trenton, New Jersey.

The revised floodway is identified on the plate specifically identified:

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
DELINEATION OF FLOODWAY AND FLOOD HAZARD AREA
HOLLAND BROOK PLATE HB-1

(b)

Flood Hazard Area Delineation Redelineation of the North Branch Raritan River in the Raritan Basin in the Township of Branchburg, Somerset County

Proposed Amendment: N.J.A.C. 7:13-7.1(d) (Plate NB-2)

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

DEP Docket No. 041-86-08.

Proposal Number: PRN 1986-390.

The agency proposal follows:

Summary

The proposed amendment provides for the application of rules and regulations concerning the development and use of land in designated floodways and flood hazard areas to a portion of the North Branch Raritan River, located in Branchburg Township, Somerset County. Regulations of delineated flood hazard areas are designed to reserve the flood carrying capacity and to minimize the threat to the public safety, health and general welfare. The regulations are to be amended by revising the floodway and flood hazard area of the North Branch Raritan River from 800 feet upstream of the Central Railroad of New Jersey extending upstream 1,900 feet to a point 1,650 feet upstream of the intersection of Stony Brook Road and River Road within the Township of Branchburg.

The proposed delineation is based on additional cross sections incorporated into a HEC-2 model of the North Branch Raritan River, prepared by Goodkind & O'Dea, on behalf of the Township of Branchburg for a stream encroachment application for the regrading of River Road and the replacement culverts near Miller Avenue and Stony Brook Road. The proposed revised floodway matches the floodway, as shown in the Township of Branchburg Flood Insurance Study. The slight increase in the water surface profiles are due to additional cross sections in the hydraulic model to better define the floodway along River Road.

Social Impact

The proposed delineation indicates floodways and flood hazard areas where added flood protection will apply within the Raritan River Basin along the North Branch Raritan River in Branchburg Township.

Economic Impact

The proposed amendment will have only a minor economic impact. The delineations clearly define the flood hazard areas, thus reductions in property value could result by restricting future development in the floodway and requiring elevated construction in flood fringe areas. However, minor property diminution would be offset by the savings to governmental bodies and private homeowners due to little or no future rehabilitation and rescue expenditures from flood damage in the delineated areas.

All relevant information and documents are available for inspection during normal working hours at the Office of the Bureau of Flood Plain Management, 1911 Princeton Avenue, Trenton, New Jersey.

In addition, maps of the proposed delineations have been sent to Clerks of the affected municipalities listed above and to the Engineering Department of the affected Counties. Review of the maps prior to the hearing is invited.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Floodway and Flood Hazard Area Delineation Map and corresponding flood profile plates, which depict the proposed redelineation of North Branch Raritan River (see N.J.A.C. 7:13-7.1(d)), are available for review at the Office of Administrative Law at Quakerbridge Plaza, Building Number 9, Quakerbridge Road, Trenton, New Jersey.

The revised floodway and profiles are identified on the plate specifically identified:

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION
AND
ECONOMIC DEVELOPMENT
DIVISION OF WATER POLICY AND SUPPLY
DELINEATION OF FLOODWAY
AND FLOOD HAZARD AREA
NORTH BRANCH RARITAN RIVER PLATE NB-2

(a)

DIVISION OF ENVIRONMENTAL QUALITY
Control and Prohibition of Air Pollution by Volatile
Organic Substances; Stage II Vapor Recovery
Proposed Amendments: N.J.A.C. 7:27-16.1 and 16.3

Authority: N.J.S.A. 26:2C-8; 13:1D-5.7 and 9.

DEP Docket No. 039-86-08.

Proposal Number: PRN 1986-384.

A **public hearing** concerning this proposal will be held on:

October 28, 1986 at 10 A.M.
First Floor Meeting Room
New Jersey State Library
W. State Street
Trenton, New Jersey

Comments relevant to the proposal must be submitted by October 31, 1986. The Department has prepared a Basis and Background document for the proposal. Comments and requests for copies of the Basis and Background document should be addressed to:

Herbert Wortreich, Deputy Director
Division of Environmental Quality
New Jersey Department of
Environmental Protection
CN 027
Trenton, New Jersey 08625

Copies of this notice and of the proposed amendment are being deposited and will be available for inspection during normal office hours until October 31, 1986 at:

Atlantic County Health Department
1200 Harding Highway
Mays Landing, New Jersey 08330
N.J. Bureau of Air Pollution Control
Room 1108, Labor and Industry Building
John Fitch Plaza
Trenton, New Jersey 08625
N.J. Bureau of Air Pollution Control
Northern Field Office
1259 Route 46
Parsippany, New Jersey 07054
N.J. Bureau of Air Pollution Control
Southern Field Office
100A Larwin Road
Cherry Hill, New Jersey 08034
N.J. Bureau of Air Pollution Control
Metropolitan Field Office
1100 Raymond Boulevard—Fifth Floor
Newark, New Jersey 07102
Warren County Health Department
151 West Washington Avenue
Washington, New Jersey 07882

The amendment will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing amendments to N.J.A.C. 7:27-16, hereinafter referred to as Subchapter 16. This subchapter controls emissions of volatile organic substances (VOS) to the atmosphere. Volatile organic substances, in the presence of sunlight, form ozone and other highly reactive pollutants commonly referred to as smog. Ozone is a known respiratory irritant seriously affecting those with chronic respiratory illnesses. Further, it significantly reduces the yield of important food crops and causes serious degradation of plastics and rubber. Control strategies for reducing atmospheric ozone concentrations are primarily directed toward the control of emissions of VOS. Subchapter 16 is designed to control industrial and commercial sources of VOS.

On August 19, 1986, the Department adopted amendments to Subchapter 16 to regulate VOS emissions from a variety of stationary source categories. (See Rule Adoptions, this issue.) The majority of the August 19, 1986 revisions were to fulfill commitments made by the Department in the revisions to the 1980 State Implementation Plan (SIP) for Attainment and Maintenance of the National Ambient Air Quality Standard for Ozone (NAAQS). These adopted amendments to Subchapter 16 will cause a reduction in VOS emissions 1) from large petroleum solvent dry cleaners, 2) from leaks at natural gas/gasoline processing plants, 3) from leaks at synthetic organic chemical or polymer manufacturing plants, 4) from four surface coating categories, and 5) from small gasoline loading facilities. The Department proposed amendments on August 19, 1985 to control the emissions of VOS during the refueling of motor vehicles, known as Stage II Vapor Recovery. However, it did not adopt them and is now reproposing Stage II Vapor Recovery provisions in order to better coordinate, for certain gasoline dispensing facilities, the timing of the Stage II Vapor Recovery program and the forthcoming leak prevention program for underground storage tanks.

Stage II Vapor Recovery systems capture gasoline vapors which are forced out of the vehicle tank and prevent their emission to the atmosphere using 1) vapor balance, 2) vapor aspirator, or 3) vacuum assist control systems. These systems are currently installed at most of the gasoline stations in 26 counties of California and many of the stations in the District of Columbia. The most commonly used system is the vapor balance system, which depends on the pressure created by the incoming gasoline to force the vapors through a hose into the storage tank. As the gasoline vapor in the vehicle fuel tank is displaced, it is prevented from escaping to the atmosphere by a flexible rubber "boot" which creates a seal at the vehicle fillneck and dispensing nozzle interface. The effectiveness of this system is dependent on a tight seal between the boot and vehicle fillneck.

The vacuum assist system relies on a vacuum inducing device to draw the gasoline vapors from the vehicle tank. The vacuum at the fillneck and nozzle interface precludes the need for a seal created by the "boot" of the vapor balance system. The vacuum draws a volume of gasoline vapor and ambient air which is greater than the underground storage tank can accommodate. Thus, a form of secondary processing, such as incineration, is necessary.

The vapor aspirator system is a hybrid of the balance and assist systems and is designed so that a small amount of gasoline is routed before metering to an aspirator, which creates a slight vacuum. The vacuum draws vapors into the rubber boot at the fillneck and nozzle interface. The vacuum is small and very little excess air is drawn into the boot, thus eliminating the need for secondary processing.

The Department is now reproposing, in N.J.A.C. 7:27-16.3, the Stage II Vapor Recovery requirements. N.J.A.C. 7:27-16.3(f) will require that the transfer of gasoline into vehicular fuel tanks be performed using a vapor control system approved by the Department which is designed, operated and maintained 1) to prevent VOS emissions to the outdoor atmosphere by no less than 90 percent by weight at average size facilities and by 97 percent by weight at large facilities and 2) to prevent overfilling of vehicular fuel tanks and spillage. N.J.A.C. 7:27-16.3(f) does not apply to gasoline dispensing facilities with an average monthly throughput of 10,000 gallons or less. The provisions of N.J.A.C. 7:27-16.3(f) will require that approximately 4,500 facilities be equipped with Stage II Vapor Recovery controls.

In view of impending State legislation requiring underground storage tanks at gasoline dispensing facilities to be tight-tight, many of the tanks will have to be replaced because of their age and condition. Therefore,

the Department is now proposing a two phase implementation schedule for Stage II Vapor Recovery in order to minimize the cost of implementing both programs for smaller facilities. N.J.A.C. 7:27-16.3(r) will require that facilities having an average monthly throughput of 40,000 gallons or greater achieve compliance with the provisions of N.J.A.C. 7:27-16.3(f) by December 31, 1987. N.J.A.C. 7:27-16.3(s) will require that facilities having an average monthly throughput of less than 40,000 gallons achieve compliance by December 31, 1988. The additional year for the implementation of Stage II Vapor Recovery at the smaller facilities will better enable affected station owners to coordinate the excavation to install Stage II equipment and to take appropriate actions to address the concerns of a leaking underground storage tank. The Department believes that the air quality benefits of requiring the implementation of Stage II Vapor Recovery at stations with throughputs of 40,000 gallons per month and greater by December 31, 1987 is justified because they produce approximately 70 percent of the gasoline vapors emitted during motor vehicle refueling. N.J.A.C. 7:27-16.3(t) and (u) will require that any facility with a monthly throughput greater than 10,000 gallons per month installing a new underground gasoline storage tank after the operative date of this rule install Stage II Vapor Recovery equipment at the same time.

The reason for the Stage II Vapor Recovery program is to reduce VOS emissions in order to attain the NAAQS for ozone, but there are added benefits. There will be a reduction in the emissions of benzene, which is a known human carcinogen, and ethylene dibromide and ethylene dichloride, which are regulated by the Department as hazardous air pollutants (see N.J.A.C. 7:27-17). In addition, gasoline which would otherwise be lost as a vapor, will be recovered and recycled. California reports that in 1981, 15 million gallons of gasoline were saved by the Stage II Vapor Recovery program. It is estimated that New Jersey can save over 4 million gallons per year when the program is fully implemented.

Social Impact

The proposed revisions to Subchapter 16 are designed to control emissions of organic substances which are part of a mixture of pollutants that react to form ozone, a pollutant for which the federal government has established a NAAQS of 0.12 parts per million. Attainment of this standard will alleviate the effects of exposure to elevated ozone concentrations on the inhabitants and environment of New Jersey.

There is substantial evidence that exposure to ozone in concentrations greater than the NAAQS causes a significant decrease in the pulmonary functions in humans. Ozone also increases the ability of an inhaled infectious virus to survive within the lung. A reduction of the ambient ozone concentration in New Jersey will produce a corresponding reduction of respiratory problems associated with exposure to the current ozone concentrations.

Foliar damage is one of the earliest and most obvious manifestations of ozone injury in the environment. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in the ambient ozone concentration will help relieve foliar damage to plants and thereby increase fruit and grain production.

Research conducted over the past two decades has shown that materials such as rubber, textiles and dyes and paints are susceptible to ozone degradation. The damaging effect of ozone is due to its oxidizing ability. For example, natural rubbers and synthetic polymers become hard and brittle at a faster rate by oxidation due to high ozone levels than by oxidation due to atmospheric oxygen. Attainment of the ozone ambient air quality standard is expected to mitigate the increased rate of degradation of natural and man-made materials.

Implementation of the Stage II Vapor Recovery requirements as proposed in N.J.A.C. 7:27-16.3(f) will have several effects in New Jersey. Gasoline vapor control technology at dispensing facilities will substantially reduce the concentration of organic vapors in the atmosphere which react to form ozone. It will also greatly reduce exposure to gasoline vapors and other hazardous air contaminants such as benzene, ethylene dichloride, and ethylene dibromide at gasoline stations for both employee and customers. The new nozzle/hose combination is slightly heavier than conventional equipment and the new system will transfer gasoline at a slower rate. The absence of self-service gas stations in New Jersey will alleviate some of the public acceptance problems with the vapor recovery equipment encountered in areas where Stage II has already been implemented.

Economic Impact

The costs incurred by gasoline dispensing station owners subject to proposed N.J.A.C. 7:27-16.3(f) will depend on the type of Stage II Vapor Recovery system installed, the station throughput, station layout and the number of nozzles and pumps. The costs of the system include new nozzles and hoses, underground plumbing, and, for vacuum assist systems, vapor transfer and processing systems. It has been demonstrated in California that Stage II Vapor Recovery systems as proposed in N.J.A.C. 7:27-16.3(f) can significantly reduce gasoline vapor emissions from motor vehicle refueling and that a Stage II program is cost effective.

The Department has estimated the cost of installing and operating Stage II Vapor Recovery equipment for five different size gasoline dispensing facilities. The capital cost for equipment and installation of a vacuum assist vapor recovery system is usually the highest of the three available systems and is approximately \$28,000 for a facility with a monthly throughput of 200,000 gallons. By contrast, a vapor balance system is the least expensive. The approximate capital cost for equipment and installation ranges from \$7,000 to \$18,000 for facilities with monthly throughputs of 10,000 and 200,000 gallons, respectively.

Estimated operating costs for Stage II Vapor Recovery systems include nozzle replacement once per year. The approximate annual operating cost for a vacuum assist vapor recovery system at a facility with a monthly throughput of 200,000 gallons is \$1,600. The approximate annual operating cost ranges from \$300 to \$1600 for facilities which install vapor balance systems and have monthly throughputs of 10,000 and 200,000 gallons, respectively.

The economic impact of expending capital to control a given source of pollution is commonly evaluated in terms of a cost effectiveness ratio. Cost effectiveness is a measure of the economic efficiency of a pollution control technique and may be defined as the net annualized cost for implementation of control technology divided by the pollution emission reduction gained annually. For the proposed Stage II program, the estimated cost effectiveness, not including the value of recovered gasoline, is approximately \$1.36 to \$0.22 per pound of emission controlled for stations with a 10,000 to 200,000 gallon monthly throughput which install vapor balance systems. Vacuum assist systems are expected to cost about \$0.29 per pound of emission controlled for stations with monthly throughputs of 200,000 gallons. The average cost effectiveness of the entire Stage II Vapor Recovery program is estimated to be \$0.40 per pound of emission controlled, not including the value of recovered gasoline.

The cost incurred by a gasoline dispensing facility is a net cost in the sense that the value of gasoline recovered is subtracted from the total cost. The value of gasoline recovered for an individual facility depends on its throughput and the efficiency of the vapor control system. On a statewide basis, the total value of the over 4 million gallons of gasoline recovered, at a resale value of \$0.80 per gallon, is \$3.5 million dollars. This improves the cost effectiveness of the statewide Stage II program from \$0.40 per pound of emission controlled to \$0.26 per pound of emission controlled.

It is assumed that the costs of a vapor control system at a gasoline station will be passed on to the customers as an increase in price. The expected price increase ranges from a minimum of approximately \$0.002 per gallon for large stations (200,000 gallons per month) installing a vapor balance system to a maximum of approximately \$0.011 per gallon for small stations (10,000 gallons per month) that install a vapor balance system.

The proposed N.J.A.C. 7:27-16.3(r) and (s) for a two phase compliance schedule for small stations will not significantly affect the cost effectiveness of the Stage II Vapor Recovery program.

The proposed extension will allow those stations with throughputs between 10,000 and 40,000 gallons per month to plan on the installation of vapor recovery piping and at the same time undertake whatever action that may be necessary in the prevention of leaking underground storage tanks. By consolidating both of these activities, the construction cost and the length of time that service is interrupted will be minimized.

Environmental Impact

The Stage II Vapor Recovery program, when fully implemented, will prevent approximately 12,950 tons of gasoline vapor and 215 tons of benzene from being emitted to the atmosphere each year from vehicle refueling operations. Seventy four percent of these annual emission reductions will be achieved by December 31, 1987, from the approximately 2,000 gasoline dispensing facilities having 40,000 gallons or greater monthly throughputs. The remaining 26 percent of the annual reductions will be achieved in the following year from the approximately 2,500

facilities having throughputs less than 40,000 gallons per month and greater than 10,000 gallons per month. The reduction in statewide emissions of VOS provided by the Stage II Vapor Recovery program will provide significant progress towards achieving attainment with the NAAQS for ozone.

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

7:27-16.1 Definitions

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

"Gasoline dispensing facility" means a facility consisting of one or more stationary gasoline storage tanks together with dispensing devices used to fill vehicle fuel tanks.

7:27-16.3 Transfer Operations

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

(f) Unless in compliance with (g), (h), (r), (s), (t), and (u) below, no person shall cause, suffer, allow, or permit the transfer of gasoline into any gasoline vapor laden vehicular fuel tank unless the transfer is made using a vapor control system that is approved by the Department and that is designed, operated, and maintained so as:

1. To prevent VOS emissions to the outdoor atmosphere by no less than 90 percent by weight at gasoline dispensing facilities with an average monthly throughput of less than 200,000 gallons (757,000 liters); or
2. To prevent VOS emissions to the outdoor atmosphere by no less than 97 percent by weight at gasoline dispensing facilities with a monthly throughput of 200,000 gallons (757,000 liters) or greater; and
3. To prevent overfilling and spillage.

(g) The provisions of (f) above shall not apply to a gasoline dispensing facility with an average monthly throughput of 10,000 gallons (37,850 liters) or less or to any gasoline dispensing devices at a marina used exclusively for refueling of marine vehicles.

(h) Any person subject to the provisions of (f) above shall comply with the following provisions:

1. The average monthly throughput shall be based on the average of the monthly throughputs between September 1, 1985 and August 31, 1986; and
2. Documentation of the monthly throughput shall be made available upon request by the Department.

Redesignate existing (i)-(g) and (i)-(j) (No change in text.)

(k) No person shall cause, suffer, allow, or permit VOS to be emitted into the outdoor atmosphere during a transfer of gasoline, subject to the provisions of (c), (d), [and] (e) and (f) above, from leaking components of vapor control systems or delivery vessels being loaded or unloaded if:

1.-2. (No change.)

Redesignate existing (i)-(n) as (l)-(q) (No change in text.)

(r) Any person subject to the provisions of (f) above and having an average monthly throughput of 40,000 gallons (151,400 liters) or greater shall comply with the following schedules:

1. By March 1, 1987, the applicant, pursuant to the provisions of N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above;

2. By June 1, 1987, construction of equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence; and

3. By December 31, 1987, compliance shall be achieved.

(s) Any person subject to the provisions of (f) above and having an average monthly throughput of less than 40,000 gallons (151,400 liters) shall comply with the following schedules:

1. By November 1, 1987, the applicant, pursuant to the provisions of N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above;

2. By March 1, 1988, construction of equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence; and

3. By December 31, 1988, compliance shall be achieved.

(t) Any existing gasoline dispensing facility with an average monthly throughput of greater than 10,000 gallons replacing an underground gasoline storage tank after the operative date of this proposal shall, prior to using that tank for dispensing gasoline, install equipment meeting the requirements of (f) 1 or 2 above, as applicable.

(u) Any new gasoline dispensing facility which begins the installation of an underground gasoline storage tank after the operative date of this rule shall install equipment meeting the requirements of (f) 2 above prior to the use of that tank for dispensing gasoline.

(a)

DIVISION OF WATER RESOURCES

Construction Grants and Loans for Wastewater Treatment Facilities

Matching Grant Procedure Requirements; Standards of Conduct

Proposed New Rules: N.J.A.C. 7:22-2 and 8

Proposed Repeal: N.J.A.C. 7:22-1 and 2

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

Authority: Clean Water 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; the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c. 329); and the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c. 302).

DEP Docket No. 038-86-08.

Proposal Number: PRN 1986-388.

Public hearings concerning this proposal will be held on:

Dates	Locations
October 6, 1986	Lebanon State Forest Administration Building Conf. Room One Mile off Rte. 70/72 Junction Four Mile Circle, NJ 10:00 a.m. to 2:00 p.m. or end of testimony
October 8, 1986	Mercer County Community College Audio Visual Room AV-110 1200 Old Trenton Road Trenton, NJ 7:00 p.m. to 9:00 p.m. or end of testimony
October 10, 1986	Wayne Township Municipal Building Council Chambers 475 Valley Road Wayne, NJ 10:00 a.m. to 2:00 p.m. or end of testimony

Submit comments by October 22, 1986 to:

Rachel Lehr, Esq.

Office of Regulatory Services

Department of Environmental Protection

CN-402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule, N.J.A.C. 7:22-2, is made necessary by the passage of the legislative appropriations bill 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. Pertinent sections of N.J.A.C. 7:22-1, which the Department is proposing to repeal, have been incorporated into Subchapter 2, reserving Subchapter 1 for future use.

Proposed new rule N.J.A.C. 7:22-2 contains the general provisions of Chapter 22, Construction Grants and Loans for Wastewater Treatment Facilities, including the scope, purpose and a brief overview of the eligibility and priority ranking criteria for the matching grant and loan programs. This rule also describes the procedures and requirements for the awarding of State matching grants. Sections include: definitions, application procedures, departmental evaluation and approval/disapproval, grant conditions, allowance project costs, project

changes, non-compliance and termination. Since receiving State assistance is predicated on being awarded a Federal grant, many program requirements of the local government unit receiving State assistance have been met under the Federal grant program.

Proposed new rule N.J.A.C. 7:22-8 establishes the minimum standards of conduct for persons participating in any State or Federal wastewater treatment facility construction grant or loan program. Specific standards of conduct regarding public accountability, disclosure, gifts and gratuities for officers, employees, agents and members of wastewater utilities are included in this subchapter. These rules were formerly codified at N.J.A.C. 7:22-4, which is proposed for repeal elsewhere in this issue of the New Jersey Register.

This proposal supersedes the proposal which appeared in the February 3, 1986 Register at 18 N.J.R. 243(a).

Social Impact

As many local government units have experienced, the lack of adequate capacity or treatment capabilities at their plants has a limiting effect on growth in their communities. With many wastewater treatment facilities in the State either facing or currently under sewer bans, the potential social benefits (as well as other benefits) cannot be fully realized. The proposed new rule will assist these communities to reach their objectives.

Economic Impact

A positive economic impact will result from the appropriation of State monies to provide local government units with grants for the construction of wastewater treatment facilities. Such financial assistance will help offset the cost of constructing and operating wastewater treatment facilities, costs which significantly increase the cost of wastewater disposal.

While it is the responsibility of local government units to plan for the rational and environmentally sound treatment of wastewater, the State has the responsibility to help alleviate the local government unit's financial burden in order to facilitate the transition to environmentally sound wastewater treatment methods.

Environmental Impact

The proposed new rules promote an environmentally sound strategy for the disposal of wastewater necessary for the protection of the public health and safety and the preservation of the State's natural resources.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:22-1 and 2.

Full text of the proposed new rules follows:

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.

"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 deobligated 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.

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.

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(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 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 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)

**DIVISION OF WATER RESOURCES
Construction Grants and Loans for Wastewater
Treatment Facilities
Wastewater Treatment Fund Procedure and
Requirements**

Proposed New Rules: N.J.A.C. 7:22-3

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

Authority: Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329).

DEP Docket No. 037-86-08.

Proposal Number: PRN 1986-381.

Public hearings concerning this proposal will be held on:

Dates	Locations
October 6, 1986	Lebanon State Forest Administration Building Conf. Room One Mile off Rte. 70/72 Junction Four Mile Circle, NJ 10:00 a.m. to 2:00 p.m. or end of testimony
October 8, 1986	Mercer County Community College Audio Visual Room AV-110 1200 Old Trenton Road Trenton, NJ 7:00 p.m. to 9:00 p.m. or end of testimony
October 10, 1986	Wayne Township Municipal Building Council Chambers 475 Valley Road Wayne, NJ 10:00 a.m. to 2:00 p.m. or end of testimony

Submit comments by October 22, 1986 to:

Rachel Lehr, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Proposed new rules N.J.A.C. 7:22-3 are made necessary by the passage of the New Jersey Wastewater Treatment Bond Act of 1985, P.L. 1985, c.329. Said act provides the financial backing (\$190,000,000) and the mechanisms required to financially assist local government units in the construction of wastewater treatment facilities. These rules prescribe the procedures to be followed by the applicant and the Department respectively, in the application loans from the Wastewater Treatment Fund as well as the administration of these funds, including accounting and record keeping procedures, loan repayment requirements, minimum standards of conduct for recipients, and standards for the construction of wastewater treatment facilities.

Social Impact

As many local government units have experienced, the lack of adequate capacity or treatment capabilities at their plants has a limiting effect on growth in their communities. With many wastewater treatment facilities in the State either facing or currently under sewer bans, the potential social benefits (as well as other benefits) cannot be fully realized. The proposed new rules will assist these communities to reach their objectives.

Economic Impact

A positive economic impact will result from the appropriation of State monies to provide local government units with grants for the construction of wastewater treatment facilities. Such financial assistance will help offset the cost of constructing and operating wastewater treatment facilities, costs which significantly increase the cost of wastewater disposal.

While it is the responsibility of local government units to plan for the rational and environmentally sound treatment of wastewater, the State has the responsibility to help alleviate the local government unit's financial burden in order to facilitate the transition to environmentally sound wastewater treatment methods.

Environmental Impact

The proposed new rule promotes an environmentally sound strategy for the disposal of wastewater necessary for the protection of the public health and safety and the preservation of the State's natural resources.

Full text of the proposed new rule follows:

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.

"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.

"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 Amendments 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.

"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.

"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, 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. 1251 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

7:22-3.5 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 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 the specific appropriation thereof by the Legislature.

(d) Payments of principal and interest on loans awarded from the Fund shall be made to the Fund.

7:22-3.6 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.

(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.

(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 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 be sent to any local government unit who is in current default on any State loan unless the Department determines that repayment of the defaulted loan will be received.

(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 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.

(f) All applicants shall be sent to:

Assistant Director
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

7:22-3.12 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 the 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, 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.

7:22-3.14 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.

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;

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 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 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 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 a report is to be transmitted by the recipient, or a change in 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 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 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.

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.

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 elements of the project within twelve months of 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.

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 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 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;

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.

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 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 dis-

qualified 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 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 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 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.

DIVISION OF WATER RESOURCES

(a)

**Construction Grants and Loans for Wastewater Treatment Facilities
Wastewater Treatment Trust Procedures and Requirements**

Proposed New Rule: N.J.A.C. 7:22-4

Proposed Repeal: N.J.A.C. 7:22-4

Authorized By: Robert Mulreany, Chairman, New Jersey Wastewater Treatment Trust.

Authority: N.J.S.A. 58:11B-1 et seq.

DEP Docket No. 035-86-08.

Proposal Number: PRN 1986-382.

A public hearing concerning this proposal will be held on:

Dates	Locations
October 6, 1986	Lebanon State Forest Administration Building Conf. Room One Mile off Rte. 70/72 Junction Four Mile Circle, NJ 10:00 A.M. to 2:00 P.M. or end of testimony
October 8, 1986	Mercer County Community College Audio Visual Room AV-110 1200 Old Trenton Road Trenton, NJ 7:00 P.M. to 9:00 P.M. or end of testimony
October 10, 1986	Wayne Township Municipal Building Council Chambers 475 Valley Road Wayne, NJ 10:00 A.M. to 2:00 P.M. or end of testimony

Submit comments by October 22, 1986 to:
Rachel Lehr, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The New Jersey Wastewater Treatment Trust proposal follows:

Summary

Proposed new rule N.J.A.C. 7:22-4 is made necessary by the passage of the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) Together with the New Jersey Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) these acts provide the financial backing (\$190,000,000) and the mechanisms required to financially assist local government units in the construction of wastewater treatment facilities. Additionally, the New Jersey Wastewater Treatment Trust is empowered with the ability to "leverage" the \$40,000,000 provided through the New Jersey Wastewater Treatment Bond Act of 1985, thus making available additional moneys to provide financial assistance.

These rules prescribe the procedures to be followed by the applicant, the Trust and the Department, respectively, in the application for loans from the Wastewater Treatment Trust as well as the administration of these funds, including accounting and record keeping procedures, loan repayment requirements, minimum standards of conduct for recipients, and standards for the construction of wastewater treatment facilities.

Social Impact

As many local government units have experienced, the lack of adequate capacity or treatment capabilities at their plants has a limiting effect on growth in their communities. With many wastewater treatment facilities in the State either facing or currently under sewer bans, the potential social benefits (as well as other benefits) cannot be fully realized. The proposed new rule will assist these communities to reach their objectives.

Economic Impact

A positive economic impact will result from the appropriation of State moneys to provide local government units with grants for the construction of wastewater treatment facilities. Such financial assistance will help offset the cost of constructing and operating wastewater treatment facilities, costs which significantly increase the cost of wastewater disposal.

While it is the responsibility of local government units to plan for the rational and environmentally sound treatment of wastewater, the State has the responsibility to help alleviate the local government unit's financial burden in order to facilitate the transition to environmentally sound wastewater treatment methods.

Environmental Impact

The proposed new rule promotes an environmentally sound strategy for the disposal of wastewater necessary for the protection of the public health and safety and the preservation of the State's natural resources.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:22-4.

Full text of the proposed new rule follows:

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.

"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.

"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 specified 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 services required to construct the wastewater treatment facilities.

"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.

"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 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, or stormwater runoff system or any combination thereof.

"Wastewater treatment facilities" includes, but is not limited to, any 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. 1251 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.

(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.

(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 Pri-

ority 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 unless the Trust determines that repayment of the defaulted loan will be received.

(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 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 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 units with general taxing power, municipal bond insurance and surety bonds.

22. Such other information as the Trust may require.

(e) Applicants 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 Trust that does not significantly affect the loan award.

(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.

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;

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 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 the disbursement schedule for Trust loans 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.

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 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 be reallocated pursuant to subsequent Legislative appropriations acts to other wastewater treatment facilities projects or used for other corporate purposes of the Trust.

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 elements of the project within twelve months of 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 performed prior to the award of the loan for the project, except:

1. Where the local government unit's project is ranked within projects one through seventy on the most currently approved Project Priority List and has met the following conditions:

i. The local government unit has submitted items three through nineteen 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.

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 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.).

7:22-4.33 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 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 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 disburse-

ment 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 any 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 any 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 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)

**DIVISION OF WATER RESOURCES
Construction Grants and Loans for Wastewater
Treatment Facilities
Determination of Allowable Costs**

Proposed New Rule: N.J.A.C. 7:22-5

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection; Robert Mulreany, Chairman, New Jersey Wastewater Treatment Trust.

Authority: N.J.S.A. 58:11B-1 et seq. and the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c. 329).

Proposal Number: PRN 1986-394.

Public hearings concerning this proposal will be held on:

Dates	Locations
October 6, 1986	Lebanon State Forest Administration Building Conf. Room One Mile off Rte. 70/72 Junction Four Mile Circle, NJ 10:00 a.m. to 2:00 p.m. or end of testimony
October 8, 1986	Mercer County Community College Audio Visual Room AV-110 1200 Old Trenton Road Trenton NJ 7:00 p.m. to 9:00 p.m. or end of testimony
October 10, 1986	Wayne Township Municipal Building Council Chambers 475 Valley Road Wayne, NJ 10:00 a.m. to 2:00 p.m. or end of testimony

Submit comments by October 22, 1986 to:

Rachel Lehr, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The agency and Trust proposal follows:

Summary

The Department of Environmental Protection and the New Jersey Wastewater Treatment Trust have proposed regulations to provide financial assistance for the construction of wastewater treatment facilities to local government units in the form of loans from the Wastewater Treatment Fund (N.J.A.C. 7:22-3) and the Wastewater Treatment Trust (N.J.A.C. 7:22-4). These proposed regulations are published in this issue of the Register.

The purpose of the regulations proposed herein is to set forth the policies and procedures for determining the allowability of project costs for either source of financial assistance, based on agency policy, ap-

propriate State cost principles and reasonableness. These regulations augment, and are to be used in conjunction with, proposed N.J.A.C. 7:22-3 and 7:22-4.

Social Impact

As many local government units have experienced, the lack of adequate capacity or treatment capabilities at their plants has a limiting effect on growth in their communities. With many wastewater treatment facilities in the State either facing or currently under sewer bans, the potential social benefits (as well as other benefits) cannot be fully realized. The proposed new rule in conjunction with proposed N.J.A.C. 7:22-3 and 7:22-4 will assist these communities to reach their objectives.

Economic Impact

A positive economic impact will result from the appropriation of State monies to provide local government units with grants for the construction of wastewater treatment facilities. Such financial assistance will help offset the cost of constructing and operating wastewater treatment facilities, costs which significantly increase the cost of wastewater disposal.

While it is the responsibility of local government units to plan for the rational and environmentally sound treatment of wastewater, the State has the responsibility to help alleviate the local government unit's financial burden in order to facilitate the transition to environmentally sound wastewater treatment methods.

Environmental Impact

The proposed new rule promotes an environmentally sound strategy for the disposal of wastewater necessary for the protection of the public health and safety and the preservation of the State's natural resources.

Full text of the proposed new rules follows:

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 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.
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 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 monitoring 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 WATER RESOURCES
Construction Grants and Loans for Wastewater
Treatment Facilities
Pinelands Procedures and Requirements
Proposed New Rule: N.J.A.C. 7:22-6

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

Authority: Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302).

DEP Docket No. 036-86-08.

Proposal Number: PRN 1986-380.

A **public hearing** concerning this proposal will be held on:

Date	Location
October 6, 1986	Lebanon State Forest Administration Building Conf. Room One Mile off Rte 70/72 Junction Four Mile Circle, NJ 10:00 A.M. to 2:00 P.M. or end of testimony

Submit comments by October 22, 1986 to:

Rachel Lehr, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN-402
Trenton, NJ 08625

The agency proposal follows:

Summary

With the passage of the Pinelands Infrastructure Trust Bond Act of 1985, P.L. 1985 c.302, an additional subchapter to the New Jersey Administrative Code, N.J.A.C. 7:22-6.1 et seq., was made necessary. The proposed new rules govern the policies for receiving financial assistance for wastewater treatment projects in the Pinelands through the \$30,000,000 bond act. These rules prescribe the procedures to be followed by the applicant and the Department respectively, in the application for grants and loans from the Pinelands Infrastructure Trust as well as the administration of these funds, including accounting and record keeping procedures, loan repayment requirements, minimum standards of conduct for recipients, and standards for the construction of wastewater treatment facilities.

Social Impact

As many local government units have experienced, the lack of adequate capacity or treatment capabilities at their plants has a limiting effect on growth in their communities. With many wastewater treatment facilities in the State either facing or currently under sewer bans, the potential social benefits (as well as other benefits) cannot be fully realized. The proposed new rule will assist these communities to reach their objectives.

Economic Impact

A positive economic impact will result from the appropriation of State moneys to provide local government units with grants for the construction of wastewater treatment facilities. Such financial assistance will help offset the cost of constructing and operating wastewater treatment facilities, costs which significantly increase the cost of wastewater disposal.

While it is the responsibility of local government units to plan for the rational and environmentally sound treatment of wastewater, the State has the responsibility to help alleviate the local government unit's financial burden in order to facilitate the transition to environmentally sound wastewater treatment methods.

Environmental Impact

The proposed new rule promotes an environmentally sound strategy for the disposal of wastewater necessary for the protection of the public health and safety and the preservation of the State's natural resources.

Full text of the proposed new rules follows:

SUBCHAPTER 6. PINELANDS INFRASTRUCTURE TRUST
FUND PROCEDURES AND REQUIREMENTS
FOR THE CONSTRUCTION OF
WASTEWATER TREATMENT FACILITIES

7:22-6.1 Scope

This subchapter shall constitute the rules of the New Jersey Department of Environmental Protection governing the disposition of appropriations pursuant to the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or other moneys appropriated to the Pinelands Infrastructure Trust Fund, for the purposes of awarding financial assistance to local government units through the issuance of Pinelands grants or loans for the planning, design, and construction of wastewater treatment facilities. These rules prescribe the procedures to be followed by the applicant and the Department respectively, in the application for grants and loans from the Pinelands Infrastructure Trust as well as the administration of these funds, including accounting and record keeping procedures, loan repayment requirements, minimum standards of conduct for recipients, and standards for the construction of wastewater treatment facilities.

7:22-6.2 Construction of rules

This subchapter shall be construed so as to permit the Department and the Pinelands Commission to discharge its statutory functions and to effectuate the purposes of the law.

7:22-6.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302);
2. To establish policies and procedures for the distribution of funds appropriated pursuant to the Pinelands Infrastructure Trust Bond Act of 1985 and other moneys appropriated to the Pinelands Infrastructure Trust Fund, for the purposes of providing financial assistance to local government units through the issuance of Pinelands grants and loans for the costs of planning and design, in accordance with N.J.A.C. 7:22-6.11(e), (f), and (g), and construction of wastewater treatment facilities necessary to accommodate development in the regional growth areas as defined in the comprehensive management plan;
3. To protect the public and the State by insuring that Pinelands Infrastructure Trust funds appropriated are spent in a proper manner and for the intended purposes;
4. To assure that the distribution and use of Pinelands Infrastructure Trust funds is consistent with the laws and policies of the State;
5. To establish minimum standards of conduct to prevent conflicts of interest and to insure proper administration of Pinelands Infrastructure Trust funds;
6. To establish accounting procedures for the administration of Pinelands Infrastructure Trust funds;
7. To establish Pineland loan repayment requirements for projects receiving loans; and
8. To establish standards for the construction of wastewater treatment facilities.

7:22-6.4 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 Pinelands grant or loan agreement. Allowable costs shall be determined on a project specific basis in accordance with N.J.A.C. 7:22-7.1 through 7.11.

"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. 7:22-7.12, and awarded in conjunction with the Pinelands Fund loan to build the project.

"Applicant" means any local government unit that applies for a Pinelands grant or 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 Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302).

"Bonds" means the bonds authorized to be issued, or issued, under the Pinelands Infrastructure Trust 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 associated with the planning and design of the project.

"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. 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 and are owned, operated and maintained by the local government unit. 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.

"Comprehensive management plan" means the plan for the protection of the Pinelands area adopted pursuant to N.J.S.A. 13:18A-8.

"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 acquisition of land (including sewer right-of-ways); 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 of Environmental Protection.

"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.

"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 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 Pinelands grant or 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.

"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 washwaters, or drainage. Inflow does not include, and is distinguished from, infiltration.

"Initiation of operation" means the date specified by the recipient in the Pinelands grant or 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).

"Pinelands Bond Act" means the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302).

"Pinelands Area" means the area so designated by N.J.S.A. 13:18A-11a.

"Pinelands Commission" means the commission created pursuant to N.J.S.A. 13:18A-4.

"Pinelands Fund" or "Pinelands Infrastructure Trust Fund" means the Pinelands Infrastructure Trust Fund established pursuant to the Pinelands Bond Act.

"Pinelands grant" or "Pinelands Infrastructure Trust Fund grant" means a grant from the Pinelands Infrastructure Trust Fund for the allowable costs of a project.

"Pinelands grant agreement" means the legal instrument executed between the State of New Jersey and the local government unit for the construction of wastewater treatment facilities.

"Pinelands Infrastructure Master Plan" means an infrastructure needs report prepared by the New Jersey Pinelands Commission which includes a capital projects inventory within regional growth areas, assessment of projects, establishment of a priority ranking system for projects, and a final ranking of Pinelands Infrastructure projects.

"Pinelands Infrastructure Trust Funding List" means the mechanism by which projects are ranked and a subsequent funding list developed by the Pinelands Commission through the Pinelands Infrastructure Master Plan.

"Pinelands loan" or "Pinelands Infrastructure Trust Fund Loan" means a loan from the Pinelands Infrastructure Trust Fund for the allowable costs of a project.

"Pinelands 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.

"Project" means the defined services for the construction of specified operable facilities as approved by the Department in the Pinelands grant or loan agreement.

"Recipient" means any local government unit which has received a Pinelands grant or loan pursuant to this subchapter.

"Regional growth area" means an area designated in the comprehensive management plan as a receiving area for Pinelands Commission development credits to accommodate regional growth.

"Scope of work" means the detailed description of the extent of services required to construct the 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 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 or stormwater runoff system or any combination thereof.

"Wastewater treatment facilities" includes, but is not limited to, any 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 overflow, intercepting sewers, trunklines, sewage 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.).

7:22-6.5 Pinelands Infrastructure Trust Fund

(a) The proceeds from the sale of bonds issued pursuant to section 5.a of the Pinelands Act shall be paid to the State Treasurer and held thereby in a separate account specifically dedicated to making grants and low interest loans to local government units for financing the cost of the construction of wastewater treatment facilities.

(b) The moneys in the Pinelands Fund are specifically dedicated and have been appropriated for the purposes identified in N.J.A.C. 7:22-6.3

of this subchapter; however, no moneys shall be expended from the Pinelands Fund for those purposes without the specific appropriation thereof by the Legislature.

(c) Payments of principal and interest on loans awarded from the Pinelands Fund shall be made to the Pinelands Fund.

7:22-6.6 Terms of grants and loans from the Pinelands Infrastructure Trust Fund

(a) The Pinelands Fund may offer grants and loans for up to 100 percent of allowable project costs for the acquisition, construction, improvement, expansion, repair or rehabilitation of all or part of any structure, facility, or equipment necessary for or ancillary to any wastewater treatment system and 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. The interest rate shall not exceed fifty percent of the Bond Buyer Municipal Bond Index for bonds available for purchase during the last 26 weeks preceding the date of the execution of the loan agreement by the Department. 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 Pinelands loan agreement. Thereafter, loan repayments shall be made in accordance with the repayment schedule indicated in the loan agreement. Principal and accrued interest may, however, be prepaid in accordance with the provisions of the relevant Pinelands loan agreement.

(c) Local government units shall secure all Pinelands 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) Pinelands grant and loan proceeds will be disbursed to recipients at intervals as work progresses and expenses are incurred and approved.

(e) The specific terms and conditions of the grant or loan shall be incorporated in the Pinelands grant or loan agreement to be executed by the recipient and the State.

7:22-6.7 Criteria for project funding priority

(a) Each year, the Division shall develop a Pinelands Infrastructure Trust Funding List which shall be the same as the priority list of projects contained within the Pinelands Infrastructure Master Plan. The Pinelands Infrastructure Trust Funding List shall be the subject of public hearings held by the Division including a public comment period. Local government units are only eligible for Pinelands Infrastructure Trust funding if they are on the priority list and are ranked by the Pinelands Infrastructure Master Plan. Eligible projects shall be placed on the Pinelands Infrastructure Trust funding List in accordance with N.J.A.C. 7:22-6.8. The following must be submitted by the authorized representative of the local government unit to confirm ranking on the Pinelands Infrastructure Trust Funding List:

1. Brief description of the project including category of need (that is, secondary treatment, advanced treatment, collection system) and any significant change in scope of work from that contained in the Pinelands Infrastructure Master Plan;

2. Brief description of existing and anticipated water quality deficiencies; and

3. Estimated costs associated with building and project, excluding planning and design except as provided in 7:22-6.11(e), (f), and (g). Significant changes in estimated costs shall be outlined.

(b) Any significant change in estimated costs or scope of work from that contained in the Pinelands Infrastructure Master Plan may result in deferral or rejection of a project.

(c) All information shall be submitted to:

Bureau Chief
Bureau of Design and Technical Services
Construction Grants Administration Element
Division of Water Resources
N.J. Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

with copies to:

The Pinelands Commission
P.O. Box 7
New Lisbon, New Jersey 08064

7:22-6.8 Pinelands Infrastructure Trust State and federal funding

(a) Local government units receiving funding through a federal grant shall also be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for the construction of the same step work (planning, design or building). However, in no case shall the total of funding assistance under a federal grant, State matching assistant pursuant to N.J.A.C. 7:22-2.1 et seq., and assistance from the Pinelands Fund exceed the total eligible project costs. Further, local government units receiving funding through a loan from the Wastewater Treatment Fund pursuant to N.J.A.C. 7:22-3.1 et seq. and the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-4.1 et seq. shall also be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for construction of the same wastewater treatment facilities; however, in no case shall the total of funding assistance under the Wastewater Treatment Fund, the New Jersey Wastewater Treatment Trust and Pinelands Infrastructure Trust Fund funds exceed the total eligible project costs.

(b) Each year those local government units whose projects are ranked within the fundable range of the Pinelands Infrastructure Trust Funding List shall receive a Notice of Project Eligibility in accordance with N.J.A.C. 7:22-6.9. The Department reserves the right to send a Notice of Project Eligibility to the next highest ranked local government unit(s) for contingency project(s) should the project(s) within the fundable range not proceed as planned.

7:22-6.9 Notice of project eligibility

(a) The Department shall send a Notice of Project Eligibility by certified mail to those local government units whose projects rank high enough on the Pinelands Infrastructure Trust Funding 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 contingency project(s) should the project(s) within the fundable range not proceed as planned. This notice shall not constitute an obligation to provide Pinelands Infrastructure Trust funding 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 unless the Department determines that repayment of the defaulted loan will be received.

(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 application in conformance with N.J.A.C. 7:22-6.11 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 Pinelands Infrastructure Trust funding and shall result in that project being bypassed on the Pinelands Infrastructure Trust 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 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 Pinelands Infrastructure Trust Funding List which may allow the next highest ranked contingency project to be within the fundable range on the Pinelands Infrastructure Trust funding list. A bypassed or disapproved project shall remain on the funding list and its priority shall remain the same.

(d) Applicants pursuing a Pinelands Infrastructure Trust Grant or loan shall be obligated to proceed with the project.

7:22-6.10 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 at time of Notice of Project Eligibility.

(b) The Department requires a pre-application conference with potential applicants prior to submission of a formal application for a Pinelands grant or loan. During the conference the Department shall identify and explain all 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

7:22-6.11 Application procedures

(a) Each application for Pinelands Infrastructure Trust funds 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 Pinelands grant or 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 Pinelands Infrastructure Trust funding for the construction of the wastewater treatment facilities:

1. An application for Pinelands Infrastructure Trust funding pursuant to this subchapter for construction of wastewater treatment facilities. Each application shall constitute an offer to accept the requirement of this subchapter and, upon execution of the agreement by the State and the applicant, acceptance of the terms and conditions of the Pinelands grant or loan agreement;

2. A resolution passed by the local government unit authorizing the filing of an application for Pinelands Infrastructure Trust Funding specifying the individual authorized to sign the Pinelands grant or 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. Projected 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 and constructing 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. Delaware River Basin Commission;
- xiv. 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 description of how the applicant plans to repay the Pinelands loan, if applicable, 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 Pinelands loan that shall guarantee that at the time of the signing of the Pinelands loan agreement it shall be irrevocably committed to repay the Pinelands 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 Pinelands Fund loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all loans in a manner acceptable to the State pledging to provide funds to repay the debt, even if the Pinelands loan is terminated pursuant to N.J.A.C. 7:22-6.43. Acceptable security arrangements include but are not limited to general obligation bonds of the local government unit, municipal bond insurance, and service/deficiency agreement(s) with government units with general taxing power and surety bonds.

21. Such other information as the Department may require.

(e) Certain planning and design projects shall be permitted under the Pinelands Infrastructure Trust Bond Act. These projects shall be approved subject to a determination of need as determined by the New Jersey Pinelands Commission. This determination of need may be based on but is not necessarily limited to groundwater contamination, surface water contamination, the potential use of Pinelands Development Credits in Regional Growth Areas, community financial and budget restraints, or overall development pressures. Any agency receiving a planning grant or loan moneys must agree, as a grant or loan provision, to abide by and follow the findings of the Planning Study with regard to recommendations for infrastructure construction.

(f) The following shall be submitted when applying for Pinelands Infrastructure Trust funding for the planning of wastewater treatment facilities:

1. A plan of study representing:

i. The proposed planning area;

ii. An identification of the entity or entities that will be conducting the planning;

iii. The nature and scope of the proposed project including a schedule for the completion of certain tasks;

iv. An itemized description of the estimated costs for the project; and

v. Any significant public comments received.

2. Comments or approvals of relevant State, local and Federal agencies.

(g) The following shall be submitted when applying for Pinelands Infrastructure Trust Funding for the design of wastewater treatment facilities:

1. A project report (including the environmental assessment) in accordance with Department guidelines;

2. Adequate information regarding availability of proposed site(s), if relevant;

3. Comments or approvals of relevant State, local and Federal agencies;

4. Proposed intermunicipal agreements necessary for the construction and operation of the proposed wastewater treatment for any facilities serving two or more municipalities and facilities; and

5. A schedule for initiation and completion of the project including milestones.

(h) Applicants are advised that all necessary federal, State and local permits and approvals must be obtained prior to the award of a Pinelands grant or 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 grant or loan award.

- (i) All applications shall be sent to:
Assistant Director
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

7:22-6.12 Use and disclosure of information

All 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.

7:22-6.13 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. The applicant will be notified of the completeness or deficiency of the application;

2. Technical and scientific evaluation to determine the merit and relevance of the project to the Department's objectives and the objectives of the Pinelands Infrastructure Master Plan;

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 the determination that the awarding of Pinelands Infrastructure Trust funds shall be deferred. An approval by the Division shall only be issued after certification by the Pinelands Commission that the master plan and zoning ordinance of the municipalities and the Master Plan of the County wherein the project is to take place is in conformance with the Comprehensive Management Plan.

(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 Department 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 Pinelands application and/or processing of a Pinelands grant or 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 ranked project on the Pinelands Infrastructure Trust Funding List may fall within the fundable range.

7:22-6.14 Supplemental information

At any stage during the evaluation process, the Department may require supplemental documents or information necessary to complete its full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

7:22-6.15 Pinelands Infrastructure Trust Fund grant and loan agreements

(a) The Department shall prepare and transmit the Pinelands Infrastructure Trust Fund grant or loan agreement to the applicant.

1. The applicant shall execute the Pinelands grant or loan agreement and return it within 45 calendar days after receipt. The Department may, at its discretion, extend the time for execution. The Pinelands grant or loan agreement shall be signed by a person authorized by resolution to obligate the applicant to the terms and conditions of the Pinelands grant or loan agreement being executed. The authorizing resolution shall also be submitted at this time.

2. The Pinelands grant or loan agreement shall set forth the terms and conditions of the Pinelands grant or loan, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

3. The Pinelands grant or loan agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

4. The Pinelands grant or 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 Pinelands grant or loan agreement, the Department shall transmit a copy of the executed Pinelands grant or loan agreement to the recipient.

7:22-6.16 Effect of grant and loan awards

(a) At the time of execution of the Pinelands grant or loan agreement by the Department and the recipient, the grant or loan shall become effective and shall constitute an obligation of the Pinelands Infrastructure Trust Fund in the amount and for the purposes stated in the Pinelands grant or loan agreement.

(b) The award of funds shall not commit or obligate the Department to award any continuation funds 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 funds 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.

7:22-6.17 Grant and loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-6.18 through 6.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Pinelands grant and loan, and conditions to each disbursement under a Pinelands grant or 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. 7:22-5.1 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;

9. The Pinelands grant or 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 Pinelands grant or loan moneys shall be disbursed to a local government unit who is in current default 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 Pinelands grant or 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 Pinelands grant or loan disbursement equal to fifty 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 Pinelands grants or 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 Sewerage Facilities" which can be obtained from the Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN-029, Trenton, New Jersey 08625.

16. The recipient shall have an operations 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 Pinelands grants or loan agreement;

19. The recipient must submit proof that it and its contractors and subcontractors shall comply with all insurance requirements of the Pinelands grants or 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;

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 should 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 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 Pinelands grants or 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 Pinelands Bond Act.

7:22-6.18 Administration and performance of funds

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing funding 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 Pinelands grant and loan moneys be used in conformance with these rules and the grant or loan agreements to achieve grant or loan objectives and to insure that the purposes set forth in the Pinelands Bond Act are fully executed.

7:22-6.19 Project changes and grant or loan modifications

(a) A Pinelands grant or loan modification means any written alteration of the grant or loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) There shall be no Pinelands grant or 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 grant or 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 decides a formal Pinelands grant or loan amendment is necessary, the recipient shall be notified and a formal Pinelands grant or loan amendment shall be processed in accordance with N.J.A.C. 7:22-6.20. If the Department decides a formal Pinelands grant or loan amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:22-6.21 or 6.22, as applicable.

7:22-6.20 Formal grant or loan amendments

(a) The Department shall require a formal Pinelands grant or loan amendment to change principal provisions of a Pinelands grant or 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 State and recipient shall effect a formal Pinelands grant or loan amendment only by a written amendment to the Pinelands grant or loan agreement executed by the State and the recipient.

7:22-6.21 Administrative grant or loan changes

Administrative changes by the Department, such as a change in the designation of a key Department personnel or of the office to which a report is to be transmitted by the recipient, or a change in the disbursement schedule for Pinelands grants or loans for construction of wastewater treatment facilities, constitute changes to the Pinelands grant or loan agreement (but not necessarily to the project work) and to 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.

7:22-6.22 Other changes

All other project changes, which do not require formal Pinelands grant or loan amendment, as stated in N.J.A.C. 7:22-6.20, shall be undertaken only upon written approval of the Assistant Director, Construction Grants Administration Element.

7:22-6.23 Access

(a) The recipient and its contractors and subcontractors shall provide to Pinelands Commission personnel, 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 moneys, may be subject to a financial audit.

(d) Records shall be retained and available to the Department until the final loan repayment has been made by the recipient.

7:22-6.24 State disbursement

Disbursement of Pinelands grants and 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 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.

7:22-6.25 Assignment

The right of a recipient to receive disbursements from the State under a Pinelands grant or loan may not be assigned, nor may repayments due under a Pinelands loan be similarly encumbered.

7:22-6.26 Unused funds

Where the total amount disbursed under a grant or loan due to the low bid building cost is less than the initial Pinelands grant or loan award, and/or where the total amount disbursed under a Pinelands grant or loan due to the final building cost is less than the low bid building cost, the Pinelands grant or loan agreement shall be adjusted and the difference

shall be retained in the Pinelands Infrastructure Trust Fund to be re-allocated pursuant to subsequent legislative appropriations acts to other wastewater treatment facilities projects.

7:22-6.27 Publicity and signs

(a) Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge State grant and/or loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the Pinelands Commission shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, the amount of financial assistance from the Pinelands Infrastructure Trust Fund, and other information as required by the Division.

7:22-6.28 Land acquisition

The acquisition of land (including sewer right-of-ways) shall be eligible for Pinelands Infrastructure Trust Funding in accordance with N.J.A.C. 7:22-7.7

7:22-6.29 Project initiation

(a) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the Pinelands grant or 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 for the building of the wastewater treatment facilities until authorization to advertise said contract has been granted by the Department.

(c) Once bids for building the wastewater treatment facilities 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 elements of the wastewater treatment facilities within twelve months of the grant or 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. 7:22-7.4(b)4.

7:22-6.30 Project performance

(a) Within 30 days of the actual date of initiation of operation of the wastewater treatment facilities 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 Pinelands 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 part 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.

7:22-6.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by 7:22-7.1 through 7.11.

(b) Notwithstanding (a) above, the Department shall not participate in costs for work that the Department determines is not in compliance with specifications or requirements of project contracts or Pinelands grant or loan agreement. Costs for work not in compliance with the contracts or agreement unallowable.

7:22-6.32 Preaward costs

(a) The Department shall not award grant or loan assistance for planning, design or building costs performed prior to the award of the funds for the project, except:

1. For costs, otherwise eligible for funding, incurred within one year prior to grant or loan award has met the following conditions:

- i. The local government unit has submitted items three through twenty of N.J.A.C. 7:22-6.11(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.

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 Pinelands Infrastructure Trust funds 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.).

7:22-6.33 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 shall 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.

7:22-6.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are ineligible for reimbursement from the Pinelands Fund unless Pinelands Commission approval for separate planning and design costs has been obtained. 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. 7:22-7.12.

7:22-6.35 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 study of the sewer system 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 any specific portion of 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 cost effectiveness analysis and propose a sewer system rehabilitation program to eliminate the excessive infiltration.

