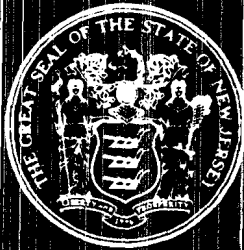


NEW JERSEY REGISTER



THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 22 NUMBER 3
 February 5, 1990 Indexed 22 N.J.R. 273-584
 (Includes adopted rules filed through January 12, 1990)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 20, 1989
 See the Register Index for Subsequent Rulemaking Activity.
 NEXT UPDATE: SUPPLEMENT DECEMBER 18, 1989

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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 **March 7, 1990**. 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

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RULE PROPOSALS

BANKING

(a)

THE COMMISSIONER

Notice of Pre-Proposed Rulemaking and Joint Public Hearings

Compensation to Mortgage Bankers, Mortgage Brokers and Real Estate Licensees for Placing Mortgage Loans

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

Authority: N.J.S.A. 17:11B-1, 2, 4, 13 and 14; *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986) (remanded).

OAL Docket Number: BRE 228-87.

Pre-Proposal Number: PPR 1990-4.

Take notice that, pursuant to the remand order of the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), the Office of Administrative Law will conduct joint public hearings for the Department of Insurance, Division of the Real Estate Commission, and the Department of Banking wherein the administrative law judge will receive and consider oral and written comment and draft proposed rules from the public, the Public Advocate, the real estate industry, the banking industry, the Department of Banking and the Real Estate Commission, and will recommend appropriate regulation of the mortgage financing activities of real estate licensees and of lenders and mortgage banking and broker licensees under the Real Estate Licensing Law, N.J.S.A. 45:15-1 et seq. and the Mortgage Bankers and Brokers' Act, N.J.S.A. 17:11B-1 et seq., to protect real estate consumers and further the public interest.

The public hearings concerning this pre-proposed rulemaking will be held at the following times and locations:

Wednesday, February 21, 1990 at 10:00 A.M.

Office of Administrative Law

185 Washington Street

Newark, New Jersey

(Overflow Date: Thursday, February 22, 1990, only if needed)

Wednesday, March 14, 1990 at 10:00 A.M.

Office of Administrative Law

Quakerbridge Plaza

Building 9

Trenton (Hamilton Township), New Jersey

(Overflow Date: Thursday, March 15, 1990, only if needed)

Interested persons wishing to make oral comments at the public hearings should appear and register to speak either on February 21, 1990 in Newark or on March 14, 1990 in Trenton. An overflow hearing has been scheduled on the immediately following day in each location (February 22 in Newark and March 15 in Trenton) to accommodate any persons who appear and register to speak, but who are not reached on the primary hearing dates. No hearings will be conducted on the overflow days if all registered persons have been reached on the primary days.

Written comments or draft proposed rules should be submitted by March 30, 1990 to:

The Honorable Arnold Samuels, ALJ

Office of Administrative Law

185 Washington Street

Newark, New Jersey 07102

All written material submitted should contain the following OAL Docket Number: OAL Dkt. No. BRE 228-87.

Background

The need for such regulation has arisen in the context of a variety of recent innovations in the delivery of residential home mortgage financing products and services to the home-buying public. In particular, over the past several years, a number of real estate licensees have proposed or formed financial and contractual relationships with mortgage lenders whereby a real estate buyer may obtain mortgage financing through the affiliated lender, and the real estate broker or, in some cases, salesperson

may receive various fees for each loan placed or dividends or other returns on investment from the affiliated lender. Other real estate licensees are participating with mortgage loan lenders in programs for computerized mortgage loan selection and origination, in real estate brokerage offices. Pursuant to a remand by the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), public hearings are now scheduled to solicit public comments on appropriate regulation of the mortgage financing activities of real estate licensees and mortgage banking and broker licensees. (A plenary, declaratory ruling hearing, governing the proper interpretation of the Real Estate Licensing Law, N.J.S.A. 45:15-17i, was completed in November 1989.)

Issues

The hearings will address the following specific questions related to Banking:

1. Under what circumstances should a real estate broker or salesperson be deemed to be "engaged in the business of a mortgage banker or broker" within the meaning of the Mortgage Bankers and Brokers Act? N.J.S.A. 17:11B-1 et seq.?

2. Under what circumstances, if any, may a real estate salesperson employed by a real estate broker also be deemed to be a mortgage solicitor within the meaning of the Mortgage Bankers and Brokers Act?

3. (a) What dangers, if any, are posed to borrowers by the "steering" of mortgage loans by mortgage bankers, brokers or solicitors to lenders with whom they are in some way affiliated?

(b) What form do such "affiliations" typically assume in the industry?

(c) Is there some form of disclosure that would adequately protect the public from such dangers?

(d) Would a rule permitting mortgage bankers, brokers or solicitors to charge permitted fees only to borrowers, and only upon condition that disclosure be made, adequately protect the public against such dangers?

(e) Would the public be better served by such a rule than by a mere requirement for disclosure?

(f) What other or additional rules would be advisable to protect the public interest in these circumstances?

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Hotels and Multiple Dwellings

Certificate of Registration; Certificate of Inspection

Proposed Amendments: N.J.A.C. 5:10-1.6, 1.11, 1.12 and 2.2

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 55:13A-6(e).

Proposal Number: PRN 1990-60.

A public hearing on this proposal will be held on February 26, 1990 at 10:00 A.M.

William Ashby Community Affairs Building

101 South Broad Street

Trenton, New Jersey 08625

Submit written comments by March 7, 1990 to:

Michael L. Ticktin, Esq.

Administrative Practice Officer

Department of Community Affairs

CN 802

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Hotel and Multiple Dwelling maintenance rules are being amended to bring them into conformity with amendments to the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq., that dealt with certificates of registration (see P.L. 1981, c.442) and retreat lodging facilities (see P.L. 1987, c.270). The amendments are also designed to provide that the Bureau of Housing Inspection may determine that the Uniform Fire

Safety Act has been complied with by examining a copy of the current certificate of inspection issued by the Bureau of Fire Safety, to require that copies of fire inspection certificates be posted in conspicuous locations in life hazard use buildings and to prohibit issuance of a certificate of inspection under the Hotel and Multiple Dwelling Law for any life hazard use that does not have a fire inspection certificate on the premises.

Social Impact

Conformity of the rules to the statutory amendments will eliminate a potential source of confusion for both inspectors and owners. Public Law 1987, Chapter 270 extended to retreat lodging facilities, requirements regarding fire safety. The proposed amendments, by conforming to the statutes, help insure consistent implementation. Requiring posting and keeping on the premises of a copy of the fire inspection certificate for a life hazard use building will speed up the administrative process by reducing the amount of paperwork required to pass between the bureaus of Fire Safety and Housing Inspection.

Economic Impact

There will be no discernible economic impact on building owners, beyond those imposed by statute, as a consequence of these proposed amendments. Fees for certificates are established by statutes and retreat lodging facilities are specifically exempted by P.L. 1987, c.270. The reduction in the amount of paperwork may allow some savings to the Department of Community Affairs.

Regulatory Flexibility Analysis

The inclusion of references to retreat lodging facilities, in conformity with P.L. 1987, c.270, will not affect any for-profit enterprises of any size. Retreat lodging facilities are defined in N.J.S.A. 55:13A-3(s) so as to include only buildings owned and used by non-profit charitable organizations. The provisions of these amendments that relate to retreat lodging facilities are already in effect as a result of the enactment of P.L. 1987, c.270, so the amendments will have no practical effect other than the possible elimination of confusion due to disparity between the statute and the rules.

The change in terminology regarding certificates of registration, pursuant to P.L. 1981, c. 442, is without practical effect on "small businesses" or any other entities, since it affects only the names of documents, not the process by which buildings are registered. The requirement that life hazard use fire inspection certificates be posted and made available to hotel and multiple dwelling inspectors imposes a burden on building owners, both large and small, that is exceedingly minimal, especially since N.J.A.C. 5:18-2.5(d) already requires posting. The purpose of this requirement is to facilitate code enforcement by making necessary information readily available to inspectors. It is necessary whether the building is owned by a "small business" or by some other type of entity.

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

5:10-1.6 Maintenance requirements

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

(f) **Where not otherwise indicated, all rules in this chapter that are applicable to hotels shall be applicable to retreat lodging facilities except as follows:**

1. N.J.A.C. 5:10-19.1(a)1 and 2; and
2. Any regulation for which a waiver pursuant to N.J.A.C. 5:10-1.2 is found by the Bureau to be appropriate.

5:10-1.11 Certificate of registration

(a) The owner of each hotel, **retreat lodging facility** or multiple dwelling shall file with the Bureau of Housing Inspection, upon forms provided by the Bureau, [an application for] a certificate of registration.

(b) Each such [application] **certificate** shall be accompanied by a fee of \$10.00.

(c) Each [application] **certificate** shall state:

1. (No change.)
2. Such description of each hotel, **retreat lodging facility** or multiple dwelling, by street number or otherwise, as will enable the Bureau easily to locate the same:
3. (No change.)
4. The name, address and telephone number of the person, association or corporation, if any, which manages or operates such

hotel, **retreat lodging facility** or multiple dwelling for or on behalf of said owner;

5.-7. (No change.)

8. Whether the building is a hotel, a **retreat lodging facility** or a multiple dwelling;

9.-19. (No change.)

20. The **name and address of the fuel oil supplier, if any, and the grade of fuel oil used.**

(d) Upon the receipt of said [application] **certificate** and fee, the Bureau shall forthwith issue to the owner of such hotel, **retreat lodging facility** or multiple dwelling a **validated copy of the certificate of registration**, which **validated copy of the certificate of registration** shall be kept posted by the owner of such hotel, **retreat lodging facility** or multiple dwelling in a conspicuous location therein.

(e) (No change.)

(f) The owner of each hotel, **retreat lodging facility** or multiple dwelling shall appoint an agent for the purpose of receiving service of process and such orders or notices as may be issued by the Bureau of Housing Inspection pursuant to the Act. Each such agent so appointed shall be a resident of this State or a corporation licensed to do business in this State.

(g) In the case of any transfer of the ownership of any hotel, **retreat lodging facility** or multiple dwelling, whether by sale, assignment, gift, intestate succession, testate devolution, reorganization, receivership, foreclosure or execution process, it shall be the duty of the new owner thereof to file with the Bureau of Housing Inspection, within 30 days of said transfer, [an application for] a certificate of registration pursuant to (a) above and to appoint an agent for the service of process pursuant to (f) above. The transferrer shall, within 30 days of such transfer, return to the Bureau of Housing Inspection his **validated copy of the certificate of registration**, indicating thereon the name and address of the new owner.

(h) In the event that the number of dwelling units in a registered hotel, **retreat lodging facility** or multiple dwelling, or any other information required to be set forth in [an application for] a certificate of registration, is changed, the owner of such hotel, **retreat lodging facility** or multiple dwelling shall file an amended [application for] a certificate of registration within 30 days of such change. No fee shall be charged for the filing of such amended [application] **certificate.**

(i) Within 30 days of the issuance of a certificate of occupancy for any newly constructed hotel, **retreat lodging facility** or multiple dwelling subject to the [Hotel and Multiple Dwelling Law (N.J.S.A. 55:13A-1 et seq.)] **Act**, the owner thereof shall file with the commissioner, upon forms provided by the commissioner [an application for] a certificate of registration pursuant to N.J.S.A. 55:13A-12.

(j)-(k) (No change.)

5:10-1.12 Certificate of inspection

(a) Within 90 days of the most recent inspection by the Bureau of Housing Inspection of any hotel, **retreat lodging facility** or multiple dwelling, the owner thereof shall file with the Bureau of Housing Inspection, upon forms which shall have been provided by the Bureau, an application for a certificate of inspection.

(b) Said application shall state:

1. The name of the owner;
2. Such description of the hotel, **retreat lodging facility** or multiple dwelling, by street number or otherwise, as will enable the Bureau easily to locate the same.

(c) Such application shall be accompanied by a fee as required by N.J.S.A. 55:13A-13(b), **except that no fee shall be required for a retreat lodging facility.**

(d) (No change.)

(e) The following relate to Uniform Fire Code inspections:

[(e)] 1. No certificate of inspection shall be issued for any hotel, **retreat lodging facility** or multiple dwelling subject to inspection, pursuant to the Uniform Fire Safety Act, by a local enforcing agency or by the **Bureau of Fire Safety**, either as a life hazard use or pursuant to a notice given by the local enforcing agency to the Bureau of Fire Safety, unless and until the Bureau shall have received from the local enforcing agency or **from the Bureau of Fire Safety** a certification that the building does not have any outstanding viol-

ations of the Uniform Fire Code, N.J.A.C. 5:18 or the Bureau's representative has, while at the premises, examined a current certificate of inspection issued pursuant to the Fire Safety Act.

2. The owner of a building subject to the Act, that is deemed a life hazard use pursuant to N.J.A.C. 5:18-2.4 through 2.4D, shall have a copy of the current certificate of inspection issued pursuant to the Uniform Fire Safety Act posted in a conspicuous location on the premises at all times.

3. No certificate of inspection shall be issued pursuant to N.J.S.A. 55:13A-13 for any building that is deemed a life hazard use pursuant to N.J.A.C. 5:18-2.4 through 2.4D, unless the owner of the building has a current certificate of inspection issued pursuant to the Uniform Fire Safety Act on the premises.

5:10-2.2 Definitions

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

...
 "Retreat lodging facility", see N.J.S.A. 55:13A-3(s).
 ...

(a)

DIVISION OF HOUSING AND DEVELOPMENT

**New Home Warranty and Builders' Registration
 State New Home Warranty Security Plan
 Warranty Contributions**

**Public Notice regarding Proposed Amendment to
 N.J.A.C. 5:25-5.4**

Take notice that the Department of Community Affairs has temporarily postponed adoption of the above referenced proposal, which was published December 4, 1989 at 21 N.J.R. 3698(a). This postponement is made pending completion of arrangements currently being made for re-insurance of the State Fund and receipt of an actuarial report now being prepared in conjunction with those arrangements. It is expected that the projections upon which the proposed warranty contribution reductions were based will prove to be unduly conservative and that the Department will be justified in providing for further reductions in the rate structure. For reasons of administrative efficiency and to insure maximum savings to potential homebuyers, the Department is therefore postponing adoption so that a greater reduction may be made in several months when anticipations as to the actuarial findings prove to be correct.

(b)

**NEW JERSEY HOUSING AND MORTGAGE FINANCE
 AGENCY**

**New Jersey Housing and Mortgage Finance Agency
 Rules**

Proposed Readoption: N.J.A.C. 5:80

Authorized By: Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Arthur J. Maurice, Executive Director/Secretary.

Authority: N.J.S.A. 55:14K-5g.

Proposal Number: PRN 1990-65.

Submit comments by March 8, 1990 to:

Anthony W. Tozzi
 New Jersey Housing and Mortgage Finance Agency
 3625 Quakerbridge Road
 CN-18550
 Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency serves as an advocate for promoting the supply, construction, rehabilitation and improvement of adequate and affordable housing in the State. To fulfill its objective, the Agency acts as a mortgage lender to housing sponsors who

wish to construct, rehabilitate or improve housing projects for low and moderate income families.

The rules of the Agency, N.J.A.C. 5:80, were adopted and have been amended over time to establish the procedures for and the terms and conditions of mortgage loans made to housing sponsors. The rules are scheduled to expire on May 20, 1990, pursuant to Executive Order 66(1978). The Agency has reviewed the rules and determined that they should be readopted in their present form in order to maintain continuity in its statutory obligation to increase the supply of affordable housing and to preserve the affordable status of the projects it has financed to date.

Social Impact

Readoption of N.J.A.C. 5:80 will enable the Agency to continue to finance the construction, rehabilitation or improvement of housing which will be made available to low and moderate income families of the State. It will also enable the Agency to continue its current role of assuring that the housing previously financed by the Agency remains safe, decent and affordable.

Economic Impact

The readoption of N.J.A.C. 5:80 continues the current economic impact of the provision of financing of construction of housing throughout the State. Once projects are constructed, another economic impact is seen in the reduced rents that are charged to the tenants residing in the projects.

Regulatory Flexibility Analysis

Virtually all of the rules proposed for adoption apply to housing sponsors. Most, if not all, of the housing sponsors are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The readoption of the rules will not impose any additional reporting, recordkeeping or compliance requirements. It will, however, retain existing reporting, recordkeeping and compliance requirements. These include the submission of monthly operating reports, annual budgets and requests for rent increases, the maintenance of tenant files and other financial records and the establishment of repair/replacement and other escrow accounts. Such requirements have been imposed and are necessary to ensure that the financial and physical aspects of the projects remain sound in order to preserve their status as low and moderate income housing. Because housing sponsors are virtually all small businesses and no new requirements have been imposed, no differentiation in the reporting, recordkeeping or compliance requirements based on business size is proposed.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:80.

EDUCATION

(c)

STATE BOARD OF EDUCATION

School Space Sizes and Capacity

Reproposed Amendment: N.J.A.C. 6:22-2.5

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:7A-5, 18A:18A-16, 18A:18A-18, 18A:18A-39, 18A:20-36, 18A:35-1 et seq., 18A:46-13, 18A:46-15, 52:27D-121, 52:27D-123, 52:27D-130, and 20 U.S.C. 1401 et seq.

Proposal Number: PRN 1990-64.

Submit written comments by March 7, 1990 to:

Irene Nigro, Rules Analyst
 State Department of Education
 225 West State Street, CN 500
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

On March 2, 1988, the State Board of Education adopted amendments to N.J.A.C. 6:22 which regulate prekindergarten and kindergarten facilities and space sizes in school buildings. On April 6, 1988, the Board adopted an additional amendment, N.J.A.C. 6:22-1.2, which establishes

requirements for the sites on which school facilities are located. In order to clarify the application of these rules to private schools for the handicapped and schools for the handicapped operated by the Department of Human Services, the State Board proposed a reorganization of some of the rules which previously were interwoven within the rules for public school facilities, and amendments to other rules which were published in the October 16, 1989 New Jersey Register (see 21 N.J.R. 3210(a)). At the January 3, 1990 State Board meeting, the State Board voted to adopt only the amendments to subchapter 1 contained in the proposal (see adoption in this Register). The Board voted to repropose amendments to N.J.A.C. 6:22-2.5(f) to correct an error made in the original proposal. The date incorrectly restricted the applicability of the rules to "spaces occupied but not previously approved prior to April 4, 1988." This reproposal reflects the Board's intention that the rules apply to all spaces occupied but not previously approved prior to the effective date of this amendment.

N.J.A.C. 6:22-2.5(f) is amended to provide an approval process for school space sizes and capacity. The schools may choose to meet either the previous standards in the School Capacity Bulletin or the new standards set forth in N.J.A.C. 6:22-2.5(f) for getting non-approved special education classrooms or spaces other than classrooms approved.

Social Impact

This reproposed amendment will apply to approve private schools for the handicapped, pursuant to N.J.A.C. 6:28-7.2 or 7.3, and schools for the handicapped operated by the Department of Human Services which serve students from the public schools; combined, there are 115 such schools in New Jersey. The amendment will require the same standards for the schools serving the handicapped as exist for the public schools to ensure that school facilities are educationally adequate, healthy and safe.

Economic Impact

A review of data about the 115 private school facilities was conducted in January 1989. Of 914 classrooms, 76, or 8.3 percent, did not meet the standard of 40 gross square feet per student. In order to assist the school with making adjustment, the Department will make site visits to determine the capacity of the 76 classrooms and the schools of which they are a part using 20 net square feet per occupant. New construction costs are not anticipated since the standards can be met by removing unnecessary furniture, reassigning students and/or classes.

Requiring private schools for the handicapped and schools for the handicapped operated by the Department of Human Services to meet the Facilities Planning Service rules as previously set forth in N.J.A.C. 6:22 may result in higher costs to those schools but are necessary to assure a thorough and efficient education and the health, safety and welfare of pupils and staff. This amendment clarifies the application of these rules and may have a slight economic impact, consisting of only minor internal reorganization of classrooms, but not capital construction, if they cannot meet either of the two standards for classrooms or other spaces set forth in N.J.A.C. 6:22-2.5(f).

Regulatory Flexibility Analysis

This reproposed amendment imposes compliance requirements on private schools for handicapped pupils which are small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The compliance requirements are the same as those for public schools.

The amendment applies, as indicated above, to private schools for handicapped pupils. These 115 schools serve students from the public schools. All other aspects of the schools' programs are approved by the Department's Division of Special Education pursuant to N.J.A.C. 6:28.

Given the status of facilities currently in operation, it is not likely that initial capital costs will have to be borne by the private schools for handicapped pupils. However, changes to or expansions of current facilities may result in capital costs based upon the extent of the changes or expansions. There is no likely annual compliance cost.

The Uniform Construction Code and the School Facility Planning Service rules, N.J.A.C. 6:22, will be applied only when required, that is, for construction, renovation or alterations.

Full text of the reproposal follows (deletion shown in brackets [thus]; addition shown in boldface (**thus**)).

6:22-2.5 School space sizes and capacity

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

(f) [This section will be applied prospectively to new educational facilities and additions, when changes of use, renovations or alter-

ations are made to existing facilities, and to existing facilities which were never approved according to prior standards or codes.] **Spaces occupied but not previously approved prior to (the effective date of this amendment), in order to be approved for capacity, must meet the following requirements:**

1. **Special education classrooms in private schools for the handicapped and in schools for the handicapped operated by the Department of Human Services shall be either a minimum of 40 square feet gross per student, as previously set forth in the Department of Education School Capacity Bulletin, or 20 net square feet per student as set forth in N.J.A.C. 6:22-2.5(b); and**

2. **Spaces, other than special education classrooms in private schools for the handicapped and in schools for the handicapped operated by the Department of Human Services shall be either the square foot amounts previously set forth in the Department of Education's School Capacity Bulletin or meet the standards set forth in N.J.A.C. 6:22-2.5(b).**

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

**Freshwater Wetlands Protection Act
Statewide General Permits**

Proposed Amendment: N.J.A.C. 7:7A-9.2

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:9B-1 et seq., particularly 13:9B-23 and 13:9B-25.

DEP Docket Number: 066-89-12.

Proposal Number: PRN 1990-56.

Public hearings concerning this proposal will be held on:

Thursday, March 1, 1990 at 9:30 A.M.
Mercer County Administration Building
Room 211
640 South Broad Street
Trenton, New Jersey

Submit written comments by April 6, 1990 to:

Michael P. Marotta, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On May 16, 1988, the New Jersey Department of Environmental Protection (Department) adopted rules, effective June 6, 1988 and operative July 1, 1988, to implement the Freshwater Wetlands Protection Act (Act), N.J.S.A. 13:9B-1 et seq. The Act requires strict regulation of activities in freshwater wetlands and State open waters. Pursuant to N.J.S.A. 13:9B-23, the Department is authorized to adopt general permits which provide an expedited permit process for common, routine activities which are determined by the Department to have minimal individual and cumulative adverse impacts on the environment, cause only minor impacts on freshwater wetlands, be in conformance with the purpose of the Act, and not violate any provision of Section 404 of the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 (33 U.S.C. §1344) and the regulations adopted pursuant thereto. Such a determination will be made by the Department only after conducting an environmental analysis and providing public notice and opportunity for a public hearing.

This proposed amendment charges the May 16, 1988 adoption of Statewide General Permit #4 for the containment and cleanup of oil and hazardous substances. The amendment will provide an expedited review process for hazardous waste remediation activities which heretofore have required an individual freshwater wetlands or open water fill permit. The amended Statewide General Permit concerns activities including work, discharges and the construction or placement of structures, for the investigation, cleanup and removal of hazardous substances. The en-

Environmental analysis for this amended General Permit #4 has been prepared by the Department and is available for inspection at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Quakerbridge Road, Mercerville, New Jersey, and the Office of the Department's Division of Coastal Resources, 501 East State Street, Trenton, New Jersey.

Until such time as this proposed rule is adopted, these activities require an individual permit. However, in light of this rule proposal, the Department will also accept general permit applications and review the activities in accordance with the amendment.

Social Impact

The proposed amendment will have a positive social impact by providing for quicker and more efficient review of hazardous site remediation activities which are undertaken, authorized or otherwise approved by the Department. The more efficient review of these remediation projects will allow many important hazardous waste cleanup activities to proceed in a timely manner while still minimizing the potential adverse environmental impacts of these projects on freshwater wetlands and State open waters.

Economic Impact

The amended Statewide General Permit is not expected to have any adverse economic impact. The proposed amendment will have a positive economic effect on persons contemplating hazardous site cleanup activities covered by this Statewide General Permit, because authorizations for projects covered by general permits are generally granted more quickly and require lower fees than individual permits.

Environmental Impact

As required by N.J.S.A. 13:9B-23, the Department has conducted an environmental analysis and has determined that the activities authorized by the amended Statewide General Permit will result in minimal individual and cumulative adverse impacts upon the environment generally and only minor impacts on freshwater wetlands. All permitted activities will be in conformance with the purposes and goals of the Freshwater Wetlands Protection Act and applicable Federal law.

Additionally, the amended Statewide General Permit will have a positive environmental impact because the expedited and less costly review process may contribute to a quicker cleanup of contaminated sites and may encourage the cleanup of additional contaminated sites containing freshwater wetlands.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this amendment will substantially reduce reporting, recordkeeping, or other compliance requirements on small businesses which engage in the regulated activities addressed by the amendment. This reduction will be the result of the generally less stringent requirements imposed upon those engaging in a regulated activity pursuant to a Statewide General Permit rather than an individual permit.

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

7:7A-9.2 Statewide General Permits

(a) The following activities in freshwater wetlands and State open waters are hereby allowed under Statewide General Permits provided the activity is in compliance with specific conditions contained in the Statewide General Permit and with the standard conditions for all Statewide General Permits in N.J.A.C. 7:7A-9.3 and provided the activities are in compliance with the Act, this chapter, and the Federal Act:

1.-3. (No change.)

4. Structures, work and discharges for the containment and clean-up of oil and hazardous substances which are undertaken by the State or Federal government, provided the activity:

- i. Does not occur in exceptional resource value wetlands;
- ii. Does not occur in EPA Priority Wetlands.]

4. Activities, including work, discharges, and the construction or placement of structures, for the investigation, cleanup and removal of hazardous substances as defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:19-23.11 et seq., which are undertaken, authorized or otherwise approved by the Department, provided the following conditions are met:

i. If the proposed cleanup activity is to take place in an exceptional resource value wetland, the activity must be reviewed and approved by the Department to assure that there are no practicable alternatives to the investigation, cleanup and removal of the hazardous substance or substances that would not involve the destruction of freshwater wetlands and State open waters.

ii. All affected wetlands and State open waters shall be restored or mitigated as specified at N.J.A.C. 7:7A-14, Mitigation. The restoration or mitigation plan must either be part of the approved cleanup plan or submitted as a part of the Statewide General Permit authorization application and approved by the Department before the proposed activity may be authorized.

5.-17. (No change.)

(a)

DIVISION OF COASTAL RESOURCES

Dam Safety Standards

Proposed Readoption with Amendments: N.J.A.C. 7:20

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 58:4-1 et seq. and N.J.S.A. 13:1D-1 et seq.
DEP Docket Number: 064-89-12.

Proposal Number: PRN 1990-55.

Submit written comments by April 6, 1990 to:

Jane Engel, Esq.

Division of Regulatory Affairs

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), N.J.A.C. 7:20 expires on May 6, 1990. As required by the Executive Order, the Department of Environmental Protection (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 proposes to readopt this chapter with amendments.

N.J.A.C. 7:20 implements the Safe Dam Act, N.J.S.A. 58:4-1 et seq. and governs the design, construction, inspection, modification and repairs of dams in New Jersey which raise the water height of a stream by more than five feet. Certain small structures in the pinelands area are exempt from these rules so long as they do not pose a security or safety concern (see N.J.S.A. 58:4-1). The primary objective of these rules is to ensure the protection of areas below dams from the consequences of their failure. Dams and their appurtenant works are required to be inspected and maintained on a regular basis in order to determine if repairs or modifications are necessary to protect life and property.

The Department regulates dams based upon their hazard classification, as identified in N.J.A.C. 7:20-1.8, and size. Hazard potential is divided into three classes: Class I, high hazard; Class II, significant hazard; and Class III, low hazard. The hazards pertain to potential harm to human beings or to property in areas downstream of any dam. The hazard classification dictates the design requirements which applicants must meet; the higher the hazard the more stringent the design criteria. These rules also establish Class IV dams, which are defined as small dams. The construction of Class IV dams is generally regulated by local government entities.

A summary of N.J.A.C. 7:20 follows:

N.J.A.C. 7:20-1.1 and 1.2 set forth the scope of this subchapter (which constitutes the entirety of N.J.A.C. 7:20), and the definitions for N.J.A.C. 7:20.

N.J.A.C. 7:20-1.3 sets forth the requirements for a dam permit-by-rule. A permit-by-rule is established for small impoundments and agricultural ponds.

N.J.A.C. 7:20-1.4 outlines the general requirements and prohibitions for a dam construction permit and describes the standards for granting emergency repair approvals.

N.J.A.C. 7:20-1.5 sets forth the procedures for applying for a dam construction, modification or repair permit. The appeal procedures for denials of a permit are also contained in this section.

N.J.A.C. 7:20-1.6 describes the information to be submitted as part of the preapplication report for the construction of a new dam.

N.J.A.C. 7:20-1.7 describes the documentation and information that must be submitted to the Department for the type of project proposed. The information that must be submitted includes a design report, construction drawings and specifications.

N.J.A.C. 7:20-1.8 describes the Department's guidelines for establishing dam classifications based upon downstream hazard. Hazard potential is broken into three classes: Class I, high hazard; Class II, significant hazard; and Class III, low hazard.

N.J.A.C. 7:20-1.9 describes the hydrologic design criteria for designing spillways and provides technical design criteria for pipe conduits, monitoring devices and freeboard.

N.J.A.C. 7:20-1.10 sets forth the construction quality control requirements and outlines the Department's conditions for approval of construction activities.

N.J.A.C. 7:20-1.11 sets forth the owner's responsibilities for periodic dam safety inspections, operation and maintenance, and emergency action planning.

A summary of the proposed amendments follows:

The definition of "Division" in N.J.A.C. 7:20-1.2 was modified to reflect the transfer of the Dam Safety Section from the Division of Water Resources to the Division of Coastal Resources. The definition of "height-of-dam" was modified, and definitions of "emergency spillway" and "toe-of-dam" were added to clarify the definition of a dam in these rules. A definition of an "Independent Review Board" was also added to define its use in N.J.A.C. 7:20-1.10(b).

The words "or removed" were added to N.J.A.C. 7:20-1.3(a) to clarify that a permit is required for all removal activities, unless exempted by the permit-by-rule provisions. This provision is consistent with N.J.A.C. 7:20-1.4(n).

"Type II storm" was changed to "Type III storm" at N.J.A.C. 7:20-1.3(a)1 and 7:20-1.9(a) to reflect the current technology and standards adopted by the United States Soil Conservation Service.

N.J.A.C. 7:20-1.3(a)3 was deleted and the requirements contained therein were moved to N.J.A.C. 7:20-1.5(e) because they are general application procedures rather than permit-by-rule procedures.

N.J.A.C. 7:20-1.4(i) was added to ensure that the Department would be notified immediately in the event of a dam emergency. In addition, N.J.A.C. 7:20-1.4(i)1, 2 and 3 (recodified herein as N.J.A.C. 7:20-1.4(j)1, 2 and 3) were modified to clarify what the obligations of an owner or operator are in the event of a dam emergency.

N.J.A.C. 7:20-1.4(k) was added to ensure that the Department will be notified when the ownership of a dam has been transferred.

N.J.A.C. 7:20-1.4(l) was added to prohibit lake dredging within 200 feet of a dam without specific Department approval to ensure the continued stability of a dam structure.

N.J.A.C. 7:20-1.4(m) was added to prohibit the installation of utilities within dam embankments to prevent the possible degradation of a dam structure.

N.J.A.C. 7:20-1.4(n) was added to indicate that the removal of an existing dam is a regulated activity.

N.J.A.C. 7:20-1.6(c) was added to clarify that a preapplication report for the repair of an existing dam would not be required unless the Department determines it to be necessary.

N.J.A.C. 7:20-1.7(h) was added to describe the application procedures for removing an existing dam.

The word "raise" was deleted and replaced with the word "change" at N.J.A.C. 7:20-1.8(a) to clarify that the Department has the discretion to raise or lower a dam classification for a proposed or existing dam.

The maximum height for a Class IV dam has been increased from 10 feet to 15 feet at N.J.A.C. 7:20-1.8(a)4 to allow small impoundment structures to meet the requirements for a permit-by-rule.

Changes were made to N.J.A.C. 7:20-1.9(b), and redesignated (g), (h), (i) and (n), to clarify and/or modify design criteria of spillways, freeboard requirements, drawdown requirements and pipe conduits, and to prohibit the use of corrugated metal pipe in new construction. These changes reflect current dam safety standards.

N.J.A.C. 7:20-1.10(b) was added to require the use of an Independent Review Board to perform an impartial review of the design and construction of a proposed or existing dam when the Department determines that such a review is necessary.

The phrases "within 30 days" and "within 14 days" were modified at N.J.A.C. 7:20-1.10(b)3 to "within 45 days" and "within 30 days" because the Department believes these time frames are more appropriate and realistic given the staff time needed to review and inspect a project. In addition, changes were made to N.J.A.C. 7:20-1.10(c)4 to allow the Department to use its discretion in deciding whether to make final inspections for certain dam projects.

N.J.A.C. 7:20-1.11(a) was modified and 7:20-1.11(b) was deleted to require that all dam owners and operators, not just owners and operators of Class I and II dams, develop an operation and maintenance manual. This section was also modified to clarify what is to be included in such a manual.

N.J.A.C. 7:20-1.11(c), (d), (e), (f) and (g) have been revised to modify the time schedules for performing regular and formal inspections. The proposed amendments decrease the frequency for a regular inspection on a Class III dam from two to four years. In addition, the Department has removed the requirement for formal inspections on Class III dams and has extended the time frame between formal inspections on Class II dams from six to 10 years. The Department has extended the time frame between these inspections based on the dam's downstream hazard potential.

Various editorial corrections have been made to the rule text.

Social Impact

The readopted rules with the proposed amendments will have a positive social impact on the people of the State by continuing to protect the public from the consequences of dam failures. The dam safety standards will continue to reduce property damage by requiring dam owners and/or operators to meet specific design criteria and perform periodic dam inspections.

Economic Impact

Dam failures which result in the loss of water supply, wildlife habitat, and recreational facilities and which can cause considerable flood damage have a major negative economic impact on the economy of New Jersey. The resultant costs associated with the failure of a single large dam, based on documented past occurrences, can exceed \$1,000,000,000. This figure does not include public costs related to rescue, relief and emergency preparedness nor does it include the value of the loss of human life or the costs associated with lost wages, sales, and production.

The existing rules have had a positive economic impact on the economy of the State by providing a safe environment downstream of water dependent dam structures essential for the needs and economic well-being of the State's residents. The readopted rules with amendments will continue to provide the safety needed for a sound social and business environment and will thus have a positive economic impact. Owners and operators of dams, however, may face additional construction and operation costs in complying with these dam safety standards.

Environmental Impact

These readopted rules will continue to prevent a dam owner or operator from allowing dam deterioration which could lead to dam failure. They have had a positive impact by maintaining the existence of lakes and reservoirs and the preservation of existing wetlands, recreation, and fish and wildlife habitat.

While construction of a new dam may potentially be disruptive to a riverine environment, the Department may require the applicant to submit an Environmental Impact Statement or consider the environmental impacts in the permit application. The statement or application is carefully reviewed by staff environmentalists and additional mitigation is recommended where possible. In developing the existing rules, the Department has balanced the need to protect the public from dam failures while protecting the environment from the negative effects of construction and operation of dam projects.

Regulatory Flexibility Analysis

These rules would apply to owners and operators of dams. It is estimated that of the total number of approximately 1,600 owners and operators affected by these rules, approximately 50 are "small business" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and will be affected. In order to comply with the rules, the small businesses will have to comply with the requirements set forth in the Summary above. In so doing, it is likely that small businesses will need to engage the services of professional engineers. It is expected that the costs of compliance for small businesses could range from \$500.00 to \$5,000. In developing the rules the Department has balanced the need to protect the environment, property and life against the economic impact

of the rules and has determined that to minimize the impact of the rules would endanger the public health and safety and, therefore, no exemption from coverage is provided.

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

7:20-1.1 Scope and applicability

(a) The rules in this subchapter were adopted pursuant to the authority of N.J.S.A. 58:4-1 et seq., as amended by the Safe Dam Act of 1981, and N.J.S.A. 13:1D-1 et seq.

1.-3. (No change.)

7:20-1.2 Definitions

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

“Division” means the Division of [Water] Coastal Resources in the Department of Environmental Protection.

“Emergency spillway” means the spillway capable of passing the spillway design storm with the principal and/or auxiliary spillway blocked.

“Height-of-dam” means the vertical dimension from the lowest point in the [original] stream bed or [natural] ground surface at the downstream toe of the dam to the elevation of the top of dam (without camber.)

“Independent Review Board” means one or more independent professional engineers who are qualified in the design, construction and rehabilitation of dams to perform a review of the project design and construction.

“Toe-of-dam” means the junction of the downstream face of a dam with the ground surface (or invert of the outlet pipe).

7:20-1.3 Permit-by-rule

(a) All dams must be designed, constructed, operated, [and] maintained or removed in compliance with the rules in this subchapter except as set forth below:

1. Owners and operators of Class IV dams (see N.J.A.C. 7:20-1.8, Dam classification) are not required to file documents with nor obtain a permit from the Department, but must meet the following requirements, in addition to those set forth elsewhere in this subchapter:

i. Design must be based upon a spillway design storm that results in rainfall of 50 percent greater than a 24-hour, 100-year, Type [II] III storm (Later technology adopted by the United States Department of Agriculture, Soil Conservation Service may be substituted for the use of the Type [II] III storm.); and

ii. (No change.)

2. (No change.)

3. Applicants for hazard classification in Class III, pursuant to N.J.A.C. 7:20-1.8, may initially submit a preliminary application, including only that information needed to establish Class III hazard classification. Thereafter, some of the documentation and inspection requirements set forth in these rules may be waived by the Department.]

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

7:20-1.4 General requirements and prohibitions

(a) No person may construct or operate a new dam or modify or repair an existing dam without first having obtained a permit from the Department, unless subject to the permit-by-rule provision in N.J.A.C. 7:20-1.3. Where emergency circumstances justify, repairs of a dam may be undertaken prior to obtaining a permit, in accordance with [(i)](j) below.

(b)-(h) (No change.)

(i) The Department shall be notified immediately by the owner or operator upon the detection of any condition which may jeopardize the safety of the structure.

[(i)](j) Situations which threaten the public health, safety, and welfare and require emergency dam repair will be considered by the Department under the following procedure:

1. [Inform] The owner or operator shall inform the Department by telephone as to the extent of work to be performed, the reason for the emergency and the location of the project.

2. [Perform] The owner or operator shall perform the emergency work upon verbal approval of the Department, which approval shall be verified by the Department in writing within three working days. The Department shall offer guidance and instructions in performing the work.

3. After the work has been completed in accordance with the Department's instructions, the owner or operator shall submit a dam permit application and “as built” drawings [shall be submitted] to the Department for review. A letter shall be issued by Department in lieu of a dam permit.

(k) The Department shall be notified in writing on or before the transfer of dam ownership.

(l) Unless otherwise approved by the Department in writing, no person shall dredge within 200 feet of a dam.

(m) Utilities crossings within dam embankments are prohibited unless demonstrated to the satisfaction of the Department that such utilities will not jeopardize the safety of the dam.

(n) No person shall remove or breach an existing dam without first having obtained a permit from the Department unless subject to the permit-by-rule provisions in N.J.A.C. 7:20-1.3.

7:20-1.5 General application procedures

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

(e) Applicants for a dam permit for a Class III dam, as defined pursuant to N.J.A.C. 7:20-1.8, may submit a preliminary application, which should include that information needed to establish a Class III hazard classification. Thereafter, in its discretion, the Department may waive certain documentation and inspection requirements set forth in these rules.

7:20-1.6 Preapplication stage

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

(c) Applicants for a permit to repair an existing dam are not required to submit a preliminary report unless the Department determines it to be necessary.

7:20-1.7 Application stage

(a)-(g) (No change.)

(h) The application to remove or breach a dam shall include the following:

1. Design report, and plans and computations to effect the breach including size of breach, shape of breach, disposal of spoil material;

2. Plans and computations for restoration of the lake bed including the channel upstream of the breach, and for the control of sediment within the lake and downstream of the breach during and after the breach has been effected;

3. Computations for design of the method and timing for dewatering the lake;

4. Computations detailing the effects of the breach on the downstream channel and demonstrating that the project will not adversely affect flooding conditions downstream;

5. Specifications containing the technical provisions which describe in detail the proposed work methods and equipment and, in addition, a work schedule for the entire project;

6. A plan of the existing dam and lake along with surrounding property lines;

7. Evidence that all adjoining property owners of the impoundment have received notification that an application has been submitted to the Department to remove or breach a dam;

8. A description of the potential effects of the dam removal or breach upon the environment; and

9. A description of the potential effects of the dam removal or breach upon life and property downstream of the dam.

7:20-1.8 Dam classification

(a) The Department will use the following guidelines to classify dams according to hazard. Probable future development of the area downstream from the dam which might be affected by its failure will be considered in determining the hazard classification. The Depart-

ment may, in its discretion, [raise] **change** the hazard class of any proposed or existing dam.

1.-3. (No change.)

4. **Class IV—Small Dams:** This classification includes any project which impounds less than 15 acre/feet of water to the top of dam, has less than [10] **15 feet** height-of-dam and which has a drainage area above the dam of 150 acres or less in extent. No dam may be included in Class IV if it meets the criteria for Class I or II[,]. [but any] **Any** applicant may request consideration as a Class III dam upon submission of a positive report and demonstration proving low hazard.

7:20-1.9 Design criteria

(a) The minimum design storm used to calculate required spillway capacity must be determined according to the following table:

Hazard	Spillway Design ¹ Storm (SDS)
Class I	PMP
Class II	One-half PMP
Class III	24 hour 100 year frequency, Type [II] III storm ¹
Class IV	24 hour 100 year frequency, Type [II] III storm plus 50% ¹

¹Any later technology adopted by the U.S. Department of Agriculture, Soil Conservation Service may be substituted for the use of the Type [II] III storm.

(b) **For existing dams, it is recognized that the relationships between valley slope and width, total reservoir storage, drainage area, and other hydrologic factors have a critical bearing on determining the safe spillway design flood. Rational selection of a safe spillway design for specific site conditions based on quantitative and relative impact analysis is acceptable. The spillway should be sized so that the increased downstream damage resulting from overtopping failure of the dam would not be significant as compared with the damage caused by the flood in the absence of a dam overtopping failure.**

[(b)-(e)](c)-(f) (No change in text.)

[(f)](g) Pipe conduits may be used for the primary (principal) spillway. When so used, the following requirements shall be met:

1. All pipe conduits must convey water at the maximum design velocity without damage to the interior surface;

2. The pipe conduits must be designed so that negative pressures will not occur at any point along the primary (principal) spillway system;

3. Anti-seep collars or other methods approved by the Department must be installed to control seepage along the conduit;

4. Adequate allowances shall be incorporated in the design to compensate for differential settlement and possible elongation of the pipe conduit;

5. An anti-vortex device must be included in the design, unless the applicant can demonstrate that one is not necessary.

6. A trash rack, approved by the Department, shall be installed at the intake to prevent clogging of the pipe conduit; and]

1. Pipe conduits shall be of such design as to safely support the total external loads in addition to the total internal hydraulic pressure without leakage. The type of construction material used shall be consistent with the anticipated life of the structure. Corrugated metal pipe shall not be used in the construction of new dams.

i. For Class I and II dams, the minimum allowable inside dimension of the pipe conduit is 30 inches.

ii. For Class III dams, the minimum allowable inside diameter of the pipe conduit is 18 inches.

iii. For Class IV dams, the minimum allowable inside diameter of the pipe conduit is 12 inches.

2. All pipe conduits shall convey water at the maximum design velocity without damage to the interior surface;

3. The pipe conduits shall be designed so that negative pressure will not occur at any point along the primary (principal) spillway system;

4. Anti-seep collars or other methods approved in writing by the Department shall be installed to control seepage along the conduit;

5. Adequate allowances shall be incorporated in the design to compensate for differential settlement and possible elongation of the pipe conduit;

6. An anti-vortex device shall be included in the design unless the applicant has demonstrated to satisfaction of the Department that one is not necessary;

7. A trash rack, approved by the Department, shall be installed at the intake to prevent clogging of the pipe conduit;

8. An emergency spillway shall be provided; and

9. Cathodic protection is required for all metal pipes.

[7.](h) Should a vegetated or unlined secondary (emergency) spillway, approved by the Department, be installed, it must be able to pass the design storm without jeopardizing the safety of the structure and that has a predicted average frequency of use less than:

[i.]1. Once in 100 years for Class I dams;

[ii.]2. Once in 50 years for Class II dams; or

[iii.]3. Once in 25 years for Class III and IV dams.

[(g) Pipe conduit and spillway requirements are as follows:

1. When used for Class I and Class II dams, pipe conduits shall be of such design as to safely support the total external loads in addition to the total internal hydraulic pressure without leakage. The minimum allowable inside dimension of the pipe conduit is 30 inches. The type of construction material used must be consistent with the anticipated life of the structure. Corrugated metal pipe shall not be used in new construction relating to Class I or II dams.

2. When used for Class III and IV dams, pipe conduits shall be of such design as to safely support the total external loads. They must be designed to be watertight and meet the following requirements:

i. The minimum allowable inside diameter of the pipe is 18 inches for Class III dams and 12 inches for Class IV dams;

ii. If corrugated metal pipe is used, it must be close-ribbed or welded, have watertight connecting bands and be of a minimum gage specified by the manufacturer as safe for a height of fill over the pipe of not less than 35 feet;

iii. If corrugated metal pipe is used, the maximum fill height over the pipe may not exceed 15 feet; and

iv. Cathodic protection for all metal pipes shall be provided.]

[h](i) Drawdown requirements are as follows:

1. Except for excavated impoundments, all dams shall include a [facility] **device** to permit draining the reservoir, as approved in **writing** by the Department. **Computations for the minimum time required to drain the reservoir shall be required for new and existing dams.**

2. [For earth dams, valves] **Valves** or sluice gates in pipe conduit drains must be installed upstream of the dam; and

3. All pipe conduits used as drawdown drains for all dam classifications shall meet the requirements of [(f) and] (g) above, except that the minimum allowable inside dimension may be less than 30 inches.

[(i)-(l)](j)-(m) (No change in text.)

[(m)](n) Freeboard requirements are as follows:

1. (No change.)

2. For all dams the minimum elevation of the top of the dam must be: i. That] **that** necessary to pass the design storm with at least one foot of freeboard to the top of dam.]; or

ii. Two feet higher than the crest elevation of the secondary (emergency) or primary spillway.]

3. Where special conditions of severe frost damage, ice damage or wave action may occur, higher elevations than required in [(m)2i and ii] (n)2 above[,] may be required and should be considered by the applicant.

[(n)](o) (No change in text.)

7:20-1.10 Construction

(a) (No change.)

(b) **The Department may, in its discretion, require the owner to obtain the services of an Independent Review Board to oversee the design and construction of any proposed or existing dam.**

[(b)](c) Construction inspection program requirements are as follows:

1.-2. (No change.)

3. Upon receipt of the as-built plans required in (a)6 above and the engineer's certification required in (a)7 above, the Department

will inspect the completed construction within [30] 45 days. If the Department finds that construction was completed in accordance with the approved designs, plans, specifications and approved changes, the construction will be approved in writing within [14] 30 days. The approval date shall be the date such approval is sent by the Department.

4. In the 12th month following approval of construction by the Department pursuant to [(b)3] (c)3 above, the Department [will] may make a final inspection of the construction. [A] **If the Department makes a final inspection of the construction, a final approval will be given by the Department, if the final inspection shows that the terms of the permit, designs, plans, specifications and approved changes thereof have been met.**

7:20-1.11 Dam operating requirements and inspections: new and existing dams

(a) [All] **The owners and operators of [Class I and II] all dams shall develop and use an Operation[a] and Maintenance Manual which provides guidance and instruction to project personnel for the proper operation and maintenance of the reservoir and dam, and meets the following requirements:**

[1. The purpose of this manual is to provide guidance and instruction to project personnel for the proper operation and maintenance of the reservoir and dam.]

[2.]1. The manual shall be composed of two parts:

i. Part One [must] **shall** include an introduction, project description, project authorizations, project history and list of project contracts.

ii. Part Two [must] **shall** contain the operation and maintenance instructions for major project facilities and equipment **and a schedule for maintenance.**

[b. Permittees for Class III dams shall develop and use an Operation and Maintenance Manual in the event that the dam classification is raised.]

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

[(d) Owners or operators of all dams shall have an informal inspection performed on the off-year from the regular inspection (see (f) below).

(e) Owners or operators of dams not covered by (c) above shall have a regular inspection performed once every six years. In the year of the formal inspection, regular and informal inspections need not be performed.]

(c) **Owners or operators of Class I dams not meeting the size characteristics described in (b) above shall have a regular inspection performed once every two years and a formal inspection performed every six years.**

(d) **Owners or operators of Class II dams shall have a regular inspection performed once every two years and a formal inspection performed every 10 years.**

(e) **Owners or operators of Class III dams shall have a regular inspection performed every four years. The Department may at its discretion require the owner or operators to perform a formal inspection of a Class III dam.**

(f) All dam inspections shall be performed from March [through July (season I) or from August] through December [(Season II)].

[(g) All dam inspections shall be performed in compliance with the following schedule:

1. All dams within the counties of Sussex, Morris, Hunterdon, Union and Essex shall have regular inspections performed in Season I of the first year after the effective date of the following year.

2. All dams within the counties of Passaic, Warren, Somerset, Bergen and Hudson shall have a regular inspection performed in Season II of the first year after the effective date of these rules. Informal inspections shall be performed in Season II of the following year.

3. All dams within the counties of Middlesex, Monmouth, Burlington, Salem and Atlantic shall have regular inspections performed in Season I of the second year after the effective date of these rules. Informal inspections shall be performed in Season I of the first year.

4. All dams within the counties Mercer, Ocean, Camden, Gloucester, Cumberland, and Cape May shall have regular inspections performed in Season II of the second year after the effective

date of these rules. Informal inspections shall be performed in Season II of the first year.

5. Successive regular and informal inspections shall be performed in the opposite inspection season from that of the prior inspection. For example, if a regular is performed in Season I of the first year, the next regular inspection must be performed in Season II of the third year.]

[(h)](g) All inspections shall be performed in compliance with the following requirements:

1.-2. (No change.)

3. Informal inspections may be performed by the dam owner or operator and[, except for Class IV dams,] the Report on Condition shall be **part of the owner's or operator's permanent file and, unless requested by the Department, Reports shall not be submitted to the Department.** [submitted to the Department within 30 days. Reports for Class IV dams shall be submitted to the county and/or municipal engineer jurisdiction over the dam structure.]

4.-5.(No change.)

[(i)-(j)](h)-(i) (No change in text.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Bureau of Shellfisheries

Oysters

Proposed Readoption: N.J.A.C. 7:25A

Authorized By: Helen C. Fenske, Acting Commissioner,

Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 50:1-5, 50:1-23, and 50:1-27.

DEP Docket Number: 002-90-01.

Proposal Number: PRN 1990-70.

Submit written comments by April 6, 1990 to:

Judeth A. Piccinini, Esq.

Division of Regulatory Affairs

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), N.J.A.C. 7:25A expires on May 6, 1990. As required by the Executive Order, the Department of Environmental Protection (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 proposes to readopt this chapter without change.

The rules at N.J.A.C. 7:25A govern the management of and harvest from the State oyster resource in the Delaware Bay. N.J.A.C. 7:25A is divided into two subchapters: Subchapter 1, Oyster Management, and Subchapter 4, Oyster Cultch Program. The current format of the rules is the result of the 1985 revision which consolidated under the general heading of Oyster Management previously separate subchapters on oyster dredging licenses, oyster management in Delaware Bay, and oyster seed beds. Subchapter 4, containing the rules on the oyster cultch program, was promulgated by the Department in 1983.

N.J.A.C. 7:25A-1, Oyster Management, provides orderly procedures for the issuance and renewal of oyster dredging licenses, the leasing of oyster grounds in Section E of the Delaware Bay, and the taking of seed oysters from the State's natural seed beds. In particular, this subchapter regulates the opening of the State's oyster seed beds between May 1 and June 30, the period prescribed for oyster harvest in this area by N.J.S.A. 50:3-8. Under N.J.A.C. 7:25A-1.9, the Division of Fish, Game and Wildlife (Division), in consultation with the Delaware Bay Section of the New Jersey Shellfisheries Council (Council) and the Oyster Research Laboratory of Rutgers University, determines the annual season for taking oysters from the seed beds above the southwest line in Delaware Bay and decides which of these seed beds will be open to harvest. This mechanism allows the Division and the Council to closely monitor and protect the productivity of the oyster seed beds, which have been seriously depleted in past years by drought and outbreaks of the MSX virus. Under this rule, the Department has not allowed harvest from the State's natural

oyster seed beds since 1986, because sampling data has indicated that the beds remain depleted below acceptable levels.

N.J.A.C. 7:25A-1 also prohibits the direct marketing of seed oysters from the State's oyster seed beds. This prohibition was imposed to ensure that all oysters moved to leased grounds from the State's natural seed beds are left in the bay during at least one spawning season, thereby minimizing the potential for serious depletion of the resource's brood stock.