7:22-6.36 Reserve capacity

(a) The Department shall limit the recipient's Pinelands grant or loan assistance to the cost of the project designed for a 20 year reserve capacity for wastewater treatment plants and pumping stations and a 40 year reserve capacity for collection systems and interceptor projects. Design shall be based on up to 120 gallons per capita per day for existing systems and 70 gallons per capita per day plus a reasonable allowance for infiltra-

tion (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 systems built after the effective date of these regulations.

7:22-6.37 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer funds, acquire property pursuant to the award documents, and award contracts and subcontracts pursuant to those funds 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 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.

7:22-6.38 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 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 Pinelands Infrastructure Trust 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 in addition to that of the Department of Environmental Protection. If Pinelands Infrastructure Trust funds are used for disbursement to a debarred firm, the Department reserves the right to immediately terminate (N.J.A.C. 7:22-6.43) the Pinelands 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 Pinelands Infrastructure Trust funds 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 Pinelands grant or loan 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 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.

7:22-6.39 Noncompliance

(a) In addition to any other remedies as may be provided by law, or in the Pinelands grant or loan agreement, in the event of noncompliance with any grant or 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. 7:22-6.40;
2. Withhold Pinelands Infrastructure Trust funds pursuant to N.J.A.C.

7:22-6.41;

3. Order suspension of project work pursuant to N.J.A.C. 7:22-6.42;
4. Terminate or rescind the Pinelands grant or loan funds pursuant to N.J.A.C. 7:22-6.43 or N.J.A.C. 7:22-6.44; 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.).

7:22-6.40 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. 7:22-6.41 and 6.42 without issuing a notice pursuant to this section.

7:22-6.41 Withholding of funds

The Department may withhold, upon written notice to the recipient, a Pinelands grant or loan disbursement or any portion thereof where it determines that a recipient has failed to comply with any grant or loan condition, provision of this subchapter, or contract specification or requirement.

7:22-6.42 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 Pinelands grant or loan. The Department shall limit the 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 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;
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.

7:22-6.43; 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 loan period, and/or the project, and the Pinelands grant or loan agreement shall be modified if necessary. However, additional project costs as a result of this action shall be the responsibility of the recipient.

7:22-6.43 Termination of grants or loans

(a) Termination of Pinelands grants or loans by the Department shall be conducted as follows:

1. The Department may terminate a Pinelands grant or 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 grant or loan agreement;
- ii. Default by the recipient;
- iii. A determination that the Pinelands grant or 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. Pinelands Infrastructure Trust moneys have been used for nonallowable costs.

2. The Department shall give written notice to the recipient (certified mail, return receipt requested) of its intent to terminate a Pinelands grant or 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 Pinelands grant or 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 Pinelands grant or 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 Pinelands grant or loan has been awarded, the Department may enter into a termination agreement or unilaterally terminate the Pinelands grant or loan effective with the date of cessation of the project work by the recipient. The determination to terminate the Pinelands grant or 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 Pinelands grant or 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 Pinelands grant or loan pursuant to this section or rescind the grant or loan pursuant to N.J.A.C. 7:22-6.44.

(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 Pinelands grant or loan.

(d) Upon termination, the recipient may be required to immediately refund or repay the entire amount of the Pinelands Infrastructure Trust funds received to the State. If a loan is guaranteed by a security/deficiency agreement, such agreement may have to be brought into effect to ensure the entire repayment of the Pinelands loan. The Department may, at its discretion, authorize the immediate repayment of a specific portion of the Pinelands loan and allow the remaining balance to be repaid in accordance with a revised Pinelands 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 Pinelands Infrastructure Trust funds awarded under the Pinelands 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.

7:22-6.44 Rescission of Pinelands grants or loans

(a) The Department may, in writing, rescind the Pinelands grant or loan if it determines that:

1. Without good cause therefor, substantial performance of the project work has not occurred;
2. The Pinelands grant or loan 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 Pinelands grant or loan. The Department shall afford the recipient an opportunity for consultation prior to rescission of the grant or loan. Upon rescission of the Pinelands grant or loan, the recipient shall return all Pinelands grant or loan 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.

7:22-6.45 Administrative hearings

(a) The Director of the Division shall make the initial decision regarding all disputes arising under a Pinelands grant or loan. The recipient shall specifically detail in writing and in detail 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 of the Division. 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 a 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.

7:22-6.46 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)

DIVISION OF WATER RESOURCES Construction Grants and Loans for Wastewater Treatment Facilities Determination of Allowable Costs: Pinelands Proposed New Rule: N.J.A.C. 7:22-7

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

Authority: Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c. 302).

Proposal Number: PRN 1986-395.

Public hearings concerning this proposal will be held on:

Dates	Locations
October 6, 1986	Lebanon State Forest Administration Building Conf. Room One Mile off Rte. 70/72 Junction Four Mile Circle, NJ 10:00 A.M. to 2:00 P.M. or end of testimony
October 8, 1986	Mercer County Community College Audio Visual Room AV-110 1200 Old Trenton Road Trenton NJ 7:00 P.M. to 9:00 P.M. or end of testimony
October 10, 1986	Wayne Township Municipal Building Council Chambers 475 Valley Road Wayne, NJ 10:00 A.M. to 2:00 P.M. or end of testimony

Submit comments by October 22, 1986 to:

Rachel Lehr, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection has proposed regulations to provide financial assistance for the construction of wastewater treatment facilities to local government units in the form of loans and grants from the Pinelands Infrastructure Trust Fund (N.J.A.C. 7:22-5). These proposed regulations are published in this issue of the Register.

The purpose of the regulations proposed herein is to set forth the policies and procedures for determining the allowability of project costs for such financial assistance, based on agency policy, appropriate State cost principles and reasonableness. These regulations augment, and are to be used in conjunction with, proposed N.J.A.C. 7:22-6.1 et seq.

Social Impact

As many local government units have experienced, the lack of adequate capacity or treatment capabilities at their plants has a limiting effect on growth in their communities. With many wastewater treatment facilities in the State either facing or currently under sewer bans, the potential social benefits (as well as other benefits) cannot be fully realized. The proposed new rule in conjunction with proposed N.J.A.C. 7:22-6.1 et seq. will assist these communities to reach their objectives.

Economic Impact

A positive economic impact will result from the appropriation of State moneys to provide local government units with grants for the construction of wastewater treatment facilities. Such financial assistance will help offset the cost of constructing and operating wastewater treatment facilities, costs which significantly increase the cost of wastewater disposal.

While it is the responsibility of local government units to plan for the rational and environmentally sound treatment of wastewater, the State has the responsibility to help alleviate the local government unit's financial burden in order to facilitate the transition to environmentally sound wastewater treatment methods.

Environmental Impact

The proposed new rule promotes an environmentally sound strategy for the disposal of wastewater necessary for the protection of the public health and safety and the preservation of the State's natural resources.

Full text of the proposed new rules follows:

**SUBCHAPTER 7: DETERMINATION OF ALLOWABLE COSTS
FOR PINELANDS INFRASTRUCTURE
TRUST FUND FINANCIAL ASSISTANCE**

7:22-7.1 Purpose

The rules in this subchapter represents the policies and procedures for determining the allowability of project costs based on Department policy, appropriate State cost principles and reasonableness.

7:22-7.2 Applicability

The cost information contained in this subchapter applies to Pinelands grant and loan assistance awarded on or after the effective date of this subchapter. Project cost determinations are not limited to the items listed in this subchapter. Additional cost determinations based on applicable law and regulations not otherwise addressed herein shall be made on a project-by-project basis.

7:22-7.3 Definitions

Terms used in this subchapter are defined in accordance with N.J.A.C. 7:33-6.4.

7:22-7.4 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:
 - i. The claim arises from work within the scope of the Pinelands grant or loan;
 - ii. A formal Pinelands grant or loan amendment is executed specifically 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 determines that there is a significant State interest in the issues involved in the claim.
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 (a)5i above 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 grant or loan award official and shall be allowable only to the extent that they meet the requirements

of paragraph (a)5i, are reasonable, and do not attempt to pass on to the Department 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. 7:22-6.30 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. Except as provided in (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;
 2. 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 grant or loan amendment is executed specifically 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 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.
 3. Bonus payments for completion of building before a contractual completion date;
 4. All costs associated with the award of any subagreement for building significant elements of the project more than 12 months after the grant or loan award, unless an extension is specified in the project schedule approved by the Assistant Director at the time of grant or loan award.
- 7:22-7.5 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.
- (b) 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;
 2. The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under State Environmental Guidelines.
- 7:22-7.6 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.

7:22-7.7 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 of sewer right-of-ways, wastewater treatment plant sites, sanitary landfill sites and sludge disposal areas. 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 Pinelands grant or 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. 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;

2. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

7:22-7.8 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 Pinelands grant or loan. This calculation shall be based on:

i. The portion of the total collection system paid for by the Pinelands grant or 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 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).

(c) 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.

7:22-7.9 Industrial and federal users

(a) Except as provided in (b) 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 monitoring 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.

7:22-7.10 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. 7:22-6.35.

2. The cost of sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system study under N.J.A.C. 7:22-6.35.

(b) Unallowable costs related to infiltration/inflow include:

1. The incremental cost of the wastewater treatment facilities capacity which is more than 20 years reserve capacity using 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 future systems plus present and future commercial and industrial flows.

7:22-7.11 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 of 1985 (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 provided:

i. The project is identified on the Pinelands Infrastructure Trust Funding List as a project for additions to wastewater treatment facilities that has received previous State or federal funds;

ii. The grant or 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 federal grant or State assistance 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 Assistant Director 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 to delay building part of the wastewater treatment facilities; or

(G) A major change in the wastewater treatment facilities' design criteria that the grantee 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 grant or loan; and

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.

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.

(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, commissioners, 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 of 1985 (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 disbursement 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 storm 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. 7:22-6.30(b)(1).

7:22-7.12 Allowance for planning and design

(a) This section provides the method the Department will use to determine both the estimated and final allowance under N.J.A.C. 7:22-6.34 planning and design. The Pinelands grant or loan agreement will include an estimate of the allowance.

(b) The Pinelands Infrastructure Trust share of the allowance may be up to 100 percent of the allowance and shall be based upon the percentage of the Pinelands Infrastructure 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 grant or loan 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 Pinelands Infrastructure Trust share of the estimated allowance immediately after the Pinelands Infrastructure Trust loan award. Final payment of the Pinelands Infrastructure 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 approval 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	4.7984

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.

HEALTH

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

HOSPITAL REIMBURSEMENT

For proposals numbered PRN 1986-378 and 379, submit comments by October 22, 1986 to:

Christine M. Grant, Esq., Director
Hospital Reimbursement
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0360

(a)

Uniform Bill—Patient Summary (Inpatient) Regulation

Procedural and Methodological Regulations Financial Elements and Reporting

Proposed Amendment: N.J.A.C. 8:31B-2.2, 3.51, 3.57, 3.73 and 4.40.

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

Proposal Number: PRN 1986-379.

The agency proposal follows:

Summary

The Department of Health proposes that Same Day Surgery (SDS) services be reimbursed as follows:

1. Hospitals will bill the patient charges based on the procedure performed. Hospitals are responsible for establishing these charges, but no patient shall be billed more than \$1,100 in a major-teaching hospital, or \$950 in non-teaching and minor teaching hospitals¹ (1986 dollars) or the sum of the charges, whichever is less. These limits are inclusive of surgery, all ancillary charges, and any charges for preadmission tests. No additional rebundled service charges, for example, the cost of lens implants, will be allowed. (A rebundled service is one which has been provided by a vendor other than the admitting hospital.) All patients, regardless of payer, must be charged the same amount for the same procedure.

2. Hospitals will be expected to establish charges which will cover their SDS direct patient care costs and SDS indirect and capital costs except for physician costs (PHY), education and research costs (EDR), resident costs (RSD), and malpractice costs (MAL) attributable to residents.

¹See attachment A for explanation of the limits. The limits will also be adjusted yearly for inflation or deflation.

There will be no adjustment at final reconciliation, either to meet any uncovered costs, or to recover any excess revenues not needed to cover costs.

3. At final reconciliation, indirect cost will be handled as follows:

(a) Total Statewide same-day surgery revenue will be divided by total Statewide direct patient care revenue, using data from the year three years prior to the rate year. The resulting percentage will be multiplied by each hospital's reasonable indirect costs exclusive of physician costs (PHY), education and research costs (EDR), resident costs (RSD), and malpractice (MAL) costs. The resulting amount shall remain fixed during the rate period except as modified for actual inflation.²

(b) PHY, EDR, and RSD indirect patient care costs shall remain fixed during the rate period except as modified for actual inflation.

(c) The allowable malpractice costs associated with graduate medical education will be subtracted from total malpractice costs. Allowable graduate medical education malpractice costs are defined as the costs to hospitals of malpractice insurance for residents and the costs of malpractice insurance for faculty to the extent that faculty members' time is devoted to teaching residents. If there is not a specific breakdown of these costs on a hospital's malpractice insurance bill, then the percentage of faculty time devoted to teaching residents plus resident's hours will be divided by total physician hours. (Resident and faculty hours can be found on line 7A of the C-10 SHARE actual form). The resulting percentage will be multiplied by the cost to the hospital of malpractice professional liability cost. (These costs should be identified on line 7M of the C-10 SHARE actual form). The costs remaining after deducting graduate medical education malpractice costs will be multiplied by 99.4 percent (see Attachment B). The resulting amount plus the entire amount of allowable graduate medical education malpractice costs shall remain fixed during the rate period except as modified for actual inflation. The remaining malpractice costs should be covered by SDS charges. The percentage of malpractice costs allotted to Same Day Surgery may be adjusted periodically to reflect changes in the amount and distribution of malpractice claims. This adjustment will take place no more frequently than three years from the time of the original percentage allocation or, in later years, 3 years from the time of the last adjustment.

(d) Specialty hospitals which provide only those services which would not be appropriate to deliver as same day surgery may appeal this approach to reconciliation under the Accept Option. The only basis for such an appeal would be that the hospital does not have any SDS appropriate patients because of the specialized nature of its programs.

4. The sum of the Capital Facilities Formula Allowance, Major Moveable Equipment, and actual amounts for other capital costs reimbursed under N.J.A.C. 8:31B-3.27 and approved or committed before September 1, 1986, shall be multiplied by the percentage described in 3(a) above and the hospital reconciled to the result, provided that any increase from the prospective amount approved by the Commission is related to Capital Facilities as defined in N.J.A.C. 8:31B-4.21.

Capital costs (excluding the Capital Facilities Formula Allowance and Major Moveable Equipment) reimbursed under N.J.A.C. 8:31B-3.27 and approved or committed after August 31, 1986 shall be:

- (a) Allocated to SDS if they are totally SDS related.
- (b) Not allocated to SDS if they are totally unrelated to SDS services.
- (c) Allocated between SDS and non-SDS services using the percentage in 3(a) if the relationship to SDS is not readily determinable.

5. Hospitals may contract out SDS services to free-standing surgery centers with certificates of need and may bill patients trailer charges (that is, charges outside those covered by DRG rates). These trailer charges may not exceed the maximum charge limits of \$1100 for major teaching hospitals and \$950 for minor teaching and non-teaching hospitals. In the case of uncompensated care patients, the free-standing center must absorb the cost of these patients until any 10 percent uncompensated care required by any Certificate of Need Condition is met. Hospitals will not be responsible for auditing such compliance and may accept a statement of compliance signed by an authorized official of the free-standing center subject to audit by the Department of Health. Free-standing centers that

elect to receive patients and revenues as the result of this option are subject to the audit requirement of N.J.A.C. 8:31B-3.17.

6. Uncompensated care related to hospital-based SDS, defined as total SDS dollars billed minus total SDS dollars collected, will be added to the hospital's non-SDS uncompensated care costs and handled in the same fashion as those non-SDS costs at final reconciliation. The regulatory collection measures outlined for inpatients in regulations N.J.A.C. 8:31B-4.40 must be followed by the hospital, and decreases in SDS collections due to Medicare regulatory changes shall not be considered uncompensated care.

7. No cross-subsidization penalties will be applied as the result of SDS charges.

Procedure Used to Develop Maximum Charge Limits

Using 1982 cost data on SDS procedures for which there were at least 10 cases in a peer group, the 75th percentile for each of these procedures in each peer group was determined. The 75th percentile cost amounts were then multiplied by the 1982 to 1986 economic factor for the appropriate peer group and the results multiplied by the May, 1986 average weighted mark-up factor for each peer group.

For each peer group, the middle 50 percent (25th percentile to 75th percentile) of 75th percentile charges was then determined. The results were as follows:

- Non-Teaching Hospitals—\$862-955
- Minor Teaching Hospitals—\$812-963
- Major Teaching Hospitals—\$917-1,117

The \$1,100 and \$950 represent the 75th percentile of 75th percentiles of SDS procedure costs rounded to the nearest \$50 within each peer group. The 75th percentile is considered sufficient because the proposed changes in the amount and type of indirect costs, which must be covered by SDS charges, should allow hospitals to lower costs, and it is expected that these lowered costs will be reflected in patient bills. If a hospital is consistently above the 75th percentile in charges, then this hospital now has the opportunity to refer SDS patients to less costly free-standing centers and bill trailer charges.

Percentage of Malpractice Costs Allotted to SDS

The American Hospital Association Forum on Risk Management has compiled the following data based on claims filed in 1983 with the St. Paul Fire and Marine Insurance Company, the largest commercial carrier of malpractice insurance.

Location	% of Claims	Average Cost
Hospital Operating Room	32.3	\$35,324
Physician's Office	18.0	25,260
Hospital Emergency Room	12.3	24,836
Hospital Patient-Care Area	11.8	37,565
Hospital Obstetrics Units	8.2	64,364
Clinic	7.9	21,053
Hospital—Other Areas	5.3	23,685
Hospital Outpatient Surgery	1.0	14,815
Surgicenters	0.8	29,334
Other Locations	2.4	—

From this data, claims against hospitals were extracted and the percentages were then multiplied by the corresponding average costs. The results were summed to establish a total cost per 100 claims. The cost for hospital outpatient surgery per 100 claims was then divided by total cost per 100 claims. The result was 0.6 percent.

Social Impact

There are several positive impacts which may be anticipated as the result of this proposal. They are:

- 1. SDS patients will have some protection against unconscionably high charges.
- 2. Competition may lead to a lowering of same day surgery charges, thereby benefiting all patients and payers.
- 3. The possibility that free-standing surgery centers will actually meet their uncompensated care obligations is enhanced. Free-standing centers now get referrals only from private physicians.

The pool of indigent patients, therefore, is quite limited because few (or, in some cases, no) private practices are located in low-income areas, and many physicians do not accept patients with no source of payment or only Medicaid as a source of payment.

4. The ability of hospitals to refer patients enhances possibilities for access to SDS services for low income patients who previously would have had no referral source. Under the proposed regulation, such patients

²The treatment of remaining inpatient indirect costs reflects current regulatory language. If changes are proposed in the way in which indirect costs are reimbursed, for example, adoption of standard cost reimbursement or volume variability of indirect costs, then all costs not allotted to SDS will be handled as specified in such regulations. Further, any change in reimbursement of indirects might also involve reconsideration of the total protection of all graduate medical education costs.

could now be referred through hospital clinics and emergency services, which often substitute for private physicians in the provision of primary care and surgical referral for indigent patients.

5. These regulatory changes continue a favorable economic climate for hospitals to further develop same-day surgery. Having appropriate surgery on a same-day basis allows patients to return to the home environment the same day and lowers their chances of exposure to nosocomial infections and other iatrogenic problems.

Economic Impact

The proposed amendments will allow hospitals to be more price competitive with free-standing centers. The percentage of indirect and capital costs which hospital Same-Day Surgery charges must cover will be based on the Statewide percentage of patient care revenues from SDS as of three years prior to the rate year. Hospitals receiving more than the Statewide percentage of revenue from Same-Day Surgery patients will immediately be able to lower Same-Day Surgery charges. Further, any growth in Same-Day Surgery volume from three years previous allows hospitals to spread indirect and capital costs across a greater number of patients and thus lower charges.

It is estimated that 40 to 60 percent of surgery will soon be able to be performed on a Same-Day Surgery basis. At present, New Jersey hospitals are performing about 20 percent of surgery on a same day basis. The possibilities for Same-Day Surgery growth are, therefore, 100 percent to 200 percent. Within a three year period, hospitals could expect a dramatic increase in the number of Same-Day Surgery patients and, as a result, cut significantly the indirect mark-up presently reflected in SDS charges. Graduate Medical Education (GME) has also been protected by this approach because the indirect and malpractice costs associated with GME will not be allocated to SDS and will, therefore, be covered by inpatient and non-SDS outpatient revenues. More costly teaching hospitals, therefore, will be able to offer more price-competitive SDS services.

Because SDS direct patient care revenue is already 100 percent volume variable, the revenue from SDS patients does not become part of a hospital's marginal revenue and is totally protected from any downward adjustment which might result from the volume/intensity calculation in the cost/volume methodology. Further, this proposal will provide immediate incentives and disincentives respectively to hospitals above and below the statewide SDS percentage of direct patient care revenue.

Allowing hospitals to subcontract with free-standing centers for SDS services makes use of already existing facilities, thus curtailing the growth of capital expenditures. Further, hospitals with high costs are presented with an opportunity to provide SDS services in conjunction with existing facilities.

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

8:31B-2.2 Implementation

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

(c) The revisions to N.J.A.C. 8:31B-2 provide for the submission of sufficient patient information for reconciliation of payments consistent with N.J.A.C. 8:31B-3.71 through 3.86.

1. "Sufficient patient information" shall consist of the following for all inpatients discharged and ambulatory same day surgery outpatients treated and shall be submitted in the format specified pursuant to N.J.A.C. 8:31B-2.5(g).

i.-x. (No change.)

xi. Total Same Day Surgery procedure charge for Same Day Surgery patients;

[xi.]xii. (No change in text.)

2. (No change.)

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

8:31B-3.51 Notification appeal and review

(a) (No change.)

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

1. Accept the Certified Revenue Base: Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient care costs. The amount will be fixed and included as an indirect cost in the mark-up factor. A hospital with an overall direct patient care disincentive will be required to present

to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. Subject to approval, acceptance provides the right of the hospital to appeals set forth under N.J.A.C. 8:31B-3.55, [through] 3.56, and 3.58, and hospitals may appeal the allocation of indirect and capital costs to Same Day Surgery services at reconciliation as defined in N.J.A.C. 8:31B-3.73 provided this appeal is based only on the contention that the hospital is a specialty hospital in which the provision of Same Day Surgery is inappropriate.

2.-4. (No change.)

8:31B-3.57 Same [day surgery] Day Surgery

(a) For the purpose of this section, the following terms shall have the following meanings.

"Rebundled service" means a service or item which has been provided by a vendor other than the admitting hospital.

"Trailer charges" means charges outside those covered by DRG rates.

[(a)](b) Under the conditionally accept and not accept options, hospitals [Hospitals] may appeal the reasonableness of their DRG rates due to trim point exclusion of those patients who have undergone Same Day Surgery as defined in N.J.A.C. 8:31B-3.11. [Where appropriate, the Commission shall establish a reasonable change for Same Day Surgical services. The ancillary charges and the Same Day Surgical services constitute the reasonable payment for Same Day Surgical services. The Same Day Surgical charges will be comprised of an incentive reward for the provision of Same Day Surgical services, as approved by the Commission. Additionally, the Commission will adjust the inpatient DRG cost per case to reflect the effect of those hospitals not performing Same Day Surgery on the standard cost per case.]

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

(d) The maximum allowable charge to a Same Day Surgery patient shall be the lower of the sum of the hospital's actual charges or \$1,100 for major teaching hospitals or \$950 for minor teaching and non-teaching hospitals in 1986 dollars, adjusted annually for inflation or deflation by multiplying by the statewide hospital economic factor. This maximum charge is inclusive of surgery, all ancillary charges, charges for rebundled items or services, and any pre-admission testing. All patients regardless of payer shall be charged the same amount for the same procedure.

(e) Hospitals may contract out Same Day Surgery services to free-standing surgical centers with Certificates of Need and bill patients trailer charges. These trailer charges are subject to the maximum charge limits defined in (c) above. In the case of uncompensated care patients, the free-standing center must absorb the costs of treating these patients until the center meets the uncompensated care requirements specified in its certificate of need. Hospitals may accept a center's written certification that it has complied with said requirements. Free-standing centers that elect to receive patients and revenues as the result of this option are subject to the audit requirement of N.J.A.C. 8:31B-3.17.

8:31B-3.73 Reconciliation: Hospitals

(a) Following receipt of [actual] actual patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill-Patient Summaries (inpatient) or N.J.A.C. 8:31A-10.7, whichever is appropriate, determination of the actual case-mix as determined by the same GROUPEL used to establish rates, and calculation of the actual economic factor, the Commissioner shall determine consistent with the Commissioner's Order, for each hospital, for each calendar year or rate period, whichever is appropriate, reconciliation of:

1. (No change.)

2. Fixed financial elements:

i. Indirect patient care costs: The indirect patient care revenue requirements except for malpractice, residents, education and research, and physicians, as initially determined or as approved through appeal shall be multiplied by the statewide percentage of patient care revenue found to be related to sources other than Same Day Surgery in the year three years prior to the rate year. The resulting amount shall remain fixed during the rate period except as modified for actual inflation. The indirect patient care revenue requirements for residents, education and research, and physicians as initially determined or approved through appeal shall remain fixed during the rate period except as modified for actual inflation. The allowable costs of malpractice attributable to graduate medical education will be deducted from the indirect patient care revenue requirement for malpractice. Allowable graduate medical education malpractice costs are defined as the cost to a hospital for malpractice coverage of residents and faculty members to the extent that the faculty members allot their time to teaching residents. The cost of malpractice not related to graduate medical education will be

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multiplied by 99.4 percent. The 99.4 percent may be adjusted periodically for changes in the amount and/or cost of malpractice claims for Same Day Surgery. No adjustment will be made if it has been less than three years since the initial percentage was used or since the last percentage adjustment was made. The result of the 99.4 percent multiplication plus the malpractice cost associated with graduate medical education shall remain fixed during the rate period except as modified for actual inflation or deflation. Any under or over collection of indirect patient care revenue shall be compensated [for] by a Schedule of Rates Variance as described below.

2. Capital costs: [With the exception of] The sum of the Capital Facilities Formula Allowance, [and] Major Moveable Equipment, [these] and actual amounts for other capital costs reimbursed under N.J.A.C. 8:31B-3.27 and approved or committed before September 1, 1986 shall be multiplied by the statewide percentage of patient care revenue from sources other than Same Day Surgery in the year three years prior to the rate year and the result included in Approved Net Revenue [reconciled to actual certified amounts], provided that any increase from the prospective amount approved by the Commission [to the actual amount are] is related to Capital Facilities as defined in N.J.A.C. 8:31B-[3.42] 4.21. Allowable Capital Cash Requirements for projects approved or committed after August 31, 1986 that are related only to SDS services shall not be included in Approved Net Revenue. Allowable Capital Cash Requirements for projects approved or committed after August 31, 1986 that are unrelated to Same Day Surgery shall be included in Approved Net Revenue. Allowable Capital Cash Requirements for projects approved or committed after August 31, 1986 that are related both to Same Day Surgery and to other services shall be multiplied by the statewide percentage of patient care revenue from sources other than Same Day Surgery in the year three years prior to the rate year and the result included in Approved Net Revenue.

iii. Exception: Specialty hospitals which provide only services which would not be appropriate to deliver as Same Day Surgery may appeal this approach to reconciliation under the Accept option, provided that the only basis for such an appeal is that the hospital has no Same Day Surgery appropriate patients because of the specialized nature of its programs.

3. Other indirect financial elements: [Actual uncompensated care, net] Net income from other sources and changes in working capital will be reconciled and included in allowable revenue. Actual uncompensated care shall include appropriate Same Day Surgery uncompensated care. The appropriate amount of Same Day Surgery uncompensated care shall be determined by subtracting the total amount of Same Day Surgery charges collected from the total amount of Same Day Surgery charges billed, except that any Same Day Surgery bad debt resulting from surgery performed in a free-standing center until its Certificate of Need specified uncompensated care requirement is met shall not be included. The appropriate collection procedures defined in N.J.A.C. 8:31B-4.40 must have been followed before charges are considered not to have been collected. The resulting amount of uncompensated care will be reconciled and included in allowable revenue. The final amount of the Working Cash Infusion [is] as based on the most recent audited financial statement to the rate year [and] is included in Approved Net Revenue.

4. (No change.)

8:31B-4.40 Appropriate collection procedures

(a) (No change.)

(b) Inpatient and Same Day Surgery:

1.-5. (No change.)

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

(a)

Procedural and Methodological Regulations Financial Elements and Reporting

Proposed Amendments: N.J.A.C. 8:31B-3.38, 3.58, Appendix II and 4.66

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

Proposal Number: PRN 1986-378.

The agency proposal follows:

Summary

The Department proposes amendments to N.J.A.C. 8:31B-3.58 and Appendix II to remove malpractice costs from the economic factor and final reconciliation and add them to the appeal process as an item appealable under any option. This process will allow the Department to scrutinize rapidly rising malpractice costs for reasonableness.

Under current regulations, the proxy for malpractice costs has been the percentage change in the community rated portion of the malpractice insurance provided through the Health Care Insurance Exchange (HCIE). In most years, the community rating has not changed and the Department has used an initial economic factor of 1.0 for malpractice costs. This has the result of reducing each hospital-specific economic factor. This proxy has been found to be inadequate for the final economic factor and, under an exception granted by the Hospital Rate Setting Commission in the Final Reconciliation methodology, hospitals have been reconciled to their actual malpractice costs. These unrestrained costs rose 39 percent between 1982 and 1984; increases of between 40 percent and 120 percent were estimated for 1985. Through the appeals process, the Department will seek to ensure that only reasonable malpractice premiums are approved for reimbursement.

In addition, the amendments will limit the amount of coverage which will be reimbursed through the rates. HCIE's Special Multi-peril Policy provides malpractice insurance for hospital and professional liability in the amounts of \$1 million per occurrence, \$3 million per year with \$5 million in excess liability coverage. The bonds offered by the New Jersey Health Care Facility Financing Authority require that hospitals obtain coverage of at least \$1 million per occurrence and \$3 million per year.

In 1985, N.J.A.C. 8:31B-3.38(c) included a change in billing method for atypical patients, which are commonly referred to as outliers. This new methodology is based on the use of per diem rates developed on actual 1982 reported costs, which replaced the prior use of actual rate year charges. An unintended result occurred in certain instances for low length of stay outlier cases. Specifically, the outlier payment exceeded the per case rate for a typical patient (inlier rate). The proposed amendment provides that the low length of stay outlier bills will be limited to the payment rate for an inlier patient whose length of stay falls within prescribed length of stay (trip points). The hospital will still be paid the full low outlier per diem through the final reconciliation process. The rationale is that, on average, a low outlier will consume no more resources than the average inlier.

N.J.A.C. 8:31B-4.66 has been corrected to show the appropriate citation to N.J.A.C. 8:31B-4.46 which refers to working capital requirements.

Social Impact

This proposal will enable the Department to ensure that only malpractice costs are included in the malpractice cost center, that non-malpractice insurance costs are included under the Administrative and General Fiscal cost center and that only a reasonable level of malpractice insurance will be paid for through the rates. This should increase the Department's ability to analyze and respond to changes in the malpractice insurance marketplace.

Limitation of the amount of malpractice coverage which will be reimbursed through the rate setting system will require hospitals to determine whether they will finance additional malpractice insurance from sources other than hospital rates.

In relatively few cases throughout all New Jersey Chapter 83 (Health Care Facilities Planning Act) hospitals, the outlier per diem methodological application yielded excessive rates for individual low length of stay inpatients. These rates did not necessarily reflect the resource consumption on these individual cases, and limitation to the inlier rate will mitigate this effect.

The correction to N.J.A.C. 8:31B-4.66 will not cause any social impact. It merely corrects an error in transmission of the citation.

Economic Impact

The amendments to N.J.A.C. 8:31B-3.58 and Appendix II which alter the way malpractice costs are reviewed in the Chapter 83 system will result in positive and negative impacts for the affected parties. Removal of the malpractice proxy from the economic factor will in most years increase the value of the initial proxy because in most years the malpractice proxy, the percentage change in HCIE's group insurance rate, does not change. In addition, hospitals will receive increases to their rates in response to increases in premiums in a more timely fashion through the appeals process than through final reconciliation. However, treatment of malpractice costs in the course of appeals will provide the Department with an opportunity to review additional malpractice costs for reasonableness. This may result in the disallowance of costs that are improperly reported or unreasonable.

Limitation of the amount of coverage should result in a decrease in malpractice costs in some hospitals and a constraint on increase in reimbursement for malpractice in all hospitals. Hospitals that elect to carry additional insurance coverage will not receive reimbursement for the coverage.

The final reimbursement to a hospital is unaffected by the billing change to N.J.A.C. 8:31B-3.38. Individual patients whose length of stay would result in a low outlier bill in excess of the inlier rate will now benefit by paying the lower inlier rate.

The correction to N.J.A.C. 8:31B-4.66 will not cause any economic impact. It merely corrects an error in transmission of a citation.

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

8:31B-3.38 Derivation from Preliminary Cost Base

- (a)-(b) (No change.)
 (c) Basic rate order:
 1. (No change.)
 2. The five outlier categories will have rates and/or per diems included on the Schedule of Rates as follows:
 i. (No change.)
 ii. Low length of stay—[The rate is the low per diem rate for each acute day of the stay.] **The billing rate is limited to either the lower of the inlier rate per case or the sum of the acute days multiplied by the low per diem.** For DRG's with three or fewer low length of stay outlier cases in the base year, the standard low length of stay per diem is the rate.
 iii.-v. (No change.)
 3. (No change.)
 (d) (No change.)

8:31B-3.58 Statewide adjustments

- (a)-(b) (No change.)
 (c) **Hospitals may appeal under this section for changes in the costs of malpractice insurance as defined in N.J.A.C. 8:31B-4.121.**

1. Malpractice insurance cost will be limited to the reasonable cost of premiums for the Special Multi-peril Policy for hospital and professional liability as defined by the Health Care Insurance Exchange in the coverage amounts of \$1 million per occurrence, \$3 million aggregate per year and \$5 million for excess liability coverage.

Appendix II Cost Components and Proxies for the Economic Factor

...
 OTHER 3.
 [COST COMPONENT: Malpractice Insurance
 COST CENTER: Other expense reported in MAL Cost Center
 PROXY: Percentage change in New Jersey Health Care Insurance Exchange Group Rates
 SOURCE: New Jersey Hospital Association
 OTHER 4.]
 COST COMPONENT: Utilities
 COST CENTER: Proportion of other expense reported in UTC Cost Center
 CATEGORY 1-4 (No change.)
 OTHER [5] 4.
 COST COMPONENT: Major Moveable Equipment
 CATEGORY 1-4 (No change.)
 OTHER [6] 5.
 COST COMPONENT: Other Services
 SHARE COST CENTER: Other expenses reported in all cost centers except INT, PLT, OGS, MAL, UTC, LFB, PFB, and PEN; other expenses in A&G Cost Center not classified above; contracted service costs in Ancillaries, DTY, HKP, MRD, PCC, EDR, A&G and FIS Cost Centers.

PROXIES: CPI, Services less rent and medical care
 SOURCE: BLS, Consumer Price Index

8:31B-4.66 Administrative items

- (a)-(c) (No change.)
 (d) Non-Capital Interest Expenses (interest other than interest [or] on Capital Facilities or Major Moveable Equipment) is excluded from Costs related to Patient Care since short-term borrowing, etc. is addressed through the Financial Element Working Capital Requirements (see N.J.A.C. 8:31B-4.46 (Case C)).
 (e) (No change.)

HOSPITAL REIMBURSEMENT

For proposals numbered PRN 1986-377 and 383, submit comments by December 21, 1986 to:

Christine M. Grant, Esq., Director
 Hospital Reimbursement
 New Jersey State Department of Health
 CN 360
 Trenton, NJ 08625-0360

(a)

Procedural and Methodological Regulations Financial Elements and Reporting

Proposed Amendment: N.J.A.C. 8:31B-4.42

Proposed Repeal and New Rule: N.J.A.C. 8:31B-3.27

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

Proposal Number: PRN 1986-383.

NOTE: The comment period for this proposal has been extended to 90 days ending on December 21, 1986.

The agency proposal follows:

Summary

The Department of Health has proposed changes to N.J.A.C. 8:31B-3.27 to provide for a new method of calculating the Capital Facilities Allowance for all hospitals for rate years from 1988 forward. Under the proposal, all hospitals would receive a Capital Facilities Allowance based on their Capital Cash Requirements, plus a Capital Facilities Formula Allowance. In addition, hospitals which on or after September 1, 1986, undertake new capital projects would receive a specified adjustment to their Capital Cash Requirements for such new projects. This new method will allow the Department to better scrutinize rapidly rising capital costs for reasonableness, to link capital reimbursement more closely to actual hospital utilization, and to eliminate incentives under existing regulations to overinvest in capital. The Department is also proposing changes to N.J.A.C. 8:31B-3.27 to strengthen capital funding requirements and to N.J.A.C. 8:31B-4.42 to clarify the definition of Capital Facilities.

Under current regulations, the Capital Facilities Allowance (which constitutes a hospital's reimbursement for plant and fixed equipment) is calculated as the larger of the following two quantities: 1. Capital Cash Requirements (essentially, actual long-term debt service) plus a Capital Facilities Formula Allowance (essentially, a replacement allowance for plant and fixed equipment) or 2. Depreciation on plant and fixed equipment plus Interest on long-term debt. Approximately two-thirds of the hospitals subject to Chapter 83 (Health Care Facilities Planning Act) are reimbursed under the Depreciation plus Interest option and the remainder under the Debt Service option. Under these regulations, hospitals are thus reimbursed either for 100 percent of their actual depreciation and interest expenses (Option 2) or for 100 percent of their actual debt service needs plus a replacement allowance (Option 1). Each option provides substantial reimbursement in excess of actual debt service needs and imposes no overall or hospital-specific limit on actual capital reimbursement. In addition, the existence of two reimbursement options creates an incentive to overinvest in capital by allowing hospitals to switch options during the useful life of a project. Partly as a result of these features of the existing regulations, statewide reimbursement for plant and fixed equipment increased from \$226.5 million in 1984 to \$304.5 million in 1986, an increase of \$78.0 million or 34 percent. Based on already approved Certificates of Need, the total statewide Capital Facilities Allowance is expected to increase to approximately \$400 million by 1988, a further increase of \$95 million or 31 percent over the 1986 level. In addition, the Department has received Letters of Intent for an additional \$481.1 million of projects; these projects, if approved, would result in an additional \$57 million per year in capital reimbursement, or \$1.7 billion over the lives of the projects. In contrast, approved non-capital expenditures have been increasing by less than 10 percent per year.

The proposal would eliminate the depreciation and interest option for all hospitals. Reimbursement of the reasonable cost of Chapter 83 financial elements related to capital would be maintained as follows:

1. All hospitals would receive the Capital Facilities Formula Allowance, which is an amount calculated to generate a 20 percent equity contribution for the preservation, replacement and improvement of hospital plant and fixed equipment, subject to appropriate planning requirements.

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2. All hospitals would receive their Capital Cash Requirements for pre-existing long-term debt, which is an amount calculated to cover current hospital payments on principal and interest (and certain other payments) on the long-term debt used to acquire plant and fixed equipment. Pre-existing debt would be defined as debt on projects which received Certificate of Need approval on or before August 31, 1986 (or, if Certificate of Need approval is not required, projects committed to on or before that date).

3. For new projects, that is, those receiving Certificate of Need approval on or after September 1, 1986 (or, if Certificate of Need is not required, projects committed to on or after that date), an addition to Capital Cash requirements would be approved, up to an amount determined to be the maximum amount reasonably necessary to efficiently construct and finance needed plant and fixed equipment.

The methodology for calculating the upper payment limit for new projects is contained in 8:31B-3.27(d) to the Procedural and Methodological Regulations. In essence, the amount would be calculated by determining, on a per adjusted admission basis, the resources reasonably needed to construct and finance new projects. That amount would be compared to the amount actually proposed to be spent on new projects by the hospital; the hospital would receive its actual capital cash requirements for the new project up to the maximum allowable amount. The Department estimates that for projects placed in use in 1988, the upper payment limit would be about \$251 per adjusted admission per year for new projects involving total facility replacement and \$167 per adjusted admission per year for all other new projects. These figures represent the maximum amounts (in 1988 dollars) needed to efficiently construct and finance such projects using least-cost financing methods and are based on analyses of actual capital projects financed in recent years by the New Jersey Health Care Facilities Financing Authority.

The proposed rule would thus allow hospitals to charge and retain an amount adequate to pay for full replacement of their plant and fixed equipment, payment of actual debt service on pre-existing debt, and payment of reasonable debt service on new projects. The proposed rule would also require that if actual hospital utilization (measured in adjusted admissions) in a particular rate year differs from the utilization projected by the hospital in its new project Certificate of Need application, the hospital's allowable new project capital cash requirements would be based on the higher of the two volume figures. This approach thus requires hospitals to make realistic volume projections in their Certificate of Need applications. The upper limit ensures that new capital projects do not cost more per adjusted admission than is reasonably necessary to efficiently construct and finance capital assets, and that hospitals, in planning their construction programs, will make reasonable volume projections (including possible declines in volume). It is expected that these rules will result in lower rates of increase in total capital expenditures and will thus address the problem of excess acute care bed capacity.

N.J.A.C. 8:31B-3.27 has been further amended to strengthen the requirements for hospital funding of reimbursement in excess of debt service requirements. Under current rules, the penalty provided in N.J.A.C. 8:31B-3.27 for non-funding applies only to hospitals that have an over-collection at Final Reconciliation. The Department proposes to apply the prescribed penalty to all hospitals.

N.J.A.C. 8:31B-3.73 has been amended to reflect the new methodology in Final Reconciliation. (See separate Health Department proposal on proposed Same-Day Surgery regulations in this issue.) N.J.A.C. 8:31B-4.42 has been amended to update the cross-reference contained in that section to include the amendments to N.J.A.C. 8:31B-3.27 and to clarify the definition of Capital Facilities.

Social Impact

The proposed amendments are expected to result in a lower rate and amount of increase in capital expenditures for plant and fixed equipment and will therefore avoid capital investment to replace excess hospital capacity. Reductions in excess capacity will contain the rate of increase in costs to health care consumers, such as employers, employees, government, and self-pay patients. There is no evidence that suggests that the proposed regulations would adversely impact access to or the quality of patient care. By moderating the increase in capital costs, it is expected that it will be easier to meet other urgent health care needs, especially the payment of hospitals for uncompensated care. By ensuring that scarce financial resources are invested only in needed facilities, access to health care and quality of care would also be protected.

Economic Impact

The proposed amendments to N.J.A.C. 8:31B-3.27 will impact all hospitals currently receiving the depreciation plus interest form of capital reimbursement by eliminating reimbursement in excess of Capital Cash Requirements plus Capital Facilities Formula Allowance. However, all hospitals will continue to receive adequate reimbursement to meet pre-existing long-term debt obligations and to provide for facility replacement. To provide a transition period for hospitals currently receiving Depreciation plus Interest, the change has been delayed until the 1988 rate year. The proposal will also affect hospitals planning to undertake new capital projects. Since such hospitals will be on notice of the proposed rule change, it is to be expected that they will take account of the proposed rules in potential Certificate of Need applications (and in plans for projects not requiring Certificates of Need) by scaling their projects so as to avoid or minimize potential adverse reimbursement consequences.

Based on an analysis of hospital-specific data, the Department projects that, absent the proposed changes, annual capital reimbursement in 1991 would reach \$550 million; over the life of the associated projects, total capital reimbursement would be approximately \$11 billion. In contrast, it is expected that the proposed rules will limit capital reimbursement to \$500 million per year or \$10 billion over total project life. The difference of \$50 million per year or \$1 billion total represents a substantial savings to those who pay for healthcare. This savings would be achieved with no negative impact on access to or quality of care at those hospitals.

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

[8:31B-3.27 Capital Facilities]

[(a) Capital Facilities as defined in N.J.A.C. 8:31B-4.42, shall be included in the Preliminary Cost Base in the following manner:

1. Building and fixed equipment:

i. Capital Cash Requirements are all current payments, excluding cash purchases, made for Capital Facilities utilized for Services Related to Patient Care during a reporting period, including lease, principal, interest on long term debt, and certain other debt services payments, but excluding the expenditure of specific purpose grants for capital projects. Capital Cash Requirements for any year the Schedule of Rates is to be prospectively set shall not include the whole amount of any balloon payments. Rather, balloon payments shall be reported to the Commission in a timely manner in order to examine the possibility of refinancing such payments. Capital Cash Requirements are to be reported per Uniform Cost Reporting Regulation.

ii. Capital Facility Formula Allowance: For hospitals receiving a Preliminary Costs Base and Schedule of Rates the allowance provides funds for replacements or major renovations of the future acute care capital facility needs of the hospital's service area as determined through the planning process; i.e., 20 percent of current replacement costs, less the portion of the fund target designated by the hospital's governing board at the time its initial Schedule of Rates is set, spread over the adjusted remaining useful life of buildings, building components, and fixed equipment for the target bed complement of the hospital, in accordance with the planning needs of the hospital's service area.

iii. The Capital Facilities Formula Allowance is calculated as follows:

(1) As a measure of the scope of Capital Facilities projected to be needed by a hospital when its present facilities are no longer usable, the number of target beds for hospitals receiving a Preliminary Cost Base and Schedule of Rates will be based on the following: until such time as alternate formulas are adopted by the Health Care Administration Board:

(A) For Pediatric and Obstetric Services (for facilities with 1,000 or more deliveries) target beds equal:

$$(1.33) \times (\text{Most Recent Actual Year Licensed Beds}) \\ \times (\text{Most Recent Actual Year Occupancy Rate})$$

For facilities with less than 1,000 deliveries no target beds will be included unless the criteria is waived by the New Jersey State Department of Health due to accessibility issues. However, in no case will waivers be considered for facilities with less than 500 deliveries.

(B) For all other services target beds equal:

$$(1.175 \times \text{Most Recent Actual Year Licensed Beds}) \\ \times \text{Most Recent Actual Year Occupancy Rate})$$

(2) The number of target beds is multiplied by an estimated current construction cost per bed. This amount shall be the average construction

cost per square foot, times gross square feet per bed, determined in the Dodge Construction System Costs, adjusted for location of the hospital (as updated annually).¹

(3) The result of (a)2iii(2) above, is multiplied by .20 to arrive at an estimate of the money, in current dollars, a hospital should have towards a down payment on future Capital Facilities.

(4) The available portion of the fund target, determined in accordance with N.J.A.C. 8:31B-4.13 through 4.25 is subtracted from the result of (a)1iii(3) above, (i.e., the Fund Target). Any excess of the Plant Fund balance over the Fund Target is to be offset against the Current Cost Base in rate determination. Any excess of the Fund Target over the Internally Generated Plant Fund Balance is the allowance for replacements and renovations to be included in a hospital's Schedule of Rates over its remaining useful life.

iv. The yearly Capital Facilities Allowance is computed per information provided by the Uniform Cost Reporting Regulation as the higher of:

(1) The current yearly amount of capital indebtedness of the hospital, excluding any portion associated with major moveable equipment, plus the deficiency of the Plant Fund (and any funds designated by the hospital's board for the Capital Facilities Formula Allowance (CFFA) against the Fund Target, divided by the adjusted remaining useful life of the hospital;

(2) The prospective year's depreciation and interest expense.

v. For building replacement or major renovations, regardless of which of the above options (a or b) is higher in any given year, the maximum amount reimbursed through the Capital Facilities Allowance shall be the higher of one of the alternatives summed over the applicable number of years.

vi. For either option, the maximum expenditure from the Plant Fund for each year shall not exceed 50 percent of the difference between the CFA and the capital cash indebtedness. If the 50 percent level per year is not maintained in the Plant Fund and the hospital has an overcollection at Final Reconciliation, a penalty of 10 percent of the amount not funded will be assessed against the institution but not to exceed the overcollection. A minimum of 50 percent of the yearly amount of the CFFA must be maintained in the Internally Generated Plant Fund to be used only for future plant replacement with approved Certificate of Need.

2. Major Moveable Equipment: For the purpose of calculating the Price Level Depreciation Allowance, Major Moveable Equipment is grouped into four categories based on the cost center function where the equipment is utilized: Beds and nursing equipment; Diagnostic and therapeutic equipment; General service equipment; Business service equipment.

i. The following rules will apply in calculating the Price Level Allowance for a given year:

(1) Only equipment which has not been fully depreciated at the start of the fiscal year is to be used in the calculation of the Price Level Allowance.

(2) The depreciation recorded and reported on all equipment subject to the Price Level Allowance must be calculated by the straight-line method, using at the time of the cost filing the most recent approved American Hospital Association (AHA) Recommended Useful Life (i.e., 1978 revision) or Asset Depreciation Range (ADR).

(3) Only capitalized equipment and related capitalized costs can be used in the calculation of the Price Level Allowance.

(4) The price level factors for each of the four Department of Health. For years prior to current cost base year the factors to be used for price leveling depreciation are as follows:

Category	Proxy
Beds and Nursing Equipment	Marshall and Swift Hospital Equipment Cost Index
Diagnostic and Therapeutic Equipment	Marshall and Swift Hospital Equipment Cost Index
General Service Equipment	Producer Price Index (PPI) 1161, Food Products Machinery (35%) (This index was not available for 1958 and 1959, hence the relationship of the PPI 114, General Service Equipment was applied to the 1960 value to determine the index for the missing years). PPI 124102, Laundry Equipment (20%).

PPI 12410111, Vacuums (15%)
PPI 113 less 1134 and 1136, Metalworking Machinery less Industrial Furnaces and Abrasive Products (30%). (This Index was not available for 1968, hence the missing value was calculated using linear interpolation.)

Business Service Equipment
PPI 1193 less 1193.06, Business and Store Equipment (less Coin Operated Vending Machines) and PPI 122, Commercial Furniture. (Data was not available for 1964, hence the linear interpolation was used to calculate the missing values.)

(5) Assets retired before the close of the fiscal year are not to be used in the calculation of the Price Level Allowance.

(6) The amount of the Price Level Allowance may be calculated by one of two options.

(A) OPTION 1

Current year straight-line depreciation of each asset being depreciated is multiplied by the price level factor corresponding to the year the asset was acquired to determine price level depreciation. Straight-line depreciation is then subtracted from price level depreciation and the result totaled to determine the amount of the Price Level Allowance provided by Option (1).

Algebraically the calculation is as follows:

D . . . (equals) Current year depreciation, ordered by the year of acquisition of the asset being depreciated.

F . . . (equals) Price level factor for the year the asset was required.

PLA . . . (equals) Price Level Allowance

PLA . . . (equals) DxF-D

(B) OPTION 2

Acquisition costs of capitalized assets in each of the last 10 years are multiplied by the appropriate price level factor of each of the 10 years to determine price level acquisition costs. Acquisition costs are then subtracted from price leveled acquisitions costs to determine the total difference between acquisition costs and the price leveled acquisition cost. Next, the difference between acquisition cost and price level cost is divided by acquisition costs and the resulting ratio applied to the hospital's current year straight-line depreciation of capitalized assets to determine the amount of Price Level Allowance in Option (2).

Algebraically the calculation is as follows:

D . . . (equals) Current year depreciation, ordered by the year of acquisition of the asset being depreciated.

F . . . (equals) Price level factor for the year the asset was required.

A . . . (equals) Acquisitions costs of capitalized assets.

n . . . (equals) The last 10 years prior to establishment of CFA.

PLA . . . (equals) Price Level Allowance

$$PLA = \frac{\sum_{n=1}^{10} (n = 1^n \times F) - n = 1^n \times D}{\sum_{n=1}^{10} n = 1^n}$$

The degree of accuracy attainable in the calculation of the Price Level Depreciation Allowance is highly dependent upon the availability and accessibility of data concerning the historic cost and date of acquisition of all assets. Recognizing that hospital records may not have been organized in the past in a fashion which would permit the calculation of Price Level Depreciation by the preferred method (Option 1), Option 2 is offered as an expedient method of closely approximating the amount of the allowance. Hospitals should begin to arrange for the modifications necessary to their accounting systems to enable them to calculate the amount of the allowance using Option 1. Starting with fiscal year 1982, Option 2 will no longer be an acceptable method for calculating the amount of the Price Level Allowance.

(7) The gain or loss on an asset retired before the expiration of its estimated useful life will be reported as depreciation (loss) or reduction to depreciation (gain) in the year the asset is retired. All calculations are to be made based upon historical cost. The gain or loss should be reported in the center previously charged with the depreciation expense.

(8) The interest component of cash disbursements relative to capitalized Major Moveable Equipment leases is to be classified as interest expense, in accordance with GAAP, and not used as a basis for calculating the price level depreciation premium.

(9) The total Price Level Allowance will be allocated to cost centers based upon the accumulated depreciation of all Major Moveable Equipment not fully depreciated.]

8:31B-3.27 Capital Facilities

(a) Capital Facilities include owned or leased land, land improvements, buildings, fixed equipment, leasehold improvements, major moveable equipment and related debt service requirements. Capital Facilities shall be included in the Preliminary Cost Base in the manner indicated in (b) and (c) below.

(b) Building and fixture equipment requirements shall be as follows.

1. Capital Cash Requirements are all current payments, excluding cash purchases, made for Capital Facilities utilized for Services Related to Patient Care during a reporting period, including lease, principal, interest on long term debt, and certain other debt services payments, but excluding the expenditure of specific purpose grants for capital projects. Capital Cash Requirements for any year the Schedule of Rates is to be prospectively set shall not include the whole amount of any balloon payments. Rather, balloon payments shall be reported to the Commission in a timely manner in order to examine the possibility of refinancing such payments. Capital Cash Requirements are to be reported per Uniform Cost Reporting Regulation.

2. Capital Facility Formula Allowance: For hospitals receiving a Preliminary Costs Base and Schedule of Rates the allowance provides funds for replacement or major renovations of the future acute care capital facility needs of the hospital's service area as determined through the planning process; that is, 20 percent of current replacement costs, less the portion of the fund target designated by the hospital's governing board at the time its initial Schedule of Rates is set, spread over the adjusted remaining useful life of buildings, building components, and fixed equipment for the target bed complement of the hospital, in accordance with the planning needs of the hospital's service area.

3. The Capital Facilities Formula Allowance is calculated as follows:

i. As a measure of the scope of Capital Facilities projected to be needed by a hospital when its present facilities are no longer usable, the number of target beds for hospitals receiving a Preliminary Cost Base and Schedule of Rates will be based on the following until such time as alternate formulas are adopted by the Health Care Administration Board:

(1) For Pediatric and Obstetric Services (for facilities with 1,000 or more deliveries) target beds equal:

$$(1.33) \times (\text{Most Recent Actual Year Licensed Beds}) \\ \times (\text{Most Recent Actual Year Occupancy Rate})$$

For facilities with less than 1,000 deliveries no target beds will be included unless the criteria is waived by the New Jersey State Department of Health due to accessibility issues. However, in no case will waivers be considered for facilities with less than 500 deliveries.

(2) For all other services target beds equal:

$$(1.175 \times \text{Most Recent Actual Year Licensed Beds}) \\ \times \text{Most Recent Actual Year Occupancy Rate})$$

ii. The number of target beds is multiplied by an estimated current construction cost per bed. This amount shall be the average construction cost per square foot, times gross square feet per bed, determined in the Dodge Construction System Costs, adjusted for location of the hospital (as updated annually).¹

iii. The result of (b)3ii above, is multiplied by .20 to arrive at an estimate of the money, in current dollars, a hospital should have towards a down payment on future Capital Facilities.

iv. The available portion of the fund target, determined in accordance with N.J.A.C. 8:31B-4.13 through 4.25 is subtracted from the result of (b)3iii above, (i.e., the Fund Target). Any excess of the Plant Fund balance over the Fund Target is to be offset against the Current Cost Base in rate determination. Any excess of the Fund Target over the Internally Generated Plant Fund Balance is the allowance for replacements and renovations to be included in a hospital's Schedule of Rates over its remaining useful life.

4. Capital Facilities Allowance through 1987:

i. For prospective years up to and including the 1987 rate year, the yearly Capital Facilities Allowance shall be computed per information provided under the Uniform Cost Reporting Regulation as the higher of:

(1) The current yearly amount of Capital Cash Requirements of the hospital, excluding any portion associated with major moveable equipment, plus the deficiency of the Plant Fund (and any funds designated by the hospital's board for the Capital Facilities Formula Allowance (CFFA) against the fund target, divided by the adjusted remaining useful life of the hospital;

(2) The prospective year's depreciation and interest expense.

ii. For building replacement or major renovations, regardless of which of the above option (1) or (2) is higher in any given year, the maximum amount reimbursed through the Capital Facilities Allowance shall be the higher of one of the alternatives summed over the applicable number of years.

5. Capital Facilities Allowance from 1988 and 1989.

i. The Capital Facilities Allowance for 1988 shall be the higher of:

(1) The amount of calculated in 4i(1) above, or,
(2) The sum of 50 percent of the amount as calculated in 4i(1) above and 50 percent of the 1988 depreciation and interest expense.

ii. The Capital Facilities Allowance for 1989 shall be the higher of:

(1) The amount as calculated in 4i(1) above, or,
(2) The sum of 75 percent of the amount as calculated in 4i(1) above and 25 percent of the 1989 depreciation and interest expense.

6. Capital Facilities Allowance from 1990 on:

i. For prospective years beginning with the 1990 rate year, the yearly Capital Facilities Allowance shall be computed per information provided under the Uniform Cost Reporting Regulation as the sum of the following:

(1) The current yearly amount of Capital Cash Requirements of the hospital, excluding any portion associated with major moveable equipment, for expenditures for Capital Facilities which received Certificate of Need approval on or before August 31, 1986 (or, if no Certificate of Need was required, expenditures for Capital Facilities which were committed to on or before August 31, 1986);

(2) The current yearly amount of Allowable Capital Cash Requirements of the hospital, excluding any portion associated with major moveable equipment, determined in accordance with the methodology set forth in Appendix XI, for expenditures for Capital Facilities which receive Certificate of Need approval on or after September 1, 1986 (or, if no Certificate of Need is required, expenditures for Capital Facilities which are committed to on or after September 1, 1986), and

(3) The deficiency of the Plant Fund (and any funds designated by the hospital's board for the Capital Facilities Formula Allowance (CFFA) against the Fund Target, divided by the adjusted remaining useful life of the hospital.

7. The maximum expenditure from the Plant Fund for each year shall not exceed 50 percent of the difference between the Capital Facilities Allowance and hospital's Capital Cash Requirements. If the 50 percent of the yearly amount of the Capital Facilities Formula Allowance, or, if the hospital is receiving depreciation plus interest, 50 percent of the excess of that amount over Capital Cash Requirements, must be maintained in the Internally Generated Plant Fund to be used only for future plant replacement with an approved Certificate of Need.

(c) Major moveable equipment requirements shall be as follows: For the purpose of calculating the Price Level Depreciation Allowance, Major Moveable Equipment is grouped into four categories based on the cost center function where the equipment is utilized: Beds and nursing equipment; Diagnostic and therapeutic equipment; General service equipment; Business service equipment.

1. The following rules will apply in calculating the Price Level Allowance for a given year:

i. Only equipment which has not been fully depreciated at the start of the fiscal year is to be used in the calculation of the Price Level Allowance.

ii. The depreciation recorded and reported on all equipment subject to the Price Level Allowance must be calculated by the straight-line method, using at the time of the cost filing the most recent approved American Hospital Association (AHA) Recommended Useful Life (that is, 1978 revision) or Asset Depreciation Range (ADR).

iii. Only capitalized equipment and related capitalized costs can be used in the calculation of the Price Level Allowance.

iv. The price level factors for each of the four Department of Health. For years prior to current cost base year the factors to be used for price leveling depreciation are as follows:

Category	Proxy
Beds and Nursing Equipment	Marshall and Swift Hospital Equipment Cost Index
Diagnostic and Therapeutic Equipment	Marshall and Swift Hospital Equipment Cost Index

¹Dodge Construction Systems Cost, McGraw Hill Cost Information systems, 1221 Avenue of the Americas, New York, New York 10020.

General Service Equipment

Producer Price Index (PPI) 1161,
Food Products Machinery (35%)
(This index was not available for 1958
and 1959, hence the relationship of the
PPI 114, General Service Equipment
was applied to the 1960 value to
determine the index for the missing
years).
PPI 124102, Laundry Equipment
(20%).
PPI 12410111, Vacuums (15%)
PPI 113 less 1134 and 1136,
Metalworking Machinery less
Industrial Furnaces and Abrasive
Products (30%). (This Index was not
available for 1968, hence the missing
value was calculated using linear
interpolation.)

Business Service Equipment

PPI 1193 less 1193.06 Business and
Store Equipment (less Coin Operated
Vending Machines) and PPI 122,
Commercial Furniture. (Data was not
available for 1964, hence the linear
interpolation was used to calculate the
missing values.)

- v. Assets retired before the close of the fiscal year are not to be used in the calculation of the Price Level Allowance.
- vi. The amount of the Price Level Allowance may be calculated by one of two options.

(1) **OPTION 1**

Current year straight-line depreciation of each asset being depreciated is multiplied by the price level factor corresponding to the year the asset was acquired to determine price level depreciation. Straight-line depreciation is then subtracted from price level depreciation and the result totaled to determine the amount of the Price Level Allowance provided by Option (1). Algebraically the calculation is as follows:

D . . . (equals) Current year depreciation, ordered by the year of acquisition of the asset being depreciated.
F . . . (equals) Price level factor for the year the asset was required.
PLA . . . (equals) Price Level Allowance
PLA . . . (equals) (DxF)-D

(2) **OPTION 2**

Acquisition costs of capitalized assets in each of the last 10 years are multiplied by the appropriate price level factor of each of the 10 years to determine price level acquisition costs. Acquisitions costs are then subtracted from price leveled acquisitions costs to determine the total difference between acquisition costs and price leveled acquisition cost. Next, the difference between acquisition cost and price level cost is divided by acquisition costs and the resulting ratio applied to the hospital's current year straight-line depreciation of capitalized assets to determine the amount of Price Level Allowance in Option (2).

Algebraically the calculation is as follows:
D . . . (equals) Current year depreciation, ordered by the year of acquisition of the asset being depreciated.
F . . . (equals) Price level factor for the year the asset was acquired.
A . . . (equals) Acquisitions costs of capitalized assets.
n . . . (equals) The last 10 years prior to establishment of CFA.
PLA . . . (equals) Price Level Allowance

$$PLA = \frac{\sum_{n=1}^{10} (n \times I^n \times F) - n}{\sum_{n=1}^{10} n} \times D$$

The degree of accuracy attainable in the calculation of the Price Level Depreciation Allowance is highly dependent upon the availability and accessibility of data concerning the historic cost and date of acquisition of all assets. Recognizing that hospital records may not have been organized in the past in a fashion which would permit the calculation of Price Level Depreciation by the preferred method (Option 1), Option 2 is offered as an expedient method of closely approximating the amount of the allowance. Hospitals should begin to arrange for the modifications necessary to their accounting systems to enable them to calculate the amount of the allowance using Option 1. Starting with fiscal year 1982, Option 2 will no longer be an acceptable method for calculating the amount of the Price Level Allowance.

vii. The gain or loss on an asset retired before the expiration of its estimated useful life will be reported as depreciation (loss) or reduction to depreciation (gain) in the year the asset is retired. All calculations are to be made based upon historical cost. The gain or loss should be reported in the center previously charged with the depreciation expense.

viii. The interest component of cash disbursements relative to capitalized Major Moveable Equipment leases is to be classified as interest expense, in accordance with GAAP, and not used as a basis for calculating the price level depreciation premium.

ix. The total Price Level Allowance will be allocated to cost centers based upon the accumulated depreciation of all Major Moveable Equipment not fully depreciated.

(d) Calculation of Allowable Capital Cash Requirements for Capital Expenditures Committed on or after September 1, 1986 shall be done as follows.

As provided in (a) above, Capital Cash Requirements attributable to expenditures for Capital Facilities (as defined in N.J.A.C. 8:31B-4.21) committed on or after September 1, 1986 shall be limited to Allowable Capital Cash Requirements calculated as provided in this section. The projects giving rise to such expenditures shall be termed "New Projects" in this section.

1. **Determination of Cost of Efficiently Constructing and Financing New Projects:**

This subsection contains a method for determining the allowable cost per adjusted admission of efficiently constructing and financing New Projects for needed hospital plant and fixed equipment. Essentially, the methodology determines the hospital's target bed complement and the target construction cost per bed; the product of these two is the target total construction cost. The methodology identifies target financing terms which, when applied to the target total construction cost, produce a target debt service amount. This amount divided by the hospital's target volume (in adjusted admissions) yields target debt service per adjusted admission. Allowable Capital Cash Requirements for New Projects in a particular rate year shall equal the smaller of target debt service per adjusted admission and cumulative actual approved New Project cost per adjusted admission, multiplied by rate-year volume.

i. The Target Bed Complement shall be the number of target beds calculated in accordance with N.J.A.C. 8:31B-3.27(b)3.i.

ii. The Target Construction Cost Per Bed for a New Project involving total facility replacement shall be the estimated current construction cost per bed for the hospital's location calculated in accordance with N.J.A.C. 8:31B-3.27(b)3.ii for the prospective year in which the hospital's first New Project is first depreciable under N.J.A.C. 8:31B-4.21(g)(6)(iii). The Target Construction Cost Per Bed for all other New Jersey Projects shall be two-thirds of the Target Construction Cost Per Bed for a New Project involving total facility replacement. The Target Construction Cost Per Bed for New Projects involving both replacement and non-replacement components shall be a weighted average of these two Target Construction Costs, with the weights equal to the percentage of replacement and non-replacement components respectively.

iii. **Target Financing Terms:**

(1) The Target Useful Life shall be 30 years.

(2) The Target Interest Rate shall be calculated as the weighted average of the following two components: (a) the yield on domestic municipal bonds as reported in the Daily Bond Buyer's 20-bond seven-year quarterly moving average (weighted at 85.34%), and (b) the seven-year quarterly average yield on Moody's AAA-rated corporate bonds (weighted at 14.66%).

(3) The target ratio of financing costs depreciable under Generally Accepted Accounting Principles to construction costs shall be 0.275.

(4) The target ratio of financing costs no depreciable under Generally Accepted Accounting Principles to construction costs shall be 0.225.

(5) The target equity contribution shall be an equity contribution equal to financing costs not depreciable under Generally Accepted Accounting Principles or the equity contribution required under applicable Certificate of Need rules, whichever is larger.

(6) The target debt amortization method shall be the level principal method, under which equal portions of the amount borrowed are amortized (repaid) each year, unless such amortization method is prohibited in a particular situation by a state or federal lending agency, in which case level debt amortization shall be used.

iv. **Target Total Cost:**

(1) The Target Construction Cost per Bed shall be multiplied by the Target Bed Complement to yield the Target Total Construction Cost. The Target Principal Amount, which is the amount a hospital would reasonably need to borrow to finance the New Project in an efficient manner, shall be determined as follows:

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Target Principal Amount = Target Total Construction Cost x (1 + Target % Depreciable Finance Costs + Target % Non-Depreciable Finance Costs) x (1 - Target % Equity Contribution)

(2) The Target Principal Amount shall be amortized in equal annual amounts over the Target Useful Life. Target Interest Expense shall be calculated as the outstanding principal balance multiplied by the Target Interest Rate for the rate year in question. The Target Debt Service in a particular year shall equal the annual Target Amount plus the Target Interest Expense for that year.

v. The Target Volume (in adjusted admission) shall be the largest of the following quantities:

(1) Adjusted admissions as projected in the New Project Certificate of Need Application,

(2) Actual adjusted admissions for the most recent year for which such data is available, and

(3) Target Bed Component x Target Occupancy Rate x 365 (or 366 in leap years) x 1/Target Length of Stay x 1/Ratio of Admissions to Adjusted Admissions (where, the Target Occupancy Rate shall be 85%, the Target Length of Stay shall be 6.5 days, and the Target Ratio of Admissions of Adjusted Admissions shall be 0.80.)

vi. Average Annual Debt Service per Adjusted Admission:

The total Target Debt Service over the Target Useful Life, as determined in D of this Appendix XI, shall be divided by the Target Useful Life to yield the Average Annual Target Debt Service; that figure in turn shall be divided by the Target Volume to obtain the Average Annual Target Debt Service per Adjusted Admission. Average Annual Target Debt Service per Adjusted Admission shall be calculated for each Chapter 83 facility when the facility first undertakes a New Project and shall not be recalculated until a period equal to the Target Useful Life has elapsed from the year said first New Project is placed in use.

vii. Adjusted Annual Target Debt Service per Adjusted Admission:

If hospitals were actually reimbursed at the Average Annual Target Debt Service per Adjusted Admission, they would experience cash shortfalls in the early years of a project's useful life and cash surpluses in later years unless they financed their projects using level debt amortization. However, level debt amortization, by paying off principal more slowly than would be true with level principal amortization, increases total interest expense. To avoid creating an incentive for hospitals to use the more expensive amortization method, annual reimbursement must be adjusted to set actual reimbursement equal to Target Debt Service in each year. To do this, the Average Annual Target Debt Service per Adjusted Admission shall be multiplied by an Amortization Index to yield an Adjusted Annual Target Debt Service per Adjusted Admission. The Amortization Index shall be calculated and used as follows:

(1) Determine, over the Target Useful Life, the average ratio of Target Debt Service to Total Principal Amount.

(2) For each year, divide that year's ratio of Target Debt Service to Total Principal Amount by the Average ratio determined in 1 above. The quotient is the Amortization Index.

(3) Multiply each year's Amortization Index by the Average Annual Target Debt Service Per Adjusted Admission to obtain the Adjusted Annual Target Debt Service per Adjusted Admission.

2. Allowable Capital Cash Requirements for New Projects.

i. Allowable Capital Cash Requirements for New Projects shall be calculated for the prospective year as the product of actual adjusted admissions for the most recent year for which such data are available, multiplied by the smaller of the following two quantities:

(1) Adjusted Annual Target Debt Service per Adjusted Admission, as determined in Part I of this Appendix XI, or

(2) The cumulative approved cost (excluding Major Moveable Equipment) of all New Projects undertaken by the hospital, divided by Target Volume.

ii. The intent of cumulating New Projects is to ensure that a hospital with multiple New Projects will not exceed the Adjusted Annual Target Debt Service per Adjusted Admission. At Final Reconciliation, the adjusted admission figure shall be reconciled to the actual amount for the rate year in question.

iii. Where a New Project includes, as one component, refinancing or advance refunding of pre-existing long-term debt, the approved cost of the project shall be allocated between such refinancing or refunding and other components, and only the approved cost of the components not involving refinancing or refunding shall be used in the calculation of the amount in i.(2) above. Said allocation shall have the following consequences:

(1) If the debt service on the pre-existing debt after the refinancing or refunding is less than or equal to the debt service on the pre-existing debt before the refinancing or refunding, then none of the new debt service on

the pre-existing debt shall be used in the calculation of the cumulative approved cost of all New Projects. Instead, all of the new debt service on the pre-existing debt shall be allocated to the hospital's Capital Cash Requirements not involving New Projects, and such Capital Cash Requirements shall be recalculated accordingly.

(2) If the debt service on the pre-existing debt after the refinancing or refunding exceeds the debt service on the pre-existing debt before the refinancing or refunding, all of the excess shall be used in the calculation of the cumulative approved cost of all New Projects. However, the Hospital Rate Setting Commission shall inquire into the costs and benefits of such a refinancing or refunding and may, if the costs outweigh the benefits, exclude such excess from the calculation of the cumulative approved cost of all New Projects even if its inclusion would not make such cumulative approved cost greater than the Adjusted Annual Target Debt Service.

8:31B-4.42 Capital Facilities

(a) Building and Fixed Equipment:

[1. Capital Facilities, other than Major Moveable Equipment, as defined in N.J.A.C. 8:31B-4.13 through 4.25 utilized for Services Related to Patient Care, are included as financial elements for all hospitals through a Capital Facility Allowance (Capital Cash Requirements plus a Capital Facility Formula Allowance), as calculated per N.J.A.C. 8:31B-3.27(a)1.]

1. The costs of Capital Facilities utilized for Services Related to Patient Care as defined in N.J.A.C. 8:31B-4.21, except for Major Moveable Equipment as defined in 8:31B-4.21 and 4.44, are included as financial elements for all hospitals through a Capital Facilities Allowance calculated in accordance with N.J.A.C. 8:31B-3.27(b).

2.-3. (No change.)

(a)

Procedural and Methodological Regulations Periodic Adjustments

Proposed Amendment: N.J.A.C. 8:31B-3.72

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

Proposal Number: PRN 1986-377.

NOTE: For this proposal, the comment period has been extended to 90 days ending on December 21, 1986.

The agency proposal follows:

Summary

The existence of excess hospital capacity in New Jersey is well documented. The reasons for the excess include dramatically changing medical practice patterns and alternatives to hospital-based care. These changes are causing significant reductions in lengths of patient stays and reduced admissions in certain hospitals. These trends of changing utilization will almost certainly persist for a number of years to come. Therefore, the Department of Health, the sole designated State agency for comprehensive health planning and hospital rate setting, is seeking explicit regulatory authority to assist in the process of reducing this excess capacity. The authority would be exercised by recommending to the Hospital Rate Setting Commission temporary rate increases which are needed to fund certain capital renovations, bond retirements, consolidations of services, or provision for more appropriate allocation of needed services, preparatory to the closure or other type of reduction of excess capacity in the same or other institutions. Alternatively, some temporary rate increases may be needed in those institutions which remain after others in the same market close, to ensure that the remaining institution is adequately equipped and staffed for services which may otherwise be lost to the community. An additional amendment is being made to allow hospital, payer reconciliation or audit adjustments after financial review of the current base year's actual costs.

Social Impact

The social impact of the proposed amendment to N.J.A.C. 8:31B-3.72(a)4 will depend on the extent to which New Jersey hospitals accept the Department's rate adjustments for hospitals that have been instrumental in reducing excess capacity. Residents of New Jersey will benefit from the opportunity to receive hospital care in facilities which are financially solvent and have sufficient occupancy to promote quality care.

The amendment to N.J.A.C. 8:31B-3.72(a)2ii will have a positive social impact in that it will make the system's treatment of base year costs more consistent. Typically, in the Chapter 83 system, when the base year changes the actual costs of the new base year will become the standard. This change will ensure that various aspects of the rate setting system will treat base year costs in a consistent manner.

Economic Impact

The systemwide economic impact of the proposed amendment to N.J.A.C. 8:31B-3.72(a)4 cannot be determined at this time. Hospitals which reduce capacity or participate in mergers that lead to reduced capacity will be benefited by the Department's ability to recommend increases in reimbursement. Payers and health care consumers will be benefited because the fixed costs associated with some underutilization will be eliminated.

The change to N.J.A.C. 8:31B-3.72(a)2ii is not likely to have a significant economic impact. When the Department changes the base year, the costs in the new base year become the standard. The new base year may be above or below the previous base year. Therefore, the impact on costs is uncertain.

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

8:31B-3.72 Periodic adjustments

(a) Certain periodic adjustments are made to the Schedule of Rates which are not dependent upon new submissions of reports. These adjustments are made independently of the yearly reconciliations of the Schedule of Rates, but will affect the calculation of Commission Approved Revenue. Periodic adjustments are made for any adjustments explicitly ordered by the Commission pursuant to N.J.A.C. 8:31B-3.64, Modification of Proposed Schedule of Rates. The following periodic adjustments will be implemented by the Commission and the affected hospitals pursuant to N.J.A.C. 8:31B-3.42, [Implementation] **Schedule of Rates—Effective Date.**

1. (No change.)
2. Other adjustments:
 - i. (No change.)
 - ii. Any hospital, payer reconciliation or audit adjustments which may be required due to financial review of [1979] **current base year** actual costs or reconciliation shall be implemented automatically in accordance with this section and by the Commissioner.
 - (1) (No change.)
 - iii.-v. (No change.)
3. (No change.)
4. **The Commissioner of Health may recommend, and the Hospital Rate Setting Commission may approve, for the purpose of reducing or reallocating hospital capacity, increases to hospital Schedule(s) of Rates, provided, however, that the Commissioner of Health determines such hospital(s) to be of continued demonstrated need to provide efficient, effective health care services at a reasonable cost. Such rate increases, if approved, shall not apply to more than one rate year unless otherwise explicitly recommended by the Commissioner and approved by the Hospital Rate Setting Commission.**

(a)

FACILITIES RATE SETTING

Residential Alcoholism Treatment Facilities Cost Accounting and Rate Evaluation Guidelines Proposed New Rule: N.J.A.C. 8:31C-1

Authority: N.J.S.A. 26:2H-1 et. seq., specifically 26:2H-18(c).
Proposal Number: PRN 1986-376.

Submit comments by October 22, 1986 to:
Charles A. Buttaci, Director
Facilities Rate Setting
New Jersey Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The Health Care Facilities Planning Act of 1971 (N.J.S.A. 26:2H-1, et seq.) mandates use of a uniform system of cost accounting for health care services (N.J.S.A. 26:2H-18(c)). Sections 18b and 18d of the Act provide for approval of payment rates for health care services provided

by government agencies (for example, Medicaid) and hospital services corporation (for example, Blue Cross). In establishing this system, the Commissioners of Health and Insurance are required by law to consider the total cost of the health care facility.

Subsequently, P.L. 1977, Chapters 115 through 118, mandated that benefits for expenses incurred in connection with the treatment of alcoholism be provided in certain insurance contracts written in the State of New Jersey, including those written by Blue Cross and commercial carriers. Subsequent regulations were adopted in accordance with applicable provisions of the Administrative Procedures Act. These new rules enacted as N.J.A.C. 11:14-15.1, et. seq., concerned alcoholism benefits in health insurance contracts and became effective in May of 1978.

Since 1978, Blue Cross of New Jersey has entered into contractual agreements with alcoholism facilities, which since July 1981 have been governed by the Manual of Standards for Licensure of Alcoholism Treatment Facilities. In so doing, Blue Cross has utilized their own rate setting methodology to establish reimbursement rates.

The proposed Residential Alcoholism Treatment Facility Cost Accounting and Rate Evaluation Guidelines were developed with the purpose of establishing a cost containment program whereby a "reasonable reimbursement" formula was developed.

The implementation of the proposed new rules will enable the Department of Health to effectively contain residential alcoholism treatment costs through the regulatory system.

The proposed new rules were developed with the assistance of the Alcohol Rate Setting Advisory Committee, a subcommittee of the Quality and Utilization Review Committee of the Governor's Advisory Committee on Alcoholism.

Social Impact

N.J.S.A. 26:2H1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs . . .".

The intent of the proposed regulations is to address the spirit and intent of the 1971 Health Care Facilities Planning Act, as amended, by establishing an alcoholism rate setting system that promotes quality, cost-effective services. The implementation of such a rate setting system will provide a protective measure for the consumer against escalating alcoholism treatment costs and will do so for Residential Alcoholism Treatment Facilities.

Economic Impact

The proposed new rules are designed to implement the provisions of N.J.S.A. 26:2H1 (as amended), provide for the protection and promotion of the health of the residents of the State, promote the financial solvency of residential alcoholism treatment facilities, and contain the rising cost of alcoholism treatment services.

As a result of the overuse and general social acceptance of alcohol throughout American society, alcohol related problems account for a significant share of New Jersey's medical care cost burden. Alcoholism, however, is a treatable disease.

The requirement exists for an effective regulatory system for cost containment in Residential Alcoholism Treatment Facilities. The economic value of adopting the proposed rules lies in the propensity of the rules for ensuring the provision of alcoholism treatment services of such quality, efficiently provided, and at a reasonable cost, that the need for medical treatment and the impairment of human performance are reduced. These reductions, in turn, lead to a diminution of health care costs and an augmentation of economic productivity.

Alcoholism treatment facilities will not be expected to incur any additional expenditure as a result of the proposed rules.

The proposed regulatory system will be successful in controlling costs for the residential alcoholism treatment facility, the payor and the consumer. The alternative to the proposed rules would be voluntary cost containment on the part of each facility which could possibly be subject to indiscriminate patient costs.

Full text of the proposed new rules follows:

CHAPTER 31C

RESIDENTIAL ALCOHOLISM TREATMENT FACILITIES

SUBCHAPTER 1. COST ACCOUNTING AND RATE EVALUATION

8:31C-1.1 Scope and purpose

(a) This chapter describes the methodology to be used by the State Department of Health ("the Department") to establish prospective per diem rates for the provision of residential alcoholism treatment services reimbursed by government agencies and hospital service corporations.

(b) It is the Department's position that the strict application of these rules will generally produce equitable rates for the payment of residential alcoholism treatment facilities (RATFs) of the reasonable cost of providing routine patient care services.

(c) The Department will review the particular circumstances with the RATF, if the RATF believes that, owing to an unusual situation, the application of these rules results in an inequity. Appeals on the grounds of inequity shall be limited to the particular circumstances of the affected RATF. Appeals shall not address the broader aspects of the rules themselves.

(d) These rules are not purported to be an exhaustive list of costs. The department reserves the right to question and exclude any unreasonable costs, consistent with the provision of N.J.S.A. 26:2H-1, et. seq.

(e) While the rules have been given due consideration and are deemed to be fair and equitable, an historical data base for Residential Alcohol Treatment Facilities was not available for detailed analysis prior to the development of the rules. Therefore, it is the intention of the Department to review the dispersion of the data used to establish the medians and reasonableness limits for the reimbursement rates effective July 1, 1987. The Department will recommend to the Health Care Administration Board any modifications to the rules that may be required to resolve identified problems.

(f) All rates established pursuant to these rules will be subject to on-site audit verification of costs and statistics reported by RATFs.

8:31C-1.2 Definitions

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

"Capital Facilities Allowance (CFA)" means the reimbursement for capital-related costs based upon reasonable values of capital assets as determined in these rules.

"Commissioner" means the Commissioner of Health.

"Department" means the New Jersey Department of Health.

"Government agency" means a department, board, bureau, division office, agency, public benefit or other corporation, or any other unit, however described, of the State or political subdivision thereof.

"Reasonable limit" means the maximum reimbursable costs based upon statewide peer grouping and medians for the various cost centers or components set forth in these rules.

"Residential alcoholism treatment facility (RATF)" means a facility or a designated unit of a facility which is licensed by the New Jersey Department of Health to provide services specified in the Manual of Standards for Licensure of Alcoholism Treatment Facilities, N.J.A.C. 8:42A.

8:31C-1.3 Reporting period: cost data

(a) Commencing with fiscal years ending December 31, 1986, RATFs are to furnish required cost studies to the Department of Health, Health Facilities Rate Setting, within 90 days of the close of each fiscal year. For rate review purposes, the period for which these actual data are reported will constitute the "base period" for establishing prospective per diem reimbursement rates commencing six months after the end of the base period. These rates will not be subject to routine retroactive adjustments except for matters as specified in the rules.

(b) Where cost studies are received beyond the 90 day filing requirement, prospective per diem reimbursement rates will be established three months after receipt of the required cost studies. During this interim period, existing reimbursement rates will remain in effect for cash flow purposes with no adjustment for inflation. The interim rate will not be subject to a retroactive adjustment to the beginning of the prospective rate period upon determination of the approved rate via the methodology described in this chapter.

(c) The Director, Health Facilities Rate Setting, may mitigate or waive the penalty specified in (b) above, for "good cause" shown:

1. "Good cause" shall include, but shall not be limited to circumstances beyond the control of the residential alcoholism treatment facility, such as fire, blood, or other natural disaster;

2. "Good cause" shall not include acts of omission and/or negligence by residential alcoholism treatment facility, its employees, or its agents;

3. All requests for mitigation and/or waiver of the penalty provision shall be submitted in writing, substantiating the reasons for the request in such detail as the Director may require.

(d) The penalty rates indicated in (b) above will be applied to cost studies commencing with the reporting periods ending December 31, 1987.

8:31C-1.4 Rate components

(a) The prospective rates will be calculated by applying standards and reasonableness criteria "limits" to the following rate components:

1. Capital Facilities Allowance (CFA);
2. Property operating expenses;
3. Administrative costs;
4. Raw food costs;
5. Routine patient care expenses;
6. General service expenses;
7. Special patient care expenses;

(b) The following considerations will be addressed in determining the Capital Facilities Allowance (CFA):

1. Buildings;
2. Land and land improvements;
3. Major moveable equipment;
4. Maintenance and replacements;
5. Property insurance;
6. Target occupancy levels;

(c) A provision for inflation will be added to reasonable base period costs to provide for inflation between the base period and the prospective rate period.

(d) All lease costs incurred as a result of related party transactions, will be excluded for reimbursement purposes. A "related party" is defined as:

1. A corporation, partnership, trust or other business entity:
 - i. Which has an equity interest of 10 percent or more of the facility;
 - ii. Which has an equity interest of 10 percent or more in any business entity which is related by the definition in (d) 1.i. above or which has an equity interest of 10 percent or more in any business entity related by (d)1. ii above; or
 - iii. In which any party, who is a related party, by any other definition (in i. or ii. above or in 2. below) has an equity interest of 10 percent or more and which has a significant business relationship with the facility.

2. An individual:

- i. Who has a beneficial interest of 10 percent or more in the net worth of the facility; or
- ii. Who has a beneficial interest of 10 percent or more in an entity related by 1.ii or 1.iii; or
- iii. Who is a relative of an individual who is covered by the definition in 2.i or 2.ii above;
- iv. Whose beneficial interest is cumulative, if it relates to spouse, parent or children.

(e) In related lease transactions, the rent paid to the lessor by the provider is not allowable as cost. The provider, however, would include in its costs the property expenses of ownership of the facility. The effect is to treat the facility as though it were owned by the provider.

8:31C-1.5 Capital Facilities Allowance (CFA); buildings

(a) The Capital Facilities Allowance for buildings and fixed equipment will be based upon appraised 1986 replacement costs less wear and tear, subject to reasonableness limits as described in (c) and (d) below.

(b) The appraisals are to be conducted by the New Jersey Department of Transportation.

(c) Reasonableness limits on plant square feet will be set at 110 percent of median plant square feet per available bed of all existing licensed RATFs in the base period.

(d) A reasonableness limit on appraised value per square foot will be established at 110 percent of the median appraised value, at 1986 price levels, of existing RATFs in the base period.

(e) Two rates will be developed for calculating the CFA for RATFs.

1. Interest rate shall equal the Medicare return on equity rate for the 12 month period ending with December of 1986.

2. Amortization rate shall equal the ratio of annual debt service (principal and interest) to original principal required to amortize a loan in 25 equal annual installments, with an interest rate in accordance with 1. above.

(f) For the first 25 years of the life of a RATF, beginning with the year of construction, the amortization rate will be applied to the 1986 reasonable appraised value of the building and fixed equipment.

(g) Beyond the 25th year after construction, the interest rate will be applied to the 1986 reasonable appraised value of buildings and fixed equipment.

(h) For RATFs built in multiple stages, a weighted average year of original construction will be established by weighting licensed beds by the age of the component multiple stages of the building in which the beds are located. Where inequities could result from this calculation, RATFs with suitable records may request that the weighted average year of construction be calculated based upon plant square feet constructed.

(i) With respect to new RATFs and significant additions to existing RATFs, the appraised value will be determined based upon price levels at the time the construction is completed.

(j) For RATFs with other component services, data relative to common areas will be apportioned to residential alcoholism patients based upon base period square footage. After making such apportionments, appraised values will be subject to the reasonableness screens described in (c) and (d) above and, where applicable, to the weighted average year of construction calculations described in (h) above.

(k) For RATFs which were converted from other uses, the year of conversion will be used provided the conversion costs exceeded the acquisition cost of the building and building equipment. Otherwise, the original year of construction will be used.

(l) For existing RATFs, the State will not increase the CFA rate in future years, should the Medicare return on equity rate increase. Should this rate decrease by more than the reasonable cost of refinancing, both the interest rate and the amortization rate will be reduced. Should financing through a governmental authority be obtained by a facility, the CFA rate will be adjusted as necessary based upon the lower of the previously established Medicare return on equity rate or the available financing rate incremented in accordance with the Medicare return on equity factor.

(m) For new RATFs, or for additions to existing RATFs, the amortization rate will be established based upon the lower of the latest Medicare return on equity rate published at the inception of operations, or the governmental financing rate incremented in accordance with the Medicare return of equity factor. The provisions of (l) above will apply in subsequent years.

(n) The Department will review, on a case by case basis situations where the strict application of the provisions of this section would be inappropriate for existing licensed RATFs under particular circumstances, such as:

1. Situations where an existing debt must be refinanced in connection with obtaining funds to expand existing RATFs;
2. The existence of firm arms-length leases whose terms cannot be modified;
3. The inability of RATFs to obtain 25 year financing.

8:31C-1.6 Capital Facilities Allowance (CFA); land

(a) The 1986 value of land and land improvements as appraised by the New Jersey State Department of Transportation will be the basis for determining the Capital Facilities Allowance with respect to land, subject to reasonable land area established as follows:

1. For urban RATFs: two acres;
2. For nonurban RATFs: five acres;
3. For this purposes of this section, a city, town, or township is considered "urban" if its population exceeds 25,000 and its average population density exceeds 7,000 per square mile. All other areas are considered "nonurban".

(b) The interest rate (equal to the Medicare return on equity rate for the 12 month period ending December of 1986) will be applied to the reasonable 1986 appraised value.

(c) For existing RATFs, the department will not increase the CFA rate in future years should the Medicare return on equity rate increase. Should this rate decrease by more than the reasonable cost of refinancing, the interest rate will be reduced. Should financing through a governmental authority be obtained by a facility, the CFA rate will be adjusted as necessary based upon the lower of the previously established Medicare return on equity rate or the available financing rate incremented in accordance with the Medicare return on equity factor.

(d) For new RATFs, or for additions to existing RATFs, the interest rate will be established based upon the lower of the latest Medicare return on equity rate published at the inception of operations, or the governmental financing rate incremented in accordance with the Medicare return on equity factor. The provisions of (c) will apply in subsequent years.

(e) With respect to new RATFs and significant additions to existing RATFs, the appraised value will be determined based upon price levels at the time the construction is completed.

(f) For RATFs providing other services, reasonable appraised values for land will be prorated to residential alcoholism patients, based upon square footage allocations.

(g) The Department will review, on a case by case basis, situations where strict application of the provisions of this section would be inappropriate for existing licensed RATFs.

8:31C-1.7 Major moveable equipment

(a) An allowance for major moveable equipment will be developed for each RATF as follows:

1. Base period major moveable equipment depreciation and interest costs per bed will be ranked in descending order on a statewide basis.
2. A reasonableness limit on major moveable equipment will be established at 110 percent of the median depreciation and interest costs per bed.
3. The dollar limit for major moveable equipment for each RATF will then be determined by multiplying the reasonableness limit per bed by the total number of licensed RATF beds.

4. Reimbursement will be based upon the lesser of actual depreciation and interest costs or the dollar limit per 3 above.

i. Seventy percent of the costs of leased major moveable equipment will be recognized as major moveable equipment costs.

5. The major moveable equipment per diem will then be determined by dividing the lesser of actual costs or the dollar limit per 4. above by total patient days in the base period.

6. The department will review on an individual basis any inequities existing RATFs believe are brought about by unusual circumstances.

8:31C-1.8 Maintenance and replacements

(a) An allowance for the maintenance of land, land improvements, buildings, fixed equipment, and for the replacement of fixed equipment will be developed for each RATF as follows:

1. Expenditures for capitalized maintenance and replacements will be reported for each RATF in the base period.
2. Expenditures for capitalized maintenance and replacements, per 1. above, will be prorated to RATF patients based upon the ratio of RATF square feet (including a prorated share of common areas) to total plant square feet.
3. Fringed maintenance salaries and maintenance expenses will be reported for each RATF in the base period.
4. Total eligible expenditures for maintenance and replacements for each RATF will be calculated by adding 2. and 3. above.

(b) The reasonableness limit per plant square foot for the RATFs salary region is determined as follows:

- A = Median Maintenance and Replacement Costs
B = Median Labor Cost
C = A-B = Non-Labor Costs

Limited by Region = $[B \div \text{Equalization Factor}] + C] \times 1.1$

(c) The dollar limit for each RATF will be determined by multiplying the reasonableness limit per (b) above by the reasonable RATF plant square feet.

(d) Reimbursement will be based upon the lower of total eligible expenditures for maintenance and replacements (a)4. or the dollar limit (c) above.

(e) The per diem amount for maintenance and replacements will be determined by dividing (d) above by target occupancy.

8:31C-1.9 Property insurance

(a) An allowance for property insurance will be developed for each RATF as follows:

1. Base period property insurance costs per \$1,000 of appraised value will be calculated for all RATFs.
2. The property insurance costs per \$1,000 of appraised value will be ranked in descending order on a statewide basis.

3. A reasonableness limit on property insurance costs per \$1,000 of appraised value will be established at 110 percent of the median property insurance cost per \$1,000 of appraised value.

4. The dollar limit on property insurance will be established based upon the property insurance reasonableness limit per \$1,000 of reasonable RATF appraised value.

5. The dollar limit for each RATF, calculated per (4) will be compared to actual property insurance costs. Property insurance costs included in the prospective rate base will be based upon the lesser of the property insurance limit or actual property insurance costs.

6. The property insurance per diem will be calculated by dividing allowable property insurance costs, per 5. above, by target occupancy.

8:31C-1.10 Target occupancy levels

(a) A target occupancy level of 70 percent of licensed bed days or actual base period patient days, whichever is greater, will be used to develop reasonable per diem amounts for the following rate components:

1. Property Taxes;
2. Utilities;
3. Capital Facilities Allowance for:
 - i. Buildings and Fixed Equipment;
 - ii. Land and Land Improvements;
 - iii. Maintenance and Replacements;
 - iv. Property Insurance

(b) If base period patient days exceeds 90 percent of licensed bed days, then the largest occupancy will be entered at 90 percent of licensed bed days.

(c) For new facilities, an occupancy rate of 70 percent of licensed bed days will be used for interim rates during the first year of operation subject to retroactive adjustments to actual occupancy should it exceed 70 percent of maximum bed days (but no higher than 90 percent of maximum bed days will be used).

8:31C-1.11 Property operating expenses

(a) Property operating expenses include property taxes and utilities.

1. Property taxes will be considered reasonable so long as they are based upon reasonable plant square feet, costs per square foot, and reasonable land area and value.

2. Reasonable plant square feet (and related property taxes) will be determined as follows:

i. The ratio of plant square feet to licensed beds will be determined for all RATFs in the base period.

ii. The reasonableness limit on plant square feet will be established at 110 percent of the median plant square feet per available bed of all existing licensed RATFs in the base period.

3. A reasonableness limit on appraised value per square foot will be determined in accordance with the CFA building methodology contained in N.J.A.C. 8:31C-1.5.

4. For RATFs whose appraised value exceed the reasonableness limit, the property taxes related to the excess will be excluded from the rate base. For this purpose, it will be assumed that assessed values for buildings vary directly in relation to their areas. The department will review on an individual basis any inequities which existing RATFs believe are brought about by unusual circumstances.

5. Reasonable land area (and related taxes) is established as follows:

- i. For urban RATFs—Two acres
- ii. For nonurban RATFs—Five acres
- iii. For this purpose, a city, town, or township is considered "urban" if its population exceeds 25,000 and its average population density exceeds 7,000 per square mile. All other areas are considered "nonurban".

6. Property taxes ascribable to unreasonable area will be excluded from the prospective rate base.

7. The department will review on an individual basis any inequities existing RATFs believe are brought about by unusual circumstances.

8. Where a lessor is paying the property taxes, the actual property taxes paid by the lessor are to be reported by the RATF operator as a property tax expense and deducted from the amount reported as rent. The property tax component of such leases will be subject to the above screens.

(b) Utility costs will be screened for reasonableness as follows:

1. Base period utility costs per bed will be deemed apparently unreasonable to the extent that they exceed 150 percent of the statewide median utility cost per bed.

8:31C-1.12 Administrative costs

(a) The administrative screen will be applied to the aggregate reported costs of management, administrator, and other administrative costs for existing licensed RATFs in the base period. Total administrative costs will then be divided by actual patient days for each RATF in the base period. These per diem costs will be ranked in descending order on a statewide basis. The reasonableness limit will be set at 110 percent of the median cost per day.

1. Compensation and special fringe benefits of all owners, officers, and related parties; management contracts; and home office costs related to chain organizations will be excluded from the development of the reasonableness limit per (a) above. RATFs with such administrative costs will be excluded from the development of the reasonableness limit.

2. Non-working officer, owner, or related party compensation and special fringe benefits are non-allowance.

8:31C-1.13 Raw food costs

Raw food costs per patient day for RATFs which provide their own food service will be determined for existing licensed RATFs in the base period. RATFs which contract for their dietary operations will be excluded. These per diem costs will be ranked in descending order on a statewide basis. The reasonableness limit will be set at 120 percent of the median cost per day.

8:31C-1.14 General fringe benefit allocation

(a) In order to equitably develop and apply screens in those cost centers with employee compensation components, the following computation will be made:

1. General fringe benefits will be allocated to function as a percentage of salaries reported to develop total compensation. Dietary adjustments will be calculated to determine the fringe benefit value of free and subsidized employee meals as follows:

i. The average food cost per meal is developed by dividing total meals (patients and employees) into total reported raw food costs.

ii. A fringe benefit per meal is imputed to the extent that the average price charged employees for a meal is less than raw food costs per meal.

iii. The fringe benefit per meal is then converted into total dollars by multiplying the benefit per meal by the number of employee meals served.

2. Fringe rates will be calculated for each RATF. For this purpose, fringe benefits are the total of fringe benefits reported by the facility and dietary adjustments per 1. above. This total is then divided by total salaries.

3. Fringe factors are established at 1.00 plus the fringe rate.

4. Fringe compensation is the total cost of labor including fringe benefits. It is calculated by multiplying reported salaries by the fringe factor for each RATF. The net effect of calculating fringe compensation is to allocate fringe benefits to each cost center in proportion to its reported salaries.

8:31C-1.15 Equalized compensation and equalized cost

(a) Salary regions within the state will be developed in order to recognize the existence of geographic compensation differentials in comparing and analyzing reported cost data. Prevailing compensation rates within any one region are comparable. Each RATF will be assigned to a salary region based **only** on its geographic location as follows:

Area	Abbreviation	Counties Included
1	PASSA	Passaic
2	HACK	Bergen
3	NEWT	Sussex, Warren
4	TRENT	Mercer, Hunterdon
5	NEWARK	Union, Essex, Somerset, Morris
6	JERCIT	Hudson
7	NEBRU	Middlesex
8	LBRAN	Monmouth, Ocean
9	ATCIT	Atlantic, Cape May
10	CAM/BURL	Burlington, Camden, Gloucester, Salem, Cumberland

(b) Equalization factors will be developed for each salary region. The factor for each region is based upon the ratio of the median compensation rate of the entire state to the median rate within that region. Salary data reported for nursing, counseling, dietary, laundry, and housekeeping personnel (plus fringes) are used in developing equalization factors.

(c) Actual compensation costs (including fringes) will be adjusted (equalized) by these factors to neutralize the effect of geographic compensation differentials.

(d) The term "equalized costs" means the net amount of equalized compensation plus other expenses, less expense recoveries and nonallowable costs.

(e) For RATFs which provide services other than residential alcoholism treatment, equalized RATF costs will be determined by apportioning equalized costs in the same ratio as the apportionment of un-equalized net expenses.

(f) Equalized costs for each RATF will be compared with reasonableness limits (screens) developed from equalized base period cost data. Unreasonable (excess) equalized costs will be calculated and then converted to fringed RATF costs so that each RATFs rates are based upon its own reported data exclusive of geographic compensation differential adjustment made in equalizing its costs. For example, if on an equalized basis, 10 percent of costs are considered unreasonable, then 10 percent of fringed RATF costs are then considered unreasonable.

8:31C-1.16 Routine patient care expenses

(a) For reporting purposes and for the application of the following guidelines, "routine patient care expenses" are defined as expenses relating to nursing and counseling services.

(b) Reasonableness limits for nursing services will be established as follows:

1. The Nursing Cost Center will consist of the aggregate reported cost of equalized salaries, contract fees, and other expenses.

2. Total nursing costs for each RATF in the base period (per (b)1. above) will then be divided by based period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median nursing cost per day.

(c) Reasonableness limits for counseling services will be established as follows:

1. The Counseling Cost Center will consist of the aggregate reported cost of equalized salaries, contract fees, and other expenses.

2. Total counseling costs for each RATF in the base period (per (c)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median counseling cost per day.

8:31C-1.17 General service expenses

(a) For reporting purposes and for the application of the following guidelines, "general service expenses" are defined as expenses relating to the following cost centers:

Dietary
Laundry and Linen
Housekeeping
Other General Services

(b) The reasonableness limit for dietary services will be established as follows:

1. The Dietary Cost Center will consist of the aggregate reported cost of equalized salaries, supplies, and other expenses minus expense recoveries. RATFs which contract for their dietary operations will be excluded.

2. Total dietary costs for each RATF in the base period (per (b)1. above) will then be divided by base period patient days. The per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median dietary cost per day.

(c) The reasonableness limit for laundry and linen services will be established as follows:

1. The Laundry and Linen Cost Center will consist of the aggregate reported cost of equalized salaries, salaries, supplies, contract fees and other expenses minus expense recoveries.

2. Total laundry and linen costs for each RATF in the base period (per (c)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median laundry and linen cost per day.

(d) The reasonableness limit for housekeeping services will be established as follows:

1. The Housekeeping Cost Center will consist of the aggregate reported cost of equalized salaries, supplies, contract fees and other expenses.

2. Total housekeeping costs for each RATF in the base period (per (d)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median housekeeping cost per day.

(e) The reasonableness limit for other general services will be established as follows:

1. The Other General Services Cost Center will consist of aggregate reported cost of equalized salaries, supplies, contract fees and other expenses.

2. Total other general service costs for each RATF in the base period (per (e)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median other general service cost per day.

8:31C-1.18 Special patient care

(a) For reporting purposes and for the application of the following guidelines, "special patient care expenses" are defined as expenses relating to the following cost centers:

Medical Director/Physician Services
Patient Activities
Laboratory Services
Pharmacy

(b) The reasonableness limit for medical director/physician services will be established as follows:

1. The Medical Director/Physician Cost Center will consist of the aggregate reported cost of salaries, contract fees, and other expenses.

2. Total medical director/physician costs for each RATF in the base period (per (b)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median medical director/physician cost per day.

(c) The reasonableness limit for patient activities will be established as follows:

1. The Patient Activities Cost Center will consist of the aggregate reported cost of salaries, supplies, contract fees, and other expenses.

2. Total patient activity costs for each RATF in the base period (per (c)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 115 percent of the median patient activity cost per day.

(d) The reasonableness limit for laboratory services will be established as follows:

1. The Laboratory Cost Center will consist of the salaries, supplies, contract fees, and other expenses.

2. Total laboratory costs for each RATF in the base period (per (d)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 110 percent of the median laboratory cost per day.

(e) The reasonableness limit for pharmacy will be established as follows:

1. The Pharmacy Cost Center will consist of the aggregate reported cost of a pharmaceutical consultant, medical supplies, legend drugs, and non-legend drugs.

2. Total pharmacy costs for each RATF in the base period (per (e)1. above) will then be divided by base period patient days. These per diem costs will then be ranked in descending order on a statewide basis.

3. The reasonableness limit will be established at 120 percent of the median pharmacy cost per day.

8:31C-1.19 Inflation

(a) A provision will be added to reasonable base period costs to provide for inflation between the base period and the prospective rate period. Changes in two factors will be used to develop this provision.

1. Average hourly earnings of manufacturing employees New Jersey as published by the Bureau of Labor Statistics (weighted 60 percent).

2. The consumer price index as published by the Bureau of Labor Statistics (weighted 40 percent).

(b) If, for reasons beyond the control of a RATF, rates have not been redetermine within three months after receipt of its reports, an interim adjustment for inflation may be made to existing rates for cash flow purposes. The inflation increment would be based upon the number or months from the midpoint of the current rate period to the beginning point of the new rate period. The interim rate will be subject to a retroactive adjustment to the beginning of the prospective rate period upon determination of the approved rate via the methodology described in these guidelines.

(c) No provision for inflation will be made with respect to costs for buildings, land, moveable equipment, and interest.

8:31C-1.20 Appeal process

(a) When a RATF believes that, owing to an unusual situation, the application of these rules results in an inequity, two levels of appeals are available; a Level I Appeal heard by representatives from the Department of Health; and a Level II Appeal heard before an Administrative Law Judge.

1. Level I Appeal: A request for a Level I Appeal must be submitted in writing to the Department of Health, Health Facilities Rate Setting, Room 600, John Fitch Plaza, CN360, Trenton, New Jersey 08625 within 30 days of receipt of the notification of rates.

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i. The first level of appeal will be heard by analysts and supervisory level representatives from the Department of Health. A RATF should be prepared to provide such substantiating material as may be required for an informal discussion of the subject matter.

ii. Level I Appeals will endeavor to reach equitable resolutions of matters peculiar to an individual RATF. They will not be expected to resolve items which have policy implications or broad applicability.

iii. The analyst's recommended resolutions will be reviewed and approved by the Director, Health Facilities Rate Setting.

iv. Adjustments resulting from the Level I Appeal will be retroactive to the beginning of the prospective rate year. This includes any adjustments as a result of errors in the calculation of the rate by the Department of Health.

2. Level II Appeals (Administrative Law Appeal): If a RATF is not satisfied with the results of the Level I Appeal, it may request a hearing before an Administrative Law Judge.

i. The request for an Administrative Hearing must be filed with the Department of Health, Health Facilities Rate Setting and the Department of the Public Advocate, Division of Rate Counsel (under N.J.S.A. 52:27E-18) within 30 days following receipt of notification of the Level I Appeal determination.

ii. The Administrative Hearing will be scheduled by the Office of Administrative Law and the facility will be notified accordingly.

iii. Within 30 days subsequent to the request for an Administrative Hearing, the RATF shall furnish to the Department of Health, Health Facilities Rate Setting and the Department of the Public Advocate, Division of Rate Counsel a list of all items to be appealed and the costs associated with those items.

iv. No documentation other than that provided to the analyst in connection with the Level I Appeal can be presented to the hearing officer unless the party can establish just cause for failure to provide the documentation earlier. Should any of the parties desire to present any such evidence, it must be sent to the other parties at least 30 days prior to the appeal.

v. Should the RATF desire to bring witnesses to the appeal to substantiate the written document already provided, the RATF must notify the other parties involved of the name of the witnesses, and the item or items which will be the subject of the witness testimony. This notification must be made at least 30 days prior to the appeal.

vi. After the hearing officer has filed his report, the Commissioner of Health will determine and approve the effective payments rates and the RATF and its payors will be notified in the form of an administrative order over the signature of the Commissioner of Health.

8:31C-1.21 Special rate provisions for rates effective July 1, 1987

(a) For the rate period July 1, 1987 through June 30, 1988, reimbursement rates will be established based upon the greater of either the "historical" rate or the screened rate calculated pursuant to the previous sections of this subchapter.

1. The historical rate will be calculated by incrementing the RATFs 1986 Blue Cross rate with the general economic factor.

2. Acceptance of the historical rate shall constitute a waiver of any right of appeal concerning the rate.

(b) For the rate periods July 1, 1988 and thereafter, historical rates will no longer be calculated and, as such, will not be utilized in establishing the effective reimbursement rate.

(c) For the rate periods July 1, 1988 and thereafter, the prospective reimbursement rates will be based upon the methodology described in the previous sections of this subchapter.

HUMAN SERVICES

DIVISION OF YOUTH AND FAMILY SERVICES

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

(a)

Manual of Standards for Adoption Agencies Proposed Amendment: N.J.A.C. 10:121A-2.2

Authority: N.J.S.A. 9:3-37 et seq.

Proposal Number: PRN 1986-386.

Submit comments by October 22, 1986 to:

J. Patrick Byrne, Chief
Bureau of Licensing
Division of Youth and Family Services
1 South Montgomery Street
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The State Adoption Law (N.J.S.A. 9:3-37 et seq.) requires that all private and public adoption agencies, both within New Jersey and outside the State, that place children for adoption in New Jersey be approved by the New Jersey Department of Human Services, in order to open and operate. The current approval period for new agencies and agencies renewing their Certificate of Approval is one year. The proposed amendment would extend the period of approval to two years. This extension will reduce the administrative burden for both adoption agencies and the Bureau of Licensing, Division of Youth and Family Services, and will not affect the ability of the Bureau to monitor compliance.

Activity upon receipt of an application for renewal involves an on-site inspection by representatives of the Bureau. The requirements of Chapter 121A are examined in detail during this inspection. It has been the experience of the Bureau that the comprehensive review performed during this inspection renders a two-year approval period more than adequate to satisfy the Bureau's responsibilities regarding the monitoring of agency compliance with regulatory standards. Additionally, any approved adoption agency, pursuant to the provisions of N.J.A.C. 10:121A-3.6 is required to report to the Bureau, within 15 working days of the event, any material change in its operation. Therefore, the Bureau position is that the two-year approval period is appropriate.

Social Impact

The proposed change to the regulation will extend the adoption agency approval period from one year to two years and will have no significant social impact on the approved adoption agencies other than a reduction in paperwork.

The Division will experience an easing of the administrative work associated with the existing annual inspection requirement. There will be no social impact on the children and families served by the Bureau-approved adoption agencies as program policies and physical facilities, once established, change infrequently.

Economic Impact

As there is no fee attached to an application for renewal, there will be no direct economic impact on approved agencies as a result of the proposed amendment other than that associated with a possible lessening of administrative costs. There will be a positive economic impact on the Bureau of Licensing as the proposed amendment will allow a heavier concentration of effort on individual case management practices. There will be no economic impact on the children and families served by the adoption agencies.

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

10:121A-2.2 Issuance of Certificate of Approval

(a) (No change.)

(b) Each certification period, which may include the issuance of one or more temporary certificates and/or one regular certificate, shall be [one year] **two years**.

1. In determining the expiration date of the first regular certificate, the Bureau shall compute the [one] **two** year period of certification from the date of issuance of the first temporary or regular certificate.

2. In determining the expiration date of a renewed regular certificate, the Bureau shall compute the [one] **two** year period of certification from the date on which the agency's previous regular certificate expired, unless the agency ceased to operate for a period of at least six months following the expiration date of its previous regular certificate.

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

(a)

Court Actions and Proceedings

Proposed Readoption: N.J.A.C. 10:132

Authority: N.J.S.A. 30:1A-1, 30:4C-4(c) and (h); 30:4C-4.1;
30:4C-4.2.

Proposal Number: PRN 1986-370.

Submit comments by October 22, 1986 to:

Jesse L. Moskowitz, Administrator
Office of Regulatory and Legislative Affairs
Division of Youth and Family Services
1 South Montgomery Street
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:132 expires on November 16, 1986. 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.

The Department of Human Services proposes to readopt the Court Actions and Procedures rules, which effectuate two statutory provisions, N.J.S.A. 30:4C-4.1 and 4.2. N.J.S.A. 30:4C-4.1 requires the consent and approval of the Commissioner as a precondition to the commencement of any Division action or proceeding in any court. N.J.S.A. 30:4C-4.2 permits the granting of the consent and approval by rule.

Failure to readopt N.J.A.C. 10:132 would result in the administratively burdensome necessity of eliciting the Commissioner's specific consent and approval on a case-by-case basis for all actions commenced by the Attorney General's Office on behalf of the Division of Youth and Family Services.

The Commissioner of the Department of Human Services has chosen to grant the required consent and approval generally, as permitted by N.J.S.A. 30:4C-4.2, in reliance on the determinations of Division of Youth and Family Services staff in consultation with the official legal counsel for the Division, the Attorney General of the State of New Jersey.

Social Impact

The proposed readoption will continue in effect existing procedures regarding court actions wherein the Division of Youth and Family Services is a party, and will have no new impact, either beneficial or detrimental, on the litigation activities of the Division, the Department, the Attorney General's Office, or other parties.

Economic Impact

Since the proposed readoption of the rules would only promulgate the existing regulatory provisions, the Department foresees no economic impact.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:132.

LAW AND PUBLIC SAFETY

STATE ATHLETIC CONTROL BOARD

The following proposals are authorized by Larry Hazzard, Commissioner, State Athletic Control Board.