The rules at N.J.A.C. 7:25A-4 govern the oyster cultch program administered by the Division. The amount and quality of cultch, the stones and old shells which form the substrate of an oyster bed and provide the points of attachment for spawn, is a critical factor in the ability of oysters to set and subsequently develop into market size oysters. This subchapter requires the reporting of all oyster landings in the State from the Delaware Bay and imposes a landing fee which is used to finance the purchase and planting on the State's oyster seed beds of at least 40 percent of the oyster shells from the previous year's harvest. A portion of the landing fee is also used to finance shellfish research as directed by the Commissioner of Environmental Protection after consultation with the Council.

Although the oyster industry has been economically depressed in the past decade, the Department has continually revised the rules in this chapter to better protect both the oyster resource base and the oyster industry. Failure to readopt these rules would likely result in intensified and uncoordinated harvest from the State's oyster seed beds, decimating the remainder of the resource within a relatively short time.

Social Impact

The Department anticipates that the proposed readoption will have a beneficial social impact on both participants in the State oyster industry and the general public. Readoption of these rules will sustain the Department's comprehensive management of the oyster resource in the Delaware Bay, including the systematic distribution of oyster dredging licenses and leases of ground in Section E of the seed beds. Under the readopted rules, the Department will continue to set the annual season for harvest from the State's oyster seed beds, thereby monitoring and protecting the productivity of the seed beds.

The proposed readoption will also perpetuate the oyster cultch program, which finances both the maintenance of the oyster seed beds and research to improve the State oyster resource. In general, readopting the rules in this chapter should help the Department in its long-term management of the State oyster resource. Continuing this long-term management program should benefit the oyster industry by maximizing the sustainable harvest of oysters, and members of the general public by maximizing the availability of oysters to the market.

Economic Impact

The proposed readoption will continue the existing nominal landing fee of \$0.35 per bushel of oysters landed from the Delaware Bay. This money finances the maintenance of the oyster seed beds and research to improve the resource; both of these programs directly benefit the oyster industry. The existing rules do not impose a lease fee for lots in Section E of the oyster seed beds, nor do they impose any additional fees as part of the oyster management or oyster cultch program.

Penalties for violation of this chapter are as established by the provisions of N.J.S.A. 23:2B-14. These penalties have assisted the Department in deterring poaching from the seed beds, deterring poaching from leased lots, and enforcing the oyster cultch requirements. Continuing these provisions will have direct economic benefit for the oyster industry by protecting the resource and protecting private investments in the oyster industry.

Environmental Impact

The proposed readoption is expected to have a positive environmental impact on the State oyster resource. The existing rules contain several provisions designed to encourage prudent oyster culture practices and to protect the State oyster resource from overharvesting. In particular, these rules allow the Department to set the annual season for harvest from the State's oyster seed beds and to determine which of the seed beds will be open to harvest. Without this provision, the unrestricted harvest from the seed beds that would occur during the period from May 1 through June 30 would deplete the seed beds in a relatively short time.

The proposed readoption should also have a positive environmental impact on the oyster resource by continuing the oyster cultch program, which finances the maintenance of the State's oyster seed beds and facilitates research to improve oyster culture practices and harvest methods.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (Act), the Department has determined that the proposed readoption will not impose significant reporting, recordkeeping or other compliance requirements on small businesses. Although most oyster harvesters are "small businesses" as defined by the Act, the paperwork involved in the oyster dredge license, oyster lease, and oyster cultch programs is minimal. Likewise, the Department has determined that compliance with the other harvest requirements imposed by the rules in this chapter has not been burdensome to small business oyster harvesters. The Department anticipates that small businesses affected by the proposed readoption will not need additional professional services or incur additional capital costs in order to comply with the rules in this chapter. Because of the de minimus nature of the compliance requirements, the existing rules and the proposed readoption do not contain exemptions or special provisions for affected small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:25A.

(a)

DIVISION OF SOLID WASTE MANAGEMENT BOARD OF PUBLIC UTILITIES

Interdistrict and Intradistrict Solid Waste Flow for Camden, Gloucester, Essex and Sussex Counties

Joint Proposed Amendment: N.J.A.C. 7:26-6.5

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection, and the Board of Public Utilities, Christine Todd Whitman, President.

Authority: N.J.S.A. 13:1E-6 and 48:13A-1 et seq.

DEP Docket Number: 063-89-12.

Proposal Number: PRN 1990-46.

A public hearing concerning this proposal will be held on:

Thursday, February 15, 1990 at 2:00 P.M.
New Jersey State Museum Auditorium
205 West State Street
Trenton, New Jersey

Submit written comments by March 7, 1990 to:

Mark Wenzler, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) are proposing to amend the Interdistrict and Intradistrict Solid Waste Flow Rules, N.J.A.C. 7:26-6, to designate waste flows to solid waste facilities that will be commencing operation in the future. Facilities from the counties of Camden, Essex, Gloucester and Sussex are specified in this proposal.

ESSEX

Regarding Essex County, solid waste presently generated in the county is directed to two transfer stations in Newark prior to out-of-State disposal. The proposed amendment directs solid waste types 10, 23, and 27 generated in the county to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, upon commencement of operations. The proposed waste redirection corresponds to an approved District Solid Waste Management Plan Amendment for Essex County. Waste types 13 and 25 shall be directed to out-of-State disposal facilities as well as all ash and bypass waste.

GLOUCESTER

For Gloucester County, all of the district's solid waste is presently disposed of at the Gloucester County Landfill pursuant to an emergency redirection order of January 27, 1987. This amendment formalizes that order. Also, the existing waste flow rules stipulate that upon operation of the Gloucester County Resource Recovery Facility, solid waste generated in all Gloucester County municipalities with the exception of Newfield Borough shall be directed to the resource recovery facility. This amendment redirects Newfield Borough's solid waste to the Gloucester

County Resource Recovery Facility, facility number 0820I, located in West Deptford Township, upon commencement of operations in early 1990.

SUSSEX

Regarding Sussex County, solid waste presently generated in the county is directed to the Sussex County Transfer Station prior to out-of-State disposal pursuant to an emergency redirection order of April 9, 1988. The amendment directs all of the county's solid waste types 10, 13, 23, 25 and 27 to the Sussex County Landfill, facility number 1913C, located in Lafayette Township, upon its commencement of operations in early 1990. The proposed waste redirection corresponds to an approved District Solid Waste Plan Amendment for Sussex County.

CAMDEN

For Camden County, two resource recovery facilities are planned, one in Pennsauken and one in Camden City. The present waste flow rules direct specific waste types from some municipalities to the Pennsauken Landfill or the Winslow Township Landfill with the balance of the county's solid waste disposed of out-of-state. The amendment directs solid waste types 10, 23, and 27 from 11 municipalities in Camden County to the Pennsauken Resource Recovery Facility, facility number 0427F, located in Pennsauken Township, and solid waste types 10, 13, 23 and 27 from the remaining 26 municipalities to the South Camden Resource Recovery Facility, facility number 0408C, located in Camden City, upon commencement of operation of these facilities. These waste flows are based upon the mandatory truck routing contained in the June 25, 1987 and July 9, 1987 amendments to the Camden County Solid Waste Management Plan which were approved by the Department on February 17, 1988 and November 25, 1987 respectively. The remaining waste types, and all bypass waste and ash, shall be disposed of out-of-State or at the Pennsauken Landfill as more specifically delineated herein.

Also, the amendment directs residentially collected waste from Chesilhurst Borough, Waterford and Winslow Townships and municipally collected waste from Berlin Borough and Berlin Township to the Winslow Township Transfer Station, facility number 0436I, located in Winslow Township, upon commencement of operations. This facility is scheduled to commence operations in early 1990 and will facilitate out-of-State disposal. Waste not directed to the transfer station shall continue to be disposed of directly out-of-State. Upon start-up of the South Camden Resource Recovery Facility, waste types 10, 13, 23, and 27 generated from these five municipalities will be transported from the transfer station to the resource recovery facility.

Social Impact

ESSEX

The social impact of directing solid waste generated in Essex County to the Resource Recovery Facility will be positive. Currently, Essex County relies upon facilities out-of-State for disposal of waste generated in county. Exclusive reliance on out-of-State facilities exposes the county to disruptions in waste disposal due to decisions by governments of other states. Inasmuch as the county residents will experience a reduction in the volume of waste needed to be disposed of out-of-State, this potential for disruption in waste disposal will be decreased.

GLOUCESTER

Residents of the Gloucester County municipality of Newfield Borough will experience a positive social impact as a result of the proposed amendment due to their inclusion into waste flow for the rest of the county which directs solid waste to the county resource recovery facility upon commencement of operations.

SUSSEX

The redirection of Sussex County solid waste from out-of-State disposal facilities to a state-of-the-art in-State landfill will result in a positive social impact on Sussex County residents who will, upon opening of the landfill, be self-reliant in waste disposal. For the reasons discussed concerning Essex County, Sussex County's self-reliance has a clear positive social impact.

CAMDEN

Camden County communities which will have their solid waste redirected to the two planned resource recovery facilities by virtue of this amendment will experience a positive social impact due to a reduction in the volume of waste needed to be disposed of out-of-State.

Economic Impact

Regarding Camden and Essex counties, tipping fees for the resource recovery facilities have not yet been finalized. It is anticipated that increases in disposal costs may result upon operation of these facilities.

Currently, all of Essex County waste and a portion of Camden County waste is disposed of out-of-State. The total disposal cost includes a significant transportation component. Thus, although tipping fees at the resource recovery facilities may initially be higher than current fees, it is expected that operation of these facilities will provide stable and reliable disposal tipping fees in the long run.

Regarding Sussex County, tipping fees for the new county landfill have not yet been finalized. Sussex County currently disposes of all its waste out-of-State. It is expected that disposal costs at the in-county facility will be more stable and reliable than costs associated with out-of-State disposal.

Regarding Gloucester County, solid waste is currently disposed of at the Gloucester County Improvement Authority (GCIA) Landfill. The rates for waste disposal in Gloucester County are expected to rise substantially in the long term as a result of the redirection to the county resource recovery facility. The use of the facility in conjunction with continued use of the GCIA landfill for disposal of residual, bypass and non-processable waste will, however, result in Gloucester County having adequate long-term disposal capacity. The county would experience a less stable disposal situation were it to rely solely on disposal at the GCIA landfill, which would by itself be adequate for a much shorter time period. Thus, it is possible that although tipping fees for the resource recovery facility will increase in the long term, this increase will be less costly to the county than will relying solely on the GCIA and out-of-state facilities for waste disposal.

Environmental Impact

ESSEX

The residents of Essex County should, on the whole, experience a positive environmental impact from the redirection of waste to the state-of-the-art resource recovery facility in Newark. Although the impact on Newark may be negative due to the facility's location there and the attendant potential increase in noise, traffic and odors, these impacts have been reduced to a minimum through stringent operating conditions imposed on the facility by the Department via the solid waste facility permit and other operating permits. Moreover, Newark is currently the site of two transfer stations to which all Essex County waste is brought prior to out-of-State disposal. While the number of waste collection vehicles going to the resource recovery facility will be similar to the number of vehicles currently going to the transfer stations, there will be fewer transfer trailers utilized for out-of-State disposal of ash due to the reduced volume of ash as compared to untreated waste. Thus, the environmental impact with regard to traffic will have a positive net effect.

GLOUCESTER

The residents of the Gloucester County municipality of Newfield Borough whose waste will be directed to the county resource recovery facility by this amendment will not experience an environmental impact different from that which is currently the case. Waste hauling vehicles servicing the Borough will continue to follow the same routes through the Borough.

SUSSEX

The Sussex County residents of Lafayette Township whose municipality is host to the landfill to which solid waste will be directed by this amendment may experience a negative environmental impact due to increased truck traffic and noise, and the possibility of odors and decreased aesthetics in the landfill area. These impacts have, however, been reduced to a minimum by permit conditions imposed upon the landfill operator and waste haulers by the Department. Additionally, any increased truck traffic should be minimal because the existing county transfer station is located on property adjacent to the landfill. Thus, incoming truck traffic should remain essentially the same as that which currently impacts the area. On the whole, county residents will experience a positive environmental impact from the citing and construction of a state-of-the-art landfill which will ensure proper disposal of County waste in-State and in accordance with New Jersey's stringent controls.

CAMDEN

This amendment will redirect solid waste from certain Camden County communities to the two resource recovery facilities upon their commencement of operations. Although the municipalities hosting the facilities—Pennsauken and Camden City—may experience a negative environmental impact from increased truck traffic and other incidents of facility operation, the Department has minimized these impacts by imposing strict permitting conditions on the facilities. Additionally, as with all facilities permitted by the Department, enforcement authority will be used to ensure compliance with permit conditions, thereby ensuring that the

environmental impact will remain at a minimum. Camden County as a whole should experience a positive environmental impact by having state-of-the-art solid waste facilities on which to rely for proper disposal of waste which is presently going out-of-State and therefore beyond the jurisdiction of New Jersey's stringent disposal regulations.

Regulatory Flexibility Analysis

This amendment will apply to all solid waste transporters in Camden, Essex, Gloucester and Sussex Counties. It is estimated that most of the transporters impacted by this amendment are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with this amendment, these small businesses will have to deposit the waste collected from the respective municipalities and counties at the newly designated in-county disposal site rather than at a previously designated disposal facility. In so doing, the small businesses will not require any additional professional services for recordkeeping, reporting, or other compliance requirements since the same reporting, recordkeeping and registration requirements already apply to their disposal activities. In is anticipated that compliance with this amendment will not require initial capital costs nor any additional annual budget expenses on the part of small businesses. Inasmuch as transporter collection rates are regulated by the BPU to ensure a reasonable rate of return, any potential increase in collection rates as a result of this amendment can be alleviated by increases in transporter tariffs. In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 54:14B-16 et seq., the Department and Board have determined that this amendment will not impose additional reporting, recordkeeping or other compliance requirements on small businesses.

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

7:26-6.5 District waste flow planning requirements and disposal facility designations

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

(d) Waste flows within, into and out of the Camden County District:

1. All waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Brooklawn, Clementon, Collingswood, Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mount Ephraim, Oaklyn, Pine Hill, Pine Valley, Runnemed, Somerdale, Stratford, and Woodlynne shall be disposed of [at The Forge, Inc., Transfer Station, located in the City of Philadelphia, Pennsylvania effective January 1, 1986] **out-of-State in an approved facility in accordance with the laws and regulations of the receiving state.**

2. (No change.)

3. All residential waste types 10, 13, 23, 25 and 27 generated in Chesilhurst Borough, Waterford Township and Winslow Township shall be directed to the Winslow Township Transfer Station, facility number 0436I, located in Winslow Township, Camden County, New Jersey, when it becomes operational, prior to out-of-State disposal. Disposal out-of-State shall be in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations at the South Camden Resource Recovery Facility, Facility Number 0408C, these waste types shall be directed from the transfer station to the resource recovery facility except for waste type 25 which shall continue to be directed from the transfer station to out-of-State disposal.

i. All commercial waste types 10, 13, 23 and 25 and industrial waste type 27 generated in Chesilhurst Borough, Waterford Township and Winslow Township shall be disposed of directly out-of-State in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations at the South Camden Resource Recovery Facility, Facility Number 0408C, waste shall be directed to the facility except that waste type 25 shall continue to be disposed of directly out-of-State.

ii. All solid waste types 10, 13, 23, 25 and 27 generated in Berlin Borough and Berlin Township which is collected and transported by the public works departments of Berlin Borough and Berlin Township shall be directed to the Winslow Township Transfer Station when it becomes operational, facility number 0436I, located in Winslow Township, Camden County, New Jersey, prior to out-of-State disposal. Disposal

out-of-State shall be in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations at the South Camden Resource Recovery Facility, facility number 0408C, waste will be directed from the transfer station to the resource recovery facility except that waste type 25 shall continue to be directed from the transfer station to out-of-State disposal.

iii. All solid waste types 10, 13, 23, 25 and 27 generated in Berlin Borough and Berlin Township which is not collected and transported by the public works departments of Berlin Borough and Berlin Township shall be disposed of directly out-of-State in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations at the South Camden Resource Recovery Facility, facility number 0408C, waste shall be directed to the facility except that waste type 25 shall continue to be disposed of directly out-of-State.

[3.]4. All waste types 10, 13, 23 and 27 generated from within the Camden County municipalities of Audubon Borough, Cherry Hill Township, Haddonfield Borough, Haddon Township, Lindenwold Borough, Merchantville Borough, Pennsauken Township, Tavistock Borough, and Voorhees Township shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey.

i. All waste type 25 generated from within the Camden County municipalities of Audubon, Cherry Hill, Haddonfield, Haddon Township, Lindenwold, Merchantville, Pennsauken, Tavistock and Voorhees [may] shall be disposed of [at the Forge, Inc. Transfer Station, located in the City of Philadelphia, Pennsylvania, effective January 1, 1986] **out-of-State in an approved facility in accordance with the laws and regulations of the receiving state.**

[4.]5. All waste types 10, 23, 25 and 27 generated from within the Camden County municipality of Camden City [may] shall be disposed of [at the Forge, Inc., Transfer Station located in the City of Philadelphia, Pennsylvania, effective January 1, 1986] **out-of-State in an approved facility in accordance with the laws and regulations of the receiving state.**

i. All waste type 13 generated from within the Camden County municipality of Camden City shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey.

[5. When the Camden County resource recovery facility becomes operational, processable solid waste generated in all of Camden County's municipalities with the exception of Chesilhurst, Waterford Township, and Winslow Township shall be disposed of at this facility. Residue and non-processable solid waste shall be disposed of at a landfill(s) designated in the first two-year update of the District Plan.]

6. All solid waste types 10, 23 and 27 generated within the Camden County municipalities of Audubon, Cherry Hill, Collingswood, Haddonfield, Haddon Township, Lindenwold, Merchantville, Oaklyn, Pennsauken, Tavistock, and Voorhees shall be directed to the Pennsauken Resources Recovery Facility, facility number 0427F, located in Pennsauken, Camden County, New Jersey, upon commencement of operation of that facility.

i. All waste type 13 from the municipalities listed in (d)6 above, bypass waste and non-hazardous ash from the operation of the Pennsauken Resource Recovery Facility shall be disposed at the Pennsauken Township Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey, in accordance with the requirements of the service agreement between the Pennsauken Solid Waste Management Authority and Odgen-Martin Systems of Pennsauken.

ii. All waste type 25 from the municipalities listed in (d)6 above shall be disposed of at an approved out-of-State facility in accordance with the laws and regulations of the receiving state.

[6. While the Forge, Inc., Transfer Station has been designated by Camden County as the disposal facility for the affected communities, the designation does not preclude the use of other out-of-state disposal facilities when such disposal does not violate any law or regulation of the receiving state.]

7. All solid waste types 10, 13, 23 and 27 generated within the Camden County municipalities of Audubon Park, Barrington,

Bellmawr, Berlin Borough, Berlin Township, Brooklawn, Camden City, Chesilhurst, Clementon, Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mt. Ephraim, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, Waterford, Winslow and Woodlynne shall be directed to the South Camden Resource Recovery Facility, facility number 0408C, located in Camden City, Camden County, New Jersey, upon commencement of operation of that facility.

i. All waste type 25 from the municipalities listed in (d)7 above, bypass waste, and ash from the operation of the South Camden Resource Recovery Facility shall be disposed of at approved out-of-State facilities in accordance with the laws and regulations of the receiving state.

(e)-(f) (No change.)

(g) Waste flows within, into and out of the Essex County District:

1.-5. (No change.)

6. Upon commencement of operations of the Essex County Resource Recovery Facility, all solid waste types 10, 23 and 27 generated within the municipalities of Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Irvington, Livingston, Maplewood, Millburn, Montclair, Newark, North Caldwell, Nutley, Orange, Roseland, South Orange, Verona, West Caldwell and West Orange shall be directed to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, Essex County, New Jersey.

i. All waste types 13 and 25 from the municipalities listed in (g)6 above, bypass waste and ash from the operation of the Essex County Resource Recovery Facility shall be disposed of at approved out-of-State facilities in accordance with the laws and regulations of the receiving state. Out-of-State disposal shall be via the transfer stations referenced in (g)1 through 5 above for so long as these facilities remain in an approved District Solid Waste Management Plan for Essex County; otherwise, waste shall be disposed of directly out-of-State.

(h) Waste flows within, into and out of the Gloucester County District:

[1. All waste types 10, 13, 23, 25 and 27 generated from within the Gloucester County municipalities of Clayton Borough, Deptford Township, East Greenwich, Franklin Township, Glassboro Township, Harrison Township, Logan Township, Mantua Township, Monroe Township, National Park, Paulsboro, Pitman, South Harrison Township, Swedesboro, Washington Borough, Wenonah, Woodbury, West Deptford, Westville, Woodbury Heights, and Woolrich Township shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.

2. All waste types 10, 13, 23, 25 and 27 generated from within the Gloucester County municipality of Newfield Borough shall be disposed of at the Vineland City Sanitary Landfill, facility number 0614B, located in Vineland City, Cumberland County, New Jersey.

3. All waste types 10, 13 and 23 generated from within the Gloucester County municipality of Elk Township shall be disposed of at the Elk Township Landfill, facility number 0804A, located in Elk Township.

i. All waste types 25 and 27 generated from within the Gloucester County municipality of Elk Township shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.

ii. Upon closure of the Elk Township landfill, all waste types generated from within the Gloucester County municipality of Elk Township shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.

4. All waste types 10, 13 and 23 generated from within the Gloucester County municipality of Greenwich Township shall be disposed of at the Greenwich Township Sanitary Landfill, facility number 0807B, located in Greenwich Township, Gloucester County, New Jersey.

i. All waste types 25 and 27 generated from within the Gloucester County municipality of Greenwich Township shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.

ii. Upon closure of the Greenwich Township Sanitary Landfill, facility number 0807B, all waste types going to this facility shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey.

5. Gloucester County is directed by Section D.26 of the approved Gloucester County District Solid Waste Management Plan to develop and implement interdistrict agreements with out-of-state generators and/or collector haulers.]

1. All solid waste types 10, 13, 23, 25 and 27 generated from within the Gloucester County municipalities of Clayton, Deptford, East Greenwich, Elk, Franklin, Glassboro, Greenwich, Harrison, Logan, Mantua, Monroe, National Park, Newfield, Paulsboro, Pitman, South Harrison, Swedesboro, Washington, Wenonah, West Deptford, Westville, Woodbury, Woodbury Heights, and Woolrich, shall be disposed of at the Gloucester County Landfill, facility number 0816A, located in South Harrison Township, Gloucester County, New Jersey.

[6.]2. When the Gloucester County resource recovery facility becomes operational, [processable] solid waste[s] types 10, 13, 23 and 25 generated in all of Gloucester County's municipalities [, with the exception of Newfield Borough,] shall be directed to the [energy] resource recovery facility [. Residue and non-processable solid wastes shall be disposed of at a landfill(s) designated in the first two-year update of the District Plan] , facility number 0820I, located in West Deptford Township, Gloucester County, New Jersey.

[i. All solid waste types 10, 13, 23, 25 and 27 generated from within Newfield, shall continue to be disposed of at the Vineland City Sanitary Landfill, facility number 0614B, located in Vineland City, Cumberland County, New Jersey.]

3. All bypass waste and non-hazardous ash from the resource recovery facility shall be disposed of at the Gloucester County Landfill, facility number 0816A, located in South Harrison Township, Gloucester County, New Jersey.

(i)-(s) (No change.)

(t) Waste flows within, into and out of the Sussex County District:

[1. All solid waste types 10, 13, 23 and 27 generated from within the Sussex County municipalities of Andover Borough, Andover Township, Branchville, Byram, Frankford, Franklin, Fredon, Green, Hamburg, Hampton, Lafayette, Montague, Newton, Ogdensburg, Sandyston, Stanhope, Sussex, Vernon, Walpack, and Wantage shall be disposed of at Hamm's Sanitary Landfill, facility number 1913A, located in Lafayette Township, Sussex County, New Jersey.

2. All solid waste type 25 generated from within the Sussex County municipalities of Andover Borough, Andover Township, Branchville, Byram, Frankford, Franklin, Fredon, Green, Hamburg, Hampton, Lafayette, Montague, Newton, Ogdensburg, Sandyston, Stanhope, Sussex, Vernon, Walpack, and Wantage shall be disposed of at Edgeboro Landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

3. All solid waste type 10 generated from within the Sussex County municipality of Stillwater shall be disposed of at Stillwater Township Sanitary Landfill, facility number 1920A, located in Stillwater Township, Sussex County, New Jersey. Upon closure of this facility all solid waste type 10 generated from within Stillwater Township shall be disposed of at the new Sussex County regional disposal facility.

4. All solid waste type 25 generated from within the Sussex County municipality of Stillwater shall be disposed of at Edgeboro Disposal Landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

5. All solid waste types 13, 23 and 27 generated from within the Sussex County municipality of Stillwater shall be disposed of at Hamm's Sanitary Landfill, facility number 1913A, located in Lafayette, Sussex County, New Jersey.

6. All solid waste types 10 and 23 generated from within the Sussex County municipality of Hardyston shall be disposed of at Hardyston Township Sanitary Landfill, facility number 1911A, located in Hardyston Township, Sussex County, New Jersey.

i. Upon closure of this facility, pursuant to the Administrative Consent Order, all waste types 10 and 23 shall be disposed of at Hamm's Sanitary Landfill, facility number 1913A, located in Lafayette Township, Sussex County, New Jersey.

7. All solid waste types 13 and 27 generated from within the Sussex County municipality of Hardyston shall be disposed of at Hamm's Sanitary Landfill, facility number 1913A, located in Lafayette Township, Sussex County, New Jersey.

8. All solid waste type 25 generated from within the Sussex County municipality of Hardyston shall be disposed of at Edgeboro Landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.]

[9.] 1. All solid waste types 10, 13 and 23 generated from within the Sussex County municipality of Hopatcong shall be disposed of at Hopatcong Sanitary Landfill, facility number 1912A, located in Hopatcong Borough, Sussex County, New Jersey.

i. Upon closure of this facility, all solid waste types 10, 13 and 23 generated from the Sussex County municipality of Hopatcong Borough shall be disposed of at the new Sussex County [regional disposal facility] **Landfill, facility number 1913C, located in Lafayette Township, Sussex County, New Jersey.**

ii. **All solid waste types 25 and 27 generated from within the Sussex County municipality of Hopatcong Borough shall be disposed of at the Sussex County Landfill, facility number 1913C located in Lafayette Township, Sussex County, upon commencement of operations. Prior to commencement of landfill operations, waste shall be disposed of at the Sussex County Transfer Station, facility number 1913D.**

[10. All solid waste type 27 generated from within the Sussex County municipality of Hopatcong shall be disposed of at Hamm's Sanitary Landfill, facility number 1913A, located in Lafayette Township, Sussex County, New Jersey.

11. All solid waste type 25 generated from within the Sussex County municipality of Hopatcong shall be disposed of at Edgeboro Landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

12. All solid waste types 10, 13 and 23 generated from within the Sussex County municipality of Sparta shall be disposed of at the Sparta Township Sanitary Landfill, facility number 1918A, located in Sparta Township, Sussex County, New Jersey.

i. Upon closure of this facility all waste types 10, 13 and 23 generated from within Sparta Township shall be disposed of at the new Sussex County Regional disposal facility.

13. All solid waste type 25 generated from within the Sussex County municipality of Sparta shall be disposed of at Edgeboro Disposal Landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

14. All solid waste type 27 generated from within the Sussex County municipality of Sparta shall be disposed of at Hamm's Sanitary Landfill, facility number 1913A, located in Lafayette Township, Sussex County, New Jersey.

i. All solid waste types 10, 13, 23 and 27 generated from within the Passaic County municipalities of Bloomingdale, Pompton Lakes, Ringwood, Wanaque, and West Milford shall be disposed of at Hamm's Sanitary Landfill, facility number 1913A, located in Lafayette Township, Sussex County, New Jersey.

ii. All solid waste types 10, 13, 23 and 27 generated from within the Morris County municipalities of Boonton, Boonton Township, Butler, Denville, Dover, Jefferson, Kinnelon, Lincoln Park, Mine Hill, Montville, Mountain Lakes, Mount Olive, Netcong, Pequannock, Riverdale, Rockaway Borough, Roxbury, Victory Gardens, and Wharton shall be disposed of at Hamm's Sanitary Landfill, facility number 1913A, located in Lafayette Township, Sussex County, New Jersey.]

2. **All solid waste types 10, 13, 23, 25 and 27 generated from within the Sussex County municipalities of Andover Borough, Andover Township, Branchville, Byram, Frankford, Franklin, Fredon, Green, Hamburg, Hampton, Hardyston, Lafayette, Montague, Newton, Ogdensburg, Sandyston, Sparta, Stanhope, Stillwater, Sussex, Vernon, Walpack and Wantage shall be disposed of at the Sussex County Landfill, facility number 1913C, located in Lafayette Township, Sussex County, New Jersey, upon commencement of operations. Prior to the commencement of landfill operations, waste shall be disposed of at the Sussex County Transfer Station, Facility Number 1913D.**

(u)-(v) (No change.)

(a)

**DIVISION OF HAZARDOUS WASTE MANAGEMENT
Hazardous Waste Determination, Waste Code
Hierarchy for Manifesting, Waste Oils Listing,
Container Labeling**

Proposed New Rule: N.J.A.C. 7:26-8.20

**Proposed Amendments: N.J.A.C. 7:26-7.2, 7.4, 8.1,
8.5, 8.7 and 8.13**

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.
DEP Docket Number: 061-89-12.

Proposal Number: PRN 1990-49.

Submit written comments by April 6, 1990 to:

Daren R. Eppley, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to amend its hazardous waste management rules which concern the classification, manifesting and labeling of hazardous wastes. The Department is also proposing to recodify the hazardous waste listing of waste oils from N.J.A.C. 7:26-8.13 to 7:26-8.20.

These amendments seek to clarify issues with respect to the coding of hazardous wastes which are shipped out of New Jersey and, in doing so, eliminate possible opportunities for evasion of compliance with state and Federal laws when engaged in the interstate transfer of hazardous waste. It is the position of the Department that the illegal disposal of hazardous wastes not only poses a threat to the public health and safety and the environment, but could harm the entire hazardous waste industry if companies engaged in legal disposal practices were forced to compete with companies which might receive or offer low rates based upon illegal disposal practices. These amendments seek to eliminate the competitive advantages companies might gain if they were to purposely evade compliance or intentionally misconstrue the State's hazardous waste management rules.

Wastes which are hazardous under the Federal regulations implementing the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq. (F, K, U and P wastes and characteristic wastes) are hazardous waste in every state, regardless of whether a state has received RCRA "authorized" status. Some states, including New Jersey, regulate RCRA wastes and additional wastes under their respective hazardous waste management programs. These additional wastes are usually designated by unique state hazardous waste codes.

In some circumstances, a waste may be classified as both a RCRA and a state hazardous waste and one or more RCRA hazardous waste codes and state waste codes may be applicable to that waste. These amendments will codify, via the waste code hierarchy discussed below, the general principle that hazardous waste must be manifested in accordance with the laws of the receiving state. Under circumstances where the receiving state would not require the waste to be manifested, usually due to a recycling exemption, these amendments require the waste to be manifested in accordance with the laws of the originating state. These amendments will assure that the state receiving the waste will be informed of the applicable waste code, eliminating circumstances where the generator and/or transporter only supply a waste code unique to the originating state, and the facility in the receiving state accepts the waste with insufficient information. This assures that any persons handling the waste will receive and utilize the necessary information for the proper waste management in the receiving state.

WASTE CODE HIERARCHY

The Department is proposing a waste code hierarchy at N.J.A.C. 7:26-7.4 to be used for determining the most appropriate waste code to be used on the manifest. This hierarchy will clarify which waste code to use when a waste can be described by more than one waste code, as, for example, when a waste is listed at N.J.A.C. 7:26-8.13, 8.14, 8.15 or 8.20 and also exhibits one or more RCRA characteristics. The Depart-

ment believes there should be a standardized procedure for choosing the proper waste code when completing the manifest. Choosing the most appropriate waste code is critical since the Federal regulations now restrict the land disposal of wastes having certain waste codes and waste characteristics. The proposed waste code hierarchy is intended to provide a standardized procedure for choosing a waste code.

HAZARDOUS WASTE DETERMINATION

The amendments at N.J.A.C. 7:26-8.5, along with the existing provisions of N.J.A.C. 7:26-8, will clarify the procedure generators must use to determine if their wastes are hazardous. First, the generator must determine whether the waste is listed as an F, K, P or U waste at N.J.A.C. 7:26-8.13, 8.14, or 8.15. If the waste is not on the above lists, the generator must test, or apply knowledge of the materials or processes used, to determine if the waste exhibits a characteristic of hazardous waste as described at N.J.A.C. 7:26-8.9 through 8.12.

In the case of waste oil, as defined at N.J.A.C. 7:26-1.4, which will be recycled, the generator must determine if the waste oil is a State-listed hazardous waste at N.J.A.C. 7:26-8.20, the recodified section for listed waste oils (see below). If the waste oil is not listed, the generator must determine if the waste oil exhibits characteristics of hazardous waste described at N.J.A.C. 7:26-8.9 through 8.12. (NOTE: Waste oils mixed with F, K, P, or U listed hazardous waste are subject to the "mixture rule" at N.J.A.C. 7:26-8.1(b)2). If the waste oil is not listed and does not exhibit characteristics of hazardous waste, then the generator must, upon the Department's request, determine if the waste oil contains hazardous waste constituents in accordance with N.J.A.C. 7:26-8.5(d) and 7:26-8.16. Furthermore, if waste oil is being recycled by being burned for energy recovery, the generator may also be subject to separate and distinct Federal regulations at 40 C.F.R. Part 266, Subpart-E. However, compliance with Federal regulations for the burning of "used oil", as defined in 40 C.F.R. Part 266, does not relieve waste oil handlers from the requirements of New Jersey's hazardous waste laws.

If the waste is not hazardous as a listed waste, characteristic or waste oil being recycled as they are described above, then the generator must determine if the waste is a unique State-listed hazardous waste at N.J.A.C. 7:26-8.20, the recodified section for listed waste oil (see below). If the waste is not listed, characteristic, waste oil being recycled or unique State-listed waste, then the generator must, upon the Department's request, determine if the waste contains hazardous waste constituents. Lastly, if the waste is determined to be hazardous by operation of this exercise, the waste must then be properly manifested in accordance with the waste code hierarchy being added at N.J.A.C. 7:26-7.4(a)4x. It should be emphasized that it is necessary to determine whether or not a waste is a hazardous waste under both the Federal and State programs or only under the State program. Furthermore, if waste is considered hazardous in New Jersey but not under RCRA or in the receiving state, the generator must designate on the manifest the type of management requested, that is, hazardous or non-hazardous treatment, storage or disposal.

The amendments at N.J.A.C. 7:26-8.1 will reflect the codification change in the listing of waste oils from N.J.A.C. 7:26-8.13 to 8.20.

The amendment at N.J.A.C. 7:26-8.7(a) will reflect the codification change of the current N.J.A.C. 7:26-8.5(c).

WASTE OILS LISTING

In 1983, the Department adopted rules that list eight waste oils as hazardous waste, designating the waste oils with waste codes X721 to X728. These hazardous oils and their assigned waste codes are currently published at N.J.A.C. 7:26-8.13. The waste oils will be moved to a new section, N.J.A.C. 7:26-8.20, in keeping with the proposed hierarchy at N.J.A.C. 7:26-7.4(a). However, it is important to note that waste oils are Federally regulated when they exhibit characteristics of hazardous waste (see N.J.A.C. 7:26-8.9 to 8.12) and are not being recycled or burned for energy recovery. Furthermore, waste oil mixed with F, K, P or U listed hazardous waste are subject to the "mixture rule" at N.J.A.C. 7:26-8.1(b)2.

CONTAINER LABELING

The amendment at N.J.A.C. 7:26-7.2 will change the wording of the marking required on each container of hazardous waste. The new wording states that the waste in the container must be disposed of in accordance with Federal and/or state law. This amendment recognizes that some wastes are state-only regulated.

Social Impact

There will be a positive social impact from these amendments. These amendments will clarify procedures for determining the proper hazardous waste codes to use when completing the manifest. The amendments will

also clarify that some wastes are State-only regulated by moving the waste oils listing to a separate section and providing a new container labeling requirement.

Economic Impact

The Department does not expect there to be a significant economic impact from these proposed amendments. They do not impose new requirements; they merely emphasize and clarify the existing program. The Department recognizes that these amendments may reduce unfair competition in the industry from companies that illegally dispose of wastes, thereby having a positive economic impact on the industry by fostering competitive disposal rates based on proper disposal practices.

Environmental Impact

There will be a positive environmental impact from these proposed amendments. The amendments emphasize that Federally regulated hazardous wastes must be classified as such and handled in that manner. The amendments also seek to eliminate the sole use of unique State waste codes when shipping Federally regulated hazardous wastes out of the State. The amendments will also clarify that certain wastes are regulated only at the state level.

Regulatory Flexibility Analysis

The proposed amendments affect businesses engaged in the disposal of hazardous waste, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments at N.J.A.C. 7:26-7.4(a)4x requires the listing of the appropriate waste code on the manifest form, and N.J.A.C. 7:26-8.5(b)3 and (c) set forth generator determination requirements for waste oil and for waste other than as specified in N.J.A.C. 7:26-8.5(b), respectively. As the Department anticipates no increased cost to those in the disposal business or to generators from these amendments, no differentiation in requirements or exemption is provided.

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

7:26-7.2 Container requirements

(a) (No change.)

(b) The hazardous waste generator shall insure that all containers used to transport hazardous waste off-site are in conformance with the construction type and labeling requirements of the United States Department of Transportation concerning hazardous material containerization (49 [CFR] C.F.R. 171-[49 CFR] 179), including 1, below.

1. Prior to transporting or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 [CFR] C.F.R. 171-304:

HAZARDOUS WASTE—Federal and/or State Laws Prohibit Improper Disposal. If found, contact the nearest police or public safety authority, the U.S. Environmental Protection Agency or the New Jersey Department of Environmental Protection.

Generator's Name and Address

Manifest Document Number

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

7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8 are as follows:

1.-3. (No change.)

4. A generator [must] shall provide the following information on the manifest form:

i.-ix. (No change.)

x. **The proper waste code(s) that accurately describe the shipment of hazardous waste, determined according to the following hierarchy:**

Table A. Wastes which can be described only by one or more F, K, P, U, or X codes

Waste Composition	Manifest Completion	
	Item I	Item J
1. One F, K, P, or U waste	use the applicable F, K, P or U code	
2. One X waste (transported within New Jersey only)	use the applicable New Jersey listed X code	
3. One X waste (transported out-of-State)	code as required by the receiving state†	New Jersey X code
4. Mixture of two or more F, K, P, and/or U wastes	listed code for the component forming the highest percentage by weight of the total waste	all other listed codes
5. Mixture of any X waste and one or more F, K, P, or U wastes	listed waste code for the F, K, P, or U listed waste component forming the highest percentage by weight of the total waste	all other listed codes including New Jersey listed waste codes, all acutely hazardous and land disposal restricted codes and the percentages of each

†If this waste is not hazardous in the receiving state, use the New Jersey hazardous waste code and designate in Item J the method of management requested (that is, hazardous or non-hazardous treatment, storage or disposal).

Table B. Waste that can be described by F, K, P, U, or X codes and characteristic (D) code(s)

Waste Composition	Manifest Completion	
	Item I	Item J
1. One F, K, P, or U waste that exhibits RCRA characteristic(s) (D wastes)	F, K, P or U code	
2. Mixture of two or more F, K, P, or U wastes which exhibits RCRA characteristic(s) (D wastes)	F, K, P or U code for the listed waste forming the highest percentage by weight of the total waste	all other listed and characteristics D code(s)
3. Mixture of any X wastes and F, K, P or U wastes which exhibits RCRA characteristic(s) (D wastes)	F, K, P, or U code for the listed waste forming the highest percentage by weight of the total waste	all other listed and characteristic D code(s) including the New Jersey listed waste codes

4. One or more X wastes which exhibit RCRA characteristic(s) (D wastes) and are destined for New Jersey waste oil recycling facilities	X code (if more than one, use X code of waste forming highest percentage by weight of total waste)	characteristic D code(s) and other X code(s)
5. One or more X wastes that exhibit RCRA characteristic(s) (D wastes) and are treated (other than recycling), stored or disposed in New Jersey	characteristic D code(s)	X code(s)
6. One or more X wastes that exhibit RCRA characteristic(s) (D wastes) and are transported out of State	code as required by receiving state†	X code(s) and characteristic D code(s)

†If this waste is not hazardous in the receiving state because it is being burned for energy recovery or recycled under the Federal program or similar state program, use the New Jersey hazardous waste code.

Table C. Waste is not F, K, P, U, or X but displays one or more characteristics (D waste)

Characteristics Exhibited	Manifest Completion	
	Item I	Item J
1. Waste displays only one characteristic	D code for the characteristic	standard information
2. Waste displays multiple characteristics	D code for the first characteristic displayed according to the following order: 1. ignitability 2. reactivity 3. corrosivity 4. EP toxicity	standard information and all other applicable D codes

Table D. Wastes are not listed or characteristic but are classified as hazardous waste by the Department in accordance with N.J.A.C. 7:26-8.5(d) and 7:26-8.6 because of their constituent content (C waste)

Waste Constituent(s) Present	Manifest Completion	
	Item I	Item J
1. Wastes considered hazardous due to the presence of only one constituent	C code for constituent	
2. Wastes considered hazardous due to presence of multiple constituents	C code for the constituent forming the highest percentage by weight of the total waste	all other applicable C codes

7:26-8.1 Definition of hazardous waste
 (a) A solid waste, as defined in N.J.A.C. 7:26-1.6, is a hazardous waste if:
 1. (No change.)
 2. It meets any one or more of the following criteria:
 i-iv. (No change.)
 v. It is listed in 40 [CFR] C.F.R. Part 261, Subpart D, including all future additions or supplements[.]; or
 vi. It is listed in N.J.A.C. 7:26-8.20.
 (b) A solid waste which is not excluded from regulation under N.J.A.C. 7:26-8.2 becomes a hazardous waste when any of the following events occur:
 1. In the case of a waste listed in this subchapter, when the waste first meets the listing description set forth in N.J.A.C. 7:26-8.13, 8.14, [or] 8.15, or 8.20; or

PROPOSALS

Interested Persons see Inside Front Cover

ENVIRONMENTAL PROTECTION

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

7:26-8.5 Hazardous waste determination: [Generator] generator responsibilities
(a) (No change.)
(b) [If the] **The generator shall determine whether the waste generated is [not] a hazardous waste listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15 or a mixture of solid waste and one or more hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15. If it is not, then the generator shall:**
1. (No change.)
2. By applying knowledge of the hazardous characteristic of the waste in light of the materials or processes used, determine whether it exhibits a characteristic or characteristics described in N.J.A.C. 7:26-8.9 through 8.12[.]; or
3. **If the waste generated is a waste oil as defined at N.J.A.C. 7:26-1.4 and is being recycled:**
i. **Determine if the waste oil:**
(1) **Is listed at N.J.A.C. 7:26-8.20;**
(2) **Exhibits a characteristic of hazardous waste described at N.J.A.C. 7:26-8.9 through 8.12; or**
(3) **Is a hazardous waste under the terms of (d) below; and**
ii. **Determine if the waste oil is a "used oil" being burned for energy recovery under the federal regulations at 40 C.F.R. Part 266, Subpart E.**
NOTE: Federal requirements for the burning of used oil for energy recovery are separate and distinct and, therefore, are in addition to the hazardous waste management requirements of N.J.A.C. 7:26.
(c) **If the waste generated has not been classified as a hazardous waste pursuant to (b) above, then the generator shall determine if the waste is listed at N.J.A.C. 7:26-8.20.**
[(c)](d) (No change in text.)
(e) **Wastes designated as hazardous wastes by operation of this section shall be manifested in accordance with the waste code hierarchy at N.J.A.C. 7:26-7.4(a)4x.**
[(d)-(e)](f)-(g) (No change in text.)

7:26-8.7 Procedures for decision-making in generator:
[Specific] **specific hazardous waste determination**
(a) Designation of a solid waste as a hazardous waste pursuant to N.J.A.C. 7:26-8.6 shall be a case by case determination which applies only to the waste stream of the generator required to submit data pursuant to N.J.A.C. 7:26-8.5[(c)](d). The Department may, in its discretion, proceed in this case by case manner or proceed with a rulemaking action pursuant to N.J.A.C. 7:26-8.8.
(b)-(g) (No change.)

7:26-8.13 Hazardous waste from non-specific sources
(a) (No change.)
[(b) NJ Hazardous

Waste Number	Hazardous Waste	Hazardous Code
Generic 1. X721	Waste automotive crankcase and lubricating oils from automotive service and gasoline stations, truck terminals, and garages	(T)
2. X722	Waste oil and bottom sludge generated from tank cleanouts from residential/commercial fuel oil tanks	(T)
3. X723	Waste oil and bottom sludge generated by gasoline stations when gasoline and oil tanks are tested, cleaned, or replaced	(T)

4. X724	Waste petroleum oil generated when tank trucks or other vehicles or mobile vessels are cleaned, including, but not limited to, oily ballast water from product transport units of boats, barges, ships or other vessels	(T)
5. X725	Oil spill cleanup residue which: A. is contaminated beyond saturation; or B. the generator fails to demonstrate that the spill material was not one of the listed hazardous waste oils	(T)
6. X726	The following used and unused waste oils: metal working oils; turbine lubricating oils; diesel lubricating oils; and quenching oils	(T)
7. X727	Waste oil from the draining, cleaning or disposal of electric transformers	(T)
8. X728	Bottom sludge generated from the processing, blending, and treatment of waste oil in waste oil processing facilities	(T)]

7:26-8.20 State hazardous wastes from non-specific sources
(a) State hazardous wastes from non-specific sources are as follows:

N.J. Hazardous Waste Number	Hazardous Waste	Hazardous Code
Generic 1. X721	Waste automotive crankcase and lubricating oils from automotive service and gasoline stations, truck terminals, and garages.	(T)
2. X722	Waste oil and bottom sludge generated from tank cleanouts from residential/commercial fuel oil tanks.	(T)
3. X723	Waste oil and bottom sludge generated by gasoline stations when gasoline and oil tanks are tested, cleaned, or replaced.	(T)
4. X724	Waste petroleum oil generated when tank trucks or other vehicles or mobile vessels are cleaned, including, but not limited to, oily ballast water from product transport units of boats, barges, ships or other vessels.	(T)

- | | | | |
|---------|---|-----|--|
| 5. X725 | Oil spill cleanup residue which: A. is contaminated beyond saturation; or B. the generator fails to demonstrate that the spill material was not one of the listed hazardous waste oils. | (T) | Copies of the proposed new rules, the proposed amendments and the basis and background document will be available for inspection during normal office hours until April 6, 1990 at:
Atlantic County Health Department
201 South Shore Road, Room #437B
Northfield, New Jersey 08225
Middlesex County Air Pollution Control Program
280 Hobart Street
Room #518
Perth Amboy, New Jersey 08861
Warren County Health Department
108 West Moore Street
Hackettstown, New Jersey 07840
New Jersey Department of Environmental Protection
Division of Environmental Quality
401 East State Street
Second Floor
Trenton, New Jersey 08625
New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Northern Regional Office
11259 Route #46
Parsippany, New Jersey 07054
New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Southern Regional Office
20 East Clementon Road
3rd Floor North
Gibbsboro, New Jersey 08026
New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Metropolitan Regional Office
2 Babcock Plaza
West Orange, New Jersey 07052
New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Central Regional Office
Twin Rivers Professional Building
Route #33
East Windsor, New Jersey 08520
New Jersey Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, New Jersey |
| 6. X726 | The following used and unused waste oils: metal working oils; turbine lubricating oils; diesel lubricating oils; and quenching oils. | (T) | |
| 7. X727 | Waste oil from the draining, cleaning or disposal of electric transformers. | (T) | |
| 8. X728 | Bottom sludge generated from the processing, blending, and treatment of waste oil in waste oil processing facilities. | (T) | |

AGENCY NOTE: The Department has proposed an amendment to N.J.A.C. 7:26-8.13(b) published in the May 1, 1989 New Jersey Register at 21 N.J.R. 1049(a). If adopted, the Department anticipates added hazardous wastes proposed therein to N.J.A.C. 7:26-8.20.

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Permits, Certificates, Hearings and Confidentiality

Proposed Repeal: N.J.A.C. 7:27-8.6

Proposed New Rules: N.J.A.C. 7:27-8.5, and 8.7 through 8.26

Proposed Amendments: N.J.A.C. 7:27-8.1 through 8.5

Authorized By: Christopher Daggett, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically
N.J.S.A. 26:2C-8.

DEP Docket Number: 062-89-12.

Proposal Number: PRN 1990-48.

Public hearings concerning this proposal will be held on:

March 15, 1990 at 10 A.M.
Auditorium
New Jersey State Museum
205 West State Street
Trenton, New Jersey 08625; and
March 28, 1990, at 10 A.M.
Student Center Theater
Rider College
2083 Lawrenceville Road
Lawrenceville, New Jersey 08648-3099

Submit written comments by April 6, 1990 to:

Stephen Tarnowski
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The Department has prepared a **basis and background document** for the proposal. Requests for copies of this document should be addressed to:

Kanaiyalal Bhandutia, Environmental Engineer
Division of Environmental Quality
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625

The new rules and amendments 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 (the Department) is proposing new rules and amendments to N.J.A.C. 7:27-8, herein-after referred to as Subchapter 8. This subchapter contains the provisions pertaining to the Department's air pollution control permits to construct and certificates to operate equipment and control apparatus. The Department is proposing to revise many of these provisions, including the service fee schedule. The new rules and amendments are proposed as part of the Department's effort to improve the environmental effectiveness of the preconstruction permit and operating certificate functions. The proposed new rules and amendments also set forth conditions and procedures for adjudicatory hearings, confidentiality of information, and public comment on permit applications.

Air pollution control permits and certificates are the primary administrative instruments with which the Department carries out its mandate to prevent and control the emission of air contaminants. The overall degree of air quality protection afforded the citizens and the environment of New Jersey depends, in large measure, on the effectiveness of the preconstruction permit and operating certificate processes.

Increased demands are being placed on the units within the Department which provide air pollution control permit and certificate services. In the last six years the number of permit and certificate applications received by the Department has doubled, and the corresponding permit and certificate services has increased accordingly. Also, State and Federal regulatory changes have resulted in many of the tasks in the permit and certificate administration process becoming more complex and more

time-consuming. In the short term, the Department has attempted to cope with the increased demand by reassigning personnel from other sections to permit review and by administratively streamlining review activities. Nonetheless, backlogs have developed for certain functions, such as review of air quality modeling, processing of adjudicatory hearing requests, and responding to requests for information and rule interpretation. Consequently, service to applicants and enforcement has been diminished.

No new fiscal resources can be expected from existing funding sources and, in fact, an erosion of existing resources is occurring. From 1965 through 1980, Federal funds were the New Jersey Air Pollution Control Program's (Air Program's) predominant funding source. But at present just over one-quarter of the Air Program's budget comes from Federal grants administered through the EPA. The EPA's current policy of level funding results, because of inflation, in a reduction of the actual Federal resources available to the program each year. Pending bills in Congress require that states develop permit fee programs which fully fund permit related air pollution control functions. As a result of this, EPA is planning to substantially reduce Federal grants to air pollution control programs. Also, the State air pollution control appropriation has been reduced and could be further reduced to address State budget problems. The only revenue source that has increased in the last five years is from fees and fines. This increase has resulted from increased permitting and enforcement activity.

Less than a sixth of the Air Program's total costs are provided through permit and certificate fees. The intent of the proposed amendments is to require, primarily through revisions to the fee schedule, that applicants for permits and certificates bear a greater portion of the costs to the State of providing permit and certificate related services. The monies received through these increased fees will compensate for the effects of inflation and address the increasing and more complex permit and certificate workload. The increased fees should also fund sufficient additional permit and certificate staff positions to allow Air Program staff who have been diverted from other assignments to return to their original assignment. Each program function plays an essential role in the Department's carrying out of its mandate to protect air quality, and this internal transfer of staff to meet the increased permit and certificate workload has diminished the Air Program's ability to meet vital objectives in other areas such as enforcement, stack testing, planning and air quality monitoring.

These amendments to N.J.A.C. 7:27-8 will also support ongoing Air Program efforts to find ways to carry out permit and certificate tasks that are less resource intensive. Since 1986 the Air Program has been actively engaged in an effort to "streamline" the permitting process. The proposed amendments and new rules contribute to these streamlining efforts by enabling applicants, through inclusion of more detailed guidance in the rules, to be more self-sufficient. The rules also will help the applicants to meet their responsibilities to provide complete and accurate information in a timely manner and in a format convenient for review.

Another streamlining measure is the proposed recategorization of various types of changes made to equipment and control apparatus. Such changes may range from minor maintenance and repair to major reconstruction. This recategorization is intended to ensure that detailed review is focused on those changes to equipment and control apparatus with the greatest potential for air contaminant emissions, and that minimal review resources are expended on adjustments to equipment or its use which have little or no possibility of resulting in increased air contaminant emissions.

Subchapter 8 recognizes two types of change to equipment and control apparatus: change which constitutes an alteration and, therefore, requires a new permit, and change which must be reported to the Department as an amendment of the permit or certificate. Implicit in the rules is a third type of change: change which need not be brought to the Department's attention. These amendments to Subchapter 8 revise and clarify the procedural requirements of an amendment and redefine, to some degree, these three categories of change to equipment and control apparatus. For example, alteration, which requires preconstruction review, is proposed to include replacement of that equipment which is more than five years old or more costly than \$20,000. Amendments have been redefined as reporting requirements, not needing preconstruction approval, and specification of the types of change which must be so reported is more clearly established. For example, modification of stacks and any change in company stack designations are proposed to be reported as amendments. The Department proposes to allow 120 days from the time the change is made for reporting of amendments to the Department, in order to allow amendments to be reported on a quarterly basis.

In addition, reporting requirements and conditions of approval specified within the rules establish circumstances under which the Department may require further information about a source for which it has issued a permit or certificate. Other provisions set forth administrative procedures for public comment, confidential information, adjudicatory hearings and inspections.

Persons subject to this subchapter who fail to conform with its requirements are subject to administrative consequences such as denial or revocation of approval of a permit or certificate. Such persons may also be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 and criminal penalties pursuant to N.J.S.A. 2C-28.3.

Social Impact

Air contaminant emissions generated in any part of the State have the potential to pose a threat to public health and welfare and to the environment. The Department's air pollution control permit and certificate process is the primary administrative instrument available to require those responsible for constructing, installing, operating and altering source operations throughout the State to prevent and control the emission of air contaminants.

The proposed new rules and amendments to Subchapter 8 will directly affect most persons who apply for and most persons who are issued "Air Pollution Control Permits to Construct" (permits) and "Air Pollution Control Certificates to Operate" (certificates). They will also affect the Department's administration of the permit and certificate process. Ultimately, by strengthening the Department's ability to prevent air pollution, the new rules and amendments will benefit all persons who live and work in New Jersey.

Most persons who request permit or certificate services will find that these amendments subject them to higher fees. Only those persons submitting applications for certain common types of sources which do not require extensive case-by-case review (Category I sources) will find that the amount of their permit and initial certificate application fees have not increased.

The increased fees should compensate for the effect of inflation and provide added resources to improve the Air Program's capability to carry out a thorough review of an application and to verify that sources are operated in a manner consistent with the requirements of their permits and certificates.

Adequate resources for the Air Program should also eliminate backlogs in its administration of the permit and certificate process. Therefore, persons who request permit and certificate services should find that their applications and inquiries are routinely dealt with more expeditiously.

In addition, the new rules and amendments should result in more efficient use of the Air Program's permit and certificate resources. They provide more information so applicants can be more self-sufficient. They clarify language in Subchapter 8 to forestall confusion and controversy. They hold applicants responsible for carrying out their obligations within the permit and certificate process, and they require applicants to submit information in a format that is convenient for the Department to review. These changes should enable the Department's permit and certificate application review procedures to become more efficient and should contribute to applicants receiving decisions on their applications within shorter time periods.

Persons who construct or alter, install and use equipment may also find that, as a result of the new rules and amendments, the requirements to which they are subject are modified. In these amendments, the applicability of Subchapter 8 to certain source types is clarified or redefined, certain procedures for notifying the Department of changes to equipment are modified, and the types of change to equipment and control apparatus subject to preconstruction review and approval are recategorized and more explicitly defined.

An increased number of types of change to equipment, that do not have the potential for adverse air quality consequences, no longer need preconstruction review and approval. Rather, such changes can be reported to the Department after the change has been implemented, as an amendment of the permit or certificate information. A definition of a new term, "equipment changeover," is proposed; the purpose of this definition is to specify those changes to equipment which are not alterations, and can be reported to the Department as an amendment of the permit or certificate information. Equipment changeover excludes certain changes to equipment, such as replacement of old or costly equipment and control apparatus, that could previously have been reported as amendments but which are now categorized as alterations, for which preconstruction review and approval is required. The overall effect of these amendments should result in the Department being able to concen-

ENVIRONMENTAL PROTECTION

PROPOSALS

trate its oversight more on sources which have greater potential for air contaminant emissions. They should also provide persons who use equipment the opportunity to more frequently make changes which do not threaten the public health or welfare or the environment, without being restrained by the delay inherent in preconstruction review and approval.

As a result of the proposed new rules and amendments, persons subject to Subchapter 8 will have better access to information they need relevant to the permit and certificate process. The promulgation of provisions for maintaining confidentiality of information submitted to the Department, for hearing contested cases, and for soliciting public comment on applications should enable persons subject to Subchapter 8 to be better informed as to their rights and obligations. The establishment of procedures for the Department to obtain information needed to keep its records up to date, to verify compliance, and to determine the actual emissions from a source will enable the Department to have better oversight of the implementation of the provisions and conditions of the permits and certificates and carry out better informed enforcement and program planning.

Economic Impact

The proposed new fee rule, N.J.A.C. 7:27-8.11, will have the consequence of shifting the economic burden of supporting the permit and certificate services of the Air Program toward the recipients of those services, the persons owning and operating sources of air contaminants, and away from general public resources.

About 40 percent of Air Program staff time is utilized in providing permit and certificate services. However, less than a sixth in Fiscal Year 1988 (FY '88) of the Program's budget is provided by the existing permit and certificate service fees. This means that only about 40 percent of the costs to the State of administering the permit and certificate process are recovered through the fees paid by the direct recipients of permit and certificate services. The remainder of the costs of the permit and certificate process are paid out of public funds from State and Federal sources.

The proposed changes to the fees in Subchapter 8 are expected to allow the Department to expand its permit and certificate staff. This will result in over half of the somewhat expanded Air Program's staff time being utilized in the provision of permit and certificate services, and approximately 40 percent of the Air Program's budget being derived from the permit and certificate services fees. About 60 percent of the costs to the State of administering the permit and certificate process would be recovered through the proposed service fees, with the remaining 40 percent of the costs still being paid out of public funds. Consequently, further increases in fees may be required within five years to address the mandates of the Federal Clean Air Act, when amended.

The revised fee schedule is expected to result in about a 350 percent increase in the total fees collected and will result in a majority of applicants being subject to increased fees. However, about a third of the applicants for a permit and certificate will find that they are subject to no increase in fees for their permit and initial certificate applications. These will be applicants whose sources are defined in N.J.A.C. 7:27-8.1 as Category I sources. These are common types of minor sources. Preconstruction Permit Applications for such sources can be reviewed generally by the Department.

In FY '88 the existing fee schedule generated \$1.9 million in fees. The proposed fee schedule is expected to generate approximately an additional \$6.8 million annually. However, even with the \$6.8 million annual increase in fees, permit and certificate services will still be provided by the Department on a "below cost" basis. Two factors contribute to this deficit. First, in order to mitigate the effects of these fees on small businesses, the proposed permit and initial certificate application fees do not increase fees for Category I sources. And, secondly, certain fees, which would otherwise be higher, have been set at \$500.00 since the Department is constrained by the "cap" in N.J.S.A. 26:2C-9(g). This fee provision in the Air Pollution Control Act provides that the Air Program may not charge more than \$500.00 for any of the services it performs.

Of the projected additional \$6.8 million in fees, some (up to about \$1.5 million) will be used to compensate for the effect of inflation on the existing program. The Department intends to use the remaining \$5.3 million to fund 73 new positions and associated program costs as follows:

Planning, Inventory, Rule Development	5
Permit Review	19
Air Toxics Screening and Evaluation	9
Inspection and Certificate Renewal	21
Database Management	6
Permit Non-Compliance Case Management and Legal Support	7
Emissions Testing and Oversight of Continuous Emissions Monitoring	6
Total Positions	<u>73</u>
Estimated Salaries	\$2,600,000.00
Employee Benefits	700,000.00
Indirect Costs	1,100,000.00
Non-Salary Costs (for example, supplies, equipment, travel, professional services)	900,000.00
	<u>\$5,300,000.00</u>

The increase in the number of permit and certificate process staff should enable the Air Program permit and certificate units to address their growing workload in a more timely manner. This will avoid the chronic backlogs which have occurred in the past and which have, for a number of applicants, proven inconvenient and costly. Also, increased emphasis on the above listed areas will result in improved air pollution control, reduced emissions, more cost effective emission reductions, and ultimately the economic benefits of clean air.

Environmental Impact

The implementation of the proposed new rules and amendments will have a positive effect on the environment. The proposed new rules and amendments should provide adequate resources to enable the Air Program to address the growing number and complexity of preconstruction permit and operating certificate activities. More resources in the planning, inventory, database management and rule development area should result in more timely and more effective air pollution control rules. The State implementation plan to attain the ozone standard is due in September, 1992. Without a substantial increase in resources dedicated to this goal, New Jersey's plan will not be as effective, from both an environmental and cost standpoint, as the seriousness of the problem and cost of the solutions warrant.

Increased permit review staff will allow for a more thorough review of major new sources. In the last few years over \$2 billion in major source construction has been approved, including incinerators, cogeneration facilities and major industrial expansions. Over \$1 billion in cogeneration applications are pending, as well as significant industrial expansions and new incineration facilities for hazardous waste, sewage sludge, hospital waste, and municipal solid waste. The Department intends to extend the level of review now given to major incinerators to other major and moderate sources. This will result in better control, more enforceable permit conditions, and cleaner air.

The Department plans on extending its air toxics evaluation procedures to all sources of carcinogenic air contaminants. At this time review of cancer risk is generally limited to incinerators. Screening procedures have been developed to quickly evaluate insignificant sources of carcinogenic air contaminants. However, added staff is needed to conduct or evaluate more thorough risk assessments of sources with significant emissions of air toxics. Using Right-to-Know emissions information and expertise developed in air toxics evaluation over the last decade will allow the Department to require significant advances in air toxics control with a modest increase in resources.

Certificate approvals and renewals require inspection of equipment to verify that operation of the equipment is in accordance with the permit. With the approval of 6,000 permits per year, inspections have been less frequent than desired. Increased staffing for certificate inspections is necessary to ensure the integrity of the permit and certificate process.

Permit non-compliance case management and legal support is needed to handle the backlog of hearing requests, which result from increased enforcement actions and more stringent permit conditions. Increased emphasis on this area constitutes an allocation of resources back into traditional enforcement roles, which are funded by Federal and State revenue, rather than permit fees.

Testing of existing sources for enforcement purposes has been reduced to about five sources per year because testing upon startup of new sources has increased to about 200 sources per year. Staffing for testing will allow more emphasis to be placed on enforcement tests.

Permit conditions for new and modified major sources increasingly require that continuous emission monitors be installed to ensure continuous compliance. About 200 such monitors have been required to date, with another 200 projected to be required in 1990. This significant new enforcement tool requires staffing to review and approve monitor specifications, observe performance tests on the monitors to ensure accuracy, review data and exceedance reports and field audit the monitors.

The 73 projected new positions will be the first major expansion of the Air Program in over a decade and should allow for the coverage of, and level of attention to, air pollution sources which the public demands and deserves.

The proposed new rules and amendments should also enable the permit and certificate application and review process to be administered more effectively. Proportionately, more permit and certificate review resources will be concentrated on those changes to equipment and control apparatus which have the greatest potential for significant air contaminant emissions. Additionally, both the Department and the regulated community will have access to more information relevant to preconstruction and operating permit and certificate responsibilities.

The permit and certificate process is the primary administrative instrument available to the Air Program to enable it to require those responsible for constructing, installing, operating and altering stationary source operations throughout the State to prevent and control the emission of air contaminants. Strengthening, clarifying, and more efficiently organizing this process should result in better protection of human health and welfare and of the environment.

Regulatory Flexibility Analysis

These proposed new rules and amendments will apply to applicants for permits and certificates and persons to whom the Department has issued permits and certificates. By the end of 1989, 72,000 permits and certificates were issued by the Department and were in effect for equipment and control apparatus subject to N.J.A.C. 7:27-8 at 14,000 New Jersey facilities. Many of these facilities are "small businesses" as defined in N.J.A.C. 1:20-3.1(f). The small businesses affected are those that construct, install, and use equipment and control apparatus that emits or has the potential to emit air contaminants and that are subject to the permit and certificate requirements of N.J.A.C. 7:27-8.

Prior to installing, altering, or using any apparatus to control the emission of air contaminants or any of the types of equipment listed in N.J.A.C. 7:27-8.2, a business is required to apply for a preconstruction permit and an operating certificate. The Department may approve such an application only if it finds that the proposed equipment or control apparatus incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted and that it otherwise conforms with all standards or requirements of all applicable air pollution control rules and regulations.

Whenever the information submitted for a permit and certificate changes, such as a change in mailing address or other general information, or whenever there is a transfer of ownership of the equipment or control apparatus, or whenever there is some limited modification to or adjustment of the usage of the equipment or control apparatus which meets the proposed definition of "equipment changeover", a small business must report these changes as an amendment of the permit or certificate information.

The conditions of approval of a permit or certificate may require a small business to keep records and submit reports. Upon the request of the Department, certain small businesses will be required to submit reports of their actual air contaminant emissions on an annual or other periodic basis.

The cost to a small business of complying with these requirements would depend upon the nature of the source operation. Costs associated with a permit application contribute to a source's initial capital costs. For a number of common source types (Category I sources), the base permit application fee is \$100.00. For all other applications, the base permit fee is \$500.00 for the first piece of equipment or control apparatus plus \$350.00 for each additional piece. A small business could also be subject to supplementary permit fees. However, these fees are applicable only to those sources which are potentially significant sources of air contaminant emissions.

In addition, small businesses are subject to a number of periodic fees. The initial certificate application fee is \$150.00 for Category I sources and \$500.00 for all other sources. Certificates must be renewed every five years. The certificate renewal fee for all sources is \$500.00. Should the information contained in the permit and certificate change, a small business is subject to a \$50.00 fee for changes in general permit information,

a \$50.00 fee to record a change in ownership, and a \$200.00 fee for each occurrence of equipment changeover. Certain small businesses may also be subject to supplementary fees associated with testing services, periodic inspections, and other services. However, these fees are applicable primarily to those sources which are the potentially more significant sources of air contaminant emissions.

The impact of these new rules and amendments on small businesses has been mitigated in several ways. N.J.A.C. 7:27-8 exempts several types of equipment. In a number of instances the proprietors of small businesses may be the persons responsible for these exempted sources. For example, the amendments would exempt tanks, bins, reservoirs and containers used by the producers of agricultural commodities for the storage of agricultural commodities in solid particle form. Most of the farmers who own these storage containers are small businessmen.

Also, the proposed amendments divide equipment and control apparatus subject to permit and certificate requirements into two categories. Category I sources will be subject to lower permit and initial certificate application fees than Category II sources. The list of types of equipment and control apparatus which comprise Category I includes common source types and will comprise about a third of all sources. Out of consideration for the fact that many of the persons responsible for Category I sources are small businessmen, the Department has not raised the total cost of these base permit and certificate application fees. This lower fee is based on the fact that, because Category I sources are familiar, routine source types, review can be standardized and is therefore less resource intensive. A significant number of the owners and operators of small businesses, including gasoline retailers, wood shop and metal shop operators, and certain small-scale paint spray booth operators will find that they are subject to these lower fees, because the sources they are responsible for are classified as Category I sources.

However, not all small businesses will have sources that are exempted, excluded, or are subject only to Category I fees. Some small businesses, because of the nature of their operation, utilize equipment which emits or has the potential to emit air contaminants which because of their quantity or quality may pose a threat to public health or welfare or the environment. For example, any company which stores toxic substances, in a quantity subject to regulation by this subchapter, will not be exempted, excluded, or subject only to Category I fees. It is the responsibility of the Department to exercise its authority to require the persons responsible for the construction, installation, and use of such equipment, whether or not they are small businesses, to prevent or control such emissions.

In developing the proposed amendments and new rules, the Department has balanced the need to protect the environment against the economic impact of the rule and has determined that the effect of the rules on small businesses is reasonable.

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

SUBCHAPTER 8. PERMITS [AND], CERTIFICATES, HEARINGS AND CONFIDENTIALITY

7:27-8.1 Definitions

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

"**Agricultural commodity**" means any vegetable matter or animal matter.

"**Air contaminant**" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases [which are discharged into the outdoor atmosphere].

"**Air quality impact analysis**" means a procedure, entailing the use of air quality simulation modeling, for determining whether air contaminant emissions will result in ambient air concentrations that exceed standards established for the protection of human health and welfare and the environment.

"**Air quality simulation model**" means a mathematical procedure, taking into account the dispersive capacity of the atmosphere and other relevant factors, to predict the concentration of an air contaminant in the ambient air.

"**Air stripping equipment**" means equipment used to transfer [volatile organic substances] any air contaminant from water or other

liquids directly or indirectly into the outdoor atmosphere[,] including, but not limited to, packed columns and water spray equipment.

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" means any change made to equipment or control apparatus or the use thereof, [or in a process; including but not limited to any physical change, change in material being processed or a change in the rate of production except where such a production rate change does not increase the quantity of air contaminant emitted or does not change the quality or nature of the air contaminant emitted. This term shall include replacement of the equipment or control apparatus if the replacement is not equivalent for the purpose of air pollution control to that which is being replaced or does not continue to represent advances in the art of air pollution control developed for the kind and amount of air contaminant emitted.] except for a change in the process which is approved in the permit issued by the Department, reconfiguration which is approved in the permit issued by the Department, equipment changeover, and repair or maintenance. Alteration includes, but is not limited to:

1. Change in the location of equipment or control apparatus;
2. Replacement of the equipment or control apparatus if:
 - i. The new equipment or control apparatus is not the same kind as that which is being replaced;
 - ii. The new equipment or control apparatus is not equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;
 - iii. The date of approval of the permit for the equipment or control apparatus being replaced is at least five years prior to the date of installation of the new equipment or control apparatus; or
 - iv. The total capital cost of the new equipment or control apparatus exceeds \$20,000, as calculated in 1989 dollars;
3. The introduction of any new raw material, not approved in a permit or certificate which is currently in effect, including the change of contents of a storage tank for which no permit or certificate has been issued;
4. Any reconfiguration to an alternate configuration not specified in the permit application and approved by the Department;
5. Any of the following types of change, if it is a change which may have an adverse effect on air quality:
 - i. Addition, replacement, or removal of auxiliary devices or appurtenances;
 - ii. Change in the concentration of any air contaminant in the influent to existing control apparatus;
 - iii. Change in the relative use, expressed in percent by weight, of any raw material in the operation of equipment or control apparatus or in the process;
 - iv. Change in the rate of production; or
 - v. Change in the process in which the equipment is used;
6. Increase in the potential rate of emission of any air contaminant above the rate authorized by the permit and certificate in effect; and
7. Emission of any new air contaminant not authorized by the permit and certificate in effect.

"Ambient air monitoring" means the measurement of concentrations of one or more air contaminants in the outdoor air.

"Amendment" means any revision [to a] of information in an existing permit or operating certificate which does not reflect a change in the quality, nature, or quantity of emissions to the outdoor atmosphere or a change in the effect of the emissions on ambient air quality. The term includes the correcting or updating of general permit or certificate information; the providing of notification of any transfer of ownership of a permit or certificate; and the recording of any equipment changeover. The term [shall] does not include alteration.

[1. The term shall include a replacement of the equipment or the control apparatus if the replacement is equivalent for the purposes of air pollution control to that which is being replaced and continues to represent advances in the art of air pollution control developed for the kind and amount of air contaminant emitted.

2. A revision to a permit or operating certificate for the sole purpose of registering a change in the contents of a storage tank, which change does not require any physical or mechanical alteration

of the equipment or additional air pollution control requirements, shall be considered an amendment.]

"AP-42" means the manual entitled "Compilation of Air Pollutant Emission Factors" published by the EPA.

"Banking" means reserving approved emission reductions for future use [as emission offsets] pursuant to N.J.A.C. 7:27-18.

"British thermal unit" or "BTU" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Category I" means the following types of new or altered equipment and control apparatus which require a permit or certificate:

1. Any gasoline vapor recovery system constructed, installed, or operated at any retail gasoline dispensing facility; this does not include gasoline vapor recovery systems at bulk terminals;
 2. Any woodworking equipment including, but not limited to, saws, planers, and sanders, that has particulate control apparatus which achieves a minimum collection efficiency of 99 percent;
 3. Any metalworking equipment including, but not limited to, welders, grinders, and drill presses, that has particulate control apparatus that achieves a minimum collection efficiency of 99 percent;
 4. Fossil fuel burning equipment used only for the burning of liquid or gaseous commercial fuel and having a designed heat input rate of less than 10 million BTU per hour; this does not include any equipment used for the burning of coal or other solid fuel, non-commercial fuel, crude oil or process by-products in any form;
 5. Stationary storage tanks which have a capacity of less than 20,000 gallons and which are used for the storage of liquid substances; this does not include any tank used to store a substance which is a TXS;
 6. Emergency diesel generators with less than 10 megawatts of electrical output that operate less than 500 hours per year;
 7. Any tank, reservoir, container or bin that is used for the storage of solid particles and has fabric filter particulate control apparatus that achieves a minimum collection efficiency of 99 percent; this does not include any that is used for the storage of any TXS;
 8. Enclosed stationary solid material handling equipment using pneumatic, bucket or belt conveying systems that have fabric filter particulate control apparatus that achieves a minimum collection efficiency of 99 percent; this does not include any equipment used to handle any material which is a TXS;
 9. Paint spray booths that have particulate control apparatus that achieves a minimum collection efficiency of 99 percent and that uses less than 0.5 gallons of paint per hour; this does not include any paint spray booth which emits or has the potential to emit any TXS; and
 10. Any control apparatus that solely serves one or more laboratory hoods used in a research, development, or educational laboratory.
- "Category II" means any type of new or altered equipment and control apparatus which requires a permit or certificate, except those types which are defined above as belonging to Category I.

"CFR" means the Code of Federal Regulations.

"Change which may have an adverse effect on air quality" means any change which causes or has the potential to cause:

1. The quantity, concentration, or rate of any air contaminant emission from equipment or control apparatus to exceed any limit established by the existing permit or certificate;
2. Equipment or control apparatus to emit any air contaminant not authorized by the existing permit or certificate; or
3. The ambient air concentration of any air contaminant to increase due to a change in any stack dispersion parameter, including temperature, velocity, direction, or volumetric flow rate.

"Construct" means to fabricate or erect equipment or control apparatus at a facility where it is intended to be used. This term does not include dismantling of existing equipment or control apparatus, site preparation, or placement of the footings or foundation upon which the structural elements of the equipment or control apparatus will rest. This term also does not include install.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor air.

"Criteria pollutant" means any air contaminant for which a national ambient air quality standard has been promulgated under 40 CFR 50 or for which a State ambient air quality standard has been promulgated in N.J.A.C. 7:27-13.

"Domestic treatment works" means a publicly or privately owned treatment works and shall include a treatment works processing primarily domestic wastes together with any ground water, surface water, storm water, or industrial process wastewater that may be present.

"Domestic waste" means waste derived from humans, animals, households, restaurants, cafeterias, hotels, hospitals, markets, and similar installations.

"Education" means the provision of academic or technical instruction by an elementary or secondary school, a private vocational school approved by the New Jersey Department of Education, or a college or university licensed by the New Jersey Department of Higher Education.

"Effective stack height" means the distance to the plume center line from the ground as determined by adding the plume rise to the physical height of the stack.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device capable of causing the emission of an air contaminant [into the open air] either directly or indirectly to the outdoor atmosphere, and any stack, chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This [shall include] term includes, but is not limited to, equipment in which the preponderance of the air contaminants emitted is caused by [the] a manufacturing process.

"Equipment changeover" means any of the following changes to equipment or control apparatus, or to the use thereof, for which the Department has issued a certificate which is currently in effect:

1. A change in the contents of a storage tank, provided such change does not:

i. Require any physical or mechanical alteration of the equipment or new air pollution control apparatus;

ii. Result in any additional emission control requirement becoming applicable; and

iii. Involve the use or storage of any TXS; or

2. Any of the following changes, provided that it is not a "change which may have an adverse effect on air quality":

i. Replacement of equipment or control apparatus if:

(1) The new equipment or control apparatus is the same kind as that which is being replaced;

(2) The new equipment or control apparatus is equivalent to, or better than, for the purpose of air pollution control, that which is being replaced;

(3) The date of approval of the permit for the equipment or control apparatus being replaced is less than five years prior to the date of installation of the new equipment or control apparatus; and

(4) The total capital cost of the new equipment or control apparatus does not exceed \$20,000, calculated in 1989 dollars;

ii. Change in the relative use, expressed in percent by weight, of any raw material being processed;

iii. Increase in the rate of production, unless such increase in rate would result in the exceedance of any limitation on a rate established in the permit or certificate, or the conditions thereof; or

iv. Any of the following changes to stacks, provided that such change is in compliance with the EPA's stack height and dispersion regulations codified in 40 CFR 51:

(1) Change in the number of stacks venting the equipment, provided that the change does not result in any discharge height less than that of the tallest stack existing prior to the change;

(2) Decrease in stack diameter, provided that the exhaust is vented upwards;

(3) Replacement of an existing stack with a taller stack, provided that this results in an effective stack height which is no less than that existing before the change; or

(4) Increase in stack gas exit temperature or stack gas volume, provided that this results in no increase in the emission rate of any air contaminant.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.

"General permit or certificate information" means the information contained in a permit or certificate application other than that pertaining specifically to the construction, installation, alteration or use of equipment or control apparatus. This term includes:

1. Business name, division name or plant name;

2. Mailing address;

3. Company stack designation;

4. Telephone number; and

5. Name of plant contact.

"Hazardous waste" means those materials defined as hazardous waste under N.J.A.C. 7:26-8.

"Hazardous waste landfill" means a solid waste facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, or a waste pile.

"Incinerator" means any device, apparatus, equipment, or structure [used] using thermal processes for destroying, reducing or salvaging [by fire] any material or substance [including but not limited to refuse, rubbish, garbage, trade waste, debris or scrap, or a facility for cremating human or animal remains], but does not include thermal oxidizers used as control apparatus on manufacturing equipment.

"Indirect emissions" means a discharge of any air [contaminants] contaminant into the outdoor atmosphere through [openings] any opening that is not [necessarily designed for that purpose, including but not limited to doors, windows, exhaust fans, ventilators, and roof monitors] a stack or chimney directly connected to the equipment.

"Install" means to carry out final setup activities necessary to provide the equipment or control apparatus with the capacity for use or service. This term includes, but is not limited to, the connection of the equipment and control apparatus, associated utilities, piping, ductwork and conveyor systems. This term does not include construct, nor the reconfiguration of equipment and control apparatus to an alternate configuration specified in the permit application and approved by the Department.

"Laboratory operations" means any action, process, or treatment utilizing chemical, physical, or biological factors to conduct experimental research, tests, or demonstrations. All laboratory operations that occur within the area designed to be vented by a single laboratory hood, except any equipment or control apparatus otherwise listed in N.J.A.C. 7:27-8.2, is a single source operation.

"Land treatment facility" means a facility, or part of a facility, at which waste is applied onto or incorporated into the soil surface so as to change the physical, chemical, or biological characteristics or composition of the waste.

"Liquid particles" means particles which have volume but are not of rigid shape [and which upon collection tend to coalesce and create uniform homogeneous films upon the surface of the collecting media].

"Mathematical combination" means the summation, pursuant to N.J.A.C. 7:27-16.6, of the air contaminant emissions from two or more stacks or chimneys and the regulation of those emissions as if they came from the same sources venting through a single stack.

"NESHAP" means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR 61.

"Nonattainment area" means any area identified by the Department as one in which the ambient air concentration of a criteria pollutant exceeds an ambient air quality standard.

"NSPS" means Standards of Performance for New Stationary Sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to [Section 13 of] the Air Pollution Control Act of 1954, [as amended, P.L. 1967, c. 106 (N.J.S.A. 26:2C-9.2)] specifically N.J.S.A. 26:2C-9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

"Order" means any and all orders issued by the Department including, but not limited to, Notices of Assessment, Administrative Orders, and Administrative Consent Orders.

"Performance test" means a series of test runs used for the purpose of determining emissions of air contaminants to the outdoor atmosphere.

"Periodic compliance inspection" means the on-site examination by representatives of the Department of equipment or control apparatus to determine if the equipment or control apparatus is constructed, installed, and used in conformance with all applicable permit and certificate provisions and conditions of approval and all applicable laws, regulations, and rules.

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to [Section 13 of] the Air Pollution Control Act of 1954, [as amended, of P.L. 1967, c. 106 (N.J.S.A. 26:2C-9.2)] specifically N.J.S.A. 26:2C-9.2.

"Person" [includes] means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and [shall also include] all political subdivisions of this State or any agencies or instrumentalities thereof.

"Plume rise" means the vertical distance from the point at which an effluent stream is discharged into the outdoor air to the highest point attained by the center line of the effluent stream.

"Prevention of significant deterioration" or "PSD" means a permitting process as defined in [Title 40, CFR 52 of the Code of Federal Regulations] 40 CFR 52 which is applicable to new or modified major emitting sources locating in areas attaining the national ambient air quality standards for at least one air contaminant.

"Process material testing" means the testing of any solid, liquid, or gaseous substance involved in a manufacturing process or other operation. This term includes, but is not limited to, fuel and other feed material, process intermediates, products, by-products, and wastes, but excludes any source emission testing.

"Product development" means investigations directed toward the establishment of methods of manufacture or of specific designs of salable substances, devices, or procedures, based on previously discovered facts, scientific principles or substances.

"Rate of production" means the quantity per unit time of any process intermediate, product, by-product, or waste generated through the use of any equipment, source operation, or a process.

"Raw material" means any input to equipment, control apparatus, or a process, including fuels, but excluding heat and other forms of energy. Such inputs may include mixtures, composites, compounds and elemental substances.

"Reconfiguration" means a change in the setup of equipment or control apparatus, or both, to an alternate configuration. This term also includes reorientation or reconnection into an alternate pattern of equipment or control apparatus, or both, or of associated utilities, piping, ductwork, or conveyor systems. This term does not include a change in the location of equipment or control apparatus from that specified in the permit.

"Repair or maintenance" means upkeep of existing equipment or control apparatus, including the replacement of parts, but does not include the replacement of the equipment or control apparatus, or of any substantial component thereof.

"Replacement" means the removal of existing equipment or control apparatus, or any substantial component thereof, and the construction and installation at the same location of new equipment or control apparatus.

"Research" means investigations directed toward the discovery of facts, scientific principles, reactions, or substances.

"Research, development, or educational laboratory" means any facility engaged in laboratory operations solely for the purposes of research, product development, or education. Such operations do not include the production of products for sale.

"Risk assessment" means a procedure for characterizing the probability that potential exposure to air contaminants will result in adverse effects on human health, human welfare or the environment.

"Sampling" means the selective collection of a quantity of raw materials, process intermediates, products, by-products or wastes.

"Sanitary landfill" means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it does not include any waste facility approved for disposal of hazardous waste.

"Solid waste facility" means any system, site, equipment, or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, [recovering] recovery, or disposal of solid waste.

"Source emission testing" means the testing of a discharge of any air contaminant from equipment, control apparatus or source operation through any stack or chimney.

"Source operation" means any [manufacturing] process or any identifiable part thereof [emitting an] having the potential to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

"Stack equivalent" means an aggregation of more than one stack or chimney approved by the Department for use in calculating or measuring air contaminant emissions from a single source operation or a group of source operations with a common exhaust ventilation system.

"Stack or chimney" means a flue, conduit or opening designed, constructed, [and/] or utilized primarily for the purpose of emitting air contaminants into the outdoor atmosphere.

"Standard conditions" means 70 degrees Fahrenheit (21.1 degrees centigrade) and one atmosphere pressure (14.7 [psia] pounds per square inch absolute or [760 mm Hg] 760.0 millimeters of mercury).

"Storage tank" means any tank, reservoir, or vessel which is a container for liquids or gases, wherein [no manufacturing process, or part thereof, other than filling or emptying takes place.]:

1. No manufacturing process, or part thereof, other than filling or emptying takes place; and
2. The only treatment carried out is that necessary to prevent change from occurring in the physical condition or the chemical properties of the liquids or gases deposited into the container. Such treatment may include recirculating, agitating, maintaining the temperature of the stored liquids or gases, or replacing air in the vapor space above the stored liquids or gases with an inert gas in order to inhibit the occurrence of chemical reaction.

"Surface cleaner" means a device to remove unwanted foreign matter from the surfaces of [non-porous or non-absorbent] materials [by using VOS in the liquid or vapor state].

"Surface cleaning" means removing unwanted foreign matter from the surfaces of materials.

"Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Surface stripping" means the removal of paints and other coatings from the surface of materials.

"Telemetry" means the automatic transmission of measurement data by phone line, radio waves, or other means to a receiver and recorder.

"Temporary operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to [Section 13 of] the Air Pollution Control Act of 1954, [as amended, of P.L. 1967, c. 106 (N.J.S.A. 26:2C-9.2)] specifically N.J.S.A. 26:2C-9.2, which is valid for a period not to exceed 90 days.

"Testing" means a procedure for the determination of the kind and amount of one or more air contaminants, potential air contaminants or air contaminant precursors present. This term includes, but is not limited to, sampling, sample custody, analysis, and reporting of findings.

"Test run" or "run" means a single integrated measurement or procedure used for the purpose of collecting a sample of air contaminants emitted during a specified time interval.

"Toxic substance" or "TXS" means a substance listed in N.J.A.C. 7:27-17.

"Use" means to engage in any form or manner of operation of equipment or control apparatus subsequent to the installation of such equipment or control apparatus. This term includes any trial operation.

"Volatile [Organic Substances.] organic substances" or "VOS[.]" means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances [including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners which have vapor pressures or sums of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater measured at standard conditions; and, in the case of surface coating formulations, includes any coalescing or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase; but does not include methane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2 trichloro-1,2,2 trifluoroethane, 1,2 dichloro-1,1,2,2 tetrafluoroethane, and chloropentafluoroethane] defined as volatile organic substances in N.J.A.C. 7:27-16.1.

7:27-8.2 [Permits and certificates required] **Applicability**

(a) New or altered equipment and control apparatus [and equipment] for which a permit and an operating certificate are required, pursuant to the provisions of N.J.A.C. 7:27-8.3, include:

1. All control apparatus, except any control apparatus used solely to purify intake air fed into a source operation;

2. Equipment used in a manufacturing process involving surface coating including, but not limited to, spray and dip painting, roller coating, electrostatic depositing, surface stripping or spray cleaning, from which direct or indirect emissions of air contaminants occur and in which the quantity of coating or cleaning material used in any source operation is equal to or greater than one half gallon in any one hour;

3-5. (No change.)

6. Equipment, in addition to that set forth in (a)3, [(a)4], and [(a)5] above, used in a [manufacturing] process involving surface cleaning or preparation including, but not limited to, degreasing, etching, pickling, or plating, from which direct or indirect emissions of air contaminants occur from a tank or vessel, the capacity of which is in excess of 100 gallons;

7. Equipment, used in a [manufacturing] process, other than as set forth in (a)2, [(a)3], [(a)4], [(a)5], and [(a)6] above, from which direct or indirect emissions of air contaminants occur and in which the combined weight of all materials, excluding air and water, introduced into any one source operation is in excess of 50 pounds in any one hour;

8. Stationary storage tanks which have a capacity in excess of 10,000 gallons and which are used for the storage of liquids, except water or distillates of air. A storage tank maintained under a pressure greater than one atmosphere is exempt from the provisions of N.J.A.C. 7:27-8 provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions];

9. Stationary storage tanks which have a capacity of 2,000 gallons or greater and which are used for the storage of volatile organic substances. A storage tank maintained under a pressure greater than one atmosphere is exempt from the provisions of N.J.A.C. 7:27-8 provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions];

10-13. (No change.)

14. Any incinerator, except incinerators constructed, installed or used in one or two-family dwellings or in multi-occupied dwellings containing six or less family units, one of which is owner occupied[.];

15. Waste or water treatment equipment which [emits] may emit air contaminants, including, but not limited to, air stripping equipment, aeration basins, and [lagoons] surface impoundments. An air pollution control permit is not required for:

i. Any water treatment equipment if the concentration of each toxic volatile organic substance included in N.J.A.C. 7:27-17 does not exceed 100 parts per billion by weight and the total concentration of VOS does not exceed 3,500 parts per billion by weight; [or]

ii. Potable water treatment equipment, except air stripping equipment with a capacity greater than 100,000 gallons per day; [or]

iii. Aeration basins and lagoons at publicly owned treatment works; or

iv. Aeration basins and lagoons at domestic treatment works[.];

16. Equipment used for the purpose of venting a closed or operating dump, sanitary landfill, hazardous waste landfill, or other solid waste facility directly or indirectly into the outdoor atmosphere[.]; and

17. Any source operation which has the potential to emit any TXS at a rate greater than the exception rate specified in N.J.A.C. 7:27-17.

(b) New or altered equipment and control apparatus for which a permit and an operating certificate are not required, notwithstanding the provisions of (a) above, include:

1. A storage tank maintained under a pressure greater than one atmosphere provided that any vent serving such storage tank has the sole function of relieving pressure under emergency conditions; and

2. Tanks, reservoirs, containers, and bins used by farmers for the storage of agricultural commodities produced by or consumed in their own operations. This exemption does not include tanks, reservoirs, containers and bins used by distributors of agricultural commodities or by research facilities which develop products for use in agricultural production.

7:27-8.3 General provisions

(a) No person shall construct, install, or alter any equipment or control apparatus without first having obtained a permit. [Such permit may be cancelled if construction, installation or alteration is not begun within one year from the date of issuance.]

[(b) No person shall use or cause to be used any new or altered equipment or control apparatus without first having obtained a certificate. In order to insure timely renewal of an operating certificate, an application for renewal of an operating certificate shall be made to the Department not less than 90 days prior to the expiration date of the operating certificate.]

(b) No person shall use or cause to be used:

1. Any new or altered equipment or control apparatus without first having obtained a certificate; or

2. Any equipment or control apparatus if its certificate has expired.

[(c) Upon request of the Department, the applicant for a permit shall demonstrate by air quality simulation modeling acceptable to the Department that the maximum controlled emissions stated on the permit application will not cause a violation of any ambient air quality standard as defined in N.J.A.C. 7:27-13, prevention of significant deterioration increment as defined in Title 40, Part 52 of the Code of Federal Regulations, or other criteria established by the Department to protect the public health and welfare from air pollution.]

(c) Any person holding a permit or certificate shall keep the information in the permit or certificate up to date. Such person shall report any change in general permit information, transfer of ownership of the permit or certificate, or equipment changeover to the Department within 120 days after the occurrence of such change, as an amendment of the permit or certificate information.

(d) Any person [in possession of] holding a permit or certificate shall make said permit or certificate, together with any amendments thereto, readily available for inspection on the operating premises.

(e) No person shall use or cause to be used any equipment or control apparatus unless:

1. All conditions and provisions of the permit and certificate are fulfilled; and

2. All components connected or attached to, or serving the equipment [and/or] or control apparatus are functioning properly and are in use in accordance with the permit and certificate.

(f) A permit or certificate shall not be transferable either from one location to another or from any one piece of control apparatus or equipment to another. [A transfer of a permit and certificate from one person to another is permissible provided a request for such transfer is made to the Department within 90 days of a change in ownership.]

(g) (No change.)

(h) Permits and certificates issued under [N.J.A.C. 7:27-8] **this subchapter** are based on [emissions] **the potential for emission** of air contaminants only and do not in any way relieve the applicant from the obligation to obtain necessary permits from other governmental agencies **and to comply with all other applicable Federal, State, and local rules and regulations.**

(i) The provisions of (a) and (b) above shall not apply to [structural changes, repairs] **repair or maintenance [to] of control apparatus or equipment, [if] provided that such [changes, repairs] repair or maintenance [will not change the quality, nature or quantity of the air contaminants emitted] does not constitute, in whole or part, an alteration of the equipment or control apparatus and is not a change which may have an adverse effect on air quality.**

(j) **No person holding any permit or certificate shall suffer, allow, or permit any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the owner or operator has exclusive use or occupancy.**

7:27-8.4 Applications for permits and certificates

(a) Applications for a permit or a certificate, **or for a renewal thereof**, shall be made to the Department on forms [provided by] **obtained from the Department. Application forms and information pertinent to applications, may be requested from:**

**Bureau of New Source Review
Division of Environmental Quality
Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-0027**

(b) The Department may require the applicant to submit such details regarding the equipment or control apparatus as it considers necessary to determine that the equipment or control apparatus is designed to operate without causing a violation of any provisions of relevant State or Federal laws or regulations and that the equipment or control apparatus incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment. Such information may include description of processes, raw materials used, operating procedures, physical and chemical nature of air contaminants, volume of gas discharged, and such other information as the Department considers necessary. All information submitted to the Department shall be public information except that which is designated confidential in accordance with N.J.S.A. 26:2C-9.2 **and in compliance with N.J.A.C. 7:27-8.14 through 8.23.**

(c) Before an operating certificate or any renewal thereof is issued, the Department may require the applicant to conduct such tests as are necessary at the discretion of the Department to determine the kind and amount of air contaminants emitted from the equipment or control apparatus. Such tests shall be conducted in a manner approved by the Department and shall be made at the expense of the applicant. The applicant shall give the Department no less than 48 hours advance notice of the time of the start of the test. The test results shall be reviewed and certified by a New Jersey Licensed Professional Engineer, or by an industrial hygienist who has been certified by the American Board of Industrial Hygiene.]

(c) **Before an application for an operating certificate, or any renewal thereof, is approved, the Department may require the applicant to conduct such testing as is necessary, at the discretion of the Department, to verify that the kind and amount of air contaminants emitted from the equipment or control apparatus are in compliance with the limits established in the permit and certificate and that only the air contaminants approved in the permit are being emitted. The applicant shall:**

1. **Submit the proposed testing protocol to the Department at least 60 days prior to the anticipated date of the testing;**
2. **Obtain approval of the protocol from the Department in advance of conducting the testing;**
3. **Conduct the testing in accordance with the approved protocol;**

4. **Give the Department at least seven days advance notice of the date and time of the start of any testing, except in cases where the Department has specified in the permit other time requirements for notice;**

5. **Submit the results to the Department within 30 days after the completion of the sampling, unless a longer period for submission is approved in writing by the Department; and**

6. **Have the results of any source emission testing reviewed and certified by a licensed professional engineer, or by an industrial hygienist who has been certified by the American Board of Industrial Hygiene, prior to their submission to the Department.**

[(d) Any person applying for a certificate or a renewal thereof, or to whom such certificate has been issued shall, when requested by the Department, provide such sampling facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the kind and amount of air contaminants emitted from the equipment or control apparatus. During such testing by the Department the equipment and control apparatus shall be operated under such conditions within their capacities as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.]

(d) **A single application for a permit or certificate may pertain to all equipment and control apparatus from which all of the air contaminants are vented through a single stack or chimney or through a single stack equivalent.**

(e) Any person who is applying for a permit shall submit as part of the application, an NSPS and NESHAP applicability and compliance demonstration, if the proposed equipment or the intended use of the proposed equipment is within any source category to which any NSPS or NESHAP is applicable.

(f) Upon request of the Department, and in accordance with a protocol approved in advance by the Department, the applicant for a permit shall demonstrate by air quality impact analysis, including air quality simulation modeling and possibly ambient air monitoring and risk assessment, whether the maximum controlled emissions stated on the permit application may cause:

1. **A violation of any State or Federal ambient air quality standard;**
2. **Any exceedance of a PSD increment as defined in 40 CFR 52;**
3. **A threshold increase in ambient air concentration, as set forth in Table 1 of N.J.A.C. 7:27-18.3(a), in a nonattainment area for that pollutant; or**
4. **A contravention of any other criterion established by the Department to protect human health and welfare and the environment.**

(g) In order to ensure timely renewal of an operating certificate, an application for renewal of an operating certificate shall be made to the Department on forms obtained from the Department not less than 90 days prior to the expiration date of the operating certificate.

(h) Any person submitting any application to the Department shall include, as an integral part of the application, certifications complying with N.J.A.C. 7:27-8.24.

(i) Any information an applicant wants the Department to take into consideration in making a decision on an application shall be submitted to the Department in writing for incorporation into the application prior to the Department's making a decision on the application.

7:27-8.5 Public comment

(a) The Department shall seek comments from the general public prior to making any final decision on those applications for which such comment is required by State or Federal statutes. Such applications include, but are not limited to, those applications which:

1. **Are subject to the PSD requirements published at 40 CFR 52; or**
2. **Must be submitted to the EPA for approval as a revisions to any state implementation plan.**

(b) The Department may seek comments from the public whenever it finds a significant degree of public interest in a permit application or whenever the Department determines such comments might clarify one or more issues involved in the decision on the permit application.

[7:27-8.5] 7:27-8.6 Denials [and conditional approvals]

(a) The Department shall deny an application for a permit or certificate, **or a renewal thereof**, if construction, **alteration**, or [opera-

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tion] use of control apparatus or equipment pursuant to the application would result in [a violation of any provision of N.J.A.C. 7:27-27 or an exceedance of]:

- 1. A violation of any provision of N.J.A.C. 7:27;
- [1.]2. An exceedance of any State or Federal ambient air quality standard [established in N.J.A.C. 7:27-13; or];
- [2. Any national ambient air quality standard established in Title 40, Part 50 of the Code of Federal Regulations; or
- 3. Any applicable prevention of significant deterioration increment as defined in Title 40, Part 52 of the Code of Federal Regulations; or]
- 3. An exceedance of any applicable PSD increment as defined in 40 CFR 52;
- 4. A violation of any applicable NSPS;
- 5. A violation of any applicable NESHAP;
- 6. A violation of any Federal stack height or emission dispersion requirement as stated in 40 CFR 51; or

[4. Other] 7. A contravention of other criteria established by the Department to protect [the public] human health and welfare and the environment [from air pollution].

(b) (No change.)

[(c) The Department may include, as a condition of approval of an application for a certificate, the requirement that an applicant perform any of the following:

- 1. Conduct periodic sampling and analysis of fuels or other feed material to equipment;
- 2. Provide instrumentation and sensing devices to determine the kind and amount of air contaminants emitted;
- 3. Provide instrumentation and sensing devices to demonstrate that operating parameters affecting air contaminant emissions are maintained within limits specified by the Department; and
- 4. Submit reports of such analysis and monitoring results in accordance with a format and schedule approved by the Department.]

(c) The Department may deny an application for a permit or certificate if the applicant fails to provide all information requested by the Department within 30 days after the request, or within a longer response period if approved in writing by the Department.

(d) The Department may deny an application for a certificate, or a renewal thereof, if the applicant has failed to:

- 1. Pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-8.10, within 60 days after receipt of a fee invoice; or
- 2. Reimburse the Department within 60 days after receipt of an invoice for any of the following charges incurred by the Department:
 - i. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a permit or certificate for the electronic transmission of data; or
 - ii. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to testing or monitoring required by the conditions of approval of a permit or certificate.

[7:27-8.6 Service Fees

(a) Any person subject to the provisions of N.J.A.C. 7:27-8 shall submit with each application for a permit, a certificate, an amendment, a mathematical combination, or banking, as an integral part thereof, a non-refundable service fee in accordance with the following schedule:

SERVICE FEE SCHEDULE

ACTIVITY	BASIS	AMOUNT
Base Fee	Per New or Altered Source Operation	\$250.00
Amendments	Per Permit	50.00
Renewals	Per Operating Certificate	75.00
Banking		
Application	Per Source Operation	100.00
Verification	Per Source Operation	100.00
Use	Per Source Operation	100.00

Prevention of Significant Deterioration	Per Application	500.00
Mathematical Combination (Bubble)	Per Application	500.00
	Per Source Operation	250.00
Modeling Analysis Evaluation	Per Evaluation	500.00

(b) An additional service fee will not be assessed solely for the failure by the applicant to submit a complete application, pursuant to N.J.A.C. 7:27-8, provided that the applicant, within 90 days of the written request from the Department, submits, in writing, the requested supplementary information to the Department.]

7:27-8.7 Approvals

(a) No person may construct, install, or alter equipment or control apparatus other than as described and authorized in an approved permit. No modification may be made in plans or specifications for construction which renders them in any respect inconsistent with the provisions and conditions of an approved permit application unless the person to whom the Department has issued a permit submits a new application for a permit to alter, and this new application is approved by the Department. Full responsibility for adequate design and construction shall be with the person to whom the Department has issued the permit.

(b) No person may operate equipment or control apparatus other than as described and authorized in an approved certificate. Full responsibility for use in accordance with the provisions of the certificate shall be with the person to whom the Department has issued the certificate.

(c) No air contaminant, or category of air contaminant where accepted by the Department, shall be emitted other than those approved in the permit. Any information contained in an approved application and any condition of approval thereof are subject to enforcement. This includes the following application information, which shall constitute maximum allowable limits, unless the Department establishes other limits in the conditions of approval:

- 1. Rates of emission of each air contaminant and each category of air contaminant listed;
- 2. Total hours of operation per time period; and
- 3. Any rate of production.

(d) The Department may establish conditions of approval of any permit or certificate application. In the event that a discrepancy exists between the information in an application for a permit or certificate and the conditions of its approval, the conditions of approval shall prevail.

(e) The Department may withdraw its approval of a permit if the person to whom the Department has issued the permit:

- 1. Does not begin construction, installation, or alteration within one year after the date of approval of the permit; or
- 2. Discontinues construction, installation, or alteration for a period of more than one year.

(f) The Department may modify the conditions of approval of a certificate:

- 1. At the time of renewal of a temporary operating certificate;
- 2. At the time of approval or renewal of a five-year operating certificate; or
- 3. At any time during the period a certificate is in force, if the Department determines that such modification is necessary to protect human health or welfare or the environment.

(g) Any person to whom the Department has issued a permit or certificate shall comply with all terms and conditions of any order related to the permit or certificate.

7:27-8.8 Conditions of approval

(a) Upon request of the Department, any person to whom the Department has issued a permit or certificate shall submit to the Department information relevant to the operation of equipment and control apparatus, including, but not limited to:

- 1. A diagram of the facility indicating the location of any equipment and control apparatus, its applicable permit and certificate number, any

stack designation assigned by the Department, and any stack designation assigned by the person;

2. Records documenting any use of any equipment, control apparatus, or other source operation including, but not limited to, rate of production and hours of operation; and

3. Records documenting any construction, installation, or alteration, including the dates thereof, of any equipment or control apparatus.

(b) The Department may include, as a condition of approval, the requirement that a person to whom the Department has issued a certificate provide verification that the equipment or control apparatus is being used in compliance with the provisions and conditions of its permit and certificate. Such verification may include:

1. Periodic testing of any process materials or source emissions, or measurement of the ambient concentration of any air contaminant. Such testing or measurement shall be conducted in accordance with a protocol approved in advance by the Department;

2. Installation, operation, and maintenance of instrumentation and sensing devices to measure, either at specified intervals or continuously:

i. The kind and amount of air contaminants emitted;

ii. Operating parameters relevant to determination of potential for air contaminant emissions, such as opacity, pH, flow rate, pressure drop, and temperature at specified process points; and

iii. Ambient concentrations of air contaminants;

3. Recordkeeping including, but not limited to, information pertaining to emissions, process operations, and operations of equipment and control apparatus. Such records shall be kept in a manner approved by the Department and be available on the operating premises for review by the Department; and

4. Reporting to the Department such information as analysis and monitoring results, data derived from measurement of emissions and operating parameters, and other information relevant to verifying that the operation of the equipment and control apparatus is in compliance with the provisions of the operating certificate and its conditions. Such information shall, pursuant to the conditions of the permit or certificate, be reported periodically, in conformance with a schedule, or within a specified number of days of the occurrence of a violation or other event.

(c) The Department may establish, as a condition of approval of any application for a permit or certificate, or any renewal thereof, a schedule of periodic compliance inspections to which the equipment and control apparatus are subject.

(d) No person to whom the Department has issued a permit or certificate shall carry out, or allow to be carried out, any replacement of equipment or control apparatus unless the new equipment or control apparatus incorporates current advances in the art of air pollution control developed for the kind and amount of air contaminant emitted.

(e) If the conditions of a permit or certificate require the Department to incur any of the following charges, the person to whom the Department has issued the permit or certificate shall reimburse the Department for the full amount of these charges:

1. The charges billed by a telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a permit or certificate for the electronic transmission of data; or

2. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to testing or monitoring required by the conditions of approval of a permit or certificate.

(f) No person shall use equipment or control apparatus in a manner which will cause any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which are, or tend to be injurious to human health or welfare, animal or plant life or property or unreasonably interfere with the enjoyment of life or property. This does not include air contaminants which occur only in areas over which the owner or operator has exclusive use or occupancy.

(g) Any person to whom the Department has issued a permit or certificate, or a renewal thereof, shall, when requested by the Department, provide such testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the kind and amount of air contaminants emitted from the equipment or control apparatus. During testing by the Department, the equipment and control apparatus shall be operated under such conditions within their capacities as may be requested by the Department. The testing facilities may be either permanent or temporary, at the discretion of

the person responsible for their provision, and shall conform to all applicable laws, regulations, and rules concerning safe construction and safe practice.

7:27-8.9 Reporting requirements

(a) Upon the request of the Department, any person holding a permit or certificate shall submit to the Department any record relevant to any permit or certificate. Such record shall be submitted to the Department within 30 days of the request by the Department or within a longer time period if approved in writing by the Department.

(b) Any person to whom the Department has issued a permit or certificate shall submit any required report in a format and on a schedule approved by the Department. Such report shall be transmitted on paper, on computer disk, or electronically, at the discretion of the Department.

(c) Any person submitting any report to the Department shall include, as an integral part of the report, certifications complying with N.J.A.C. 7:27-8.24.

(d) Upon the request of the Department, any person to whom the Department has issued a certificate shall report on forms obtained from the Department the actual emissions, and information relevant thereto, of any air contaminant or class of air contaminants emitted by the equipment, control apparatus, or source operation.