Submit comments by October 22, 1986 to:

Larry Hazzard, Commissioner
State Athletic Control Board
CN 180, Justice Complex
Trenton, NJ 08625

(b)

Specifications for Bandages on Boxer's Hands

Proposed Amendment: 13:46-3.1

Authority: N.J.S.A. 5:2A-7(c).

Proposal Number: PRN 1986-372.

The agency proposal follows:

Summary

This proposal will amend N.J.A.C. 13:46-3.1, which sets forth the specifications for the bandages used to wrap a boxer's hands prior to a bout. Currently, two different sets of specifications on the length of these bandages are set forth in N.J.A.C. 13:46-3.1(a) and (b): one for all weight classes of boxers up to and including middleweights and then one for all other classes. The Board believes that to protect the boxer from injury, the longer bandage length specifications currently used for the heavier weight classifications should be used for all boxers. The proposal, therefore, would also provide for uniformity in the use of such bandages.

Social Impact

The proposed amendment will have a positive social impact since it will serve to protect the health and safety of the boxer.

Economic Impact

It does not appear that any discernible significant economic impact will result from the adoption of the proposed amendment.

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

13:46-3.1 Specifications for bandages on boxer's hands

[(a) In all weight classes up to and including middleweights, the bandages on each hand of a boxer shall be restricted to soft gauze cloth not more than ten yards in length and two inches in width, held in place by not more than six feet of surgeon's adhesive tape one inch in width for each hand.

(b) In all other classes (light heavyweights, cruiserweights and heavyweights), the bandages shall be not more than 13 yards in length and two inches in width, held in place by not more than eight feet of surgeon's tape one inch in width for each hand.]

(a) In all weight classes, the bandages on each hand shall be restricted to soft gauze cloth not more than 13 yards in length and two inches in width, held in place by not more than 10 feet of surgeon's tape, one inch in width, for each hand.

Redesignate existing (c)-(f) as **(b)-(e)** (No change in text.)

(c)

Term of Licenses; License Fees

Proposed Amendment: N.J.A.C. 13:46-4.25

Proposed Repeal: N.J.A.C. 13:46-4.7

Proposed New Rule: N.J.A.C. 13:46-4.7

Authority: N.J.S.A. 5:2A-7(c).

Proposal Number: PRN 1986-374.

The agency proposal follows:

Summary

N.J.S.A. 5:2A-14(b) requires the State Athletic Control Board to license all promoters, boxers, wrestlers, kick boxers, combative sports contestants or performers, managers, scorers, trainers, booking agents and ring officials. N.J.S.A. 5:2A-14(c) provides that all licenses shall be for a period of one year, unless revoked for cause. To date, the Board has issued all of its licenses on a fiscal year basis. Pursuant to N.J.A.C.

13:46-4.7, a license is valid from the date it is issued to the expiration of the fiscal year. The license must then be renewed. The Board has found that the fiscal year licensure term works well for all categories of licenses except boxers. Unlike the other categories, boxers have historically only sought licensure when they are scheduled to box in New Jersey. A boxer may have only one bout in New Jersey in any given year. On the other hand, promoters, managers and ring officials maintain a year-long presence in New Jersey, as do professional wrestlers who, unlike boxers, may compete several times each week.

Each time a boxer is licensed, he must undergo the thorough medical examinations required by N.J.A.C. 13:46-12.1 et seq. If a boxer does renew his license and the end of the fiscal year, he must undergo these examinations at that time. However, because a boxer may not actually be scheduled to compete until several months thereafter, the Board believes that the boxer would benefit by having his examination performed closer to the time he actually competes, as a better check on his pre-fight physical condition. In addition, because of the relatively expensive nature of the medical examinations, the Board believes that boxers may be unduly burdened by a fiscal year licensure term. For example, a boxer competing for the first time in New Jersey in the month of May would have to be licensed and undergo the medical examinations. If the same boxer wished to compete in September, he would have to be licensed again because of the expiration of the fiscal year, and would again have to complete the medical examination process, even though the examination results would otherwise be "good" for a full year.

Accordingly, the Board is proposing to repeal and propose a new section N.J.A.C. 13:46-4.7 to provide that licenses issued to boxers after the effective date of the regulation will be valid for the one-year period following the date of licensure, unless revoked or suspended for cause. All other categories of licensure will remain on a fiscal year basis while the Board continues to study the matter to monitor the feasibility and practicality of the fiscal year based licensure term for these other categories.

The proposal will also amend N.J.A.C. 13:46-4.25, covering licensing fees, to make it clear that boxer's licenses will no longer be issued on a fiscal year basis. No change has been made, however, to the fee schedule itself.

Social Impact

The proposal will have a positive impact because it will serve to protect the health and safety of the boxer while, at the same time, relieving him of the possible financial burden of undergoing more than one comprehensive medical examination for licensure in any given one-year period. It should be noted that boxers will continue to be required to undergo the regular pre-fight and post-fight examinations, the examinations required after a knock-out or technical knock-out, and any examinations ordered by the Commissioner or the attending physician.

Economic Impact

Because the licensure term for boxers will now be for a straight one-year period from the date of licensure, rather than for a fiscal year term, boxers should save some costs of their medical examinations. The medical examinations will now be "good" for a period of one full year, rather than only for the remainder of the fiscal year. A boxer, under the proposal, therefore, may have to pay for fewer medical examinations over the course of any given year.

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

13:46-4.7 [Period of validity; Renewal of licenses] **Term of licenses**

[All licenses must be renewed on or before June 30 of each year no matter when they were originally obtained and shall be valid until June 30 of the next year.]

(a) All new and renewal licenses issued to boxers by the State Athletic Control Board after the effective date of this regulation shall be valid for a period of one year from the date the license is issued, unless revoked or suspended for cause.

(b) All other licenses issued by the State Athletic Control Board shall be on a fiscal year basis (July 1 through the following June 30) and shall be valid from the date the license is issued until the expiration of the fiscal year, no matter when the license was originally obtained, unless revoked or suspended for cause.

13:46-4.25 License fees

(a) License fees for [boxers,] wrestlers, managers, seconds, referees, timekeepers, announcers, doormen and box-office employees shall be on

a fiscal year basis (July 1 through the following June 30) and the fee for each license shall be as follows:

1. Wrestling Booking Agency	\$50.00
2. Wrestling Booking Agent	15.00
3. Referee	15.00
4. Manager	15.00
[5.] 5. Boxer	5.00]
[6.] 5. Wrestler	5.00
[7.] 6. Second	5.00
[8.] 7. Timekeeper	5.00
[9.] 8. Announcer	5.00
[10.] 9. Doorman	5.00
[11.] 10. Box office employee	5.00
[12.] 11. Matchmaker	25.00

(b) The fee for a boxer's license shall be \$5.00.

(a)

Compensation of Boxing Referees and Judges and of Boxing Timekeepers

**Reproposed New Rule: 13:46-11.10
Reproposed Amendment: 13:46-8.25**

Authority: N.J.S.A. 5:2A-7(c).

Proposal Number: PRN 1986-373.

The agency proposal follows:

Summary

On May 5, 1986, the State Athletic Control Board published a rule proposal in the New Jersey Register, (18 N.J.R. 930(a)), which would have amended N.J.A.C. 13:46-8.25 by increasing the compensation schedule for boxing judges and referees, and which would have established a new rule, N.J.A.C. 13:46-11.10, which would have created a compensation schedule for boxing and wrestling timekeepers. Following the publication of this proposal, the Board determined that further study was necessary before a compensation schedule for wrestling timekeepers could be established. Because the deletion of wrestling timekeepers was a substantive change in the proposal, the Board has determined to publish a new proposal to replace the proposal published on May 5, 1986.

The new proposal amends N.J.A.C. 13:46-8.25. The proposal amends the compensation schedule for boxing referees and judges and also increases the amounts to be paid to these officials.

The proposal also adds a new provision whereby a referee who must referee an entire, or the remaining portions of a boxing show because of the incapacity or unforeseen unavailability of the second referee, may receive additional compensation at the discretion of the Commissioner. For example, if the gross gate receipts for a boxing show were less than \$25,000, the promoter would be required to pay \$250.00 to each of the referees assigned to the show for a total of \$500.00. If one of these referees became incapacitated at the start of the first bout of the show and the other referee then refereed that bout and the remaining bouts on the program, that referee could be paid up to twice the amount of the fee established under N.J.A.C. 13:46-8.25(a). Thus, for example, the referee who was incapacitated may receive \$20.00 and the referee who worked the entire show would receive \$480.00. This provision is proposed based upon the Board's belief that a referee who performs more than his normal share of the referee duties at a boxing show, due to unforeseen circumstances, should be compensated accordingly for his efforts.

The proposal would further provide that compensation fees for boxing referees and judges officiating at sanctioned championship bouts would be set by the Commissioner rather than pursuant to the compensation schedule set forth in N.J.A.C. 13:46-8.25(a). In making this determination, the Commissioner could consider the determinations, standards or recommendations made by a nationally recognized boxing association. However, the proposal makes clear that the Commissioner retains full authority to set the compensation for referees and judges assigned to officiate at such bouts.

When this amendment was originally proposed, the Board received one comment from the public concerning it. The commentator stated that the new compensation schedule for referees and judges was long overdue because New Jersey has some of the very best officials and their fees should be on at least a par with comparable states. The Board agrees with this comment.

This new proposal also adds a new rule, N.J.A.C. 13:46-11.10, to establish a compensation schedule for boxing timekeepers. The proposal would also give the Commissioner the authority to set the boxing timekeeper's compensation in regard to sanctioned championship boxing bouts.

When this new rule was originally proposed, as discussed above, it would also have established a compensation schedule for wrestling timekeepers. The Board received one public comment concerning the original proposal. This commentator stated that timekeepers should not be compensated the same as boxing judges. However, the Board believes that timekeepers in boxing bouts perform a critical function. The timekeeper must ensure that all rounds are correctly timed, that all rest periods are correctly timed and that all of the required bells and warning signals are correctly given. The timekeeper should be adequately compensated for this important function and the compensation schedule set forth in the rule accomplishes this goal.

At the same time, the Board recognized that timekeepers in wrestling exhibitions, because of the nature of that sport, play a less significant role than do boxing timekeepers. For this reason, the Board has determined to further study the issue of what compensation should be paid to wrestling timekeepers. Therefore, the new proposal only applies to boxing timekeepers. As is the situation at present, compensation for wrestling timekeepers will continue to be set by negotiated agreement with the promoter.

Social Impact

The proposal would have a positive social impact. The proposal would bring the compensation schedules for boxing referees and judges and for boxing timekeepers into line with that paid in other jurisdictions.

Economic Impact

The proposal would affect the promoters of boxing shows who are required to pay the fees for compensation of boxing referees, judges and timekeepers. The compensation schedules set forth in the proposal for these officials have been increased, but are similar to range to those paid to such officials in other jurisdictions. The proposal will help to ensure that New Jersey continues to attract qualified officials to preside at boxing shows held in this State.

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

13:46-8.25 Compensation for boxing referees and judges

(a) The compensation [and expenses] to boxing referees and judges shall be paid by the promoter conducting the show and shall be on the following basis:

1. [If] **When** the gross gate receipts of the show do not exceed [~~\$15,000~~] **\$25,000**, the fee for each of the two referees shall be [~~\$150.00~~] **\$250.00** and the fee for each of the three judges shall be [~~\$125.00~~] **\$200.00**.

2. When the gross **gate** receipts of the show are between [~~\$15,000~~] **\$25,000 and \$50,000**, the fee for each of the **two** referees shall be [~~\$175.00~~] **\$300.00** and the fee for each of the **three** judges shall be [~~\$150.00~~] **\$250.00**.

3. When the gross **gate** receipts of the show are between [~~\$30,000~~] **\$50,000 and \$100,000**, the fee for each of the **two** referees shall be [~~\$200.00~~] **\$350.00** and the fee for each of the three judges shall be [~~\$175.00~~] **\$300.00**.

4. When the gross **gate** receipts of the show are between [~~\$50,000~~] **\$75,000 and \$200,000**, the fee for each of the **two** referees shall be [~~\$250.00~~] **\$400.00** and the fee for each of the three judges shall be [~~\$200.00~~] **\$350.00**.

5. When the gross **gate** receipts of the show are between [~~\$75,000~~] **\$150,000 and \$300,000**, the fee for each of the **two** referees shall be [~~\$300.00~~] **\$500.00** and the fee for each of the three judges shall be [~~\$225.00~~] **\$400.00**.

[6. When the gross receipts are between \$150,000 and \$200,000 the fee for each of the referees shall be \$400.00 and the fee for each of the three judges shall be \$250.00.

7. When the gross receipts are between \$200,000 and \$300,000 the fee for each of the referees shall be \$500.00 and the fee for each of the three judges shall be \$275.00.]

[8.] **6.** When the gross **gate** receipts of the show are in excess of \$300,000 the fee for the referees and judges shall be set by the Commissioner.

(b) In the event one of the two referees assigned to a boxing show becomes incapacitated, or in an emergency situation where only one of the two referees is available, the remaining referee shall referee the remaining contests of the program and, at the discretion of the Commissioner, may be compensated in an amount up to twice the amount of the fee established

under (a) above. In such a situation, the compensation to be paid to the incapacitated or unavailable referee shall be reduced accordingly.

(c) The compensation schedule set for in (a) above shall not apply in a sanctioned championship bout. The Commissioner shall set the compensation to be paid to boxing referees and judges officiating at sanctioned championship bouts. In making this determination, the Commissioner may consider any determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. A nationally recognized boxing association shall include, but not be limited to, the World Boxing Association, the World Boxing Council, the North American Boxing Federation and the United States Boxing Association. Nevertheless, the Commissioner shall retain full authority to set the compensation schedule for boxing referees and judges in championship bouts irrespective of a determination or a recommendation by such an association.

13:46-11.10 Compensation for boxing timekeepers

(a) The compensation to boxing timekeepers shall be paid by the promoter conducting the show and shall be on the following basis:

1. When the gross gate receipts of the show do not exceed \$25,000, the fee for the timekeeper shall be \$200.00.

2. When the gross gate receipts of the show are between \$25,000 and \$50,000, the fee for the timekeeper shall be \$250.00.

3. When the gross gate receipts of the show are between \$50,000 and \$100,000, the fee for the timekeeper shall be \$300.00.

4. When the gross gate receipts of the show are between \$100,000 and \$200,000, the fee for the timekeeper shall be \$350.00.

5. When the gross gate receipts of the show are between \$200,000 and \$300,000, the fee for the timekeeper shall be \$400.00.

6. When the gross gate receipts of the show are in excess of \$300,000, the fee for the timekeeper shall be set by the Commissioner.

(b) The compensation schedule set forth in (a) above shall not apply in a sanctioned championship boxing bout. The Commissioner shall set the compensation to be paid to timekeepers officiating at sanctioned championship boxing bouts. In making this determination, the Commissioner may consider any determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. A nationally recognized boxing association shall include, but not be limited to, the World Boxing Association, the World Boxing Council, the North American Boxing Federation and the United States Boxing Association. Nevertheless, the Commissioner shall retain full authority to set the compensation schedule for timekeepers in championship boxing bouts irrespective of a determination or a recommendation by such an association.

ENERGY

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Energy Subcode

Thermal and Lighting Efficiency Standards

Proposed Amendment: N.J.A.C. 14A:3-4.4

Authorized By: Charles A. Richman, Acting Commissioner,
Department of Energy.

Authority: N.J.S.A. 52:27F-27.

Proposal Number: PRN 1986-385.

Submit comments by October 22, 1986 to:

Edward J. Linky
Chief Regulatory Officer
New Jersey Department of Energy
101 Commerce Street
Newark, New Jersey 07102

Summary

The New Jersey Builders Association (NJBA) submitted extensive comments and met with the Department regarding the Energy Subcode: Thermal and Lighting Efficiency Standards, prior to the adoption of the Energy Subcode on August 4, 1986, 18 N.J.R. 1612(a). After the adoption, the Department continued to meet with the NJBA regarding implementation of the adopted subcode. As a result of these discussions, the Department recognized the need to correct two technical oversights in the adopted subcode. First, an error was detected in calculations by

Department staff when they converted the Farmers Home Administration requirements to the performance oriented equivalents used in the New Jersey Energy Subcode for one and two family detached housing. This error resulted in publishing incorrect thermal transmittance, U_0 , values for wall and roof/ceiling assemblies. The correct U_0 values are: 0.124 for wall assemblies and 0.039 for roof/ceiling assemblies.

In addition, the NJBA noted that the proposed and adopted subcode for one and two family housing (A-1 buildings) is more stringent than for other types of residential construction not more than three stories in height (A-2 buildings). This distinction was not the intent of the Department.

The Department wishes to state that the oversight is limited to only the thermal performance associated with the wall assemblies for all residential construction not more than three stories in height. The Department states that this proposal does not have a significant social, economic, or environmental impact as it only clarifies the original intent of the Department and corrects a calculation error.

The Social, Economic and Environmental impacts of the Thermal and Lighting Efficiency Standards remain as stated on May 19, 1986, and are as follows:

Social Impact

The proposed amendments are designed to ensure that new detached 1 and 2 family housing will be more energy efficient and cost effective. By further reducing energy costs, the family will have more disposable income for other purposes.

Economic Impact

The proposed amendments will have a positive economic impact in several areas. Owners of detached 1 and 2 family housing constructed to the new standard will recover the additional costs associated within four years. With energy costs reduced, additional disposable income can be realized and saleability enhanced.

This single standard for detached 1 and 2 family housing should reduce the economic and administrative burdens on the housing construction sector. Finally the new standard will be implemented through the existing enforcement mechanism thereby adding no new administrative costs.

Environmental Impact

It is anticipated that the proposal will have a positive indirect effect on the environment. The reduced energy consumption will result in an overall improvement in air quality.

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

14A:3-4.4 Thermal efficiency standards

(a) The Department adopts the model code of the Building Officials and Code Administrators International Inc., known as the BOCA Basic/National Energy Conservation Code/1984, including all subsequent revisions and amendments thereto. Copies of the BOCA Basic/National 1984 may be obtained from the sponsor at BOCA, 4501 West Flossmoor Road, Country Club Hills, Illinois 60477.

(b) The Energy Subcode is amended as follows:

1.-2. (No change.)

3. The following amendments are made to Article 3 of the energy subcode entitled "Building Envelope":

i. (No change.)

ii. Delete Figure E-301.2.1a and add the words "**The maximum allowable U_0 value for gross exterior wall assemblies is 0.124 Btu/hr-ft²-°F for all residential buildings not more than three stories in height in all regions.**" [Table E-301.2.1 below:

Table E-301.2.1
MAXIMUM ALLOWABLE U_0 VALUES FOR GROSS EXTERIOR WALL ASSEMBLIES

Region ¹	Annual heating degree days-F°	Maximum " U_0 "	
		A1	A2
I	5000	0.063	0.29
II	5500	0.063	0.28
III	6000	0.063	0.27

¹See Figure A

Note 1. A1 indicates detached one and two family dwellings.

Note 2. A2 indicates all other residential buildings not more than three stories in height.]

iii. (No change.)

iv. Delete Figure E-301.2.2 and add the words "**The maximum allowable U_0 value for gross roof/ceiling assemblies is 0.039 Btu/hr-ft²-°F for all regions.**" [Table E-301.2.2 below:

Table E-301.2.2
MAXIMUM ALLOWABLE U_0 VALUES FOR GROSS ROOF/CEILING ASSEMBLIES

Region ¹	Annual heating degree days-°F	Maximum " U_0 "
I	5000	0.033
II	5500	0.033
III	6000	0.033

¹See Figure A.]

v.-xvii. (No change.)

4.-7. (No change.)

TREASURY-GENERAL

(a)

NEW JERSEY STATE LOTTERY COMMISSION

Rules of the Lottery Commission

Proposed Amendments: N.J.A.C. 17:20-4.4, 5.1, 6.2, 6.4

Authorized By: Joan Zielinski, Executive Director, State Lottery Commission.

Authority: N.J.S.A. 5:9-7(a), 5:9-8(g), 5:9-11, 5:9-12.1, 5:9-14, 5:9-14.1, 5:9-15, 5:9-16.

Proposal Number: PRN 1986-371.

Submit comments by October 22, 1986 to:

Chris Kniesler
Administrative Procedure Officer
State Lottery Commission
Lawrenceville Shopping Center
Alternate Route 1, Texas Avenue
CN 041
Lawrenceville, NJ 08648

The agency proposal follows:

Summary

Lottery rules currently require ticket sales agents to report indictments, arrests, convictions and similar events to the Lottery within four days of any such occurrence. The proposal extends the requirement to complaints for violating other administrative rules such as alcoholic beverage control or medicare regulations (see N.J.A.C. 17:20-5.1). It also specifies the agent's obligation to notify the Lottery of any change in the licensing data within ten days of the change (see N.J.A.C. 17:20-4.4).

The State Lottery Law (N.J.S.A. 5:9-19) provides a protective shield for State Lottery operations from the prohibitions of other laws. Until now, the rules of the State Lottery Commission have not addressed the outer limits of those operations, other than to prohibit the sale, by licensed agents, of any lottery tickets other than lawful New Jersey Lottery tickets (N.J.A.C. 17:20-6.2(b)). The law (N.J.S.A. 5:9-14) also prohibits sales of lottery tickets at a price other than set by the Commission. Many questions have been raised as to whether the "gift" of a lottery ticket in conjunction with a commercial promotion constitutes an indirect "sale" at a greater or lesser price than specified. Questions have also come up regarding "losers' lotteries" which revolve around outdated or non-winning tickets.

The proposal authorizes the Director of the Division of the State Lottery to approve cross-marketing proposals. It also formalizes the tacit approval which "losers' lotteries" have received from the Division in the past. The proposal applies only to licensed lottery ticket sales agents, and cannot be relied on by merchants in the private sector, generally.

Lottery rules currently provide that ticket sales agents are trustees for the State with respect to lottery tickets and ticket sales proceeds. The agents are also allowed to participate as players in the various lottery games. This dual status has led to many questionable situations, on which the present proposal amending N.J.A.C. 17:20-6.4 is focused. It clarifies the agent's responsibility to the Lottery for the consequences of losing a ticket or claim form. It requires prompt reporting of any theft—whether

or not lottery materials appear to be involved at the time, and it precludes an agent from winning a prize on stolen or unclaimed tickets absent special circumstances and findings.

Social Impact

Insofar as it promotes increased sales of lottery tickets, the proposal furthers the revenue-raising goals of the State Lottery Law (N.J.S.A. 5:9-1, et seq.). By giving the Director the power to approve or disapprove marginal lottery marketing schemes, the proposal enhances the Director's ability to administer lottery operations tightly, consistent with the Lottery's need to maintain the highest level of integrity.

Insofar as it increases efficiency and accountability in the agent community, the proposal should be of benefit to the general public as well. It should have no effect on the typical lottery player.

Economic Impact

The proposal has no discernible economic impact, since it clarifies reporting requirements which already exist. Insofar as the proposed amendments lead to tighter security, it should aid the State indirectly in preserving lottery funds and the revenue source which they represent.

The aim of increasing lottery ticket sales via creative marketing cannot be quantified with revenue projections.

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

17:20-4.4 Issuance of license

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

(d) **All applicants and agents shall report any change in status, such as ownership, control, address or other data relevant to licensure, within 10 days of occurrence. Failure to do so shall be cause for discipline under N.J.A.C. 17:20-5.1.**

17:20-5.1 Reasons for denial, revocation, suspension or imposition of civil penalties

(a) An application may be denied or a license suspended, revoked or its renewal rejected by the Director in the exercise of discretion for any one or more of the following reasons:

1.-2. (No change.)

3. Whenever a person:

i. Has been indicted, arrested for or convicted of a crime, [or a] disorderly persons offense **or violation of ordinance or administrative regulation** relating adversely to the duties of a lottery agent; or

ii. Has been the subject of a complaint or accusation for such offense; or

iii. Has failed to notify the Director in writing within five days of any of the above actions.

4.-9. (No change.)

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

17:20-6.2 Sale of lottery tickets

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

(f) **Lottery ticket sales shall not be combined with the sale of any other product or service without the express written approval of the Director. This prohibition shall not apply to promotions, conducted entirely at the expense of the Agent, involving losing tickets, tickets for which the drawing date or claiming period has expired, or other tickets which no longer have value for Lottery purposes.**

17:20-6.4 Lost or stolen tickets

(a) [The agent is] **Agents are responsible to the Lottery** for lost, damaged, destroyed, stolen or missing lottery receipts and tickets [to the lottery] notwithstanding the degree of care which [he or she] **they** may have exercised with regard to the tickets and receipts.

(b) **Agents are responsible to the Lottery for the consequences of the loss of tickets or claim forms, or for other breaches of these rules or game rules. Such responsibility includes reimbursement to the Lottery for prizes paid to ticket holders.**

(c) **Agents shall make prompt reports to the Lottery regarding any theft from, or unauthorized entry upon, licensed premises, whether or not any lottery monies or property appear to be missing at the time.**

(d) **No prize shall be paid to any agent with respect to stolen tickets or regarding unclaimed winning tickets unless the Director so determines.**

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax Periodical Defined

Proposed New Rule: N.J.A.C. 18:24-1.2

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24.

Proposal Number: PRN 1986-387.

Submit comments by October 22, 1986 to:

Nicholas Catalano
Assistant Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., contains a number of exemptions assigned to sale transactions involving newspapers, magazines and other periodicals. These include N.J.S.A. 54:32B-3 (b) (5) by which advertising services for use directly and primarily for publication in newspapers and magazines are exempt; N.J.S.A. 54:32B-8.5 by which sales of newspapers, magazines and periodicals are exempt; N.J.S.A. 54:32B-8.30 by which sales of advertising to be published in a newspaper are exempt; and N.J.S.A. 54:32B-11(5) by which the use of paper in the publication of newspapers is exempt from use of tax. The purpose of the proposed new rule is to enable taxpayers and Division personnel to determine through the use of specified criteria which publications are newspapers, magazines or periodical publications under the Sales and Use Tax Act. The proposed new rule utilizes several definitional criteria, the most important of which are the standards that each issue of a newspaper or other periodical carry not less than 10 percent news or information content (other than advertising) and that it be available for distribution among the general public, whether or not through a paid subscription. The rule also refers to the criteria of the Domestic Mail Manual as used by the Postal Service for determining second class mail privileges.

Social Impact

The proposed new rule will aid vendors who must determine whether receipts from the sale of a publication is subject to sales tax in New Jersey. It will also help to clarify the taxable status of certain transactions involving free circulation publications, particularly as that status is in doubt by reason of *Fairlawn Shopper v. Director, Division of Taxation*, 98 N.J. 64 (1984). Both vendors and consumers in New Jersey should benefit from the criteria provided by the proposal after its adoption.

Economic Impact

The economic impact of the proposed new rule is insignificant. State sales and use tax revenue should not be substantially affected, nor is the cost of tax administration and compliance expected to increase for either the Division or taxpayers.

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

SUBCHAPTER 1: FORMS AND DEFINITIONS

18:24-1.2 Periodical defined

(a) "Periodical" means newspapers, magazines and similar publications which conform to all the following indicia:

1. A periodical is published in printed form at a stated frequency, at least four times a year, with the intent to continue publication indefinitely. The primary purpose of a periodical must be the transmission of information. A periodical may consist of original or reprinted articles on a variety of topics, listings, photographs, illustrations, graphs, a combination of advertising and nonadvertising matter, comic strips, legal notices, editorial material, cartoons, or other subject matter. A periodical also exhibits continuity from issue to issue as to title and general nature of content;

2. A periodical does not constitute a book, either singly or when successive issues are put together;

3. A periodical must be available for circulation among the general public, whether or not through a paid subscription; and

4. Each issue of a periodical does not contain as advertising more than 90 percent of its printed area.

(b) Except as inconsistent with (a)1 through (d) above, whether a publication has been or would be classified by the United States Postal Service as one which is entitled to second class mailing privileges under the criteria of the Domestic Mail Manual, as amended, will be considered in determining whether or not the publication is a periodical.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Slot Count Procedures

Proposed Amendments: N.J.A.C. 19:45-1.32 and 1.43

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and 5:12-69.

Proposal Number: PRN 1986-369.

Submit comments by October 22, 1986 to:

Deno R. Marino

Deputy Director, Operations

Division of Financial Evaluation & Control

Casino Control Commission

3131 Princeton Pike

Building No. 5, CN208

Trenton, NJ 08625

The agency proposal follows:

Summary

The amendments to N.J.A.C. 19:45-1.32(d) and 1.43(j) would require casinos to use either a hand-held or fixed-door type metal detector to check persons exiting the hard count room. The amendment to 19:45-1.43(g) would simply formalize a long-standing requirement that the hard count process be taped by Surveillance and retained for a five day period.

Social Impact

The proposed amendments would increase the integrity of funds being counted in the hard count room by significantly decreasing the possibility of theft.

Economic Impact

Decreasing the possibility of theft may have a positive economic impact for the casino industry, thereby, increasing funds for the State of New Jersey through the Gross Revenue Tax. However, it is impossible to judge how significant the increase may be. The cost of the metal detectors to the casinos is approximately \$200.00 for the hand-held type or \$4,000 for the fixed-door-type.

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

19:45-1.32 Count rooms; characteristics

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

(d) The count room designated for counting contents of slot machine drop buckets, if a different room than that used for counting contents of drop boxes, shall meet all requirements herein except for the audio capabilities. **In addition, the room shall contain either a fixed-door type or hand-held metal detector to inspect all persons exiting the count room.**

19:45-1.43 Slot count: procedure for counting and recording contents of drop buckets

(a)-(f) (No change.)

(g) Immediately prior to the commencement of the count, one count team member shall notify the person assigned to the closed circuit television monitoring station in the establishment that the count is about to begin, **after which such person shall make a video recording, with the time and date inserted thereon, of the entire counting process, including the metal detector check by security, which shall be retained by the surveillance department for at least five days from the date of recordation unless otherwise directed by the commission or the division.**

(h)-(i) (No change.)

(j) Procedures and requirements at the conclusion of the count shall be the following:

1. (No change.)

2. A security department employee shall check all persons with a metal detector upon their exiting the count room.

Renumber existing 2.-4. as 3.-5. (No change in text.)

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee Acquisition of Development Easements

Adopted Amendments: N.J.A.C. 2:76-6.2 and 6.15

Proposed: July 7, 1986 at 18 N.J.R. 1328(a).

Adopted: August 28, 1986 by Arthur R. Brown, Jr., Chairman,
 State Agriculture Development Committee.

Filed: August 28, 1986 as R.1986 d.386, **without change.**

Authority: N.J.S.A. 4:1C-5F.

Effective Date: September 22, 1986.

Expiration Date: August 29, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

2:76-6.2 Definitions

"Premises" means the property under easement which is defined by the legal metes and bounds description contained in the deed of easement.

2:76-6.15 Deed restrictions

(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land:

"Grantor promises that the Premises shall be owned, used and conveyed subject to:

"1. Any development of the Premises for non-agricultural purposes is expressly prohibited.

"2. The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter committee). Agricultural use shall mean the use of land for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, grazing and conservation.

"3. (Current text recodified as 13.)

"3. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used. Grantor retains and reserves for himself all oil, gas, and other mineral rights in the land underlying the Premises, provided that any prospective drilling and/or mining will be done by slant from adjacent property or in any other manner which will not materially affect the agricultural operation.

"4. No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly recommended by the Committee as an agricultural management practice.

"5. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the land.

"6. Grantee and its agents shall be permitted access to, and to enter upon, the Premises at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions of this easement. Grantee agrees to give Grantor at least 24 hours advance notice of its intention to enter the Premises, and further, to limit such times of entry to the daylight hours on regular business days of the week. The interior of buildings shall not be inspected.

"7. Grantor may use the Premises to derive income from recreational activities, so long as such activities do not interfere with the actual use of the land for agricultural production.

"8. Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this easement or as otherwise provided by law.

"9. Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this easement.

"10. Nothing in this easement shall be deemed to restrict the right of Grantor to maintain all roads and trails existing upon the Premises as of the date of this easement. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, buildings, or reservoirs as may be necessary.

"11. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

i. Improvements to agricultural buildings shall be consistent with agricultural uses;

ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and

iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

"12. Grantor may construct any new buildings for agricultural purposes. The construction of any new building which will serve as a residential use, regardless of its purpose, shall be prohibited except as follows:

i. To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee; and

ii. To construct a single family residential building anywhere on the Premises in order to replace any single family residential building in existence at the time of this easement but only with the approval of the Grantee and Committee.

"13. The land and its buildings may be sold collectively or individually for continued agricultural uses defined in Section 2 of this easement. However, no subdivision of the land shall be permitted without the joint approval in writing of the Grantee and the Committee. The subdivision shall be consistent with agricultural management practices recommended by the Committee. Subdivision means any division of the Premises, for any purpose, subsequent to the effective date of this easement.

"14. In the event of any violation of the terms and conditions of this easement, Grantee or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require the restoration of the Premises to its prior condition. Grantee or the Committee do not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purposes of this easement by a prior failure to act.

"15. This easement imposes no obligation or restriction on the Grantor's use of the Premises except as specifically set forth in this easement.

"16. This easement shall be binding upon the Grantor and upon the grantee.

"17. Throughout this easement, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

"18. The word 'Grantor' shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to his heirs, executors, administrators, personal or legal representatives, successors and assigns.

"19. Wherever in this easement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words 'heirs, executors, administrator, personal or legal representatives, successors and assigns' have been inserted after each and every designation."

(b) The Committee or landowner may require more stringent deed restrictions consistent with the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

(c) The deed restrictions contained in (a) above shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c.276, and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 22, 1986

COMMUNITY AFFAIRS**(a)****DIVISION OF HOUSING AND DEVELOPMENT****Uniform Construction Code****Building, Fire Protection and Mechanical Subcodes****Adopted Amendments: N.J.A.C. 5:23-3.4, 3.14, 3.17 and 3.20**

Proposed: June 16, 1986 at 18 N.J.R. 1235(a).

Adopted: August 19, 1986 by Leonard S. Coleman, Jr.,
Commissioner, Department of Community Affairs.Filed: August 20, 1986 as R.1986 d.380, **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. 52:27D-124.

Effective Date: September 22, 1986.

Expiration Date: April 1, 1988.

Summary of Public Comments and Agency Responses:**No comments received.****Summary of Changes made between Proposal and Adoption:**

Errors were found by the Department in some of the section numbers in N.J.A.C. 5:23-3.4 as a result of changes in the BOCA codification. These errors have been corrected.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks ***[thus]***).**5:23-3.4 Responsibility**(a) Responsibility for enforcement of specific provisions of the building subcode shall be ***[delineated]*** as follows:

1. Plan review functions of sections 513.0, 601.0, through 607.0, 609.0 through 613.0, 617.0 through 621.0; article 8; sections 1316.0 and 1317.0; articles 14, 15, 16 and 17; and sections 1818.0, 1820.0, 2107.0, 2108.0, 2111.0, 2112.0, 2116.0 and 2117.0; shall be enforced jointly by the building subcode official and fire protection subcode official.

2. Plan review functions of sections 608.0 and 614.0 through 616.0 and 622.0 shall be enforced exclusively by the building subcode official.

3. Construction inspection functions of sections ***513.0 and*** 601.0 through ***[612.0, 614.0 through]*** 622.0; article 8; sections 1316.0 and 1317.0; articles 14 and 15 shall be enforced exclusively by the building subcode official.4. Construction inspection functions of articles 16 and 17; and sections 1818.0,* ***[and]*** 1820.0*, **2108.3, 2111.4 and 2117.3*** shall be enforced exclusively by the fire protection subcode official.

5.-6. (No change.)

(b) (No change.)

(c) Responsibility for enforcement of specific provisions of the electrical subcode shall be ***[delineated]*** as follows:

1. Plan review functions of article 300-21; article 450, part C; chapter 5; and article 760 shall be enforced jointly by the electrical subcode official and the fire protection subcode official.

2. Construction inspection functions of article ***[30021]*** ***300-21***; article 450, part C; chapter 5; and article 760 shall be enforced exclusively by the electrical subcode official.

3.-4. (No change.)

(d) Responsibility for enforcement of the fire protection subcode shall be the exclusive province of the fire protection subcode official except as is otherwise provided in (a), (c) and (f).

(e) Responsibility for enforcement of specific provisions of the energy subcode shall be as follows:

1.-2. (No change.)

3. Article 6 and standard LEM-1 shall be enforced exclusively by the electrical subcode official.

4.-6. (No change.)

(f) Responsibility for enforcement of specific provisions of the Mechanical Subcode shall be as follows:

1. Articles 3, ***[11,]*** 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. Articles 4, 5, and 10 Plan review and construction inspection functions shall be enforced exclusively by the fire subcode official.

3. Articles 6, 7, 8, 9, and 13 Plan review and construction inspection functions shall be enforced exclusively by the plumbing subcode official.

4. Article 15 Plan review functions shall be enforced by the Department of Community Affairs, and construction inspection functions shall be enforced by the fire subcode official.

5. Article 16 Plan review and construction inspection functions shall be enforced exclusively by the building subcode official.

6. Article 18 Plan review functions shall be enforced jointly by the building and plumbing subcode officials, construction inspection functions shall be enforced by the plumbing subcode official.

5:23-3.14 Building subcode

(a) Rules concerning subcode adopted are as follows:

1. (No change.)

2. The 1986 Accumulative Supplement to the BOCA Basic/National Building Code/1984 is adopted by reference with modifications as cited in (c) below as part of the building subcode for New Jersey.

(b) (No change.)

(c) The following articles or sections of the 1986 Accumulative Supplement to the building subcode are modified as follows:

1. The following amendment is made to Article 1 of the building subcode, entitled "Administration and Enforcement":

i. Sections 103.3, 103.4, 111.6.1, 111.7, 124.0 are deleted.

2. The following amendments are made to Article 5 of the building subcode entitled "General Building Limitations".

i. Section 504.1 is amended to delete the term "building official" from Exception 1 and substitute in lieu thereof, "building subcode official."

ii. (No change in text.)

iii. Section 512.1.4 is deleted.

3. The following amendments are made to Article 6 of the building subcode entitled "Special Use and Occupancy Requirements."

i. Section 609.2.5 is amended to delete the phrase "plumbing code listed in Appendix A" and substitute in lieu thereof "Plumbing Subcode."

ii. Section 617.4 is amended to delete the phrase "mechanical code listed in Appendix A" and substitute in lieu thereof "mechanical subcode."

4. The following amendments are made to Article 8 of the building subcode entitled "Means of Egress."

i. Section 812.5.4 is amended to delete "15 pounds (73.23N)" and in lieu thereof substitute "8 pounds (39.55N)."

ii. Section 812.5.6 is amended to delete "15 pounds (73.23N)" and in lieu thereof substitute "(pounds (39.55N))."

iii. Section 812.5.7 is amended to delete the term "building official" from Exceptions 1 and 2 and substitute in lieu thereof, "fire protection subcode official."

iv. Section 817.1.1 is amended to delete the term "building official" and substitute in lieu thereof, "building subcode official."

5. The following amendments are made to Article 13 of the building subcode entitled "Building Enclosures, Walls and Wall Thickness."

i. Section 1313.6 is amended to delete the phrase "NFIP 70 listed in Appendix A" and substitute in lieu thereof, "the electrical subcode."

ii. Section 1313.8 is amended to delete the reference to sections 103.0, 119.0 and 120.4 and substitute in lieu thereof, "N.J.A.C. 5:23-2."

iii. Sections 1313.10.2, 1313.10.3 and 1315.2.3 are amended to delete the term "building official" and substitute in lieu thereof, "building subcode official."

iv. Section 1316.2 is amended to delete the phrase "mechanical code listed in Appendix A" and substitute in lieu thereof "Mechanical Subcode."

6. The following amendments are made to Article 14 of the building subcode, entitled "Fire Resistive Construction Requirements":

i. (No change.)

ii. Section 1417.2 is amended to delete the phrase "mechanical code listed in Appendix A" from Exception 7 and substitute in lieu thereof, "mechanical subcode."

7. The following amendments are made to Article 17 of the building subcode entitled "Fire Protection Systems:"

i. (No change.)

ii. Section 1717.7.3 is amended to delete the term "department" on line 3 and in lieu thereof, substitute "fire protection subcode official."

8. The following amendment is made to Article 21 of the building subcode entitled "Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance."

i. Section 2102.4.1 is amended to delete the term "building official" on line 6 and in lieu thereof, substitute "construction official."

9. The following amendment is made to Article 22 of the building subcode entitled "Plumbing Systems:"

i. Section 2207.1 is deleted.

10. (No change in text.)

11. The following amendments are made to Appendix A of the building subcode entitled "Reference Standards:"

i. (No change.)

ii. Under the subheading "BOCA" delete the following titles:

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

(3) Basic/National Private Sewage Disposal Code.

iii-iv. (No change.)

5:23-3.17 Fire protection subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, as amended, the commissioner hereby adopts the following portions of the building, electrical and mechanical subcodes to the extent delineated in N.J.A.C. 5:23-3.4, as the Fire Protection Subcode for New Jersey.

i. BOCA Basic/National Building Code 1984 of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.14):

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

Renumber (4)-(11) as (3)-(10) (No change in text.)

ii. (No change.)

iii. BOCA Basic/National Mechanical Code/1984 of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.20):

(1) Article 4—Mechanical Equipment.

(2) Article 5—Kitchen Exhaust Equipment.

(3) Article 10—Combustion Air.

2. (No change.)

(b) Rules concerning modification to subcodes are as follows:

1. The modifications made to the appropriate portion of the adopted model code in N.J.A.C. 5:23-3.14 (Building Subcode), N.J.A.C. 5:23-3.16 (Electrical Subcode) and N.J.A.C. 5:23-3.20 (Mechanical Subcode) will apply also to those portions as regards this adoption.

5:23-3.20 Mechanical Subcode

(a) Rules concerning subcode adopted are as follows:

1. (No change.)

2. The 1986 Accumulative supplement to the BOCA Basic/National Mechanical Code/1984 is adopted by reference with modifications cited in (c) below as part of the Mechanical subcode for New Jersey.

(b) (No change.)

(c) The following articles or sections of the 1986 Accumulative supplement to the Mechanical subcode are modified as follows:

1. (No change.)

i. (No change.)

ii. Sections M-301-2, M-301.4, and line 3 and exception number 8 of M-311.2 are amended to delete the phrase "building code listed in Appendix A" and substitute in lieu thereof "Building Subcode."

iii. (No change.)

2. (No change.)

i. Under the subheading "ASHRAE" delete the following titles:

(1) Thermal Environment Conditions for Human Occupancy.

(2) Energy Conservation in New Building Design.

(3) Handbook, Fundamentals Volume.

ii. Delete the entire subheading "ASME" and all titles under this subheading.

iii. (No change in text.)

(1) (No change.)

iv. (No change in text.)

ENVIRONMENTAL PROTECTION

DIVISION OF WASTE MANAGEMENT

(a)

Disposal of Asbestos

Disposal Area; Disruption

Adopted Amendments: N.J.A.C. 7:26-2.6 and 2.7

Proposed: November 18, 1985 at 17 N.J.R. 2719(a).

Adopted: August 29, 1986 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: August 29, 1986 as R.1986 d.388, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3 and 13:1E-6.

Effective Date: September 22, 1986.

Expiration Date: November 4, 1990.

DEP Docket No. 062-85-10.

Summary of Public Comments and Agency Responses:

Written comments on this rule proposal were accepted by the Department of Environmental Protection (Department) until December 18, 1985. One comment was received.

COMMENT: The commenter asserted that the proposal would prohibit the development and implementation of landfill gas venting and recovery system at landfills which accepted asbestos waste for disposal.

RESPONSE: N.J.A.C. 7:26-2.6(e)2v prohibits the disruption of asbestos disposal areas except as required for pollution control or remedial action. Landfill gas venting and recovery systems are considered by the Department to be pollution control measures. The venting and recovery of landfill gas contributes to control of the ever-present potential for landfill gas migration and the associated threats of explosion and damage to plant life. As such, landfill gas venting and recovery systems are exempt from the prohibition in N.J.A.C. 7:26-2.6(e)2v.

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

7:26-2.6 Sanitary landfill operational requirements (Specific)

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

(e) Rules concerning the disposal of asbestos and asbestos-containing waste in sanitary landfills follow:

1. (No change.)

2. All asbestos and asbestos-containing waste accepted for disposal at a sanitary landfill shall be disposed of in the following manner:

i. Owners or operators of new landfills accepting asbestos ***or asbestos-containing*** waste shall meet the following requirements:

(1) The owner or operator of the landfill shall develop a separate area of the landfill, apart from other waste disposal areas, for disposal of asbestos and asbestos-containing waste. It is recommended that the asbestos disposal area be operated by a trench method, with sufficient width and ramping to allow the transport vehicle to back up to or into the trench to allow for proper unloading of the asbestos and asbestos-containing waste in a manner that prevents the rupture of the containers during the unloading operation.

(2) Upon acceptance of the waste, the asbestos disposal area shall immediately be prepared. After unloading, the asbestos and asbestos-containing waste shall be immediately covered with a minimum of three feet of soil.

(3) In areas in which asbestos and asbestos-containing waste has been previously deposited, as required by (2) above, the current working face may be prepared by removal of cover material; however, no previously deposited asbestos and asbestos-containing waste shall be exposed and a minimum of six inches of cover material shall be maintained between the cells. After unloading, the asbestos and asbestos-containing waste shall be immediately covered with a minimum of three feet of soil.

(4) The final cover of the asbestos disposal area shall be a minimum of three feet of soil and shall be sufficient to minimize infiltration into the asbestos and asbestos-containing waste. The final slopes shall be graded to facilitate run-off away from the asbestos disposal area.

(5) The final cover shall be seeded and maintained to prevent erosion and exposure of the asbestos and asbestos-containing waste.

ii. Owners or operators of existing landfills must comply with one of the following two options for disposal of asbestos and asbestos-containing waste:

(1) The owner or operator of the landfill may develop a separate area of the landfill for asbestos and asbestos-containing waste disposal, prepared and operated as required by 2i above; or

(2) A separate excavation may be prepared in the working face of the landfill. The excavation shall be of sufficient width and depth so as to allow the asbestos and asbestos-containing waste to be deposited such that a minimum of three feet of earth or other cover material may be placed between the top of the waste deposited and the top surface of the working face. A written notice must be recorded along with the deed for the landfill property, for all landfilled areas, with the appropriate county recording office, notifying future owners of the property that asbestos has been disposed in the landfill and that disruption or excavation is expressly prohibited under N.J.A.C. 7:26-2.6(e)2v.

iii. The asbestos and asbestos-containing waste deposited in the disposal areas described in 2i and 2ii above, shall immediately be covered with three feet of earth or other approved cover material in a manner that prevents the rupture of the containers during the burying operation.

iv. For disposal areas identified in 2j and 2ii(1) above, a detailed*[.]* metes-and-bounds description of the asbestos disposal area *[must]* ***shall*** be recorded, along with the deed for the landfill property, with the appropriate county recording office, notifying future owners of the property that disruption or excavation is expressly prohibited ***[under]* *pursuant to*** N.J.A.C. 7:26-2.6(e)2v. This description shall also include the depths of asbestos ***and asbestos-containing*** waste and cover material and shall remain in the record in perpetuity.

v. For disposal areas identified in 2i and 2ii above, the intermediate and/or final landfill cover may not be disrupted, except as required for pollution control or remedial action, in which case such disruption must be managed in compliance with State and Federal regulations governing the removal, disposal or other handling of asbestos or asbestos-containing ***[material]* *waste***.

vi. No person may enter an asbestos disposal area at a landfill during the unloading and covering of asbestos and ***[asbestos-contained]* *asbestos-containing*** waste without wearing a respirator approved for asbestos by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration. This equipment shall be provided and maintained in good working order by the landfill owner or operator.

3.-4. (No change.)

5. The requirements in this subsection do not apply to renovation or demolition projects wherein the total project involves less than 260 feet of asbestos-coated pipe or less than 160 square feet of asbestos-coated surface, such as ducts, boilers, tanks, structural members and the like.

7:26-2.7 Disrupted landfill requirements

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

(f) For landfills which accept asbestos ***and asbestos-containing*** waste, disruption of any asbestos disposal area is also regulated under N.J.A.C. 7:26-2.6(e).

(a)

Dioxin-Containing Waste

Adopted Amendments: N.J.A.C. 7:26-8.3, 8.4, 8.13, 8.15, 10.5, 10.6, 10.7, 10.8, 11.1, 11.5, 11.6, 12.2, and N.J.A.C. 7:14A-4.4 and 4.7

Proposed: May 5, 1986 at 18 N.J.R. 879(a).

Adopted: August 29, 1986 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: August 29, 1986 as R.1986 d.387, **without change.**

Authority: N.J.S.A. 13:1D-9 and 13:1E-6(a)2.

Effective Date: September 22, 1986.

Expiration Date: November 4, 1990.

DEP Docket No. 012-86-03.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

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

(d) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under N.J.A.C. 7:26-7 through 11.1 et seq.

1. A total of one kilogram of any acutely hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, or 8.15(e).

2. A total of 100 kilograms of any residue or contaminated soil, water, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acutely hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, or 8.15(e).

7:26-8.4 Residues of hazardous waste in empty containers

(a) (No change.)

(b) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15(e), is empty if:

1.-2. (No change.)

3. A container or an inner liner removed from a container that has held an acute hazardous waste identified in N.J.A.C. 7:26-8.13, 8.14, or 8.15(e) of this chapter is empty if:

i.-iii. (No change.)

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

(a) Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
	F001-F019	(No change.)	
	F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives.	(H)
	F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.	(H)
	F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)
	F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols.	(H)
	F024	(No change.)	
	F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)
	F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols.	(H)
	F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.	(T)
(b) Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
	1.-8.	(No change.)	

(CITE 18 N.J.R. 1934)
ENVIRONMENTAL PROTECTION

ADOPTIONS

7:26-8.15 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof

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

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

Hazardous Waste Number	Substance
...	
See F027	Phenol, pentachloro-
See F027	Phenol, 2,3,4,6-tetrachloro-
See F027	Phenol, 2,4,5-trichloro-
See F027	Phenol, 2,4,6-trichloro-
...	
See F027	Propionic acid, 2-(2,4,5-trichlorophenoxy)
...	
See F027	Silvex
See F027	2,4,5-T
...	
See F027	2,3,4,6-Tetrachlorophenol
...	
See F027	2,4,5-Trichlorophenol
See F027	2,4,6-Trichlorophenol
See F027	2,4,5-Trichlorophenoxyacetic acid
...	

7:26-10.5 Tanks

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

(e) An owner or operator shall comply with the inspection requirements of this subsection.

1.-2. (No change.)

3. As part of the contingency plan required under N.J.A.C. 7:26-9.7 the owner or operator shall specify the procedures to be used to respond to tank spills or leakage, including procedures and timing for immediate removal of leaked or spilled waste and replacement or repair of the tank;

4.-6. (No change.)

(f)-(j) (No change.)

7:26-10.6 Surface impoundments

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

(e) Operational and maintenance standards for surface impoundments include the following:

1.-9. (No change.)

10. Specific requirements for hazardous waste F020, F021, F022, F023, F026, or F027 include the following:

i. Hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026 or F027 shall not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accordance with all other applicable requirements of this subchapter. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design or monitoring techniques.

ii. The Department may determine that additional design, operating, and monitoring requirements are necessary for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026, or F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

7:26-10.7 Hazardous waste incinerators

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

(d) Performance standards for hazardous waste incinerators include the following:

1. Any person responsible for an incinerator burning hazardous waste shall ensure that it is designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under N.J.A.C. 7:26-10.7(f) and (g) below it will meet the following performance standards:

i. Except as provided in vi. below, an incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99 percent for each principal organic hazardous constituent (POHC) designated (under N.J.A.C. 7:26-10.7(e) below) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

(No change in the accompanying equation.)

ii.-v. (No change.)

vi. An incinerator burning hazardous waste listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each principal organic hazardous constituent (POHC) designated (under N.J.A.C. 7:26-10.7(e)) in its permit. This performance must be demonstrated on POHC's that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in N.J.A.C. 7:26-10.7(d)li. In addition, the owner or operator shall provide 14 days prior written notification to the Department of its intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(e)-(m) (No change.)

7:26-10.8 Hazardous waste landfills

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

(e) Operational standards for hazardous waste landfills include the following:

1.-20. (No change.)

21. Specific requirements for hazardous waste F020, F021, F022, F023, F026 or F027 include the following:

i. Hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, and F027 shall not be placed in landfills unless the owner or operator operates the landfill in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accord with all applicable requirements of this subchapter. The factors to be considered are:

(1) The volume, physical and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design or monitoring requirements.

ii. The Department may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, or F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

(f)-(j) (No change.)

7:26-11.1 Applicability

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

(c) The following hazardous wastes shall not be managed at existing hazardous waste facilities subject to regulation under this subchapter:

1. Hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026 or F027 unless:

i. The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

ii. The waste is stored in tanks or containers;

iii. The waste is burned in incinerators that are certified pursuant to the standards and procedures in N.J.A.C. 7:26-11.5; or

iv. The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in N.J.A.C. 7:26-11.6.

7:26-11.5 Hazardous waste incinerators

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

(f) Special requirements for hazardous wastes listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 include the following:

1. Owners or operators of incinerators subject to this subchapter may burn hazardous wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Department indicating that they can meet the performance standards of N.J.A.C. 7:26-10.7 when they burn these wastes.

2. The following standards and procedures will be used in determining whether to certify an incinerator:

i. The owner or operator will submit an application to the Department containing applicable information in N.J.A.C. 7:26-12.2(f)4 and 12.9(b)

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and demonstrating that the incinerator can meet the performance standards in N.J.A.C. 7:26-10.7 when burning these wastes.

ii. The Department will issue a tentative decision as to whether the incinerator can meet the performance standards in N.J.A.C. 7:26-10.7. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The Department will accept comment on the tentative decision for 60 days. The Department also may hold a public hearing upon request or at the Department's discretion.

iii. After the close of the public comment period, the Department will issue a decision whether or not to certify the incinerator.

7:26-11.6 Thermal treatment

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

(f) Special requirements for hazardous wastes listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 include the following:

1. Owners or operators of thermal treatment devices subject to this subchapter may burn hazardous wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Department indicating that they can meet the performance standards in N.J.A.C. 7:26-10.7 when burning these wastes.

2. The following standards and procedures will be used in determining whether to certify a thermal treatment unit:

i. The owner or operator will submit an application containing the applicable information in N.J.A.C. 7:26-12.2(f)4 and 12.9(b) and demonstrating that the thermal treatment unit can meet the performance standards in N.J.A.C. 7:26-10.7 when burning these wastes.

ii. The Department will issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in N.J.A.C. 7:26-10.7. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the thermal treatment unit is located. The Department will accept comments on the tentative decision for 60 days. The Department also may hold a public hearing upon request or at the Department's discretion.

iii. After the close of the public comment period, the Department will issue a decision whether or not to certify the thermal treatment unit.

7:26-12.2 Permit application

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

(f) The following additional information is required from an owner or operator of specific types of hazardous waste management facilities that are used or to be used for storage or treatment:

1. (No change.)

2. For facilities that use tanks to store or treat hazardous waste, except as otherwise provided in N.J.A.C. 7:26-10.5 et seq. a description of design and operation procedures which demonstrate compliance with the requirements of N.J.A.C. 7:26-10.5 et seq., including:

i.-vi. (No change.)

vii. A description of the containment and detection systems to demonstrate compliance with N.J.A.C. 7:26-10 including at least the following:

(1) Drawings and a description of the basic design parameters, dimensions, and materials of construction of the containment system;

(2) Capacity of the containment system relative to the design capacity of the tank(s) within the system;

(3) Description of the system to detect leaks and spills, and how precipitation and run-on will be prevented from entering into the detection system;

(4) Description on how the design promotes drainage or how tanks are kept from contact with standing liquids in the containment system; and

(5) Description of how accumulated liquids can be analyzed and removed to prevent overflow.