(e) Any person to whom the Department has issued a permit or certificate shall provide, in each report of an amendment of permit and certificate information, specification of the date and nature of each change that has occurred. The report shall be submitted on forms obtained from the Department. Changes to be reported to the Department as an amendment of permit and certificate information include:

1. Changes in the general permit and certificate information, including the name of the company, mailing address, telephone number, authorized company representative or any company stack designation;

2. Transfer of ownership of the permit and certificate; or

3. Equipment changeover.

7:27-8.10 Revocation

(a) The Department may revoke its approval of a certificate or a renewal thereof, if the person to whom the Department has issued the certificate:

1. Uses, or allows to be used, equipment or control apparatus out of compliance with any provision or condition of approval of the certificate, or any renewal thereof, or with any applicable Federal, State, or local law, regulation, or rule;

2. Constructs or alters, or allows to be constructed or altered, equipment or control apparatus without applying for and obtaining Departmental approval of a permit for such alteration of the equipment or control apparatus;

3. Fails to allow lawful entry by authorized representatives of the Department, pursuant to N.J.A.C. 7:27-8.25;

4. Fails to submit to the Department a request for amendment of the permit or certificate information within 120 days after the occurrence of any change in general permit or certificate information, transfer of ownership of the permit or certificate, or equipment changeover;

5. Fails to pay any penalty assessed pursuant to a final order issued by the Department;

6. Fails to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-8.11, within 60 days after receipt of a fee invoice;

7. Fails to reimburse the Department within 60 days after receipt of an invoice for any of the following charges incurred by the Department:

i. The charges billed by a telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a permit or certificate for the electronic transmission of data; or

ii. The charges billed by a laboratory for performing the analysis of audit samples collected pursuant to monitoring any testing required by the conditions of approval of a permit or certificate; or

8. Fails to dispose lawfully of all aqueous and solid wastes generated as a result of the operation of the equipment or control apparatus.

(b) The Department may revoke any approval of any application, if it determines that the approval authorizes a contravention of Federal or State laws, regulations, rules, or procedural requirements.

7:27-8.11 Service fees

(a) Any person subject to the provisions of this subchapter shall submit with each application for a permit, an operating certificate or a renewal thereof, or a mathematical combination, or with a request for an amendment or a banking service, as an integral part thereof, a non-refundable base service fee in accordance with the Base Fee Schedule.

(b) Prior to taking final action on any application for a permit, an operating certificate or a renewal thereof, or a mathematical combination, or on any request for an amendment or a banking service, the Department will invoice each applicant for any additional fees due to the Department, assessed in accordance with the Base Fee Schedule

and the Supplementary Fee Schedule. The applicant shall submit any fees so assessed to the Department within 60 days after receipt of the invoice.

(c) The Base Fee Schedule and the Supplementary Fee Schedule are applicable to all applications on which the Department makes its decision on or after the date on which this section is operative.

(d) An additional service fee will not be assessed solely for the failure by the applicant to submit a complete application, pursuant to this subchapter, provided that the applicant, within 30 days after the written request from the Department, or within a longer time period if so specified in writing by the Department, submits in writing the requested supplementary information to the Department.

A. BASE FEE SCHEDULE

<u>Activity</u>	<u>Basis</u>	<u>Amount</u>
1. Permit Application ¹		
a. Category I	Per Application	\$100.00
b. Category II	Per First New or Altered Piece of Equipment or Control Apparatus Listed in N.J.A.C. 7:27-8.2(a) per Application	500.00
	Per Each Additional Piece of Equipment or Control Apparatus Listed in N.J.A.C. 7:27-8.2(a) in an Application	350.00
2. Certificate Application		
a. Category I	Per Operating Certificate	150.00
b. Category II	Per Operating Certificate	500.00
3. Amendment		
a. General Information	Per Permit	50.00
b. Transfer of Facility Ownership	Per Permit	50.00
c. Equipment Changeover	Per Change	200.00
4. Certificate Renewal	Per Operating Certificate	500.00
5. Banking		
a. Base Application Review	Per Source Operation	200.00
b. Verification	Per Source Operation	200.00
c. Transfer of Facility Ownership	Per Source Operation	50.00
d. Withdrawal of Credits	Per Source Operation	200.00
e. Donation of Credits to the State of New Jersey	Per Donation	0.00
6. Mathematical Combination (Bubble)		
a. Engineering Review	Per Application, plus	500.00
	Per Source Operation	500.00
b. Implement Public Comment Requirement	Per Comment Period	500.00

¹Should both Category I and Category II equipment and control apparatus be included in a single application, the Category I equipment and control apparatus will be subject to the Category I fee; and the Category II equipment control apparatus will be subject to the Category II fee.

B. SUPPLEMENTARY FEE SCHEDULE

<u>Activity</u>	<u>Basis</u>	<u>Amount</u>
1. Prevention of Significant Deterioration		
a. Engineering Review	Per Applicable Air Contaminant	\$500.00
b. Implement Public Comment Requirement	Per Comment Period	500.00
2. Ambient Air Monitoring		
a. Review Protocol	Per Protocol	500.00
b. Inspect Monitoring Locations and Equipment Installation	Per Inspection	500.00
c. Review Quality Assurance Plan and Implementation	Per Plan	500.00
d. Review Data	Per Required Report	500.00
3. Air Quality Impact Analysis		
a. Evaluate Protocol	Per Protocol	500.00
b. Review Screening Modeling	Per Review	500.00
c. Review Refined Modeling	Per Review	500.00
4. Risk Assessment		
a. Evaluate Protocol	Per Protocol	500.00
b. Review Risk Assessment	Per Review	500.00
5. Testing		
a. Evaluate Protocol		
i. Process Materials Testing	Per Protocol	450.00
ii. Source Emission Testing	Per Protocol	500.00
b. On-site Monitoring of Sample Collection		
i. Process Materials Testing	Per Collection Event	200.00
ii. Source Emissions Testing	Per Performance Test	500.00
c. Review Test Report		
i. Process Materials Testing	Per Report	200.00
ii. Source Emissions Testing	Per Report	500.00
6. Audit Performance of Continuous Emission Monitors		
a. Evaluate Protocol	Per Monitor	500.00
b. Observe Testing	Per Performance Test	500.00
c. Review Performance Report	Per Report	500.00
7. Periodic Compliance Inspection	Per Inspection Per Certificate	200.00

7:27-8.12 Request for an adjudicatory hearing

(a) An applicant who believes himself or herself to be aggrieved, with respect to decisions made by the Department regarding any permit and certificate, amendment, certificate renewal, variance, or registration, may contest the decision and request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Department:

1. Denies an application, or any part thereof;
2. Has, in the judgement of the applicant, imposed an unreasonable condition on its approval of an application;
3. Revokes or withdraws a previously issued approval; or
4. Denies the request for a stay under N.J.A.C. 7:27-8.13.

(b) Requests for a contested case hearing shall be submitted to:

Assistant Director
 Environmental Enforcement Element
 Division of Environmental Quality
 Department of Environmental Protection
 CN 027
 Trenton, New Jersey 08625-0027

(c) All requests for a contested case hearing must be received by the Department within 20 days of the date upon which the notice of decision was received.

(d) All requests for a contested case hearing must be submitted by the applicant in writing to the Department in accordance with (b) above and shall contain:

1. The name, address and telephone number of the person making such request;
2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;

3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in such decision; and

4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included.

(e) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

7:27-8.13 Requests for a stay of the effective date of a Departmental decision

(a) The Department may grant a stay of the effective date of a decision to revoke any previous approval. The applicant for a stay shall submit documents which substantiate, by a preponderance of the evidence, that one of the following circumstances exist:

1. The granting of the stay is required as a constitutional or statutory right; or
2. The potential effect on human health and welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay.

(b) The decision to grant a contested case hearing request shall not automatically result in a stay of the Department action appealed from, absent an express decision by the Department to stay such action. The burden shall be upon the party requesting a hearing to explicitly request

a stay of action within the same document as well as to describe reasons why such stay should be granted.

(c) Department decisions are effective according to their terms, unless stayed by the Department in writing.

(d) Written requests for a stay of the effective date of the Department's decision shall be made to the Department within 20 days of the date upon which the notice of decision was received.

(e) Any stay granted by the Department shall be temporary and shall not extend beyond the date of the Department's final decision in respect to the contested case.

(f) Determinations made pursuant to this section shall be made in writing and mailed to the specific party making such request.

7:27-8.14 Confidentiality claims

(a) Any applicant required to submit any information, pursuant to the provisions of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. or this subchapter, which in the applicant's opinion constitutes trade secrets, proprietary information, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter. Emissions information may not be claimed as confidential.

(b) Any applicant submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit two documents to the Department. One shall contain all the information required by the Department including any information which the applicant alleges to be entitled to confidential treatment. The second shall be identical to the first except that it shall contain no information which the applicant alleges to be entitled to confidential treatment. The second can be a photocopy of the first, with the allegedly confidential material blacked out. The second document may be released by the Department to the public as submitted.

(c) The top of each page of the first submission containing the information which the applicant alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first submission which the applicant alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. The manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first submission, containing the information which the applicant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, non-confidential submission (which may or may not be enclosed in a separate envelope, at the option of the applicant), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of the contents.

(f) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received.

7:27-8.15 Access to information; non-disclosure

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made will be limited to Department employees, representatives and contractors whose activities necessitate such access and as provided at N.J.A.C. 7:27-8.18 and 8.21.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(c) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons not otherwise having knowledge of such confidential information to deduce from it the confidential information or the identity of the owner or operator who supplied it to the Department.

7:27-8.16 Confidentiality determinations

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided in this section and N.J.A.C. 7:27-8.17.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information;

2. Desires to determine whether information in its possession is entitled to confidential treatment; or

3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the initial determination whether information is or is not entitled to confidential treatment.

1. If the Department determines that information is not entitled to confidential treatment, it shall so notify the applicant who submitted the information.

2. The notice required under this section shall be sent by certified mail, return receipt requested, and shall state the reasons for the Department's initial determination.

3. Any applicant who wishes to contest a determination by the Department shall, within 30 days after notification of the determination, submit evidence to support the applicant's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

i. The period of time for which confidential treatment is desired by the applicant (for example, until a certain date, until the occurrence of a specified event, or permanently);

ii. The measures taken by the applicant to guard against undesired disclosure of the information to others;

iii. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

iv. The extent to which disclosure of the information would result in substantial damage to the applicant, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the causal relationship between disclosure and the damage.

4. Failure of an applicant to contest the Department's initial determination and submit supporting evidence within 30 days waives the applicant's confidentiality claim.

5. The applicant may assert a confidentiality claim to any information submitted to the Department by an applicant as part of its evidence pursuant to (c)3 above.

6. The Department may extend the time limit for submitting evidence pursuant to (c)4 above for good cause shown by the applicant and upon receipt of a request in writing.

(d) After receiving the evidence, the Department shall review its initial determination and make a final determination.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the applicant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department may make the information available to the public on the 14th day following receipt of the written notice by the applicant.

2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The applicant shall be notified of the Department's determination by certified mail, return receipt requested. The notice shall state the basis for the determination and that it constitutes final agency action.

7:27-8.17 Substantive criteria for use in confidentiality determinations

(a) When the applicant satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential:

1. The applicant has asserted a confidentiality claim which has not expired by its terms or been waived or withdrawn;

2. The applicant has shown that sufficient responsible measures have been taken to protect the confidentiality of the information and that the applicant intends to continue to take such measures;

3. The information is not, and has not been, available or otherwise disclosed to other persons without the applicant's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. No statute specifically requires disclosure of the information;

5. Except for information related to national security, the applicant has shown that the disclosure of the information would be likely to cause substantial damage to its competitive position; and

6. The information relates to secret processes or methods of manufacture or production.

7:27-8.18 Disclosure of confidential information

(a) The Department may disclose confidential information to persons other than Department employees, representatives and contractors only as provided in this section or N.J.A.C. 7:27-8.20 or 8.21.

(b) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;

2. The request sets forth the official purpose for which the information is needed;

3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;

4. The other State or Federal agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;

5. The other agency agrees not to disclose the information further unless:

i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The other agency has obtained the consent of the affected owner or operator to the proposed disclosure; and

6. The other agency has adopted rules or regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided at N.J.A.C. 7:27-8.20, the Department shall notify in writing the applicant who supplied the confidential information of:

1. Its disclosure to another agency;

2. The date on which disclosure was made;

3. The name of the agency to which it was disclosed; and

4. A description of the information disclosed.

7:27-8.19 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department when the contractor's activities necessitate such access.

(b) No information shall be disclosed to a contractor unless the contract in question provides that the contractor and the contractor's employees, agents, and representatives shall use the information only for the purpose of carrying out the work required by the contract, shall not disclose the information to anyone not authorized in writing by the Department, shall store the information in locked cabinets in secure rooms, and shall return to the Department the information, all copies of the information, and any abstracts or extracts therefrom, upon request by the Department or whenever the information is no longer required by the contractor for the performance of the work required by the contract.

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting, in addition to whatever other remedies may be available to the Department at equity or law.

7:27-8.20 Disclosure by consent

(a) The Department may disclose any confidential or allegedly confidential information to any person if it has obtained the written consent of the person claiming confidentiality to such disclosure.

(b) The giving of consent of person claiming confidentiality to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such a nature as to make the disclosed information accessible to the general public.

7:27-8.21 Disclosure based on imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an imminent and substantial danger to human health and welfare and the environment, the Department may:

1. Prescribe and make known to the applicant such shorter comment period (see N.J.A.C. 7:27-8.16(c)3), post-determination waiting period (see N.J.A.C. 7:27-8.16(d)1), or both, as it finds necessary under the circumstances; or

2. Disclose confidential information to any person whose role in alleviating the danger to human health and welfare and the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall it of itself be grounds for any determination that information is no longer entitled to confidential treatment.

(c) The Department will notify the applicant of any disclosure made pursuant to this section as soon as is feasible.

7:27-8.22 Security procedures

(a) Submissions to the Department pursuant to the Act and this chapter will be opened only by persons authorized by the Department to engage in administering the Act and this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope which is marked "CONFIDENTIAL".

(c) All submissions entitled to confidential treatment as determined in accordance with N.J.A.C. 7:27-8.16 shall be stored by the Department or its contractors in locked cabinets only.

(d) Any record made or maintained by Department employees, representatives or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.

7:27-8.23 Wrongful access or disclosure; penalties

(a) A person shall not disclose, seek access to, seek to obtain or seek to have possession of any confidential information obtained pursuant to this chapter, except as authorized by this subchapter.

(b) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee, representative, or contractor shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the confidentiality rules N.J.A.C. 7:27-8.14 through 8.23, if may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information.

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of the confidentiality rules, N.J.A.C. 7:27-8.14 through 8.23, by an employee of the Department shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

7:27-8.24 Certification of information

(a) Any person who submits an application, registration, or report to the Department shall include, as an integral part of the application

or report, the following certification, signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified documents:

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

(b) The following documents shall be additionally certified as set forth in (c) and (d) below:

1. Any permit application, which is subject to any PSD requirement or any provision of the emission offset rules contained in N.J.A.C. 7:27-18.2(a) or (b); or

2. Any report which indicates that a violation has or may have occurred of any provision or condition of a permit or certificate or any applicable law, regulation, or rule.

(c) Any person who submits an application or report to the Department, for which additional certification is required pursuant to (b) above, shall include, as an integral part of the application or report, the following additional certification:

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

(d) The additional certification set forth in (c) above shall be signed by the ranking official, as follows:

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

2. For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

3. For a municipality, the mayor or equivalent official;

4. For a county, the county executive or equivalent official;

5. For the State, an official of at least the rank of agency director;

or
6. For any other public agency, a principal executive officer or ranking elected official.

(e) Notwithstanding the provisions of (b) above, the certification contained in (a) above shall be the only certification required if the individual required in (a) above to sign the certification is the same individual required in (d) above to sign the additional certification.

7:27-8.25 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit or any certificate, or any order or agreement issued or entered into pursuant thereto. The Department and its representatives shall also have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time to verify any information included in any application or report submitted to the Department. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance will appropriate standard safety procedures.

(b) Owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspections. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of air contaminants emitted. During such testing by the Department, the equipment and all components connected, attached to, or serving the

equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe constructions and safe practice.

(c) No person shall obstruct, hinder or delay, or interfere with by force or otherwise, the performance by the Department or its personnel of any duty under the provisions of this chapter, or refuse to permit such personnel to perform their duties by refusing them upon proper identification or presentation of a written order of the Department, entrance to any premises at reasonable hours.

7:27-8.26 Civil or criminal penalties for failure to comply

Any person who is subject to the provisions of this chapter and who fails to conform to its requirements may be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 or criminal penalties pursuant to N.J.S.A. 2C-28.3 or both.

(a)

DIVISION OF ENVIRONMENTAL QUALITY Noise Control

Proposed Readoption: N.J.A.C. 7:29

Authorized By: Helen Fenske, Acting Commissioner,

Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq., 13:1G-1 et seq.

DEP Docket Number: 001-90-01.

Proposal Number: PRN 1990-69.

Submit written comments by March 7, 1990 to:

Stephen Tarnowski

Department of Environmental Protection

Division of Regulatory Affairs

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of this proposal is to readopt, without change, the existing Noise Control rules, N.J.A.C. 7:29 ("rules"). The current text of the rules will expire on March 31, 1990 pursuant to provisions of Executive Order No. 66 (1978), commonly referred to as the "sunset" executive order. After internal review of the noise control program, the Department finds the continuation of the rules is necessary to assure proper noise abatement in the State of New Jersey.

In 1971, the Legislature declared in the Noise Control Act, N.J.S.A. 13:1G-2, that the people of the State are entitled to and should be insured of an environment free from noise which unnecessarily degrades the quality of life; that the levels of noise in the community have reached such a degree as to endanger the health, safety and welfare of the people of this State as well as the integrity of the environment; and that this threat can be abated by the adoption and enforcement of noise standards embodied in rules.

A brief description and explanation of the substantive sections of the rules follow:

Subchapter 1, General Provisions, includes the following sections:

N.J.A.C. 7:29-1.1, Definitions, defines the words needed to implement the chapter.

N.J.A.C. 7:29-1.2, Industrial, commercial, public service, or community service facilities. This section establishes the sound level standards allowed to emanate from industrial, commercial, public service or community service facilities as they are received at residential or commercial properties during daytime hours (7:00 A.M. to 10:00 P.M.) and nighttime hours (10:00 P.M. to 7:00 A.M. the next day). The section defines standards in general sound levels (dba), octave bands (dB) or impulsive sound.

N.J.A.C. 7:29-1.3, Stationary emergency signaling devices, establishes standards controlling the noise from "stationary emergency signaling devices" (fire and first aid sirens, horns, whistles).

N.J.A.C. 7:29-1.4, Exceptions, establishes exemptions from the requirements of the chapter which include:

1. Agriculture;

2. Bells, chimes or carillons while being used in conjunction with religious services;
3. Emergency energy release devices;
4. Emergency work to provide electricity, water or other public utilities when public health or safety is involved;
5. Motor vehicle race tracks;
6. National Warning System (NAWAS): Systems used to warn the community of attack or imminent public danger such as flooding or explosion. These systems are controlled by the New Jersey Office of Emergency or Hazardous Spill Management, Division of State Police;
7. Noise of aircraft flight operations;
8. Public celebrations;
9. Public roadways;
10. Surface carriers engaged in commerce by railroad;
11. The unamplified human voice; and
12. Use of explosive devices: These are regulated by the New Jersey Department of Labor under the 1960 Explosive Act N.J.S.A. 21:1A-1 et seq.

N.J.A.C. 7:29-1.5, Performance test principle. This section states that test equipment methods and procedures for the purpose of measuring sound shall comply with N.J.A.C. 7:29B-1, Test Methods and Procedures.

Social Impact

The Noise Control rules provide the necessary standards that control noise from industrial, commercial, public service, and community service facilities. During the 16 years of enforcing this chapter, \$10 to \$12 million in abatement practices have been introduced. This has caused hundreds of communities surrounding noise sources to be from two to 13 dBA quieter than they would be if the noise control rules had not been implemented.

The readoption of this chapter will ensure that additional communities surrounding existing or additional noise sources will be quieter and in keeping with the environment envisioned by the State's Noise Control Act.

Economic Impact

This chapter will have little or no economic impact on persons complying with the noise level standards without abatement. However, persons exceeding the noise standards and subject to this chapter would have to have their facility evaluated to determine noise abatement strategies. Typically, an acoustical consultant charges \$700.00 to \$1,000 per day. The abatement strategy to control a single noise producing element in a facility would take perhaps a half day to one full day to evaluate. Facilities with multiple sources would require a more extensive evaluation.

The actual abatement practice could range from a simple noise barrier costing a few hundred dollars to a multi-stepped, phased abatement plan that introduces barriers as path controls or treatments of the source of noise. During the 16 years the Department has been involved with abatement, abatement costs have ranged from a few hundred dollars to several hundred thousand dollars per facility.

The range of cost depends on the number of individual sources of noise, the corresponding sound levels, the distance between these sources and the receiving properties, reflective and absorptive surfaces nearby, etc.

Environmental Impact

The readoption of this chapter will provide the Department with the continued authority to assure the abatement of noises from the facilities controlled. The Legislature has declared in the Noise Control Act of 1971, N.J.S.A. 13:1G-2, that the citizens of the State are entitled to be protected from noise that endangers the health, safety and welfare of the people of the State and the integrity of the environment. This chapter provides the mechanism to cause abatement of the noise impacts from facilities and thereby achieve the legislative purpose.

Regulatory Flexibility Analysis

The readoption of the chapter would apply to all commercial, industrial, public service, and community service facilities as defined in N.J.A.C. 7:29-1.1. Some of these regulated groups may be classified as small businesses as defined in the New Jersey Flexibility Act, N.J.S.A. 52:14B-16 et seq. This chapter would not impose any reporting or record keeping requirements on such businesses. However, both large and small businesses subject to this chapter must comply with its requirements since these compliance requirements have been established by the Department to protect human health, welfare and the environment. It has been the experience of the Department that small as well as large businesses have the ability to create noise in violation of this chapter. The Department

has weighed the impact of the chapter on small business and has concluded that the potential health impact and environmental damage outweigh the burden of the chapter. Therefore, no small business exemption from this chapter is provided.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:29.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Notice of Administrative Correction and Extension of Comment Period

Diagnosis Related Groups

Proposed Amendment: N.J.A.C. 8:31B-5.3

Take notice that the Department has discovered errors in the proposal published in the December 18, 1989 New Jersey Register at 21 N.J.R. 3873(b). DRGs (318) through (332) of Major Diagnostic Category 11 were inadvertently omitted from the publication of the proposal in the New Jersey Register. The Department is, therefore, issuing this notice of correction, pursuant to N.J.A.C. 1:30-2.7.

The Department will receive comments on the following DRGs and trim points until March 7, 1990. Comments should be submitted to:

Pamela Dickson, Assistant Commissioner
 Health Planning and Resources Development
 New Jersey Department of Health
 CN 360
 Trenton, N.J. 08625

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

8:31B-5.3 List of Diagnosis Related Groups

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

(c) A table of Diagnosis Related Group follows:

MAJOR DIAGNOSTIC CATEGORY 01 through 10 (No change.)

MAJOR DIAGNOSTIC CATEGORY 11: DISEASES AND DISORDERS OF THE KIDNEY AND URINARY TRACT

	OUTLIER TRIM POINT	
	LOW	HIGH
(302) Through (317) (No Change.)		
(318) KIDNEY & URINARY TRACT NEOPLASMS W CC	2	[32] 29
(319) KIDNEY & URINARY TRACT NEOPLASMS W/O CC	1	[11] 9
(320) KIDNEY & URINARY TRACT INFECTIONS AGE > 17 W CC	2	[32] 27
(321) (No Change.)		
(322) KIDNEY & URINARY TRACT INFECTIONS AGE <18	2	[11] 12
(323) URINARY STONES W CC, &/OR ESW LITHOTRIPSY	[2] 1	[11] 10
(324) URINARY STONES W/O CC	1	[7] 6
(325) KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	2	[22] 18
(326) KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	[2] 1	[12] 8
(327) (No Change.)		
(328) URETHRAL STRICTURE AGE >17 W CC	[2] 1	[19] 12
(329) URETHRAL STRICTURE AGE >17 W/O CC	1	[7] 5
(330) URETHRAL STRICTURE AGE <18	1	[5] 3
(331) OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	2	[27] 20
(332) OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	[2] 1	[15] 9
(333) Through (736) (No Change.)		

MAJOR DIAGNOSTIC CATEGORY 12 through 25 (No change.)

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

**Tuition Aid Grant Program
1990-91 Award Table**

Proposed Amendment: N.J.A.C. 9:7-3.2

Authorized By: Student Assistance Board, M. Wilma Harris,
Chairperson.

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.

Proposal Number: PRN 1990-52.

Submit comments by March 7, 1990 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment eliminates the 1988-89 Tuition Aid Grant (TAG) Award Table since it no longer represents current award payments to eligible students and adds a new TAG Award Table for payment of grants for the upcoming 1990-91 academic year. The proposed TAG Award Table for 1990-91 continues to provide percentages of tuition instead of actual award amounts. This format permits the Student Assistance Board and the Board of Higher Education to align award amounts for all New Jersey college sectors to those percentages when actual tuition levels and the program appropriation have been determined.

Social Impact

The proposed TAG Award Table provides for awards equal to full tuition for the neediest students at New Jersey public colleges and universities. Pursuant to N.J.S.A. 18A:71-47, the maximum award for students attending independent institutions of higher education is up to 50 percent of the average tuition normally charged students attending those institutions which has been recommended at \$4,000 for 1990-91. The awards to other students will reflect average tuition increases in the various sectors. The proposed TAG Award Table will allow the Student Assistance Board and the Board of Higher Education to assign award amounts in July immediately after the program appropriation and tuition levels for the various college sectors are known. This process will eliminate the necessity for emergency adoption of a revised TAG Award Table during the summer months. In addition, students will be notified promptly of the change in award values at a time when tuition payments are due.

Economic Impact

The proposed 1990-91 TAG Award Table continues to provide for the assignment of grant amounts in the various eligibility cells within the recommended appropriation in the Fiscal Year 1991 Budget Request and continued estimated funding through the Federal State Student Incentive Grant Program.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendment provides Tuition Aid Grant awards to eligible students attending New Jersey colleges and universities for the 1990-91 academic year.

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

9:7-3.2 Tuition Aid Grant award table

(a) The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs.

[1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1988-89
APPROXIMATE TUITION AID GRANT VALUES¹
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ ²	NJ Inst. of Tech.
Under 1500	100% of tuition	100% of tuition	40-50% ³	100% of tuition	100% of tuition
1500-2499	80-99%	80-99%	80-99%	85-99%	80-99%
2500-3499	50-79%	60-79%	70-79%	70-84%	70-79%
3500-4499	Minimum	50-59%	60-69%	60-69%	60-69%
4500-5499	0	30-49%	50-59%	50-59%	50-59%
5500-6499	0	Minimum	35-49%	35-49%	35-49%
6500-7499	0	0	25-34%	30-34%	30-34%
7500-8499	0	0	20-24%	Minimum	Minimum
8500-9499	0	0	Minimum	0	0
Over 9499	0	0	0	0	0

¹In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed \$400.00.

²Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

³Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY1989 Budget Request contains a recommended \$3,300.00 maximum award level in the independent sector for students with an NJEI under 1500. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award.]

[2.]1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1989-90
APPROXIMATE TUITION AID GRANT VALUES¹
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ ²	NJ Inst. of Tech.
Under 1500	100% of tuition	100% of tuition	40-50% ³	100% of tuition	100% of tuition
1500-2499	85-99%	80-99%	85-99%	85-99%	85-99%
2500-3499	70-84%	70-79%	75-84%	75-84%	75-84%
3500-4499	50-69%	60-69%	65-74%	65-74%	65-74%
4500-5499	Minimum	50-59%	55-64%	50-64%	50-64%
5500-6499	0	30-49%	45-54%	40-49%	40-49%
6500-7499	0	Minimum	35-44%	30-39%	30-39%
7500-8499	0	0	25-34%	20-29%	20-29%
8500-9499	0	0	15-24%	Minimum	Minimum
9500-10499	0	0	Minimum	0	0
Over 10499	0	0	0	0	0

¹In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed \$400.00.

²Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

³Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY1990 Budget Request contains a recommended \$3,700.00 maximum award level in the independent sector for students with an NJEI under 1500[2].

2. TUITION AID GRANT (TAG) AWARD TABLE FOR 1990-91
APPROXIMATE TUITION AID GRANT VALUES'
NEW JERSEY COLLEGES AND UNIVERSITIES

CORRECTIONS

(c)

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ	NJ Inst. of Tech.
Under 1500	100% of tuition	100% of tuition	40-50% ¹	100% of tuition	100% of tuition
1500-2499	85-99%	85-99%	85-99%	85-99%	85-99%
2500-3499	70-84%	75-84%	75-84%	75-84%	75-84%
3500-4499	50-69%	60-74%	65-74%	70-74%	70-74%
4500-5499	Minimum	50-59%	55-64%	60-69%	60-69%
5500-6499	0	30-49%	45-54%	50-59%	50-59%
6500-7499	0	Minimum	40-44%	40-49%	40-49%
7500-8499	0	0	30-39%	25-39%	25-39%
8500-9499	0	0	20-29%	Minimum	Minimum
9500-10499	0	0	Minimum	0	0
Over 10499	0	0	0	0	0

¹In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed \$400.00.

²Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

³Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY1991 Budget Request contains a recommended \$4,000.00 maximum award level in the independent sector for students with an NJEI under 1500.

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Extension of Comment Period

Proposed New Rules: N.J.A.C. 10:121

Adoptions

Take notice that the comment period for the proposed new rules published in the New Jersey Register at 21 N.J.R. 3047(b) has been reopened. The comment period will be open from February 5, 1990 to March 7, 1990.

Submit comments by March 7, 1990 to:
Kathryn A. Clark, Esq.
Division of Youth and Family Services
CN 717
1 South Montgomery St.
Trenton, N.J. 08625

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Extension of Comment Period

Proposed New Rules: N.J.A.C. 10:123-1

Income Schedule for Financial Eligibility for Social Services Programs

Take notice that the comment period for the proposed new rules published in the New Jersey Register at 21 N.J.R. 2438(a) has been reopened. The comment period will be open from February 5, 1990 to March 7, 1990.

Submit comments by March 7, 1990 to:
Mary Ann Earhart
Office of Adult and County Social Services
Division of Youth and Family Services
CN 717
1 South Montgomery St.
Trenton, N.J. 08625

THE COMMISSIONER

**Medical and Health Services
Special Medical Units**

Reproposed Repeal and New Rules: N.J.A.C. 10A:16-11

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

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

Proposal Number: PRN 1990-46.

Submit comments by March 7, 1990 to:
Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Corrections proposed and adopted N.J.A.C. 10A:16-11, Special Medical Unit, to provide guidelines specifically for the Special Medical Unit at the New Jersey State Prison. Subsequent to the adoption of this subchapter, a Special Medical Unit has been established at the Edna Mahan Correctional for Women. The Department of Corrections presently has two Special Medical Units and other Special Medical Units may be established in the future.

The Department of Corrections proposed the repeal of N.J.A.C. 10A:16-11, Special Medical Unit, and new rules N.J.A.C. 10A:16-11, Special Medical Units, which appeared in the January 17, 1989, issue of the New Jersey Register at 21 N.J.R. 111(a). As a result of comments received and further consideration of A.I.D.S. related issues regarding administration of Special Medical Units, the Department of Corrections reproposes the repeal of and new rules for N.J.A.C. 10A:16-11, Special Medical Units, which provide guidelines for the operation of all Special Medical Units.

Social Impact

The reproposed repeal and new rules will provide for the specialized care of an increasing number of inmates who have been diagnosed with Acquired Immune Deficiency Syndrome. The rules provide the guidelines and the administrative flexibility necessary to operate the current Special Medical Units and any additional units, should the need arise.

Economic Impact

The reproposed repeal and new rules will have no immediate significant economic impact because additional funding is not required to implement or maintain the new rules. The Special Medical Units are funded as part of the overall budget of a given institution through the established Department/State budget process. Any increased costs will be related to the increased number of Acquired Immune Deficiency Syndrome diagnoses.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rules do not impose reporting, record keeping or other compliance requirements on small businesses. The reproposed repeal and reproposed new rules impact on inmates and the New Jersey Department of Corrections and have no significant effect on small businesses.

Full text of the rules reproposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10A:16-11.

Full text of the reproposed new rules follows:

SUBCHAPTER 11. SPECIAL MEDICAL UNITS

10A:16-11.1 Applicability

This subchapter shall be applicable to all Special Medical Units within the New Jersey Department of Corrections.

10A:16-11.2 Criteria for admission to a Special Medical Unit (S.M.U.)

(a) The Health Services Unit of the Office of Institutional Support Services (O.I.S.S.) shall authorize placement of inmates, who are

confirmed Acquired Immune Deficiency Syndrome (A.I.D.S.) cases, in a Special Medical Unit (S.M.U.) when:

1. Their condition does not require acute care hospitalization; but
2. The medical condition of the inmate precludes housing in other medical units within correctional facilities of the Department of Corrections.

10A:16-11.3 Authority of the Inter-Institutional Classification Committee (I.I.C.C.)

(a) Only male inmates that have been diagnosed and found to have Acquired Immune Deficiency Syndrome (A.I.D.S.) shall be assigned by the Inter-Institutional Classification Committee (I.I.C.C.) to a Special Medical Unit (S.M.U.) which houses male inmates.

(b) Female inmates that have been diagnosed and found to have Acquired Immune Deficiency Syndrome (A.I.D.S.) shall be assigned to the Special Medical Unit at the Edna Mahan Correctional Facility for Women.

10A:16-11.4 Special Medical Unit Classification Committee (S.M.U.C.C.)

(a) The members of the Special Medical Unit Classification Committee (S.M.U.C.C.) shall include, but are not limited to:

1. The chairperson;
2. A representative from the custody staff;
3. A representative from the professional staff;
4. A representative from the medical staff; and
5. A representative from the Office of Institutional Support Services (O.I.S.S.) professional staff.

(b) The Special Medical Unit Classification Committee (S.M.U.C.C.) shall review the assignment of an inmate to a Special Medical Unit (S.M.U.) to determine the program to which the inmate will be assigned.

(c) The Special Medical Unit Classification Committee (S.M.U.C.C.) is authorized to monitor an inmate's Special Medical Unit (S.M.U.) program, and conduct case and in-person reviews.

(d) The Special Medical Unit Classification Committee (S.M.U.C.C.) may permit or preclude an inmate's participation in programs depending upon the inmate's ability to participate without posing a security or clinical threat to the inmate's condition or, to the operation of a Special Medical Unit (S.M.U.).

(e) An inmate's case shall be reviewed:

1. At the completion of the period of orientation;
2. Every three months after orientation; or
3. More frequently than every three months, if deemed appropriate by a member of the Special Medical Unit Classification Committee (S.M.U.C.C.)

(f) Whenever necessary for appropriate decision making, the inmate will be required to appear before the Special Medical Unit Classification Committee (S.M.U.C.C.) unless the inmate refuses to appear without the use of force.

(g) Written decisions on all Special Medical Unit Classification Committee (S.M.U.C.C.) case reviews shall be placed in the inmate's classification folder and copies shall be forwarded to the inmate unless security considerations preclude such disclosures.

10A:16-11.5 Special Medical Unit (S.M.U.) staff

(a) The staff of a Special Medical Unit (S.M.U.) is comprised of:

1. The administrator in charge of the Special Medical Unit (S.M.U.);
2. The custody supervisor;
3. The custody staff; and
4. The professional services staff (for example, social workers, psychologists, chaplains and medical staff).

(b) The staff of a Special Medical Unit (S.M.U.) is responsible to the Special Medical Unit Classification Committee (S.M.U.C.C.) for program development, implementation and assessment.

(c) The concerns of both the custody and the professional services staff members shall be given equal consideration in decision making regarding the development of programs for a Special Medical Unit (S.M.U.)

10A:16-11.6 Orientation

(a) Upon assignment of an inmate to a Special Medical Unit (S.M.U.), the inmate shall begin a period of orientation and intense supervision which shall not exceed seven days. During this period, the inmate shall be assessed to determine the inmate's:

1. Clinical condition;
2. Attitude;
3. Level of cooperation; and
4. Willingness to work and participate in program activities.

(b) The assessment of the inmate shall be accomplished by:

1. The submission of daily progress reports by custody staff members to the custody supervisor for submission to the administrator in charge of the Special Medical Unit (S.M.U.); and

2. The submission of a written evaluation of the inmate, by the Special Medical Unit (S.M.U.) social worker and other staff members, to the Special Medical Unit Classification Committee (S.M.U.C.C.) at the completion of the orientation period.

(c) Within 24 hours following an inmate's placement in a Special Medical Unit, except when placement is made on a weekend or a holiday, the custody supervisor shall:

1. Familiarize the inmate with the rules of conduct within the Special Medical Unit (S.M.U.);

2. Provide the inmate with a copy of the Institution's Inmate Handbook;

3. Provide the inmate with the written rules and regulations of the Special Medical Unit (S.M.U.);

4. Determine if the inmate has any difficulties which require immediate referral for special medical or social services; and

5. Notify the social worker of the placement and convey any special instructions regarding the inmate.

(d) If an inmate is placed in a Special Medical Unit (S.M.U.) on a weekend or a holiday, the custody supervisor shall perform the tasks listed in (c) above within 24 hours following the weekend or holiday.

(e) Within 72 hours following an inmate's placement in a Special Medical Unit (S.M.U.), except when placement is made on a weekend or a holiday, the social worker shall review with the inmate the assignment of the inmate to the Special Medical Unit and any unique problems referred by the custody supervisor which require immediate attention.

(f) If an inmate is placed in a Special Medical Unit (S.M.U.) on a weekend or holiday, the social worker shall, within 72 hours following the weekend or holiday, review with the inmate the assignment of the inmate to the Special Medical Unit and any unique problems referred by the custody supervisor which require immediate attention.

(g) The Professional Service staff shall be advised by the custody supervisor that an inmate has been assigned to the Special Medical Unit (S.M.U.). The social worker shall meet with the newly assigned inmate during orientation and advise the inmate of the programs and services available within the S.M.U.

(h) During orientation, the newly assigned inmate shall be permitted to participate in Special Medical Unit (S.M.U.) activities while his or her program is being developed. Any limitations determined at the time of the inmate's admission to the S.M.U., by the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services or his or her designee, shall be considered during the development of the inmate's program.

(i) At the completion of the inmate's orientation, the Special Medical Unit Classification Committee (S.M.U.C.C.) shall review and approve or disapprove the continuation of the program developed for the inmate upon admission to the Special Medical Unit (S.M.U.).

10A:16-11.7 Personal items

(a) During orientation, all of the inmate's personal belongings shall be thoroughly searched and returned to the inmate within 24 hours unless extenuating circumstances exist (for example, transfers from another correctional facility, major disturbances, etc.).

(b) All contraband, including razors and spoons, shall be removed from the inmate's possession.

(c) Decisions regarding items not permitted for retention within the Special Medical Unit (S.M.U.) shall be made in accordance with N.J.A.C. 10A:1-11, Personal Property of Inmates.

10A:16-11.8 Work opportunities

(a) Each inmate shall be afforded an opportunity to participate in a work program designed to respond to the needs of the inmate and the Special Medical Unit (S.M.U.). The custody supervisor shall familiarize the inmate with the work program during the initial orientation interview.

(b) The administrator in charge of the Special Medical Unit (S.M.U.) and/or the custody supervisor may, at his or her discretion, devise other work opportunities in which the inmate may participate upon approval by the special Medical Unit Classification Committee (S.M.U.C.C.).

(c) An inmate shall receive the work assignment of cell sanitation upon initial assignment to a Special Medical Unit (S.M.U.). Each inmate shall be responsible for the cleanliness of his or her cell. Cleaning equipment shall be provided for the inmate to clean his or her cell at least once per week.

(d) Commutation and work time credits shall be given to inmates pursuant to N.J.A.C. 10A:9-5, Commutation and Work Time.

(e) Inmates shall be paid for work assignments in accordance with the established inmate wage scale.

(f) At the beginning of each three months of assignment to a Special Medical Unit (S.M.U.), every inmate shall be given the opportunity to confirm his or her continuation in the work program via an in-person work review with the Special Medical Unit Classification Committee (S.M.U.C.C.).

(g) Removal and lay-in action from the work program may be initiated by the custody supervisor or by the Special Medical Unit (S.M.U.) officers. Removal and lay-in action from the work program shall be reviewed by the Special Medical Unit Classification Committee (S.M.U.C.C.) for appropriate confirmation.

10A:16-11.9 Community release activities

Any inmate with confirmed Acquired Immune Deficiency Syndrome (AIDS) which status is either active or in remission is not eligible for community release activities (such as, furloughs, work release, residential release, etc.).

10A:16-11.10 Disciplinary action within a Special Medical Unit (S.M.U.)

(a) The Department of Corrections' Inmate Discipline Program shall be in full force and effect in a Special Medical Unit (S.M.U.). Any restrictions of privileges placed upon an inmate in a Special Medical Unit (S.M.U.) shall be in accordance with N.J.A.C. 10A:4, Inmate Discipline.

(b) Disciplinary action initiated by any staff member shall be referred to the Disciplinary Hearing Officer/Adjustment Committee and, where appropriate, to the Special Medical Unit Classification Committee (S.M.U.C.C.) for confirmation.

10A:16-11.11 Psychological and social work services

Crisis intervention, problem solving and short and long term counseling programs shall be provided within a Special Medical Unit (S.M.U.) on an individual and/or congregate level.

10A:16-11.12 Medical Services

(a) The Office of Institutional Support Services (O.I.S.S.) Health Services Unit shall provide the following services to a Special Medical Unit (S.M.U.):

1. Medical examinations and treatment as prescribed by the consultant physician and approved by the O.I.S.S. Director of Medical Services;

2. Ancillary contract services as needed;

3. Liaison services between the O.I.S.S. Health Services Unit and the Medical Department of the correctional facility by the O.I.S.S. Health Services Unit Nursing Supervisor; and

4. Dental services by contracted consultants.

(b) Routine medication dispensing and emergency medical support, to include psychiatric services, shall be provided by the Medical Department of the correctional facility.

(c) Daily sick call shall be conducted by a physician or other qualified health personnel at the correctional facility.

10A:16-11.13 Religion

Spiritual programs and counseling shall be provided to inmates in a Special Medical Unit (S.M.U.) on an individual and congregate basis.

10A:16-11.14 Legal activities

(a) Each inmate shall have access to an Inmate Law Library and to legal assistance consistent with the program needs of the Special Medical Unit (S.M.U.) to which the inmate is assigned.

(b) The Education Department of the correctional facility shall coordinate the needs of inmates for legal materials with the paralegal representative (if assigned). The inmate paralegal shall conduct interviews with inmates in an appropriately suited area determined by the administrator in charge of the Special Medical Unit (S.M.U.).

(c) Attorneys and court related personnel shall be granted contact visits with a Special Medical Unit (S.M.U.). Such visits must be approved and pre-scheduled by the administrator in charge of the Special Medical Unit (S.M.U.) 24 hours in advance of the visit by calling the Special Medical Unit (S.M.U.) office Monday through Friday during regular working hours.

(d) Visits of attorneys and court related personnel shall be conducted in a room or area designated by the administrator in charge of the Special Medical Unit (S.M.U.). No staff member shall monitor the conversations between an inmate and his or her attorney(s).

10A:16-11.15 Recreation

Inmates in a Special Medical Unit (S.M.U.) shall be permitted exercise and recreation activity to the extent of their physical abilities to participate, dependent upon medical factors as determined by the Director of Medical Services of the Department of Corrections and the attending physician(s).

10A:16-11.16 Correspondence, legal correspondence, publications and packages

(a) Inmates in a Special Medical Unit shall receive and forward correspondence, publications and packages in accordance with:

1. N.J.A.C. 10A:18-2, Correspondence;
2. N.J.A.C. 10A:18-3, Legal Correspondence;
3. N.J.A.C. 10A:18-4, Publications; and
4. N.J.A.C. 10A:18-5, Packages.

10A:16-11.17 Visits

(a) Visits to a Special Medical Unit shall be approved, scheduled or disapproved in accordance with N.J.A.C. 10A:18-6, Visits, and the written rules and regulations of the Special Medical Unit.

(b) Special Medical Units provide for contact visits only.

(c) In the event that an inmate or a visitor violates the rules and regulations pertaining to visits as outlined in N.J.A.C. 10A:18-6, Visits, or in the written rules and regulations of a Special Medical Unit, the administrator in charge of the Special Medical Unit (S.M.U.), the custody supervisor, or their designees may discontinue the visit and initiate disciplinary measures. The Special Medical Unit Classification Committee (S.M.U.C.C.) may approve, disapprove or restrict a visitor should either the inmate or the visitor fail to adhere to the rules of the visit program.

10A:16-11.18 Telephone calls

Inmates in a Special Medical Unit may use public telephones in accordance with N.J.A.C. 10A:18-8, Telephone, and written regulations of the Special Medical Unit (S.M.U.).

10A:16-11.19 Congregate activities

(a) Congregate activities shall be developed during the inmate's orientation process with specific consideration for physical disabilities and infection control guidelines.

(b) The Special Medical Unit Classification Committee (S.M.U.C.C.) may, at its discretion, approve an inmate for participation in any one or all congregate activities.

(c) The Special Medical Unit Classification Committee (S.M.U.C.C.) may also rescind the inmate's participation in congregate activities should the inmate fail to cooperate in the program, or the S.M.U.C.C. may temporarily restrict the inmate's participation in congregate activities because of physical illness.

10A:16-11.20 Food

(a) All meals in a Special Medical Unit (S.M.U.) shall be prepared and served in accordance with the Food Service System of the correctional facility as approved by the Office of Institutional Support Services (O.I.S.S.).

(b) Inmates in a Special Medical Unit (S.M.U.) shall be served the normal correctional facility meals on the "Menu of the Day" or such special diet that is prescribed by the medical staff.

10A:16-11.21 Showers

(a) Each inmate in the general population of a Special Medical Unit (S.M.U.) shall be permitted to shower once daily.

(b) Each inmate in Disciplinary Detention within a Special Medical Unit (S.M.U.) shall be permitted to shower once every other day.

10A:16-11.22 Haircuts

(a) Each inmate shall be afforded an opportunity to have a haircut once monthly. Each inmate desiring a haircut must place his or her name on the barber's list.

(b) All haircutting equipment shall be monitored while in use and secured when not in use.

10A:16-11.23 Reading material

(a) Reading material shall be made available for inmates assigned to a Special Medical Unit (S.M.U.).

(b) Inmates may obtain reading material by submitting their requests to the social worker.

10A:16-11.24 Training

(a) The Office of Institutional Support Services (O.I.S.S.) Director of Medical Services shall be responsible for ensuring that a program of training is provided to all staff and inmates concerning infection control and isolation precautions which include:

1. Use of protective garments;
2. Personal hygiene; and
3. Accident reporting.

(b) All new staff and inmates shall receive training upon assignment to a Special Medical Unit (S.M.U.).

(c) The training program shall be reviewed and updated as is deemed advisable by the Director of Medical Services, Health Services Unit of the Office of Institutional Support Services (O.I.S.S.).

10A:16-11.25 Program assessment reports

(a) The staff of a Special Medical Unit (S.M.U.) must submit to the administrator in charge of the Special Medical Unit (S.M.U.) a progress report for each inmate assigned to the S.M.U.

(b) Shift officers designated by the custody supervisor shall complete a progress report on each inmate daily during the orientation period, and every three months for the remaining time the inmate is assigned in the Special Medical Unit (S.M.U.).

(c) The custody supervisor shall review the progress reports submitted by the correction officers and submit these reports to the administrator in charge of the Special Medical Unit (S.M.U.) at the completion of the orientation period.

(d) The administrator of a Special Medical Unit (S.M.U.) shall make program assessment reports available to the Special Medical Unit Classification Committee (S.M.U.C.C.) for all scheduled routine reviews, which occur every three months after the period of orientation.

(e) The professional staff of a Special Medical Unit (S.M.U.) shall complete and forward to the Special Medical Unit Classification Committee (S.M.U.C.C.) a progress report on each inmate at the completion of the orientation period, and every three months thereafter for the scheduled inmate routine review.

10A:16-11.26 Procedures and post orders

(a) Each correctional facility which has a Special Medical Unit (S.M.U.) shall develop written procedures and post orders for the Special Medical Unit (S.M.U.) that are consistent with this subchapter.

(b) Special Medical Unit (S.M.U.) procedures and post orders shall be reviewed and dated annually.

(c) Post orders shall be submitted before September 15 of each year to the appropriate Assistant Commissioner, and to the Office of the Deputy Commissioner for review and approval.

(a)

THE COMMISSIONER**Manual of Standards for Juvenile Detention Facilities****Proposed Readoption: N.J.A.C. 10A:32**

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

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

Proposal Number: PRN 1990-62.

Submit comments by March 7, 1990 to:

Elaine W. Ballai, Esq.

Special Assistant for Legal Affairs

Department of Corrections

CN 863

Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 10A:32 generally provides the rules which establish the minimum requirements for the physical facilities and the administration of programs and services to juveniles admitted to county operated juvenile detention facilities. N.J.A.C. 10A:32 became effective on March 4, 1985 for a period of five years, which expires on March 4, 1990. The Department of Corrections proposes to readopt N.J.A.C. 10A:32 without change at this time. The rules are reviewed, on an ongoing basis to identify any need for future revisions.

The readoption of N.J.A.C. 10A:32 will provide for the continued establishment of the minimum requirements for the planning, design and construction of new county juvenile detention facilities or the renovation of existing county juvenile detention facilities. The readoption of these rules will continue the authorization of the Department of Corrections to inspect county juvenile detention facilities and monitor the extent of compliance with these rules as they relate to the intake and admission of juveniles, the preparation and maintenance of reports and records, the maintenance of security and discipline, the provision of physical care, the administration of programs and services and the utilization of personnel.

Social Impact

Readoption of these rules will ensure that secure custody, in an atmosphere which is as non-threatening as possible, is provided for juveniles who are deemed a threat to the physical safety of the community and/or whose confinement is necessary to ensure the juveniles' presence at the next court hearing.

Economic Impact

The readoption of N.J.A.C. 10A:32 should not result in any new economic impact on the counties or the public because no requirements have been added to these rules which would require additional financial resources to achieve compliance with these rules.

However, the costs of meeting and maintaining the standards which are established by these rules have been carried by the counties through their established budgeting process and by the Department in so far as monies are allocated for enforcement purposes.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed readoption does not impose reporting, record keeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption impacts on county freeholders, juveniles and staff at juveniles detention facilities and the New Jersey Department of Corrections and has no effect on small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:32.

INSURANCE

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Notice of Pre-Proposed Rulemaking and Joint Public Hearings

Compensation to Real Estate Licensees for Placing Mortgage Loans

Authorized By: New Jersey Real Estate Commission,
Daryl G. Bell, Executive Director.

Authority: N.J.S.A. 45:15-3, 6, 16 and 17: *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986) (remanded).

OAL Docket Number: BRE 228-87.

Pre-Proposal Number: PPR 1990-3.

Take notice that, pursuant to the remand order of the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), the Office of Administrative Law will conduct joint public hearings for the Department of Insurance, Division of the Real Estate Commission, and the Department of Banking wherein the administrative law judge will receive and consider oral and written comment and draft proposed rules from the public, the Public Advocate, the real estate industry, the banking industry, the Department of Banking and the Real Estate Commission, and will recommend appropriate regulation of the mortgage financing activities of real estate licensees and of lenders and mortgage banking and broker licensees under the Real Estate Licensing Law, N.J.S.A. 45:15-1 et seq. and the Mortgage Bankers and Broker's Act, N.J.S.A. 17:11B-1 et seq., to protect real estate consumers and further the public interest.

The public hearings concerning this pre-proposed rulemaking will be held at the following times and locations:

Wednesday, February 21, 1990 at 10:00 A.M.

Office of Administrative Law

185 Washington Street

Newark, New Jersey

(Overflow Date: Thursday, February 22, 1990, only if needed)

Wednesday, March 14, 1990 at 10:00 A.M.

Office of Administrative Law

Quakerbridge Plaza

Building 9

Trenton (Hamilton Township), New Jersey

(Overflow Date: Thursday, March 15, 1990, only if needed)

Interested persons wishing to make oral comments at the public hearings should appear and register to speak either on February 21, 1990 in Newark or on March 14, 1990 in Trenton. An overflow hearing has been scheduled on the immediately following day in each location (February 22 in Newark and March 15 in Trenton) to accommodate any persons who appear and register to speak, but who are not reached on the primary hearing dates. No hearing will be conducted on the overflow days if all registered persons have been reached on the primary days.

Written comments or draft proposed rules should be submitted by March 30, 1990 to:

The Honorable Arnold Samuels, ALJ

Office of Administrative Law

185 Washington Street

Newark, New Jersey 07102

All written material submitted should contain the following OAL Docket Number: OAL Dkt. No. BRE 228-87.

Background

The need for such regulation has arisen in the context of a variety of recent innovations in the delivery of residential home mortgage financing products and services to the home-buying public. In particular, over the past several years, a number of real estate licensees have proposed or formed financial and contractual relationships with mortgage lenders whereby a real estate buyer may obtain mortgage financing through the affiliated lender, and the real estate broker or, in some cases, salesperson may receive various fees for each loan placed or dividends or other returns on investment from the affiliated lender. Other estate brokers are participating with mortgage loan selection and origination, in real estate brokerage offices. Pursuant to a remand by the New Jersey Supreme Court

in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), public hearings are now scheduled to solicit public comments on appropriate regulation of the mortgage financing activities of real estate licensees and mortgage banking and broker licensees. (A plenary, declaratory ruling hearing, governing the proper interpretation of the Real Estate Licensing Law, N.J.S.A. 45:15-17i, was completed in November 1989.)