3. For facilities that store or treat hazardous waste in surface impoundments, except as otherwise provided in N.J.A.C. 7:26-10.6(a), the owner or operator shall submit detailed plans and specifications accompanied by an engineering report which shall collectively include the information itemized in N.J.A.C. 7:26-12.2(f)3i through xii. For new surface impoundments, the plans and specifications shall be in sufficient detail to provide complete information to a contractor hired to build the surface impoundment even if the owner or operator intends to construct the surface impoundment without hiring a contractor. For existing surface impoundments, comparable detail shall be provided, but the form of presentation need not assume contractor construction except to the extent that the facility will be modified.

i.-xi. (No change.)

xii. For facilities that store or treat hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 in a surface impoundment, a waste management plan describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of N.J.A.C. 7:26-10.6(e) is required. This submittal must address the following items as specified in N.J.A.C. 7:26-10.6(e):

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

4. (No change.)

5. For facilities that dispose of hazardous waste in a landfill, the owner or operator shall submit detailed plans and specifications accompanied by an engineering report which shall collectively include the information itemized in (f)5i through xi below. For new hazardous waste landfills, the plans and specification shall be in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intend to construct the facility without having a contractor. For existing hazardous waste landfills, comparable detail shall be provided, but the form or presentation need not assume contractor construction except to the extent that the facility will be modified.

i.-xi. (No change.)

xii. For facilities that dispose of hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 in a landfill, a waste management plan describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of N.J.A.C. 7:26-10.8(e). This submittal must address the following items as specified in N.J.A.C. 7:26-10.8(e):

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(g)-(l) (No change.)

7:14A-4.4 Application for a permit

(a) (No change.)

(b) For land treatment facilities only.

1.-2. (No change.)

3. For facilities that dispose of hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, and F027 in a land treatment unit, a waste management plan describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of N.J.A.C. 7:14A-4.7(a) is required. This submittal must address the following items as specified in 7:14A-4.7(a):

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

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

7:14A-4.7 Standards for hazardous waste land treatment units

(a) The following applies to this section:

1.-2. (No change.)

3. Hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accordance with all other applicable requirements of this subchapter. The factors to be considered are:

i. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

ii. The attenuative properties of underlying and surrounding soils or other materials;

iii. The mobilizing properties of other materials co-disposed with these wastes; and

iv. The effectiveness of additional treatment, design, or monitoring techniques.

4. The Department may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

(b)(c) (No change.)

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Control and Prohibition of Air Pollution by Volatile Organic Substances

Adopted Amendments: N.J.A.C. 7:27-16.1 through 16.6

Adopted New Rule: N.J.A.C. 7:27-16.8

Proposed: August 19, 1985 at 17 N.J.R. 1969(a).

Adopted: August 19, 1986 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: August 19, 1986 as R.1985 d.379, **with substantive and technical changes** not requiring additional public notice and comment and with portions not adopted (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-5, 13:1D-7, 13:1D-9, 26:2C-8.

Effective Date: September 22, 1986.

Operative Date: October 18, 1986.

Expiration Date pursuant to Executive Order No. 66(1978):

Exempt under 42 U.S.C. 7401 et seq.

DEP Docket No. 041-85-07.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:27-16, "Control and Prohibition of Air Pollution by Volatile Organic Substances" to further regulate emissions of volatile organic substances (VOS) to the atmosphere. These amendments were proposed on August 19, 1985 at 17 N.J.R. 1969(a). The majority of the revisions to N.J.A.C. 7:27-16 are to fulfill commitments made by the Department in the revisions to the 1980 State Implementation Plan (SIP) for Attainment and Maintenance of the National Ambient Air Quality Standard (NAAQS) for Ozone.

Public hearings were held on September 23, and 24, 1985 to provide interested parties the opportunity to present testimony on the proposed amendments. The comment period closed on September 27, 1985. The Department received written testimony from 35 people and 12 people presented comments at the public hearings.

The Department is not adopting the Stage II Vapor Recovery provisions proposed at N.J.A.C. 7:27-16.3(f), (g) and (q) at this time and, in accordance with N.J.A.C. 1:30-4.2(c), these provisions of the proposal have expired. However, the Department is reproposing the Stage II Vapor Recovery provisions in this issue of the Register. Comments are again invited on the Stage II Vapor Recovery provisions.

NOTE: There are four appendices to the Summary of Public Comments and Agency Responses. Copies of the Appendices may be obtained from Herbert Wortreich, Deputy Director, Division of Environmental Quality, CN027, Room 1109, Trenton, New Jersey 08625.

7:27-16.1 Definitions

COMMENT: "Construction ballast" is incorrectly defined as filling an underground storage tank with gasoline to provide stability during construction, whereas it is actually filled with water.

RESPONSE: "Construction ballast" is correctly defined. The weight of the contents settles the soil before the plumbing is installed. According

to the Department's information, water is not used for this purpose because it cannot be completely removed and would contaminate the gasoline subsequently introduced into the tank.

COMMENT: Some of the adverbs in the proposed definition of "extreme performance coating" make the interpretation too narrow and should be deleted. For example, automobiles which are assembled with parts using coating required to meet miscellaneous metal parts coating limits are subjected to changing environmental conditions which are not "consistently" harsh, although the coatings are designed for harsh environments.

RESPONSE: The definition of "extreme performance coating" applies to those coatings that are designed to be exposed to outside weather conditions all of the time, temperatures consistently above 95°C or below 0°C, detergents, solvents, abrasives or scouring agents; or corrosive atmospheres or fluids. For example, extreme environmental conditions include those to which the interior of a freezer cabinet or a washing machine drum are exposed. The definition of "extreme performance coating" has been amended to read "means a coating formulated for [exposure to] and [consistently] exposed to harsh environmental conditions. . . ." where the brackets indicate deletions in the definition proposed in N.J.A.C. 7:27-16.1. However, the use of "all of the time" to qualify weather and "consistently" to qualify temperatures above 95°C and below 0°C will be retained.

COMMENT: The definition of "high performance architectural coating" should include the specifications contained in 605.2 of the Architectural Aluminum Manufacturers Association as an enforcement aid.

RESPONSE: The specifications contained in AAMA Publication Number 605.2-85 "Voluntary Specifications for High Performance Organic Coatings on Architectural Extrusions and Panels" include such parameters as test duration, degree of solar incidence, and depth of coating lost by weather or chemical abrasion. A copy of the specifications, which is several pages, is provided in Appendix I of the Summary of Public Comments and Agency Responses. The Department is incorporating the above specifications by reference in the N.J.A.C. 7:27-16.1 definition for high performance architectural coatings.

COMMENT: "Light liquid" should not be defined separate from, but should be included in, the definition of "volatile organic substances".

RESPONSE: The vapor pressure of 0.044 pounds per square inch absolute (2.27 mm Hg) in the definition of "light liquid" represents the split between kerosene and naphtha and is the criterion established by the United States Environmental Protection Agency (EPA) to distinguish between light liquids and heavy liquids. The definition of VOS includes organic substances which have a vapor pressure of 0.02 pounds per square inch absolute (1 millimeter of Hg) or greater at standard conditions. All light liquids are VOS by virtue of their vapor pressures. The leak program specifically refers to and is intended to apply to light liquids. Therefore, the definition which was proposed has been adopted.

COMMENT: Under the existing regulations, vinyl coaters have relied upon the classical definition of plastisols to plan and implement compliance with the vinyl coating standard contained in N.J.A.C. 7:27-16.5, Table 3B. The proposed definition of "plastisol" constitutes a major change to N.J.A.C. 7:27-16 and not simply a clarification.

RESPONSE: The application of plastisols and organosols to vinyl-coated fabric or vinyl sheets has not been and is not now subject to the vinyl coating standard contained in N.J.A.C. 7:27-16.5, Table 3B. Vinyl coaters have reduced emissions of plastisols and organosols to prevent opacity violations of the particulate emission standards of N.J.A.C. 7:27-6.2(d) and any control of VOS has been incidental to and not a purpose of that reduction. The Department's policy has been that existing sources coating vinyl substrate are not required to control VOS emissions from the application of plastisols or organosols and, therefore, has not granted sources credit for these reductions. The vinyl coating industry, while disagreeing with this policy, has long been aware of it. Therefore, the proposed definition is not a major change of Department policy, but is a clarification to ensure that this policy is perfectly clear.

COMMENT: In presenting the proposed definition of plastisol, the Department provided inadequate notice, thus depriving the public of an opportunity to comment and violating the state law governing rulemaking procedures.

RESPONSE: The Department provided adequate opportunity to the public to comment on not only the definition of plastisol but on this entire rule amendment. The comment period lasted for forty days (from August 19, 1985 to September 27, 1985), during which time two public hearings were held and public comment was invited. Additionally, notice of the proposed rule appeared in a number of newspapers throughout the State. Therefore, State law governing rulemaking procedures was not violated.

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COMMENT: The definition of plastisol should not include organosols, which are plastisols to which volatile organic solvents have been added. According to the "Condensed Chemical Dictionary," the change from a plastisol to an organosol ordinarily occurs when the concentration of any volatile solvent added exceeds five percent of the total. Organosols contain 10 to 20 percent VOS that should not be excluded from the regulation. These coatings are then available for use in a mathematical combination of source gases, or bubble, pursuant to N.J.A.C. 7:27-16.6(c)4. The proposed N.J.A.C. 7:27-16.1 defining plastisol would exclude significant VOS emissions from regulation. The total uncontrolled emissions of VOS from these sources would be more than 1200 tons per year.

RESPONSE: The commenter has apparently concluded that organosols are not a subset of plastisols. The Department has historically included organosols as a subset of plastisols because the properties of the coatings are more similar than dissimilar. Plastisols are defined as a liquid dispersion of a finely divided resin in a plastisizer. Plastisols are usually 100 percent solid with no volatiles; when volatile content exceeds five percent of the total weight it is called an organosol. Regardless of the fact that there may be different interpretations as to whether or not organosols are a subset of plastisols, the Department has and will continue to exclude both from VOS regulations.

The distinct properties of plastisols prevent them from being substituted for a formulation with 3.8 pounds of VOS per gallon of coating which is the maximum allowable emissions per volume of coating, minus water, for sources coating vinyl or urethan fabric or sheets. This vinyl coating standard was not intended to apply to plastisols, which inherently contain little or no volatile solvents. It is inappropriate to credit reductions in emissions of plastisols as part of a mathematical combination of source gases in order to avoid control of other regulated sources which emit significant amounts of VOS.

The Department is aware that there are VOS emissions from the application of plastisols. However, because both organosols and plastisols have inherently very low VOS contents, particularly in comparison to typical surface coating formulations, it is unlikely that it will become necessary to reduce emissions from their application. Department files indicate that the commenter's emissions estimate of 1200 tons per year from the application of plastisols includes the plastisizer and solids in the coating and does not represent only VOS emissions.

COMMENT: The definition of "plastisol" should explicitly include organosols and clearly exempt them from VOS compliance calculations. This change must be made in order to meet Clean Air Act requirements.

RESPONSE: The definition of "plastisol" in N.J.A.C. 7:27-16.1 includes organosols. The Department has historically excluded organosols from VOS compliance calculations and will continue to do so.

COMMENT: The proposed definition of "plastisol" exceeds the Department's legal authority by applying extraordinary controls throughout the State to obtain a credit in the New Jersey/New York/Connecticut Air Quality Control Region. No basis exists for this action.

RESPONSE: The definition of plastisol was not proposed to balance emission reductions between air quality control regions. The definition was proposed to clarify that plastisols, of which organosols are a subset, were excluded from the vinyl, paper and fabric coating regulations promulgated in 1981. No credit is being taken because there are no emission standards for plastisols or organosols.

COMMENT: Among the definitions for wood furniture coatings, the differences between opaque stain and pigmented coat and between sealer and wash coat need to be distinguished. Also, stain should be defined.

RESPONSE: The coatings for wood furniture generally include the same constituents, but in different proportions. The typical wood finish consists of the following materials which are generally applied in the order given: sizing or bleach, semitransparent stains, wash coat, filler or opaque stain, sealer, pigmented coat, and topcoat. A simplified finish eliminates the wash coat, semitransparent stain, and pigmented coat applications. Semitransparent stains, opaque stains, and pigmented coats, in that order, increase in the content of dyes, chemicals, or pigments. For instance, semitransparent stains are primarily solutions of dye in various solvents, but may also contain translucent or transparent pigments. Opaque stains and pigmented coats can be differentiated by the amount of pigments they contain and by the order in which they are applied. Wash coats and sealers are similarly distinguished. Wash coating usually takes place between staining and filling. Its purpose is to stiffen small wood fibers and to seal the stain. Sealers will also raise any loose wood fibers that protrude through the coating, but their main purpose is to seal the wood and protect the preceding color coats.

Stains may be defined as formulations which change the color of wood through the application of transparent or semitransparent liquids made from dyes, pigments or chemicals without disturbing or concealing the texture or markings.

The Department does not believe that the definitions discussed above require clarification in the regulation, or that stain needs to be defined in this regulation. However, it is useful to list the coatings in N.J.A.C. 7:27-16.5, Table 3E in order of application to distinguish the coating by purpose and sequence in application. The different formulations are named as much for a description of the contents as they are for the purpose of the coating in a sequence of coating applications. The coatings in Table 3E have been arranged in the following order: semitransparent stain, wash coat, opaque stain, sealer, pigmented coat, and clear topcoat. The definition and emission standard for "final repair coatings" are deleted since these coatings consist of all the aforementioned coatings and are generally applied by hand.

COMMENT: The proposed definition of "tablet coating" should reflect that surface coating formulations are applied to a "formed" pharmaceutical product.

RESPONSE: The final definition has been amended to reflect that the standard only applies to formed pharmaceutical tablets.

7:27-16.3 Transfer operations

COMMENT: The requirement set forth at N.J.A.C. 7:27-16.3(c)4 to install a vapor control system was based on a 90 percent efficiency. To mandate a five percent increase in efficiency imposes an unnecessary economic burden for a minimal improvement in emission reductions.

RESPONSE: The guidance provided by the EPA in "A Study of Vapor Control Methods for Gasoline Marketing Operations" (EPA-450/3-75-046-a) required a vapor control system which could prevent at least 90 percent by weight of the vapors displaced during the transfer of gasoline from any delivery vessel into any stationary storage tank with a capacity greater than 250 gallons. The design criteria for the vapor control system include submerged fill, a gauge well, vapor return and overall vapor tightness. The guidance document (EPA-450/3-75-046-a) also states that suitable restrictive orifices or pressure-relief valves are required whenever the systems would otherwise be incapable of achieving 90 percent control. The mass emission limit of 6.7 pounds of VOS per 10,000 gallons of gasoline transferred was provided as an alternative standard to the requirements of N.J.A.C. 7:27-16.3(c)1 through 3 for vapor control and vent pipe restrictions. Because of the varying relationship between control efficiency and mass emission limits, the Department has chosen to rely on an equipment-based standard and has lowered the proposed 95 percent to 90 percent and N.J.A.C. 7:27-16.3(c)4 has been changed to reflect this. Systems which cannot meet a 90 percent efficiency standard will be required to install vent pipe restrictions.

COMMENT: N.J.A.C. 7:27-16.3(n) should be modified to read "... shall not apply to a storage tank being filled for the purposes of construction ballast".

RESPONSE: This addition, when combined with the proposed definition of construction ballast, would read "... shall not apply to a storage tank being filled for the purposes of filling an underground storage tank with gasoline to provide stability during construction." The Department does not agree that N.J.A.C. 7:27-16.3(n) should be so modified.

COMMENT: The following comments were received on the Stage II Vapor Recovery provisions:

1. The Department made a commitment in the 1983 SIP revisions to reevaluate Stage II. The results of that evaluation have never been published; therefore, no commitment has been made or implied. Stage II is not defined as a reasonably available control technology by the EPA and is not required by the EPA.

2. The New Jersey Petroleum Council and its member companies support a decision in favor of carbon canisters on vehicles to control refueling and evaporate losses of gasoline. These controls have been successfully demonstrated and represent available technology. The letter of Robert Hughey, Commissioner, New Jersey Department of Environmental Protection to Lee Thomas, Administrator, United States Environmental Protection Agency, and the adoption of Joint Resolution Six assert the State's endorsement of onboard canisters as opposed to Stage II vapor recovery.

3. In contrast to onboard canisters, Stage II vapor recovery systems are costly to install and operate. Operating costs will exceed the estimates the Department has presented. The installation involves risks of improper construction, heavy nozzles and an additional hose to trap vapors.

4. Requiring Stage II vapor recovery will upset the competitive balance in the market, driving small independent dealers out of business and ultimately concentrating the gasoline market in fewer, larger stations.

5. Manufacturing capacity to supply parts and equipment for Stage II is not sufficient to meet the demand or the schedule imposed by the proposed rule or the schedule imposed by the Clean Air Act. If parts and equipment were available, enough qualified contractors to install the systems would not be available. The available manufacturing capacity and qualified contractors will result in implementation and reduction of emissions by Stage II vapor recovery in a timeframe that approximates the half-life of the vehicle fleet turnover, which is five years. Since the length of time required for onboard canisters to achieve emission reductions in excess of Stage II approximates five years because of vehicle fleet turnover, the need for Stage II as an interim measure is negated.

6. If Stage II requirements are adopted, then low volume stations should not be exempted. This exemption would exacerbate market disruptions, and economically overburden large volume stations.

7. The proposed Stage II requirements should exclude marina stations. The average marina in New Jersey sells less than 50,000 gallons of gasoline per year, principally during June, July and August. Most marinas only sell gasoline as a convenience to customers and do not make a profit.

8. Requiring a 97 percent efficient system to be installed at stations with a monthly throughput of greater than 200,000 gallons is not consistent with data published by the EPA which states that the theoretical efficiency of the most sophisticated systems is only 95 percent.

9. The Department may be of the opinion that a Stage II system does not require installation of vapor return line, and therefore, that excavation is not necessary.

10. The wording of N.J.A.C. 7:27-16.3(f) should include "gasoline vapor laden" to qualify the condition of the vehicle fuel tank. Automobile manufacturers fill new cars with a small amount of gasoline, but there are no gasoline vapors to prevent from being emitted into the atmosphere.

11. The December 31, 1987 attainment date is unrealistic, arbitrary and likely to be changed by Congress, and we believe that the EPA will not impose sanctions if all reasonable control measures are implemented. History shows that the EPA will not actually impose sanctions for not attaining a standard if good faith efforts are being made. The EPA is about to announce a national strategy to control vehicle refueling emissions by onboard canisters. Therefore, the imposition of Stage II in New Jersey would be redundancy and more costly when the systems overlap.

12. In contrast to Stage II, the efficiency of the onboard canister does not depend on an expensive enforcement program. The Department should be prepared to implement a vigorous enforcement program.

13. Were the latest forecasts for the introduction of vehicles with fuel injection and lead phase-down considered in the total emission reduction expected? The state of Virginia has shown that fleet turnover will bring their non-attainment areas into compliance.

14. The Department's efforts to apply VOS regulations on an equitable basis, rather than only to industrial sources, are commendable. It is unreasonable to expect industry to continue to reduce emissions while emissions from commercial sources such as gasoline filling stations add up to a significant total.

15. The Department should require that the entire Stage II vapor recovery system be vapor tight, even when not being used. This would enable an inspector to site a station owner for allowing transfers of gasoline using faulty equipment even if the inspector did not witness a transfer. The Department should include in N.J.A.C. 7:27-16.3 a provision to prohibit the use of a dispensing pump until Stage II equipment found leaking has been repaired and reinspected.

RESPONSE: At this time, the Department is not adopting the Stage II Vapor Recovery provisions and is, instead, reproposing them in this issue of the New Jersey Register to better coordinate the timing of the Stage II Vapor Recovery program with respect to certain gasoline dispensing facilities and the forthcoming leaking underground storage tank program. The Department is inviting comment on the reproposal.

7:27-16.4 Open top tanks and surface cleaners

COMMENT: N.J.A.C. 7:27-16.4(g)5 should refer to a VOS kept at an operating temperature higher than the boiling point and not lower.

RESPONSE: The commenter has incorrectly cited N.J.A.C. 7:27-16.4(g)5 as referring to temperature. The commenter is apparently referring to N.J.A.C. 7:27-16.4(g) which applies to conveyerized surface cleaners that are heated, but maintained below the boiling point of the VOS contained. This subsection is correct as proposed.

7:27-16.5 Surface coating and graphic arts operations

COMMENT: N.J.A.C. 7:27-16.5(a) should include a new paragraph stating that no person shall cause, suffer, allow or permit the use of a surface coating formulation that exceeds the maximum allowable emissions per volume of coating (minus water) as set forth in Tables 3A, 3B,

3C, 3D and 3E for those sources that comply with the regulation by reformulation. This change must be made in order to meet Clean Air Act requirements.

RESPONSE: A source which demonstrates compliance by reformulation must meet or be less than the limits set forth in the tables; therefore, the above provision would be redundant. N.J.A.C. 7:27-16.5(a)1 and 2 clearly state that a source may not exceed a maximum allowable emission rate. The provisions prohibit the use of noncomplying coating unless control equipment is installed that reduces emissions to or below the allowable emission rate which is based on the use of a complying coating.

COMMENT: N.J.A.C. 7:27-16.5(a)1 should state that sources included in a mathematical combination of source gases pursuant to N.J.A.C. 7:27-16.6(c)4, or which had installed control equipment to reduce VOS emissions and thus comply with N.J.A.C. 7:27-16.5, can continue to evaluate compliance status on the volume basis pursuant to N.J.A.C. 7:27-16.5(a)1.

RESPONSE: All surface coating operations not in a bubble which had installed control equipment to reduce emissions and comply with N.J.A.C. 7:27-16.5 will continue to be evaluated on the volume basis pursuant to 16.5(a)1. Clarification of this provision is not necessary. Individual surface coating sources included in a mathematical combination of source gases cannot be evaluated using the two methods of calculation provided in N.J.A.C. 7:27-16.5(a)1 and 2. Such sources must be evaluated using the solids applied basis set forth at N.J.A.C. 7:27-16.5(a)2.

New applications for bubbles must comply with the schedule in N.J.A.C. 7:27-16.5(j) with final compliance required by December 31, 1987. In cases of reformulated coatings, where N.J.A.C. 7:27-16.5(a)2 is less stringent than N.J.A.C. 7:27-16.5(a)1, the provisions of (a)2 are effective upon promulgation, as set forth at N.J.A.C. 7:27-16.5(a)4.

COMMENT: N.J.A.C. 7:27-16.5(a) appears to inadvertently omit tables 3D and 3E. This change must be made in order to meet requirements of the Clean Air Act.

RESPONSE: N.J.A.C. 7:27-16.5(a) should have referenced Table 3E, and the rule has been amended accordingly. The allowable emission rates for source operations subject to Table 3D are established by the provisions of N.J.A.C. 7:27-16.5(f) rather than 16.5(a) and, therefore, reference to Table 3D in 16.5(a) is inappropriate.

COMMENT: N.J.A.C. 7:27-16.5(a) should include a new provision to clarify that state-of-the-art control equipment installed pursuant to N.J.A.C. 7:27-8 will be expected to reduce emissions to or below the maximum allowable emission rate. This change must be made in order to meet requirements of the Clean Air Act.

RESPONSE: The Department's air pollution control permit review process ensures that sources which install control equipment to comply with N.J.A.C. 7:27-16.5(a) conform to the state-of-the-art for that source and reduce emissions to meet the standards of 16.5(a). Therefore, to state that such equipment must reduce emissions to or below the standard is redundant. There are no provisions of the Clean Air Act that require the suggested addition to the rule.

COMMENT: The proposed new calculation method for determining maximum alternative allowable hourly emission rates for bubbles set forth at N.J.A.C. 7:27-16.5(a)2 would negate previous efforts to comply by reformulation and capital investment and would impose limits beyond the lowest achievable emission rate. In the case of coatings with a very low solids content, the required collection and destruction efficiency reaches 100 percent, which is technically impossible.

RESPONSE: In cases where the proposed N.J.A.C. 7:27-16.5(a)2 would impose limits beyond the lowest achievable emission rate, the affected source may apply to the Department for a variance pursuant to N.J.A.C. 7:27-16.10. This provision states that whenever a person responsible for the emission of VOS believes that advances in the art of control for the kind and amount of VOS emitted have not developed to a degree that would enable the requirements of this Subchapter to be attained, the person may apply to the Department in writing for a variance, setting forth the reasons and justifications therefor.

COMMENT: The proposed N.J.A.C. 7:27-16.5(a)2 should use the actual coating density in the numerator and 7.36 in the denominator.

RESPONSE: No justification for this comment was provided and the Department has not made the suggested change. The typical solvent density of 7.36 pounds per gallon was used by the EPA in developing its reasonably available control technology guidance documents and represents a mixture of methyl ethyl ketone and methyl isobutyl ketone. The Department will use the same solvent density in both the numerator and denominator. Calculations provided in Appendix II of the Summary of

Public Comments and Agency Responses illustrate the inequities caused by determining allowable emission rates by using two densities in the formula contained in N.J.A.C. 7:27-16.5(a)2.

COMMENT: The proposed N.J.A.C. 7:27-16.5(a)2 should become effective immediately and not on June 30, 1987 because most sources affected by this change are presently in violation of the bubble provisions at N.J.A.C. 7:27-16.6(c)4. This change must be made in order to comply with requirements of the Clean Air Act.

RESPONSE: The existing approved mathematical combinations of source gases (bubbles) are not in violation of the former standards for bubbles, but most sources affected by the proposed N.J.A.C. 7:27-16.5(a)2 will be in violation of the new standards for bubbles. It is unrealistic to expect these sources to apply for and receive approved new permits and order, purchase, and install control equipment immediately. Therefore, existing approved bubbles will be reevaluated pursuant to N.J.A.C. 7:27-16.5(a)2 in accordance with the schedule adopted in N.J.A.C. 7:27-16.5(j). The final compliance date has been extended from June 30 to December 31, 1987 because of delays in promulgating this rule.

COMMENT: N.J.A.C. 7:27-16.5(a)2 should include an equation for calculating the daily weighted mean.

RESPONSE: The daily weighted mean of the mass of emissions from a single surface coating line that manufactures more than one product must equal or be less than the sum of maximum allowable mass of emissions over the hours of operation in a day for each product as determined by N.J.A.C. 7:27-16.5(a)1 for the various coatings. In practice, it is not necessary to set up this calculation as an equation. The mathematical exercise is a simple balance where only one variable, y , is changed for determining the allowable and actual emission rates. Therefore, the Department is not incorporating this equation into N.J.A.C. 7:27-16. If the commenter needs further clarification, the following equation may be used.

$$\sum_{j=1}^n (w)(y)(z) = \sum_{i=1}^n (w)(x)(z)$$

wheren = number of coatings applied in one day

w = number of hours the ith coating is applied (hr)

y = applied vos content of the ith surface coating formulation, minus water (lb/gal)

x = maximum allowable emissions per volume of coating, minus water for the ith coating pursuant to N.J.A.C. 7:27-16.5 (lb/gal)

z = volume of the ith coating applied per hour (gal/hr)

COMMENT: It is not clear that Table 3C applies only to automobile and light duty truck coatings.

RESPONSE: The title of Table 3C has been changed to "Alternative Maximum Allowable Emissions with Minimum Transfer Efficiencies Required for Automobile and Light Duty Truck Surface Spray Coating Operations".

COMMENT: N.J.A.C. 7:27-16.5(e) should read "... may apply to the Department for an equivalent maximum allowable emission rate which reflects an improvement in transfer efficiency above 60 percent." The present wording does not make it clear that the credit is only for an improvement above 60 percent. This change is required in order to meet requirements of the Clean Air Act.

RESPONSE: The existing wording states that the owner or operator must demonstrate that surface coating formulations are applied at a transfer efficiency of greater than 60 percent. The effect is to allow sources to meet the existing emission standards by using an alternative coating applied at a transfer efficiency of greater than 60 percent which will achieve an equivalent maximum allowable emission rate. The Clean Air Act does not address this issue, and no details of such requirements were provided by the commenter.

COMMENT: The proposed standards for pharmaceutical tablet coatings in N.J.A.C. 7:27-16.5 Table 3B are strict and it will require considerable effort and cost to comply with them. Nevertheless, we believe they are fair and we commend the Department for the spirit of cooperation in which they were developed. However, the schedule of compliance does not allow reasonable time for implementation. The proposal requires that the plan for compliance be submitted by April 1, 1986 which allows four months or less and is insufficient time to complete the task. A more realistic and achievable time frame is eight months after adoption. The proposal requires that documentation of progress toward reformulation be submitted beginning January 1, 1986, which allows one month or less

to complete. At least four months from adoption should be allowed. The proposal requires that construction and installation shall commence by January 1, 1987. This date should correspond to the submittal of the plan for compliance. Lastly, we recommend that two final compliance dates should be set depending on the method of compliance. Ten months are necessary to complete construction and start up of control equipment. If reformulation is chosen as a means of compliance, three years would be necessary to include time for approval by the United States Food and Drug Administration (FDA).

RESPONSE: The flexibility of the schedule of compliance is limited by the attainment deadline of December 31, 1987 set by the Clean Air Act. However, based on the information provided, the following compliance dates have been changed. Compliance plans and reports detailing progress toward the development of reformulated coatings must be submitted by January 30, 1987 and January 1, 1987 pursuant to N.J.A.C. 7:27-16.5(j)1 and 2, respectively. Construction and installation shall commence by May 1, 1987 pursuant to N.J.A.C. 7:27-16.5(j)3. The final compliance date pursuant to N.J.A.C. 7:27-16.5(j)4 has been extended from June 30, to December 31, 1987.

COMMENT: Two major problems exist with the proposed regulation for tablet coating operations in that the Department cites preferences for carbon adsorption and incineration. Major unknowns exist regarding the ability to regenerate the activated carbon which will, most probably, be a hazardous waste. The Department's identification of incineration as a method of compliance neglects several significant problems, including the cost of auxiliary fuel and the costs and operating problems associated with supplemental control equipment (scrubbers) which might be required.

RESPONSE: The Basis and Background document for the proposed revisions to N.J.A.C. 7:27-16 points out that carbon adsorption is a demonstrated technology to control VOS emissions from tablet coating operations. Thermal oxidation is also a possible control method. The Department did not intend to state a preference for any method of VOS control on tablet coating operations.

COMMENT: Polyvinylidene fluoride is the key component of the resin binder for high performance architectural coatings which meet specification 605.2 of the Architectural Aluminum Manufacturers Association. Successful formulations meeting the specification must contain at least 6.25 pounds of VOS per gallon of coating as applied, excluding water. We are not aware of any spray formulation using polyvinylidene fluoride that could meet the standard of 4.2 pounds of VOS per gallon of coating as proposed in N.J.A.C. 7:27-16, Table 3B. High performance architectural coatings should have a maximum allowable emissions limit of 6.25 pounds per gallon of coating as applied, because of its superior durability. These coatings actually reduce air pollution over their 20 plus year life because field repainting is virtually unnecessary. Further control of VOS emissions from these coatings should be pursued case by case and the emission reductions achieved should be available to demonstrate compliance in a bubble.

RESPONSE: The proposed standard does not represent the actual solvent content of 6.25 pounds per gallon because the Department expects emission reductions to be achieved. The Department intended the standard to reflect the achievable capture and control efficiency of equipment to reduce VOS emissions from the application of this formulation to aluminum panels and extrusions. However, the proposed 4.2 pounds of VOS per gallon of coating did not reflect the emission reduction that is reasonably achievable. A maximum allowable emission per volume of coating of 5.9 pounds per gallon is a reasonable standard based on a 95 percent control efficiency of the curing oven emissions. Therefore, N.J.A.C. 7:27-16.5, Table 3B has been amended accordingly.

COMMENT: There has yet to be shown a need to reduce the emissions from the typical plastic shower curtain coating operations which may exhaust 300 ppmv of methyl ethyl keton (MEK) out above the roof when the Occupational Safety and Health Administration (O.S.H.A.) allows a worker to breathe up to 200 ppmv of MED for up to 40 hours a week.

RESPONSE: The revisions to N.J.A.C. 7:27-16 do not contain standards for the surface coating of plastic. This source category is being evaluated for inclusion in future revisions to N.J.A.C. 7:27-16. It should be noted that O.S.H.A. standards are irrelevant to ambient, outdoor air pollution are not appropriate for determining acceptable ambient pollution levels.

COMMENT: The structural steel fabricating industry generally applies primers or paints by spray techniques, usually done outside. If dip coating is used, the transfer efficiency achieved is in excess of 90 percent. The problem with dip painting is that paint manufacturers have not been able to formulate a coating with less than 4.0 pounds of VOS per gallon that

will stay in an emulsified state. We are requesting an allowance for greater solvent content on the basis of increased transfer efficiency, similar to that which is proposed in N.J.A.C. 7:27-16.5(e) for metal furniture and large appliances.

RESPONSE: The existing N.J.A.C. 7:27-16.5, Table 3B includes an emission standard of 3.5 pounds of VOS per gallon of coating applied (minus water) for air-dried miscellaneous metal part coatings based on the OAQPS Guideline Series, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products," (EPA-950/2-78-015). The guideline discusses spray, flow and dip coating techniques and estimates that emission reductions can be achieved from each technique by various control alternatives. In the case of dip coating, the guideline recognized the transfer efficiency of 90 percent, and recommends that emission reductions be achieved by conversion to waterborne coatings or by electrodeposition of waterborne coatings at a cost effectiveness of approximately \$0.81 per pound or \$1.11 per pound, respectively. The Department cannot allow an alternative allowable emission rate for a standard which was developed with consideration of all the coating application techniques discussed above.

If the commenter believes that standards are not achievable, an application may be made to the Department for a variance pursuant to N.J.A.C. 7:27-16.10. The application must justify why the standards are not achievable.

COMMENT: A transfer efficiency of 65 percent as proposed in N.J.A.C. 7:27-16.5, Table 3E for wood furniture coating is not achievable when coating case good furniture based on reasonably available control technology. Furniture and wood parts can be flat stock or a complicated three dimensional piece. Case goods refers to a finished or assembled piece of furniture. Flat goods can be roller coated and achieve transfer efficiencies greater than 65 percent. This efficiency cannot be achieved on case goods. We recommend that the minimum transfer efficiency be deleted and that references to flat line processes, electrostatic processes, airless spray, and air assisted airless be adopted wherever feasible with the understanding that the use of one of these techniques constitutes compliance.

RESPONSE: The proposed requirement for a 65 percent transfer efficiency was based on information that a 40 percent transfer efficiency was being achieved by conventional, or air spray equipment. Testimony received during the comment period has shown that this is erroneous and that conventional equipment only achieves 25 to 30 percent transfer efficiency. After careful consideration of the testimony received, the Department will require a minimum transfer efficiency of 40 percent in N.J.A.C. 7:27-16.5(h) for minor sources. This transfer efficiency is to be achieved using airless, air-assisted airless, heated airless or electrostatic spray equipment. Wood furniture coating facilities that are major sources of VOS emissions must achieve an overall 65 percent transfer efficiency by using electrostatic spray or a combination of methods such as flat line processes, that result in an overall transfer efficiency of 65 percent. For the purposes of this regulation, a major source in the wood furniture finishing industry is defined in N.J.A.C. 7:27-16.5(h)2 as one emitting 50 tons of VOS per year or greater. Because of the nature of the wood furniture finishing industry, the Department has deviated from current practice, and is defining effected sources in tons per year instead of pounds per hour. The use of any of the applicable spray techniques will constitute compliance with the requirement for the transfer efficiencies set forth at N.J.A.C. 7:27-16.5(h). The Department is retaining the minimum required transfer efficiencies as the standard for new or equivalent equipment.

COMMENT: Although the maximum allowable emissions proposed in N.J.A.C. 7:27-16.5, Table 3E for clear topcoat and sealer are achievable, the maximum allowable emissions for the stains are not.

RESPONSE: It was the Department's understanding that the coatings standards proposed in N.J.A.C. 7:27-16.5, Table 3E represent typical coatings and no significant emission reductions were expected from compliance with these standards. The emission reductions were expected from increases in transfer efficiency and corresponding decreases in coating consumption. Testimony received at the public hearings indicated that a VOS content of 6.8 pounds per gallon is typical for stains. Therefore, the standard for semitransparent stains will be increased from 6.6 to 6.8 pounds per gallon of coating, minus water, to reflect the solvent content of available stains.

COMMENT: Although heated airless spray allows a significant improvement in transfer efficiency over conventional air spray used in the wood furniture industry, it necessitates reformulation of present coatings and major purchases of new equipment. No documentation was provided

in the Basis and Background document regarding the proposed N.J.A.C. 7:27-16.5, Table 3E to show that heated airless has a greater transfer efficiency than airless or air assisted airless.

RESPONSE: The Department did not suggest that a heated airless spray process can achieve a transfer efficiency greater than airless or air assisted airless spray. The heated airless spray allows the use of coating with a higher solids content and therefore may achieve emission reductions equivalent to using standard coatings and electrostatic spray equipment at a transfer efficiency of 65 percent.

COMMENT: The existing five gallon per day exemption provided in N.J.A.C. 7:27-16.5(c) is very important to the wood furniture finishing industry because decorating stains have very low volumes of solids. Fly speck stain, pad stains, striping and gun shade stain are important decorating items that do not lend themselves to any technique to reduce VOS or improve transfer efficiency. We believe the proposal would not be measurably affected by increasing the exemption of 100 tons per year. This level is the same as proposed in Illinois, although not adopted. They are also proposing a 65 percent transfer efficiency. It is also interesting to note that New York and Connecticut still exempt the wood surface coating industry and they are in the same Air Quality group.

RESPONSE: The revisions to the 1980 SIP for attainment and maintenance of the NAAQS for ozone is divided into two strategies with two consecutive schedules. The majority of the proposed revisions are the result of the first strategy to implement all reasonably available control technology. Lowering the exclusion rates in N.J.A.C. 7:27-16.5(c) is part of the second strategy, referred to as "extraordinary measures." The Department proposed the lower exclusion rates in advance of the schedule projected in the SIP for the purpose of seeking comments from the regulated community. The Department is not adopting the proposed lower exclusion rates at this time. Based on the comments received, the Department has decided to continue its evaluation of the effects of lowering the exclusion rates in N.J.A.C. 7:27-16.5 and 16.6. The Department intends to propose appropriate exclusion rates at the same time standards are proposed for the other extraordinary measures which may include automobile refinishing, architectural coatings, and barge and tanker loading.

As for increasing the exemption to 100 tons per year, the extent of the ozone problem in New Jersey does not warrant a 100 ton per year exclusion rate for any source. The present standards require emission reductions from sources as small as seven tons per year.

The Department committed in its SIP to regulating all source categories in which one facility was identified as having greater than 100 tons of VOS emissions per year. The Department is unaware of the reasons why New York and Connecticut are not regulating wood furniture finishing operations.

COMMENT: The proposed N.J.A.C. 7:27-16.5, Table 3E for wood furniture finishes will prevent companies in New Jersey from being able to compete with out-of-state goods. We recommend that a plant bubble policy be established so that emission reductions in one area will contribute to an overall solution.

RESPONSE: Wood furniture finishers may use the bubble provision promulgated at N.J.A.C. 7:27-16.6(c)3, 4 and 5iii. Therefore, companies in New Jersey should be able to compete with out-of-state goods. Pursuant to N.J.A.C. 7:27-16.5(a)2, emission credits and debits are based on the mass of VOS emitted per gallon of solids applied for bubbles and maximum alternative allowable hourly emission rates can be assigned to each source. The source must also comply with standards of N.J.A.C. 7:27-16.5(h)1 and 2 pertaining to transfer efficiency.

COMMENT: Neither incineration nor carbon adsorption are economical or practical methods to control VOS emissions from wood furniture coating operations subject to the proposed N.J.A.C. 7:27-16.5, Table 3E. Costs for incineration are unusually high because of the dilute streams which require auxiliary fuel to be combusted and costs for adsorption are high because of carbon disposal.

RESPONSE: The Department is not requiring incineration or carbon adsorption as emission control methods for wood furniture refinishing. Emission reductions in the wood furniture finishing industry are expected to be achieved by more efficient methods of coating application. This is discussed on page 15 of the Basis and Background Document.

COMMENT: There are about five different test methods for volatile organic emissions. Since they do not all give the same results, reference should be made to the specific Departmental or EPA test method which will be applicable.

RESPONSE: The Department proposed "Air Test Method 3 Sampling and Analytical Procedures for the Determination of Volatile Organic Substances from Source Operations", N.J.A.C. 7:27B-3 on September 16,

1985 at 17 N.J.R. 2194(a). Air Test Method 3 is being adopted simultaneously with the amendments to N.J.A.C. 7:27-16. The methods set forth in N.J.A.C. 7:27B-3 will be applicable for all VOS emission testing necessary to determine compliance with N.J.A.C. 7:27-16. The Department agrees that there should be cross references between Air Test Method 3 and N.J.A.C. 7:27-16 and a cross reference table has been provided in Appendix III to the Summary of Public Comments and Agency Responses. Procedures for determining the volatile organic substances in surface coating formulations are contained in N.J.A.C. 7:27B-3.10. Requests for copies of N.J.A.C. 7:27B-3 should be directed to the Chief, Bureau of Technical Services, 380 Scotch Road, West Trenton, New Jersey, 08628.

COMMENT: There has been very little reference to prior test reports of VOS tests in New Jersey by the Department. There has been no consultation with the key independent testing/consulting firms in preparing this latest revision of N.J.A.C. 7:27-16.5. The Department should present test data and health report data to show that the proposed N.J.A.C. 7:27-16 really is necessary. No data was provided on the actual ozone levels in any of the 21 New Jersey counties or the expected reduction in ozone if these measures are taken.

RESPONSE: The adverse health effects of exposure to elevated ambient ozone levels are well documented and are the basis for the national ambient air quality standard. Data on the elevated ozone levels found in New Jersey can be found in the air quality report published annually by the Bureau of Air Quality Management and Surveillance. Excerpts from the "1984 Air Quality Report" regarding ozone are provided in Appendix IV to the Summary of Public Comments and Agency Responses. A copy of the full report may be obtained from the Acting Assistant Director, Bureau of Air Quality Management and Surveillance, CN027, Room 1109, Trenton, New Jersey, 08625.

COMMENT: The existing N.J.A.C. 7:27-16 does not clearly reference Graphic Arts Operations. To clarify this, the title and N.J.A.C. 7:27-16.5(a), (b) and (c) should cite Graphic Arts Operations.

RESPONSE: The Department agrees that such a clarification is warranted and the heading of N.J.A.C. 7:27-16.5 and N.J.A.C. 7:27-16.5(b) and (c) have been amended accordingly. The provisions of N.J.A.C. 7:27-16.5(a) do not apply to graphic arts operations. Allowable emission rates for such operations are established pursuant to N.J.A.C. 7:27-16.5(f).

COMMENT: The Department knew that it had a major error in its March 1, 1982 revision to N.J.A.C. 7:27-16 in its Graphic Arts requirements, yet despite many requests it failed to issue any corrective bulletin to industry or the testing/consulting firms in the State.

RESPONSE: The March 1, 1982 revision to N.J.A.C. 7:27-16.5 for graphic arts operations was correct. The change that the Department is adopting converts units of volume per volume to units of mass per volume using a solvent density of 7.36 pounds per gallon and is not related to the 1982 revision. Simple and precise test methods exist for determining the mass of solvent per volume of coating. The proposed and existing standards are numerically equivalent for solvent densities of 7.36 pounds per gallon which is an appropriate density for coatings, or inks, used in graphic arts operations.

COMMENT: The costs for fume incinerators will have a significant impact on the surface coating industry. The Department says the direct opposite. Calculations also show that the uncontrolled emission rate of 300 ppmv of methyl ethyl ketone (MEK) will exactly equal the emission rate of controlled MEK plus hydrocarbons from the oil-fired fume incinerator used to control those emissions. It is true that some sources really need a fume incinerator because their solvent/organic emissions are higher than necessary and/or are adversely affecting the neighbors. However, those sources are 10 percent, at the most 15 percent, of the coating operations in New Jersey.

RESPONSE: The Basis and Background document for the proposed revisions to N.J.A.C. 7:27-16 does not state that the costs for fume incinerators will have an insignificant impact on the surface coating industry. The document states that imposing an emission standard on the operations of any industry will affect the profitability and competitive position of firms and the cost of products. The degree of the economic affect will depend on the method chosen to reduce emissions and the size of the effected facility.

Some of the calculations provided to justify the above comment cannot be substantiated. For example, there is no reference provided for the hydrocarbon emission factor of 75 parts per million by volume and the molecular weight of Number 2 fuel oil was incorrectly stated as 260 pounds per pound mole. The commenter's calculations indicate that the sum of unburned MEK and the hydrocarbon emissions from burning

Number 2 fuel oil is equal to the original mass of emissions from the surface coating operation.

The major error made by the commenter is apparently in determining the emissions from fuel burning. The Department calculated a required heat input of roughly 15,000,000 BTU (British Thermal Units) per hour using the varying specific heats of air. On the average, Number 2 fuel oil has 142,000 BTU per gallon. Therefore, the fume incinerator will burn about 106 gallons of fuel per hour. The emission factor provided by the EPA in AP-42 for fuel burning is 0.713 pounds of hydrocarbons per 1000 gallons of fuel oil burned. Therefore, the resulting emissions are 0.076 pounds of hydrocarbons per hour and not 30 pounds per hour as the commenter suggests.

COMMENT: The tragedy that will befall New Jersey if N.J.A.C. 7:27-16.5 is enacted in its present form includes: half of the over 100 plastic, metal and paper surface coating plants will leave New Jersey within two years and we will again have much tighter VOS limits than Pennsylvania and 75 percent of the time our air blows in from that state. We do not believe that it is necessary to apply it to smaller sources. The Department admits that almost all of the spray painting operations, and this includes hundred of auto spray shops, will require at least a \$250,000 fume incinerator to control the VOS emissions. For every one or two plastic, metal or paper surface coating lines in the textile, shower curtain, plastic, metal or paper coating plants in New Jersey, a \$250,000 fume incinerator will have to be installed. The price may be \$300,000 or more counting installation. The installation of these incinerators will create an incredible natural gas or No. 2 fuel oil burden on the affected firms and on our available resources.

RESPONSE: The proposed revisions did not include standards for auto body spray shops or plastic coating operations. The standards for paper, fabric and metal coating in N.J.A.C. 7:27-16.5(a) were adopted in 1979, 1979, and 1981, respectively, and no changes were proposed with the exception of lowering the exclusion rates in N.J.A.C. 7:27-16.5(c). There is no evidence known to the Department which indicates that those metal, fabric or paper coating operators that installed fume incinerators to comply with the standards adopted in 1979 and 1981 created an incredible fuel burden on our available resources.

The Department proposed the lower exclusion rates in advance of the schedule projected in the SIP for the purpose of seeking comments from the regulated community. The Department is not adopting the proposed exclusion rates at this time and will continue to evaluate the effects of lowering the exclusion rates in N.J.A.C. 7:27-16.5(c). The Department expects to propose appropriate exclusion rates at the same time it proposes the other extraordinary measures which may include automobile refinishing, architectural coatings, barge and tanker loading, landfill venting and wastewater treatment plants.

COMMENT: N.J.A.C. 7:27-16.5(i)2 should mention that reports should be submitted to NJDEP and if possible include an address. This information clearly places a person on notice of the reporting requirements and eliminates the claim that the source did not know where to mail the report.

RESPONSE: The reports required pursuant to N.J.A.C. 7:27-16.5(i)2 will be sent to one of the four regional offices. Affected sources should contact the Bureau of Enforcement Services, CN027, Trenton, New Jersey, 08625 if they cannot reach the appropriate office using the telephone directory.

7:27-16.6 Source operations other than storage tanks, transfers, open top tanks, surface cleaners, surface coating, and graphic arts operations.

COMMENT: No economic evaluation is given in the Basis and Background Document regarding the cost of halving the exclusion rates in N.J.A.C. 7:27-16, Table 4. The cost will be very high both in terms of dollars spent per ton of VOS emission reduced and in terms of economic dislocation, such as shut downs and jobs lost, caused by a requirement for expensive controls on small and economically marginal emission sources. In 1983, our committee assessed the impact of halving the exclusion rates as now proposed. We randomly surveyed five pharmaceutical plants in New Jersey and found that a total of 65 sources would be affected. This would result in emission reductions of 17.15 tons/year or 0.047 tons/day. This is insignificant when compared to the State goal of 11 tons/day. In addition, the cost of these control measures extrapolates to VOS reduction expenditures of \$47.9 million per ton per day. Halving of the exclusion rates is a serious concern of the specialty chemicals industry. The major problem associated with the proposed reduction of exclusion rates in N.J.A.C. 7:27-16.6, Table 4, Column 4, is cost effectiveness.

Because research and development equipment is used for multiple purposes and for various types of materials, this equipment cannot be

expected to be as efficient in emission control for small, occasional emissions as for full scale production equipment. We are requesting that research and development operations be exempt from the proposed lower exclusion rates in N.J.A.C. 7:27-16.6, Table 4, Column 4 and should be allowed to meet the emission exclusion requirement of Column 3.

RESPONSE: The Department is not adopting the proposed N.J.A.C. 7:27-16.6, Table 4, Column 4 at this time. The Department proposed the lower exclusion rates in advance of the schedule projected in the SIP for the purpose of seeking comments from the regulated community. The Department will continue its evaluation of the effects of lowering the exclusion rates in N.J.A.C. 7:27-16.5 and 16.6. The Department may propose appropriate exclusion rates if it proposes the other extraordinary measures which may include automobile refinishing, architectural coatings, barge and tanker loading, landfilling venting and wastewater treatment plants.

COMMENT: We suggest that requiring additional controls on VOS transfers other than gasoline would be more cost effective than the proposed exclusion rates.

RESPONSE: The Department agrees that requiring controls on VOS transfers other than gasoline may be very cost effective and this source category will be evaluated for inclusion in future revisions to N.J.A.C. 7:27-16.

COMMENT: We recommend that the conditions for approving bubbles set forth in N.J.A.C. 7:27-16.6(c)5 include a provision to indicate that the standard period of time over which a bubble is to be calculated is 24 hours and that longer periods may be approved by the Department when justified by operating, technical, or economic factors. This recommendation must be incorporated into N.J.A.C. 7:27-16 in order to meet Clean Air Act requirements.

RESPONSE: The standard period of time over which a bubble is calculated is one hour. A maximum alternative allowable emission rate is calculated for each source based on a maximum rate of operation and all complying and noncomplying sources operating simultaneously. Each source in an approved bubble is assigned a maximum alternative allowable emission rate that can be enforced. The Department also calculates allowable and actual emission rates based on actual hours of operation over a seven day period. It should be pointed out that the major difference between EPA and Department policy on bubbles is that the EPA alternative allowable emission rates are for the entire facility, whereas the Department's alternative allowable emission rates are for individual sources and, thus, are enforceable.

Since the EPA policy on bubbles is in a state of uncertainty, and since the EPA does not recognize bubbles with averaging times greater than 24 hours, the Department has agreed to submit such bubbles as individual revisions to the SIP for Attainment and Maintenance of the Ozone Standard.

COMMENT: EPA policy limits the geographic applicability of VOS bubbles to sources within the same ozone demonstration area. This provision can be easily added to the end of N.J.A.C. 7:27-16.6(c)5i in order to meet requirements of the Clean Air Act.

RESPONSE: The Clean Air Act does not limit the application of a mathematical combination of source gases, or bubble, over the geographic delineations of an air quality control region. In addition, EPA policy is not, in this case, equivalent to a requirement of the Clean Air Act. The Department recognizes the existence of a long range transport of ozone and allows statewide bubbles because of the small size of our air quality control regions.

COMMENT: Is N.J.A.C. 7:27-16.6(d) referring to liquid or gaseous leaks?

RESPONSE: N.J.A.C. 7:27-16.6(d) and (e) refer to leak of VOS, in both the liquid and vapor states. The distinction is that (d) refers to leaks involving stationary parts and (e) refers to leaks involving moving parts.

COMMENT: In N.J.A.C. 7:27-16.6(d) and (f), by removing the words "into the outdoor atmosphere" in the definition of leaks, it appears that the Department is establishing workplace standards, not environmental standards. This is normally the province of the federal O.S.H.A. and we question the authority of the Department in this area.

RESPONSE: The Department is not attempting to establish workplace standards or usurp the province of O.S.H.A. During the development of this proposal, one industry representative suggested that the words "into the outdoor atmosphere" would serve to exempt synthetic organic chemical and polymer manufacturing facilities because the VOS was not vented directly to the outdoor atmosphere, as through a stack, but was emitted first inside a building. As a result of that suggestion, the Department chose to delete the words "into the outdoor atmosphere" to ensure

that there would be no confusion as to how the definition of leaks in N.J.A.C. 7:27-16.6(d) and (e) affect the proposed leak monitoring and repair standards in N.J.A.C. 7:27-16.6(h).

COMMENT: The leak testing and repair requirements of N.J.A.C. 7:27-16.6(f), (g) and (h) should include provisions to allow the Department to require an unscheduled shutdown of a process unit for repairs to be made on leaking equipment in cases where the percentage of components awaiting repair becomes excessive.

RESPONSE: The Department recognizes that excessive leaks may pose health and environmental problems. In such cases, the Department has the authority to require a cessation of the process resulting in health or environmental problems pursuant to N.J.S.A. 26:2C-1 et seq.

COMMENT: The time required to test relief valves set forth at N.J.A.C. 7:27-16.6(f)4 should be modified to reflect the OAQPS Guideline Series, "Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment", (EPA-450/2-76-036) which recommends that after a pressure relief valve has vented to the atmosphere, the operator must monitor immediately and repair within 15 days. This provision should also apply to synthetic organic chemical and polymer manufacturing plants and natural gas/gasoline processing plants regulated pursuant to N.J.A.C. 7:27-16.6(g) and (h). Another commentator objected to the fact that the Department's proposed leak detection and repair standards for existing sources are equivalent to New Source Performance Standards.

RESPONSE: The "Response to Comments" section of the Control Techniques Guideline—Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment", (EPA-450/3-83-006) published in 1983 by the EPA states that "monitoring should follow every over pressure relief within 5 days of the relief" and does not require immediate monitoring. The requirement as proposed in N.J.A.C. 7:27-16.6(f)4, (g)3 and (h)3 accurately reflects EPA guidance.

The proposed N.J.A.C. 7:27-16.6(f)8, (g)7, and (h)7 clearly state that any leaking component shall be repaired within 15 days after the leak is detected unless the shutdown of a process unit is necessary to repair the leak, in which case, the repair must be completed at the next period in which it is out of service. These standards also accurately reflect EPA guidance.

Although it is true that New Source Performance Standards for petroleum refineries require monitoring within 5 days of leak detection pursuant to 40 CFR Part 60.592-8, the requirement to monitor relief valves which have vented to the atmosphere within 5 days as proposed in N.J.A.C. 7:27-16.6(f)4 for petroleum refineries is reasonable because any pressure relief valve can be monitored within five days, regardless of the date the facility was constructed.

COMMENT: For many years, the application of emission studies at petroleum refineries has overestimated emission rates from synthetic organic chemical and polymer plants. In 1982, the EPA lowered its initial estimates, and based on ongoing internal chemical industry studies these factors will likely have to be lowered again. Initial data review of these studies indicates that actual fugitive emission rates for synthetic organic chemical or polymer manufacturing are 10 to 30 percent of the current estimates of the EPA. The cost for a company to implement the programs required by N.J.A.C. 7:27-16.6(h) will be significantly higher than that indicated in the Basis and Background Document. We recommend that the Department delay the proposed emission testing program for six months to allow the chemical industry an opportunity to complete their studies.

RESPONSE: This comment was also made during the development of the Control Techniques Guidelines (CTG), EPA-450/3-83-006, for this source category which was published by the EPA in 1983. The EPA reviewed data from the Refinery Assessment Study and the study of leak frequency at synthetic organic chemical plant process units, both prepared by the Radian Corporation for the EPA in 1980. The differences in data were noted and attributed, in general, to smaller unit sizes, lower temperatures and pressures, more expensive products, more toxic products, and chemicals whose leaks are self-sealing such as polymers. In developing the CTG, EPA-450/3-83-006 the EPA used the leak frequencies to weight the emission factors determined in the Refinery Assessment Study. The Department concurs with EPA's method for determining emission factors. Therefore, no change has been made to the proposed N.J.A.C. 7:27-16.6(h).

COMMENT: The emission testing program in N.J.A.C. 7:27-16.6(h) should include a provision to allow a source to discontinue monitoring, onerous paperwork, and recordkeeping requirements if a specific operation can be shown to have fugitive emissions less than approximately

25 percent of the estimated value on which the regulations are based. As with federal regulations, facilities demonstrating good performance or four consecutive quarters of no leaks should be allowed to go to skip-period or annual sampling. Specific types of valves are known to be "tight". They are generally more expensive and are exempted by some states. We suggest that ball, plug and diaphragm valves be exempt from the provisions of N.J.A.C. 7:27-16.6(h). Testing of safety/relief valves should only be necessary for those valves which do not have a rupture disc.