Issues

The hearings related to Real Estate are intended to consider the following specific topics or areas of discussion and other related areas, including those within the purview of the Department of Banking.

1. What are the various financial and contractual relationships which exist between real estate licensees and mortgage lenders in New Jersey?

2. Do any of the financial relationships between New Jersey real estate licensees and mortgage lenders constitute violations of N.J.S.A. 45:15-17i, when mortgage services are provided to the buyer in the same transaction, where a sales commission is received from the seller?

3. What regulation of the mortgage financing activities of real estate licensees would be appropriate and in the public interest under Real Estate Licensing Law? For example:

(a) Have particular problem areas been identified in the hearing which should be addressed by regulation?

(b) Would regulations requiring written disclosure of the financial relationships between a real estate licensee and a mortgage lender benefit the involved consumer?

(c) Can the provisions of the Federal Real Estate Settlement Procedures Act (RESPA) and its regulations serve as a model for state regulation of these activities?

(d) Would it be appropriate for agency regulations to differentiate between commercial and residential real estate transactions?

(b)

OFFICE OF SURPLUS LINES

Exportable List

Proposed New Rules: N.J.A.C. 11:1-32

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.40 et seq., 52:14B-1 et seq.

Proposal Number: PRN 1990-67.

Submit comments by March 7, 1990 to:

Verice M. Mason, Assistant Commissioner

Legislative and Regulatory Affairs

New Jersey Department of Insurance

20 West State Street

CN-325

Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 17:22-6.43 provides that the Commissioner of Insurance ("Commissioner") may declare eligible for export certain lines or classes of insurance for which, after a hearing, he or she determines that there exists no reasonable or adequate market among authorized carriers in New Jersey. This list of lines or classes of insurance is known as the exportable list and has been promulgated by the Department of Insurance ("Department") on a yearly basis.

Among other things, the list allows certain insurers writing commercial coverages to be exempt from the rate- and form-filing requirements of N.J.S.A. 17:29AA-1 et seq., and relieves insurance brokers of the burden of filing declinations in cases where it can be acknowledged that an adequate and reasonable market does not exist. The list also enables admitted insurers to write certain coverage without regard to rate filings which may otherwise be applicable to such insurers.

The Department proposes these new rules in order to clarify, publicize and formalize the hearing procedures concerning the exportable list, and provide for the promulgation of the exportable list as a rule pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., rather than by publication of a public notice in the New Jersey Register. In addition, the proposed new rules seek to amend and add certain items to the list. Lastly, the proposed new rules update the current list of eligible

surplus lines insurers which is found in Appendix B-1 of Title 11 of the New Jersey Administrative Code.

The current list was published in the October 17, 1988 New Jersey Register at 20 N.J.R. 2596(b) with corrections to such list published in the December 5, 1988 Register at 20 N.J.R. 3029(e). The proposed exportable list contains four modifications to the current list. The first modification is an expansion of the current item #16 to all coverages for fleets instead of the restricted application to only physical damage coverage. In addition, the definition of "non-fleet" would change from one to five vehicles to one to nine vehicles. This amendment would serve to open up the commercial market and further the Department's policy of depopulating the Commercial Automobile Insurance Plan.

The second modification is an alteration to the current item #21 on the list which would, rather than list all of the classes of professional liability and errors and omissions risk or coverage eligible for export, list those classes that are not exportable. This amendment would serve to reduce any uncertainty as to the types of risks or coverages that are or are not included as exportables and would reflect the modern industry practice of not distinguishing a professional liability policy from an errors and omissions policy.

The third modification would add a new item to the exportable list, namely, large risk. As defined in these proposed new rules, this addition would acknowledge the difficulty that large risks insureds have in obtaining coverage from the admitted market.

The fourth modification would add another new item to the list, namely, specific excess and aggregate excess medical coverage for self-insured medical employee benefit plans. Currently, the admitted market does not provide such coverage on a "stand alone" basis.

N.J.A.C. 11:1-32.1 sets forth the purpose of these proposed new rules.

N.J.A.C. 11:1-32.2 defines the terms used throughout this subchapter.

N.J.A.C. 11:1-32.3 sets forth the procedures for an exportable list hearing.

N.J.A.C. 11:1-32.4 sets forth the contents of the exportable list hearing record.

N.J.A.C. 11:1-32.5 sets forth provisions for the promulgation and modification of the exportable list.

N.J.A.C. 11:1-32.6 sets forth the class or classes of risk or coverage proposed by these rules to constitute the exportable list.

Social Impact

The promulgation of hearing procedures will ensure that all interested persons are appraised of the exportable list hearing and related procedures and are able to participate fully in the creation of an exportable list. These interested persons are likely to include licensed surplus lines agents, eligible surplus lines carriers, insurance brokers and authorized property and casualty carriers.

Economic Impact

The proposed new rules codify existing Department procedure and thus will not require additional staff, nor require that present staff assume new duties.

The proposed new rules will have no economic impact on insurers, insurance producers or the general public since they merely codify existing hearing procedures and do not create or establish substantive rights or obligations.

Regulatory Flexibility Statement

The proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses as that term is defined in N.J.S.A. 52:14B-1 et seq. since it only codifies the Department's existing hearing procedures. Accordingly, a Regulatory Flexibility Analysis is not required.

Full text of the proposed new rules follows:

SUBCHAPTER 32. SURPLUS LINES: EXPORTABLE LIST

11:1-32.1 Purpose

The purpose of this subchapter is to identify the procedures concerning the creation and modification of an exportable list of certain classes of insurance risks and coverages, and to promulgate the list as a rule, in implementation of N.J.S.A. 17:22-6.43.

11:1-32.2 Definitions

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

"Authorized insurer" means a domestic or foreign insurer duly authorized by a Certificate of Authority issued by the Commissioner to transact the business of insurance in this State.

"Commissioner" means the Commissioner of Insurance of the State of New Jersey.

"Department" means the Department of Insurance of the State of New Jersey.

"Exportable list" means a list of insurance coverages or risks declared and promulgated by the Commissioner for which there is no reasonable or adequate market among authorized insurers.

"State" means the State of New Jersey.

"Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.41 et seq. (see Appendix A to this subchapter, incorporated herein by reference).

11:1-32.3 Exportable list hearing

(a) On or about December 1 of each year, the Department shall hold a hearing, pursuant to N.J.S.A. 17:22-6.43, for the purpose of determining the inexistence of a reasonable or adequate market among authorized insurers for certain property and casualty insurance coverages and risks.

1. This hearing shall be preceded by a notice of hearing published in the New Jersey Register at least 30 days prior to the date of the hearing, which notice shall include information concerning the date by which and the person to whom written public comment may be made. Notice shall be provided to persons who have previously requested receipt of such notice.

2. The notice published in the New Jersey Register and otherwise provided pursuant to (a) above shall also request that persons who wish to testify at the hearing provide the Department with timely notice of this intention, including brief summary of the subject matter of their testimony.

3. The notice shall indicate whether the hearing will include discussion of the desirability or undesirability of maintaining each class of coverage or risk currently on the list, or whether the hearing will consider only testimony and public comment regarding the addition, deletion or clarification of a class of coverage or risk to or from the list.

(b) The hearing shall be conducted by a hearing officer designated by the Commissioner. The length of testimony permitted at the hearing and the receipt of questions from the floor shall be within the discretion of the hearing officer.

(c) A transcript of the hearing shall be made and a copy thereof shall be made available to any interested person upon request and payment of an appropriate fee.

11:1-32.4 Exportable list hearing record

(a) The record of the hearing shall include the following:

1. Timely received written public comment;
2. The transcript of the hearing; and
3. Any other information which the Department may deem relevant.

11:1-32.5 Promulgation and modification of exportable list

(a) Upon review of the exportable list hearing record, the Commissioner shall, by rules adopted pursuant to the Administrative Procedure Act, declare eligible for export generally, and notwithstanding the provisions of N.J.S.A. 17:22-6.43(a), (b) and (c), any class or classes of insurance coverage or risk for which he or she finds there is no reasonable or adequate market among authorized insurers; provided, however, that if adequate documentary evidence has been presented which satisfies the Commissioner that a reasonable or adequate market does exist among authorized insurers, he or she may, by rules adopted pursuant to the Administrative Procedure Act, strike any class or classes of insurance coverage from the exportable list.

(b) When, during the term of a duly promulgated exportable list, the Commissioner determines that changed conditions require a modification of the exportable list, he or she shall, after a hearing, by a duly promulgated rule, amend the list.

1. Notice of the Commissioner's action shall be provided to all surplus lines agents, eligible surplus lines insurers, authorized insurers and others who have previously requested receipt of such information.

11:1-32.6 Current exportable list

- (a) The current exportable list is as follows:
1. Amusement Devices, Parks and Carnivals;
 2. Animal Mortality;
 3. Armored Cars;
 4. Auto Racing and Race Tracks;
 5. Day Care Center Liability;
 6. Differences on Condition;
 7. Environmental Impairment Liability Insurance;
 8. Excess and Buffer Liability;
 9. Excess Loss and Excess Aggregate for Self-Insurers; Public Liability and Worker's Compensation;
 10. Fine Arts Dealers;
 11. Golf Driving Range;
 12. First Loss and Excess of First Loss Insurance;
 13. House Movers and Building Demolition;
 14. Kidnapping and Ransom Insurance;
 15. Manufacturers and Contractors Liability for Floor Waxes, Building Maintenance People, Window Washers and Exterminators;
 16. "Large Risks" which mean any insured:
 - i. Which procures insurance of any risk by use of the services of an employee who is a full-time insurance manager or buyer or the service of a regularly and continuously retained qualified insurance consultant; and
 - ii. Whose aggregate commercial premiums for insurers (excluding, Life, Accident and Health and workmen's compensation insurance) totals at least \$1 million;
 17. Limousine and Trucks (over 10,000 pounds) Physical Damage Coverage for Non-Fleet (one to nine), including trailers and trailer interchange, and all coverages for commercial fleet (over nine) risks irrespective of gross vehicle weight;
 18. Mortgage Impairment;
 19. Pony Rides/Riding Academies;
 20. Physical Damage Coverage for Private Passenger and Commercial Vehicles with Actual Cash Value over \$300,000;
 21. Products Liability and Products Recall Coverage;
 22. Professional Liability and Errors and Omissions except:
 - i. Legal malpractice liability and;
 - ii. Medical malpractice liability;
 23. Short Term Events;
 24. Skating Rinks (Roller and Ice) and Skateboard Parks;
 25. Specific Excess and Aggregate Excess Medical Coverage for Self-Insured Medical Employee Benefits Plans;
 26. Swim Clubs/Swim Pools;
 27. Vacant and Unoccupied Building;
 28. Warehouseman's Legal Liability.

AGENCY NOTE: The list of eligible surplus lines insurers found in Appendix B-1 of the "General Information" section of Title II is, by this proposal, recodified as Appendix A of this subchapter, and is reproduced below:

APPENDIX A

LIST OF UNAUTHORIZED INSURERS WHICH QUALIFY AS ELIGIBLE SURPLUS LINES INSURERS

The following is a list of unauthorized insurers which qualify as eligible surplus lines insurers in New Jersey.

<u>Companies of Other States</u>	<u>Location</u>
Agricultural Excess and Surplus Insurance Co.	Wilmington, DE
Allianz Underwriters, Inc.	Los Angeles, CA
American Empire Surplus Lines Insurance Co.	Wilmington, DE
Appalachian Insurance Co.	Johnston, RI
Associated International Insurance Co.	Los Angeles, CA
California Union Insurance Co.	Los Angeles, CA
Chesapeake Insurance Co.	Wilmington, DE
Columbia Casualty Insurance Co.	Chicago, IL
Evanston Insurance Co.	Evanston, IL

First State Insurance Co.	Wilmington, DE
General Agents Insurance Co.	Oklahoma City, OK
General Star Indemnity Co.	Stamford, CT
Gibraltar Casualty Co.	Dover, DE
Great Central Insurance Co.	Peoria, IL
The Home Insurance Co. of Illinois	Chicago, IL
International Surplus Lines Insurance Co.	Chicago, IL
Interstate Fire and Casualty Co.	Chicago, IL
Lexington Insurance Co.	Wilmington, DE
Lincoln Insurance Co.	Dover, DE
Mt. Hawley Insurance Co.	Peoria, IL
Mt. Vernon Fire Insurance Co.	King of Prussia, PA
National Indemnity Co.	Omaha, NE
Nautilus Insurance Co.	Scottsdale, AZ
New York Marine and General Insurance Co.	New York, NY
Pacific Insurance Co.	Los Angeles, CA
Penn-American Insurance Co.	Hatboro, PA
Preferred Physicians Insurance Co.	Omaha, NE
St. Paul Surplus Lines Insurance Co.	St. Paul, MN
Savers Property-Casualty Insurance Co.	Overland Park, KS
Scottsdale Insurance Co.	Scottsdale, AZ
Southern American Insurance Co.	Memphis, TN
T.H.E. Insurance Co.	Metairie, LA
Tudor Insurance Co.	Keene, NH
United Capital Insurance Co.	Stevens Point, WI
United National Insurance Co.	Phila., PA
Western World Insurance Co.	Keene, NH
Western Alliance Insurance Co.	Austin, TX

Companies of Other Countries

Anglo-American Insurance Co., Ltd.	London, England
Associated Electric and Gas Services, Ltd.	Hamilton, Bermuda
English and American Co., Ltd.	London, England
Lloyds Underwriters, Member of	London, England
Riunione-Adriatica Di Sicurita	Trieste, Italy
Sphere Insurance Co., Ltd.	London, England
Terra Nova Insurance Co., Ltd.	London, England

(a)

DIVISION OF ADMINISTRATION

Nonrenewal of Automobile Insurance Policies

Reproposed Repeal and New Rule: N.J.A.C. 11:3-8.4
Reproposed Amendment: N.J.A.C. 11:3-8.2

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

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:22-6.14(a)1, 2 and 3; 39:6A-3; 39:6A-7; 39:6A-7.1 and 39:6A-19.

Proposal Number: PRN 1990-66.

Submit comments by March 7, 1990 to:

Verice M. Mason, Assistant Commissioner
 Department of Insurance
 Legislative and Regulatory Affairs
 20 West State Street
 CN-325
 Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

Three 1988 amendments to the insurance statutes address the right of insurers to nonrenew automobile insurance policies. N.J.S.A. 17:29C-7.1(b) permits an insurer to nonrenew in each territory up to two percent of the policies in force at the end of the previous calendar year. N.J.S.A. 17:29C-7.1(c) permits an insurer to nonrenew an additional one automobile policy for each two newly insured automobiles voluntarily written in each territory, subject to a fair and non-discriminatory formula to be established by regulation. N.J.S.A. 17:29A-46 provides that insurers which adopt multi-tier rating plans must nonrenew risks that fail to meet their approved underwriting guidelines. This reproposed repeal, new rule and amendment conform current rules regarding nonrenewal of automobile insurance policies to the provisions of these new statutes.

The Department of insurance ("Department") previously proposed changes to its nonrenewal rules which were limited to implementing the

provisions of N.J.S.A. 17:29C-7.1(b) and (c) (see 21 N.J.R. 1306 (a)). Several written comments were received regarding that proposal. This repropoed repeal, new rule and amendment contains a number of changes from the previous proposal, many of which are based upon the comments received. These comments, and the Department's responses, are summarized below. The rules citations refer to the previous proposal.

COMMENT: Several commenters objected to the provision of N.J.A.C. 11:3-8.2(f)ii that would require a nonrenewal notice to contain the insurer's classification code regarding major driver characteristics. Most commenters stated that this requirement would be very difficult to administer, and that it would provide no valuable information to the insured.

RESPONSE: This requirement has been eliminated in the reproposal. It was previously included to improve Department oversight and enforcement of nonrenewal rules. A different form of oversight and enforcement is anticipated in the reproposal. Insurers will be required to keep certain records and file reports with the Department.

COMMENT: Several commenters objected to the provisions of N.J.A.C. 11:3-8.4(b)1, which would have required insurers to match major driver characteristics and vehicle use for automobiles nonrenewed pursuant to N.J.S.A. 17:29C-7.1(c). Many of the commenters stated that it would be very difficult to do so administratively. Several stated that, because of the number of separate major classes in each territory, they would lose a significant number of otherwise permitted nonrenewals. One commenter stated it was unnecessarily restrictive; another stated that the proposed rule goes much further than the "fair and nondiscriminatory formula" authorized by statute.

Several commenters proposed alternatives. One suggested that the standards set forth in N.J.A.C. 11:3-8.4(b)iv, which was proposed for repeal, was an adequate safeguard. Another suggested that the rule simply require a match between "under 25" drivers and "over 25" drivers.

One commenter noted that the State of New York, which has a similar section in its statute that has been in place for several years, requires a match between five categories as follows: young male; young female; adult; senior citizens; and other. It noted that insurers which also do business in New York already have systems developed to match insureds in these categories, and that these systems could be easily adapted to New Jersey.

RESPONSE: The repropoed rules adopt the suggestion that the Department use the same fair and nondiscriminatory formula as New York, so that an insured nonrenewed pursuant to N.J.S.A. 17:29C-7.1(c) must match the category (young male, young female, adult, senior citizen, other) of the two newly insureds. This change will carry out the essential elements of the Department's desire to match drivers by major characteristics, while minimizing the administrative burden by allowing insurers to use systems already developed for use in a neighboring state.

COMMENT: Several insurers objected to the language of N.J.A.C. 11:3-8.4(b) which provided: "For every two newly insureds automobiles which an insurer voluntarily writes in each territory during each calendar year period, the insurer shall be permitted to refuse to renew one additional **automobile** in that territory . . ." (emphasis added). The commenters noted that the statute provides: "For every two newly insured automobiles which an insurer voluntarily writes in each territory during each calendar year period, the insurer shall be permitted to refuse to renew one additional **policy** of automobile insurance in that territory . . ." (emphasis added). The commenters stated that the rule does not follow the statute, and would improperly limit the number of automobiles they could nonrenew, since most policies insure more than one automobile.

RESPONSE: After careful consideration, the Department has determined to repropoed the rule as stated. The Department believes that the legislative intent was to permit nonrenewals in a ratio of one nonrenewal for each two newly insureds, and that the Legislature used the words "automobile" and "policy" as interchangeable. The Department notes that this section was mentioned in the Governor's Recommendation and Statement to S-2637, which became P.L. 1988, c. 119 when it addressed this specific issue as follows:

"In addition to flex rating, the bill allows insurance companies to terminate two percent of those drivers who they presently insure, whether those drivers are insured pursuant to the mandatory depopulation quotas of this bill or previously were insured by the company. Furthermore, the bill provides that for every two new **policies** written in the voluntary market, the insurer shall be permitted to refuse to renew one additional **policy** over and above the two percent limitation. In the spirit of compromise I have agreed to this "two-for-one" credit." (emphasis added).

As two of the commenters specifically noted, most of their policies are issued to cover more than one automobile. It is not unusual for a single

policy to cover as many as four automobiles. To interpret the statutory language literally would permit an insurer to nonrenew a policy containing as many as four automobiles simply as the result of adding a single automobile to each of two existing policies. It seems clear that the legislative intent was to encourage insurers to expand their business by covering more automobiles, while providing additional underwriting flexibility and a credit for the voluntary expansion of business. To construe the language of the statute literally, as urged by the commenters, may in fact encourage insurers to reduce the number of vehicles they cover. The Department therefore believes that the Legislature used the terms "automobile" and "policy" interchangeably, and so proposes the language in this rule.

The repropoed rule uses "automobile" as the appropriate unit in calculating the "two-for-one" credit. While some insurers write a separate policy for each automobile, many insurers cover all household vehicles on a single policy. To use "one policy nonrenewed" for "each two new insurance policies" would likewise misstate the Legislature's intent. It would mean an insurer could nonrenew a policy covering four automobiles for two new policies each of which covered a single automobile. The Department further notes that all companies keep data on "exposures" that is, automobiles, and that to use the "policy" as the unit would unduly prejudice those companies that write each vehicle on a separate policy.

COMMENT: Two commenters objected to the provisions of N.J.A.C. 11:3-8.4(b)2 concerning keeping records of nonrenewal by major driver characteristic classification code. One commenter stated that it does not do so now, and that it would be a burden to change to a system that did so. Another commenter stated that the proposed rule called for excessive recordkeeping.

RESPONSE: The provision has been changed in the repropoed rule. Keeping records as required by the repropoed N.J.A.C. 11:3-8.4(d) is necessary so that the Department may determine whether the insurer has exceeded its permitted number of nonrenewals.

COMMENT: Two commenters objected to the record retention provisions of N.J.A.C. 11:3-8.4(c)1. One commenter requested that it be made clear that the records are only required for the "two percent" and "two-for-one" nonrenewals. It inquired whether it had to develop and maintain these records. It suggested that the five year record retention requirement is unnecessarily long, and that three years should be sufficient. Finally, the commenter requested that the language be clarified to ensure that an insurer need not keep such records unless it in fact nonrenews policies based upon the "two percent" and "two-for-one" criteria.

RESPONSE: The repropoed rule contains language changes and a form of report that the insurer will be required to submit. If an insurer does not use these numerical criteria to nonrenew policies, it need not keep the underlying data required to calculate the permissible number. Insurers must, of course, file the required reports and keep other records concerning the drivers it insures and the policies it issues, renews, or chooses to nonrenew. The repropoed rule requires that these records be maintained for five years; the Department notes that the existing rule requires nonrenewal information to be kept for five years.

COMMENT: One commenter objected to the proposed language in N.J.A.C. 11:3-8.4 that "voluntary writing" shall not include any exposures voluntarily written or assigned to an insurer to meet its depopulation quota for the New Jersey Automobile Full Insurance Underwriting Association. The commenter stated that this was a departure from the statute.

RESPONSE: The language in the rule in this instance tracks the statutory language precisely.

COMMENT: One commenter stated that language in N.J.A.C. 11:3-8.2(f)iii, which requires the nonrenewal notice to specify whether the nonrenewal is authorized by either N.J.A.C. 11:3-8.4(a) or (b), is unnecessary. It noted that a nonrenewal pursuant to either rule and N.J.S.A. 17:29C-7.1 would be a two percent territorial nonrenewal or a nonrenewal because of two newly insured automobiles.

RESPONSE: The Department does not believe the language is unnecessary. The intention is that the notice sent will advise the insured of the specific reason for the nonrenewal. If the nonrenewal is based upon the two percent territorial nonrenewal, it will so state. If the nonrenewal is based on one nonrenewal for each two newly insured automobiles, it will so state. The notice will not state that the insured is being nonrenewed for one reason or the other and fail to specify the reason.

COMMENT: A commenter inquired whether adding an additional automobile to an existing policy would qualify as a "newly insured automobile".

RESPONSE: An additional automobile added to an existing policy is a "newly insured automobile". A replacement automobile that does not increase a number of vehicles written by an insurer would not, of course, so qualify.

COMMENT: One commenter noted that the rule appeared to provide that the "two percent" nonrenewal criteria is to be based on the previous calendar year, while the "two-for-one" criteria would be based on the current calendar year. Another commenter suggested that the rule provide for one nonrenewal in the current calendar year for two newly insured automobiles in the previous calendar year.

RESPONSE: The statutory language is not ambiguous. The "two percent" criteria is based on the previous calendar year; the "two-for-one" criteria is based on automobiles written in the current calendar year.

COMMENT: A commenter inquired whether an insurer must exhaust its "two percent" nonrenewals per territory or Statewide before it begins to use its "two-for-one" nonrenewals.

RESPONSE: Language of the repropoed rule has been changed to clarify that the "two percent" nonrenewals must be exhausted per territory.

COMMENT: A producer trade organization requested that the Department consider mandating reporting requirements so that an agent can determine if a notice of nonrenewal is proper and valid.

RESPONSE: In the repropoed rule the Department has attempted to balance recordkeeping requirements and Departmental oversight of nonrenewals with the expense and administrative difficulty involved with complex recordkeeping and the practical time delays in calculating the number of permitted nonrenewals. The numbers of "two percent" nonrenewals are relatively easy to calculate, although accurate figures concerning the number of vehicles insured in each territory as of December 31 may not be available for several weeks. Renewals based upon the "two-for-one" criteria will not begin until the "two percent" nonrenewals have been exhausted, which is likely to be much later in the calendar year when the insurer is able to determine the number of vehicles newly insured in the year to date. The Department recognizes that there will always be a time delay in making these calculations, but expects insurers who choose to use these criteria to nonrenew automobile insurance policies will establish appropriate systems to avoid improper nonrenewals. The recordkeeping requirements and reports are expected to focus an insurer's attention on not exceeding permitted nonrenewals, and to provide the Department with an adequate amount of oversight. Nevertheless, the Department recognizes that it will be difficult to determine with precision that any particular "two-for-one" nonrenewal is valid when the notice is issued.

The Department's internal review resulted in additional language in the repropoed rule to clarify that an insurer will not get credit for a "newly insured automobile" when the insurance is cancelled within 60 days pursuant to N.J.S.A. 17:29C-7.

N.J.A.C. 11:3-8.2 is proposed to be amended. The amendment to this rule, which generally provide for the form and manner of issuing notices of nonrenewal, requires specific language notifying the insured if the action to nonrenew is being taken pursuant to the "two percent" and "two-for-one" numerical criteria. Additional language is included that conforms this notice provision to the provisions of N.J.A.C. 11:3-19, a proposed rule concerning multi-tier rating systems (see 21 N.J.R. 3721(a)). That proposed rule provides that the transfer of an insured from one tier to another within an approved multi-tier rating system will not be considered a "nonrenewal". When an insured no longer qualifies for the higher or highest rated tier in an insurer's approved multi-tier rating system, the insurer will be required to nonrenew the insured. The form of the notice, and the process to nonrenew, are set forth in an amendment to the present rule.

N.J.A.C. 11:3-8.4 is proposed for repeal and replacement. It was adopted as part of the Department's efforts to encourage voluntary depopulation of the New Jersey Automobile Full Insurance Underwriting Association. That rule is no longer necessary since depopulation has now been mandated by statute.

The repropoed new rule provides for nonrenewals as permitted by 1988 amendments to the automobile insurance laws. N.J.S.A. 17:29A-46, enacted last year but effective November 14, 1989, permits insurers to implement multi-tier rating systems based on approved underwriting rules. That statute further requires insurers to renew or nonrenew insureds at the appropriate rating tier for which the insured qualifies according to its underwriting rules. The repropoed new rule acknowledges the obligation of an insurer to apply its underwriting rules in a non-discriminatory manner, which may result in a number of permitted nonrenewals not otherwise recognized by N.J.A.C. 11:3-8. Repropoed

N.J.A.C. 11:3-8.4(a) provides that the renewal of an insured at a different rating tier within a multi-tier system is not a "nonrenewal" (even among different companies in a group) and cross-references appropriate provisions of the multi-tier rating system rule, N.J.A.C. 11:3-19, proposed December 4, 1989, at 21 N.J.R. 3721(a). Nonrenewals of insureds in the highest rated tier of a multi-tier system in accordance with approved underwriting rules are likewise recognized as a special case. Although virtually all such nonrenewals are likely to be covered by N.J.A.C. 11:3-8.3, insurers with multi-tier rating systems should nonrenew the insured based on its approved underwriting rules rather than N.J.A.C. 11:3-8.3.

The proposed new rule also provides for the annual nonrenewal of up to two percent of the policies in each territory, as provided by N.J.S.A. 17:29C-7.1(b). The proposed new rule further provides for additional nonrenewals based on the "two-for-one" formula contained in N.J.S.A. 17:29C-7.1(c), subject to the following restrictions:

1. Besides being from the same territory, the named insured or highest rated driver must be of the same general category for the nonrenewed automobile as for the two newly insured automobiles. The general categories are: young male; young female; adult; senior citizen; and other.

2. An insurer must exhaust its permitted nonrenewals in the territory based on the annual two percent limitation before nonrenewing an automobile based on the "two-for-one" criteria.

These restrictions are intended to prohibit unfairly discriminatory policy nonrenewals. They prevent an insurer from using the "two-for-one" criteria to nonrenew policies of drivers in the specified categories, and nonrenewing a significant additional number of the same category using the two percent annual limit.

Social Impact

The repropoed new rule and amendment will impact automobile insurance purchasers and automobile insurers. They implement recent legislative changes to the automobile insurance laws, and thus will have the positive social impact on the automobile insurance market as determined by the Legislature. They will prevent unfairly discriminatory nonrenewals.

Economic Impact

The repropoed new rule and amendment will impact the Department, as the increase in automobile insurance nonrenewals is likely to increase the number of consumer complaints received and to which the Department must respond. If this proves correct, additional investigators must be added to the current staff. The number required cannot be determined at this time.

The repropoed new rule and amendment will also impact automobile insurers, who may be required to amend their current procedures for nonrenew of policies to provide additional information on their nonrenewal notices. This change will be a minor one and the cost should be more than offset by the increased competitive flexibility regarding nonrenewals permitted by the legislation and the repropoed rule and amendment. It also requires that an annual report summarizing the number of automobiles nonrenewed and specifying the reason for nonrenewal shall be submitted. This will involve some minimal expenditure by insurers, but is necessary for proper oversight.

Regulatory Flexibility Analysis

The repropoed new rule and amendment may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" would consist of insurance companies authorized to write private passenger automobile insurance.

The repropoed new rule and amendment impose requirements on these businesses in connection with the nonrenewal of automobile insurance policies. They permit nonrenewals for an increased variety of reasons, but require additional recordkeeping and reporting necessary for regulatory oversight. Overall, the repropoed new rule and amendment increase the underwriting flexibility of all companies. They allow companies more freedom to exercise business judgments.

When the company chooses to exercise that judgment to nonrenew a policy, the insurer must give notice to the insured, which must refer to the rule authorizing it. This is a requirement of the current rules and no additional costs are imposed. Some minor changes in internal company procedures may be required to adapt to the new permitted criteria for nonrenewal, but they may be accomplished with the company's current underwriting staff. The legislation provides no additional flexibility for insurance companies that qualify as "small businesses."

The repropoed new rule and amendment require companies to maintain records of nonrenewals so as to provide a basis for regulatory oversight. These records must be maintained for the five-year period as

provided in the rule prior to amendment. The records to be maintained are different, however, because they are to track nonrenewals based on the additional criteria now permitted by statute. The Department believes that this obligation has been minimized in the repropoed rule and the kinds of records required to be kept made clear by the report form. Reporting requirements have likewise been minimized, as set forth on the report form.

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

11:3-8.2 General provisions

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

(f) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured no less than 60 days and no more than 90 days prior to the expiration of the current policy, setting forth the reason(s) for such nonrenewal.

1. No notice of nonrenewal shall be valid unless it includes the text of the designated provision(s) of this subchapter under which action is being taken and the correct facts which bring the insured under the provision(s), including dates and any other facts necessary for identification of the incidents. In the event action is being taken under N.J.A.C. 11:3-8.3(a)1, the text of the exceptions under N.J.A.C. 11:3-8.3(a)2 must be included together with a statement that none of these exceptions are applicable.

i. In the event action is being taken under N.J.A.C. 11:3-8.3(a)1[, (b) or (c), the text of the notice shall include both the number of accidents or claims where the insurer's nonrenewal is contingent thereon, and the number of [cars] automobiles in the household.

ii. In the event action is being taken under N.J.A.C. 11:3-8.4(a) to nonrenew an insured in accordance with the approved underwriting rules applicable to the highest rated tier of an insurer's multi-tier rating plan, the notice shall reference the specific underwriting rule by which the insured is disqualified and the specific facts upon which the insurer relied to determine that the insured is no longer qualified to be insured in that tier.

iii. In the event action is being taken under N.J.A.C. 11:3-8.4(b), the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.4(b) (two percent territorial nonrenewal) and shall be consecutively numbered in each territory.

iv. In the event action is being taken under N.J.A.C. 11:3-8.4(c), the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.4(c) (one nonrenewal for each two newly insured automobiles) and shall be consecutively numbered in each territory.

2.-3. (No change.)

(g)-(i) (No change.)

11:3-8.4 Additional nonrenewals [based on underwriting guidelines

(a) An insurer may issue notice of nonrenewal based upon a failure to meet current underwriting standards as specified in such insurer's underwriting guidelines provided that such nonrenewals may be issued only with respect to a policy:

1. Issued by the insurer to any policyholder who was cancelled pursuant to N.J.S.A. 17:29C-7 or nonrenewed pursuant to this subchapter; or

2. Issued by the insurer to any policyholder who was last insured through a statutorily mandated residual market mechanism; or

3. Issued by the insurer to any policyholder who is a first-time applicant for automobile coverage.

i. For the purposes of this section, the term "first-time applicant" shall mean a person seeking automobile insurance for the first time, including a child applying for a policy in his or her own name after being on their parents' policy.

(b) Pursuant to the provisions of N.J.S.A. 17:22-6.14a1, an insurer's underwriting guidelines shall not be arbitrary, capricious or unfairly discriminatory.

1. Nonrenewals based upon one or more of the following reasons are specifically prohibited:

i. The race, religion, nationality or ethnic group of an insured;

ii. Solely upon the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer, agent or broker which limits its market to one lawful occupation or profession, or to several related lawful occupations or professions;

iii. The principal location of the insured motor vehicle, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination. The insurer shall state the business purpose for such nonrenewal and provide the Department with documentation of such purpose upon request;

iv. Solely upon the age, sex or marital status of an insured, except that this subparagraph shall not prohibit rating differentials based upon age, sex or marital status;

v. The insured previously obtained insurance coverage through a residual market insurance mechanism;

vi. Another insurer previously declined to insure the insured or terminated an existing policy of the insured.

(c) When policies are written subject to nonrenewal pursuant to this section, the company shall document that the insured is a first time applicant, was cancelled pursuant to N.J.S.A. 17:29C-7 or nonrenewed pursuant to this subchapter or was last insured through a statutorily mandated residual market mechanism. Insurance companies shall maintain copies of such documentation for a period of not less than five years. Such documentation shall be available to the Department on request.

(d) Issuance of a notice of nonrenewal pursuant to this section shall be limited to a period of three years from the date as of which the policy becomes effective after first issuance.]

(a) An insurer which has filed a multi-tier rating plan pursuant to N.J.A.C. 11:3-19 may issue notices of intention not to renew any insured who no longer qualifies for any tier in accordance with its approved underwriting rules.

1. The renewal of an insured at a higher or lower rated tier within an insurer's multi-tier rating plan shall not require that a notice of nonrenewal be sent to the insured, even though the renewal will be effected by an affiliated company. The insurer shall renew the insured at the proper tier in accordance with its approved underwriting rules pursuant to N.J.A.C. 11:3-19.6(a).

2. A notice of nonrenewal to an insured in the highest rated tier of an insurer's multi-tier rating plan shall be issued in the form provided by N.J.A.C. 11:3-8.2(f)iii, if applicable, even though the insured may also be nonrenewed in accordance with N.J.A.C. 11:3-8.3.

(b) For each calendar year period, an insurer may issue notices of intention not to renew an automobile insurance policy in the voluntary market in an amount not to exceed two percent of the total number of voluntary market automobile insurance policies of the insurer, rounded to the nearest whole number, which are in force at the end of the previous calendar year in each of the insurer's territories.

(c) For every two newly insured automobiles which an insurer voluntarily writes in each territory during each calendar year period, the insurer shall be permitted to refuse to renew one additional automobile in that territory in excess of the two percent limitation established in (a) above, subject to the conditions set forth below. For the purposes of this subsection, "voluntarily writes" shall not include any exposure voluntarily written by or assigned to an insurer to meet any quota established pursuant to N.J.S.A. 17:30E-14.

1. Any automobile nonrenewed in accordance with this subsection shall be similarly classified as the two newly insured automobiles in the following categories: young male; young female; adult; senior citizen; and other.

2. No insurer shall issue a notice of nonrenewal in accordance with this subsection until it has exhausted its permitted number of annual nonrenewals in the territory in accordance with (b) above.

(d) Insurance companies shall maintain records of nonrenewals for not less than five years which shall include a copy of the notice of nonrenewal, data concerning the allowable number of nonrenewals in each territory computed in accordance with (b) above, and data concerning the actual number of newly insured automobiles and nonrenewals in each territory for each category, computed in accordance with (c) above. Such records and data shall be made available to the Department upon request. In addition, each insurer shall file summary reports of its nonrenewals as follows:

1. For insurers with approved multi-tier rating plans, in the form of report set forth as Exhibit C of the Appendix incorporated herein by reference; or

2. For all other insurers, in the form of report set forth as Exhibit D of the Appendix, incorporated herein by reference.

3. Insurers shall submit summary reports of its nonrenewals for the year to date on or before February 15 and August 15 of each year to the following address:

New Jersey Department of Insurance
Division of Enforcement and Consumer Affairs
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

(e) Nothing in this rule shall be construed to authorize insurers to act in contravention of any applicable State or Federal law prohibiting discrimination on impermissible bases.

(a)

DIVISION OF ACTUARIAL SERVICES

Medicare Supplement Minimum Standards Transition Rule for 1990

Proposed New Rules: N.J.A.C. 11:4-25

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:35C-1 et seq., 17B:26A-1 et seq.

Proposal Number: PRN 1990-68.

Submit comments by March 7, 1990 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN-325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Medicare Catastrophic Coverage Act of 1988, P.L.100-360, was repealed December 13, 1989 upon enactment of the Medicare Catastrophic Coverage Repeal Act ("Catastrophic Repeal Act"). The effect of the Catastrophic Repeal Act on Medicare beneficiaries is to return Medicare benefits and the Medicare Part B monthly premiums to their previous amounts prior to passage of the 1988 Catastrophic Act. In summary, the Catastrophic Repeal Act repeals:

1. the Medicare Part A benefit increases with the exception of the blood deductible;
2. the Medicare Part B benefit increases including the prescription drug benefit;
3. the supplemental Medicare premium (the surtax); and
4. the increase in the Medicare Part B monthly premium.

Of particular importance is the role the Catastrophic Repeal Act gives the National Association of Insurance Commissioners ("NAIC") in developing regulations to guide the states in the necessary changes that must be made in state Medicare supplement insurance laws or regulations in order to comply with the Baucus Amendment (42 U.S.C. 1395ss). The Baucus Amendment is the section of the Social Security Act that provides for Federal voluntary certification of Medicare supplement insurance policies.

The Catastrophic Repeal Act gives the states one year from December 13, 1989, to adopt standards at least as stringent as those in the revised model regulation for Medicare supplement policies and contracts adopted by the NAIC, in order to comply with the voluntary certification program in the Baucus Amendment.

A transition rule establishing interim standards is necessary for certification of Medicare supplement insurance policies already sold and for those that will be sold in New Jersey before New Jersey adopts standards at least as stringent as the NAIC's revised model regulation. The NAIC has adopted a transition regulation for purposes of interim certification standards. This proposed transition rule follows the NAIC's transition regulation.

The Catastrophic Repeal Act also requires that by January 31, 1990, Medicare supplement insurers must notify policyholders (or individuals) of changes in benefits as a result of repeal and how the changes affect the benefits in the policy and the premium for the policy. Proposed N.J.A.C. 11:4-25.4(a) meets this requirement.

If an individual dropped a Medicare supplement insurance policy between December 31, 1988 and enactment of the Catastrophic Repeal Act, then insurers must offer these individuals substantially similar coverage with no pre-existing condition provision and with no discriminatory rate effects. The idea behind this requirement, which is set forth at proposed N.J.A.C. 11:4-25.6, is to avoid penalizing policyholders who may have dropped their coverage because of passage of the Catastrophic Act in 1988.

Social Impact

The proposed transition rules return the minimum benefit standards for Medicare supplement policies and contracts to those standards which were required in 1988, and in some instances exceed 1988 levels. The result is an overall increase in the benefits required to be provided by these policies and contracts in 1990, when contrasted with benefits required in 1989. Consequently, many insureds will experience an increase in premiums for updated policies, while insurers will probably experience concomitant increases in claims.

The proposed reinstatement provision set forth at N.J.A.C. 11:4-25.6 may benefit certain senior citizens by removing a possible penalty which these senior citizens would otherwise have incurred upon purchase of updated policies or contracts intended to replace coverage which was dropped by those seniors in 1989, when the Medicare Catastrophic Coverage Act was effective.

Economic Impact

Insureds can expect an increase in their premiums as a result of increased benefits required to be provided by Medicare supplement policies and contracts. Insurers can also expect to incur increased expenses as a result of this proposed transition rule. This increase would be due, in part, to the administrative costs inherent with any change in benefit levels, as well as increases in claims brought about by increased benefit levels. Insurers may also experience costs involved with the separate filing requirements of these proposed transition rules and the reinstatement of some former policies or contracts. The Department of Insurance may also experience some increases in costs relative to the filing requirements proposed and dissemination of active and current information.

Regulatory Flexibility Statement

No insurer selling Medicare supplement insurance in this State is a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; thus, a regulatory flexibility analysis is not required. Further, since the Federal standards do not make any exceptions for small businesses with regard to Medicare supplement insurance, no insurer qualifying as a small business, engaging in this line of insurance, would be exempted from the proposed amended rules.

Full text of the proposal follows:

SUBCHAPTER 25. MEDICARE SUPPLEMENT MINIMUM STANDARDS TRANSITION RULE FOR 1990

11:4-25.1 Purpose

The purpose of this subchapter is to assure the orderly implementation and conversion of Medicare supplement insurance benefits and premiums due to changes in the Federal Medicare program; to provide for the reasonable standardization of the coverage, terms and benefits of Medicare supplement policies or contracts; to facilitate public understanding of such policies or contracts; to eliminate provisions contained in such policies or contracts which may be misleading or confusing in connection with the purchase of such policies or contracts; to eliminate policy or contract provisions which may duplicate Medicare benefits; to provide for adjustment of required minimum benefits for Medicare supplement policies; to provide notice to former policyholders of an offer to reinstitute coverage; to provide full disclosure of policy or contract benefits and benefit changes; and to provide for appropriate premium adjustments.

11:4-25.2 Applicability and scope

(a) This subchapter shall take precedence over other rules and requirements relating to Medicare supplement policies or contracts to the extent necessary to assure that benefits are not duplicated and to adjust minimum required benefits to changes in Medicare benefits, that applicants receive adequate notice and disclosure of changes in

Medicare supplement policies and contracts, that appropriate premium adjustments are made in a timely manner, and that premiums are reasonable in relation to benefits.

(b) Except as provided in N.J.A.C. 11:4-25.4, this subchapter shall apply to:

1. All Medicare supplement policies and contracts delivered, or issued for delivery, or which are otherwise subject to the jurisdiction of this State on or after the effective date hereof; and

2. All certificates issued under group Medicare supplement policies as provided in (b)1 above.

11:4-25.3 Definitions

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

"Applicant" means:

1. In the case of an individual Medicare supplement policy or contract, the person who seeks to contract for insurance benefits; and

2. In the case of a group Medicare supplement policy or contract, the proposed certificate holder.

"Certificate" means any certificate issued under a group Medicare supplement policy.

"Medicare supplement policy" means a group or individual health insurance policy or any other contract which is advertised, marketed or designed primarily to provide health care benefits as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age.

11:4-25.4 Benefit conversion requirements

(a) Effective January 1, 1990, no Medicare supplement insurance policy, contract or certificate in force in this State shall contain benefits which duplicate benefits provided by Medicare.

(b) Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.

(c) For Medicare supplement policies subject to the minimum standards adopted by this State pursuant to the Medicare Catastrophic Coverage Act of 1988, set out at N.J.A.C. 11:4-16.6(j)1 and 2, and at N.J.A.C. 11:4-23.6(c), the minimum benefits shall be:

1. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

2. Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

3. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

4. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

5. Coverage under Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under Federal regulations) unless replaced in accordance with Federal regulations or already paid for under Part B;

6. Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible;

7. Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under Federal regulations), unless replaced in accordance with Federal regulations or already paid under Part A, subject to the Medicare deductible amount; and

8. Effective January 1, 1990, coverage for the coinsurance amount of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy subject to the Medicare deductible amount.

(d) No later than January 31, 1990, every insurer, health care service plan or other entity providing Medicare supplement insurance or benefits to a resident of this State shall notify its policyholders,

contract holders and certificate holders of modifications it has made to Medicare supplement insurance policies or contracts. Such notice shall be in the format of Appendix A of this subchapter, incorporated herein by reference.

1. Such notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or contract.

2. The notice shall inform each covered person as to when any premium adjustment due to changes in Medicare benefits will be effective.

3. The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

4. Such notice shall not contain or be accompanied by any solicitation.

(e) No modifications to an existing Medicare supplement contract or policy shall be made at the time of or in connection with the notice requirements of this subchapter except to the extent necessary to accomplish the purposes articulated in N.J.A.C. 11:4-25.1.

11:4-25.5 Form and rate filing requirements

(a) As soon as practicable, but no later than 45 days after the effective date of the Medicare benefit changes, every insurer, health care service plan or other entity providing Medicare supplement insurance or contracts in this State shall file with the Department, in accordance with the applicable filing procedures of this State:

1. Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts with supporting documents as necessary to justify the adjustment; and

2. Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplications with Medicare and to provide the benefits required by N.J.A.C. 11:4-25.4. Any such riders, endorsements or policy forms shall result in a clear description of the Medicare supplement benefits provided by the policy or contract.

(b) Upon satisfying the filing requirements of this State, every insurer, health care service plan or other entity providing Medicare supplement insurance in this State shall provide each covered person with any rider, endorsement or policy form necessary to make the adjustments outlined in N.J.A.C. 11:4-25.4.

(c) Any premium adjustments shall produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare supplement policies and shall result in an expected loss ratio at least as great as that originally anticipated by the insurer, health care service plan or other entity for such Medicare supplement insurance policies or contracts. Premium adjustments may be calculated for the period commencing with Medicare benefit changes.

11:4-25.6 Offer of reinstatement of coverage

(a) Except as provided in (b) below, in the case of an individual who had in effect, as of December 31, 1988, a Medicare supplement policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy on or before December 13, 1989, the insurer shall:

1. Provide written notice no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described below; and

2. Offer the individual, during a period of at least 60 days, beginning not later than February 1, 1990, reinstatement of coverage which shall be effective as of January 1, 1990, under terms which:

i. Do not provide for any waiting period with respect to the treatment of pre-existing conditions;

ii. Provide for coverage substantially equivalent to coverage in effect before the date of such termination; and

iii. Provide for classification of premiums on terms which are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

(b) An insurer is not required to make the offer set out in (a)2 above in the case of an individual who is a policyholder or certificate holder of another Medicare supplemental policy as of January 1, 1990, if the individual is not subject to a waiting period with respect to treatment of a pre-existing condition under such other policy.

11:4-25.7 Requirements for new policies and certificates

(a) Effective January 1, 1990, no Medicare supplement insurance policy, contract or certificate shall be delivered or issued for delivery in this State which provides benefits which duplicate benefits provided by Medicare. No such policy, contract or certificate shall provide less benefits than those required under N.J.A.C. 11:4-25.4.

(b) The filing required under N.J.A.C. 11:4-25.5(a)1 shall provide for loss ratios which are in compliance with all minimum standards.

(c) Every applicant for a Medicare supplement insurance policy, contract or certificate shall be provided with an outline of coverage which simplifies and accurately describes benefits provided by Medicare and policy or contract benefits along with benefit limitations.

11:4-25.8 Filing requirements for advertising

Every insurer, health care service plan or other entity providing Medicare supplement insurance or benefits in this State shall provide

a copy of any advertisement intended for use in this State whether through written, radio or television medium to the Commissioner of Insurance of this State for review in accordance with N.J.A.C. 11:4-23.14. Such advertisement shall comply with all applicable laws of this State.

11:4-25.9 Buyer's guide

No insurer, health care service plan or other entity shall make use of or otherwise disseminate any buyer's guide or informational brochure which does not accurately outline current Medicare benefits and which has not been adopted in accordance with N.J.A.C. 11:4-23.12 by the Commissioner of Insurance.

11:4-25.10 Separability

If any provision of this subchapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

APPENDIX A
(COMPANY NAME)

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE—1990

THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1990 Your Coverage Will Pay Per Calendar Year
MEDICARE PART A SERVICES AND SUPPLIES				
Inpatient Hospital Services	Unlimited number of hospital days after \$560 deductible	All but \$592 for first 60 days/benefit period		
Semi-Private Room & Board		All but \$148 a day for 61st-90th days/benefit period		
Misc. Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room		All but \$296 a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)		
BLOOD	Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period		
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit	100% of costs for 1st 20 days (after a 3-day prior hospital confinement)/benefit period		

	First 8 days— All but \$25.50 a day	All but \$74.00 a day for 21st-100th days/ benefit period
	9th through 150th day— 100% of costs	Beyond 100 days— Nothing/benefit period
	Beyond 150 days— Nothing	
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after \$75 deductible)	80% of allowable charges (after \$75 deductible/ calendar year)
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for immunosuppressive drugs during the first year following a covered transplant (after \$75 deductible/calendar year)	Inpatient prescription drugs. 80% of allowable charges for immunosuppressive drugs during the first year following a covered transplant (after \$75 deductible/calendar year)
BLOOD	80% of all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period (after \$75 deductible/ calendar year)	80% of costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period (after \$75 deductible/ calendar year)

[Any other policy benefits not mentioned in this chart should be added to the chart in the order prescribed by the outline of coverage. If there are corresponding Medicare benefits, they should be shown.]

[Describe any coverage provisions changing due to Medicare modifications.]

[Include information about when premium adjustments that may be necessary due to changes in Medicare benefits will be effective.]

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY [COMPANY] ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT [Policy] CONTACT:

[COMPANY OR FOR AN INDIVIDUAL POLICY—NAME OF AGENT] [ADDRESS/PHONE NUMBER]

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Motorized Bicycles

Proposed Readoption: N.J.A.C. 13:25

Proposed Repeal: N.J.A.C. 13:25-7.1

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:4-14.3, 39:4-14.3a et seq. and 39:4-14.3g.

Proposal Number: PRN 1990-73.

Submit written comments by March 7, 1990 to:
Glenn R. Paulsen, Director
Division of Motor Vehicles
Department of Law and Public Safety
25 South Montgomery St., 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:25 concerning motorized bicycles (with the exception of N.J.A.C. 13:25-7.1 which is proposed for repeal as part of this proposal) in accordance with the "sunset" and other provisions of Executive Order 66(1978). These rules expire on March 18, 1990. The Division of Motor Vehicles has reviewed these rules pursuant to the Executive Order and has found them, with the exception of N.J.A.C. 13:25-7.1 which is proposed for repeal as part of this proposal, to be necessary and required for the purpose for which promulgated, that is, to regulate the operation of motorized bicycles. Given the impending expiration of these rules, the Division has refrained from proposing extensive changes to these rules at this time (with the exception of the proposed repeal of N.J.A.C. 13:25-7.1 as noted below) to facilitate their timely readoption. However,

it is likely that the Division will propose additional revisions to these rules following readoption.

The substantive change to N.J.A.C. 13:25 which is part of this proposal is the proposed repeal of N.J.A.C. 13:25-7.1, which pertains to operating a motorized bicycle under the influence of alcohol. The Division's regulation is unnecessary in view of the fact that New Jersey law (N.J.S.A. 39:4-14.3g) prohibits the operation of a motorized bicycle by a person who is under the influence of intoxicating liquor and subjects a motorist convicted of such an offense to the same penalties as imposed upon a person convicted of operating a motor vehicle while intoxicated. The New Jersey law (N.J.S.A. 39:4-14.3g) also extends the "implied consent" law to motorized bicycle operators, meaning that a motorized bicycle operator convicted of refusing to submit to a valid request to submit to a breath alcohol determination test to enable police to ascertain the content of alcohol in his blood is subject to the same penalties as imposed upon a person convicted of the same offense in connection with the operation of a motor vehicle. Since the subject covered by N.J.A.C. 13:25-7.1 is completely dealt with by N.J.S.A. 39:4-14.3g, and since the text of that rule is in fact inconsistent with the current New Jersey law pertaining to this subject, the Division's rule is unnecessary and confusing and is accordingly proposed for repeal.

The rules which are the subject to this proposed readoption regulate the operation of motorized bicycles (which are also known as "mopeds"). N.J.A.C. 13:25 contains nine subchapters which are summarized below:

Subchapter 1 sets forth the definitions of certain terms which are used in N.J.A.C. 13:25.

Subchapter 2 sets forth the requirements which must be met by an applicant seeking to obtain a motorized bicycle learner's permit which is validated for practice motorized bicycle driving.

Subchapter 3 sets forth the requirements which must be met by an applicant seeking to obtain a motorized bicycle operator license. This subchapter also contains several provisions pertaining to the issuance of motorized bicycle operator licenses by the Division of Motor Vehicles.

Subchapter 4 sets forth rules pertaining to the issuance and/or retention of motorized bicycle learner's permits or motorized bicycle operator licenses with regard to persons who suffer or have suffered from convulsive seizures. This subchapter also contains several provisions

pertaining to the Division of Motor Vehicles' suspension and/or restoration of the motorized bicycle operating privileges of such persons, as well as providing for hearings for those individuals who object to such Division suspension action.

Subchapter 5 sets forth rules pertaining to the issuance and/or retention of motorized bicycle operating privileges with regard to persons who suffer or have suffered from cardiovascular disorders. This subchapter also contains provisions pertaining to the Division of Motor Vehicles' suspension and/or restoration of the motorized bicycle operating privileges of such persons.

Subchapter 6 was repealed effective September 6, 1983. This subchapter contained rules concerning point system regulation.

Subchapter 7 sets forth serious motorized bicycle traffic offenses. As noted above, N.J.A.C. 13:25-7.1 is proposed for repeal as part of this proposal because it is inconsistent with current New Jersey law (N.J.S.A. 39:4-14.3g) with regard to operating a motorized bicycle while intoxicated.

Subchapter 8 sets forth the procedure by which the operation of motorized bicycles on specific highways is regulated, as well as indicating certain specific highways on which the operation of motorized bicycles is either permitted or prohibited.

Subchapter 9 sets forth rules pertaining to motorized bicycle operator protective helmets.

Social Impact

The readoption of N.J.A.C. 13:25 will have a beneficial social impact upon the public, since many of the rules proposed for readoption enhance highway safety. Applicants for motorized bicycle learner's permits are required to meet certain prerequisites before receiving a validated permit to allow practice motorized bicycle driving. Applicants for motorized bicycle operator licenses are likewise required to meet certain requirements before being issued a motorized bicycle operator license by the Division of Motor Vehicles. Persons may be disqualified from operating a motorized bicycle because their medical condition creates an unreasonable risk to the safety of other motorists. The rules also set forth the procedure by which operation of motorized bicycles on specific highways is regulated. The Division anticipates no social impact on itself.

Economic Impact

There is an economic impact on the State of New Jersey in funding the Division of Motor Vehicles, which is responsible for the administration of the rules which are the subject of the proposed readoption. The economic impact on the State is partially defrayed by a statutory motorized bicycle learner's permit fee that must be paid by permit applicants and by a fee for the photo on a motorized bicycle operator license which must be paid by license applicants who successfully complete the required licensing tests. Motorized bicycle operators will incur an expense in connection with purchasing a protective helmet so as to be in compliance with N.J.S.A. 39:4-14.3g and these rules (which require the use of same by a motorized bicycle operator).

Regulatory Flexibility Analysis

The rules proposed for readoption have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption impose no compliance, reporting or recordkeeping requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules regulate individual motorized bicycle licenses and permittees regarding the operation of motorized bicycles.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:25.

Full text of the proposed repeal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:25-7.1 [Operating a motorized bicycle under the influence of alcohol] (**Reserved**)

[(a) A person who operates a motorized bicycle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motorized bicycle owned by him or in his custody or control, shall be subject, for the first offense, to the forfeiture of his driving privileges for a period of not less than 60 days nor more than 180 days. Except as hereinafter provided, for a second violation, he shall forfeit his driving privileges for a period of not less than one year nor more than three years upon conviction, and, after the

expiration of said period, he may make application to the Director of the Division of Motor Vehicles for restoration of driving privileges, which application may be granted at the discretion of the director, consistent with subsection (b) of this section. Except as hereinafter provided, for a third or subsequent violation, he shall forfeit his driving privileges for a period of five years upon conviction, and, after the expiration of said period, he may make application to the Director of the Division of Motor Vehicles for restoration of driving privileges which application may be granted at the discretion of the director, consistent with subsection (b) of this section. If the driving privilege of any person is under revocation or suspension for a violation of any provision of the motor vehicle laws at the time of any conviction for a violation of this section, the revocation of suspension period imposed shall commence as of the date of termination of the existing revocation or suspension period.

1. A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him in order to render him liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs 15 or more years after the first conviction the court shall treat the conviction as a first offense, and if a third or subsequent offense occurs 10 or more years after the first conviction, the court shall treat the conviction as a second offense.

(b) In addition to any other requirements provided by law, a person convicted under this section must satisfy the requirements of a program of alcohol education or rehabilitation approved by the Director of the Division of Motor Vehicles. Failure to satisfy such requirements shall result in a driver license revocation or suspension or continuation of revocation or suspension until such requirements are satisfied, unless stayed by court order in accordance with Rule 7:8-2 of the N.J. Court Rules, 1969, or R.S. 39:5-22. A fee, not to exceed \$30.00 shall be payable to the director from every person required to satisfy the requirements of a program of alcohol education or rehabilitation under the provisions of this section.

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey drivers' license or licenses of the person so convicted and forward such license or licenses to the Director of the Division of Motor Vehicles. In the event that a person convicted under this section is the holder of any out-of-state driver's license, the court shall not collect the license but shall notify forthwith the director who shall, in turn, notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the non-resident's driving privileges to operate a motor vehicle in this State in accordance with this section.

(d) In any prosecution for a violation of subsection (a) of this regulation relating to driving a motorized bicycle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at the time 0.05 per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor;

2. If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

3. If there was at that time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

4. The foregoing provisions of this section shall not be construed as requiring that evidence of the amount of alcohol in the defendant's blood must be presented, nor shall they be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

(e) Further rules concerning consent are:

1. Any person who operates a motorized bicycle on any public road, street or highway or quasi-public area in this State shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood; provided, however, that the taking of samples is made in accordance with the provisions of this regulation at the request of a police officer who has reasonable grounds to believe that such person has been operating a motorized bicycle in violation of the provisions of subsection (a) of this section.

2. A record of the taking of such sample, disclosing the date and time thereof, as well as the result of any chemical test, shall be made and a copy thereof, upon his request, shall be furnished or made available to the person so tested.

3. In addition to the samples taken and tests made at the direction of a police officer hereunder, the person tested shall be permitted to have such samples taken and chemical tests of his breath, urine or blood made by a person or physician of his own selection.

4. The police officer shall inform the person tested of his rights under paragraphs 2 and 3 of this subsection.

5. No chemical test, as provided in this section, or specimen necessary thereto, may be made or taken forcibly and against physical resistance thereto by the defendant, the police officer shall, however, inform the person arrested of the consequences of refusing to submit to such test under subsection (b) of this section.

(f) Rules concerning refusal to take the test are:

1. If an operator of a motorized bicycle, after being arrested for a violation of subsection (a) of this section, shall refuse to submit to the chemical test provided for in subsection (d) of this section when requested to do so, the arresting officer shall cause to be delivered to the Director of Motor Vehicles his sworn report of such refusal in which report he shall specify the circumstances surrounding the arrest and the grounds upon which his belief was based that the person was driving or operating a motorized bicycle in violation of the provisions of subsection (a) of this section.

2. Upon receipt of such a report, if the director shall find that the arresting officer acted in accordance with the provisions of this act, he shall, upon written notice, suspend the person's driving privileges or if such person is a non-resident, the privilege to drive within this State, unless such person, within 10 days of the date of such notice, shall have requested, in writing, a hearing before the director. Upon such request, the director shall hold a hearing on the issues of whether the arresting officer had reasonable grounds to believe the person had been operating or was in actual physical control of a motorized bicycle on the public highways or quasi-public areas of this State while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether he refused to submit to the test upon request of the officer. If no such hearing is requested within the time allowed, or if after a hearing the director shall find against the person on such issues, he shall revoke such person's license or permit to drive, or the privilege to drive or operate a motorized bicycle within this State if such person is a non-resident for a period as prescribed in paragraph 3 of this subsection to be calculated from the date of the director's determination, or if such person is a resident without a license or permit to drive or operate a motorized bicycle in this State, the director shall deny to such person the issuance of any such license or permit during the period prescribed from the date of the director's determination. Such revocation shall be independent of any revocation imposed by virtue of a conviction under the provisions of subsection (a) of this section.

3. Any revocation of the right to operate a motorized bicycle over the highways of this State for refusing to submit to a chemical test shall be for 90 days unless the refusal was in connection with a subsequent offense of this section, in which case, the revocation period shall be for one year. In addition to any other requirements provided by law, a person whose operator's license is revoked for refusing to submit to a chemical test must satisfy the requirements of a program of alcohol education or rehabilitation pursuant to the provisions of subsection (b) hereof.]

(a)

**BOARD OF ARCHITECTS
LANDSCAPE ARCHITECT EXAMINATION AND
EVALUATION COMMITTEE
Education and/or Experience Requirements for
Certificate**

Proposed Amendment: N.J.A.C. 13:27-8.6

Authorized By: New Jersey Board of Architects, Barbara S. Hall,
Executive Director.

Authority: N.J.S.A. 45:3-3.

Proposal Number: PRN 1990-57.

Submit written comments by March 7, 1990 to:

Barabara S. Hall, Executive Director
Board of Architects, Landscape Architect
Examination and Evaluation Committee, Room 511
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Architects and the Landscape Architect Examination and Evaluation Committee are proposing to amend N.J.A.C. 13:27-8.6(a)2 relating to experiential and educational requirements necessary to qualify for admission to the Uniform National Examination or for certification as a landscape architect. The Committee wishes to clarify that the required two years of practical landscape architectural experience must be obtained after a candidate completes the educational requirement of four years of college study with three years in a landscape architecture curriculum. The Committee has found that in a number of instances candidates for licensure or certification have misunderstood the regulation and have sought to have part-time college work experience accepted as fulfilling the two-year practical experience requirement set forth in N.J.A.C. 13:27-8.6(a)2.

The Committee's requirement that landscape architectural experience must be obtained after a candidate completes the educational requirements is based upon its belief that postgraduate landscape architectural work experience is more valuable than part-time undergraduate work experience. The Committee feels that since the person who has completed three years in a landscape architecture curriculum has more practical knowledge in landscape architecture than an undergraduate, he or she is more likely to obtain a job which will utilize and expand upon that knowledge, resulting in a more competent candidate for certification.

Accordingly, the Committee seeks to amend N.J.A.C. 13:27-8.6(a)2 to clarify that the required two years of practical architectural experience must be obtained after the candidate completes the educational requirements set forth in this rule.

Social Impact

The proposed amendment to N.J.A.C. 13:27-8.6(a)2 merely clarifies the Committee's intent that the required two years of practical architectural experience must be obtained after the candidate completes the educational requirements. This requirement continues to protect the consumer by assuring that truly qualified and competent individuals are certified to practice landscape architecture.

Economic Impact

The proposed amendment to N.J.A.C. 13:27-8.6(a)2 will have no discernible economic impact upon consumers or licensed landscape architects; it relates only to candidates for licensure and is merely a clarification of the Committee's current experiential requirements.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., it has been determined that this amendment will not impose reporting, recordkeeping or other compliance requirements on small businesses within New Jersey, since it relates to applicants and not to licensees.

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

13:27-8.6 Education and/or experience requirements for certificate

(a) Each applicant for examination or certification as a landscape architect shall provide the committee with evidence satisfactory to it that:

1. The applicant is the holder of a bachelor's or higher degree in landscape architecture from a college or university having a landscape architecture curriculum approved by the committee; and

2. The applicant has engaged in landscape architectural work satisfactory to the committee to an extent that his or her combined college study and practical experience total at least six years, four years of which must be college study with three years in a landscape architecture curriculum and two years of which must be practical landscape architecture experience approved by the committee. **The practical landscape architecture experience shall be obtained subsequent to completion of the educational requirements.**

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

(a)

BOARD OF PHYSICAL THERAPY

Notice of Comment Period Extension Educational Requirements for Applicants for Licensure as Physical Therapists

Reproposed Amendment: N.J.A.C. 13:39A-5.1

Take notice that the Board of Physical Therapy is extending the public comment period for the reproposed amendment to N.J.A.C. 13:39A-5.1, published in the December 18, 1989 New Jersey Register at 21 N.J.R. 3855(a), to February 16, 1990.

Submit written comments by February 16, 1990 to:

Patricia E. Stuart, Executive Director
Board of Physical Therapy, Room 513
1100 Raymond Boulevard
Newark, New Jersey 07102

(b)

STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Continuance of Practice

Proposed New Rule: N.J.A.C. 13:44-2.6

Authorized By: State Board of Veterinary Medical Examiners,
Maurice W. McQuade, Executive Director.

Authority: N.J.S.A. 45:16-9.5 and 9.9.

Proposal Number: PRN 1990-58.

Submit written comments by March 7, 1990 to:

Maurice McQuade, Executive Director
State Board of Veterinary Medical Examiners, Room 513
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The State Board of Veterinary Medical Examiners is proposing a new rule, N.J.A.C. 13:44-2.6, which will permit an unlicensed spouse or the executor or administrator of the licensee's estate to continue to own, maintain and operate a veterinary facility upon the demise of the licensed proprietor of an individually owned veterinary facility, provided that a New Jersey licensed veterinarian is engaged to conduct, manage and assume responsibility for the practice of veterinary medicine.

Within three weeks of the licensed proprietor's death, the unlicensed owner of the veterinary facility is directed to provide the Board with written notice of the substitute licensee's name. This period of time may be extended upon written petition to the Board. Also, that licensee must notify the Board in writing of his or her willingness to assume the position.

If the substitute licensee's services are terminated, both the owner and the licensee are required immediately to inform the Board in writing. A new licensee must then be engaged and immediately registered with the Board.

The one-year conveyance or liquidation period may be extended by written petition to the Board.

The purpose of this rule is to provide continuity for the consumer and to allow him or her a reasonable period of time to make appropriate arrangements for veterinary care. At the same time it permits the spouse or the decedent's estate to convey or liquidate the facility in a timely manner.

Social Impact

The effect of the proposed rule is beneficial to the public in that it will provide continuity for the consumer and allow a reasonable period of time to make appropriate arrangements for veterinary care. The provisions of the rule will ensure that licensed, qualified individuals are providing that care in an uninterrupted manner.

Economic Impact

The adoption of this rule will have no unfavorable impact upon the public inasmuch as no increased costs are foreseen in this effort to provide continuity to the public. The spouse or the decedent's estate may derive some small economic benefit from not having to convey or liquidate the facility in a hasty or arbitrary manner.

Regulatory Flexibility Analysis

The State Board of Veterinary Medical Examiners currently licenses 1,766 (1,270 active, 496 inactive) individuals. It is impossible to determine how many of these licensees operate individually owned veterinary facilities inasmuch as the Board licenses individuals and not entities.

The proposed rule sets forth several reporting requirements. First, within three weeks of the licensee's death, the owner must provide the State Board of Veterinary Medical Examiners with written notice of the substitute licensee's name and that licensee shall also write to the Board stating that he or she is willing to assume the position. Also, if the licensee's services are terminated, the owner and licensee must immediately inform the Board in writing and a new substitute licensee shall be immediately engaged and registered with the Board. There are no recording requirements, and no capital investment is needed for compliance.

It is not anticipated that compliance will impose additional costs on the veterinary establishment so affected, nor will it have any adverse economic impact. In fact, this rule may have a salutary effect on a small veterinary establishment in that the spouse or decedent's estate will not be forced to convey or liquidate the business in a hasty or arbitrary manner. The financial health of the small establishment will be further enhanced by the provision that the one-year conveyance or liquidation period may be extended following written petition to the Board.

Full text of the proposed new rule follows:

13:44-2.6 Temporary continuance of facility upon licensee's death

(a) Upon the demise of the licensed proprietor of an individually owned veterinary facility, an unlicensed spouse or the executor or administrator of the licensee's estate may continue to own, maintain and operate the facility for a period of one year in order to convey or liquidate the practice, provided that the services of a New Jersey licensed veterinarian shall be engaged to conduct, manage and be responsible for the practice of veterinary medicine.

(b) The unlicensed owner shall provide the State Board of Veterinary Examiners with written notice of the substitute licensee's name within three weeks of the owner's death. This period of time may be extended upon written petition to the Board.

(c) The substitute licensee shall also write to the Board indicating his or her willingness to assume the position.

(d) If, for any reason, the substitute licensee's services are terminated, both the owner and the licensee shall immediately inform the Board in writing and a new licensee shall be immediately engaged and registered with the Board.

(e) The one-year period of conveyance or liquidation may be extended following written petition to the Board.

(a)

**AUDIOLOGY AND SPEECH-LANGUAGE
PATHOLOGY ADVISORY COMMITTEE****Notice of Comment Period Extension
Authorized Practice Exemptions****Proposed Amendment: N.J.A.C. 13:44C-7.2**

Take notice that the Audiology and Speech-Language Pathology Advisory Committee is extending until March 7, 1990, the public comment period for the proposed amendment to N.J.A.C. 13:44C-7.2, Exemptions, published in the September 5, 1989 New Jersey Register at 21 N.J.R. 2702(a). While the amendment to N.J.A.C. 13:44C-3.2 proposed along with this amendment was adopted effective November 20, 1989 (see 21 N.J.R. 3670(b)), as explained in that Notice of Adoption, the Committee is further considering the exemption amendment, and did not adopt it at that time.

Submit comments by March 7, 1990 to:

Richard Weisman, Executive Director
Advisory Committee for Audiology and Speech-Language
Pathology, Room 500
1100 Raymond Boulevard
Newark, New Jersey 07102

PUBLIC UTILITIES

(b)

BOARD OF PUBLIC UTILITIES**Notice of Extension of Comment Period
Meter Tampering****Proposed New Rule: N.J.A.C. 14:3-4.11**

Take notice that the Board of Public Utilities is extending until February 16, 1990 the public comment period for its proposed new rule, N.J.A.C. 14:3-4.11, Meter tampering, published in the December 18, 1989 New Jersey Register at 21 N.J.R. 3865(a).

Submit written comments by February 16, 1990 to:

Karen Kennedy, Esq.
Assistant Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

(c)

**BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION****Regulations of Cable Television****Notice of Preproposal on Readoption of N.J.A.C.
14:18 with Possible Amendments**

Authorized By: Celeste Fasone, Director, Office of Cable
Television.

Authority: N.J.S.A. 48:5A-10.

Preproposal Number: PPR 1990-5.

Take notice that the Office of Cable Television will hold a public hearing on Tuesday, February 20, 1990, at 10 A.M. at:

Board of Public Utilities
Hearing Room
Two Gateway Center
Newark, New Jersey 07102

Subject: Readoption and possible amendments to the Office's substantive regulations governing cable television operations and franchising.

Pursuant to Executive Order 66(1978), the rules of the New Jersey Administrative Code, N.J.A.C. 14:18, will expire on July 29, 1990. For the most part, the basic rules have been in effect since 1974. During the subsequent period, amendments have been made to reflect sundry amendments to the New Jersey Cable Television Act as well as the requirements imposed by the federal Cable Communications Policy Act of 1984 upon

the franchise renewal process. That period has also seen cable television establish itself in virtually every community and 62% of the homes in the State. The range and nature of services provided, as well as the national regulatory environment, have undergone dramatic changes, making these rules of daily concern to all citizens.

These rules affect franchised cable operators, subscribers, municipalities, multi-unit dwelling owners, and pole-owning utilities. They cover plant, service, testing of service, offices, records, billing and payment, technical standards, applications to municipalities, applications to the Board, renewals, and informational filing requirements. A complete text of the expiring rules is available from the Office of Cable Television or the rules can be found in the New Jersey Administrative Code at N.J.A.C. 14:18.

The purpose of the hearings and this notice is to elicit specific oral and written comments to identify:

- 1) Which rules are not needed?
- 2) Which new rules are needed?
- 3) How can rules be made more effective?

The Office has identified the following rules as needing revision or improved format. Please note that some of the following involves only reformatting of existing rules. Where additions to the existing regulations are suggested, the Office solicits proposed language as well as any comments addressing the impact, need, and supporting information for such rules.

Interested persons should submit comments by March 7, 1990 to:

Celeste Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, N.J. 07102

SUBCHAPTER 2. PLANT

- 1) Improve the readability and clarity of the pole attachment formula without changing the substance. 14:18-2.9
- 2) Add a procedure for filing for a change in pole attachment rates, whether by agreement or in a dispute. 14:18-2.9
- 3) Add specification that headends, tower facilities, and other facilities not adjacent to a business office, display company business address and phone number for emergency contact. 14:18-2.4
- 4) Add pedestals as property on which operator must be identified. 14:18-2.5

**SUBCHAPTER 3. SERVICE
SUBSCRIBER RIGHTS**

- 5) Consolidate subscriber rights in a single section, identifying those items which should be included.
 - a. Annual notice of all rates
 - b. Annual privacy notice
 - c. Notice of complaint officer
 - d. Notice of rate change
 - e. Notice of programming change
 - f. 24 hour answering
 - g. Outage credits
 - h. Availability of A/B switch
 - i. Availability of parental lock
 - j. Availability of devices for hearing-impaired
- 6) Add a subsection on deposit requirements and procedures, including interest and return requirements.
- 7) Add a requirement for itemized bills.
- 8) Add a requirement of written application with notice to subscribers and municipalities affected prior to any office closing.
- 9) Add a subsection requiring a scheduling window for home service calls.
- 10) Adequacy of 30 day time limit for making installations, and reasonableness of reducing limit to 20 days unless line extension policy or operations provide otherwise.
- 11) Add interest to subscriber for operator's failure to correct bill error within two billing cycles.
- 12) Add definitions for converter damage and replacement purposes. 14:18-7.2
- 13) Add definitions for seasonal subscribers. 14:18-7.8
- 14) Add requirement that rates be posted in public view in business offices.
- 15) Add a rule that makes a complaint to the OCTV an authorization for the cable operator to release information about the complaining subscriber to the OCTV.

16) Add a general requirement that systems over a threshold size have a technical person on the job 24 hours a day to provide emergency service to distribution plant.

OPERATOR RIGHTS

- 17) Refusal to connect under specified circumstances.
- 18) Basis for disconnection.

SUBCHAPTER 5. OFFICES

- 19) Add definition of local office.

SUBCHAPTER 6. RECORDS AND REPORTS

GENERAL

PERIODIC FILINGS

20) Consolidate cable operator reporting and filing obligations in single section, listing those items and filing deadlines which should be included.

- a. Annual report forms (5A-44(c))
- b. Cable Facts questionnaire

FORMS

21) Formal adoption of existing forms, including a format for informational tariffs (14:18-14.3) and rate changes (14:18-14.5).

22) Formal adoption of the Uniform System of Accounts for cable operators.

23) Add a subsection requiring notice of change in records location, whether intra-state or with permission to keep records out-of-State.

24) Add a subsection requiring notice to the Board upon damage or destruction of records.

25) Add a subsection requiring that local records include copies of documents which must be filed with the FCC, i.e., FCC public file.

26) Adopt specific electrical codes by reference.

27) Add a time limit for cable operators to disconnect service when discontinued by subscribers.

28) Add rule permitting free service to municipal or educational entities under specified circumstances.

29) Modify the channel change notice requirements to allow less notice time for adding channels when there are no deletions involved.

30) Amend rule governing senior citizens discounts to include disabled citizens as required by P.L. 1988, C. 81. 14:18-7.11.

31) Add requirement that a municipality notify the OCTV in writing that it is waiving a written ascertainment report and stating its reasons. 14:18-13.2(c).

SUBCHAPTER 11. MUNICIPAL CONSENT APPLICATION

32) Clarify the filing deadlines for renewal consents during the last nine to twelve months of the expiring franchise period.

33) Clarify the trigger period for the ten-day acceptance or rejection of a consent ordinance.

SUBCHAPTER 12. APPLICATION FOR CERTIFICATE

34) Add automatic service of arbitrary refusal petition on respondent municipality, which then would have 20 days in which to answer.

35) Add requirement that notice of COA petition filing be published at petitioning operator's expense in a form to be prescribed by the Director.

SUBCHAPTER 13. RENEWALS

36) Add provision stating the need to comply with the notice and opportunity to cure requirement, and how to do so.

37) Add explicit language which permits utilization of the municipality's ascertainment proceeding in lieu of a proceeding conducted directly by the Board.

38) Amend N.J.A.C. 14:18-13.7(b) to require that when a renewal matter goes to hearing at the BPU level, at least one hearing for public comment is held in the municipality.

39) Amend N.J.A.C. 14:18-13.5(d) to require that the applicant publish notice of its filing in a form to be prescribed by the Director of the OCTV in a local newspaper widely distributed in the franchised municipality.

The foregoing preproposal does not address the following, which are intended to be subjects of separate rulemaking proceedings; the re-adoption may include reservations of sections or subsections for these topics:

- a. Ownership and installation of subscriber premises wiring.
- b. Requirements for written protocols for management and use of public, educational, and governmental access channels.
- c. Procedures for discontinuance or curtailment of service due to excessive radio frequency signal leakage.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits for State Highways

Routes N.J. 157 in Atlantic County and N.J. 82 in Union County

Proposed Amendments: N.J.A.C. 16:28-1.99 and 1.108

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1990-63.

Submit comments by March 7, 1990 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish "speed limit" zones along Route N.J. 157 in the City of Absecon, Atlantic County, and N.J. 82 in Springfield and Union Townships, Union County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "speed limit" zones along Routes N.J. 157 in the City of Absecon, Atlantic County, and N.J. 82 in Springfield and Union Townships, Union County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.99 and 16:28-1.108 based upon the requests from the local government and the traffic investigations.

Social Impact

The proposed amendments will establish "speed limit" zones along Routes N.J. 157 in the City of Absecon, Atlantic County, and N.J. 82 in Springfield and Union Townships, Union County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the rule is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments primarily affect the motoring public.

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

16:28-1.99 Route N.J. 157

(a) The rate of speed designated for the certain parts of State highway Route 157 described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i. **In the City of Absecon, Atlantic County:**

[i. Forty-five miles per hour from the junction with Route U.S. 9 to the intersection of East Faunce Landing Road; thence

- ii. Thirty-five miles per hour to the junction with Route U.S. 30;
- iii. The legal speed limits through school zones shall be subject to the provisions of N.J.S.A. 39:4-98(a).]

(1) Zone 1: 35 mph between Route U.S. 30 and East Faunce Landing Road (mileposts 0.00 to 0.45); thence

(2) Zone 2: 45 mph between East Faunce Landing Road and Route U.S. 9 (mileposts 0.45 to 0.91).

16:28-1.108 Route 82

(a) The rate of speed designated for the certain parts of State highway Route [number] 82 described in this [section] subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i. In Springfield Township, Union County:

[i. 45 miles per hour from the easterly terminus of Route 82, at the intersection of Route 439, to a point 500 feet west of the intersection of Conant Avenue, Union Township; thence

ii. 40 miles per hour to the intersection of Suburban Road; thence

iii. 45 miles per hour to the intersection of Coolidge Avenue; thence

iv. 30 miles per hour to the intersection of Park Terrace; thence

v. 35 miles per hour to the westerly terminus of Route 82, at the intersection of Route 24 in Springfield Township.

vi. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]

(1) Zone 1: 35 mph between Meisel Avenue and the Springfield Township—Union Township Corporate Line (mileposts 0.00 to 0.45).

ii. In Union Township, Union County:

(1) Zone 1: 35 mph between the Springfield Township Corporate Line and Liberty Avenue (Co. Rd. 637); (mileposts 0.45 to 0.80); thence

(2) Zone 2: 30 mph between Liberty Avenue and Coolidge Avenue (mileposts 0.80 to 2.60); thence

(3) Zone 3: 40 mph between Coolidge Avenue and Route N.J. 439 except for 25 mph when passing through the Holy Spirit Roman Catholic School Zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 2.60 to 4.93).

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

**Teachers' Pension and Annuity Fund
Mandatory Retirement**

Proposed Repeal: N.J.A.C. 17:3-6.16

Authorized By: Teachers' Pension and Annuity Fund,

Anthony Ferrazza, Secretary.

Authority: N.J.S.A. 18A:66-51.

Proposal Number: PRN 1990-50.

Submit comments by March 7, 1990 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The current text of N.J.A.C. 17:3-6.16, which governs mandatory retirement within the Teachers' Pension and Annuity Fund (TPAF), is proposed for repeal. Mandatory retirement has been eliminated by court cases and legislation, thereby making this rule inapplicable.

Social Impact

This proposed repeal will not actually affect any individual, since its provisions are not now being enforced due to mandatory retirement having been eliminated by legislative and court actions.

Economic Impact

The purpose of this repeal is to eliminate this unnecessary rule in order to prevent confusion. The proposed repeal of this rule will not have any adverse economic impact upon the State, taxpayers or TPAF members because its provisions are not currently being enforced, since mandatory retirement has been eliminated by court cases and legislative action.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this repeal does not impose reporting, recordkeeping or other compliance requirements on small businesses. Since the rules of the Division of Pensions only impact upon public employers and/or employees, this repeal will not have any adverse effect upon small business or private industry in general.

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

17:3-6.16 [Retirement of members age 71 (correction of age)]
(Reserved)

[(a) All benefits shall be determined pursuant to the statutes and tables in effect on the date the member should have retired.

(b) No credits shall be granted for any salaries earned and for service rendered after the member's correct compulsory retirement date.

(c) The member's contributions account shall be reconstructed to determine the proper value thereof.

(d) No benefits shall be paid for the period between the date he should have retired and the effective date established for payment of a retirement allowance on the basis of the application filed.]

(b)

DIVISION OF BUILDING AND CONSTRUCTION

Classification and Qualification of Bidders

Proposed Readoption: N.J.A.C. 17:19

Authorized By: Thomas H. Bush, Director, Division of Building and Construction

Authority: N.J.S.A. 52:35-1 et seq., specially 52:35-11, 52:27-1 et seq., 52:18A-30 and 52:18A-151 et seq.

Proposal Number: PRN 1990-51.

Submit comments by March 7, 1990 to:

Thomas H. Bush, Director
Division of Building and Construction
CN 235
Trenton, NJ 08625-0235

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 17:19 expires on March 18, 1990. The Division of Building and Construction, Department of the Treasury, has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes for which they exist. In the latter half of 1989, the Division modified portions of each of the four subchapters, which attests to the currentness of the rules. Hereinafter are synoptic descriptions of the subchapters of N.J.A.C. 17:19.

N.J.A.C. 17:19-1, General Provisions, provides definitions for these general terms: "Classification", "Director", "Person", "Public Work" and "Questionnaire".

N.J.A.C. 17:19-2, Rules, as recently amended and adopted, establishes and defines the rules governing the classification of bidders pursuant to N.J.S.A. 52:35-1 et seq. whereby the Division determines eligibility of persons to bid on State public works projects.

N.J.A.C. 17:19-3, Debarment, Suspension and Disqualification of Person(s), pursuant to N.J.S.A. 52:27-1 et seq. and as recently amended and adopted to conform to Executive Order No. 189 (1988), defines specific prohibitions relative to conflicts of interest and other unlawful or unethical practices which will cause suspension, disqualification or debarment by the Division and establishes the Division's authorities and responsibilities relative to these matters.

N.J.A.C. 17:19-4 through 17:19-9 are reserved.

N.J.A.C. 17:19-10, Consultant Selection Procedures, pursuant to N.J.S.A. 52:18A-30 and N.J.S.A. 52:18A-151 et seq. as recently amended and adopted, establishes the rules for selection of architectural, engineer-

ing, construction management and other construction-related consultants which are contracted to provide professional services to the Division for its public works projects.

Social Impact

Readoption of these rules will ensure continued application of the Division's standard procedures for selecting consultants, classifying bidders and addressing instances of malfunction or contractual non-performance. Failure to readopt these rules could jeopardize the integrity and established practices which have served to promote and maintain the opportunity for all qualified and interested design and construction vendors to compete for the State's public works contracts administered by the Division.

Economic Impact

The readoption of these rules which provide for competitive consultant selection and construction bidding for State contracts is considered essential for continuation of procurement programs by which the most qualified and responsive consultants and construction contractors are contracted, ensuring that the State receives value—a quality product or service at a fair price—for the dollars it invests in its facilities.

Regulatory Flexibility Analysis

Nearly all eligible design and construction vendors and consultants affected by these rules are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

N.J.A.C. 17:19-1 and 2 impose requirements on those seeking classification as construction bidders. The requirements include completion of the Contractor's Financial Statement and Experience Questionnaire (GSA 27), joint venture statements (when applicable), and surety statements, and re-classification procedures. N.J.A.C. 17:19-3 does not impose requirements on small businesses per se, but does set forth the grounds for debarment, suspension and disqualification of person(s) pursuant to statute and Executive Order No. 189 (1989). N.J.A.C. 17:19-10 sets forth the Division's consultant selection procedures which impose compliance requirements as to completion of application forms for classification project-specific activities.

The Division considers these bidder classification and consultant selection requirements to be the minimum necessary to ensure an open, competitive bidding process and a fair consultant selection procedure. Small business compliance costs are not significant as part of the cost of engaging in the design, construction and consultant businesses. The Division does not anticipate that small businesses will require outside professional assistance to comply. For these reasons, and due to the predominance of small businesses in the areas regulated, no differentiation or exemption is provided based upon business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:19.

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Interest Arbitration

Proposed Amendment: N.J.A.C. 19:16-5.7

Authorized By: Public Employment Relations Commission,

James W. Mastriani, Chairman.

Authority: N.J.S.A. 34:13A-11.

Proposal Number: PRN 1990-47.

Submit comments by March 7, 1990 to:

James W. Mastriani, Chairman
Public Employment Relations Commission
CN 429
495 W. State Street
Trenton, NJ 08625-0429

The agency proposal follows:

Summary

Having considered a petition for rulemaking, the Commission believes N.J.A.C. 19:16-5.7(d) should be amended to delete the requirement of securing the arbitrator's consent before interest arbitration proceedings can be made public. Negotiations is essentially a bilateral process. If both

parties agree that public hearings will facilitate the resolution of their contract dispute, that agreement should be sufficient to make the proceedings public.

Social Impact

The proposed amendment will have a positive impact on the parties to an interest arbitration proceeding. It adds flexibility to the collective negotiations process but does so in a way that preserves both parties' right to participate in traditional non-public interest arbitration hearings. It removes any barrier to public hearings should both parties consent to such hearings.

Economic Impact

The amendment will have an insignificant economic impact limited to cost of facilities for public hearings should both parties consent to such hearings.

Regulatory Flexibility Statement

The proposed amendment imposes no requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Commission's actions involve employer-employee relations in public employment.

Full text of proposal follows (deletions indicated in brackets [thus]):

19:16-5.7 Conduct of the arbitration proceeding

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

(d) The arbitrator may administer oaths, conduct hearings, require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. Any hearings conducted shall not be public unless all parties [and the arbitrator] agree to have them public.

(e)-(k) (No change.)

(b)

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY

Possession of Firearms

Proposed Amendment: N.J.A.C. 19:20-2.2

Authorized By: New Jersey Sports and Exposition Authority,

Robert E. Mulcahy, III, President.

Authority: N.J.S.A. 5:10-5(1).

Proposal Number: PRN 1989-563.

Submit comments by March 7, 1990 to:

Robert E. Mulcahy, III, President
New Jersey Sports and Exposition Authority
P.O. Box C200
East Rutherford, New Jersey

The agency proposal follows:

Summary

The New Jersey Sports and Exposition Authority has, pursuant to N.J.S.A. 5:10-5(1), adopted rules elsewhere in this issue of the New Jersey Register specifying those substances and objects which are either prohibited upon the property of, or the facilities operated by, the Authority, or which are otherwise subject to limitations and control by the Authority. The provision of N.J.A.C. 19:20-2.2 which is proposed for amendment deals with the possession of firearms on the property of the New Jersey Sports and Exposition Authority by law enforcement officers. The proposed amendment will modify the existing rule so as to require law enforcement officers to obtain authorization from the New Jersey Sports and Exposition Authority and from the State Police to carry a weapon on Authority property and will also provide for the establishment of a secure depository, under the supervision of the Division of State Police, for the storage of weapons which are carried by law enforcement officers who, for example, may be required by internal regulation or municipal ordinance to carry weapons when off duty.

Social Impact

The proposed amendment will serve to further benefit and protect patrons and other individuals in attendance at sporting and entertainment events conducted at the facilities operated by the Authority by continuing to insure the creation and maintenance of a safe and appropriate environment for the conducting of, and the attendance at, sporting and other entertainment events while, at the same time, providing an appropriate mechanism for the storage of weapons which may be in the possession of law enforcement officers who may be required by either internal regulation or municipal ordinance to carry weapons when off duty.

Economic Impact

The proposed amendment will have no direct economic impact or effect upon the public at large or upon patrons attending sporting and entertainment events at any of the facilities operated by the Authority. The proposed amendment will have no economic impact upon the Authority.

Regulatory Flexibility Statement

The proposed amendment does not require a regulatory flexibility analysis since the proposed amendment does not impose any requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:20-2.2 [Firearms prohibited] **Possession of firearms**

(a) The possession, use, display or discharge of any **firearm or firearms, or other weapon or weapons or fireworks of any type, except by persons authorized by the New Jersey Sports and Exposition Authority [or required by law] is prohibited on any property owned or maintained by the Authority (including, but not limited to, parking areas and all facilities of the Authority open to the public). Persons authorized by the Authority to possess a firearm or firearms, or other weapon or weapons, under this subsection may include duly appointed law enforcement officers of this State (including political subdivisions thereof), of the government of the United States, or of another state (including political subdivisions thereof), who are present on Authority property on official business in their official capacity on behalf of their appointing authority or jurisdiction. Such law enforcement officers who are carrying a weapon, whether or not in uniform, are required to report their status as law enforcement officers and their presence on Authority property to the Authority and the Division of State Police through an appropriate supervisor or upon their entry on any property owned or maintained by the Authority.**

(b) Law enforcement officers either on-duty or off-duty who are in the possession of a firearm or firearms, or other weapon or weapons, and who are not authorized under the provisions of (a) above to possess, use, display or discharge any firearm or firearms, or other weapon or weapons or fireworks, shall report that they are carrying a weapon to the Authority and the Division of State Police upon their entry on any property owned or maintained by the Authority and shall personally deposit any and all firearms or weapons in a secure depository under the supervision of the Division of State Police. The deposit of a firearm by a law enforcement officer under this subsection shall not be construed to be a transfer of a firearm in contravention of N.J.S.A. 2C:39-1 et seq. or 2C:58-1 et seq.

(c) The Authority shall provide for an appropriate procedure for the depositing and the reclaiming of a firearm or weapon which shall include appropriate methods of identification in consultation with the Superintendent of State Police.

(a)

ELECTION LAW ENFORCEMENT COMMISSION**Personal Interest Disclosure Statement****Proposed New Rule: N.J.A.C. 19:25-7.8****Proposed Amendment: N.J.A.C. 19:25-1.7**

Authorized By: Election Law Enforcement Commission,

Frederick M. Herrmann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-6.

Proposal Number: PRN 1990-61.

Submit written comments by March 7, 1990 to:

Gregory E. Nagy, Legal Director

Election Law Enforcement Commission

National State Bank Building, 12th Floor

CN-185

Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, "the Commission") proposes a new rule, N.J.A.C. 19:25-7.8, Personal Interest Disclosure Statement, and an amendment to N.J.A.C. 19:25-1.7, Definitions, by adding definitions for the terms "immediate family member" and "substantial financial interest."

The proposed new rule would require a candidate, treasurer, deputy treasurer, organizational treasurer, or deputy organizational treasurer (hereafter "candidate or treasurer") to file a personal interest disclosure statement for any reported campaign or organizational expenditure to an immediate family member of the candidate or treasurer, or any reported expenditure to a business in which the candidate or treasurer has a substantial financial interest.

The personal interest disclosure statement will provide to the Commission and the public information beyond that required under existing rules for expenditures by a candidate, political committee, or continuing political committee. The statement must contain the name of the entity filing the report, the date of the expenditure, the amount of the expenditure, and the name and mailing address of all payees or ultimate recipients. Additionally, the statement must contain the nature of the relationship between the candidate or entity making the expenditure and the payee or ultimate recipient, and must contain a full description of the services or goods provided and the rate of compensation or price per item. The statement must further describe the unique or particular qualifications of the payee or ultimate recipients, and the campaign or political purpose of the services or goods. With such information, the Commission will enhance its ability to assess whether the expenditure is in compliance with the prohibition against personal use of campaign or organizational funds set forth in existing N.J.A.C. 19:25-7.2, Use of funds; general, and in N.J.A.C. 19:25-7.4, Use or disposition of surplus campaign funds.

A candidate filing campaign reports pursuant to N.J.S.A. 19:44A-16 must file such a statement if the candidate's campaign makes an expenditure to the candidate or treasurer, to an immediate family member of the candidate or treasurer, or to a business or other income-producing enterprise in which the candidate has a substantial financial interest. For example, if a candidate or treasurer employs and compensates a family member to provide services to the campaign, a personal interest disclosure statement must be filed simultaneously with the filing of the campaign report in which the expenditure is reported.

A political committee aiding or promoting a candidate in an election pursuant to N.J.S.A. 19:44A-8(a) must file a personal interest disclosure statement for any expenditure to that candidate, to an immediate family member of that candidate, or to a business or other income-producing enterprise in which the candidate has a substantial financial interest.

A continuing political committee, such as a political action committee (PAC), aiding or promoting a candidate pursuant to N.J.S.A. 19:44A-8(b) must similarly file a personal interest disclosure statement for any expenditure to the candidate, an immediate family member of that candidate, or to a business or other income-producing enterprise in which the candidate has a substantial financial interest.

Any candidate or entity that reports making an expenditure to its treasurer, deputy treasurer, organizational treasurer, or deputy organizational treasurer, or to an immediate family member of those persons, or to a business or other income-producing enterprise in which any of those

persons has a substantial financial interest, must also file a personal interest disclosure statement.

The certification of any personal interest disclosure statement must be made by the same person or persons certifying the correctness of the accompanying report. For example, if a political committee files a report certified by its treasurer, the accompanying personal interest disclosure statement must be certified by that treasurer.

Social Impact

The Commission believes that the social impact of the proposed new rule and amendment will be beneficial. Candidates and treasurers will be required to make a public statement elaborating on any expenditure of campaign or organizational funds in which there is an appearance of personal financial interest. For example, a treasurer who pays himself or herself, or an immediate family member, a salary in compensation for services performed will be required to file a personal interest disclosure statement. That statement will document the number of hours of work, the rate of compensation, the unique or particular qualifications of the payee, and the campaign or political purpose of the services provided. In the absence of such a statement, the report filed by a campaign or organization simply indicates the name and address of the payee, the date of payment, the total amount paid, and purpose. Therefore, in the absence of this statement, neither the public nor the Commission can assess precisely what services were provided, the amount of time the services took, the rate of compensation for those services, and the nature of the relationship between the candidate or treasurer and the payee or ultimate recipient.

The Commission believes that this additional information will enhance its ability and the ability of the electorate and public-at-large to understand campaign and organizational financial activity, and to monitor compliance with restrictions against personal use of campaign and organizational funds.

The Commission has observed over the past several election cycles that the amounts of money being raised and expended by candidates and continuing political committees including PACs have rapidly accelerated. The tendency for elected candidates to retain funds for future election campaigns has also similarly increased. Under such social circumstances, the Commission believes that it is necessary for it to buttress public confidence in the integrity of the electoral process as it pertains to financial activity, and this new rule and amendment will assist in pursuing that objective.

Economic Impact

The Commission believes that the economic impact of this proposed new rule and amendment will be minimal on the affected persons. Candidates and treasurers will be required to prepare and file personal interest disclosure statements for certain expenditures, and the preparation of those statements will result in some additional minimal cost. The Commission will incur some additional costs in the filing, storage and copying of these statements. However, the Commission believes that these additional costs are more than justified by the beneficial impact of the information that the statements will contain.

Regulatory Flexibility Statement

The proposed new rule and amendment do not impose any requirements on small businesses, as that term is defined under Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rule and amendment affect only candidates for public elective office and other political entities required to file reports with the Commission.

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

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the context.

...
 "Immediate family member" of a person means a spouse, child, parent or sibling of that person.

...
 "Substantial financial interest" means a 10 percent or greater legal or beneficial ownership of a business or other income producing enterprise which provided to the person in the prior calendar year a total of more than \$1,000 of earned and unearned income.

...

19:25-7.8 [(Reserved)] Personal interest disclosure statement

(a) Any report filed pursuant to the act shall include a personal interest disclosure statement if such report contain any expenditure to a payee or ultimate recipient who is any of the following:

1. A candidate filing the report pursuant to N.J.S.A. 19:44A-16;
2. A candidate who is being aided or promoted by a political committee filing the report pursuant to N.J.S.A. 19:44A-8(a);
3. A candidate who is being aided or promoted by a continuing political committee filing the report pursuant to N.J.S.A. 19:44A-8(b);
4. A treasurer, deputy treasurer, organizational treasurer, or deputy organizational treasurer of a candidate, political committee or continuing political committee filing the report;
5. An immediate family member as defined in N.J.A.C. 19:25-1.7, Definitions, of any person described in (a)1, 2, 3, or 4 above; or
6. A business or other income producing enterprise in which any person described in (a)1, 2, 3, 4, or 5 above has a substantial financial interest as defined in N.J.A.C. 19:25-1.7, Definitions.

(b) A personal interest disclosure statement filed pursuant to this section shall be on a form provided by the Commission and shall contain the following information for each expenditure described in (a) above:

1. The name of the reporting entity filing the report in which the expenditure was disclosed;
2. The date of the expenditure;
3. The amount of the expenditure;
4. The name and mailing address of all payees or ultimate recipients of the expenditure;
5. The nature of the relationship of the immediate family member and the reporting candidate or entity making the expenditure (for example, father of candidate), or the nature of the substantial financial interest in a business or other income-producing enterprise of the reporting candidate or entity making the expenditure (for example, in excess of 10 percent ownership);
6. A full description of any service provided by the payee or ultimate recipient including:
 - i. The amount of time expended by the payee or ultimate recipient in providing the service;
 - ii. The hourly or weekly rate of compensation;
 - iii. The amount, if any, paid as reimbursement for any expense incurred by the payee or ultimate recipient;
 - iv. The particular or unique qualifications of the payee or ultimate recipient to provide the services; and
 - v. The campaign or political purpose of the service; and
7. A full description of any goods provided by the payee or ultimate recipient including:
 - i. The nature of the goods;
 - ii. The price per item;
 - iii. The number of items;
 - iv. The particular or unique qualifications of the payee or ultimate recipient to provide the goods; and
 - v. The campaign or political purpose of the goods.

(c) A personal interest disclosure statement shall be certified as true and correct by the candidate, treasurer, deputy treasurer, organizational treasurer, or deputy organizational treasurer, of the candidate, political committee, or continuing political committee filing the statement.

(a)

CASINO CONTROL COMMISSION

Affirmative Action

Requirements for Applicants and Licensees

Proposed Amendment: N.J.A.C. 19:53-1.5

Authorized By: Casino Control Commission, Joseph A. Papp,
 Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69 and 5:12-134.

Proposal Number: PRN 1990-13.

Submit comments by March 7, 1990 to:
 James F. Schwerin, Senior Assistant Counsel
 Legal Division
 Casino Control Commission
 3131 Princeton Pike Office Park
 Building No. 5, CN 208
 Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed amendment would delete the current regulatory requirement that all employment criteria, tests or other procedures be submitted in advance to the Commission for approval before use. Such items would still have to be submitted to the Commission but job relatedness, which currently must be demonstrated before use, would only need to be demonstrated after a showing of a discriminatory impact. This amendment would lower the current rule's standard to conform with the current state of the law under the Federal Civil Rights Acts and the regulations of the Equal Employment Opportunity Commission in not requiring preapproval.

Social Impact

The proposed amendment could conceivably have some social impact in terms of the effect on possible use of discriminatory criteria in employment decisions. Such discrimination is still forbidden, but the need for routine preapproval of all employment criteria, tests or procedures will be eliminated. If there is an initial showing of a discriminatory impact, however, licensees and applicants will be obliged to prove to the Commission's satisfaction that the employment tests or criteria utilized are demonstrably job related and that no less discriminatory selection method is feasible. The amendment will allow licensees and applicants to formulate and implement criteria and tests more easily and may allow development of more effective employment techniques. However, absent preapproval, it is possible that some inappropriate tests or criteria may be utilized until a discriminatory impact is shown.

Economic Impact

The proposed amendment is not expected to have any significant economic impact. However, it may result in some savings for licensees and applicants who introduce a new employment screening device for which no validating history exists.

Regulatory Flexibility Statement

The proposed amendment does not impose any reporting, record keeping or compliance requirements on entities which qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

19:53-1.5 Affirmative action requirements for applicants and licensees

(a) Affirmative action programs required by N.J.A.C. 19:53-1.3(b) shall include the following:

1.-7. (No change.)

8. If an applicant or a licensee employs or will imminently employ 15 or more employees, the applicant or licensee must provide to the [commission] **Commission** a description of all criteria, tests and/or other procedures used to determine whether to employ an applicant for employment or to transfer, advance, upgrade or promote an existing employee. [Such applicant or licensee must justify the requirements imposed and must demonstrate to the satisfaction of the commission that any criteria, tests or other procedures are truly predictive of job performance.] In the event that a discriminatory impact [appears] is **shown**, the applicant or licensee must demonstrate to the satisfaction of the [commission] **Commission** that no less discriminatory method of job evaluation and prediction is feasible. **In such case, such applicant or licensee must justify the requirements imposed and must demonstrate to the satisfaction of the Commission that any criteria, tests or other procedures are truly predictive of job performance.** Such applicant or licensee shall discontinue the use of any criteria, tests or other procedure which has a discriminatory impact and which cannot be validated to the satisfaction of the [commission] **Commission**. In attempting to establish the validity of a criterion, test or other procedure, the applicant or licensee shall be guided by the criteria adopted by the New Jersey Division of Civil Rights, the Federal Equal Employment Opportunity Commission, and by the applicable cases and statutes, both State and Federal.

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

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Ordering a Transcript; Cost

Adopted Amendment: N.J.A.C. 1:1-14.11

Pre-proposed: May 15, 1989 at 21 N.J.R. 1181(b).

Proposed: November 20, 1989 at 21 N.J.R. 3587(a).

Adopted: January 2, 1990 by Jaynee LaVecchia, Director, Office of Administrative Law.

Filed: January 2, 1990 as R.1990 d.68, **without change**.

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

Effective Date: February 5, 1990.

Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:

Only one comment was submitted in response to the proposal. The Department of Personnel commented that it was pleased that the process for ordering transcripts prior to the rendering of a final decision would remain essentially unchanged.

The Office of Administrative Law has decided to adopt the rule amendment as proposed.

Full text of the adoption follows:

1:1-14.11 Ordering a transcript; cost; certification to court; copying

(a) A transcript of any proceeding which has been sound recorded may be obtained by filing a request with the Clerk. The requesting party shall notify all other parties of the request. Unless the requesting party is the State or a political subdivision thereof, the request shall be accompanied by a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the preparer or \$300.00 for each day or fraction thereof of the proceeding, the deposit to be made payable to the preparer. The Clerk shall promptly arrange for the preparation of the transcript with a copy for the case file. Upon completion of the transcript, the preparer shall forward the transcript to the requesting party and the copy to the Clerk. The preparer shall bill the requesting party for any amount due for the preparation of the transcript and the copy or shall reimburse the requesting party for any overpayment.

(b) An unofficial copy of a sound recorded proceeding may be obtained by making a request to the Clerk accompanied by a blank standard cassette of appropriate length.

(c) A transcript of any stenographically recorded proceeding may be obtained by requesting the appropriate stenographic firm to prepare a transcript, except as specified in (d) below. The requesting party shall provide notice of the request to the Clerk and to all other parties. Unless the requesting party is the State or a political subdivision thereof, the stenographic firm may require a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the preparer or \$300.00 for each day or fraction thereof of the proceeding. The reporter shall promptly prepare the transcript and shall file a copy with the Clerk at the time the original is delivered to the requesting party. The reporter shall bill the requesting party for any amount due for the preparation of the transcript and the copy or shall reimburse the requesting party for any overpayment.

(d) When the preparation of a transcript is being requested for an appeal to court, whether the proceeding was sound or stenographically recorded, the request shall be made as follows:

1. For cases heard by an Administrative Law Judge, the request shall be made to the Clerk of the Office of Administrative Law;
2. For cases heard by an agency head, the request shall be made to the Clerk of that agency.

(e) All transcript preparation requests pursuant to (d) above for appeal to a court shall include one copy of the transcript for the Clerk

and any additional copies required by R. 2:6-12. The form of the transcript request shall conform with the requirements of R. 2:5-3(a) and be accompanied by the deposit required by R. 2:5-3(d).

1. The Clerk shall promptly arrange for the preparation of the transcript. Upon completion of the transcript, the preparer shall bill the requesting party for any sum due or shall reimburse the requesting party for any overpayment and shall forward the original and any copies ordered pursuant to R. 2:6-12 to the requesting party. When the last volume of the entire transcript has been delivered to the appellant, the preparer shall forward to the Clerk the copy of the transcript prepared for the Clerk.

2. The Clerk shall transmit the transcript copy to the court and comply with the requirements of R. 2:5-3.

(f) For cases in which an agency possesses a transcript of the hearing being appealed, the request for copying under R. 2:5-3(a) shall be made to the Clerk of that agency. Upon receiving such a request, the Clerk shall make the existing transcript available to the appellant for reproduction for filing and service.

(g) Any transcript that is required by law to be filed with a Clerk shall be considered a public document which is available upon request for copying, as required by the Right to Know Law, N.J.S.A. 47:1A-1 et seq.

(h) The following shall apply to all transcripts:

1. Transcripts must be prepared in accordance with State standards established by the Administrative Director of the Courts.

2. Unless a proceeding has been sealed, any person may request a transcript or a recording of the proceeding. However, if the person requesting a transcript or tape recording was not a party to the proceeding, the requester when making the request must also notify all parties of the request. If a party objects to the request, a written objection must be filed immediately with the Clerk and served on the requester and all other parties to the proceeding. This objection shall be reviewed by the judge who presided over the proceeding.

3. If a proceeding was sealed, only parties to the proceeding may request a transcript or a tape recording and the contents of the transcript or recording shall not be disclosed to anyone except in accordance with the order sealing the proceeding.

(i) Any party or person entitled by Federal statute or regulation to copy and inspect the verbatim transcript may arrange with the Clerk to review any transcript filed under (a) or (c) above and shall also be permitted to hear and receive a copy of any sound recorded proceeding pursuant to (b) above. All applications to obtain a transcript of any proceeding at public expense for use on appeal shall be made to the Appellate Court pursuant to New Jersey Court Rule R. 2:5-3 or in case of Federal appeals pursuant to applicable Federal Court Rules.

(j) Where the Public Advocate's office is representing the public interest in a proceeding and another party to the proceeding is entitled by law to recover the costs thereof from others, such other party shall obtain, pay for and furnish to the Public Advocate upon request the official transcript.