RESPONSE: The Department carefully evaluated the proposed leak testing and repair program and determined that it is reasonable. Monitoring of sources and repair and reporting of leaks are the tools for maintaining low rates of fugitive emissions. The Department has reviewed the various alternative valve monitoring programs that use statistics to predict the frequency of leaks and corresponding monitoring requirements and has concluded that such programs have merit, but are not practical for a state agency to enforce emission standards. The alternative programs would put an excessive burden of enforcement on the State, particularly in view of the number of facilities that would require supervision and inspection.

Ball, plug, and diaphragm valves were included in the studies and data used to develop the proposed standards. Therefore, it is inappropriate to exempt these valves from the leak testing requirements proposed in N.J.A.C. 7:27-16.6(h).

According to the CTG, EPA-450/3-83-006, the quarterly monitoring requirement for safety/relief valves is designed to eliminate significant VOS emissions that occur if the valve does not seat correctly after an over pressure relief. Rupture discs have been identified by the EPA as a means of eliminating VOS leaks from safety/relief valves before an over pressure relief occurs. The monitoring requirement is to prevent the emissions after a relief occurs if the disk/valve is not repaired or replaced.

COMMENT: It is unclear from the information provided which sources are subject to the leak testing and repair program required by N.J.A.C. 7:27-16.6(h) for synthetic organic chemical and polymer manufacturing plants. How will the proposal apply to batch operations? It makes no sense to monitor for leaks at a valve or pump which does not contain a VOS during the scheduled monitoring.

RESPONSE: The proposed N.J.A.C. 7:27-16.6(h) applies to any equipment operated to produce 1,100 tons per year or more of any synthetic organic chemical or polymer listed in Appendix I to N.J.A.C. 7:27-16 and provided such equipment is in contact with substances that are 10 percent by weight or greater VOS. Some of the chemicals listed are not a VOS, and some are even solids, but significant quantities of VOS are used to produce the chemicals listed in Appendix I of the regulation. The regulation applies to batch operations that use VOS, if more than 1,100 tons per year of the product listed in Appendix I is produced.

The Department agrees that it makes no sense to monitor equipment that does not contain VOS during a scheduled monitoring and does not require such monitoring.

COMMENT: In many older chemical plants, there exists equipment which is inaccessible for purposes of a leak detection and monitoring program as proposed in N.J.A.C. 7:27-16.6(h). There should be an exemption procedure to allow total exclusion from monitoring of the truly inaccessible equipment. The proposal should allow visual checks of such "grandfathered" components. However, new or repaired piping should allow accessibility and lose this exemption.

RESPONSE: The Department proposed an annual monitoring requirement, instead of quarterly monitoring, in N.J.A.C. 7:27-16.6(l) for those valves it considers difficult to access. The Department does not consider annual monitoring to be unreasonable for such valves. It is neither in the best interest of the plant, nor the residents of this State, to disregard such emission sources.

COMMENT: The exclusion of a de minimis production rate of 1,100 tons per year in N.J.A.C. 7:27-16.6(h) will prevent much of this program from burdening small facilities; however, we also feel that a de minimis number of components should be established. We suggest an aggregate total of fifty.

RESPONSE: An exemption rate based on the number of leaking components would also depend on the product and its chemical processing. The Department recognizes that two process units operating at the same production rate using a different number of components will also have different amounts of fugitive emissions, but to define the number of components that constitute small facilities for the chemicals and polymers listed in Appendix I to N.J.A.C. 7:27-16 would not be feasible. The Department is confident that an exemption based on production rate will be sufficient to control VOS emissions and prevent an economic burden

to small facilities. The magnitude and duration of VOS emissions is proportional to the rate of production and is more easily defined than the number of leaking sources.

COMMENT: The Department's analysis of the economic impact of the proposed N.J.A.C. 7:27-16.6(h) on the chemical industry is woefully inaccurate. One of our members has estimated that the impact on its operations will be in the order of \$2,000 per ton or \$1 per pound of emissions reduced as compared with the estimate of \$0.009 or 0.245 per pound.

RESPONSE: The Department has reviewed the economic analyses in the CTG, EPA-450/3-83-006, for synthetic organic chemical and polymer manufacturing plants and is satisfied with its accuracy. The estimates of \$0.009 to \$0.245 per pound provided in the Basis and Background document include the value of the recovered VOS. Without this value included, the cost effectiveness ranges from approximately \$5.80 to \$38.00 per pound. The Department considers costs up to \$2.00 per pound in 1985 dollars to be reasonable at this time.

COMMENT: The proposed reporting requirements in N.J.A.C. 7:27-16.6 for synthetic organic chemical and polymer manufacturing will burden the industry. We suggest that the submission of reports on a quarterly basis serves no useful purpose, since the volume of data will overtax the Department's severely limited resources. A better approach would be a review of this information by a field inspector on a periodic basis. This type of an inspection would better serve both the Department and the people of the State.

RESPONSE: The Department does not consider the requirement in N.J.A.C. 7:27-16.6(j)2 to submit quarterly reports on leaking components to be burdensome. Such reports are useful in that they aid in ensuring that monitoring and repairs are completed in accordance with the appropriate standards.

COMMENT: Some plants are operating under leak detection and elimination programs required and approved by the EPA for the National Emission Standards for Hazardous Air Pollutants (NESHAP). We are alarmed at the possible substantial costs, for example, of retrofitting seals with monitoring devices and even the required quarterly check of the hundreds of valves in our plant. We urge the Department to include in the proposed N.J.A.C. 7:27-16.6(h) the acceptance of existing leak detection and elimination programs.

RESPONSE: The proposed N.J.A.C. 7:27-16.6(h) does not require any duplication of efforts. In general, the equipment covered by NESHAP or New Source Performance Standards will be controlled to a higher degree than under this proposal. The leak monitoring program does not require that any component be retrofitted with monitoring devices. Portable organic vapor analyzers can be used to monitor for leaks.

COMMENT: The leak testing and repair provisions of N.J.A.C. 7:27-16.6(h) are acceptable for addressing federal requirements of Control Techniques Guidelines, but could be broadened to address federal NESHAP requirements for benzene and vinyl chloride. This would make delegation of authority for these pollutants much easier. EPA staff are available to assist New Jersey in this regard.

RESPONSE: The suggested change was not proposed, but will be considered in future revisions to the rule.

COMMENT: N.J.A.C. 7:27-16.6(h) should require monthly monitoring of pumps instead of the proposed quarterly monitoring of leaks at synthetic organic chemical and polymer manufacturing plants. The CTG, EPA-450/3-83-006, for this source indicates that there is a higher cost-effectiveness ratio for monthly monitoring than for quarterly monitoring.

RESPONSE: The CTG, EPA-450/3-83-006, actually says that states may choose monthly monitoring for pumps instead of quarterly monitoring because the cost-effectiveness ratio associated with monthly monitoring is more attractive, not higher, than the cost effectiveness ratio for quarterly monitoring. A higher ratio would be less attractive. The lower net cost for monthly monitoring results from higher emission reductions and, therefore, higher recovery credits. Monthly monitoring requires approximately 27 percent more capital investment. At this time, the Department prefers to have a uniform quarterly monitoring program. The Department may consider monthly monitoring of pumps in future revisions to N.J.A.C. 7:27-16.

COMMENT: The requirement to maintain a log as set forth at N.J.A.C. 7:27-16.6(i) should include a provision that says the log be maintained for a specific period, for example, three years.

RESPONSE: The Department agrees that the length of time the logs are to be maintained should be specified. The rule has been amended to require that logs be maintained for five years. The five year retention requirement is based on the Department's enforcement needs.

7:27-16.8 Petroleum solvent dry cleaning operations

COMMENT: N.J.A.C. 7:27-16.8(e) only refers to 16.8(a) and not 16.8(b) and (c). It appears that it is the State's intention to make N.J.A.C. 7:27-16.8(b) and (c) immediately effective. If this is not your intention, these provisions should also be included in 16.8(e).

RESPONSE: The compliance schedule proposed in N.J.A.C. 7:27-16.8(e) should not have cited N.J.A.C. 7:27-16(b) and (c). These provisions are effective 60 days from the date of adoption of this proposal.

Miscellaneous comments

COMMENT: N.J.A.C. 7:27-16.11(d) permits the seasonal shutdown of control equipment. This provision does not meet EPA policy and guidance, which is strictly limited to natural gas-fired afterburners. Any seasonal shutdown variance that is issued must be consistent with this policy and be submitted and approved as a SIP revision.

RESPONSE: The Department intends to submit as SIP revisions any requests for disconnection of control apparatus pursuant to N.J.A.C. 7:27-16.11(d).

COMMENT: N.J.A.C. 7:27-16.11(d) cannot be used for control equipment included in mathematical combinations (bubbles), since the discontinuance of operation causes the sources within the bubble to be in violation of 16.6(c)5 and exceed the sum of the maximum allowable emission rates. To make this clear to the regulated community, this limitation must be included in 16.11(d) or 16.6(c)5.

RESPONSE: The Department disagrees with this comment. Bubbles are an extension of regulations for individual sources and, therefore, are eligible for consideration of allowing "winter shutdowns" of control equipment. Any source discontinuing use of control equipment would exceed its maximum allowable emission rate or the controls would not have been required to begin with.

COMMENT: The proposed revisions delete compliance dates that have already passed. However, these final compliance dates are of importance to EPA in calculating noncompliance penalties should it be necessary to take federal enforcement action. Retention of these dates provides the affected sources, the Office of the Attorney General and the Office of Administrative Law with notice of the timeframe for compliance and establishes the length of time a source is out of compliance.

RESPONSE: The Department retains copies of N.J.A.C. 7:27-16 that include the obsolete compliance schedules and recommends that the EPA do the same. If the commenter does not have copies of the obsolete compliance schedules, the Department will prepare a table listing the standards of interest and corresponding compliance dates.

COMMENT: The intermediate and final compliance dates proposed for new source categories being added to the regulation generally could be expedited. This would provide additional time for State inspectors to ensure compliance with the regulation's provisions. Should a source not be in compliance, enforcement action can be taken early enough to ensure compliance by the federally mandated December 31, 1987 attainment date.

RESPONSE: The Department has adopted the most expeditious dates practical for each affected source category. There would be no administrative or environmental gain in imposing unrealistic compliance schedules. Moreover, many dates have been extended as a result of delays in adopting this proposal.

The Department has made the following changes based on minor comments, schedule changes or a need for clarification.

1. The definition of "fabric printing operation" has been amended to clarify that knit or woven cloth includes webs, sheets and towels.

2. The definition of "graphic arts" has been amended to specify vinyl or urethane coated fabric or sheets rather than substrates, which is too general.

3. The definition of "petroleum solvent dry cleaning" has been clarified to better describe the industrial dry cleaning process.

4. The definition of "wash coat" has been amended to replace "seal" with "raise" which more accurately describes the purpose of this coating.

5. The underground storage tank capacity affected by the proposed revision to N.J.A.C. 7:27-16.3(a) requiring permanent submerged fill pipes is specified as 2,000 gallons (7,570 liters) or greater. The compliance date in N.J.A.C. 7:27-16.3(a) for installation of permanent submerged fill pipes is extended from June 30, to December 31, 1986.

6. A typographical error in N.J.A.C. 7:27-16.3(c)4 was corrected by replacing "reduced" with "reduces".

7. The date for submitting completed permit applications to the Department for vapor control at small bulk plants pursuant to N.J.A.C. 7:27-16.3(n) has been extended from April 1, 1986 to January 1, 1987.

The dates to commence construction and for final compliance have been extended from October 1, 1986 to May 1, 1987 and March 31, 1987 to November 1, 1987 respectively.

8. The compliance date in N.J.A.C. 7:27-16.4(g)7 requiring conveyORIZED heated surface cleaners to be equipped with vapor control systems has been extended from June 30, 1986 to February 1, 1987.

9. The reference to N.J.A.C. 7:27-16.5(a)3 is being deleted from N.J.A.C. 7:27-16.5(a)4 because the provision is not new and should not have been proposed in N.J.A.C. 7:27-16.5(a)4.

10. A reference to N.J.A.C. 7:27-16.5(f) was inadvertently omitted from the proposed provisions of N.J.A.C. 7:27-16.6(c)3 and 16.6(c)5ii. The error has been corrected.

11. The verb of N.J.A.C. 7:27-16.6(i) has been changed from "include" to "comply with".

12. The deadline to complete initial emission tests set forth at N.J.A.C. 7:27-16.6(g)5 and (h)5 has been extended from June 30, 1986 to March 31, 1987 because of delays in promulgating this rule. Similarly, the requirement in N.J.A.C. 7:27-16.6(i)1 to begin maintaining a log of information about leaking components has been changed from July 1, 1986 to April 1, 1987 and the requirement to begin the submission of quarterly reports as set forth at N.J.A.C. 7:27-16.6(i)2 has been amended from October 1, 1987 to July 1, 1987. (Note: N.J.A.C. 7:27-16.6(i)2, as proposed, contained an error and should have been proposed to state that the due date for submittal of quarterly reports was October 1, 1986 rather than October 1, 1987.) Also, the seal requirement deadline in N.J.A.C. 7:27-16.6(k) has been changed from January 1, 1987 to July 1, 1987.

13. A short explanation of surfaces considered permanent support surfaces has been added to the provisions of N.J.A.C. 7:27-16.6(l) which allows annual rather than quarterly monitoring of valves that are inaccessible.

14. The compliance date set forth at N.J.A.C. 7:27-16.8(e)1 for the submission of permit applications for petroleum solvent dry cleaners has been extended from April 1, 1986 to February 2, 1987. Construction on installation must commence by May 1, 1987 pursuant to N.J.A.C. 7:27-16.8(e)2. The final compliance date for petroleum solvent dry cleaners has been extended to October 31, 1987.

15. The citation to N.J.A.C. 7:27-16.4(c)4 contained in N.J.A.C. 7:27-16.5(a)2 as proposed, was in error and has been corrected to N.J.A.C. 7:27-16.6(c)4.

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

7:27-16.1 Definitions

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

"Cartridge filtration system" means a system in which perforated canisters containing filtration paper and/or activated carbon are used in a pressurized system to remove solid particles and fugitive dyes from soil-laden solvent.

"Clear coating" means a coating which lacks color and opacity or is transparent and uses the undercoat as a reflectant base or undertone color and any coating used as an interior protective lining on any cylindrical metal shipping container of greater than one gallon capacity.

"Clear topcoat" means the final coating, which contains binders by not opaque pigments and which is specifically formulated to form a transparent or translucent solid protective film on wood furniture.

"Conservation vent" means any valve designed and used to reduce evaporation losses of VOS by limiting the amount of air admitted to, or vapors released from, the vapor space of a closed storage vessel.

"Construction ballast" means the filling of an underground storage tank with gasoline to provide stability during construction.

"Extreme performance coating" means a coating formulated for *[exposure to]* and *[consistently]* exposed to harsh environmental conditions including, but not limited to: outside weather conditions all of the time, or temperatures consistently above 95°C, or temperatures consistently below 0°C, or solvents, detergents, abrasives or scouring agents; or corrosive atmospheres or fluids.

"Fabric printing operation" means the decorative enhancement of knit or woven cloth ***including webs, sheets and towels,*** by applying a pattern or colored design with inks, dyes, or print pastes by techniques including, but not limited to, roller, flat screen, rotary screen, and silk screen printing.

["Final repair coatings" means coatings applied to correct imperfections or damage to the surface of wood furniture.]

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["Gasoline dispensing facility" means a facility consisting of one or more stationary gasoline storage tanks together with dispensing devices.]

"Gasoline loading facility" means a plant at which gasoline is transferred into delivery vessels.

"Graphic arts" means rotogravure and flexographic printing used to produce published material and packaging for commercial or industrial purposes, rotogravure and flexographic printing on vinyl or urethane [substrates]* ***coated fabric or sheets***, and fabric printing operations.

"High performance architectural coating" means a fluoropolymer resin-based coating which meets [specifications 605.2 of] the Architectural Aluminum Manufacturers Association *, **Publication Number 605.2-85; "Voluntary Specifications for High Performance Organic Coatings on Architectural Extrusions and Panels"** and is applied to aluminum extrusions or panels.

"Light liquid" means a fluid with vapor pressure greater than 0.044 pounds per square inch absolute (2.27 millimeters of mercury) at 68°F.

"Light liquid service" means contact with a fluid that is 10 percent or greater by weight light liquid.

"Natural gas/gasoline processing plants" means facilities engaged in the separation of natural gas liquids from field gas and/or fractionation of the liquids into natural gas products such as ethane, propane, butane, and natural gasoline. Excluded from the definition are compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquefied natural gas units, and field gas gathering systems unless these facilities are located at a gas plant.

"Opaque stain" means all stains that contain pigments but are not classified as semitransparent stains, and includes stains, glazes, and other opaque material applied to wood surfaces.

["Petroleum solvent dry cleaning" means a process for the cleaning of textiles and fabric products in which articles are washed in a solution of organic material produced by petroleum distillation that exists as a liquid under standard conditions, and then dried by exposure to a heated air stream.]

****"Petroleum solvent dry cleaning" means a process in which textile and fabric articles are washed in a solution of organic material, and then dried by exposure to a heated air stream. The organic material is produced by petroleum distillation and is comprised of a hydrocarbon range of 8 to 12 carbon atoms per organic molecule.***

"Pigmented coat" means opaque coatings that contain binders and colored pigments and are formulated to conceal the wood surface either as an undercoat or topcoat.

"Plastisol" means a surface coating formulation that is a dispersion of finely divided polymeric resin in a high boiling solvent or softening agent that is added to increase flexibility or toughness and includes plastisols to which volatile solvent has been added.

"Sealer" means coatings containing binders that seal a wood surface prior to application of subsequent coatings.

"Semitransparent stain" means stains that contain dyes and/or semitransparent pigments and are formulated to enhance wood grain and to change the color of the surface, but not to conceal the surface; including sap stain, toner, nongrain raising stains, pad stain, spatter stain, and other semitransparent stains.

"Solvent recovery dryer" means a class of dry cleaning dryers that employ a condenser to liquefy and recover solvent vapors evaporated in a closed-loop, recirculating stream of heated air.

"Surface coating of fabrics" means the application of any surface coating formulation, except ink and plastisol, applied to a textile substrate in a fabric coating line.

"Surface coating of glass" means the application of any surface coating formulation to glass lamps or bulbs.

"Surface coating of leather" means the application of any surface coating formulation to a leather substrate in a leather coating line.

"Surface coating of paper" means the application of any coating, excluding plastisol, uniformly distributed across the web, which is put on paper, or on pressure-sensitive tapes regardless of substrate (including paper, fabric, or plastic film); related web coating processes on plastic film including, but not limited to, typewriter ribbons, photographic film and magnetic tape; and decorative coating on metal foil including, but not limited to, gift wrap and packaging.

"Surface coating of wood furniture" means the application of any surface coating formulation to any furnishing made of wood or a composite of wood including, but not limited to, kitchen cabinets, equipment cabinets, household furniture and office furniture.

"Synthetic organic chemical or polymer" means one or more of the substances listed in Appendix I.

"Tablet coating" means the application of any surface coating formulation to a ***formed*** pharmaceutical product.

"Urethane coating" means the application of any surface coating formulation, except plastisol, to urethane coated fabric or urethane sheets that are more than 0.002 inches (50 micrometers) thick, except resilient floor covering and flexible packaging.

"Vacuum service" means equipment operating at an internal pressure which is at least 0.725 pounds per square inch absolute (37.5 millimeters of mercury) below ambient pressure.

"Vinyl coating" means the application of any surface coating formulation, except ink and plastisol, to vinyl-coated fabric or vinyl sheets.

"Wash coat" means a coating containing binders that ***[seal]* *raise*** wood surfaces, prevent undesired staining, and control penetration.

7:27-16.2 Storage of volatile organic substances

(a) (No change.)

(b) No person shall cause, suffer, allow, or permit the storage of a VOS in any stationary storage tank having a maximum capacity of 10,000 gallons (37,850 liters) or greater unless such stationary storage tank is equipped with control apparatus as determined in accordance with the procedure for using Table 1 or as approved by the Department as being equally or more effective in preventing the emission of a VOS into the outdoor atmosphere.

Procedure for Using Table 1

Step 1: Determine the vapor pressure at standard conditions in pounds per square inch absolute of the VOS to be stored.

Step 2: Select the appropriate line in Table 1 for the vapor pressure determined in Step 1.

Step 3: Determine the maximum tank capacity in thousands of gallons.

Step 4: Find the tank capacity range classification for the vapor pressure determined under Step 1.

Step 5: Determine the control requirements in accordance with the following:

Range I: No control apparatus required under this subsection.

Range II: Conservation vent required.

Range III: Floating roof required.

TABLE 1
DETERMINANTS OF TYPE CONTROL APPARATUS REQUIRED FOR STORAGE
OF VOLATILE ORGANIC SUBSTANCES

VAPOR PRESSURE IN PSIA @ 70°F		TANK CAPACITY IN THOUSANDS OF GALLONS			
		Range I		Range II	Range III
Greater than	But not Greater than	Not Greater than	Greater than	But not Greater than	Greater than
*0.02	0.03	4,500	4,500	14,000	14,000
0.03	0.04	4,500	4,500	11,000	11,000
0.04	0.06	3,500	3,500	8,000	8,000
0.06	0.08	2,500	2,500	6,000	6,000
0.08	0.10	2,000	2,000	4,500	4,500
0.10	0.15	1,600	1,600	3,500	3,500
0.15	0.2	1,050	1,050	2,500	2,500
0.2	0.3	750	750	1,600	1,600
0.3	0.4	550	550	1,250	1,250
0.4	0.5	475	475	1,075	1,075
0.5	0.6	400	400	900	900
0.6	0.7	350	350	750	750
0.7	0.8	300	300	650	650
0.8	1.0	260	260	550	550
1.0	1.2	210	210	475	475
1.2	1.4	190	190	400	400
1.4	1.6	170	170	350	350
1.6	1.8	150	150	300	300
1.8	2.1	125	125	260	260
2.1	2.4	110	110	225	225
2.4	2.7	100	100	200	200
2.7	3.0	90	90	180	180
3.0	3.5	80	80	160	160
3.5	4.0	70	70	145	145
4.0	4.5	60	60	130	130
4.5	5.0	50	50	115	115
5.0	5.5	50	50	105	105
5.5	6.0	50	50	95	95
6.0	6.5	40	40	85	85
6.5	7.0	40	40	75	75
7.0	7.5	40	40	70	70
7.5	8.0	35	35	65	65
8.0	8.5	35	35	60	60
8.5	9.5	30	30	55	55
9.5	10.5	25	25	50	50
10.5	11.5	20	20	45	45
11.5	13.0	10	10	40	40

*VOS which have a vapor pressure of 0.02 pounds per square inch absolute at 70°F shall be included in this line.

(c)-(g) (No change.)

(h) No person shall cause, suffer, allow, or permit the storage of a VOS in any stationary storage tank having a maximum capacity of 40,000 gallons (151,400 liters) or greater and equipped with an external floating roof unless such stationary storage tank is equipped with control apparatus as determined in accordance with the procedure for using Table 1A or as approved by the Department as being equally or more effective in preventing the emission of VOS into the outdoor atmosphere.

Procedure for Using Table 1A

Step 1: Determine the vapor pressure at standard conditions in pounds per square inch absolute of the VOS to be stored.

Step 2: Select the appropriate line in Table 1A for the vapor pressure determined in Step 1.

Step 3: Determine the type of construction of the tank shell or walls, whether riveted or welded.

Step 4: Determine the maximum tank capacity in thousands of gallons.

Step 5: Find the tank capacity range classification for the vapor pressure determined under Step 1 and for the type of construction determined under Step 3.

Step 6: Determine the control requirements in accordance with the following:

Range R-1 and Range W-1: A single seal-envelope combination is required.

Range R-2 and Range W-2: A second seal-envelope combination must be added.

(i)-(m) (No change.)

TABLE 1A
DETERMINANTS OF REQUIREMENTS FOR SECOND SEAL RETROFITS ON EXTERNAL
FLOATING ROOF STORAGE TANKS CONTAINING
VOLATILE ORGANIC SUBSTANCES

VAPOR PRESSURE IN PSIA @ 70°F		TANK CAPACITY IN THOUSANDS OF GALLONS			
		Riveted Tanks		Welded Tanks	
		Range R-1	Range R-2	Range W-1	Range W-2
Greater than	But not Greater than	Not Greater than	Greater than	But not Greater than	Greater than
*0.02	1.0	—	—	—	—
1.0	1.2	470	470	—	—
1.2	1.4	400	400	—	—
1.4	1.6	350	350	—	—
1.6	1.8	300	300	—	—
1.8	2.0	265	265	—	—
2.0	2.2	230	230	1,030	1,030
2.2	2.4	200	200	930	930
2.4	2.6	175	175	840	840
2.6	2.8	155	155	770	770
2.8	3.0	135	135	720	720
3.0	3.2	120	120	665	665
3.2	3.4	105	105	620	620
3.4	3.6	90	90	580	580
3.6	3.8	80	80	545	545
3.8	4.0	75	75	510	510
4.0	4.4	65	65	450	450
4.4	4.8	60	60	405	405
4.8	5.2	50	50	360	360
5.2	5.6	45	45	320	320
5.6	6.0	40	40	280	280
6.0	6.4	40	40	245	245
6.4	6.8	40	40	210	210
6.8	7.2	40	40	180	180
7.2	7.6	40	40	155	155
7.6	8.0	40	40	130	130
8.0	8.4	40	40	110	110
8.4	8.8	40	40	90	90
8.8	9.6	40	40	65	65
9.6	10.4	40	40	50	50
10.4	—	40	40	40	40

*VOS which have a vapor pressure of 0.02 pounds per square inch absolute at 70°F shall be included in this line.

7:27-16.3 Transfer operations

(a) No person shall cause, suffer, allow, or permit the transfer of any VOS into any receiving vessel of 2,000 gallons (7,570 liters) or greater total capacity unless such transfer is made through a submerged fill pipe or by other means approved by the Department as being equally or more effective in preventing the emission of VOS into the outdoor atmosphere during transfer. By no later than [June 30] ***December 31***, 1986, such submerged fill pipe shall be permanently affixed to any underground storage tank ***of 2,000 gallons (7,570 liters) or greater total capacity*** into which gasoline is transferred.

(b) (No change.)

(c) No person shall cause, suffer, allow, or permit the transfer of gasoline from any delivery vessel into any stationary storage tank of 2,000 gallons (7,570 liters) or greater capacity unless such storage tank is equipped with and operating one of the following controls:

1.-3. (No change.)

4. A vapor control system which ***[reduced]* *reduces*** by no less than ***[95]* *90*** percent by volume the air-vapor mixture displaced during the transfer of gasoline; or

5. (No change.)

(d) No person shall cause, suffer, allow, or permit the transfer of any substance into any gasoline vapor laden delivery vessel of 2,000 gallons (7,570 liters) or greater total capacity unless such transfer is made at a

gasoline loading facility and unless such delivery vessel is connected to control apparatus installed and operating in accordance with the provisions of (e) below.

(e) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any substance into any gasoline vapor laden delivery vessel at a gasoline loading facility unless such facility is equipped with and operating a control apparatus in accordance with the following provisions:

1. Facilities loading 15,000 gallons (56,775 liters) of gasoline or less per day shall be equipped with and operating a vapor balance system or other control apparatus of equal or higher efficiency. Such vapor balance system shall have no open operating vent to the atmosphere during transfer and shall not return the vapors to any tank equipped with a floating roof.

2. Facilities loading more than 15,000 gallons (56,775 liters) of gasoline per day shall be equipped with and operating a vapor control system which:

i.-ii. (No change.)

Table 2 (No change.)

***[(f)]** No person shall cause, suffer, allow, or permit the transfer of gasoline into any vehicular fuel tank unless the transfer is made using a vapor control system that is approved by the Department and that is designed, operated, and maintained so as:

1. To prevent VOS emission to the outdoor atmosphere by no less than 90 percent by weight at stations with a monthly throughput of less than 200,000 gallons (757,000 liters) or;

2. To prevent VOS emissions to the outdoor atmosphere by no less than 97 percent by weight at stations with a monthly throughput of 200,000 gallons (757,000 liters) or greater, and;

3. To prevent overfilling and spillage.

(g) The provisions of (f) above shall not apply to a gasoline dispensing facility with a monthly throughput of 10,000 gallons (7,570 liters) or less.)*

*[(h)]***(f)* No person shall cause, suffer, allow, or permit any delivery vessel having a maximum total capacity of 2,000 gallons (7,570 liters) or greater to contain gasoline unless such delivery vessel:

1. (No change.)

2. Has a certification affixed to the vessel in a prominent location which indicates the identification number of the vessel and the date the vessel last passed the pressure and vacuum tests; and

3. Has a record of certification which shall be kept with the delivery vessel at all times and made available upon request by the Department. The record of certification shall include the test title, delivery vessel owner and address, delivery vessel identification number, testing location, date of test, testers' name and signature, and test results. The provision of this paragraph shall become operative *[June 30]* ***December 31***, 1986.

*[(i)]***(g)* No person shall cause, suffer, allow, or permit a transfer of gasoline subject to the provisions of (c), (d), and (e) above if the delivery vessel being loaded is under a pressure in excess of 18 inches of water (34 millimeters of mercury) gauge or the delivery vessel being unloaded is under a vacuum in excess of 6 inches of water (11 millimeters of mercury) gauge.

*[(j)]***(h)* No person shall cause, suffer, allow, or permit VOS to be emitted into the outdoor atmosphere during a transfer of gasoline, subject to the provisions of (c), (d)*[,]* ***and*** (e) *[,]* and (f)* above, from leaking components of gasoline vapor control systems or delivery vessels being loaded or unloaded if:

1.-2. (No change.)

[(k)-(m)] ***[(j)-(k)]*** (No change in text.)

*[(n)]***(l)* The provisions of (c) above shall not apply to a storage tank during construction ballast.

*[(o)]***(m)* Any delivery vessel subject to the provisions of *[(h)]* ***[(f)]*** above found in violation of *[(j) or (l)]* ***[(h) or (j)]*** above shall be repaired within 15 days and shall be recertified.

*[(p)]***(n)* Any person subject to the provisions of (e)l above and loading 4,000 gallons (15,140 liters) of gasoline or less per day shall comply with the following schedule:

1. By *[April 1, 1986]* ***January 1, 1987***, the applicant, pursuant to N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department. This application shall demonstrate compliance with the requirements of (e)l above.

2. By *[October 1, 1986,]* ***May 1, 1987***, construction of equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence.

3. By *[March 31]* ***November 1***, 1987, compliance shall be achieved.

[(q)] Any person subject to the provisions of (f) above shall comply with the following schedules:

1. By June 30, 1986, the applicant, pursuant to N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install or Alter Control Apparatus or Equipment" to the Department. The application shall demonstrate compliance with the requirements of (f) above.

2. By January 1, 1987, construction of equipment and control apparatus in accordance with the approved "Permit to Construct, Install or Alter Control Apparatus or Equipment" shall commence.

3. By June 30, 1987 compliance shall be achieved.]*

7:27-16.4 Open top tanks and surface cleaners

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

(d) No person shall cause, suffer, allow, or permit the use of VOS in any heated open top tank which is operated at a temperature lower than the boiling point of such VOS unless such tank:

1.-2. (No change.)

3. Is devoid of any flushing wand which produces VOS droplets or mist or which delivers a stream of VOS under line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge); and

4.-5. (No change in text.)

(e) (No change.)

(f) No person shall cause, suffer, allow, or permit the use of VOS in any unheated conveyerized surface cleaner unless such cleaner:

1.-5. (No change.)

6. Is equipped with a vapor control system which reduces the total emissions of VOS from the cleaner by at least 85 percent by volume. Cleaners installed before December 17, 1979 are not subject to this requirement.

(g) No person shall cause, suffer, allow, or permit the use of VOS in any conveyerized heated surface cleaner which is operated at a temperature lower than the boiling point of such VOS, unless such cleaner:

1.-5. (No change.)

6. Is protected from drafts when in active use by the installation of a silhouette cutouts or hanging flaps to minimize the effective openings around the conveyor inlet and conveyor outlet parts; and

7. Is equipped with a vapor control system by *[June 30, 1987]* ***February 1, 1987***, which reduces the total emissions of VOS from the cleaner by at least 85 percent by volume.

(h) No person shall cause, suffer, allow, or permit the use of VOS in any conveyerized vapor surface cleaner unless such cleaner:

1.-7. (No change.)

8. Is equipped with:

i. (No change.)

ii. A vapor control system which reduces the total emissions of VOS from the cleaner by at least 85 percent by volume.

(i)-(o) (No change.)

7:27-16.5 Surface coating ***and graphic arts*** operations

(a) General provisions for surface coating operations are as follows:
1. No person shall cause, suffer, allow, or permit VOS emissions from a surface coating operation to exceed the maximum allowable hourly emission rate as determined by multiplying the maximum allowable emissions per volume of coating, minus water, as set forth in *[Table 3a, in Table 3B, or in Table 3C]* ***Tables 3A, 3B, 3C or 3E*** of this section, times the volume of coating, minus water, applied per hour.

2. *[After June 30, 1987, no]* ***No*** person shall cause, suffer, allow, or permit VOS emissions from a surface coating operation included in a mathematical combination of source gases pursuant to N.J.A.C. 7:27-***[16.4(c)4]*16.6(c)4*** to exceed the maximum allowable hourly emission rate as determined by the following equation:

$$\text{Allowable} = \frac{[1-y/d]}{[1-x/d]} (z)(x)$$

where x = maximum allowable emissions per volume of coating (minus water), ***pounds per gallon,* lb/gal (*kilograms per liter,* kg/l)**

d = density of VOS of the applied surface coating formulation, lb/gal (kg/l)

y = VOS content of the applied surface coating formulation (minus water), lb/gal (kg/l)

z = volume of coating (minus water) applied per hour, gal/hr (l/hr).

3. If more than one product is manufactured on a single surface coating line, a weighted daily mean of the emissions can be calculated to demonstrate compliance.

4. The provisions of 2 ***[and 3]*** above shall become effective immediately upon promulgation for any surface coating operation included in a mathematical combination of source gases for which the maximum allowable hourly emission rate is greater when calculated by 2 above than when calculated by 1 above.

(b) No person shall cause, suffer, allow, or permit the installation of any surface coating ***or graphic arts*** operation to apply a surface coating formulation which does not contain water deliberately added in a planned proportion unless a coating application system having a transfer efficiency of 60 percent or greater, or as otherwise approved by the Department, is used.

(c) The provisions of (a) and (b) above and (f), (g), and (h) below shall not apply to any individual surface coating ***or graphic arts*** operation in which the total surface coating formulations containing VOS are applied:

1. At rates not in excess of one gallon per hour and five gallons per day; **or*** ***[and after December 31, 1986, at rates not in excess of 0.5 gallons per hour and 2.5 gallons per day; or]***

2. (No change.)

(d) Any person subject to the emission standards specified in Table 3A pertaining to spray prime and spray topcoat surface coating formulations may, as an alternative to the maximum allowable emissions set forth in Table 3A, comply with the provisions of Table 3C.

TABLE 3A (No change.)

TABLE 3B
MAXIMUM ALLOWABLE EMISSIONS FOR MISCELLANEOUS
SURFACE COATING OPERATIONS

Type of Operation	Maximum Allowable Emissions per Volume of Coating (minus water)	
	Pounds per Gallon	Kilograms per Liter
Group I		
Can Coating		
Sheet basecoat	2.8	0.34
Two-piece can exterior		
Two- & three-piece can interior body spray, two-piece and exterior	4.2	0.51
Side-seam spray	5.5	0.66
End sealing compound	3.7	0.44
Coil Coating	2.6	0.31
Fabric Coating	2.9	0.35
Vinyl Coating	3.8	0.45
Paper Coating	2.9	0.35
Metal Furniture Coating	3.0	0.36
Magnet Wire Coating	1.7	0.20
Large Appliance Coating	2.8	0.34
Miscellaneous Metal Parts and Products		
Clear coating	4.3	0.52
Air-dried coating	3.5	0.42
Extreme performance coating	3.5	0.42
High performance architectural coating	*[4.2]**5.9*	*[0.51]**0.71*
All other coatings	3.0	0.36
Flat Wood Paneling		
Printed hardwood plywood panels and particleboard panels	2.7	0.32
Natural finish hardwood plywood	3.3	0.40
Hardboard panels	3.6	0.43
Group II		
Leather Coating	5.8	0.70
Urethane Coating	3.8	0.45
Tablet Coating	5.5	0.66
Glass Coating	3.0	0.36

TABLE 3C
ALTERNATIVE MAXIMUM ALLOWABLE EMISSIONS WITH
MINIMUM TRANSFER EFFICIENCIES REQUIRED
FOR SPRAY COATING OPERATIONS

Maximum Allowable Emissions per Volume of Coating (minus water)		Minimum Transfer Efficiency Required
Pounds per Gallon	Kilograms per Liter	
3.0	0.36	34
3.2	0.38	37
3.4	0.41	42
3.6	0.43	47
3.8	0.46	52
4.0	0.48	58
4.2	0.50	65

TABLE 3D
MAXIMUM ALLOWABLE EMISSIONS FOR GRAPHIC
ARTS SOURCES

Basis	Control Criterion	
For formulations that contain water; Volume percent VOS in volatile fraction of coating (VOS plus water) as applied, maximum	25.0	
or		
For formulations that do not contain water;	Pounds per gallon	Kilograms per liter
The maximum allowable emissions per volume of formulation (minus water)	2.9	0.35

TABLE 3E
MAXIMUM ALLOWABLE EMISSIONS FOR
WOOD FURNITURE SURFACE COATING OPERATIONS

Type of Operation	Maximum Allowable Emissions per Volume Coating (minus water)		*[Minimum Transfer Efficiency Required]*
	Pounds per gallon	Kilograms per liter	
*[Clear topcoat and Sealer	*[5.6	*[0.67	*[65
Wash coat	6.1	0.73	65
Final repair coat	5.6	0.67	30
Pigmented coat	5.0	0.60	65
Semitransparent stain	6.6	0.79	65
Opaque stain]*	4.7]*	0.56]*	65]*
*Semitransparent stain	*6.8	*0.82	
Wash coat	6.1	0.73	
Opaque stain	4.7	0.56	
Sealer	5.6	0.67	
Pigmented coat	5.0	0.60	
Clear topcoat*	5.6*	0.67*	

(e) Any person subject to emission standards specified in Table 3B, Group I pertaining to metal furniture coating or large appliance coating may apply to the Department for an alternative maximum allowable emission rate, provided the owner or operator can demonstrate to the Department's satisfaction that surface coating formulations are applied at a transfer efficiency of greater than 60 percent.

(f) Any person subject to an emission limitation set forth in Table 3D who reduces VOS emissions by means other than reformulation of the surface coating formulation shall comply with the following requirements:

1. (No change.)
2. Collect at least 70 percent by volume of the source gas emitted from a flexograph printing operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by volume of the VOS collected on a hourly basis; or
3. Collect at least 70 percent by volume of the source gas emitted from a fabric printing operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by volume of the VOS collected on a hourly basis.

(g) Any person subject to the emission limitations set forth in Table 3B, Group II for tablet coating who reduces VOS emissions by means other than reformulation of the surface coating formulation shall reduce the total emissions of VOS to the outdoor atmosphere by no less than 90 percent by weight on an hourly basis.

(h) No person shall cause, suffer, allow, or permit VOS emissions from a wood furniture surface coating operation unless each surface coating formulation is applied at no less than the minimum transfer efficiency specified in Table 3E.]

*(h) Any person subject to an emission limitation set forth in Table 3E shall comply with the following requirements:

1. At a facility emitting less than 50 tons of VOS per year, each surface coating formulation specified in Table 3E shall be applied at a transfer efficiency of 40 percent or greater using airless, air-assisted airless, or heated airless spray techniques; or
2. At a facility emitting 50 tons of VOS or greater per year, the combination of all surface coating formulations specified in Table 3E shall be applied at an average transfer efficiency of 65 percent or greater using airless, air-assisted airless, heated airless, electrostatic spray techniques or flat line processes.*

(i) Any person subject to an emission limitation set forth in Table 3A or Table 3C of this Section shall comply with the following schedule:

1. By January 1, 1981, a plan must be submitted to the Department for approval describing the measures which will be applied in order to achieve compliance. The plan submittal shall include:
 - i. Completed applications for all "Permits to Construct, Install, or Alter Control Apparatus or Equipment" and "Certificates to Operate Control Apparatus or Equipment" required by N.J.A.C. 7:27-8; and
 - ii. Completed applications, if relevant, for the mathematical combination of source gases as provided for in N.J.A.C. 7:27-16.6(c)4; and
 - iii-iv. (No change.)

2.-4. (No change.)

(j) Any person subject to *(a)2 above or* an emission limitation set forth in Table 3B, Group II for leather coating, urethane coating, tablet coating, glass coating; in Table 3D for fabric or urethane printing operations; or in Table 3E for wood furniture coating, shall comply with the following schedule*[:]**:

1. By *[April 1, 1986]* ***January 30, 1987***, a plan must be submitted to the Department for approval describing the measures which will be applied in order to achieve compliance. The plan submittal shall include:
 - i. Completed applications for all "Permits to Construct, Install, or Alter Control Apparatus or Equipment" and "Certificates to Operate Control Apparatus or Equipment" required by N.J.A.C. 7:27-8;
 - ii. Completed applications, if relevant, for the mathematical combination of source gases as provided for in N.J.A.C. 7:27-16.6(c)4;
 - iii. Documentation of the rates of application of surface coating formulations in surface coating operations excluded under the provisions of (c) above; and
 - iv. Details of production rate changes or process modifications for which no "Permits to Construct, Install, or Alter Control Apparatus or Equipment" are required.

2. By *[January 1, 1986]* ***January 1, 1987*** and by the first day of every fourth month thereafter, persons using surface coating reformulation as a measure for complying with the provisions of (a) or (h) above shall submit detailed reports describing the progress being made with specific surface coating manufacturers and suppliers toward the development of suitable formulations.

3. By *[January]* ***May* 1, 1987**, construction or installation of equipment and control apparatus, in accordance with the approved plan shall commence.

4. By *[June 30]* ***December 31***, 1987, compliance with this section shall be achieved.

(k) (No change in text.)

7:27-16.6 Source operations other than storage tanks, transfers, open top tanks, surface cleaners, *[and]* surface coaters ***and graphic arts operations***

(a) No person shall cause, suffer, allow, or permit VOS to be emitted into the outdoor atmosphere from any source operation not subject to the provisions of Sections 16.2, 16.3, 16.4, 16.5, 16.7, and 16.8 of this Subchapter, in excess of the maximum allowable emission rate as determined in accordance with the procedure for using Table 4.

Procedure for Using Table 4

1.-4. (No change.)

5. The maximum allowable emission rate shall be the pounds (kilograms) per hour (or per batch cycle hour) equivalent to the percent of the process emissions shown in Column 2 or the Exclusion Rate shown in Column 3, whichever is greater. *[After June 30, 1987, the maximum allowable emission rate shall be the pounds (kilograms) per hour (or per batch cycle hour) equivalent to the percent of the process emissions shown in Column 2 or the Exclusion Rate shown in Column 4, whichever is greater.]*

TABLE 4
MAXIMUM ALLOWABLE EMISSIONS
FOR VOS FROM SOURCE OPERATIONS

Column 1	Column 2	Column 3		*[Column 4 June 30, 1987]*	
Range Determined from Table 5	Maximum Allowable Emissions, Percent or Process Emissions by Weight	Exclusion Rates, Continuous or Batch Cycle Emission		*[Exclusion Rates, Continuous or Batch Cycle Emission]*	
		Pounds Per Hour	Kilograms Per Hour	*[Pounds Per Hour	*[Kilograms Per Hour
Range A	15	7	3.18	3.5	1.58
Range B	15	6	2.72	3.0	1.36
Range C	15	5	2.27	2.5	1.13
Range D	12	4	1.82	2.0	0.91
Range E	10	3	1.36	1.5	0.68
Range F	8	2	0.91	1.0	0.45
Range G	2	1	0.45	0.5	0.23
Range H	0.3	0	0	0	0
Range I	15	7	3.18	3.5]*	1.59]*

TABLE 5 (No change.)

- (b) (No change.)
- (c) For the purpose of this section:
 - 1.-2. (No change.)
 - 3. The maximum allowable emission rate for source gases physically combined (manifolded) for more than one source operation shall be the sum of the maximum allowable emission rates for the separate source gases as determined under N.J.A.C. 7:27-16.5(a), *(f),* (g) and (h), and 16.6(a) and (b). The process emission rate shall be used as the maximum allowable emission rate of a separate source gas if it is less than the applicable exclusion rate contained in Table 4, Column 3*;*[and after June 30, 1987, if it is less than the applicable exclusion rate contained in Table 4, Column 4.]*
 - 4. (No change.)
 - 5. The Department may approve such mathematical combining of source gases provided:
 - i. (No change.)
 - ii. The sum of the emission rates of the separate source gases does not exceed the sum of the maximum allowable emission rates for the separate source gases as determined under N.J.A.C. 7:27-16.5(a), *(f),* (g) and (h), and 16.6(a) and (b). The process emission rate shall be used as the maximum allowable emission rate of a separate source gas if it is less than the applicable exclusion rate contained in Table 4, Column 3*;*[and after June 30, 1987, if it is less than the applicable exclusion rate contained in Table 4, Column 4; and]*
 - iii.-ix. (No change.)
 - (d) No person shall cause, suffer, allow, or permit VOS to be emitted from leaking flange gaskets, manhole gaskets, measuring instrument connections, sight glass connections, and other sealed connections, joints, and fittings not involving moving parts.
 - (e) No person shall cause, suffer, allow, or permit VOS to be emitted from leaking valve bonnets, pump packings, compressor packings, and other seals surrounding moving parts:
 - 1. If the rates of emission result in concentrations of greater than 10,000 ppm by volume when measured at a distance of 0.4 inches (1 centimeter) from the source.
 - 2. (No change.)
 - (f) The owner or operator of a petroleum refinery shall develop and initiate an emission testing program for equipment leaks subject to the provisions of (d) and (e) above. The program shall include the following provisions:
 - 1.-3. (No change.)
 - 4. By no later than 5 calendar days after a relief valve has vented to the atmosphere, test it; and
 - 5.-6. (No change.)
 - 7. A readily visible identification tag shall be affixed to any leaking refinery component. The tag must bear an identification number and the date on which the leak was detected. The tag must remain in place until the leak is repaired; and
 - 8. (No change.)

- (g) The owner or operator of a natural gas/gasoline processing plant shall develop and initiate an emission testing program for equipment leaks subject to the provisions of (d) and (e) above. The program shall apply to only that equipment in contact with a substance that is 1.0 percent by weight or greater VOS and shall include the following provisions:
 - 1. Quarterly, test all pumps, valves, compressors, and pressure relief valves;
 - 2. Weekly, visually inspect all pumps;
 - 3. By no later than 5 days after a relief valve has vented to the atmosphere, test it;
 - 4. Immediately after repair, test any equipment from which a leak was detected;
 - 5. By *[June 30, 1986]* **March 31, 1987***, the initial emission tests shall be completed;
 - 6. A readily visible identification tag shall be affixed to any leaking component. The tag must bear an identification number and the date on which the leak was detected. The tag must remain in place until the leak is repaired; and
 - 7. Any leaking component shall be repaired within 15 days after the leak is detected unless the shutdown of a process unit is necessary to repair the leak. A leak shall be repaired at the earliest period in which either the process is not in operation or the particular unit is out of service, whichever occurs first.
- (h) The owner or operator of a synthetic organic chemical or polymer manufacturing facility shall develop and initiate an emission program for equipment leaks subject to the provisions of (d) and (e) above. The program shall apply only to that equipment in contact with a substance that is 10 percent by weight or greater VOS and that is used to produce greater than 1,100 tons per year (1,000 megagrams per year) of a synthetic organic chemical or polymer and shall include the following provisions:
 - 1. Quarterly, test all pumps in light liquid service, valves in light liquid service, valves in gas service, compressors and safety relief valves in gas service;
 - 2. Weekly, visually inspect all pumps in light liquid service;
 - 3. By no later than 5 calendar days after a relief valve has vented to the atmosphere, test it;
 - 4. Immediately after repair, test any equipment from which a leak was detected;
 - 5. By *[June 30, 1986]* **March 31, 1987***, the initial emission tests shall be completed;
 - 6. A readily visible identification tag shall be affixed to any leaking component. The tag must bear an identification number and the date on which the leak was detected. The tag must remain in place until the leak is repaired; and
 - 7. Any leaking component shall be repaired within 15 days after the leak is detected unless the shutdown of a process unit is necessary to repair the leak. A leak shall be repaired at the earliest period in which either the process is not in operation or the particular unit is out of service, whichever occurs first.

(i) Any person subject to the provisions of (f), (g) or (h) above shall ***[include]* *comply with*** the following provisions:

1. After July 1, 1982, for a petroleum refinery and after ***[July 1, 1986]* *April 1, 1987***, for natural gas/gasoline processing plants and synthetic organic chemical and polymer manufacturing facilities, a log of information about leaking components shall be maintained. The log shall ***be retained for a minimum of five years and*** be made available immediately upon request by the Department. The log shall contain the following data:

- i. The name of the process unit where the leaking component is located;
- ii. The type of component;
- iii. The tag identification number of the component;
- iv. The date on which the leak was detected;
- v. The date on which the leaking component was repaired;
- vi. The date and instrument reading of the retest procedure after a leaking component is repaired;
- vii. A record of the calibration of the monitoring instrument;
- viii. An identification of those leaks that cannot be repaired until a process unit is shut down; and
- ix. The total number of components monitored and the total number of components detected leaking.

2. By October 1, 1982, for a petroleum refinery and by ***[October]* *July* 1, 1987**, for natural gas/gasoline processing plants and synthetic organic chemical and polymer manufacturing facilities, and by the first day of every third month thereafter, a report shall be submitted to the Department that lists all leaking components detected during the previous three calendar months but not repaired within 15 days, all leaking components whose repair is awaiting a process unit shutdown, the total number of components inspected, and the total number of components detected leaking.

(j) The provisions of (f), (g) and (h) above shall not apply to pressure relief devices which are connected to an operating flare or to a vapor recovery device, to storage tank valves, to valves that are not externally regulated, or to valves in vacuum service.

(k) After July 1, 1982, for a petroleum refinery, and after ***[January 1,]* *July 1,* 1987** for a natural gas/gasoline processing plant or synthetic organic chemical and polymer manufacturing facilities, no owner or operator shall install or operate a valve, except for safety pressure relief valves, at the end of a pipe or line containing VOS unless the pipe or line is sealed with a second valve, a blind flange, a plug, or a cap. The sealing device may be removed only when a sample is being taken or during maintenance operations.

(l) The provisions of (f), (g) and (h) above shall not apply to valves which would require monitoring personnel to be elevated higher than 6.6 feet (2 meters) above permanent support surfaces by the use of a ladder or scaffolding. ***Permanent support surfaces include, but are not limited to, ground level, catwalks and platforms.*** Such valves shall be monitored annually rather than quarterly.

7:27-16.8 Petroleum solvent dry cleaning operations

(a) No person shall cause, suffer, allow, or permit VOS emissions to the outdoor atmosphere from a petroleum solvent dry cleaning dryer unless such dryer is:

1. Equipped with a vapor control system which prevents VOS emissions from exceeding 7.7 pounds (3.5 kilograms) per 220 pounds (100 kilograms) dry weight of articles dry cleaned; or

2. A solvent recovery dryer operated in a manner such that the dryer remains closed and the recovery phase continues until a final recovered solvent flow rate of 0.013 gallons (50 milliliters) per minute is attained.

(b) No person shall cause, suffer, allow, or permit VOS emissions to the atmosphere from a petroleum solvent filtration system unless:

1. The VOS content in all filtration wastes is reduced to no more than 2.2 pounds (1.0 kilograms) per 220 pounds (100 kilograms) dry weight of articles dry cleaned, before disposal, and exposure to the atmosphere; or

2. The system is a cartridge filtration system operated such that the filter cartridges are drained in their sealed housings for eight hours or longer before their removal.

(c) No owner or operator of a petroleum solvent dry cleaning facility shall cause, suffer, allow, or permit VOS to be emitted into the outdoor atmosphere from:

1. Visibly leaking equipment including, but not limited to, washers, dryers, solvent filters, settling tanks, and vacuum stills; and

2. Containers of VOS or VOS-laden waste standing open to the atmosphere.

(d) The provisions of (a) above shall not apply to petroleum solvent dry cleaning facilities that consume less than 15,000 gallons (56,775 liters) of petroleum solvent annually.

(e) Any person subject to the provisions of (a) above shall comply with the following schedule:

1. By ***[April 1, 1986]* *February 2, 1987***, a plan ***[must]* *shall*** be submitted to the Department for approval describing the measures which will be applied in order to achieve compliance. The plan submittal shall include completed applications for all "Permits to Construct, Install, or Alter Control Apparatus or Equipment" and "Certificate to Operate Control Apparatus or Equipment" required by N.J.A.C. 7:27-8.

2. By ***[January 1,]* *May 1,* 1987**, construction or installation of equipment and control apparatus^[,] in accordance with the approved plan shall commence; and

3. By ***[June 30,]* *October 31,* 1987**, compliance with this section shall be achieved.

[7:27-16.8—7:27-16.12]* *7:27-16.9—7:27-16.13 (No change in text.)