(b)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Withdrawals

Adopted Amendment: N.J.A.C. 1:1-19.2

Proposed: November 20, 1989 at 21 N.J.R. 3589(a).

Adopted: January 2, 1990 by Jaynee LaVecchia, Director, Office of Administrative Law.

Filed: January 4, 1990 as R.1990 d.71, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

ADOPTIONS

Effective Date: February 5, 1990.

Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:

Three comments were received. The Department of Personnel, Public Service Electric and Gas (PSE&G) and the Board of Public Utilities (BPU) all favored the proposal to eliminate the requirement that an initial decision be filed in a withdrawal. The BPU noted, however, that the transmitting agency retains the authority to review a withdrawal in all cases. To clarify this, the Office of Administrative Law agrees that the words "for appropriate disposition" should be retained in subsection (b). Except for that change, the rule amendment has been adopted as proposed.

Full text of adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

1:1-19.2 Withdrawals

(a) A party may withdraw a request for a hearing or a defense raised by notifying the judge and all parties in writing. Upon receipt of such notification, the judge shall discontinue all proceedings and return the case file to the Clerk. If the judge deems it advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and returning the matter to the transmitting agency for appropriate disposition.

(b) When a party withdraws, the Clerk shall return the matter to the agency which transmitted the case to the Office of Administrative Law ***for appropriate disposition***.

(c) After the Clerk has returned the matter, a party shall address to the transmitting agency head any motion to reopen a withdrawn case.

BANKING

(a)

THE COMMISSIONER

Organizational Rule

Banking Department Reorganization

Adopted New Rule: N.J.A.C. 3:3-1.1

Adopted: January 9, 1990 by Mary Little Parell, Commissioner, Department of Banking.

Filed: January 11, 1990 as R.1990 d.103.

Authority: N.J.S.A. 17:1B-3a; N.J.S.A. 52:14B-4(b).

Effective Date: January 11, 1990.

Expiration Date: January 11, 1995.

Take notice that Mary Little Parell, Commissioner of Banking, pursuant to authority of P.L. 1970, c.11 (N.J.S.A. 17:1B-1 to 17:1B-3), as supplemented by P.L. 1970, c.88 (N.J.S.A. 17:1B-3a), and in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., has adopted a rule reorganizing the Department of Banking.

Previously, the Department was organized into Divisions of Banking, Savings and Loan, and Consumer Complaints, Legal and Economic Research (see 2 N.J.R. 69 (September 10, 1970)). Pursuant to the reorganization, the Department is divided based upon the function of the unit, not the type of entity supervised. The units in their reorganized form are outlined in the adopted new organizational rule set forth below.

CHAPTER 3

DEPARTMENT ORGANIZATION

SUBCHAPTER 1. ORGANIZATION

3:3-1.1 Department organization

(a) The Department of Banking is organized into the following elements:

1. The Division of Supervision, which is responsible for the processing of all applications, corporate filings, and licensing activities. In addition, this division supervises the Department's consumer ser-

COMMUNITY AFFAIRS

vices functions and oversees special investigations and enforcement actions taken against depository institutions and licensees;

2. The Division of Examinations, which is responsible for the examination of all depository institutions, financial services companies and licensed lenders. A separate unit of this division performs financial analysis, including the analysis of financial reports from regulated entities;

3. The Office of Legislative Affairs, which serves as a liaison to the legislature, industry groups, governmental agencies and the Governor's Counsel on legislative matters. In addition, it prepares and coordinates the formulation of departmental positions on proposed legislation;

4. The Office of Regulatory Affairs, which provides regulatory advice to the operating units, reviews the legal sufficiency of departmental positions and drafts regulations. In addition, it provides the Department with information on existing Federal and state laws and regulations, and coordinates the formulation of departmental positions on regulations proposed by related agencies;

5. The Office of Human Resources, which designs and implements human resource systems and policies, among other personnel functions;

6. The Office of Information Resources, which manages the computer and communication needs of the Department; and

7. The Office of Fiscal and Facilities Management, which oversees the fiscal and facilities systems including budget preparation, revenue and expenditure analysis, revenue collection, and facilities procurement and maintenance.

(b) All of the units in (a) above report directly to the Commissioner, as assisted by the Chief Operations Officer, who coordinates the functions and activities of the units. The Commissioner also directly oversees the press and public information function and maintains such support staff as is necessary to perform the full scope of duties of the Commissioner.

COMMUNITY AFFAIRS

(b)

OFFICE OF THE COMMISSIONER

Standards of Conduct

Adopted Repeal and New Rule: N.J.A.C. 5:1-6.1

Adopted Amendments: N.J.A.C. 5:1-1.1 and 2.1

Adopted Repeals: N.J.A.C. 5:1-6.2 through 6.11 and 7.4

Proposed: December 4, 1989 at 21 N.J.R. 3693(a).

Adopted: January 8, 1990 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.

Filed: January 10, 1990 as R.1990 d.99, **with a technical change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: February 5, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

The Department of Personnel recommended that the reference to "classified civil service" in N.J.A.C. 5:1-1.1 be changed to "career service," in conformity with the changed terminology used in Title 11A of the New Jersey Statutes. This change has been made upon adoption.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

5:1-1.1 Applicability

The standards of conduct applicable to employees in the ***[classified]* *career*** service pursuant to the rules of the Department of Personnel are hereby made applicable to all officers and employees

of the Department of Community Affairs, irrespective of whether they are or are not in the *[classified civil]* *career* service.

5:1-2.1 Words and phrases defined

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

...
 "Department" means the New Jersey Department of Community Affairs.
 ...

5:1-6.1 Compliance with Department of Community Affairs Code of Ethics

(a) All officers and employees of the Department of Community Affairs shall comply with the Department of Community Affairs Code of Ethics, approved by the Executive Commission on Ethical Standards pursuant to N.J.S.A. 52:13D-23 and effective November 1, 1989.

(b) Copies of the Department of Community Affairs Code of Ethics may be obtained from the Office of Human Resources, CN 800, Trenton, NJ 08625. Telephone: (609) 292-6030.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

**Relocation Assistance
 Definitions; Relocation Plans**

Adopted Amendments: N.J.A.C. 5:11-1.2 and 6.2

Proposed: December 4, 1989 at 21 N.J.R. 3694(a).
 Adopted: January 12, 1990 by Anthony M. Villane, Jr., D.D.S.,
 Commissioner, Department of Community Affairs.
 Filed: January 12, 1990 as R.1990 d.113, **without change**.
 Authority: N.J.S.A. 52:31B-10 and 20:4-10.
 Effective Date: February 5, 1990.
 Expiration Date: March 10, 1994.

Summary of Public Comment and Agency Response:

The Division of Public Interest Advocacy of the Department of the Public Advocate submitted comments expressing support for the amendments and asked that the Department make it clear that the rules, as amended, apply to ongoing redevelopment projects as well as to future projects. In reply, the Department points out that its economic impact statement clearly indicated the anticipated impact upon "designated developers" who "have avoided responsibility for providing relocation assistance by reliance upon the rules" and who "will be adversely impacted by the discontinuation of their ability to do so." It is clear to the Department that the statute has at all times governed and the contradiction between the statute and the rule that has now been eliminated should in all cases have been resolved in favor of the broader definition set forth in the statute. The definition now set forth in the rule is thus applicable to ongoing projects as well as to future projects.

Full text of the adoption follows.

5:11-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context or any definition set forth in P.L. 1967, c.79 (N.J.S.A. 53:31B-1 et seq.) or P.L. 1971, c.362 (N.J.S.A. 20:4-1 et seq.) clearly indicates otherwise.

...
 "Unit of local government" means any political subdivision of this State, or any two or more such political subdivisions acting jointly pursuant to law, and any department, division, office, agency or bureau thereof or any authority or instrumentality created or chartered thereby.
 ...

5:11-6.2 Joint exercise

(a) A displacing agency may contract with another agency in order to provide the benefits required in subchapters 3 and 4 of this chapter and two or more displacing agencies may agree to provide the ben-

efits jointly; provided that the Department gives prior approval. In the event of a displacing agency contracting with another or in the event of joint exercise, the ultimate responsibility for relocation assistance and benefits remains with the displacing agency.

(b) In any case in which displacement is being undertaken by a "unit of local government" that is a chartered private entity, responsibility for the filing of the WRAP shall rest with the political subdivision by which the private entity was chartered to exercise governmental powers and, unless otherwise agreed between the political subdivision and the private entity, primary responsibility for providing relocation assistance shall rest with the political subdivision.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Homelessness Prevention Program

Readoption with Amendments: N.J.A.C. 5:12

Proposed: September 18, 1989 at 21 N.J.R. 2845(a).
 Adopted: December 21, 1989 by Anthony M. Villane, Jr., D.D.S.,
 Commissioner, Department of Community Affairs.
 Filed: December 27, 1989 as R.1990 d.62, **with substantive changes**
 not requiring additional public notice and comment (see
 N.J.A.C. 1:30-4.3).
 Authority: N.J.S.A. 52:27C-24 and 52:27D-280.
 Effective Date: December 27, 1989, Readoption; February 5,
 1990, Amendments.
 Expiration Date: December 27, 1994.

Summary of Public Comments and Agency Responses:

Comments were received from the Department of Human Services and several public and private social service agencies protesting the proposed elimination of the priority category for households with children that have broken up or face imminent breakup due to homelessness. The commenters advise that the Department was mistaken in its belief that it is no longer the case that children are taken and placed elsewhere because of homelessness.

The Department's records indicate only one bona fide case brought to its attention in the past year that would fit this category. However, so long as it remains possible that some people might fall into this category, the Department will defer to the concerns of the commenters and retain the category.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:12.

Full text of the amendments follows (additions to proposal indicated in boldface with asterisks *thus*):

5:12-2.1 Eligibility

(a)-(h) (No change.)

(i) Assistance to any person or household facing foreclosure as a result of mortgage or property tax arrearages shall be in the form of a loan which shall be secured by a recorded mortgage.

1. (No change.)

2. No person or household shall be eligible for a mortgage loan in the event of initiated or ongoing bankruptcy proceedings.

3. The total amount of any mortgage loan shall not exceed an amount equal to 720 percent (six times 120 percent) of the monthly "Fair Market Rental" as defined for the Section 8 Existing Program for the region in which the property is located as determined in accordance with guidelines published annually by the United States Department of Housing and Urban Development.

5:12-2.5 Priorities

(a) Inasmuch as all households that apply and are found eligible may not be able to receive assistance due to lack of funds, first consideration shall be given to those most vulnerable in the event of homelessness. Priorities for consideration for assistance among otherwise qualified applicants in the same applicant pool shall be assigned in the following order. However, no person shall be deemed

to be entitled to assistance solely by virtue of being in one of the following categories.

1. Households with a person who is found to be disabled or handicapped by a government agency physician or other health professional at time of application;

2. Households with a person who is at least 62 years of age;

3. Victims of domestic violence (A referral from the Division of Youth and Family Services, emergency shelter agency, county welfare agency, or other social agency shall be required.);

4. Households with children which have broken up or face imminent breakup due to homelessness. (A recommendation from the Division of Youth and Family Services, emergency shelter agency, county welfare agency or other social agency shall be required.);

Renumber 5.-7. as *[4.-6.]* as *5.-7.*

(b) Preference will be given to households already in sustainable housing.

5:12-2.6 Administrative Hearings

(a) (No change.)

(b) A request for a hearing must be made in writing within 15 days of the applicant's receipt of the notice or order complained of and must be sent to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, New Jersey 08625.

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
Neighborhood Preservation Balanced Housing
Program**

Affordability Control Procedures

Adopted Amendment: N.J.A.C. 5:14-4.1

Proposed: December 4, 1989 at 21 N.J.R. 3695(a).

Adopted: January 8, 1990 by Anthony M. Villane, Jr., D.D.S.,

Commissioner, Department of Community Affairs.

Filed: January 10, 1990 as R.1990 d.100, **without change.**

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

Effective Date: February 5, 1990.

Expiration Date: December 1, 1990.

Summary of Public Comments and Agency Responses:

The New Jersey State League of Municipalities forwarded a comment by an attorney representing a municipality that has developed local affordability controls that it wishes not to see superseded by the Department's affordability control procedures. The attorney urges that participation in the Department's program be optional and that mandatory participation infringes upon home rule, sets up an unnecessary additional bureaucracy funded by a \$300.00 per unit fee that would not otherwise have to be paid.

In response, the Department states that it does not view this as a home rule issue at all since municipalities are free to establish their own affordability control procedures for projects that do not utilize Balanced Housing funds. Where State funds are used, however, the Department believes that the public interest is best served by having uniform procedures, including procedures for purchaser and tenant selection and verification of continued eligibility. No new bureaucracy is created by mandating participation in the Department's program because the program would have to exist in any event to administer controls in municipalities without their own local administrative apparatus. The administrative fee will be paid out of balanced housing funds in the case of any nonprofit development and paid by developers in inclusionary for-profit developments. It will not be imposed upon municipalities in any event.

Full text of the adoption follows:

5:14-4.1 General provisions

(a) (No change.)

(b) In order to receive approval for a grant or loan from the Department of Community Affairs, Neighborhood Preservation Balanced Housing Program, a municipality must assure that units remain affordable to and occupied by low and moderate income-eligible households for the prescribed time period.

1. The Affordable Housing Management Service is established within the Department to administer affordability controls for Balanced Housing projects. This service shall be utilized by municipalities receiving Balanced Housing funds as a condition of the funding contract. Funding recipients shall be charged a \$300.00 per unit fee for the use of these services.

2. If the funding recipient is a non-profit organization or a municipality acting as the developer, this fee will be added to the total funding and paid to the Affordable Housing Management Service. If the recipient is a for-profit developer, the fee will be paid by the developer to the Affordable Housing Management Service.

3. An alternative affordability control program may be utilized for special projects requiring more stringent procedures provided verification of an alternative program has been submitted by the project sponsor and written approval has been received from the Affordable Housing Management Service.

4. These rules will be used as a standard for the review and approval of any affordability control program as it pertains to the Neighborhood Preservation Balanced Housing Program.

(c) (No change.)

(b)

**DIVISION OF HOUSING AND DEVELOPMENT
Uniform Fire Code; Fire Code Enforcement; High
Level Alarms**

Readoption: N.J.A.C. 5:18, 5:18A and 5:18B

Proposed: November 6, 1989 at 21 N.J.R. 3344(a).

Adopted: December 23, 1989 by Anthony M. Villane, Jr., D.D.S.,
Commissioner, Department of Community Affairs.

Filed: January 4, 1990 as R.1990 d.72, **without change.**

Authority: N.J.S.A. 52:27D-198, 201 and 219.

Effective Date: January 4, 1990.

Expiration Date: January 4, 1995.

Summary of Public Comments and Agency Responses:

No public comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:18, 5:18A and 5:18B.

(c)

**DIVISION OF HOUSING AND DEVELOPMENT
Uniform Fire Code; Fire Service Training and
Certification**

Adopted New Rule: N.J.A.C. 5:18C-1

Proposed: June 19, 1989 at 21 N.J.R. 1655(a).

Adopted: January 12, 1990 by Anthony M. Villane Jr., D.D.S.,
Commissioner, Department of Community Affairs.

Filed: January 12, 1990, as R. 1990 d.114, **with technical and
substantive changes** not requiring additional public notice and
comment (see N.J.A.C. 1:30-4.3(c)) **and with portions not
adopted.**

Authority: N.J.S.A. 52:27D-198 and 52:27D-219.

Effective Date: February 5, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from fire departments and fire districts, county fire training academies, private sector fire service training organizations, representatives of the New Jersey State Fire College and other organizations representing the fire service. The substance of the comments received is as follows:

COMMENT: Commenters stated that N.J.A.C. 5:18C-2.2 precluded representatives of the New Jersey State Fire College, Fire, Safety & Management Services Inc. and other private sector fire service training

organizations from submitting applications to offer courses or modules which satisfy the code requirements.

RESPONSE: The New Jersey Fire Safety Commission considered the apparent limitations of N.J.A.C. 5:18C-2.2 and, upon extensive discussion of same, determined that the New Jersey State Fire College qualified as an eligible teaching organization under the provisions of N.J.A.C. 5:18C-2.2(a). The Commission noted, however, that since the State Fire College does not currently offer Firefighter I training, the rules should restrict the programming presented by the facility. The rules will, therefore, preclude the State Fire College from submitting an application to teach recruit firefighter (Firefighter I) training. Additionally, the Commission determined that the rules do not preclude private sector fire service training organizations from offering educational programs so long as the organizations operate through recognized, approved governmental agencies.

COMMENT: Commenters expressed concern that the proposed rules fail to provide an exemption from the requirements of Firefighter, Level I for firefighters who received a certificate of exemption pursuant to N.J.S.A. 40A:14-56, as amended by P.L. 1971, c. 197, P.L. 1977, c.248, and P.L. 1983, c.413. The law accorded firefighters exempt status in recognition of achieving seven years of 60 percent participation in all fire and drills within their respective fire companies. Additionally, commenters stated that the rules should provide credit (that is, a grandfather provision) for years of service or prior training which would otherwise satisfy the proposed training standards.

RESPONSE: The proposed training rules primarily govern entry-level firefighters; however, for purposes of advancement, all firefighters must provide evidence (that is, State certification) documenting satisfaction of the Firefighter I requirements. After prolonged discussion of this issue, the Fire Safety Commission determined that the rules should recognize training or experience equivalent to the training requirements for Firefighter I. The rule would include a "grandfathering" provision which would allow firefighters to substitute experience in satisfaction of the applicable training requirements for Firefighter I status. Firefighters would, however, be afforded a limited time to achieve this status. The issue of grandfathering is currently being addressed by the Training and Education Council of the Fire Safety Commission.

COMMENT: The New Jersey Fire Prevention and Protection Association (NJFPPA) stated that the rules do not require mandatory training in the basics of fire prevention but instead designate fire prevention as an optional module pursuant to N.J.A.C. 5:18C-4.5(a)6. The NJFPPA stated that fire prevention and fire safety basics comprise a significant portion of the development of every firefighter. If fire prevention remains an optional module, firefighter candidates will receive inadequate instruction in this critical area. Therefore, the NJFPPA requested a change to the proposed rules to remove fire prevention from the optional modules under N.J.A.C. 5:18C-4.5(a)6 and include this topic as a mandatory module, pursuant to N.J.A.C. 5:18C-4.3, as a prerequisite for certification. Comments reiterating the concerns of NJFPPA were received from several other fire departments and individuals. In addition to concerns regarding the fire prevention module, commenters expressed concern regarding the omission of Hazardous Materials Awareness (Haz-Mat) as a mandatory module under the rules.

RESPONSE: Upon review of the comments received, the Fire Safety Commission concluded that basic fire prevention is a primary component of fire training. In response to the evident concerns of the fire service, the Commission determined that one hour of the module I three-hour classroom requirement, specified by N.J.A.C. 5:18C-4.3(a)iv would be devoted solely to basic fire prevention. The Commission also considered the Haz-Mat certification issue and determined that certification required the development of a separate, specialized course. The Commission further noted that, in the Haz-Mat area, the rules should stress competence rather than focusing solely on the number of hours taught. The Commission considered the possibility of decreasing the time allocated to other modules and dedicating this time to Haz-Mat training within the proposed training standards. This issue currently has been transferred to the Codes Advisory Council for further review and no change has been effected at this time.

COMMENT: Commenters stated that N.J.A.C. 5:18C-4.3(a)7 and 8 requires ropes and knots training that exceeds the training required by the National Fire Protection Association (NFPA). The commenters requested modification of the proposed rules so that the standards coincide with NFPA Chapter 3-5. Additionally, the commenters indicated that three hours of classroom time is inadequate to provide instruction and demonstrate the basic knots. To provide adequate training, the module

should provide five hours of classroom time. One commenter indicated that four of the seven types of knots included in the rule (that is, the square knot, figure 8 knots, bowline-on-a bight, and chimney hitch) were unnecessary for Firefighter I.

RESPONSE: In response to the comments regarding required ropes and knots training, the Commission reviewed the type of knots required for Firefighter I pursuant to the rules. In light of its review, the Commission decided to accept the seven knot standard as a part of the Firefighter I training standards and further believes the established three-hour classroom time is adequate for such instruction.

Summary of Agency-Initiated Changes:

Analysis of N.J.A.C. 5:18C-3, Fire Official/Fire Inspector, raised several issues regarding fire official/fire inspector certification which require further prolonged discussion. Therefore, subchapter 3 is being reserved and is not being adopted as part of N.J.A.C. 5:18C at this time. However, rules governing such certification remain in N.J.A.C. 5:18A. Following resolution of the issues, a new subchapter N.J.A.C. 5:18C-3 will be proposed.

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

CHAPTER 18C STANDARDS FOR FIRE SERVICE TRAINING AND CERTIFICATION

SUBCHAPTER 1. GENERAL PROVISIONS

5:18C-1.1 Title; division into subchapters

(a) The rules contained in this chapter shall be known as "Standards for Fire Service Training and Certification" and are referred to herein as the Standards.

(b) The Standards are divided into five parts:

1. Subchapter 1 is entitled "General Provisions" and may be cited throughout the Standards as N.J.A.C. 5:18C-1, and when referred to in subchapter 1 of this chapter, may be referred to as this subchapter.

2. Subchapter 2 is entitled "Educational Programs and Facilities" and may be cited throughout the Standards as N.J.A.C. 5:18C-2, and when referred to in subchapter 2 of this chapter, may be referred to as this subchapter.

3. Subchapter 3 is ***[entitled "Fire Official/Fire Inspector" and may be cited throughout the Standards as N.J.A.C. 5:18C-3, and when referred to in subchapter 3 of this chapter, may be referred to as this subchapter]* *reserved***.

4. Subchapter 4 is entitled "Firefighter I" and may be cited throughout the Standards as N.J.A.C. 5:18C-4, and when referred to in subchapter 4 of this chapter, may be referred to as this subchapter.

5. Subchapter 5 is entitled "Instructor" and may be cited throughout the Standards as N.J.A.C. 5:18C-5, and when referred to in subchapter 5 of this chapter, may be referred to as this subchapter.

5:18C-1.2 Authority

These Standards are promulgated by the Commissioner of Community Affairs pursuant to the authority of the Uniform Fire Safety Act (P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., specifically 52:27D-198 and 52:27D-219) and of the act which established a Bureau of Fire Safety in the Department of Community Affairs (P.L. 1983, c.382, N.J.S.A. 52:27D-25a et seq., specifically 52:27D-25d).

5:18C-1.3 Intent and purpose

(a) It is the intent of the Standards to control all matters relating to qualifications for, and the training and certification of*[:

1. All fire officials and fire inspectors engaged in, or to be engaged in, the administration and enforcement of the New Jersey Uniform Fire Code; and

2. All* ***all*** members of the fire service, including firefighters and officers engaged in, or to be engaged in, fire suppression activities, and all fire service instructors.

(b) The Uniform Fire Safety Act and related legislation, specifically N.J.S.A. 52:27D-25a et seq., have been adopted to ensure public safety and welfare. In order for fire suppression ***[and fire code**

ADOPTIONS

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enforcement]* activities to be conducted adequately and effectively, members of the fire service will need to have sufficient knowledge and competence. This can best be achieved through the creation of an education and training program and the development of certification requirements.

1. It is the purpose of this chapter*[:

i. To establish standards and procedures for the certification of fire officials, including, but not limited to, fire officials and inspectors and to require all persons performing duties with respect to the inspection for compliance with the New Jersey Uniform Fire Code in any political subdivision within this State, to be certified as provided in this chapter; and

ii. To]* *to* establish standards and procedures for the certification of persons involved in fire suppression activities including but not limited to firefighter recruits, firefighters, fire officers, and fire service instructors.

(c) Unless otherwise specifically provided, all references to article or section numbers or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this chapter.

5:18C-1.4 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise:

“Bureau” means the Bureau of Fire Safety in the Division of Housing and Development of the Department of Community Affairs.

“Commission” means the Fire Safety Commission created under N.J.S.A. 52:27D-25a et seq.

“Commissioner” means the Commissioner of the Department of Community Affairs or his or her delegate.

“Council” means the Training and Education Advisory Council created to advise the Commission under the provisions of N.J.S.A. 52:27D-25a et seq.

“Department” means the Department of Community Affairs.

“Shall” indicates a mandatory requirement.

“Should” indicates a recommendation or that which is advised but not required.

5:18C-1.5 Office established; hearings

(a) There is hereby established in the Bureau of Fire Safety, Division of Housing and Development, an Office of Training and Certification. The office shall consist of such employees of the Department of Community Affairs as may be required for the efficient implementation of this chapter.

(b) The Office shall have the following responsibilities in addition to all others provided in this chapter:

1. To issue such certifications as may be called for herein when warranted and to affix the seal of the Commissioner thereon;

2. To keep accurate records of all applications for a certification and any official action thereon and to make such records available for inspection by the public at all reasonable times; and

3. To suspend or revoke a certification provided for herein upon the establishment of good cause.

(c) Any person aggrieved by any notice, action, ruling or order of the Commissioner, with respect to this subchapter, shall have a right to a hearing before the Office of Administrative Law, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The final decision in any such case shall be issued by the Commissioner.

1. The aggrieved person must request a hearing. The request must be made within 15 days after receipt of the action or ruling being contested. The request shall be made to the Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, N.J. 08625. The request for hearing shall raise all issues that will be set forth at the hearing.

5:18C-1.6 Certifications required

*[(a) No person shall carry out the duties of fire official or fire inspector unless that person is certified pursuant to the subchapter. The term “carry out the duties” shall mean and include representing oneself as authorized to carry out inspection of life hazard uses on behalf of the Commissioner, issuing orders pursuant to the Uniform

Fire Safety Act, and assessing or imposing any of the penalties provided for by the act.

(b) No local enforcing agency shall employ any person to enforce the provisions of the Uniform Fire Code unless that person shall be certified in accordance with the provisions of this subchapter.

(c) When a local enforcing agency, which enforces the Code in life hazard uses, has a vacancy that leaves the agency without a certified fire official, then the appointing authority shall appoint a certified person to the position within 45 days of the vacancy having occurred. The appointing authority may request an extension of 30 days in which to make the appointment. Such requests shall be made within the initial 45 day period, by the appointing authority or his designee, to the Bureau, Attention: LEA Supervisor, shall set forth the reasons why additional time is necessary and shall indicate if any inspection or enforcement matters require Bureau assistance in the interest of public health, safety or welfare. Within seven business days from receipt of an extension request, the Bureau shall send a written determination either granting or denying the request.

1. Fire officials appointed to fill vacancies shall so notify the Bureau in writing on the local enforcing agency letterhead within five days of the appointment.

2. Fire officials shall undertake duties within 10 days of being appointed.

3. The appointing authority or his designee shall notify the Bureau, Attention: LEA Supervisor, in writing within five days of the date that the fire official vacates his or her office.

4. The Bureau shall be notified in writing by either the appointing authority or the fire official at least 10 days in advance of any leaves of absence by the fire official in excess of 30 days, which notification shall include the provisions which have been made to enforce the Code during the period of absence.

5. If no fire official is appointed within the applicable time, the Bureau shall assume responsibility for enforcement and modify the Registry accordingly. Registration fees collected for the period during which the Bureau is responsible, as well as for the preceding period of the fire official's vacancy, shall ensure to the Bureau.

(d) The following shall be deemed a violation of the Uniform Fire Safety Act subject to a penalty of not more than \$500.00 for each offense:

1. To carry out inspections or issue notices or orders pursuant to the Act in connection with life hazard uses if not certified;

i. This shall not preclude notifying the owner of a life hazard use of a perceived violation observed by a firefighter during the course of any normal fire service activity, such as routine inservice inspections. A copy of such notification shall be transmitted to the fire official for appropriate action.

2. To appoint or employ a person who is not certified to carry out the responsibilities of fire official in connection with life hazard uses; or

3. To fail or notify the Bureau of Fire Safety concerning a vacancy as required by this subsection.]*

[(e)] No person shall serve as a fire service instructor for any module if such person does not have at least the level of instructor certification and/or special instructor certificate required pursuant to this chapter for the teaching of such module. Except as may otherwise be expressly provided in this chapter, no course taught by any person not so certified shall serve as a basis for credit towards certification as a fire inspector or fire official.

5:18C-1.7 Requirements for certification

(a) Any candidate for certification in any of the fire service areas pursuant to the chapter shall submit an application to the Office of Training and Certification in the Bureau of Fire Safety accompanied by the required fee established at N.J.A.C. 5:18C-1.10. The application shall include such information and documentation as the Office may require.

(b) The Office shall determine by examination of the application and review of any supporting documents, including any evidence of experience, training and/or education submitted whether an applicant is qualified for certification for which the application has been made. If the application is satisfactory, the Office shall issue a certification to the applicant upon payment of the required fee. This

certification will show that the person has met the established requirements and is entitled to be employed in the state in accordance with the provisions of these regulations. The Office may deny or refuse to issue a certification to an applicant upon proof that there has been any act or omission which would constitute grounds for revocation under this chapter.

5:18C-1.8 Renewal of certification

*(a) The Bureau shall issue a certification following submission of an application, payment of the required fee, and verification by the Office of Training and Certification that the applicant meets the requirements for the certification established herein.

(b) Every two years the fire official/fire inspector certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Office of Training and Certification that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Bureau shall renew the certification previously issued for a term of two years. The renewal date shall be 60 days prior to the expiration date.

(c) Where the holder of a certification has allowed the certification to lapse by failing to renew the certification as provided for in (b) above, a new application and certification shall be required. If such application is made within six months of the certification having lapsed, then application may be made in the same manner as a renewal, but the application shall be accompanied by the fee for a new application. Upon a finding that a certification was previously held that any applicable continuing education requirements have been satisfied the certification shall be issued. Where the former certification has lapsed for a period exceeding six months, a new application shall be required in accordance with N.J.A.C. 5:18C-1.5.]*

*(d)**(a)* The Bureau shall issue, upon application, a duplicate certificate of any type and specialty upon a finding that the certification has been issued and the applicant is entitled to such certification to replace the one which has been lost, destroyed, or mutilated. Payment of a fee as may be established by the Commissioner shall be required.

*(e)**(b)* After revocation of a certification upon any of the grounds set forth in this chapter, the Bureau may not renew or reinstate such certification; however, a person may file a new application for a certification with the Bureau. When it can be shown that all loss caused by the act or omission for which the certification was revoked has been fully satisfied, that the applicant has been legally rehabilitated and that all conditions imposed by the decision of revocation have been complied with, the Bureau may issue a new certification. *[No new certification shall be issued if the cause for revocation was conviction of any crime in connection with Fire Code Enforcement.]*

*(f)**(c)* Fire Service Instructor (Reserved)

5:18C-1.9 Revocation of certifications and alternative sanctions

*(a) The Bureau may suspend and/or revoke a certification of a fire official/fire inspector, and/or assess a civil penalty of not more than \$500.00, if the Department has determined that the holder:

1. Has violated any of the provisions of the Uniform Fire Code rules;
2. Has obtained a certification by fraud or misrepresentation, or the person named in the certificate has obtained it by fraud or misrepresentation;
3. Has aided or abetted in practice as a certified fire official or inspector any person not authorized to practice as a certified fire official or inspector under the provisions of this chapter.
4. Has fraudulently or deceitfully practiced as a certified fire official or inspector;
5. Has been grossly negligent or has engaged in misconduct in the performance of any of his or her duties;
6. Has failed, over a period of time, to maintain a minimally acceptable level of competence;
7. Has been found to have failed to report an offer or bribe or other favor in a proceeding under the Uniform Fire Safety Act or other appropriate law of this or any other state or jurisdiction;

8. Has failed to comply with any order issued by the Department;
9. Has made a false or misleading written statement, or has made a material omission in any submission to the Department;
10. Has failed to enforce the Uniform Fire Code; or
11. Has violated any provision of this chapter or of N.J.A.C. 5:18.]*

*(b)**(a)* The Bureau may suspend and/or revoke a certification of a firefighter if the Department has determined that the holder:

1. Has obtained a certification by fraud or misrepresentation, or the person named in the certificate has obtained it by fraud or misrepresentation;
2. Has fraudulently or deceitfully practiced as a certified firefighter;
3. Has been grossly negligent or has engaged in misconduct in the performance of any of his or her duties;
4. Has failed, over a period of time, to maintain a minimally acceptable level of competence;
5. Has failed to comply with any order issued by the Department;
6. Has made a false or misleading written statement, or has made a material omission in any submission to the Department; or
7. Has violated any provision of this chapter.

*(c)**(b)* The Bureau may suspend or revoke a certification of an Instructor Level 1, Instructor Level 2 or any special Instructor Certificate if the Department has determined that the holder:

1. Has obtained a certification by fraud or misrepresentation, or the person named in the certificate has obtained it by fraud or misrepresentation;
2. Has fraudulently or deceitfully practiced as a certified Instructor Level 1 or Instructor Level 2 or a holder of any special Instructor Certificate;
3. Has been grossly negligent or has engaged in misconduct in the performance of any of his or her duties;
4. Has failed, over a period of time, to maintain a minimally acceptable level of competence;
5. Has failed to comply with any order issued by the Department;
6. Has made a false or misleading written statement, or has made a material omission in any submission to the Department; or
7. Has violated any provision of this chapter.

*(d)**(c)* The Bureau, in addition or as an alternative, as the case may be, to revoking or suspending a certification, or assessing a penalty, may issue a letter or warning, reprimand, or censure with regard to any conduct which, in the judgment of the Department, warrants a letter of warning, reprimand, or censure. Such letter, in addition to any other filing requirements, shall be made a part of the certification file of the individual.

*(e)**(d)* Conviction of a crime, or an offense in connection with the practice as a certified *[Code Enforcement official inspector, firefighter]* **firefighter***, fire officer or fire service instructor shall result in revocation of a certification.

(f) Any sanctions imposed by the Bureau of Construction Code Enforcement pursuant to N.J.S.A. 52:27D-119 et seq. shall constitute grounds for imposition of sanctions against a fire official/fire inspector under this subsection.]

*(g)**(e)* Any person *[grieved]* ***aggrieved*** by any action of the bureau pursuant to this chapter shall be entitled to a hearing before the Office of Administrative Law in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, as provided in N.J.A.C. 5:18A-4.2.

5:18C-1.10 Fees

(a) No application for certification shall be acted upon unless the application is accompanied by the appropriate fee.

(b) The fee schedule is as follows:

*[1. For fire official/fire inspector:

- i. The initial application fee shall be \$20.00; and
- ii. The two-year renewal application fee shall be \$20.00.]*

[2.] ***1.*** For instructor:

- i. The initial application fee for Instructor Level 1 shall be \$5.00;
- ii. The initial application fee for Instructor Level 2 shall be \$5.00;
- iii. The initial application for a Live Burn Certificate shall be \$5.00;

- iv. The initial application for an SCBA/Smokehouse certificate shall be \$5.00; and
 - v. The two-year renewal application shall be \$5.00.
- *[3.]**2.* For firefighter:
- i. The application fee for firefighter I shall be \$5.00.

SUBCHAPTER 2. EDUCATIONAL PROGRAMS AND FACILITIES

5:18C-2.1 Standards for educational programs

(a) To carry out their responsibilities, fire service personnel must be fully knowledgeable and adequately prepared. This subchapter adopts standards for fire service *[and Fire Code enforcement official]* training and education programs.

[1. Programs for fire code enforcement personnel must meet certain standards to ensure fire officials and fire inspectors have the necessary technical and administrative training to effectively enforce the Uniform Fire Code at the local level.]

*[2.]**1.* Programs for firefighters must meet certain standards to ensure firefighters have the necessary skills and knowledge which the specialized and hazardous nature of fire fighting requires.

*[3.]**2.* Programs for fire service instructors must meet certain standards to ensure they have the knowledge and skills necessary to provide instruction for fire service members.

5:18C-2.2 Eligible organizations

(a) A fire department or district, a combination of fire departments or districts, an institution of higher learning*, **the New Jersey State Fire College*** or a recognized governmental entity is eligible to submit an application to offer courses or modules which meet the requirements of this chapter.

1. To ensure accountability, any module or course for a firefighter 1 certification may only be offered by a fire department or district, a combination of fire departments or districts or a recognized governmental entity.

(b) An applicant for module or course approval shall have satisfied the following requirements:

1. All courses or modules offered shall meet the knowledge and skill content, hours of instruction and facility and equipment criteria set forth in this chapter;

*[2. The following provisions relate to instructors of courses for fire official/fire inspector certification;

i. Faculty members shall be competent in the field and have contacts with fire code enforcement environments and other sources so their teaching and research are current and relevant.

ii. The quality of the faculty is one of the more important factors in judging the effectiveness of an institution. Appraisal of the faculty shall be made in terms of its competence to provide the program for which approval is being sought. Each faculty member shall have a high degree of competency in his or her area. The faculty consists of those instructors who teach the curricula and all personnel who direct students in all types of activities included as part of the curriculum. Those who teach courses shall be familiar with practices in Fire Code enforcement and/or fire protection technology generally.

iii. The institution, recognizing that an appropriate faculty is one of the major determinants of the quality of its education program, shall make provision for the use of part-time or adjunct faculty.

iv. No individual who has ever had a license suspended for a period of six months or more or has ever had a license or certification revoked for any reason set forth in N.J.A.C. 5:23-5.11 or N.J.A.C. 5:18C-1.7 shall be eligible to instruct Fire Code Enforcement educational programs.]*

*[3.]**2.* Concerning instructors of courses for fire service personnel certification, all courses shall be taught by the level of instructor required by this chapter who have satisfied the requirements for certification set forth in N.J.A.C. 5:18C-5.

*[4.]**3.* A recordkeeping system required by the Office of Training and Certification including, but not limited to, attendance, course schedules and examination scores shall be maintained.

*[5.]**4.* Course schedules shall be provided to the Office of Training and Certification indicating the course or modules being

taught or proposed to be taught and the dates and times for the course or module offering.

5:18C-2.3 Procedure for approving educational programs

(a) Any eligible institution or organization may submit to the Office of Training and Certification any course or module required by this chapter for approval. The application shall be submitted on a form prescribed by the Bureau at least 60 days prior to the first class session of the course and shall contain all the information specified in this section.

(b) Each application shall be submitted in the name of the institution or organization by a person authorized to do so. It shall contain the following minimum information:

1. The name of the course, program, or module;
2. A description of the length of each session, the frequency of the sessions and the total number of sessions;
3. An outline showing the course or program content by session;
4. A description of any texts or materials to be used. The description shall identify whether the text or materials will be mandatory or suggested.
5. The list of certified instructors who will teach each module or course for fire service courses *[or a description of the institution or organizations standard for faculty members who will be employed to teach the course or programs for fire code enforcement courses]*;
6. An estimate of the number of times the course will be offered;
7. A statement that the institution or organization will notify the Office of Training and Certification if the program is withdrawn or changed at any time;
8. A statement that the institution or organization will conduct the course or program in accordance with this standard and will maintain such records as are herein required;
9. A statement of the charges the institution has established for the course program; and
10. The facilities where instruction will take place. The description shall identify any specialized structures which may be used for teaching the course.

(c) The Department shall have the right to undertake such reviews as may be necessary to verify the accuracy of an application, or conformity with this standard. The institution, by submitting an application, expressly agrees to cooperate in such reviews.

(d) Upon verification that the program or course will satisfy the educational program requirements, the Office of Training and Certification shall:

1. Issue a letter of approval to the institution or organization which letter shall contain any terms or conditions of such approval;
2. Place the name of the institution and the course on the Bureau's list of approved courses. That list will be made available to the public.
 - i. Any approval shall be limited in that it is effective only as long as the course conforms to the application submitted and approved.

(e) Whenever a course or program has been approved by the Bureau, the institution or organization offering the course may include the statement "This course is approved for credit toward a certification issued by the Department of Community Affairs" in any catalog, bulletin or informational circulars. Whenever such a statement is included, however, the catalog, bulletin or circular shall also contain a statement describing precisely the nature and extent of the approval.

(f) The Office of Training and Certification may revoke its approval, after due notice and the opportunity to be heard, whenever it ascertains that a course has lapsed, is no longer in conformity with the requirements of these regulations or the terms of the Bureau's approval or for other good cause. Whenever approval has been revoked or a course or module has been withdrawn by an institution or organization, a new application and approval shall be required before the course or module may again be offered as providing credit toward a certification.

(g) Any institution or organization may submit an application for approval for a course administered after January 1, 1989 so that applicants may receive credit for it. Any such application shall be judged against the standards for programs established herein.

5:18C-2.4 Facility requirements

(a) In order to provide firefighter training, the facilities must be adequate. The requirements of this section are the minimum requirements for firefighter training facilities.

(b) Classroom Level A requirements are as follows:

1. A separate classroom for instruction shall be provided. The classroom size shall adequately accommodate the number of students.

i. For classroom training for modules for firefighter 1, a meeting hall or large room will be accepted as an alternative to a separate classroom.

2. The following are required:

- i. Adequate lighting;
- ii. A writing surface for each student;
- iii. Sufficient chairs for students;
- iv. A chalkboard, or large pad with easel;
- v. Access to overhead projector and screen;
- vi. Adequate space for each student;
- vii. Comfortable room temperature;
- viii. Access to sanitary facilities;
- ix. Sufficient electrical outlets for use of training aids; and
- x. The classroom must be in a quiet area, that is, removed from disturbances.

(c) Drill Area A requirements are as follows:

1. The area to be provided for drills shall be sufficient to allow hands-on practice by all students. Sufficient area shall be provided for the following activities:

- i. The *[typing of lists]* ***tying of knots***;
- ii. The carrying and raising of ladders;
- iii. The rolling and loading, carrying and dragging and coupling of hose; and
- iv. The practice of salvage operations.

2. The following practice aids shall be available:

- i. A fire hydrant or other water source;
- ii. A sprinkler connection or simulated sprinkler connection; and
- iii. Simulated roof area and sufficient practice boards to practice venting through roofs.

3. The following materials shall be available:

- i. Fire hose, couplings and tools as specified in N.J.A.C. 5:18C-4.3(a)12vi;
- ii. Forcible entry tools as specified in N.J.A.C. 5:18C-4.3(a)3vi;
- iii. Salvage covers as specified in N.J.A.C. 5:18C-4.3(e)10vi;
- iv. Lengths of rope as specified in N.J.A.C. 5:18C-4.3(a)8vi;
- v. Ladders as specified in N.J.A.C. 5:18C-4.3(a)16vi;
- vi. PEOSHA approved breathing apparatus for each student;
- vii. PEOSHA approved personal protective clothing for each student;
- viii. Materials for rescue drills as specified in N.J.A.C. 5:18C-4.3(a)21vi; and
- ix. Wedges or sprinkler tongs as specified in N.J.A.C. 5:18C-4.3(a)23vi.

(d) Classroom Level B: (Reserved)

(e) Drill Area Level B: (Reserved)

(f) Smoke building requirements are as follows:

1. The purpose of the structurally safe smoke building is to acquaint the trainees with the skills and abilities necessary for survival in an oxygen deficient atmosphere by creating a controlled learning situation that is under constant supervision.

2. The smoke building shall meet the following requirements:

- i. There shall be an exterior exit or secondary means of egress in every room;
- ii. The smoke building shall be equipped for simulating smoke filled atmosphere and conditions;
- iii. The building shall be so designed and equipped so as to allow for constant surveillance of the trainees; and
- iv. There shall be a means to provide emergency ventilation which may include manual control of roof openings, doors and exterior windows.

3. Smoke used should be of a controlled composition with minimum toxicity. Specially designed mechanical equipment may be installed in the facility to produce smoke.

(g) Drill tower requirements are as follows:

1. The purpose of the drill tower is to train fire fighters in basic evolutions using pumper and ladder equipment.

2. The tower shall meet the following requirements.

- i. It shall be not less than two stories in height;
- ii. It shall be suitable for use with ladders and rescue equipment;
- iii. It shall be so designed as to permit raising, lowering, and maneuvering of hose lines and other equipment;
- iv. It may be of wood frame, reinforced concrete, steel or other durable material;
- v. It shall have structurally sound interior and exterior walls which will withstand the force of master streams;
- vi. It shall contain stairways which provide means of access between floor levels;
- vii. All stairway treads should be slip resistant;
- viii. The drill tower should include provisions for standpipe connections at all floor levels of the facility;
- ix. Roof openings should be provided for practice of ventilation procedures;
- x. Safety railings should be provided for roof operations; and
- xi. A temporary or permanent safety net on at least one exterior side of the building should be provided.

(h) Live burn facility requirements are as follows:

1. The following apply to burn buildings:

i. The purpose of the burn building is to safely train fire fighters in methods of interior fire suppression. Every room should have an exterior exit or a secondary means of egress.

ii. Walls, floors, ceilings, and other permanent features shall have strong resistance to heat generated by Class A materials.

iii. Class B materials shall not be used for fuel except as part of approved simulation.

iv. Fires should be limited to short duration.

v. Emergency ventilation should be provided by manual control of the roof openings, doors, and exterior shuttered windows:

2. The following apply to the flammable liquid and flammable gas area:

i. This area should be located as remote from any building as possible. Fencing and/or curbing should be provided as a safety factor.

ii. Pit aprons should be made of concrete, crushed stone, or iron ore slag.

iii. There shall be adequate water supply, fuel supply, fuel pumping capability and drainage.

iv. If flammable liquid or gas is fed to an area, the flow shall be controlled by quick shutoff valves. In case of an emergency, an instantaneous shutdown will be necessary.

(i) The following relate to exemptions:

1. An exemption from the training facility requirements may be made upon the following findings:

i. There is no facility in the immediate area where the training can be provided or there are minimum facilities in the area and all prospective applicants cannot be accommodated; and

ii. That alternative training in the form of simulation or other method will be provided which will provide, to the greatest extent possible the same practice/drill opportunity.

2. An application for exemption to this section shall be filed in writing and set forth specifically:

i. A statement of the requirements from which an exemption is sought;

ii. A statement of the manner by which strict compliance with said provisions would result in practical difficulties; and

iii. A statement of the feasible alternatives which would adequately provide the same practice/drill opportunity.

SUBCHAPTER 3. *[FIRE OFFICIAL/FIRE INSPECTOR]*

(RESERVED)

*[5:18C-3.1 Requirements for certification

(a) A certification as a fire official/fire inspector shall be issued to any applicant who meets any one of the following standards:

1. A person who served as a fire inspector in the fire service for all of the period between February 19, 1984 and February 19, 1985.

Such person shall have been appointed to the position of an inspector, whether full- or part-time, and shall have been vested with authority to enforce a validly adopted fire prevention or fire safety code. Such appointments shall be verified by a letter signed by the appointing authority. The performance of inspections which are supplementary to the primary duty of a firefighter shall not be considered experience as a fire inspector.

2. A person who has successfully completed an educational program approved by the Bureau pursuant to N.J.A.C. 5:18C-3.2.

3. A person who holds a valid license as an ICS or HHS fire protection subcode official issued by the New Jersey Bureau of Construction Code Enforcement pursuant to N.J.A.C. 5:23-5.

5:18C-3.2 Course requirements

(a) The course of study for fire official/fire inspector shall consist of a planned pattern of instruction and experiences designed to meet the following standards. The course shall provide at least 45 contact hours of instruction, not including examination and support time, and it shall ensure by examination technical competence in the following subject areas:

1. The theory of fire code enforcement;
2. Administration and enforcement of fire codes;
3. The life safety systems of buildings and uses including, but not limited to, means of egress, fire suppression systems, fire alarm systems, and methods for limiting the flame spread, flammability or combustibility of materials;
4. The safe use and maintenance of facilities, buildings and uses which are subject to the New Jersey Uniform Fire Code including, but not limited to:
 - i. Airports, heliports and helistops;
 - ii. Application of flammable finishes;
 - iii. Bowling alleys;
 - iv. Dry cleaning plants;
 - v. Dust explosion hazards;
 - vi. Fruit ripening processes;
 - vii. Lumber yards and woodworking plants;
 - viii. Oil burning equipment;
 - ix. Ovens and furnaces;
 - x. Places of assembly;
 - xi. Service stations and garages;
 - xii. Tents and air supported structures;
 - xiii. Welding or cutting;
 - xiv. Places of amusement; and
 - xv. High level alarms
5. The safe handling of materials which pose a fire hazard, including, but not limited to:
 - i. Cellulose nitrate products;
 - ii. Combustible fibers;
 - iii. Compressed gasses;
 - iv. Cryogenic liquids;
 - v. Explosives, ammunition and blasting agents;
 - vi. Fireworks;
 - vii. Flammable and combustible liquids;
 - viii. Hazardous materials and chemicals such as oxidizing materials, radioactive materials, unstable (reactive) chemicals, and poisonous gases;
 - ix. Liquefied petroleum gases and liquefied natural gases;
 - x. Magnesium;
 - xi. Matches; and
 - xii. Organic coatings.]*

SUBCHAPTER 4. FIREFIGHTER I

5:18C-4.1 Duties and responsibilities of firefighter I

(a) A certified firefighter I shall work under direct supervision.

(b) Prior to receiving a certification as firefighter I, firefighter candidates grade 1 and grade 2 may perform the designated functions after completing the following modules:

1. Upon successful completion of modules 1, 3a, 3b, 6a, 6b, 8a, 8b, 13a, 13b and 14 as described in N.J.A.C. 5:18C-4.3, an individual shall receive a certification as a firefighter candidate grade 1 and may, under direct supervision, respond to fire alarms and assist in exterior

firefighting involving laying and connecting hose lines and raising ladders.

2. Upon successful completion of modules 2a, 2b, 4a, 4b, 5a, 5b, 11a, 11b, 12, and 15 as described in N.J.A.C. 5:18C-4.3, an individual shall receive a certification as a firefighter candidate grade 2 and may, under direct supervision, assist with all exterior fireground operations.

3. Upon successful completion of all modules in N.J.A.C. 5:18C-4.3, an individual shall receive a certification as a firefighter I and may perform interior structural firefighting under direct supervision.

5:18C-4.2 Firefighter I certification

(a) A certification for firefighter I shall be granted to an individual who has met the following requirements:

1. Is at least 18 years of age;
2. Has successfully completed all instructional modules listed in N.J.A.C. 5:18C-4.3;
3. Has taken and passed a written examination as established by N.J.A.C. 5:18C-4.4(a); and
4. Has successfully passed a skills test as established by N.J.A.C. 5:18C-4.4(b).