APPENDIX I

***[LIST OF]* CHEMICALS DEFINING SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING**

CAS #	CHEMICAL
105-57-7	Acetal
75-07-0	Acetaldehyde
107-89-1	Acetaldo
60-35-5	Acetamide
103-84-4	Acetanilide
64-19-7	Acetic acid
108-24-7	Acetic anhydride
67-64-1	Acetone
75-86-5	Acetone cyanohydrin
75-05-8	Acetonitrile
96-86-2	Acetophenone
75-36-5	Acetyl chloride
74-86-2	Acetylene
107-02-8	Acrolein
79-06-1	Acrylamide
79-10-7	Acrylic acid
107-13-1	Acrylonitrile
124-04-9	Adipic acid
111-69-3	Adiponitrile
[a] ***	Alkyl naphthalenes
107-18-6	Allyl alcohol
107-05-1	Allyl chloride
1321-11-5	Aminobenzoic acid
111-41-1	Aminoethylethanolamine
123-30-8	p-Aminophenol
628-63-7, 123-92-2	Amyl acetates
71-41-0, *[a]* ***	Amyl alcohols
110-58-7	Amyl amine
543-59-9	Amyl chloride
110-66-7, *[a]* ***	Amyl mercaptans
1322-06-1	Amyl phenol
62-53-3	Aniline
142-04-1	Aniline hydrochloride
29191-52-4	Anisidine
100-66-3	Anisole
118-92-3	Anthranilic acid
84-65-1	Antraquinone
100-52-7	Benzaldehyde
55-21-0	Benzamide
71-43-2	Benzene
98-48-6	Benzenedisulfonic acid
98-11-3	Benzenesulfonic acid
134-81-6	Benzil
76-93-7	Benzilic acid
65-85-0	Benzoic acid
119-53-9	Benzoin
100-47-0	Benzonitrile
119-61-9	Benzophenone
98-07-7	Benzotrichloride
98-88-4	Benzoyl chloride
100-51-6	Benzyl alcohol
100-46-9	Benzylamine
120-51-4	Benzyl benzoate
100-44-7	Benzyl chloride

98-87-3	*[Benzyl dichloride]* *Benzal chloride*	111-44-4	Dichloroethyl ether
92-52-4	Biphenyl	96-23-1	Dichlorohydrin
80-05-7	Bisphenol A	26952-23-8	Dichloropropene
[10-86-1] *108-86-1*	Bromobenzene	101-83-7	Dicyclohexylamine
27497-51-4	Bromonaphthalene	109-89-7	Diethylamine
106-99-0	Butadiene	111-46-6	Diethylene glycol
106-98-9	l-butene	112-36-7	Diethylene glycol diethyl ether
123-86-4	n-butyl acetate	111-96-6	Diethylene glycol dimethyl ether
141-32-2	n-butyl acrylate	112-34-5	Diethylene glycol monobutyl ether
71-36-3	n-butyl alcohol	124-17-4	Diethylene glycol monobutyl ether acetate
78-92-2	s-butyl alcohol	111-90-0	Diethylene glycol monoethyl ether
75-65-0	t-butyl alcohol	112-15-2	Diethylene glycol monoethyl ether acetate
109-73-9	n-butylamine	111-77-3	Diethylene glycol monomethyl ether
13952-84-6	s-butylamine	64-67-5	Diethyl sulfate
75-64-9	t-butylamine	75-37-6	Diffluoroethane
98-73-7	*[p]**4*-tert-butyl benzoic acid	25167-70-8	Diisobutylene
107-88-0	1,3-butanediol glycol	26761-40-0	Diisodecyl phthalate
123-72-8	n-butyraldehyde	27554-26-3	Diisooctyl phthalate
107-92-6	Butyric acid	674-82-8	Diketene
106-31-0	Butyric anhydride	124-40-3	Dimethylamine
109-74-0	Butyronitrile	121-69-7	N,N-dimethylaniline
105-60-2	Caprolactam	115-10-6	N,N-dimethyl ether
[75-1-50] *75-15-50*	Carbon disulfide	68-12-2	N,N-dimethylformamide
558-13-4	Carbon tetrabromide	57-14-7	Dimethylhydrazine
56-23-5	Carbon tetrachloride	77-78-1	Dimethyl sulfate
9004-35-7	Cellulose acetate	75-18-3	Dimethyl sulfide
79-11-8	Chloroacetic acid	67-68-5	Dimethyl sulfoxide
108-42-9	m-chloroaniline	120-61-6	Dimethyl terephthalate
95-51-2	o-chloroaniline	99-34-3	3,5-dinitrobenzoic acid
106-47-8	p-chloroaniline	51-28-5	*[Dinitrophenol]* *2,4-dinitrophenol*
35913-09-8	Chlorobenzaldehyde	25321-14-6	Dinitrotoluene
108-90-7	Chlorobenzene	123-91-1	Dioxane
[a] **	Chlorobenzoic acid	646-06-0	*[Dioxilane]* *Dioxolane*
[a] **	Chlorobenzotrichloride	122-39-4	Diphenylamine
1321-03-5	Chlorobenzoyl chloride	101-84-8	Diphenyl oxide
25497-29-4	Chlorodifluoromethane	102-08-9	Diphenyl thiourea
75-45-6	Chlorodifluoroethane	25265-71-8	Dipropylene glycol
67-66-3	Chloroform	25378-22-7	Dodecene
25586-43-0	Chloronaphthalene	28675-17-4	Dodecylaniline
88-73-3	o-chloronitrobenzene	27193-86-8	Dodocylphenol
100-00-5	p-chloronitrobenzene	106-89-8	Epichlorohydrin
25167-80-0	Chlorophenols	64-17-5	Ethanol
126-99-8	Chloroprene	*[a]* **	Ethanolamines
7790-94-5	Chlorosulfonic acid	141-78-6	Ethyl acetate
108-41-8	m-chlorotoluene	141-97-9	Ethyl acetoacetate
95-49-8	o-chlorotoluene	140-88-5	Ethyl acrylate
106-43-4	p-chlorotoluene	75-04-7	Ethylamine
75-72-9	Chlorotrifluoromethane	100-41-4	Ethylbenzene
108-39-4	m-cresol	74-96-4	Ethyl bromide
95-48-7	o-cresol	9004-57-3	Ethylcellulose
106-44-5	p-cresol	75-00-3	Ethyl chloride
1319-77-3	Mixed cresols	105-39-5	Ethyl chloroacetate
1319-77-3	Cresylic acid	105-56-6	Ethylcyanoacetate
4170-30-0	Crotonaldehyde	74-85-1	Ethylene
3724-65-0	Crotonic acid	96-49-1	Ethylene carbonate
98-82-8	Cumene	107-07-3	Ethylene chlorohydrin
80-15-9	Cumene hydroperoxide	107-15-3	Ethylenediamine
372-09-8	Cyanoacetic acid	106-93-4	Ethylene dibromide
506-77-4	Cyanogen chloride	107-21-1	Ethylene glycol
108-80-5	Cyanuric acid	111-55-7	Ethylene glycol diacetate
108-77-0	Cyanuric chloride	110-71-4	Ethylene glycol dimethyl ether
110-82-7	Cyclohexane	111-76-2	Ethylene glycol monobutyl ether
108-93-0	Cyclohexanol	112-07-2	Ethylene glycol monobutyl ether acetate
108-04-1	Cyclohexanone	110-80-5	Ethylene glycol monoethyl ether
110-83-8	Cyclohexene	111-15-9	Ethylene glycol monoethyl ether acetate
108-91-8	Cyclohexylamine	109-86-4	Ethylene glycol monomethyl ether
111-78-4	Cyclooctadiene	110-49-6	Ethylene glycol monomethyl ether acetate
112-30-1	Decanol	122-99-6	Ethylene glycol monophenyl ether
123-42-2	Diacetone alcohol	2807-30-9	Ethylene glycol monopropyl ether
27576-04-1	Diaminobenzoic acid	75-21-8	Ethylene oxide
[a] **	Dichloroaniline	60-29-7	Ethyl ether
541-73-1	m-dichlorobenzene	104-76-7	2-ethylhexanol
95-50-1	o-dichlorobenzene	122-51-0	Ethyl orthoformate
106-46-7	p-dichlorobenzene	95-92-1	Ethyl oxalate
75-71-8	Dichlorodifluoromethane	41892-71-1	Ethyl sodium oxalacetate
107-06-2	1,2-dichloroethane (EDC)	50-00-0	Formaldehyde

(CITE 18 N.J.R. 1954)

ENVIRONMENTAL PROTECTION

ADOPTIONS

75-12-7	Formamide	*[a]* **	Nitrobenzoic acid (o, m, & p)
64-18-6	Formic acid	79-24-3	Nitroethane
110-17-8	Fumaric acid	75-52-5	Nitromethane
98-01-1	Furfural	88-75-5	2-Nitrophenol
56-81-5	Glycerol	25322-01-4	Nitropropane
26545-73-7	Glycerol dichlorohydrin	1321-12-6	Nitrotoluene
25791-96-2	Glycerol triether	27215-95-8	Nonene
56-40-6	Glycine	25154-52-3	Nonylphenol
107-22-2	Glyoxal	27913-28-8	Octylphenol
118-74-1	Hexachlorobenzene	123-63-7	Paraaldehyde
67-72-1	Hexachloroethane	115-77-5	Pentaerythritol
36653-82-4	*[Hexadecyl alcohol]* *Hexadecanol*	109-66-0	n-pentane
124-09-4	Hexamethylenediamine	109-67-1	l-pentene
629-11-8	Hexamethylene glycol	127-18-4	Perchloroethylene
100-97-0	Hexamethylenetetramine	594-42-3	Perchloromethyl mercaptan
74-90-8	Hydrogen cyanide	94-70-2	o-phenetidine
123-31-9	Hydroquinone	156-43-4	p-phenetidine
99-06-9	p-hydroxybenzoic acid	108-95-2	Phenol
26760-64-5	Isoamylene	*[a]* **	Phenolsulfonic acids
78-83-1	Isobutanol	91-40-7	Phenyl anthranilic acid
110-19-0	Isobutyl acetate	*[a]* ***	Phenylenediamine
115-11-7	Isobutylene	75-44-5	Phosgene
78-84-2	Isobutyraldehyde	85-44-9	Phthalic anhydride
79-31-2	Isobutyric acid	85-41-6	Phthalimide
25339-17-7	Isodecanol	108-99-6	b-picoline
26952-21-6	Isooctyl alcohol	110-85-0	Piperazine
78-78-4	Isopentane	*[a]* **	Polybutenes
78-59-1	Isophorone	25322-68-3	Polyethylene glycol
121-91-5	Isophthalic acid	25322-69-4	Polypropylene glycol
78-79-5	Isoprene	123-38-6	Propionaldehyde
67-63-0	Isopropanol	79-09-4	Propionic acid
108-21-4	Isopropyl acetate	71-23-8	n-propyl alcohol
75-31-0	Isopropylamine	107-10-8	Propylamine
75-29-6	Isopropyl chloride	540-54-5	Propyl chloride
25168-06-3	Isopropylphenol	115-07-1	Propylene
463-51-4	Ketene	127-00-4	Propylene chlorohydrin
[a] ***	Linear alkyl sulfonate	78-87-5	Propylene dichloride
123-01-3	Linear alkylbenzene	57-55-6	Propylene glycol
110-16-7	Maleic acid	75-56-9	Propylene oxide
108-31-6	Maleic anhydride	110-86-1	Pyridine
6915-15-7	Malic acid	106-51-4	Quinone
141-79-7	Mesityl oxide	108-46-3	Resorcinol
121-47-1	Metanilic acid	27138-57-4	*[Resorcylic]* *Resorcylic* acid
79-41-4	Methacrylic acid	69-72-7	Salicylic acid
563-47-3	Methallyl chloride	127-09-3	Sodium acetate
67-56-1	Methanol	532-32-1	Sodium benzoate
79-20-9	Methyl acetate	9004-32-4	Sodium carboxymethyl cellulose
105-45-3	Methyl acetoacetate	3926-62-3	Sodium chloracetate
74-89-5	Methylamine	141-53-7	Sodium formate
100-61-8	n-methylaniline	139-02-6	Sodium phenate
74-83-9	Methyl bromide	110-44-1	Sorbic acid
37365-71-2	Methyl butynol	100-42-5	Styrene
74-87-3	Methyl chloride	110-15-6	Succinic acid
108-87-2	Methylcyclohexane	110-61-2	Succinonitrile
1331-22-2	Methylcyclohexanone	121-57-3	Sulfanilic acid
75-09-2	Methylene chloride	126-33-0	Sulfolane
101-77-9	Methylene dianiline	1401-55-4	Tannic acid
101-68-8	Methylene diphenyl diisocyanate	100-21-0	Terephthalic acid
78-93-3	Methyl ethyl ketone	*[a]* **	Tetrachloroethanes
107-31-3	Methyl formate	117-08-8	Tetrachlorophthalic anhydride
108-11-2	Methyl isobutyl carbinol	78-00-2	Tetraethyl lead
108-10-1	Methyl isobutyl ketone	119-64-2	Tetrahydronaphthalene
80-62-6	Methyl methacrylate	85-43-8	Tetrahydrophthalic anhydride
77-75-8	Methylpentynol	75-74-1	Tetramethyl lead
98-83-9	a-methylstyrene	110-60-1	Tetramethylenediamine
110-91-8	Morpholine	110-18-9	Tetramethylethylenediamine
85-47-2	a-naphthalene sulfonic acid	108-88-3	Toluene
120-18-3	b-naphthalene sulfonic acid	95-80-7	*[Toluene-2,4-diamine]* *2,4-diaminotoluene*
90-15-3	a-naphthol	584-84-9	Toluene-2,4-diisocyanate
135-19-3	b-naphthol	26471-62-5	Toluene diisocyanates (mixture)
75-98-9	Neopentanoic acid	1333-07-9	Toluenesulfonamide
88-74-4	o-nitroaniline	*[a]* **	Toluenesulfonic acids
100-01-6	p-nitroaniline	98-59-9	Toluenesulfonyl chloride
91-23-6	o-nitroanisole	26915-12-8 *, **	Toluidines
100-17-4	p-nitroanisole	*[a]* **	Trichlorobenzenes
98-95-3	Nitrobenzene	71-55-6	1,1,1-trichloroethane

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79-00-5	1,1,2-trichloroethane
79-01-6	Trichloroethylene
75-69-4	Trichlorofluoromethane
96-18-4	1,2,3-trichloropropane
76-13-1	1,1,2-trichloro*[-1,2,2-]*trifluoroethane
121-44-8	Triethylamine
112-27-6	Triethylene glycol
112-49-2	Triethylene glycol dimethyl ether
7756-94-7	Triisobutylene
75-50-3	Trimethylamine
57-13-6	Urea
108-05-4	Vinyl acetate
75-01-4	Vinyl chloride
75-35-4	Vinylidene chloride
25013-15-4	Vinyl toluene
1330-20-7	Xylenes (mixed)
95-47-6	o-xylene
106-42-3	p-xylene
1300-71-6	Xylenol
1300-73-8	Xylidine
1634-04-4	Methyl tert-butyl ether
9002-88-4	Polyethylene
9003-07-0	Polypropylene
9003-53-6	Polystyrene

[a.] ** CAS numbers for the various isomers and mixtures have not been listed here.

†† CAS number not available.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Long-Term Care Facilities Standards for Licensure

Adopted Amendment: N.J.A.C. 8:39-3.11

Proposed: June 16, 1986 at 18 N.J.R. 1241(b).

Adopted: August 25, 1986, by Molly Joel Coye, M.D.,
Commissioner, Department of Health (with approval of the
Health Care Administration Board).

Filed: August 26, 1986 as R.1986 d.384, **with technical changes**
not requiring additional public notice and comment (N.J.A.C.
1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: September 22, 1986.

Expiration Date: June 20, 1988.

Summary of Public Comments and Agency Responses:

Thirteen letters of comment were received by the Department in response to the proposed amendment. Specifically, letters were received from the following: New Jersey Association of Health Care Facilities, New Jersey Association of Non-Profit Homes for the Aging, Catholic Community Services, the New Jersey Coalition for the Protection of Vulnerable Adults, New Jersey Citizen's Coalition for Nursing Home Reform, The Preakness Hospital, Cadbury Health Care Center, and Friends Home at Woodstown. Comments were also received from the Commission of the New Jersey Department of Human Services and from three divisions of the New Jersey Department of Human Services: Division of Medical Assistance and Health Services, Division of Veterans Programs and Special Services, and Division of Developmental Disabilities. All commentators agreed with the concept of the proposed amendment, although several changes were recommended regarding implementation of the rule.

A comment from the Division of Medical Assistance and Health Services, New Jersey Department of Human Services, recommended a technical language change to further clarify the proposed amendment. It was suggested that the statement would be more precise if changed to read ". . . and the list of deficiencies from any valid complaint investigation during the past 12 months." The Department accepted the suggested change and the proposed rule was revised as requested.

Seven commentators expressed concerns regarding the implementation of the proposed amendment, N.J.A.C. 8:39-3.11. The letters of comment stated that facilities would suffer "adverse economic impact" due to the need to increase administrative personnel, especially during evenings, weekends and holidays. There was concern that an unnecessary burden would be placed and supervisory nursing personnel. The letters further indicated that in some instances facilities would be required to hire additional staff to interpret and explain regulations, reports, and other requested documents which are "not easily understandable to all" in order to "avoid confusion and/or undue alarm." Several commentators suggested that the information be available "by appointment after normal business hours" or "upon advance request" so that a "licensed administrator" could be present to answer any questions which might arise.

The Department contends that additional personnel would not be required in order to comply with the proposed amendment since the existing licensure rules for long-term care facilities require that an administrator or his or her alternate be available at all times in the facility. The proposed amendment does not address specific methods for implementing the rules. Each facility has the flexibility to establish its own procedures. Appointments may be arranged by the facility if this is agreeable to the person requesting the information. However, all documents and reports shall be made available as requested.

The Department asserts that this rule is necessary to benefit patients, consumers, and the public in their right to know about the operation of the facility and will help provide necessary information to make informed decisions about the placement and quality of care provided to patients.

No substantive changes were made to the proposed amendment. A technical language change was added to further clarify the intent of the proposed rule.

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

8:39-3.11 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility, during visiting hours, 8:00 *[a.m.]* *A.M.* to 8:00 *[p.m.]* *P.M.* daily, to patients, their next of kin and/or sponsors and/or guardians, and the public;

1.-2. (No change).

3. A list of deficiencies from the last annual licensure inspection and certification survey report (if applicable) and the list of deficiencies from any valid complaint ***investigation*** during the past 12 months;

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: August 21, 1986, by the Drug Utilization Review
Council, Robert Kowalski, Acting Chairman.

Filed: August 26, 1986 as R.1986 d.381, **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: September 22, 1986.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

Ciba-Geigy regarding transdermal nitroglycerin and extended-release potassiums:

COMMENT: Ciba-Geigy had objected in writing to the Bolar transdermal nitroglycerin products, based on Bolar not being the manufacturer. In addition, they noted that the proposed extended release potassium products do not have FDA approvals, thus should not be accepted by the Council.

RESPONSE: The Council agreed with both objections. Bolar will have the actual manufacturer of the transdermal nitroglycerin apply to the Council, and the extended-release potassium products will not be considered for final inclusion in the formulary until after FDA approval is obtained. The Bolar proposal for this product has been withdrawn.

Thames regarding "fluocinolone acetonide":

COMMENT: Thames noted an error in the proposal: the proposed fluocinolone acetonide lotion, 0.1%, should have been listed as triamcinolone acetonide lotion, 0.1%.

RESPONSE: The Council agrees that an error was made. The corrected proposal has already been made at 18 N.J.R. 1775(a).

Searle regarding verapamil:

COMMENT: Searle stated that the Searle patent on verapamil expires on September 25, 1986, thus asking the Council not to consider such an entity until after the patent's expiration date.

RESPONSE: The Council recognizes this argument, but the point is made moot by the lack of an FDA approval for these products. At this point in time, any potential action by the Council could only occur after September 25, thus meeting Searle's objections.

Pennwalt regarding doxepin:

COMMENT: Pennwalt questioned the lack of adherence of Mylan to the stated protocol for the doxepin bioequivalency study. Specifically, Pennwalt said that Mylan's protocol called for subjects to remain standing after dosing, but later in the protocol stated that subjects were semi-recumbent for several hours, a significant deviation in Pennwalt's opinion.

Pennwalt also stated that the coefficient of variation for the AUC of the Mylan doxepin was large enough to be of clinical concern.

RESPONSE: The Council noted that the Mylan doxepin study was adequate in all factors usually reviewed by the Council, and varied from the brand by only 1% in the only statistically significant difference between the brand and the Mylan product, thus Pennwalt's objections were considered insufficient reason to reject the Mylan doxepins.

Mead-Johnson regarding trazodone, potassium chloride extended-release, and cholestyramine:

COMMENT: Mead-Johnson noted that no generic firms have an approval from the FDA for trazodone products. In addition, Mead-Johnson claims to hold a patent on the film coating for their potassium chloride extended-release product. Finally, Mead-Johnson noted that the proposed cholestyramine product is listed as "4 g/packet." The Mead-Johnson cholestyramine product holds 9 g/packet, with the "inactives" being important in that they increase the product's dispersion.

RESPONSE: Neither trazodone, the extended-release potassiums, nor the cholestyramine have FDA approval as yet, so these products remain deferred. The Council will consider these objections when the products again come up for discussion.

Miles regarding nifedipine:

COMMENT: Miles wrote in support of their nifedipine product, stating that it is made by the same manufacturer as the brand.

RESPONSE: Although the Miles nifedipine is still pending, the Council notes that it is basically the identical price to the branded product, thus little or no saving to the consumer would result from using the Miles product in place of the brand.

Cord regarding propoxyphene and tolazamide:

COMMENT: Cord wrote in support of these products, and noted that the tolazamide shows a similar pattern of blood glucose lowering to that caused by Tolinase, the branded product.

RESPONSE: The Council accepted Cord's propoxyphene argument and has referred the tolazamide issues to a clinical consultant.

Bristol-Myers regarding extended-release potassium, cholestyramine powder, and trazodone:

COMMENT: On all three products, Bristol-Myers stated that the FDA had not yet given their approval for marketing.

RESPONSE: The Council agrees and will not consider final action on these products until FDA approval has been received.

Norwich-Eaton regarding macrocrystalline nitrofurantoin:

COMMENT: Norwich stated that they opposed the proposed substitute for their product, Macrochantin, based on lack of FDA approval, lack of information on the crystal size of the proposed product, and failure of a normal bioavailability study's ability to assess the efficacy of the substitute in decreasing the gastrointestinal distress usually caused by nitrofurantoin. In addition, they state that the bioavailability study provided by the generic manufacturer was defective in that both the generic and the brand did not reach effective therapeutic concentrations.

RESPONSE: The Council will consider these arguments when a final decision is reached, but at this time the generic product is undergoing a new bioavailability study, so action is delayed pending those results.

Searle regarding verapamil:

COMMENT: Searle raised several issues concerning the Danbury verapamil bioavailability study, including protocol problems. Searle con-

cluded that the Danbury verapamil product is not equivalent to the brand. Searle also asked the Council to require separate bioavailability tests for the 80 mg and 120 mg generic products.

RESPONSE: The Council did not consider the proposed verapamil products because none had yet received FDA approval. Searle objections will be considered before final decisions are reached.

The following products and their respective manufacturers were adopted:

Allopurinol tablets 100 mg, 300 mg	Purepac
Amiloride tabs 5 mg	Par
Amitriptyline tabs 10, 50, 75, 100 mg	Purepac
Antipyrine/benzocaine otic soln	Thames
Chlorpromazine conc. 30 mg/ml, 100 mg/ml	Roxane
Chlorpropamide tabs 100, 250 mg	Halsey
Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Biocraft
Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Danbury
Diazepam tabs 2 mg, 5 mg, 10 mg	Cord
Diazepam tabs 2, 5, 10 mg	Purepac
Diazepam tabs 2, 5, 10 mg	Quantum
Dipyridamole tabs 25, 50, 75 mg	Purepac
Disopyramide caps 100, 150 mg	Bolar
Doxepin HCl caps 10, 25, 50, 75, 100 mg	Mylan
Fluocinolone acetonide top soln 0.01%	Thames
Hydralazine HCl tabs 10, 100 mg	Barr
Hydralazine HCl tabs 10, 25, 50, 100 mg	Halsey
Hydrocortisone lotion 1%	Thames
Lidocaine HCl oral soln, 2%	Roxane
Meclizine tabs 12.5, 25 mg	Sidmak
Methyldopa tabs 125, 250, 500 mg	Bolar
Methyldopa tabs 125, 250, 500 mg	Purepac
Methyldopa/HCTZ tabs 250/15, 250/25	Mylan
Methyldopa/HCTZ tabs 500/50	Purepac
Nystatin 100MU/Triamcinolone crm & oint	Fougera
Nystatin 100MU/Triamcinolone crm & oint	Pharmaderm
Nystatin 100MU/Triamcinolone crm & oint	Savage
Nystatin oral tabs 500,000 U	Quantum
Prednisolone acetate 0.2%/10% sulfacet.	Pharmafair
Propoxyphene napsylate 100/APAP 650	Cord
Propranolol HCl tabs 10, 20, 40, 80 mg	Danbury
Propranolol HCl tabs 10, 20, 40 mg	Lederle
Propranolol/HCTZ tabs 40/25, 80/25 mg	Purepac
Tolazamide tabs 500 mg	Mylan

The following products and their respective manufacturers were not adopted:

Isosorbide dinitrate SL tabs 10 mg	Barr
Isosorbide dinitrate oral tabs 20, 30 mg	Barr

The following products were not adopted but are still pending:

Amitriptyline/perphenazine 2/10, 2/25 mg	Bolar
Amitriptyline/perphenazine 4/10, 4/25 mg	Bolar
Chlorthalidone tabs 25 mg	Purepac
Chlorthalidone tabs 50 mg	Purepac
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
Diazepam tabs 2, 5, 10 mg	Duramed
Estropipate tabs 1.5, 3.0 mg	Pharm. Basics
Furosemide tabs 80 mg	Roxane
Haloperidol tabs 0.5, 1, 2, 5, 10 mg	Purepac
Hydromorphone tabs 2 mg, 4 mg	Roxane
Hydroxyzine HCl tabs 10, 25, 50 mg	Sidmak
Ibuprofen tabs 300, 400, 600 mg	Purepac
Ibuprofen tabs 800 mg	Boots
Indomethacin caps 25, 50 mg	Bolar
Indomethacin caps 25, 50 mg	Purepac
Lactulose syrup 10 g/15 ml	Alra
Lithium carbonate caps 300 mg	Bolar
Lorazepam tabs 0.5, 1.0, 2.0 mg	Duramed
Lorazepam tabs 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 125, 250, 500 mg	Lederle

Methyldopa tabs 250, 500 mg	Duramed
Methyldopa/HCTZ 250/15, 250/25	Purepac
Methyldopa/HCTZ tabs 500/30	Purepac
Metoclopramide tabs 10 mg	Bolar
Metoclopramide tabs 10 mg	Watson
Metronidazole tabs 250, 500 mg	Watson
Nifedipine caps 10 mg	Miles
Nitrofurantoin macrocrys. 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 HCl tabs 10, 20, 40, 80 mg	Watson
Propranolol HCl tabs 10, 20, 40, 80 mg	Mylan
Propranolol tabs 10, 20, 40, 60, 80 mg	Bolar
Spironolactone tabs 25 mg	Purepac
Sucralfate tabs 1.0 g	Pharm.Basics
Temazepam caps 15, 30 mg	Bolar
Tolazamide tabs 100, 250, 500 mg	Bolar
Tolazamide tabs 250, 500 mg	Cord
Tolbutamide tabs 250, 500 mg	Bolar
Trazodone HCl tabs 50, 100 mg	Danbury
Trifluoperazine tabs 5 mg	Bolar
Valproic acid syrup 250 mg/5 ml	Alra
Verapamil HCl tabs 80, 120 mg	Danbury
Verapamil tabs 80, 120 mg	Bolar
Verapamil tabs 80, 120 mg	Purepac

SPECIAL NOTES: The following products have been withdrawn from the proposal at 18 N.J.R. 1167(a) for the following reasons:

1. Flucinolone acetonide lotion 0.1% by Thames
An incorrect drug name was used in the proposal. The correct drug name, triamcinolone acetonide lotion, 0.1%, has been proposed at 18 N.J.R. 1775(a).
2. Valproic acid caps 250 mg Par
This product was previously approved under the proposed manufacturer "Chase." Since "Chase" and "Par" are the same company, the approval for "Chase" is sufficient.
3. Nitroglycerin transdermal patch 15 mg Bolar
Nitroglycerin transdermal patch 5 mg Bolar
This product was erroneously applied for, incorrectly stating Bolar as the manufacturer. The actual manufacturer has now applied for consideration at a later date.

(a)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: March 17, 1986 at 18 N.J.R. 537(a).
Adopted: August 21, 1986, by the Drug Utilization Review Council, Robert Kowalski, Acting Chairman.
Filed: August 26, 1986 as R.1986 d.382, **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: September 22, 1986.
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their respective manufacturers were **adopted**:

Metoclopramide tabs 10 mg	Par
Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Par
Methyclothiazide tabs 2.5, 5 mg	Par
Clofibrate capsules, 500 mg	Chase
Ergoloid mesylates oral tabs 1 mg	Barr
Hydrochlorothiazide tabs 25 mg, 50 mg	PFI

The following products and their respective manufacturer were **not adopted**:

Aminophylline tabs 100 mg, 200 mg	Roxane
The following products were not adopted but are still pending :	
Aminophylline oral soln 105 mg/5 ml	Roxane
Carisoprodol 200/Aspirin 325 mg tabs	Bolar
Chlorzoxazone 250mg/Acetaminophen 300mg	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, 500/50mg	Par
SMZ/TMP Susp. 200 mg+40 mg/5 ml	Naska
Sulfasalazine tabs 500 mg	Superpharm
Tolazamide tabs 250, 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

The following products were **withdrawn** by their manufacturers:
Flurazepam HCl caps, 15 mg, 30 mg Pharm. Basics
Oxazepam caps 10, 15, 30 mg Chelsea

OAL NOTE: See related Notice of Adoption at 18 N.J.R. 1463(b).

(b)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: December 2, 1985 at 17 N.J.R. 2842(a).
Adopted: August 12, 1986, by the Drug Utilization Review Council, Robert Kowalski, Acting Chairman.
Filed: August 26, 1986 as R.1986 d.383, **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: September 22, 1986.
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their respective manufacturers were **adopted**:

Metoclopramide tabs 10 mg	Chelsea
Procainamide HCl tabs, slow-release, 500 mg	Copley
Temazepam caps 15, 30 mg	PharmBasic

The following products were not adopted but are still **pending**:

Procainamide tabs slow-release 250, 750 mg	Danbury
Tolbutamide tabs 500 mg	Purepac
Hydralazine/Hydrochlorothiazide caps 25/25, 50/50	Superpharm
Isosorbide dinitrate oral tabs 5, 10, 20 mg	Superpharm
Indomethacin caps 25, 50 mg	Superpharm
Spironolactone tabs 25mg/hydrochlorothiazide 25mg	Superpharm
Chlorpheniramine maleate 8 mg/pseudoephedrine HCl 120 mg caps, slow-release	Graham
Spironolactone tabs 25 mg	P-D
Spironolactone 25mg/hydrochlorothiazide 25mg tabs	P-D
Diazepam tabs 2, 5, 10 mg	Par
Methyldopa 250/hydrochlorothiazide 25 mg tabs	Cord
Methyldopa 500/hydrochlorothiazide 50 mg tabs	Cord
Methyldopa 500/hydrochlorothiazide 30 mg tabs	Cord
Ibuprofen tabs 400, 600 mg	Danbury
Ergoloid mesylates oral tablet 1 mg	Superpharm
Ergoloid mesylates SL tabs 0.5, 1.0 mg	Superpharm
Diazepam tabs 2, 5, 10 mg	Superpharm
Disopyramide caps 100, 150 mg	Chelsea
Carbamazepine tabs 200 mg	PharmBasic
Methyldopa tabs 250, 500 mg	Cord
Diazepam tabs 2, 5, 10 mg	Barr
Disopyramide phosphate caps 100, 150 mg	Barr
Flurazepam caps 15, 30 mg	Barr

Nalidixic acid tabs 250, 500, 1000 mg
Oxytriphyllyne tabs 100, 200 mg
Propranolol tabs 10, 20, 40, 60, 80 mg
Tolazamide tabs 100, 250, 500 mg

Barr
Barr
Barr
Barr

OAL NOTE: See related Notices of Adoption at 18 N.J.R. 417(a), 984(b), 1102(b), 1382(a), 1463(a).

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Dental Services

General Provisions, Instructions for Payment, Procedure Codes and Descriptions

Readoption: N.J.A.C. 10:56-1, 2 and 3

Adopted Amendments: N.J.A.C. 10:56-1.1, 1.6, 1.8, 1.11, 1.12, 1.14, 1.15, 1.17, 1.19 through 1.22; 2.2

Proposed: July 7, 1986 at 18 N.J.R. 1337(a).

Adopted: August 26, 1986 by Drew Altman, Ph.D.,
Commissioner, Department of Human Services.

Filed: August 26, 1986, as R.1986 d.385, with **substantive and technical changes** not in violation of N.J.A.C. 1:30-4.3.

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

Effective Date for Readoption: August 26, 1986.

Effective Date for Amendments: September 22, 1986.

Expiration Date: August 26, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Changes between Proposal and Adoption:

There are two minor textual changes being made upon adoption. The word "hospital" is being inserted in front of outpatient dental clinics in section 10:56-1.12(b)1i. The previous text of this subparagraph applied to hospital outpatient departments and the same language should have been included with the original proposal. It should be noted that the hospital outpatient dental clinics have been subject to the same policies, procedures and reimbursement schedules as dentists in "private" practice since 1982 (see R.1981 d.479).

The word medical is being changed to Medicaid in section 10:56-1.13(b) so that the address for the Prudential Insurance Company will be correct.

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

10:56-1.1 Definitions

"Specialist" means one who is licensed to practice dentistry in the state where treatment is rendered, who limits his practice solely to his specialty, which is recognized by the American Dental Association.

NOTE: Further conditions regarding the qualifications for a dental specialist for the New Jersey Medicaid Program may be found at N.J.A.C. 10:56-1.13.

10:56-1.6 Special dental services

Dental services for which no specific provisions are made, or which are limited or prohibited in these policies and procedures may be considered on an individual basis. Such a request should be forwarded to the Dental Claims Review Unit, CN-713, Trenton, New Jersey 08625. The request must be accompanied by all supporting documentation.

10:56-1.8 Patient records

(a) (No change.)

1. The record shall consist of the following:

i.-vii. (No change.)

viii. Explanation of any duplication of services within one year (prosthetic service within seven and one-half years).

ix.-x. (No change.)

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

10:56-1.11 Basis of payment

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

1. The stage of completion of the service should be detailed on the dental form (MC-10), or in the case of an appliance, denture or crown, and so forth, the case to the point of completion should be forwarded to the dental consultant for proration as determined by the Chief, Bureau of Dental Services. The case will be returned to the provider and should be retained for at least one year.

(d) Partial reimbursement for an appliance completed but not delivered to the recipient because of circumstances beyond the control of the provider will be authorized by the New Jersey Medicaid Program. An amount equivalent to the professional component for inserting and adjusting the appliance will be deducted from the total reimbursement for such appliance. In the event the patient returns and the service is completed, the provider may request reimbursement for the deducted amount. Procedures as outlined in (c) above will apply.

(e) Reimbursement is not made for, and recipients may not be asked to pay for broken appointments.

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

10:56-1.12 Place of service

(a) In addition to the private office, dental services may be provided in the home, a hospital, approved independent clinic, long term care facility, and elsewhere.

(b) Services should be provided in any appropriate setting, governed by medical/dental necessity and not by the convenience or desires of the patient or the providers of services.

1. Policies specific for dental services rendered in the outpatient departments of approved licensed hospitals and services rendered in approved independent clinics are described in their respective manuals.

i. ***[Outpatient]* *Hospital outpatient*** dental clinics are subject to the same New Jersey Medicaid Program policies, procedures and reimbursement schedule as outlined in this manual that apply to the dentist in "private" practice (reference is made to N.J.A.C. 10:52-2.8A).

2. Dental services performed on an inpatient basis in approved licensed hospitals are reimbursable provided that they require that level of care which must be documented on the hospital records.

i. (No change.)

(c) Dental services as performed by a licensed dentist in a long term care facility, or elsewhere outside the provider's office setting are reimbursable provided that:

1. The policies and procedures as detailed in this manual are followed.

2. In a long term care facility, the dentist rendering the dental services is not an owner, administrator, stockholder of the company or corporation or otherwise has a direct financial interest in the facility.

3. Reimbursement of a supplemental fee for an out-of-office visit in addition to a fee for service is limited to once per trip per facility, regardless of the number of patients examined or treated during the visit.

4. The dentist who examines a long term care facility patient must provide the treatment necessary unless the examination indicates that a specialist is needed.

10:56-1.13 Requirements for specialists

(a) The following conditions shall apply to specialists as defined in N.J.A.C. 10:56-1.1:

1. In New Jersey, and where required in other states, has obtained specialty certification from the appropriate agency of the state where dental services are to be rendered; or

2. In those states not requiring specialty certification:

i. Is a diplomate of the appropriate American Dental Association recognized board; or

ii. Meets the minimum requirements for that specialty as stipulated by the American Dental Association.

(b) Any provider who meets the qualifications in (a) above and desires specialist reimbursement is required to submit written documentation to the Prudential Insurance Company ***[Medical]* *Medicaid*** Claims Division II, Provider Enrollment Section, P.O. Box 5007, Millville, New Jersey 08332. This documentation must be as follows:

1. In New Jersey, and where required in other states, a copy of the specialty certificate/permit issued by the appropriate agency of the state where dental services are to be rendered; or

2. In those states not requiring specialty certification and when the practitioner is not listed in the Directory of the American Dental Association under "Character of Practice-Specialist."

i. From his specialty board indicating his specialist status as a diplomate; or

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ii. From the American Dental Association stipulating that he meets the minimum requirements for his specialty.

(c) Specialist reimbursement where appropriate will be limited to the following specialties.

1. Oral surgery;
2. Endodontics;
3. Pedodontics;
4. Orthodontics;
5. Periodontics;
6. Prosthodontics.

10:56-1.14 Diagnostic services

(a) (No change.)

(b) Radiography rules are as follows:

1.-2. (No change.)

3. Reimbursement for dental X-rays shall be limited according to the following guidelines.

i. A complete series radiographic study is defined and limited by age. It represents the maximum number of diagnostic x-rays reimbursable as a single radiographic study every three years without prior authorization as follows:

(1) Up to and including age six—eight films (six periapical plus two bitewing films);

(2) Age seven, up to and including age 14—12 films (10 periapical films, plus two bitewing films);

(3) The need for additional films in (b)3i(1) and (2) above must be substantiated and the specific authorization obtained from the Dental Consultant.

(4) For those patients 15 years of age or older—16 X-rays (at least 14 periapical plus two posterior bitewing films).

(5) The three year limitation in (b)3i(1), (2), and (4) above will continue to apply even though there should be an age change that would transfer the patient from one age category to another. For example, a patient who has eight X-rays at age six is not eligible for the 12 film series until he or she has reached age nine and three years have passed.

4. In an emergency situation, in order to establish a diagnosis (which must be recorded in Item 16 of Dental Claim Form MC-10) an X-ray may be taken at any time as dentally appropriate.

5. All X-ray films must be suitable for interpretation and when submitted to the New Jersey Medicaid Program or its agents must be properly mounted, marked "Right" and "Left" and identified with the patient's name, the date, and the name of the dentist. Films that are technically unacceptable for proper interpretation will be returned to the provider for replacement at no additional cost to the Medicaid program, or where appropriate, no reimbursement will be made. When already reimbursed, recoupment will be made where indicated.

6. The originals of all X-ray films must be forwarded to the dental consultant when procedures requiring prior authorization are requested. It is recommended that the two film packet be used or a copy made by all dentists who wish to retain a set of X-ray films in their offices at all times.

7. Postoperative X-rays normally taken at the conclusion of dental treatment by a dental provider shall be maintained as part of the patient's dental records (for example—final X-ray(s) at completion of endodontic treatment, certain surgical procedures, and so forth).

8. The originals of all X-rays must be available to authorized representatives of the New Jersey Medicaid Program or other agencies of the State of New Jersey as approved by the New Jersey Medicaid Program. Such X-rays will be reviewed by dental consultants of the Medicaid program and/or dentists representing organized dentistry, if appropriate.

9. It is most important, also, that all X-rays be examined carefully by the provider to assure quality care and to make certain that all necessary treatment has been diagnosed and completed.

(c) "Clinical laboratory services" means professional and technical laboratory services ordered by a dentist within the scope of his practice as defined by the laws of the state in which he practices and provided by a laboratory that is qualified to participate under the program. Such laboratories include:

1. Independent clinical laboratories, including physician operated, out of hospital laboratories which perform primarily diagnostic work referred by other practitioners;

2. Hospital laboratories and laboratories of educational institutions which provide laboratory services to ambulatory patients as requested by a licensed practitioner.

3. Services provided by any of the above laboratories must be billed directly to the program by the laboratory, and not by the dentist.

(d) Radiological (X-ray) services other than those ordinarily provided by a practitioner in his own office may be referred to a dental specialist who will provide radiological services limited to his own special field. Radiological services may also be requested from a physician who is a specialist in radiology or a qualified hospital facility.

1. Services provided by another dentist, physician, or hospital facility must be billed directly to the program by that provider and not by the referring dentist.

(e) Prior authorization is required for reimbursement for additional aids such as diagnostic models, photographs, and so forth (exception—see section N.J.A.C. 10:56-1.21 of this subchapter).

10:56-1.15 Preventive dental care

(a) In addition to a dental examination every six months for those patients through age 17 and once every twelve months for those patients 18 years of age or older, preventive dental care encompasses the following recommended services:

1. Prophylaxis:

i. Dental prophylaxis means the complete removal of calculus and stains from the exposed and unexposed areas of the teeth by scaling and polishing.

ii. (No change.)

2. Flouride treatment

i. (No change.)

ii. A complete prophylaxis must be performed prior to the topical flouride treatment.

iii. (No change in text.)

iv. This is not a covered service for persons 21 years of age and over.

10:56-1.17 Endodontia

(a) When requesting endodontic treatment, consideration should be given to the age and general health of the patient, the status of the tooth in the arch, and the condition of the remaining dentition and supporting structures.

1. Reimbursement for root canal therapy for all teeth shall include extirpation, treatment, complete filling of the root canal(s) with permanent material, all necessary X-rays during treatment and post-operatively, and follow-up care.

i. Prior authorization is necessary. When the patient is in pain, the dentist should institute appropriate emergency measures to extirpate the pulp and/or relieve the pain only until authorization is requested and received.

2.-4. (No change.)

5. Apicoectomy:

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

(1) Overfilled canal (previously treated tooth);

(2) Canal cannot be filled properly because of excessive root curvature or calcification;

(3) Fractured root tip that cannot be reached endodontically;

(4) Broken instrument in canal;

(5) Perforation of the apical third of canal;

(6) Broken root canal filling lying free in periapical tissues and acting as an irritant;

(7) Periapical pathology not resolved by previous endodontic therapy;

(8) Periapical pathology which will not be resolved by endodontic therapy alone;

(9) A post, post and core, or post-crown which cannot be removed.

ii. Apicoectomy should not be performed for convenience. If endodontic treatment is necessary, but none of the above conditions exist, reimbursement for the apicoectomy will not be made.

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

iv. Post-treatment X-rays are required.

10:56-1.19 Prosthodontic treatment

(a) (No change.)

(b) 1.-8. (No change.)

9. Denture relining, rebasing (jumping) or repairing (other than as noted in this section) are reimbursable.

i. The fee will include all necessary adjustments for a six month period following insertion for relining and rebasing and three months for repairs.

10. (No change.)

10:56-1.20 Exodontia and oral surgery

(a) Exodontia rules are as follows:

1. Extraction of teeth other than those classified as non-restorable requires prior authorization.

i. Where any extraction is being considered which will necessitate the insertion of a dental prosthesis, prior authorization is mandatory. Reimbursement for such an extraction(s) rendered without appropriate authorization will be denied, or if already paid, reimbursement will be recovered. Due to the rule limiting the authorization of denture(s) (refer to N.J.A.C. 10:56-1.19) it may be impossible to replace a denture(s) following such extraction(s). Therefore, careful consideration should be given to the condition of teeth:

- (1) Prior to a request for dentures initially; and
- (2) Prior to any extraction which would jeopardize an existing denture.

ii. When any extraction is to be performed in conjunction with or during orthodontic treatment, the dentist must determine:

(1) That such orthodontic treatment has been authorized through the Chief, Bureau of Dental Services, Division of Medical Assistance and Health Services.

(2) That such extraction(s) has the express consent of the practitioner to whom orthodontic treatment has been authorized. Reimbursement will be denied (or if already paid, reimbursement will be recovered) for any extraction(s) performed:

(A) In conjunction with orthodontic care if such orthodontic treatment has not had authorization from the Chief, Bureau of Dental Services; or

(B) On an appropriately authorized orthodontic case without the consent of the practitioner to whom orthodontic treatment has been authorized, or the approval of the Chief, Bureau of Dental Services.

2.-5. (No change.)

(b) (No change.)

10:56-1.21 Orthodontic treatment

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

(e) Rules concerning prior authorization for orthodontic treatment are:

1. i.-iii. (No change.)

iv. Diagnostic aids must include and reimbursement will be limited to:

(1) Diagnostic models with the correct inter-arch relationship indicated;

(2) A cephalometric radiograph with a detailed tracing;

(3) A series of intra-oral radiographs consistent with policy as stated in section 1.14 of this subchapter (or a diagnostic panoramic radiograph);

(4) Extra-oral lateral plate radiographs (but not if a diagnostic panoramic radiograph has been submitted);

(5) Photographs (minimum size 2 inches by 2 inches) or slides—maximum reimbursable—six.

(6) All the diagnostic aids will be returned to the practitioner, but shall be made available upon the request of the Division of Medical Assistance and Health Services, Bureau of Dental Services. It is suggested that models and X-rays be duplicated before submission to enable you to retain a set in your office should there be breakage or loss in mailing.

2.-3. (No change.)

(f) (No change.)

(g) Final records similar to diagnostic aids described in (e)1.iv. above, taken at termination of treatment must be submitted with the claim for the last six monthly visits to:

Division of Medical Assistance and Health Services
Bureau of Dental Services
CN-713

Trenton, New Jersey 08625

In no instance will any of the last six monthly visits be payable until final records are received.

(h) Failure to submit the records referred to in (g) above, may result in the recovery, by the Division of Medical Assistance and Health Services, of an amount not to exceed that paid for the previous 12 months of treatment actually reimbursed to the provider.

10:56-1.22 Adjunctive general services

(a) Anesthesia, analgesia, and intravenous sedation rules are as follows:

1.-2. (No change.)

3. General anesthesia: In any setting exclusive of a hospital, when general anesthesia is provided by the dentist, such may be authorized subject to the following:

i.-iii. (No change.)

iv. When general anesthesia is administered by a dentist whose sole function is to administer general anesthesia, such service is reimbursable provided:

(1) Anesthetic management is necessary to perform restorative dentistry alone or restorative dentistry in conjunction with other dental services.

(2) Special general anesthesia codes are utilized (see subchapter 3 of this chapter. Prior authorization is required.

(3) An anesthesia record is maintained and submitted along with both the dental forms (MC-10) for anesthesia and treatment.

(A) The anesthesia record submitted must show elapsed anesthesia time, pinpoint the time and amounts of drugs administered, pulse rate and character, blood pressure, respiration, and so forth.

(B) Elapsed anesthesia time means the time from induction of the general anesthesia to the completion of the operation, or in other words, table (chair) time only.

4. Intravenous sedation: Reimbursement for the administration of intravenous sedation is subject to the following conditions:

i. Such sedation is administered continuously during the operative or surgical procedure.

ii. No reimbursement will be made for injections given as preoperative medication.

iii. The practitioner shall demonstrate the need for this service.

iv. Person administering the intravenous sedation is a dentist satisfying all rules and regulations as established and has such written certification (permit) as may be required by the State of New Jersey or the state in which the procedure is being performed.

v. There can be only one charge for intravenous sedation per visit.

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

10:56-2.2 Dental services form (MC-10)

(a) Dental services form (MC-10) shall be used for recording proposed treatment and also for billing of treatment rendered, as specified in Exhibit 1.

(b) Procedure code numbers and descriptions as they appear in subchapter 3 of this chapter shall be used on this form. A fee shall be requested for each procedure and shall be the usual and customary fee of the provider.

(c) When prior authorization is necessary (refer to subchapter 1 of this chapter for those treatment plans requiring prior authorization), the dental form MC-10 (both copies) should be sent to the Dental Claims Review Unit, CN-713, Trenton, New Jersey 08625.

1. Out-of-state providers shall submit their dental form (MC-10) to the Bureau of Dental Services, CN-713, Trenton, New Jersey 08625, for prior authorization.

(d) (No change.)

(e) Rules for payment are as follows.

1. Routine dental services:

i. After the routine dental services are completed, patient (or his authorized representative) shall sign the dental form MC-10, item 22. The provider shall personally sign and date the dental form MC-10, item 23.

ii. The top copy (contractor's/fiscal agent's) of the dental form MC-10 shall be forwarded to:

The Prudential Insurance Company
Medicaid Claims Division II
P.O. Box 1900
Millville, New Jersey 08332

(1) The second copy (provider's) should be retained by the provider.

iii. Request for payment must be received within 90 days of the last treatment date.

2. Authorized treatment plans:

i. After previously authorized treatment plans are completed, the patient (or his authorized representative) shall sign the dental form MC-10, item 22. The provider shall personally sign and date the dental form MC-10, item 23.

ii. The top copy (contractor's/fiscal agent's) of the dental form MC-10 shall be forwarded to:

The Prudential Insurance Company
Medicaid Claims Division II
P.O. Box 1900
Millville, New Jersey 08332

(1) The second copy (provider's) should be retained by the provider.

iii. Request for payment must be received within 90 days of the last treatment date.

(1) (No change.)

3. Orthodontic treatment:

i. Following utilization of the Handicapping Malocclusion Assessment system, when the malocclusion does not meet the minimum number of points, the practitioner should not proceed with the diagnostic work-up, but shall bill for the Assessment Examination only by submitting the contractor/fiscal agent copy of a Dental Claim Form (MC-10) directly to:

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The Prudential Insurance Company
Medical Claims Division II
P.O. Box 1900
Millville, New Jersey 08332

identifying by procedure code 0140 the service that has been rendered. A copy of the Assessment Record Form (FD-10) shall accompany this submission (limitation—see N.J.A.C. 10:56-1.14(a)4i).

ii. If the malocclusion meets or exceeds the minimum number of assessment points but the case does not fall within the parameters that have been established for orthodontic treatment under the Medicaid program, the dental form (MC-10) with authorization of the diagnostic services performed will be returned to the provider for completion of those sections requiring patient and provider signatures and dates. The contractor's/fiscal agent's copy may then be submitted to Prudential at the address above for reimbursement.

iii.-iv. (No change.)

vii. Request for payment must be received by the fiscal agent, the Prudential Insurance Co. no later than (90) days from the last date of service, and (12) months from the earliest date of service indicated on the Dental Claim Form (MC-10).

EXHIBIT I

Instructions for completing the dental form (MC-10) are:

1. Item 1: Patient's name: Print patient's name, last name first, as it appears on the patient's validation form or Medicaid eligibility identification card.

2. Item 2: Patient's address: Print complete address, include zip code. Enter patient's telephone number in appropriate space.

3. Item 3: Health services program case number: Enter patient's health services case number exactly as it appears on the validation form or Medicaid eligibility identification card.

4. Item 4: Patient person number: Enter number as it appears on the validation form or Medicaid eligibility identification card. Patient person numbers 1 through 9 must be shown as 01, 02, 03, and so forth.

5. Item 5: Age: Enter patient's date of birth.

6. Item 6: Sex: Indicate the patient's sex by placing an X in the appropriate box.

7. Item 7: Other dental insurance: Indicate other dental health insurance coverage by entering an X in the appropriate box.

i. No fault auto coverage: Indicated by placing an X in the appropriate box if the treatment was necessary as a result of an auto accident.

ii. If answer is yes to either question, attach a copy of the explanation of payment or the decline notice from the appropriate insurance carrier. If no payment has been received, a complete report of the current status of the claim should be attached.

(1) Claims collectible under the New Jersey no fault law are not reimbursable under the New Jersey Medicaid Program, however, supplemental payments can be made if the provider has received less than he would obtain from the Medicaid program.

8. Item 8: Illness or injury—employment related or injury due to automobile accident: Indicate if patient's illness or injury is employment related or result of auto accident by entering an X in the appropriate box. If yes is indicated in employment related questions, enter the name and address of the employer.

9. Item 9: Place of service: Indicate the place of service by placing an X in the appropriate box.

10. Item 10: EPSDT program referral:

i. This question must be answered for recipients under 21 years of age.

ii. Early periodic screening, diagnosis and treatment (EPSDT), is an aspect of the Medicaid program which ensures that recipients under 21 years of age receive early detection of disease and illness, as well as diagnostic and treatment services. If an EPSDT screening uncovers a health problem or defect, the patient may be referred to another practitioner for further diagnosis and/or treatment.

iii. It is essential that the Medicaid program be able to relate diagnostic and/or treatment services to the original screening. Therefore, when a patient under 21 visits your office, a reasonable effort should be made to determine whether it is as a result of an EPSDT program referral by asking the referring physician or clinic or the patient. If you are unable to obtain the information, check No.

11. Item 11: Provider name, address and number: This area is preprinted for the convenience of the provider who only need to enter his telephone number in the appropriate box.

i. Inform Prudential Insurance Company immediately of any errors in preprinting.

12. Item 12: Existing or previous dentures: Indicate whether or not the patient has existing or previous dentures by placing an X in the appropriate box. If yes, indicate whether partial or complete dentures, date inserted, usable or repairable for both maxillary and mandibular.

i. When prior authorization for dentures is requested, the claim will not be reviewed by the dental consultant if this section is not completed.

13. Item 13: Number of X rays: Indicate the number of pretreatment and posttreatment X rays on appropriate line.

14. Item 14:

14a. Date of initial impressions: Insert date of initial impressions for maxillary and mandibular denture(s), appliances, space maintainers, etc., on appropriate line, if applicable.

14b. Place the tooth code in the box provided and the date of initial preparation on the line adjacent to that code when the initial preparation is made for the crown.

14c. When initial treatment for authorized endodontic treatment is commenced, place the tooth code in the box and enter the date of initial treatment on the line adjacent to that tooth code.

15. Item 15: Record recommended treatment: Do not make any entries in the shaded area. Use one line for each procedure. Print clearly.

i. Date of service: Date procedure was completed—month, day and year. Numbers 1 through 9 are to be shown as 01, 02, 03, and so forth. Example: May 9, 1978 will be entered as 05 09 78.

ii. Procedure code: Enter the appropriate procedure code for service proposed or performed. Since amount of payment will be determined from the procedure code, accuracy is most important. The procedure codes and corresponding schedule of maximum allowances can be found at N.J.A.C. 10:56-3.

iii. Units of services: Do not use. These spaces for contractor use only.

iv. Fee requested: Providers must indicate their usual and customary charge for each procedure. Each charge should contain six numerals.

(1) Examples:

(A) \$1.00 written as 0001.00;

(B) \$20.00 written as 0020.00;

(C) \$300.00 written as 0300.00.

v. Amount B, code and jam: Do not use. These spaces for contractor use only.

vi. Tooth code: Identify tooth treated by utilizing tooth numbers from dental chart (Item 15G).

vii. Surface: Indicate each surface treated for each procedure. Use abbreviations as shown in item 19.

viii. Description of service: Briefly describe service rendered. Include materials used and all pertinent information using the abbreviations shown in item 19 as appropriate.

ix. Authorization for services only: Do not use.

x. The dental consultant will indicate by initials, date and possibly by a line connecting initials those services which are authorized and, therefore, reimbursable under the New Jersey Medicaid Program.

xi. Service denied: The dental consultant will indicate by an X in this column those services which are denied. The service itself will not be lined out by the dental consultant.

xii. Complete dental chart accurately and in detail: Indicate missing teeth, extractions, restorations to be placed indicating all areas where treatment is proposed or has been completed as noted above.

16. Item 16: Diagnosis(es): Enter a diagnosis for those procedure codes prefixed with a "d" in subchapter 3 of this chapter. Where possible, select the diagnosis from the international classification of diseases (Adapted for use in the United States), as published by the United States Department of Health, Education, and Welfare. (Do not confuse the diagnosis with the patient's complaint or symptoms—pain, swelling, and so forth is not acceptable as a diagnosis.)

17. Item 17: Referral: Indicate in the appropriate box whether this patient was a referral from another practitioner. If yes, the name and individual Medicaid practitioner number (IMP number) of the referring practitioner must be provided.

18. Item 18: Remarks: This space is for provider use, should a remark be necessary. Box should be checked if additional information is attached.

19. Item 19: Abbreviations: To be used when describing the service rendered.

20. Item 20: Charting symbols: To be used when charting services on the dental chart portion of item 15.

21. Item 21: This section is to be completed on each claim form. If one page is the complete claim, place an X in the top block. If there is more than one page to the complete claim, place an X in the second box and fill in blanks to the right.

i. For example: Page 1 of 3, page 2 of 3, and so forth.

22. Patient certification, see N.J.A.C. 10:49-1.26.

23. Item 23: Provider certification: The signature and IMP number of the dentist actually performing or supervising the service(s) described on the claim is required in item 23.

i. Exception: Dental groups: When practitioners in a group practice (whether sole ownership, association, partnership or corporation) submit claims for Medicaid reimbursement, the signature of any member of the group will be accepted on the claim form for billing purposes.

(1) However, the group will be required to enter the IMP number of the practitioner who personally performed the services represented on the claim. If a claim covers services performed by more than one practitioner, the IMP number of any one of the performing practitioners will be accepted.

The dental form (MC-10) is available from the Medicaid Claims Division II, Prudential Insurance Company, P.O. Box 1900, Millville, New Jersey 08332.

(a)

DIVISION OF PUBLIC WELFARE

General Assistance Manual

Emergency Assistance

Adopted Amendment: N.J.A.C. 10:85-4.6

Proposed: July 7, 1986 at 18 N.J.R. 1343(a).

Adopted: August 29, 1986, by Drew Altman, Ph.D.,

Commissioner, Department of Human Services.

Filed: August 29, 1986 as R.1986 d.389, with technical changes

not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:8-111(d).

Effective Date: September 22, 1986.

Operative Date: October 1, 1986.

Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: Comments submitted by a municipal welfare director support the amendment expanding the time period for temporary emergency shelter assistance. However, the commenter urges that the proposal be amended to authorize the deduction of the regular grant from payments made as emergency assistance.

RESPONSE: The additional money allowed for emergency assistance is in recognition of special needs and situations which arise beyond the client's control including fire or natural disaster. Only payments which are necessary are to be authorized by the municipal welfare department (MWD), depending on individual circumstances. Provisions at N.J.A.C. 10:85-4.6 allow for authorization of extra emergency payments for shelter, food, clothing and/or household furnishings, but only to the extent that the MWD deems each or all of those benefits as essential for the health and safety of the individual. In any event, the commenter's suggestion that this proposed amendment be modified so as not to duplicate regular assistance payments is a matter of separate rulemaking inasmuch as the subject amendment dealt with an expansion of the time frame during which emergency assistance may be granted only.

OAL NOTE: The original text of this rule required authorized payment "be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed the calendar month following the month in which the state of homelessness first became known." The Emergency Adoption (at 18 N.J.R. 850(a)) changed the requirement to a time period "not to exceed 90 days following the date on which the state of homelessness first becomes known to the municipal welfare department." The emergency provisions were published in the N.J.A.C. on April 21, 1986. The emergency provisions expired on May 28, 1986. At the time this proposed amendment was submitted for publication, and at the time it was published in the July 7, 1986 issue of the New Jersey Register, the Administrative Code reflected the text of the Emergency Adoption, which had already expired. This proposal was inadvertently amended to conform to the text as it appears in the N.J.A.C. This change was erroneous, since the text of the Emergency Adoption had expired on May 28, 1986, and the text had reverted to the original text.

During the time period between May 29, 1986 and October 1, 1986, the operative provisions of the rule are those of the original text. The intent of this most recent proposal (18 N.J.R. 1343(a)) and this adoption of the proposal were to increase the amount of time a homeless person may be eligible for temporary emergency shelter assistance.

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

10:85-4.6 Emergency grants

(a) An emergency grant shall be authorized to or for an individual(s) otherwise eligible to receive General Assistance under the regulations in this manual when circumstances set forth in (a)1-2 below exist. In addition, these regulations shall apply to an emergency (as described in (a)1-2 below) which occurred within the seven calendar days immediately prior to the application for General Assistance if the applicant(s) is determined eligible at the time of application under established procedures and standards.

1. (No change.)

2. Situation beyond client's control: Because of an emergent situation over which the individual had no control or opportunity to plan in advance, *[he/she]* ***he or she*** is in a state of homelessness, and the municipal welfare director determines that provision of shelter, food, clothing, *[and/or]* ***or*** minimum essential house furnishings are necessary for the health and safety of the individual:

i. Domestic violence: The state of homelessness may result from imminent or demonstrated violence which imperiled the health and safety of the individual or eligible unit *[, or]* ***.***

(b) Standards for emergency grants are:

1. Emergency shelter: When an actual state of homelessness exists or is manifestly imminent in accordance with (a)1 or (a)2 of this section the authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed the two calendar months following the month in which the state of homelessness first becomes known to the municipal welfare department.

i.-ii. (No change.)

2.-4. (No change.)

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

MISCELLANEOUS NOTICES

BANKING

(a)

THE COMMISSIONER

Decision and Determination of Reciprocity Public Notice

Take notice that Mary Little Parell, Commissioner of Banking, on August 8, 1986 issued the following Order and Determination.

New Jersey Public Law 1986, Chapter 5, pertaining to interstate acquisitions by bank companies, enacted on March 28, 1986, provides that it shall take effect on the 30th day after enactment but that Section 2 thereof shall remain inoperative until the Commissioner of Banking determines that the number of eligible states, as defined in and required by Section 1(f) thereof, has been established and until the enactment of Senate Bill No. 1466 of 1986. Pursuant to the requirements of said statute, I hereby issue this Order and Determination.

I specifically make the following findings:

(1) On August 24, 1986, the condition for establishment of "eligible states" in the Central-Atlantic Region imposed by Section 1.f(1) is met. That condition defines "Eligible States" as: "Any state in the Central-Atlantic Region, when at least three of those states (in addition to New Jersey), each of which have at least \$20,000,000.00 in commercial bank deposits, have reciprocal legislation in effect . . ." Three states which will have in effect reciprocal legislation with New Jersey as of August 24, 1986 are:

a. **Kentucky**—which enacted a law on July 13, 1984 authorizing reciprocity with New Jersey as of July 13, 1986 [Kentucky Revised Statute, Chapter 287, KRS 287.900]. Kentucky's commercial bank deposits are over \$20 billion—\$23,754,034,000 on 3/31/86 per Federal Deposit Insurance Corporation data;

b. **Ohio**—which enacted a law on October 17, 1985 authorizing reciprocity with New Jersey on that date [Section 1101.05 Ohio Revised Code]. Ohio's commercial bank deposits are over \$20 billion—\$63,734,544,000 on 3/31/86 per Federal Deposit Insurance Corporation data; and

c. **Pennsylvania**—which enacted a law on June 24, 1986 authorizing reciprocity with New Jersey as of August 24, 1986 [P.L. 1986 No. 69]. Pennsylvania's commercial bank deposits are over \$20 billion—\$93,215,127,000 on 3/31/86 per Federal Deposit Insurance Corporation data.

(2) Senate Bill No. 1466 was enacted on March 28, 1986 as Public Law 1986 Chapter 4.

NOW, THEREFORE, IT IS, on this 8th day of August, 1986 DECIDED and DETERMINED THAT:

1. As of August 24, 1986, the states which will comprise "eligible states," as defined in P.L. 1986, Chapter 5, Section 1, are: **New Jersey, Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Wisconsin and the District of Columbia**; and

2. As of August 24, 1986, eligible states which have reciprocal legislation in effect, as defined in P.L. 1986, Chapter 5, Section 1, are: **Kentucky, Ohio and Pennsylvania**; and accordingly,

3. As of August 24, 1986, Section 2 of P.L. 1986, Chapter 5 shall become operative.

ALL INTERESTED PERSONS ARE HEREBY ADVISED that regulations will be issued pursuant to P.L. 1986, Chapter 5, Section 2.a. for enforcement of the conditions of that subsection. FURTHER, all persons making transactions and thereafter controlling banks located in New Jersey pursuant to P.L. 1986 Chapter 5 Section 2 are reminded that they are required to comply with all applicable provisions of the New Jersey Banking Act, as supplemented and revised [N.J.S. 9A:17-1 et seq.], and with all regulations issued thereunder, in addition to complying with applicable provisions of federal law and the laws of other affected states.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Subcode Official Requirements

Notice of Correction: N.J.A.C. 5:23-5.7(a)6

Take notice that an error appears in the July 7, 1986 issue of the New Jersey Register at 18 N.J.R. 1373(a) concerning Uniform Construction Code, N.J.A.C. 5:23-5.7 Subcode Official Requirements. The corrected text appears below:

5:23-5.7 Subcode official requirements

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

1.-5. (No change.)

6. A person who is already licensed as a building, plumbing or electrical subcode official shall be deemed to have satisfied the experience requirement for any other subcode official license other than the fire protection subcode official license.

(c)

Inplant Inspector Requirements

Notice of Correction: N.J.A.C. 5:23-5.18

Take notice that an error appears in the Adopted Amendment of N.J.A.C. 5:23-5.18, concerning Inplant Inspector Requirements, published in the January 6, 1986 New Jersey Register, at 18 N.J.R. 80(a).

The text of N.J.A.C. 5:23-5.18 appearing below corrects the current text in the Administrative Code and the adoption notice in the Register.

5:23-5.18 Inplant inspector requirements

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

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

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

3. Five years of experience as a construction contractor currently regulated by any of the four above enumerated subcodes, or a combination thereof, or

4. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering and three years of experience in any one or more of the fields regulated by the above enumerated subcodes; or

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

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

ENVIRONMENTAL PROTECTION**DIVISION OF WATER RESOURCES****(a)****Amendment to Northeast Water Quality Management Plan****Public Notice**

Take notice that on July 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 Northeast Water Quality Management Plan was adopted by the Department. This amendment will allow two road crossings in wetlands as part of the Spring Ridge Development located in Bernards Township. The hydraulic continuity of the wetlands system will be maintained.

(b)**Amendment to Northeast Water Quality Management Plan****Public Notice**

Take notice that on July 28, 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 Northeast Water Quality Management Plan was adopted by the Department. This amendment will provide for the elimination of the existing Butler Bloomingdale Wastewater Treatment Plant. Wastewater treatment for the Pequannock River Basin Regional Sewage Authority service area will be provided by expanding the Two Bridges Sewerage Authority service area and by the construction of an interceptor line connecting the two regional systems.

(c)**Amendment to Northeast Water Quality Management Plan****Public Notice**

Take notice that on July 28, 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 Northeast Water Quality Management Plan was adopted by the Department. This amendment is to increase the Passaic Valley Sewage Authority's Treatment Facility's permitted flow from 300 million gallons per day (mgd) to 330 mgd. The increase in permitted flow will provide additional capacity to accept a number of wastewater treatment facilities which are presently operating at treatment levels in violation of their permit conditions.

(d)**Amendment to Northeast Water Quality Management Plan****Public Notice**

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment is to allow 1.2 acres of wetlands encroachment for the development of Pinson Office Park located in Bernards Township, Somerset County.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted

within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(e)**Amendment to Tri-County Water Quality Management Plan****Public Notice**

Take notice that on July 28, 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 Tri-County Water Quality Management Plan was adopted by the Department. This amendment will allow for the expansion of the Maple Shade Water Pollution Control Plant No. 1 from 1.0 million gallons per day (mgd) to serve the present and future wastewater needs of the Township. Maple Shade Water Pollution Control Plant No. 2 will be eliminated and a pump station and force main constructed in its place.

(f)**Amendment to 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. The amendment would allow for the filling of 35,300 square feet of wetlands for two road crossings and gravel driveway easements for the proposed Windsor Forest subdivision in Washington Township, Gloucester County. There are 22 acres of wetlands on the project site, but deed restrictions on lots containing wetlands will prohibit activities in wetlands except those approved by this amendment.

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, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(g)**Amendment to Upper Delaware Water Quality Management Plan****Public Notice**

Take notice that on August 1, 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 Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment will

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allow the expansion of the sewer service area of the Warren County (Pequest River) Municipal Utilities Authority's Oxford Plant to include the Washington Valley Golf Course Development, and will update the municipal sewage flow projections.

(a)

Amendment to Mercer County Water Quality Management Plan

Public Notice

Princeton South at Lawrenceville has petitioned Mercer County to amend the Mercer County Water Quality Management Plan. This amendment, "An Amendment Concerning the Application of Wetlands Policy (Section 4.5.1, Point Source Control: Functional Programs and Agencies)" would provide for the filling of 4.01 acres of wetlands and a mitigation program creating 9.6 acres of new wetlands at the site of Princeton South at Lawrenceville, (Lots 5, 11, 24, 25 of Block S-52 and Lots 11, 11.01, 11.02 of Block S-45), Lawrence Township, Mercer County.

This notice is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the Mercer County Planning Division, Room 420, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 25 Arctic Parkway, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

The Mercer County Planning Board will hold a public hearing on the proposed WQM Plan amendment. The public hearing will be on Wednesday, October 8, 1986 at 8:30 A.M. in Room 211 of the Mercer County Administration Building.

Interested persons may submit written comments on the amendment to the Secretary, Mercer County Planning Board, at the Mercer County address cited above; and to George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days following the public notice publication date or until 15 days following the public hearing(s), whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Planning Board and County Executive with respect to the amended request. In addition, if the amendment is adopted by Mercer County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Mercer County and the NJDEP thereafter may approve and adopt this amendment without further notice.

HEALTH

(b)

**Local and Community Health Services
Public Forum on Children/Adolescents and Smoking**

Take notice that the Department of Health, in coordination with the departmental advisory Commission on Smoking or Health, is announcing an open forum to give opportunity for public participation in the discussion of current and proposed activities concerning children/adolescents: their motivation to smoke, their access to cigarettes and their use of other tobacco products (i.e., smokeless tobacco).

New Jersey has been among the leaders in protecting the rights of non-smoking adults through the control of smoking in workplace, government buildings, restaurants, and other areas of public congregation. The Department of Health now seeks to address what factors influence children/adolescents to start smoking and what preventive strategies can be implemented.

1. Advertising

- (a) Should the free distribution of cigarettes be prohibited?
- (b) Should sporting events not advertise cigarettes or tobacco products?

2. Sales Restrictions

- (a) Should unsupervised vending machine sales of cigarettes be banned or restricted?

3. Taxation

- (a) Should the present state cigarette tax be increased in order to discourage consumption among children/adolescents? Would this be effective?

4. Education

- (a) What source of revenue can be used to fund educational activities? Is it appropriate to tap into the cigarette tax?

The use of cigarettes by children/adolescents and young adults has proliferated to the point of significant increase in the rate of pulmonary diseases in these age groups. This public forum will serve as a catalyst for the department, and the community at large, on how to proceed to inform children and adolescents about the hazards of smoking, and reduce their use of cigarettes.

The public meeting will be held on Wednesday, November 19, 1986, at 9:00 A.M. to 4:00 P.M. at:

State House Annex
Room 403, Fourth Floor
West State Street
Trenton, NJ 08625

Persons wishing to present testimony or if further information is needed on this subject, please contact:

Diane DiDonato, R.N., M.P.H.
Coordinator, Chronic Illness Prevention
Adult Health Services
CN 364
120 South Stockton Street
Trenton, NJ 08625-0364
(609) 292-8106

TREASURY-GENERAL

(c)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments—Month of August

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.

Last list dated August 7, 1986.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
M689	Door & Hardware Replacement Main Hall Ancora Psychiatric Hospital Hammonton, NJ	Kolbe & Poponi, PA	\$ 65,000
M692	Sanitary Sewer Main Building Annex Arthur Brisbane Child Treatment Center Farmingdale, NJ	Maitra Associates	\$ 27,000
M693	Roof Repairs Main Building Annex Arthur Brisbane Child Treatment Center Farmingdale, NJ	Matthew L. Rue, AIA	\$ 41,000
E163	Window Replacement Newark Skills Center Newark, NJ	Leslie M. Dennis & Son	\$197,500
P513	Cabin Renovations Bass River State Park New Gretna, NJ	Lamney & Giorgio, PAS	80,000
M645-01	Chest Building Demolition/New Admissions Acute Care Facility Greystone Park Psychiatric Hospital	Gilbert L. Seltzer Associates	\$ 12,000 Services
W008	Facility Consultant Dept. of Environmental Protection	Maitra Assoc., Inc.	\$ 20,000
W009	Facility Consultant Dept. of Environmental Protection	Pennoni & Assoc., Inc.	\$ 15,000 Services
W010	Facility Consultant Dept. of Environmental Protection	Vinokur Pace Engineering	\$ 15,000 Services
W011	Facility Consultant Dept. of Environmental Protection	John C. Morris & Associates, Inc.	\$ 15,000 Services

**(CITE 18 N.J.R. 1966)
OTHER AGENCIES**

MISCELLANEOUS NOTICES

W012	Facility Consultant Dept. of Environmental Protection	Bernard R. Berson & Associates, Inc.	\$ 15,000 Services
D024	Facility Consultant Dept. of Corrections	Leroy Calendar, PC	\$ 10,000 Services
D025	Facility Consultant Dept. of Corrections	Matthew L. Rue, AIA	\$ 10,000 Services
M701	Swimming Pool Rehabilitation Arthur Brisbane Child Treatment Center Farmingdale, NJ	Lovrek Associates	\$ 72,000
H876	Exterior Masonry & Asphalt Repairs Stockton State College Pomona, NJ	Speitel Associates	\$ 62,000
P495	Phase II Study Shaws Mill Pond Dam E. G. Bevan Wildlife Management Area	PRC Engineering, Inc.	\$ 44,000 Services

COMPETITIVE PROPOSALS

PRC Engineering	\$33,000 Lump Sum
Stone & Webster Engineering Corp.	\$33,900 Lump Sum
Metcalfe & Eddy, Inc.	\$54,950 Lump Sum

A491	CPM Scheduling Services Renovations to Taxation Building Trenton, NJ	Gaudet Associates, Inc.	\$ 8,925 Services
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COMPETITIVE PROPOSALS

Gaudet Associates, Inc.	\$ 8,925 Lump Sum
Wagner-Hohns-Ingles, Inc.	\$10,600 Lump Sum
Don Todd Associates, Inc.	\$30,000 Lump Sum

M683	Roof Replacement ICF Cottages at Landis Campus Vineland Dev. Center	Basco Associates, PA	\$473,000
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COMPETITIVE PROPOSALS

Basco Associates	2.94%
Kitchen Associates	5.9%
Kolbe & Poponi	4.73%

M688	Roof Replacement Hospital & Seven Residential Cottages Woodbine Development Center	Kitchen Associates	\$840,000
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COMPETITIVE PROPOSALS

Kitchen Associates	3.63%
Herbert J. Cannon Associates	6.0%
BBM Architects	7.5%
James N. Lindemon & Associates	8.492%

M909	Installation of Secondary Glazing on 23 Buildings Woodbine Developmental Center	Kolbe & Poponi	\$440,000
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COMPETITIVE PROPOSALS

Kolbe & Poponi	8.89%
Lammy & Giorgio	11.8%

H872	Steam Line Replacement Various Locations William Paterson College	Technical Associates, Inc.	\$520,000
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COMPETITIVE PROPOSALS

Technical Associates, Inc.	7.00%
Chu & Gassman, Inc.	8.10%
Jeffrey & Kallaur, Inc.	10.00%

M681	Installation of A/E and Fire Prevention Systems-Allen Building North Princeton Developmental Center Skillman, NJ	Roy Larry Schlein	\$495,000
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COMPETITIVE PROPOSALS

Roy Larry Schlein & Associates	5.80%
Edward A. Sears Associates	9.89%
Chu & Gassman, Inc.	11.50%

M691	New HVAC & Fire Protection Systems Living Units A, B, C, D & Main Building Glen Gardner Center for Geriatrics Glen Gardner, NJ	Maitra Associates	\$397,000
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COMPETITIVE PROPOSALS

Maitra Associates	9.90%
Haines, Lundberg Waehler	10.3141%
Technical Associates	10.70%
Chu & Gassman, Inc.	11.80%

OTHER AGENICES

CASINO CONTROL COMMISSION

(a)

**Petition for Rulemaking
Slot Booth Drop Boxes
N.J.A.C. 19:45-1.33(b), 19:45-1.34(a) and
19:45-1.35(a)**

Petitioner: Atlantic City Casino Association.
Authority: N.J.S.A. 52:12-69(c) and N.J.S.A. 52:14B-4(f).

Take Notice that on August 13, 1985, petitioner filed a rulemaking petition with the Casino Control Commission requesting various amendments to sections 33, 34 and 35 of N.J.A.C. 19:45-1. These amendments, if adopted, would authorize alternative procedures for the maintenance and counting of slot booth inventories. More specifically, the amendments as proposed by the petitioner would authorize the use of slot drop boxes or lockable bank bags for the deposit of cash or coupons received from patrons by slot cashiers. The slot drop boxes or lockable bank bags would be removed from the slot booths at the end of each shift and would be counted at a separate location under strict controls. According to the petitioner, this alternative procedure would provide improved security for slot booth operations while at the same time allowing improved customer service by freeing slot cashiers from currently imposed accounting responsibilities.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c).

REORGANIZATION PLAN

(a)

OFFICE OF THE GOVERNOR

Governor Thomas H. Kean

Notice of a Plan for the Reorganization and Coordination of Responsibility for Certain Energy Matters Within the Department of Commerce and Economic Development

Take notice that on June 30, 1986, Governor Thomas H. Kean hereby issues the following Reorganization Plan (No. 001—1986) to provide for the increased coordination and integration of the State's economic and energy policies by the transfer of certain functions from the Department of Energy to the Department of Commerce and Economic Development, the Department of Community Affairs and the Department of Environmental Protection.

GENERAL STATEMENT OF PURPOSE

Pursuant to its present statutory authority, it is the duty of the Department of Energy, among other responsibilities, to collect and to evaluate energy data and assimilate that data, issue and promote a State Energy Master Plan; design, implement and enforce a comprehensive energy conservation program; administer emergency energy planning and determine the need for and siting for new power facilities.

The purpose of this Reorganization Plan is to create a governmental structure that will promote the reduction of energy costs which will in turn promote and maximize economic growth, speed business development, promote employment and ensure general prosperity in the State. In transferring certain existing functions from the present Department of Energy to other State departments, this Plan is intended to promote the availability of energy at reasonable prices to all consumers—residential, commercial and industrial—and to integrate the State's economic, business and energy policies and programs to retain and to enhance this State's economic health and to ensure that the State's economy remains competitive.

Both congressional and court-ordered petroleum violation restitutionary programs have placed a significant administrative burden on the State. This reorganization will allow the State to fulfill its obligations under these programs with greater efficiency.

In accordance with the provisions of the "Executive Reorganization Act of 1969", P.L. 1969, c. 203 (C. 52:14C-1 et seq.), I find with respect to each reorganization included in this Plan that each is necessary to accomplish the purposes set forth in Section 2 of that Act and will do the following:

1. It will promote more effective management of the Executive Branch and its departments because it will group similar functions within already existing agencies;
2. It will promote the better and more efficient execution of the law by integrating the State's economic and energy public policies;
3. It will group, coordinate and consolidate functions in a more consistent and practical way according to major purposes;
4. It will reduce expenditures by more closely aligning similar functions; and
5. It will eliminate duplication and overlapping of effort by consolidating certain functions.

The provisions of the Reorganization Plan are as follows:

I. 1.a. The Division of Energy Planning and Conservation in the Department of Energy, created pursuant to P.L. 1977, c. 146 (C. 52:27F-7), together with all its functions, powers and duties, as set forth in P.L. 1977, c. 146 (C. 52:27F-14), is continued and this division is transferred to and constituted the Division of Energy Planning and Conservation in the Department of Commerce and Economic Development.

b. The Division of Energy Planning and Conservation shall be under the immediate supervision of a Director who shall administer the work of the Division under the direction and supervision of the Commissioner and shall perform such other functions of the Department as the Commissioner may prescribe.

c. The Commissioner shall organize the work of the Division of Energy Planning and Conservation and establish therein such administrative subdivisions as he may deem necessary, proper and expedient.

d. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to

the Division of Energy Planning and Conservation in the Department of Energy, the same shall mean and refer to the Division of Energy Planning and Conservation in the Department of Commerce and Economic Development.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, this reorganization will confer on the Department of Commerce and Economic Development the necessary authority to implement the important goals of coordinating and integrating the State's economic and energy policies to ensure the availability of energy at reasonable prices. This reorganization will also promote and assist the development and utilization of cogeneration of energy and programs of energy conservation for both residential and commercial users. This Plan will provide for the collection and dissemination of energy data for the benefit of promoting the economy.

II. 1.a. The Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the Department of Energy, created by P.L. 1977, c. 146, §10 (C. 52:27F-12), together with all its functions, powers and duties as set forth in P.L. 1977, c. 146, §11 (C. 52:27F-13), is continued and transferred to and constituted the Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the Department of Commerce and Economic Development.

b. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Advisory Council on Energy Planning and Conservation in the Department of Energy, the same shall mean and refer to the Advisory Council on Energy Planning and Conservation in the Department of Commerce and Economic Development.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, this reorganization will provide the Commissioner of the Department of Commerce with a body that can advise him regarding the relationship between the State's economic and energy policies.

III. 1.a. All of the functions, powers and duties heretofore exercised by the Department of Energy and the Commissioner thereof pursuant to P.L. 1981, c. 278 (C. 13:1E-92 et seq.) are continued and transferred to and vested in the Department of Environmental Protection and the Commissioner thereof.

b. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Office of Recycling in the Department of Energy, the same shall mean and refer to the Office of Recycling in the Department of Environmental Protection or its successor.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, this reorganization will group functions which are now split between two departments and thereby provide a single supervisory control by the department—Environmental Protection—which is the most logical agency capable of providing a coordinated and unified approach to recycling matters.

IV. 1. All of the functions, powers and duties heretofore exercised by the Department of Energy and the Commissioner thereof pursuant to P.L. 1977, c. 146 (C. 52:27F-1 et seq.) relating to the adoption, amendment and repeal of the energy subcode of the State Uniform Construction Code pursuant to P.L. 1975, c. 217 (C. 52:27D-119 et seq.) and P.L. 1977, c. 256 (C. 54:4-3.113 et seq.) are hereby transferred to and vested in the Department of Community Affairs and the Commissioner thereof.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, this reorganization will end the split jurisdiction between the Department of Energy and the Department of Community Affairs over energy subcode enforcement which has proved cumbersome and as a result, hampered the efficient enforcement of the energy subcode. This transfer consolidates all such subcode responsibilities within the Department of Community Affairs.

V. 1. All of the functions, powers and duties heretofore exercised by the Department of Energy and the Commissioner thereof pursuant to P.L. 1980, c. 68; §15 of P.L. 1971, c. 198 (C. 40A:11-15) as amended by P.L. 1981, c. 551; P.L. 1983, c. 115 (C. 48:7-16 et seq.); and N.J.S. 18A:18A-42 and N.J.S. 18A:18A-5 as amended by P.L. 1984, c. 49 are transferred to and vested in the Department of Commerce and Economic Development and the Commissioner thereof.

(CITE 18 N.J.R. 1968)
REORGANIZATION PLAN

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 22, 1986

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, this reorganization would further consolidate conservation functions within the Department of Commerce and Economic Development and help ensure the availability of low-cost energy supplies. In addition, the transfer of utility plant siting authority is also consistent with the need to ensure the lowest possible long-term electricity rates for all energy users.

VI. 1. The responsibilities for the adoption of a State Energy Master Plan assigned to the Department of Energy, through the Division of Energy Planning and Conservation by P.L. 1977, c.146, §12 (C. 52:27F-14), and the responsibility and authority to intervene in proceedings of State instrumentalities which regulate energy producers or distributors set forth in P.L. 1977, c. 146, §13 (C. 52:27F-15) are hereby transferred to the Department of Commerce and Economic Development and the Commissioner thereof.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, this reorganization will ensure that the relationship of energy policy to the State's economic policy will be considered in the preparation of the State's Energy Master Plan regarding the production, distribution, consumption and conservation of energy in this State.

VII. 1. The responsibility and authority requiring the periodic reporting by energy industries of energy information, set forth in P.L. 1977, c. 146, §16 (C. 52:27F-18), is transferred to the Department of Commerce and Economic Development.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, this transfer is

consistent with the centralization of energy data collection and dissemination responsibilities within the Department of Commerce as an aid to integrating energy and economic policy.

VIII. 1. The enforcement and penalty authority set forth in §19 (C. 52:27F-21), §21 (C. 52:27F-23) and §22 (C. 52:27F-24) of P.L. 1977, c. 146 is hereby transferred to the Department of Commerce and Economic Development.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, the transfer of this enforcement authority is necessary to best administer and execute the other powers and responsibilities transferred to the Department of Commerce and Economic Development by this Plan.

IX. 1. All transfers directed by this act shall be made in accordance with the "State Agency Transfer Act", P.L. 1971, c. 375 (C. 52:14D-1 et seq.).

All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies. A copy of this Reorganization Plan was filed on June 30, 1986 with the Secretary of State and the Office of Administrative Law. **This Plan shall become effective in 60 days on August 29, 1986 unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than August 29, 1986 should the Governor establish such a later date for the effective date of the Plan by Executive Order.**

TAKE NOTICE that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual addition of the public laws under a heading of "Reorganization Plans."

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 August 4, 1986 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1986 d.100 means the one hundredth rule adopted in 1986.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: JULY 21, 1986.

NEXT UPDATE WILL BE DATED AUGUST 18, 1986.

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
17 N.J.R. 2171 and 2318	September 16, 1985	18 N.J.R. 583 and 726	April 7, 1986
17 N.J.R. 2319 and 2484	October 7, 1985	18 N.J.R. 727 and 868	April 21, 1986
17 N.J.R. 2485 and 2584	October 21, 1985	18 N.J.R. 869 and 1018	May 5, 1986
17 N.J.R. 2585 and 2710	November 4, 1985	18 N.J.R. 1019 and 1122	May 19, 1986
17 N.J.R. 2711 and 2814	November 18, 1985	18 N.J.R. 1123 and 1222	June 2, 1986
17 N.J.R. 2815 and 2934	December 2, 1985	18 N.J.R. 1223 and 1326	June 16, 1986
17 N.J.R. 2935 and 3032	December 16, 1985	18 N.J.R. 1327 and 1432	July 7, 1986
18 N.J.R. 1 and 128	January 6, 1986	18 N.J.R. 1433 and 1504	July 21, 1986
18 N.J.R. 129 and 234	January 21, 1986	18 N.J.R. 1505 and 1640	August 4, 1986
18 N.J.R. 235 and 376	February 3, 1986	18 N.J.R. 1641 and 1726	August 18, 1986
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		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1, 1:2-1:21	Administrative hearings	18 N.J.R. 1728(a)		
1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)	R.1986 d.340	18 N.J.R. 1699(a)
1:1-15.10	Prior transcribed testimony	18 N.J.R. 1020(a)		
1:5	Council on Affordable Housing hearings	18 N.J.R. 1506(a)		
1:6	Education budget hearings	18 N.J.R. 1020(b)	R.1986 d.342	18 N.J.R. 1699(b)
1:10B	Medicaid and Medically Needy hearings	18 N.J.R. 1507(a)		

(TRANSMITTAL 22, dated June 16, 1986)

AGRICULTURE—TITLE 2				
2:7-1.2, 1.3, 1.4	Pullorum and fowl typhoid control	18 N.J.R. 1508(a)		
2:76-6.2, 6.15	Sale of development easements: deed restrictions	18 N.J.R. 1328(a)	R.1986 d.386	18 N.J.R. 1930(a)
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(a)		
2:90-1.5, 1.14	Soil conservation plan certifications; minor subdivisions	17 N.J.R. 2172(a)		
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)	Expired	

(TRANSMITTAL 42, dated July 21, 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)		
3:13-2, 3	Bank holding company: reporting requirements and examination charges	18 N.J.R. 1763(a)		
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		
3:41	Cemeteries: disinterment and reinterment of human remains	18 N.J.R. 1642(a)		

(TRANSMITTAL 34, dated July 21, 1986)

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)		
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)		
4:2-15.1	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)		
4:3-16	Separations and demotions	18 N.J.R. 450(a)		
4:4	State employees' awards program	18 N.J.R. 1766(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)		
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)		
5:23-3.2	Subcode exceptions	18 N.J.R. 757(a)		
5:23-3.4, 3.14, 3.17, 3.20	Building, Fire Protection, and Mechanical Subcodes	18 N.J.R. 1235(a)	R.1986 d.380	18 N.J.R. 1931(a)
5:23-3.11	Uniform Construction Code: correction to Administrative Code	_____	_____	18 N.J.R. 1621(a)
5:23-3.11	Uniform Construction Code: enforcement activities reserved to State	_____	_____	18 N.J.R. 1842(a)
5:23-7	Barrier Free Subcode: access for physically handicapped and aged	18 N.J.R. 757(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 490(a)		
5:30-17	Local public contracts: cooperative pricing and joint purchasing systems	18 N.J.R. 1022(a)	R.1986 d.315	18 N.J.R. 1524(a)
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(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)		
5:92	Council on Affordable Housing: substantive rules	18 N.J.R. 1124(b)	R.1986 d.333	18 N.J.R. 1527(a)

(TRANSMITTAL 43, dated July 21, 1986)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:20-4.4	Tuition for private schools for handicapped	18 N.J.R. 1237(a)	R.1986 d.360	18 N.J.R. 1797(a)
6:28-3.4, 3.5	Special education	18 N.J.R. 1771(a)		
6:29-4.4	Children with HIV infection and school attendance	18 N.J.R. 1509(a)		
6:29-9	Policies and procedures concerning pupil use of drugs and alcohol	18 N.J.R. 1237(b)		
6:30	Adult and community education	18 N.J.R. 871(b)	R.1986 d.310	18 N.J.R. 1561(a)
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		

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ENVIRONMENTAL PROTECTION—TITLE 7

7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:6-1.42	Boating rules: diving and swimming	Emergency	R.1986 d.345	18 N.J.R. 1712(a)
7:7-2.1	CAFRA facilities	18 N.J.R. 1772(a)		
7:7-2.2	Wetlands management in Atlantic County	18 N.J.R. 1026(a)	R.1986 d.349	18 N.J.R. 1700(a)
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)		
7:13-7.1	Floodway delineations along East Branch of Stony Brook, South Branch of Rockaway Creek, and Whale Pond Brook	18 N.J.R. 1239(a)		
7:13-7.1	Floodway delineations in Montgomery Township and Rocky Hill	18 N.J.R. 1334(a)		
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)	R.1986 d.346	18 N.J.R. 1700(b)
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:14A-4.4, 4.7	Dioxin-containing waste	18 N.J.R. 879(a)	R.1986 d.387	18 N.J.R. 1933(a)
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:18	Laboratory certification and standards of performance	18 N.J.R. 1239(b)	R.1986 d.351	18 N.J.R. 1797(b)
7:19-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:22	Wastewater treatment facilities: construction grants and loans	18 N.J.R. 243(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	18 N.J.R. 1511(b)		
7:25-6	1987-88 Fish Code	18 N.J.R. 1644(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, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)	R.1986 d.347	18 N.J.R. 1701(a)
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)	R.1986 d.388	18 N.J.R. 1932(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)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	18 N.J.R. 1773(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:26-8.3, 8.4, 8.13, 8.15, 10.5-10.8, 11.1, 11.5, 11.6, 12.2	Dioxin-containing waste	18 N.J.R. 879(a)	R.1986 d.387	18 N.J.R. 1933(a)
7:26-8.14, 8.15, 8.16	Hazardous waste criteria, identification and listing	18 N.J.R. 1037(a)		
7:26-8.16	Waste code numbers for hazardous constituents	18 N.J.R. 792(a)	R.1986 d.371	18 N.J.R. 1798(a)
7:26-8.17	Hazardous waste delisting procedure	18 N.J.R. 1335(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)	R.1986 d.379	18 N.J.R. 1936(a)
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)	R.1986 d.377	18 N.J.R. 1800(a)
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		
7:45-1, 2, 3	Delineation of Review Zone within Delaware and Raritan Canal State Park: reopening of comment period	18 N.J.R. 457(a)		

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HEALTH—TITLE 8

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)		
8:22-1	Campgrounds sanitation	18 N.J.R. 1038(a)	R.1986 d.329	18 N.J.R. 1576(a)
8:26	Recreational bathing	18 N.J.R. 1040(a)	R.1986 d.328	18 N.J.R. 1576(b)
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:33F-1.2	Continuous ambulatory peritoneal dialysis	18 N.J.R. 1241(a)	R.1986 d.372	18 N.J.R. 1816(a)
8:33I	Megavoltage radiation oncology services	18 N.J.R. 1436(a)		
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:39-3.11	Availability of information at long-term care facilities	18 N.J.R. 1241(b)	R.1986 d.384	18 N.J.R. 1955(a)
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:43G	Hospital capital policy	18 N.J.R. 1242(a)	R.1986 d.375	18 N.J.R. 1817(a)
8:51-1—6	Standards for local boards of health	18 N.J.R. 1690(a)		
8:52	Standards for local boards of health	18 N.J.R. 1690(a)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)	R.1986 d.332	18 N.J.R. 1591(a)
8:57-1.14	Reporting of AIDS and AID Related Complex	18 N.J.R. 1245(a)		
8:59-1.3, 1.5, 2.1, 3.13, 5.1, 5.5, 6.2, 7.1, 7.2, 8.1, 8.2, 8.5-8.12, 10.3	Worker and Community Right to Know Act	18 N.J.R. 1363(a)	R.1986 d.373	18 N.J.R. 1821(a)
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:61-1.1	Children and adults with HIV infection and school attendance	18 N.J.R. 1512(a)		
8:65-10.1	Controlled dangerous substances: Parafluorofentanyl	18 N.J.R. 603(a)	R.1986 d.326	18 N.J.R. 1591(b)
8:65-10.1, 10.2	Reschedule Dronabinol from Schedule I to II	18 N.J.R. 1774(a)		
8:65-10.2	Removal of Nalmefene from Schedule II of controlled substances	18 N.J.R. 536(a)	R.1986 d.327	18 N.J.R. 1592(a)
8:65-10.4	Controlled substances: Quazepam and Midazolam	18 N.J.R. 1166(b)	R.1986 d.374	18 N.J.R. 1827(a)
8:65-11	Narcotic treatment programs	18 N.J.R. 924(b)	R.1986 d.330	18 N.J.R. 1592(b)
8:71	Generic drug list additions (see 18 N.J.R. 417(a), 984(b), 1102(b), 1382(a), 1463(a))	17 N.J.R. 2842(a)	R.1986 d.383	18 N.J.R. 1957(b)
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a), 1463(b))	18 N.J.R. 537(a)	R.1986 d.382	18 N.J.R. 1957(a)
8:71	Generic drug list additions	18 N.J.R. 1167(a)	R.1986 d.381	18 N.J.R. 1955(b)
8:71	Generic drug additions	18 N.J.R. 1775(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
HIGHER EDUCATION—TITLE 9				
9:2-5	Management of computerized information	18 N.J.R. 799(a)		
9:4	Policies and procedures for community colleges	18 N.J.R. 1439(a)		
9:7-2.2	Residency and student assistance	18 N.J.R. 801(a)	R.1986 d.322	18 N.J.R. 1592(c)
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)	R.1986 d.323	18 N.J.R. 1593(a)
9:7-3.1	Tuition Aid Grant Program: 1986-87 Award Table	Emergency	R.1986 d.348	18 N.J.R. 1713(a)
9:11-1.2	Student residency	18 N.J.R. 1777(a)		
9:11-1.5	EOF: undergraduate grants	18 N.J.R. 926(a)	R.1986 d.344	18 N.J.R. 1704(a)
9:11-1.7	EOF: grant amounts	18 N.J.R. 926(b)	R.1986 d.343	18 N.J.R. 1704(b)
9:12-1.5, 2.3	Educational Opportunity Fund Program	17 N.J.R. 2214(b)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

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HUMAN SERVICES—TITLE 10				
10:2	County Human Services Advisory Councils	18 N.J.R. 1777(b)		
10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(a)	R.1986 d.331	18 N.J.R. 1704(c)
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)		
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)	R.1986 d.341	18 N.J.R. 1707(a)
10:51-1, App. B, C	Pharmaceutical services manual	18 N.J.R. 1780(a)		
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:51-2.2, 2.3, 2.6	Pharmaceutical Services Manual: pharmacy claims	18 N.J.R. 1674(a)		
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:54-4	Physician's Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)	R.1986 d.320	18 N.J.R. 1593(b)
10:56	Dental Services manual	18 N.J.R. 1337(a)	R.1986 d.385	18 N.J.R. 1958(a)
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)		
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-3	Independent Clinic Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)	R.1986 d.320	18 N.J.R. 1593(b)
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1053(a)	R.1986 d.369	18 N.J.R. 1827(b)
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:68	Chiropractic services and billing procedures	18 N.J.R. 1053(b)	R.1986 d.309	18 N.J.R. 1594(a)
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:69A-5.3	Renewal applications for PAAD beneficiaries	18 N.J.R. 1054(a)	R.1986 d.321	18 N.J.R. 1594(b)
10:81-3.17, 3.18, 5.9, 5.10	PAM: AFDC eligibility, WIN status, LLR reevaluation	18 N.J.R. 1513(a)		
10:81-3.34	PAM: temporary absence of child from home	18 N.J.R. 1675(a)		
10:81-3.38	PAM: transfer of resources	18 N.J.R. 1168(a)		
10:81-3.40, 3.41	PAM: repayment agreements and child injury awards	18 N.J.R. 1055(a)	R.1986 d.317	18 N.J.R. 1594(c)
10:81-7.21—7.29	PAM: funeral and burial payments	18 N.J.R. 1168(b)		
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:82-1.8, 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)		
10:82-2.3, 2.4, 4.3	ASH: AFDC eligibility requirements	18 N.J.R. 928(a)		
10:82-4.2	ASH: income from tips	18 N.J.R. 1056(a)	R.1986 d.318	18 N.J.R. 1595(a)
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)		
10:85-3.3	GAM: income from tips	18 N.J.R. 1056(b)	R.1986 d.319	18 N.J.R. 1595(b)
10:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)		
10:85-4.6	GAM: emergency assistance	18 N.J.R. 1343(a)	R.1986 d.389	18 N.J.R. 1962(a)
10:85-4.8	GAM: funeral and burial payments	18 N.J.R. 1170(a)		
10:85-6.4	GAM: fiscal and statistical reporting	18 N.J.R. 1056(c)	R.1986 d.316	18 N.J.R. 1595(c)
10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:89-2.2, 2.3, 3.4	Home Energy Assistance	18 N.J.R. 1676(a)		
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)	R.1986 d.307	18 N.J.R. 1596(a)
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)		
10:100-3.6, 3.7	Special Payments Handbook: funeral and burial payments	18 N.J.R. 1171(a)		
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:121A	Adoption agency standards	18 N.J.R. 1057(a)	R.1986 d.324	18 N.J.R. 1609(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
CORRECTIONS—TITLE 10A				
10A:3	Security and control	18 N.J.R. 1057(b)		
10A:4-4.1	Inmate prohibited acts: correction			18 N.J.R. 1709(a)
10A:5	Close custody units	18 N.J.R. 1067(a)		
10A:9	Classification of inmates	18 N.J.R. 1649(a)		
10A:16	Medical and health services	18 N.J.R. 1662(a)		
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		
10A:71-2.2, 3.3, 3.4, 3.22, 3.27, 3.28, 3.31, 4.2, 4.3	Parole Board process and procedure	18 N.J.R. 929(a)	R.1986 d.306	18 N.J.R. 1610(a)

(TRANSMITTAL 12, dated July 21, 1986)

INSURANCE—TITLE 11

11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20.1, 20.2, 20.3, 22.1	Cancellation and nonrenewal of commercial policies	18 N.J.R. 1445(a)		
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:3-8	Nonrenewal of automobile policies	18 N.J.R. 1079(a)		
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:3-17	Rating organizations: private passenger automobile filings	18 N.J.R. 1171(b)		
11:3-22	Automobile coverage option survey	18 N.J.R. 1344(b)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-21	Limited death benefit policies	18 N.J.R. 1085(a)		
11:5-1.3	Real estate licensing qualifications	18 N.J.R. 1782(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:5-1.15	Advertising by real estate licensees	18 N.J.R. 1679(a)		
11:5-1.16, 1.23	Obligations of real estate licensees	18 N.J.R. 1677(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.25	Sales of interstate properties	18 N.J.R. 1678(a)		
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:12	Legal services insurance	18 N.J.R. 1182(b)		
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1183(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

(TRANSMITTAL 40, dated July 21, 1986)

LABOR—TITLE 12

12:15-1.3	Unemployment compensation and temporary disability: 1987 maximum weekly benefits	18 N.J.R. 1787(a)		
12:15-1.4	Unemployment compensation: 1987 taxable wage base	18 N.J.R. 1787(b)		
12:15-1.5	Unemployment compensation: 1987 contribution rate for governmental entities	18 N.J.R. 1788(c)		
12:15-1.6	Base week earnings for claim eligibility	18 N.J.R. 1787(c)		
12:15-1.7	Alternate earnings test	18 N.J.R. 1788(a)		
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)		
12:17-7.1, 7.2	Unemployment compensation and temporary disability: disclosure of information	18 N.J.R. 1447(a)		
12:20-4.8	Temporary appointment to Unemployment Compensation Board of Review	18 N.J.R. 544(b)	R.1986 d.312	18 N.J.R. 1611(a)
12:235-1.6	Workers' compensation: 1987 maximum weekly benefit	18 N.J.R. 1788(b)		

(TRANSMITTAL 31, dated July 21, 1986)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)
12A:100-1	Commission on Science and Technology: Innovation Partnership Grant Program	18 N.J.R. 1175(a)	R.1986 d.350	18 N.J.R. 1828(a)

LAW AND PUBLIC SAFETY—TITLE 13

13:27	Rules of Board of Architects	17 N.J.R. 2851(b)		
13:30-8.6, 8.15	Practice of dentistry and referral fees	18 N.J.R. 1515(a)		
13:35-6.10	Ambulatory care facilities: advertising and solicitation practices	18 N.J.R. 1788(d)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
13:37-6.2	Delegation of nursing tasks by RPNs	17 N.J.R. 2354(a)		
13:37-6.2	Delegation of selected nursing tasks	18 N.J.R. 1448(a)		
13:37-6.2	Delegation of selected nursing tasks	18 N.J.R. 1176(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)		
13:39A-2.2	Authorized practice by physical therapist	18 N.J.R. 1177(b)		
13:39A-2.2, 3.3	Electromyographic testing by licensed physical therapist: public hearing	18 N.J.R. 1684(b)		
13:39A-3.2	Pre-proposal: fee splitting and kickbacks by physical therapists	17 N.J.R. 2360(a)		
13:39A-3.3	Physical therapy: unlawful practices	18 N.J.R. 1178(a)		
13:39A-5.2—5.4, 5.6—5.9	Physical therapy educational credentials and examination standards	18 N.J.R. 1179(a)		
13:39A-6	Temporary licensure of physical therapists	18 N.J.R. 1179(b)		
13:42-6	Reimbursement for psychological services: disclosure of patient information	18 N.J.R. 817(a)		
13:44-2.5	Veterinary practice and referral fees	18 N.J.R. 1515(b)		
13:45A-2	Motor vehicle advertising practices	17 N.J.R. 2861(a)		
13:45A-24	Sale of grey market merchandise	17 N.J.R. 2866(a)		
13:46-1A.1, 1A.2, 5.19, 12.4	Boxing: weight classes, age limitations, health safeguards	18 N.J.R. 1789(a)		
13:46-8.19	Point system scoring in boxing contests	18 N.J.R. 1515(c)		
13:46-8.25, 11.10	Compensation of boxing officials, and boxing and wrestling timekeepers	18 N.J.R. 930(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)		
13:54	Regulation of firearms businesses	18 N.J.R. 51(a)		
13:70-1.17	Thoroughbred racing: policing requirements	18 N.J.R. 819(a)	R.1986 d.354	18 N.J.R. 1829(a)
13:70-3.47	Thoroughbred racing: Coggins test	18 N.J.R. 401(a)		
13:70-3.47	Thoroughbred racing: Coggins test for track entrance	18 N.J.R. 1448(b)		
13:70-29.56	Thoroughbred racing: Super Six	Emergency	R.1986 d.334	18 N.J.R. 1619(a)
13:71-5.1	Harness racing: policing requirements	18 N.J.R. 820(a)	R.1986 d.358	18 N.J.R. 1830(a)
13:71-6.24	Harness racing: Coggins test	18 N.J.R. 402(b)		
13:71-6.24	Harness racing: Coggins test for track entrance	18 N.J.R. 1448(c)		
13:71-21.8	Harness racing: purse deductions	18 N.J.R. 1516(a)		
13:71-27.53	Harness racing: Super Six	Emergency	R.1986 d.334	18 N.J.R. 1619(a)

(TRANSMITTAL 44, dated July 21, 1986)

PUBLIC UTILITIES—TITLE 14

14:3-4.7	Adjustment of utility bills	17 N.J.R. 2236(a)		
14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012(a)	R.1986 d.368	18 N.J.R. 1830(b)
14:18-1.2, 3.9	Cable TV: service outages	18 N.J.R. 619(a)	R.1986 d.376	18 N.J.R. 1831(a)
14:18-1.2, 11.21, 3	CATV: franchise renewals	18 N.J.R. 1181(a)		

(TRANSMITTAL 28, dated July 21, 1986)

ENERGY—TITLE 14A

14A:3-4.4, 4.5	Thermal and lighting efficiency	18 N.J.R. 1089(a)	R.1986 d.314	18 N.J.R. 1612(a)
14A:6-2	Business Energy Improvement Subsidy Program	18 N.J.R. 1347(a)	R.1986 d.367	18 N.J.R. 1833(a)

(TRANSMITTAL 19, dated July 21, 1986)

STATE—TITLE 15

15:3-2.15	Microfilm standards: correction to Administrative Code	_____	_____	18 N.J.R. 1623(b)
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(TRANSMITTAL 17, dated July 21, 1986)

PUBLIC ADVOCATE—TITLE 15A

(TRANSMITTAL 1, dated March 20, 1978)

TRANSPORTATION—TITLE 16

16:27	Bureau of Traffic Engineering	18 N.J.R. 1184(a)	R.1986 d.352	18 N.J.R. 1835(a)
16:28-1.92	Parking and stopping on Route 169	18 N.J.R. 1790(b)		
16:28A-1.7, 1.36	No parking zones along U.S. 9 in Little Egg Harbor and Route 57 in Mansfield	18 N.J.R. 1517(a)		
16:28A-1.8, 1.15, 1.22, 1.37	No parking zones along Routes 10, 23, 31, and 70	18 N.J.R. 1252(b)	R.1986 d.335	18 N.J.R. 1709(b)
16:28A-1.23, 1.27, 1.51, 1.71, 1.106	No parking zones along Routes 33, 38, 168, 67 and Truck Route U.S. 1 and 9	18 N.J.R. 1350(a)	R.1986 d.361	18 N.J.R. 1836(a)
16:28A-1.61	Bus stop zones on U.S. 9W in Englewood Cliffs	18 N.J.R. 1351(a)	R.1986 d.362	18 N.J.R. 1836(b)
16:28A-1.71	Bus stop zones along Route 67 in Fort Lee	18 N.J.R. 1253(a)	R.1986 d.337	18 N.J.R. 1710(a)
16:29-1.21, 1.57	No passing zones along Routes 27 and 28	18 N.J.R. 1254(a)	R.1986 d.336	18 N.J.R. 1710(b)
16:29-1.56, 1.58, 1.59	No passing zones along U.S. 9W, U.S. 202, and Route	18 N.J.R. 1449(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
16:29-1.60	No passing zones along Route 54 in Atlantic County	18 N.J.R. 1449(b)		
16:29-1.61-1.64	No passing zones along Routes 17, 24, 45 and 48	18 N.J.R. 1450(a)		
16:30-1.8	One-way on Route 57 ramp in Warren County	18 N.J.R. 1517(b)		
16:30-2.9	Yield intersection along U.S. 130 in Westville	18 N.J.R. 1254(b)	R.1986 d.338	18 N.J.R. 1710(c)
16:30-2.11	Stop-intersections along Route 57, Warren County	18 N.J.R. 1517(c)		
16:30-3.4	Bus and HOV lane on U.S. 9 in Middlesex County	18 N.J.R. 1518(a)		
16:30-3.5	Bus and carpool lane on I-95 approach to GWB	18 N.J.R. 624(a)	R.1986 d.339	18 N.J.R. 1710(d)
16:31-1.4	No left turn on Route 35 in Sayreville	18 N.J.R. 1352(a)	R.1986 d.363	18 N.J.R. 1837(a)
16:31-1.14, 1.21	No left turns along Route 15 in Morris County and Route 57 in Warren County	18 N.J.R. 1518(b)		
16:32-1.2, 1.3, 3	Designated routes for double trailers and wide trucks	18 N.J.R. 1184(b)		
16:41-8.9	Outdoor advertising permit fees for vegetation control	18 N.J.R. 625(b)	R.1986 d.378	18 N.J.R. 1837(b)
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)		
16:51	Pre-proposal: Practice before Office of Regulatory Affairs	17 N.J.R. 2867(a)		
16:53-3.5, 3.19, 6.28, 6.29	Autobus specifications	18 N.J.R. 1519(a)		
16:74	NJ TRANSIT: claims of destructive competition	18 N.J.R. 1255(a)		
16:79	NJ TRANSIT: background checks on prospective employees	18 N.J.R. 1685(a)		

(TRANSMITTAL 42, dated July 21, 1986)**TREASURY-GENERAL—TITLE 17**

17:1-1.17	Administrative expenses proration among retirement systems	18 N.J.R. 1686(a)		
17:1-2.3	Alternate Benefit Program: salary reduction and deduction	17 N.J.R. 2350(b)		
17:1-2.37	Alternate Benefit Program: transmittal of employee contributions	18 N.J.R. 1256(a)		
17:1-4.35	PERC: purchase of temporary service credit	18 N.J.R. 1450(b)		
17:2-6.1	PERC: application for retirement	18 N.J.R. 1451(a)		
17:3-6.1	Teachers' Pension and Annuity Fund: filing of retirement application	18 N.J.R. 1517(b)		
17:4-6.1	Police and Firemen's Retirement System: retirement applications	18 N.J.R. 1795(a)		
17:5-5.1	State Police Retirement System: filing of retirement application	18 N.J.R. 1520(a)		
17:5-5.12	State Police disability retirant rule	17 N.J.R. 2746(b)		
17:6-3.1	Consolidated Police and Firemen's Pension Fund: administrative change			18 N.J.R. 1624(a)
17:7-1.4	Prison Officers' Pension Fund: election of commission members	18 N.J.R. 1352(b)		
17:7-3.1	Prison Officers' Pension Fund: retirement applications	18 N.J.R. 1796(a)		
17:9-6.1	State Health Benefits Program: "retired employee" status	18 N.J.R. 1451(b)		
17:9-6.6	State Health Benefits Program: coverage for surviving dependent	18 N.J.R. 1452(a)		
17:12-8.1	Standard third party contract	18 N.J.R. 1353(c)		
17:16-17.1, 17.3	State Investment Council: limitations on common and preferred stock and convertible issues	18 N.J.R. 1353(a)	R.1986 d.356	18 N.J.R. 1838(a)
17:16-37.1	State Investment Council: repurchase agreements	18 N.J.R. 1353(b)	R.1986 d.357	18 N.J.R. 1838(b)

(TRANSMITTAL 41, dated July 21, 1986)**TREASURY-TAXATION—TITLE 18**

18:7-4.5, 4.6	Corporation business tax: indebtedness, interest, and offsets	18 N.J.R. 934(a)		
18:7-5.5	Corporation business tax: entire net income tax base	18 N.J.R. 1256(a)		
18:7-11.16	Corporation business tax: returns filed by S corporations	18 N.J.R. 1686(b)		
18:26-8.7	Transfer inheritance tax waiver	18 N.J.R. 1520(b)		

(TRANSMITTAL 37, dated July 21, 1986)**TITLE 19 SUBTITLES A-L—OTHER AGENCIES (Except Casino Control Commission)**

19:12	Mediation, fact-finding, arbitration	18 N.J.R. 1357(a)	R.1986 d.354	18 N.J.R. 1838(c)
19:16	Labor disputes in public fire and police departments	18 N.J.R. 1358(a)	R.1986 d.355	18 N.J.R. 1839(a)
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)		
19:30-2	Economic Development Authority fees	18 N.J.R. 1094(b)	R.1986 d.311	18 N.J.R. 1614(a)

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 22, 1986

(CITE 18 N.J.R. 1977)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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	Atlantic County Transportation Authority: bus management program	18 N.J.R. 1688(a)		

(TRANSMITTAL 32, dated July 21, 1986)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:41-9.7	Fee for casino hotel alcoholic beverage license	18 N.J.R. 1687(a)		
19:45-1.11, 1.12	Minibaccarat	18 N.J.R. 1096(a)	R.1986 d.308	18 N.J.R. 1614(b)
19:45-1.27	Patron credit	18 N.J.R. 935(b)	R.1986 d.365	18 N.J.R. 1839(a)
19:45-1.40	Manually-paid slot machine jackpots	18 N.J.R. 1360(a)		
19:46-1.12, 1.19	Minibaccarat	18 N.J.R. 1096(a)	R.1986 d.308	18 N.J.R. 1614(b)
19:46-1.27	Aisle space and slot machines	17 N.J.R. 2533(a)		
19:47-2.9	Blackjack: insurance wagers	18 N.J.R. 1361(a)		
19:47-7, 8.2	Minibaccarat	18 N.J.R. 1096(a)	R.1986 d.308	18 N.J.R. 1614(b)
19:50-1.6	Purchasing and dispensing of wine	18 N.J.R. 160(a)	R.1986 d.364	18 N.J.R. 1840(a)
19:51	Advertising by licensees	18 N.J.R. 1258(a)	R.1986 d.366	18 N.J.R. 1841(a)
19:52	Casino entertainment	18 N.J.R. 1687(b)		

(TRANSMITTAL 24, dated July 21, 1986)



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