5:18C-4.3 Training requirements

(a) An applicant for firefighter I certification shall have satisfactorily completed instructional modules conforming to the following standards:

1. Module 1: Orientation/Fire Department Organization
 - i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor requirements: Instructor Level 1 certification;
 - iii. Examination: written;
 - iv. Hours required: three classroom ***hours of which one hour must be devoted to fire prevention***;
 - v. Subject areas:
 - (1) Fire department history, development;
 - (2) Organizational structure/chain of command;
 - (3) Firefighter candidate duties and responsibilities;
 - (4) Local department form of organization (municipal department, fire district, volunteer non-profit, other) and how it relates to local government structure;
 - (5) Area covered by local department geographical boundaries;
 - (6) Standard operating procedures of department;
 - (7) Training program overview;
 - (8) PEOSHA requirements;
 - (9) Familiarization of training facilities;
 - (10) New Jersey Motor vehicle laws with respect to emergency vehicles and blue light law;
 - (11) Right-to-know law; and
 - (12) Fire Prevention
 - vi. Required materials:
 - (1) Copy of ordinance, certificate of incorporation or other document creating fire department;
 - (2) Map showing geographical boundaries of fire department;
 - (3) "Right to Know" brochure; and
 - (4) Copy of Hazardous Substance Fact Sheet.
2. Module 2a: Forcible Entry
 - i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor requirements: Instructor Level 1 certification;
 - iii. Examination: written;
 - iv. Hours required: three classroom;
 - v. Subject areas:
 - (1) Reasons for forcible entry;
 - (2) Identification and major function of the following forcible entry tools:
 - i. Pick head ax;
 - ii. Flat head ax;
 - iii. Halligan bar;
 - iv. Circular saw;
 - v. Bolt cutters;
 - vi. Pike pole;

- vii. Wrecking bar;
 - viii. Ceiling hook;
 - ix. Sledge hammer; and
 - x. All other tools used by the local fire department;
 - (3) Safety requirements for tool usage and carrying;
 - (4) Maintenance and inspection of tools;
 - (A) Testing of tools; and
 - (B) Cleaning tools;
 - (5) Methods of forcible entry:
 - (A) Through doors;
 - (B) Through windows;
 - (C) Through roofs;
 - (D) Through floors and ceilings; and
 - (E) Through walls;
 - (6) Forcible entry safety precautions;
 - vi. Required materials:
 - (1) Pick head ax;
 - (2) Flat head ax;
 - (3) Halligan bar;
 - (4) Circular saw;
 - (5) Bolt cutters;
 - (7) Pike pole;
 - (8) Wrecking bar;
 - (9) Ceiling hook;
 - (10) Sledge hammer; and
 - (x) All other tools used by the local fire department.
 - 3. Module 2b: Forcible Entry Drill
 - i. Facility requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
 - ii. Instructor requirements: Instructor Level 1 certification;
 - iii. Examination: skills test;
 - iv. Hours required: three drill hours;
 - v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the areas listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstrate the function of each tool listed below by simulating the use of the tool on teaching aid:
 - (A) Pick head ax;
 - (B) Flat head ax;
 - (C) Halligan bar;
 - (D) Circular saw;
 - (E) Bolt cutters;
 - (F) Pike pole;
 - (G) Wrecking bar;
 - (H) Ceiling hook; and
 - (I) Sledge hammer;
 - (2) Demonstrate the methods of opening various types of windows;
 - (3) Demonstrate safety procedures to be followed in use of equipment;
 - (4) Demonstrate methods of properly cleaning, maintaining and inspecting each type of forcible entry tool and equipment;
 - (5) Identify each forcible entry tool;
 - vi. Required materials and tools:
 - (1) Pick head ax;
 - (2) Flat head ax;
 - (3) Halligan bar;
 - (4) Circular saw;
 - (5) Bolt cutters;
 - (6) Pike pole;
 - (7) Wrecking bar;
 - (8) Ceiling hook; and
 - (9) Sledge hammer;
 - vii. Prerequisite: Module 2a—Forcible Entry.
4. Module 3a: Protective Breathing Apparatus
 - i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor requirements: Instructor Level 1 certification and SCBA/Smokehouse certificate;
 - iii. Examination: written;
 - iv. Hours required: three classroom;

- v. Subject areas:
 - (1) Respiratory hazards encountered by firefighters;
 - (2) Types of required breathing apparatus;
 - (3) Mechanical operating procedures for breathing equipment;
 - (4) Inspection, testing and servicing procedures for breathing equipment;
 - (5) Physical requirements of wearer;
 - (6) Major components, purpose, use and limitations of breathing equipment;
 - (7) Methods of donning breathing equipment;
 - (8) Safety rules for use of breathing equipment;
 - (9) Use of safety lines;
 - (10) PEOSHA requirements for breathing equipment;
 - (11) "Right to Know" requirements; and
 - (12) Emergency operating techniques;
- vi. Required materials:
 - (1) PEOSHA approved breathing apparatus for demonstration.
- 5. Module 3b: Protective Breathing Apparatus Drill 1
 - i. Facility Requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
 - ii. Instructor requirements: Instructor Level 1 certification and SCBA/Smokehouse certificate;
 - iii. Examination: skills test;
 - iv. Hours required: three drill hours;
 - v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the areas listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstrate donning breathing apparatus in full turn out gear;
 - (2) Demonstrate care, maintenance and testing of breathing apparatus;
 - (3) Demonstrate operation of breathing equipment;
 - (4) Demonstrate use of tag line; and
 - (5) Identify parts of breathing apparatus;
 - vi. Required materials and tools:
 - (1) PEOSHA-approved breathing apparatus for each student; and
 - (2) PEOSHA-approved personal protective clothing for each student;
 - vii. Prerequisite: Module 3a—Protective Breathing Apparatus.
- 6. Module 3c: Protective Breathing Apparatus Drill 2
 - i. Facility requirements: Smoke building per N.J.A.C. 5:18C-2.4(f);
 - ii. Instructor requirements: Instructor Level 2 certification and SCBA/Smokehouse certificate;
 - iii. Examinations: skills test;
 - iv. Hours required: three drill hours;
 - v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstrate search and rescue techniques as a member of a team under simulated conditions:
 - (A) One room search; and
 - (B) Whole building search; and
 - (2) Demonstrate use of equipment in dense smoke environment;
 - vi. Required materials and tools:
 - (1) PEOSHA-approved breathing apparatus for each student; and
 - (2) PEOSHA-approved personal protective clothing for each student;
 - vii. Prerequisites:
 - (1) Module 3a—Protective Breathing Apparatus; and
 - (2) Module 3b—Protective Breathing Apparatus Drill 1.
- 7. Module 4a: Ropes and Knots
 - i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor requirements: Instructor Level 1 certification;
 - iii. Examination: written;
 - iv. Hours required: one-half classroom;
 - v. Subject areas:
 - (1) Use of rope in the fire service;
 - (2) Care and maintenance of rope;

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- (3) Types and uses of following knots:
 - (A) Square knot;
 - (B) Becket bend;
 - (C) Clove hitch;
 - (D) Figure 8 knot;
 - (E) Bowline;
 - (F) Bowline-on-a-bight; and
 - (G) Chimney hitch;
- (4) Types and characteristics of rope; and
- (5) Methods of using rope to hoist tools;
- vi. Required materials:
 - (1) Pieces of practice rope at least six feet in length; and
 - (2) One or more 100 feet or longer sections of one-half inch rope.
- 8. Module 4b: Ropes and Knots Drill
 - i. Facility requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
 - ii. Instructor requirements: Instructor Level 1 certification;
 - iii. Examination: skills test;
 - iv. Hours required: two and one-half drill hours
 - v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstrate procedure for inspecting rope;
 - (2) Demonstrate tying the following knots;
 - (A) Square knot;
 - (B) Becket band;
 - (C) Clove hitch;
 - (D) Figure 8 knot;
 - (E) Bowline;
 - (F) Bowline-on-a-bight; and
 - (G) Chimney hitch;
 - (3) Demonstrate storing, bagging and coiling rope;
 - (4) Using an approved knot, hoist a forcible entry tool up a ladder to a height of at least 20 feet;
 - vi. Required materials and tools:
 - (1) Pieces of practice rope at least six feet in length; and
 - (2) One or more 100 feet or longer sections of one-half inch rope;
- 9. Module 5a: Salvage and Overhaul
 - i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor requirements: Instructor Level 1 certification;
 - iii. Examination: written;
 - iv. Hours required: One Classroom;
 - v. Subject areas:
 - (1) Definition and purpose of salvage and overhaul;
 - (2) Salvage and overhaul terminology;
 - (3) Salvage organization and duties;
 - (4) Types of salvage equipment, including covers and tools;
 - (5) Methods of inspecting, cleaning, maintaining and storing salvage equipment;
 - (6) Methods of folding and spreading salvage covers;
 - (7) Methods of handling water removal and handling water run-off;
 - (8) Techniques for removing debris from the building and restoring the premises;
 - (9) Techniques for searching for and extinguishing hidden fires; and
 - (10) Safety precautions during overhaul
- 10. Module 5b: Salvage and Overhaul Drill
 - i. Facility requirements: Drill Area A per N.J.A.C. 5:18C-2.4(c);
 - ii. Instructor requirements: Instructor Level 1 certification;
 - iii. Examination: skills test;
 - iv. Hours required: three drill hours;
 - v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstrate folding and spreading salvage covers:
 - (A) One person roll and spread;

- (B) Two person roll and spread; and
- (C) Two person fold;
- (2) Demonstrate proper procedures for inspecting, cleaning, maintaining and storing salvage equipment;
- (3) Demonstrate methods of removing and routing water from a structure;
- (4) Demonstrate the construction and use of a water chute and catch all;
- vi. Required materials:
 - (1) Salvage covers of assorted sizes;
- vii. Prerequisite: Module 5a—Salvage and Overhaul.
- 11. Module 6a: Fire Hose, Nozzles, and Appliances
 - i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor requirements: Instructor Level 1 certification;
 - iii. Examination: written;
 - iv. Hours required: three classroom;
 - v. Subject areas:
 - (1) Types, construction and use of hose, and nozzles;
 - (2) Inspection, testing and maintenance of hose;
 - (3) Types and uses of coupling attachments;
 - (4) Advancing and operating hose line;
 - (5) Hydrant hookup and operation;
 - (6) Types of hose lays;
 - (7) Hose carries, drags and rolls;
 - (8) Techniques of connecting hose to standpipe and operating hose from a standpipe;
 - (9) Methods of replacing burst section of hose line;
 - (10) Techniques of advancing a hose up a ladder and hoisting hose;
 - (11) Methods and techniques of advancing a hose from a pumper; and
 - (12) Methods of loading fire hose on an apparatus.
- 12. Module 6b: Fire Hose, Nozzles and Appliances Drill 1
 - i. Facility requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
 - ii. Instructor requirements: Instructor Level 1 certification;
 - iii. Examination: skills test;
 - iv. Hours required: three drill hours;
 - v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the areas listed below. Performance shall be determined by using skill evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstrate the connection of a fire hose to a hydrant;
 - (2) Demonstrate the proper procedure for cleaning hose, couplings and nozzles;
 - (3) Demonstrate inspecting and testing hose for damage and recommend replacement or repairs;
 - (4) Demonstrate at least three hose rolls;
 - (5) Demonstrate at least two hose carries;
 - (6) Demonstrate at least two hose drags;
 - (7) Demonstrate hose lays;
 - (8) Demonstrate the methods for extending a hose line and replacing a burst section;
 - (9) Demonstrate the use of nozzles, hose adaptors and appliances;
 - (10) Demonstrate the loading of a hose on the fire apparatus; and
 - (11) Demonstrate making hose connections;
 - vi. Required materials:
 - (1) Several hundred feet of hose used locally;
 - (2) Nozzles;
 - (3) Access to a fire hydrant; and
 - (4) Spanner and hydrant wrenches;
 - vii. Prerequisite: Module 6a—Fire Hose, Nozzles and Appliances
- 13. Module 6c: Fire Hose, Nozzles and Appliances Drill 2
 - i. Facility requirements: Drill Tower per N.J.A.C. 5:18C-2.4(g);
 - ii. Instructor requirements: Instructor Level 2 certification;
 - iii. Examination: skills test;
 - iv. Hours required: six drill hours;
 - v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance shall be determined by using skill evaluation forms provided by the Office of Training and Certification.

(1) The firefighter 1 candidate, given the necessary equipment and operating as an individual and as a member of a team, shall advance dry hose lines of two different sizes, both of which shall be one and one-half inch or larger from a pumper:

- (A) Into a structure;
- (B) Up a ladder into an upper floor window;
- (C) Up an inside stairway to an upper floor;
- (D) Up an outside stairway to an upper floor;
- (E) Down an inside stairway to a lower floor;
- (F) Down an outside stairway to a lower floor; and
- (G) To an upper floor by hoisting;

(2) The firefighter 1 candidate, given the necessary equipment and operating as an individual and as a member of a team, shall advance charged attack lines of two different sizes, both of which shall be one and one-half inch or larger from a pumper:

- (A) Into a structure;
- (B) Up a ladder into an upper floor window;
- (C) Up an inside stairway to an upper floor;
- (D) Up an outside stairway to an upper floor;
- (E) Down an inside stairway to a lower floor;
- (F) Down an outside stairway to a lower floor; and
- (G) To an upper floor by hoisting;

(3) The firefighter 1 candidate shall demonstrate working from a ladder with a charged attack line which shall be one and one-half inch or larger;

vi. Required materials:

- (1) Several hundred feet of hose used locally;
- (2) Extension ladders;
- (3) Rope hose tools;
- (4) Nozzles;
- (5) Hose hoist; and
- (6) Rope;

vii. Prerequisites:

- (1) Module 6a—Fire Hose, Nozzles and Appliances; and
- (2) Module 6b—Fire Hose, Nozzles and Appliances Drill 1;
- (3) Module 13a—Safety;
- (4) Module 13b—Safety Drill;
- (5) Module 8a—Ladders;
- (6) Module 8b—Ladder Drill 1; and
- (7) Module 8c—Ladder Drill 2.

14. Module 7: Fire Streams

i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);

ii. Instructor requirements: Instructor Level 1 certification;

iii. Examination: written;

iv. Hours required: three classroom;

v. Subject areas:

- (1) Definition of fire streams and fire stream technology;
- (2) Requirements, principles and characteristics of fire streams;
- (3) Methods of producing fire streams;
- (4) Design, use and operation of various types of nozzles;
- (5) Water as an extinguishing agent;
- (6) Conditions that cause pressure loss in hose; and
- (7) Definition of water hammer and means of prevention;

vii. Prerequisites:

- (1) Module 6a—Hoze Nozzles and Appliances; and
- (2) Module 6b—Hoze Nozzles and Appliances Drill 1.

15. Module 8a: Ladders

i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);

ii. Instructor requirements: Instructor Level 1 certification;

iii. Examination: written;

iv. Hours required: one classroom;

v. Subject areas:

- (1) Types of ladders and ladder terminology;
- (2) Ladder construction and use;
- (3) Methods of ladder visual inspection and maintenance;
- (4) Methods of removing ladders from apparatus;
- (5) Methods of carrying and manipulating ground ladders;
- (6) Proper ladder placement;
- (7) Methods of raising and climbing ladders;

(8) Methods of securing ladders;

(9) Equipment and techniques to safely work while on ladders;

(10) Methods of assisting victims down a ladder, ladder rescue;

(11) Ladder safety;

(12) Methods of advancing a hose up a ladder; and

(13) Techniques of using a charged line from a ladder.

16. Module 8b: Ladders Drill 1

i. Facility requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);

ii. Instructor requirements: Instructor Level 1 certification;

iii. Examination: skills test;

iv. Hours required: three drill hours;

v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance shall be determined by using evaluation forms provided by the Office of Training and Certification.

(1) Demonstrate visual inspection for different types of ladders;

(2) Demonstrate proper procedure for cleaning ladders;

(3) Demonstrate ladder carries:

- (A) One person;
- (B) Two persons;
- (C) Three persons;
- (D) Four persons;
- (E) Five persons; and
- (F) Six persons;

(4) Demonstrate the following ladder raises as an individual and as a team:

- (A) Flat raise;
- (B) Beam raise; and
- (C) Under obstruction;

vi. Required materials:

(1) Assorted ladders; and

(2) Rope

vii. Prerequisite: Module 8a—Ladders.

17. Module 8c: Ladders Drill 2

i. Facility required: Drill Tower per N.J.A.C. 5:18C-2.4(g);

ii. Instructor required: Instructor Level 2 certification;

iii. Examination: skills test;

iv. Hours required: six drill hours;

v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance shall be determined by using skill evaluation forms provided by the Office of Training and Certification.

(1) Raise the following ladders:

- (A) 12 to 14 foot roof ladder;
- (B) 24 to 28 foot extension ladder; and
- (C) 35 foot extension ladder;

(2) Climb the full length of the following ground ladders:

- (A) 12 to 14 foot roof ladder;
- (B) 24 to 28 foot extension ladder; and
- (C) 35 foot extension ladder;

(3) Climb the 35 foot ladders carrying the following fire fighting tools and equipment:

- (A) Axe;
- (B) Pike pole; and
- (C) 14 foot roof ladder

(4) Demonstrate the methods of working from a ladder with and without a life belt;

(5) Climb the full length of the ladder and demonstrate bringing an injured person down (using a training aid dummy);

(6) Using an approved knot, hoist a selected forcible entry tool and ground ladder to a height of at least 20 feet;

(7) Demonstrate the method of working from a ladder with charged lines of two different sizes, both of which shall be one and one-half inch or larger from a pumper;

(8) Demonstrate method of lowering a victim using bowline on bight rescue knot;

vi. Required materials:

(1) Ladders of the following sizes:

- (A) 12 to 14 foot roof ladder;
- (B) 24 to 28 foot extension ladder; and
- (C) 35 foot extension ladder

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- (2) Life belt;
- (3) Training aid dummy for practice;
- (4) Small entry tools; and
- (5) Rope;
- vii. Prerequisites:
 - (1) Module 8a—Ladders;
 - (2) Module 8b—Ladders Drill 1;
 - (3) Module 6a—Fire Hose, Nozzles and Appliances;
 - (4) Module 6b—Fire Hose, Nozzles and Appliances Drill 1
 - (5) Module 13a—Safety;
 - (6) Module 13b—Safety Drill;
 - (7) Module 4a—Ropes and Knots; and
 - (8) Module 4b—Ropes and Knots Drill.
- 18. Module 9a: Ventilation
 - i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor requirements: Instructor Level 1 certification and SCBA/Smokehouse certificate;
 - iii. Examination: written;
 - iv. Hours required: three classroom;
 - v. Subject areas:
 - (1) Definition of ventilation;
 - (2) Principles of ventilation;
 - (3) Advantages of ventilation;
 - (4) Safety precautions;
 - (5) Vertical and horizontal ventilation;
 - (6) Principles and methods of forced ventilation; and
 - (7) Techniques of using water fog to expel smoke and gas;
 - vii. Prerequisites:
 - (1) Module 8a—Ladders; and
 - (2) Module 8b—Ladders Drill 1;
- 19. Module 9b: Ventilation Drill
 - i. Facility requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
 - ii. Instructor requirements: Instructor Level 1 certification and SCBA/Smokehouse certificate;
 - iii. Examination: skills test;
 - iv. Hours required: three drill hours;
 - v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance shall be determined by using skill evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstrate proper method of creating a ventilation opening;
 - (2) Demonstrate proper techniques of horizontal ventilation; and
 - (3) Demonstrate proper techniques of mechanical ventilation;
 - vi. Prerequisites:
 - (1) Module 3a—Protective Breathing Apparatus;
 - (2) Module 3b—Protective Breathing Apparatus Drill 1;
 - (3) Module 9a—Ventilation;
 - (4) Module 2a—Forcible Entry; and
 - (5) Module 2b—Forcible Entry Drill.
- 20. Module 10a: Rescue
 - i. Facility requirement: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor requirement: Instructor Level 1 certification;
 - iii. Examination: written;
 - iv. Hours required: one classroom;
 - v. Subject areas:
 - (1) Situations involving rescue operations;
 - (2) Safety precautions during rescue;
 - (3) Rescue tools;
 - (4) Rescue procedures;
 - (5) Search and rescue techniques;
 - (6) Methods of removing victims from hazard:
 - (A) Carries and drags;
 - (B) Placing victim on stretcher; and
 - (C) Lowering a victim; and
 - (7) Elevator evacuation;
 - vii. Prerequisites:
 - (1) Module 3a—Protective Breathing Apparatus;
 - (2) Module 3b—Protective Breathing Apparatus Drill 1;
 - (3) Module 8c—Ladder Drill 2; and

- (4) Module 14—Fire Behavior.
- 21. Module 10b: Rescue Drill
 - i. Facility required: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
 - ii. Instructor required: Instructor Level 1 certification;
 - iii. Examination: skills test;
 - iv. Hours required: three drill hours;
 - v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance shall be determined by using evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstrate methods of locating victims;
 - (2) Demonstrate procedures to be used in rescuing victim from electrical contact;
 - (3) Demonstrate the following carries and drags:
 - (A) Lone rescuer lift and carry;
 - (B) Extremities carry;
 - (C) Bunker coat or blanket drag;
 - (D) Hip carry—one person;
 - (E) Seat carry—two persons;
 - (F) Chair carry—two persons;
 - (G) Carrying stretchers; and
 - (H) Improvised stretcher with pike poles;
 - vi. Required materials:
 - (1) Rope;
 - (2) Pike poles;
 - (3) Blankets; and
 - (4) Stretchers
 - vii. Prerequisites:
 - (1) Module 3a—Protective Breathing Apparatus;
 - (2) Module 3b—Protective Breathing Apparatus Drill 1;
 - (3) Module 8c—Ladder Drill 2;
 - (4) Module 14—Fire Behavior;
 - (5) Module 10a—Rescue;
 - (6) Module 8a—Ladders;
 - (7) Module 8b—Ladders Drill 1;
 - (8) Module 4a—Ropes and Knots;
 - (9) Module 4b—Ropes and Knots Drill;
 - (10) Module 13a—Safety;
 - (11) Module 13b—Safety Drill;
 - (12) Module 14—Fire Behavior;
 - (13) Module 9a—Ventilation; and
 - (14) Module 9b—Ventilation Drill.
- 22. Module 11a: Sprinklers
 - i. Facility required: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor required: Instructor Level 1 certification;
 - iii. Examination: written;
 - iv. Hours required: one classroom;
 - v. Subject areas:
 - (1) Types and components of sprinkler system;
 - (2) Types of and operation of sprinkler heads;
 - (3) Purpose and operation of fire department sprinkler connection; and
 - (4) Waterflow alarms.
- 23. Module 11b: Sprinkler Drill
 - i. Facility required: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
 - ii. Instructor required: Instructor Level 1 certification;
 - iii. Examination: skills test;
 - iv. Hours required: one drill hour;
 - v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance shall be determined by using skill evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstration of fire department connection; and
 - (2) Demonstrate shutting down individual heads using a wedge or sprinkler tongs;
 - vi. Required materials:
 - (1) Sprinkler head mounted for shut downs; and
 - (2) Wedge or sprinkler tongs to shut down heads;
 - vii. Prerequisite: Module 11a—Sprinklers.
- 24. Module 12: Fire Alarm and Communications
 - i. Facility required: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor required: Instructor Level 1 certification;

- iii. Examination: written;
- iv. Hours required: one classroom;
- v. Subject areas:
 - (1) Procedure for a person to report a fire or other emergency;
 - (2) Procedure for initiating an action after receiving alarm:
 - (A) Method of receiving and recording calls;
 - (B) Method of establishing location and nature of emergency; and
 - (C) Methods of dispatching equipment and apparatus;
 - (3) Purpose and function of alarm receiving instruments;
 - (4) Purpose and function of traffic control devices;
 - (5) Fire alarm signals;
 - (6) Organization of county/local network;
 - (7) Policy and procedures for ordering and transmitting multiple alarms from the emergency scene; and
 - (8) Types of fire alarm signals
- vi. Required materials:
 - (1) Local radio operating procedures; and
 - (2) County radio operating procedures where applicable.
- 25. Module 13a: Safety
 - i. Facility required: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor required: Instructor Level 1 certification;
 - iii. Examination: written;
 - iv. Hours required: two classroom;
 - v. Subject areas:
 - (1) Protective clothing:
 - (A) PEOSHA requirements;
 - (B) Right to know requirements;
 - (C) Types of clothing;
 - (D) Care, maintenance testing and repair procedures; and
 - (E) Donning and wearing procedures;
 - (2) Types and causes of occupational injuries;
 - (3) Proper methods of going to and from a fire:
 - (A) Mounting a vehicle;
 - (B) Riding apparatus; and
 - (C) Dismounting vehicle;
 - (4) Safety at the fire scene:
 - (A) Toxic gas/respiratory hazards;
 - (B) Structural hazards; and
 - (C) Electrical hazards.
- 26. Module 13b: Safety Drill
 - i. Facility required: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
 - ii. Instructor required: Instructor Level 1 certification;
 - iii. Examination: skills test;
 - iv. Hours required: one hour drill;
 - v. Subject areas: The firefighter I candidate must be able to perform the skill in the area listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstrate testing and maintenance requirements for each article of personal protective equipment;
 - (2) Demonstrate donning personal protective equipment; and
 - (3) Demonstrate proper procedures for mounting and demounting a vehicle;
 - vi. Required materials and tools:
 - (1) OSHA approved personal protective clothing for each student;
 - vii. Prerequisite: Module 13a—Safety.
- 27. Module 14: Fire Behavior
 - i. Training facility: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor required: Instructor Level 1 certification;
 - iii. Examination: written;
 - iv. Hours required: three classroom;
 - v. Subject areas:
 - (1) Definitions of terms used to describe fire activity;
 - (2) Basic theory of combustion;
 - (A) Fire triangle/tetrahedron; and
 - (B) Heat sources;
 - (3) Phases of a fire:
 - (A) Incipient;
 - (B) Flame spread;
 - (C) Hot smoldering;
 - (D) Flash over and backdraft;

- (E) Steady state; and
- (F) Clear burning;
- (4) Heat transfer;
- (5) Products of combustion;
- (6) Common paths of fire spread;
- (7) Classes of fire;
- (8) Fire extinguishment theories; and
- (9) Thermal balance.
- 28. Module 15: Portable Fire Extinguishers
 - i. Training facility: Classroom Level 1 per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor level: Instructor Level 1 certification;
 - iii. Examination: written;
 - iv. Hours required: three classrooms;
 - v. Subject areas:
 - (1) Extinguisher rating system;
 - (2) Types of fire extinguishers and selection of extinguisher for various types of fires;
 - (3) Capabilities, advantages and limitations of various extinguishers;
 - (4) Identification of damaged or obsolete extinguishers;
 - (5) Proper care and inspection of fire extinguishers; and
 - (6) Types of extinguishing agents;
 - vi. Prerequisites:
 - (1) Module 14—Fire Behavior;
 - (2) Module 13a—Safety; and
 - (3) Module 13b—Safety Drill.
- 29. Module 16: Live Fire Evolution
 - i. Facility requirements: Live burn facility per N.J.A.C. 5:18C-2.4(h);
 - ii. Instructor requirements: Instructor Level 2 certification and live burn certificate;
 - iii. Examination: skills test;
 - iv. Hours required: 12 drill hours;
 - v. Subject areas: The firefighter I candidate must be able to perform the skills in the areas listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
 - (1) Demonstrate manipulating a fire hose nozzle so as to attack at least two live fires, including a Class A fire and a Class B liquid fire;
 - (2) Demonstrate attack on automobile fire;
 - (3) Demonstrate the proper positioning of attack lines;
 - (4) Demonstrate interior fire attack;
 - (5) Demonstrate by simulation the use of all of the following portable extinguishers and by actual demonstration of one of the following on both a Class A and a Class B fire:
 - (A) Stored pressure water extinguisher;
 - (B) Aqueous film forming foam extinguisher;
 - (C) Carbon dioxide extinguishers;
 - (D) Dry chemical extinguishers;
 - (6) Demonstrate inspection of fire extinguisher;
 - vi. Prerequisite: All Modules.
- 5:18C-4.4 Examination requirements
 - (a) Applicants for the firefighter I certification shall demonstrate knowledge of the subject areas by successful completion of the firefighter I written examination administered through the Office of Training and Certification.
 - (b) Applicants for the Firefighter I certification shall demonstrate competence by successful completion of the firefighter Level 1 skills examination administered through the Office of Training and Certification.
- 5:18C-4.5 Optional courses
 - (a) The firefighter I may receive additional endorsements in the following areas:
 - 1. Module 17A: Emergency Medical Care—First Aid
 - i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
 - ii. Instructor requirements: Current first aid instructor certificate issued by the American Heart Association or the American National Red Cross;

- iii. Examination: No examination required—current first aid card must be submitted;
- iv. Hours required: eight;
- v. Subject areas:
 - (1) Recognize and understand treatment of fractures and splinting;
 - (2) Recognize and understand treatment of burns;
 - (3) Understand types of external and internal bleeding and its control;
 - (4) Understand the symptoms and treatment for various poisons;
 - (5) Recognize symptoms of shock and understand treatment;
 - (6) Understand primary and secondary survey; and
 - (7) Understand priority injuries.
- 2. Module 17B: Emergency Medical Care—CPR (Reserved)
- 3. Module 18: Hazardous Materials—Awareness (Reserved)
- 4. Module 19: Fire Pumps—(Reserved)
- 5. Module 20: Hazardous Materials—(Reserved)
- 6. Module 21: Fire Prevention—(Reserved)
- 7. Module 22: Arson Awareness—(Reserved)
- 8. Module 23: Ground Cover Fires—(Reserved)
- 9. Module 24: Vehicle Fires—(Reserved)
- 10. Module 25: Foam—(Reserved)
- 11. Module 26: Electric—(Reserved)
- 12. Module 27: Fire Service Law—(Reserved)
- 13. Module 28: Natural/LPG Gas—(Reserved)
- 14. Module 29: Marine Firefighting—(Reserved)
- 15. Module 30: Vehicle Extrication—(Reserved)
- 16. Module 31: High Hazard Buildings—(Reserved)
- 17. Module 32: High Rise Fires—(Reserved)
- 18. Module 33: Building Construction—(Reserved)
- 19. Module 34: Truck Company Operations—(Reserved)
- 20. Module 35: Below Grade/Confined Space Rescue—(Reserved)

SUBCHAPTER 5. INSTRUCTORS

5:18C-5.1 General provisions

It is the object of this subchapter to establish criteria for certification of various levels of instructors of fire service courses.

5:18C-5.2 Instructor Level 1

(a) The Instructor Level 1 may provide training for those modules or courses in this chapter where Instructor Level 1 certification is required.

(b) To obtain a certification as an Instructor Level 1, an individual shall meet the following requirements:

- 1. Be at least 18 years of age;
- 2. Satisfactorily complete the 16 hour course "Instruction Techniques: Instructor Level 1" as specified in (c) below;
- 3. Satisfactorily complete the 16 hour course "Instructor I Level 1 Safety" as specified in N.J.A.C. (d) below;
- 4. Satisfactorily pass the safety skills test specified in (e) below; and
- 5. Satisfactorily pass the written test specified in (f) below or possess three years of active firefighting service.

(c) The following standard applies to programs designed to satisfy the requirements for the course "Instruction Techniques: Instructor Level 1":

- 1. Hours required: 16;
- 2. Subject areas. The course must cover the following subject areas:
 - i. Communication;
 - ii. Concepts of learning/adult learning;
 - iii. Human relations in the teaching-learning environment;
 - iv. Methods of teaching;
 - v. Organizing the learning environment;
 - vi. Performance evaluation;
 - vii. Records and reports;
 - viii. Testing and evaluation;
 - ix. The instructor's roles and responsibilities;
 - x. The lesson plan;
 - xi. The teaching technique; and
 - xii. The use of instructional materials;
- 3. The following certificates, courses, or experience will be accepted as substitutes for the course "Instruction Techniques: Instruc-

tor Level 1" for a period of two years from the effective date of this chapter:

- i. A valid New Jersey Teacher's Certificate;
- ii. A valid Instructional Certificate with an endorsement for a teacher of skilled trades: fire science;
- iii. The course "Instructional Techniques for Company Officers" as developed by the National Fire Academy taken prior to the effective date of these regulations;
- iv. Any other course taken prior to the effective date of this chapter can be submitted by the candidate to the Office of Training and Certification for an evaluation by the office as equivalent. The office will maintain a list of reviewed and approved substitute courses; or
- v. Two years of experience as a fire service instructor with 10 contact hours of instruction during the two years prior to the effective date of this chapter may be substituted for the "Instruction Techniques: Instructor Level 1" course.

(d) Applicants for an Instructor Level 1 certificate must complete the 16 hour safety course promulgated by the Office of Training and Certification. The approved course materials are incorporated by reference and are provided by the Office of Training and Certification, Division of Housing and Development, Department of Community Affairs, CN 809, Trenton, New Jersey 08625.

(e) Applicants for the Instructor Level 1 certification shall demonstrate competence by successful completion of the Instructor Level 1 Skills examination administered through the Office of Training and Certification.

(f) Applicants for the Instructor Level 1 certification shall demonstrate knowledge of the subject areas by successful completion of the Instructor Level 1 written examination administered through the Office of Training and Certification.

1. Three years of active firefighting experience prior to the effective date of the regulations may be substituted for the written examination for a period of two years from the effective date of this chapter.

5:18C-5.3 Instructor Level 2

(a) The Instructor Level 2 may provide training for those modules or courses in this chapter where Instructor Level 1 or 2 is required.

(b) To obtain a certification as Instructor Level 2, an individual must meet the following requirements:

- 1. Be at least 18 years of age; and
- 2. Possess a certification as Instructor Level 1 for two years.
 - i. For a period of two years from the effective date of these regulations, two years of experience as a fire service instructor with 20 contact hours of instruction during the two years prior to the effective date of this chapter plus satisfactory completion of the safety course specified in N.J.A.C. 5:18C-5.2(d) may be substituted for the above.
- 3. Satisfactorily complete the 45 hour course "Instruction Techniques: Instructor Level 2" as specified in (c) below;
- 4. Satisfactorily pass the skills test specified in (d) below; and
- 5. Satisfactorily pass the written test specified in (e) below.
 - i. Five years of active firefighting experience prior to the effective date of this chapter may be substituted for the written examination for a period of two years following the effective date of this chapter.

(c) The following standard applies to programs designed to satisfy the requirements for the course "Instruction Techniques: Instructor Level 2.":

- 1. Hours required: 45;
- 2. Subject areas: The course must cover the following subject areas:
 - i. Methods of instruction;
 - ii. Lesson development;
 - (1) Task analysis;
 - (2) Writing lesson objectives (behavioral or performance);
 - (3) Preparing basic projected visual aids:
 - (A) Overhead transparencies;
 - (4) Preparing non-projected visual aids:
 - (A) Charts and graphs;
 - (5) Preparing demonstration materials:
 - (a) Models;
 - (b) Mock-ups; and

- (c) Cutaways;
- (6) Preparing printed materials:
- (A) Student handout materials;
- iii. Testing and evaluation:
 - (1) Developing lesson examinations (written, oral and performance); and
 - (2) Evaluating examinations;
- 3. Presentations: Each student shall make the following presentations:
 - i. A seven minute presentation;
 - ii. A 15 minute presentation;
 - iii. A 30 minute presentation which is videotaped and reviewed with instructor;
- 4. For two years following the effective date of this chapter, the following certificates or courses can be substituted for the course "Instruction Techniques: Instructor Level 2."
 - i. A valid New Jersey Teachers Certificate;
 - ii. A valid Instructional Certificate with an endorsement for a teacher of skilled trades: fire science;
 - iii. The course "Educational Methodology" as developed by the National Fire Academy taken prior to the effective date of this chapter;
 - iv. Any other course taken prior to the effective date of this chapter can be submitted by the candidate to the Office of Training and Certification for evaluation as an equivalent. The office will maintain a list of reviewed and approved substitute courses; or
 - v. Two years of experience as a fire service instructor with 20 contact hours of instruction during the two years prior to the effective date of this chapter.

(d) Applicants for the Instructor Level 2 certification shall demonstrate competence by successful completion of the Instructor Level 2 Skills examination administered through the Office of Training and Certification.

(e) Applicants for the Instructor Level 2 Certification shall demonstrate knowledge of the subject areas by successful completion of the Instructor Level 2 written examination administered through the Office of Training and Certification.

1. Five years of active firefighting experience may be substituted for the written examination.

5:18C-5.4 Special instructor certificates

(a) In addition to the Instructor Level 1 or Instructor Level 2 certifications, individuals shall possess special certificates as indicated in this chapter to teach specific modules.

(b) The following relate to the live burn instructor certificate:

1. A live burn certificate is required to teach specified modules for firefighter 1.

2. An individual seeking a live burn instructor certificate shall complete the following requirements:

- i. Possess a certificate as Instructor Level 1 or Instructor Level 2;
- ii. Successfully complete the eight hour live burn course promulgated by the Office of Training and Certification, including instructor and student manuals, which is incorporated herein by reference. The course materials are provided by the Office of Training and Certification, Department of Community Affairs, CN 809, Trenton, N.J. 08625; and
- iii. Successfully complete the live burn instructor written and skills examination administered through the Office of Training and Certification.

(c) The following apply to the SCBA/Smokehouse certificate:

1. An individual seeking a SCBA/Smokehouse certificate shall meet the following requirements:

- i. Possess a certificate as an Instructor Level 1 or Instructor Level 2;
- ii. Successfully complete the eight hour SCBA/Smokehouse course promulgated by the Office of Training and Certification including instructor and student manuals which is incorporated herein by reference. The course materials are provided through the Office of Training and Certification, Department of Community Affairs, CN 809, Trenton, N.J. 08625; and

- iii. Successfully complete the SCBA/Smokehouse instructor written and skills examination administered through the Office of Training and Certification.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Exemptions from Taxation

Adopted New Rules: N.J.A.C. 5:22

Proposed: November 6, 1989 at 21 N.J.R. 3345(a).

Adopted: December 21, 1989 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.

Filed: December 27, 1989 as R.1990 d.60, **without change**.

Authority: N.J.S.A. 54:4-3.79 and 3.123.

Effective Date: February 5, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

No public comments received.

Since N.J.A.C. 5:22 expired, pursuant to Executive Order No. 66 (1978), on December 1, 1989, the rules proposed for re-adoption are adopted as new rules in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules may be found in the New Jersey Administrative Code at N.J.A.C. 5:22.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Underground Storage Tanks; Definitions

Adopted Amendment: N.J.A.C. 5:23-1.4

Proposed: November 6, 1989 at 21 N.J.R. 3345(b).

Adopted: December 21, 1989 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.

Filed: December 27, 1989 as R.1990 d.57, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124 and 58:10A-25.

Effective Date: February 5, 1990.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

No public comments were received.

However, the Department has added language to make it clear that approval of compliance with N.J.A.C. 7:14B is deemed to be a prior approval whether the approval is given by the Department of Environmental Protection or by the construction official himself under authority of N.J.A.C. 7:14B.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

5:23-1.4 Definitions

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

"Building" means a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing, shelter, enclosure and support of individuals, animals or property of any kind. When used herein, "building" and "structure" shall be interchangeable except where the context clearly indicates otherwise.

"Prior approvals" means the necessary certifications or approvals of any Federal or State agency, or any political subdivision of the State, which are not inconsistent with this chapter, and which are

conditions precedent to the issuance of a construction permit or a certificate of occupancy, which shall include, but not be limited to, the following:

1. Zoning;
2. Soil erosion and sediment control;
3. Highway curb cuts;
4. Water and sewer service extension permits;
5. Coastal area facilities review; and
6. Compliance of underground storage tank systems with N.J.A.C. 7:14B.

i. An approval granted by either the Department of Environmental Protection or the construction official by authority of N.J.A.C. 7:14B shall be deemed to be a prior approval.

...
 "Structure" means a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land; provided, the word "structure" shall be construed when used herein as though followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning.
 ...

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
 Uniform Construction Code
 Plumbing Subcode**

Adopted Amendment: N.J.A.C. 5:23-3.15

Proposed: November 6, 1989 at 21 N.J.R. 3346(a).
 Adopted: December 21, 1989 by Anthony M. Villane, Jr., D.D.S.,
 Commissioner, Department of Community Affairs.
 Filed: December 27, 1989 as R.1990 d.58, **without change**.
 Authority: N.J.S.A. 52:27D-123b, 124.
 Effective Date: February 5, 1990.
 Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No public comments received.

Full text of the adoption follows:

- 5:23-3.15 Plumbing subcode
 (a)-(c) (No change.)
 (d) The 1989 Supplement to the 1987 National Standard Plumbing Code is adopted with the following amendments:
1. Chapter 2 of the Plumbing Subcode, entitled "General Regulations", is amended as follows:
 - i. Section 2.16 is amended to insert the number "Forty-two" in the blank space under item (a), and to insert the number "Twenty-four" in the blank space under item (b). Under item (c), delete the words "section 3.12.1" and substitute in lieu thereof, the words "N.J.A.C. 5:23-2.9".
 2. Chapter 7 of the Plumbing Subcode, entitled "Plumbing Fixtures", is amended as follows:
 - i. Table 7.4.5 on page 22 is amended to insert the words "21 inches" in the space for clearance at the front of the first fixture. Also delete the word "code" and substitute in lieu thereof "Subcode" in the block at the bottom.
 - ii. Table 7.24.1 Note #1 is amended to delete the words "for handicapped requirements see local state and nation ordinances" and substitute in lieu thereof, the words "for handicapped requirements see the State Barrier Free Subcode N.J.A.C. 5:23-7.1 et seq."
 3. Appendix D of the Plumbing Subcode, entitled "Water conservation", is amended as follows:
 - i. Item D.4 is amended to add a note after line 4 to read "Note: see Energy subcode for public lavatories flow rate value".
 - ii. Item D.7 is deleted in its entirety, and substitute in lieu thereof "See the State Barrier Free Subcode, N.J.A.C. 5:23-7.1 et seq."

(b)

**DIVISION OF HOUSING AND DEVELOPMENT
 Uniform Construction Code
 Enforcing Agencies**

Adopted Amendments: N.J.A.C. 5:23-4.5, 4.19 and 4.20

Proposed: November 6, 1989 at 21 N.J.R. 3346(b).
 Adopted: December 21, 1989 by Anthony M. Villane, Jr., D.D.S.,
 Commissioner, Department of Community Affairs.
 Filed: December 27, 1989 as R.1990 d.61, **without change**.
 Authority: N.J.S.A. 52:27D-124.
 Effective Date: February 5, 1990.
 Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-4.5 Municipal enforcing agencies—administration and enforcement

- (a) (No change.)
- (b) Forms:
 1. (No change.)
 2. The following standardized forms established by the Commissioner are required for use by the municipal enforcing agency:

Form No.	Name
F-100A	Construction Permit Application
F-110A	Building Subcode Technical Section
F-120A	Electrical Subcode Technical Section
F-130A	Plumbing Subcode Technical Section
F-140A	Fire Subcode Technical Section
F-160A	Application for a Variation
F-170A,B	Construction Permit, Required Inspection
F-180A	Construction Permit Notice
F-190A	Permit Update
F-210A	Notice of Violation and Order to Terminate/Notice Order to Pay Penalty
F-220A	Inspection Sticker Approval for Building
F-222A	Inspection Sticker Approval for Electric
F-223A	Inspection Sticker Approval for Plumbing
F-224A	Inspection Sticker Approval for Fire Protection
F-230A	Inspection Sticker—Not Approved
F-240A	Notice of Unsafe Structure/Imminent Hazard
F-245A	Unsafe Structure Notice
F-250A	Stop Construction Order
F-255A	Stop Construction Notice
F-260A	Certificate
F-270A	Application for Certificate
F-310A	Elevator Inspection
F-320A	Elevator Notice
F-330A	Application to Construction Board of Appeals
F-340A	Decision of Construction Board of Appeals
F-350A	Cut-In Card
F-360A	Denial of Permit

3. The following standardized forms established by the Commissioner are optional for use by the municipal enforcing agency; provided, however, that where they are not used, equivalent forms or mechanisms are used by the enforcing agency to accomplish the same purpose:

Form No.	Name
F-150A	Tickler/X-Ref Card
F-200A	Inspection Notice
F-280A	T.C.O. Control Card
F-290A	Ongoing Inspections Control Card
F-300A	Ongoing Inspections Schedule

4. (No change.)

5. Printing of forms: The municipal enforcing agency shall arrange for the printing of all forms. Other interested persons may also arrange for the printing of forms or they may purchase and use forms printed by others. The municipal enforcing agency may provide for the inclusion of its name and other appropriate identifying information on the forms it has printed. However, the municipal enforcing agency shall accept forms not having municipal identification and shall, in any such case, insert the name of the municipality. All required forms shall be exact replicas of the forms required by the Commissioner, conforming in content, size, format and colors, except that all multi-part forms may be printed with an additional copy so long as the additional copy shall be in a color distinct from those specified by the Commissioner. Forms F-110A, F-120A, F-130A and F-140A may have the Subcode Technical Sections printed in any color or colors of ink as desired and Form F-310A (Elevator Inspection) may be printed as a multipart form on separate pages with up to four copies of each page.

(c) Logs:

1. The following standardized logs established by the Commissioner are required to be maintained by the municipal enforcing agency:

Log No.	Name
L-700A	Permit Fee Log
L-710A	Inspection Log
L-720A	Certificate Log
L-730A	Ongoing Inspection Log

2. (No change.)

(d) Reports:

1. The following standardized report forms established by the Commissioner are required to be completed by the municipal enforcing agency and transmitted to the Department as required by N.J.A.C. 5:23-4.19 by the tenth business day following the end of each calendar month:

Report No.	Name
R-811A	Municipal Monthly Activity Report Certificates
R-812A	Municipal Monthly Activity Report Permits

2. The following standardized report established by the Commissioner is required to be completed by the municipal enforcing agency for State of New Jersey training fees and must be submitted quarterly pursuant to N.J.A.C. 5:23-4.19:

Report No.	Name
R-840A	State Training Fee Report

3. The following standardized report form established by the Commissioner is optional for use by the municipal enforcing agency:

Report No.	Name
R-800A	Inspector's Report

(e)-(h) (No change.)

5:23-4.19 State of New Jersey training fees

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

(c) Remitting and reporting:

1. The municipality shall remit fees to the Bureau on a quarterly basis, in conjunction with report number R-840A State Training Fee Report in accordance with N.J.A.C. 5:23-4.5(d). Fees remitted shall be for the quarter. Checks shall be made payable to "Treasurer, State of New Jersey".

5:23-4.20 Departmental fees

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

(c) Departmental (enforcing agency) fees:

1.-5. (No change.)

6. Annual permits: The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers who are employed by the facility, and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered

maintenance workers for the purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing. Fees shall be as follows:

i. (No change.)

ii. Prior to the issuance of the annual permit, a training registration fee of \$100.00 per subcode shall be submitted by the applicant to the Department of Community Affairs, Construction Code Element, Training Section, along with a copy of the construction permit (Form F-170A). Checks shall be made payable to "Treasurer, State of New Jersey."

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Dedication of Revenue for Code Enforcement

Adopted Amendment: N.J.A.C. 5:23-4.17

Proposed: November 6, 1989 at 21 N.J.R. 3348(a).

Adopted: January 12, 1990 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.

Filed: January 12, 1990 as R.1990 d.115, with technical and

substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: February 5, 1990.

Operative Date: March 1, 1990.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Comments in support of the proposed amendment were received from the New Jersey Builders Association, the Northern New Jersey Chapter, Inc. of the National Electrical Contractors Association, the New Jersey State Council of Electrical Contractors Associations, Inc., the New Jersey Department of Agriculture, the Plumbing Inspectors Association, Incorporated, the New Jersey Farm Bureau, the New Jersey Business & Industry Association, the New Jersey Alliance for Action, Inc., and Atlantic Electric.

The New Jersey Builders Association included in its comments recommendations: (1) that fee schedules be required to be amended when exceptionally large surpluses occur, and (2) that municipalities be allowed to amortize motor vehicles that are purchased so as to avoid sudden surges in fees. In response, the Department points out that the first recommendation is beyond the scope of the amendment, while the second would be at variance with accepted municipal accounting practices, according to the Department's Division of Local Government Services.

Opposition to the amendment came from the New Jersey State League of Municipalities and from various municipal officials who submitted letters and resolutions. A major concern of the municipal representatives was that surpluses received in one year would have to be used to reduce fees in the following year and that a municipality would therefore be unable to accumulate reserves in the dedicated fund for years of low revenue. The amended rule has been changed upon adoption to make it clear that accumulation of funds to offset future expenses is to be allowed.

The municipal representatives also expressed concern that money from the general fund of the municipality used to cover the cost of construction code enforcement in a year of low fees could not be recovered from the dedicated fund. While costs incurred in a prior budget year may not be met through surplus fee revenues generated in a subsequent budget year, the Department will allow additional costs to be charged against surplus fee revenues in years in which such revenues are generated. This may serve to ameliorate situations in which municipalities will have found it necessary to support construction code enforcement with monies from the municipalities' general fund in years of low fee revenue. The rule has been changed upon adoption accordingly.

Another municipal concern was removal of the dedicated fund from the process of review by the governing body. In response, the Department has changed the rule upon adoption to require the construction official to prepare a report on the revenues and expenditures of the enforcing agency in consultation with the finance officer and to submit this report to the governing body by February 10th of each year, a date recommended as appropriate by the Division of Local Government Services.

The municipal representatives also challenged the 12 percent limit on indirect costs. The Department's response is that the limit is 12 percent or the ratio of the specified indirect costs to all costs for the entire municipal government, whichever is greater.

The municipal officials further urge that the amendment not be adopted because it imposes burdens on all municipalities for the excesses of a few and that the Department has authority to take over those few violators. The Department's response is that it has been advised by the Attorney General's office that dedication of construction code fee revenue is statutorily mandated. The amendment is not unreasonably burdensome, particularly with the allowance now included for the charging of additional costs to construction code fees in years of surplus fee revenue. The Department must have an effective way of monitoring compliance with the statutory requirement that construction code fees not be diverted to other uses. However, it has no reason to take over municipal code enforcement when the code enforcement officials are doing their jobs properly but other municipal officials are using fee revenue in an inappropriate manner.

Comments were also received from a municipal attorney and a municipal administrator recommending that legal services to the construction code enforcing agency be allowable as a direct cost. This recommendation has been accepted insofar as it applies to documented charges for litigation.

The comptroller of a county that administers an interlocal enforcing agency agreement asked whether this rule applies to his county. In the judgment of both the Division of Housing and Development and the Division of Local Government Services, it does, since the county collects fees. However, where a county agency provides inspection services for local enforcing agencies but does not itself collect fees, the rule would not apply to the county.

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

5:23-4.17 Municipal enforcing agency fees

(a) (No change.)

(b) Report:

1. ***On or before February 10th of each year, the* [The]* construction official shall,* with the advice of the subcode officials ***and in consultation with the municipal finance officer,*** prepare*[, once every two years,]* ***and submit to the governing body* a report ***detailing the receipts and expenditures of the enforcing agency and*** indicating his recommendations for a fee schedule, based on the operating expense of the agency. The report shall be structured in accordance with ***(c) below and with*** such guidelines as shall be issued from time to time by the ***[commissioner]* ***Commissioner***** so as to accurately portray true enforcing agency expenses in general and for structures of different use groups. This report shall serve as the basis for the ordinance to be enacted by the municipality, as it may deem appropriate, establishing the fee schedule.****

2. A copy of the construction official's report recommending a fee schedule and setting forth enforcing agency ***revenues and*** expenses shall be filed with the ***[department]* ***Department***** when prepared*[, but, in any event, not less frequently than once every two years]* and a copy of the ordinance, together with the fee schedule, shall be filed with the ***[department]* ***Department***** when enacted or amended.

3. The fund containing all revenue dedicated by rider pursuant to (c) below shall be audited annually by an independent auditor acceptable to the Department and a copy of the auditor's report shall be provided to the Department when it is issued to the municipality. Submission of a copy of the annual municipal audit required to be submitted to the Division of Local Government Services at the time that it is required to be submitted to that Division shall constitute compliance with this requirement provided, however, that the annual municipal audit tests and contains an opinion that all expenditures of fees dedicated by rider have been made for purposes herein permitted.

(c) Costs: The fee schedule shall be calculated to reasonably cover the municipal costs of enforcing the regulations.

***1. It is the purpose and intent of this subsection to provide a mechanism to facilitate the accumulation by municipalities of the funds necessary to offset future construction code enforcement expenses, to ensure**

that construction code fee revenue is used only for construction code enforcement purposes, and to provide a means of making such revenue readily available for such purposes from year to year.*

[1.]*2.* All fees collected after February 28, 1990*, or after the date on which the 1990 municipal budget is adopted, whichever is later,*** shall be dedicated by rider to be applied to the municipal costs of enforcing the regulations, which costs shall be defined as including only the following:**

i. Salaries and employee benefits for licensed code enforcement officials and inspectors and clerical personnel assigned to the enforcing agency, in an amount proportionate to the time spent in performing work for the enforcing agency provided, however, that detailed time records are kept where employees divide their time between Uniform Construction Code and non-Uniform Construction Code duties;

ii. Cost of motor vehicles in an amount proportionate to their use by or for the enforcing agency. Payments for this purpose may be in the form of mileage reimbursement paid to employees for use of their own motor vehicles, cost of purchase of motor vehicles by the municipality for the exclusive use of the enforcing agency (which cost may not be amortized), depreciation and operating expenses of motor vehicles made available to the enforcing agency by another municipal agency, and cost of rental of motor vehicles for use by the enforcing agency;

iii. Direct costs in support of the agency such as equipment, supplies, furniture, office equipment maintenance, standardized forms, printing, and safety equipment that are supplied directly to the enforcing agency for its sole use;

iv. Professional expenses of enforcing agency personnel that are directly related to the enforcement of the regulations, including publications, membership dues, license fees, and authorized travel to conferences, meetings and seminars;

v. Fees for services performed under contract by private on-site inspection agencies;

vi. Documented charges for legal services required in connection with construction code enforcement litigation;

[vi.]*vii.*** Fees for the annual audit of the dedicated fund by an independent auditor; and**

[vii.]*viii. Subject to the limitations set forth in (c)3 below, indirect,* [Indirect and]* overhead*, and other* expenses of the municipality in support of the enforcing agency,* including:****

(1) Legislative and Executive expenses;

(2) Administration, including personnel, payroll, and general training services provided to the agency in common with all other municipal offices;

(3) Central services shared jointly with other municipal offices, such as telephone, reproduction, centralized computer services, etc.;

(4) Insurance except for group insurance premiums included under employer fringe benefits;

(5) General building maintenance expenses;

(6) Finance, including bookkeeping, purchasing, and auditing ***[but excluding all tax collection and tax assessment costs; and]********

(7) Office space expenses, including rent or interest and debt service on municipal capital facilities***[.]******** and*

(8) Such other expenses as may be properly allocable to construction code enforcement, not to exceed the amount by which the municipal costs of construction code enforcement in any prior year beginning after December 31, 1989 exceeded fee revenue received by the enforcing agency in that year, provided that such amount has not previously been charged against the dedicated fund.

[2.]*3.*** Indirect and overhead expenses charged to the dedicated fee account*, other than amounts charged pursuant to (c)2viii(8) above,* shall only exceed 12 percent of all other costs of the enforcing agency ***[unless]* ***if*** the indirect and overhead expenses of the municipality exceed 12 percent of the entire municipal budget, in which case indirect and overhead expense may be charged to the rider in proportion to the general municipal overhead and expense ratio. A detailed written justification for any charge in excess of 12 percent shall be prepared and made available for inspection both by the Department and by the public.****

*[3.]**4.* This subsection shall not be construed as precluding the use of money from the general fund of the municipality to pay costs of code enforcement when the funds dedicated by rider are insufficient for that purpose or when necessary to compensate the enforcing agency for work done without fee pursuant to statute or ordinance. (d) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Landlord-Tenant Relations Forms

Adopted New Rules: N.J.A.C. 5:29-1 Adopted Amendment: N.J.A.C. 5:29-2.2

Proposed: November 6, 1989 at 21 N.J.R. 3349(a). Adopted: December 21, 1989 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs. Filed: December 27, 1989 as R.1990 d.59, without change. Authority: N.J.S.A. 46:8-28, 46:8-9.2 and 52:27D-3(e). Effective Date: February 5, 1990. Expiration Date: June 18, 1991.

Summary of Public Comments and Agency Responses: No public comments received.

Full text of the adoption follows.

SUBCHAPTER 1. LANDLORD IDENTITY REGISTRATION FORMS

5:29-1.1 Applicability

(a) Pursuant to N.J.S.A. 46:8-28 and 46:8-29, the form prescribed by this subchapter is required to be given by landlords to tenants in single unit dwellings and in two-unit dwellings that are not owner-occupied and to be filed in the office of the clerk of the municipality in which any such single unit dwelling or two-unit dwelling is situated.

(b) Tenants in multiple dwellings are required to be given a copy of the certificate of registration filed with the Bureau of Housing Inspection in accordance with N.J.S.A. 55:13A-12, N.J.S.A. 46:8-28 and N.J.A.C. 5:10-1.11.

5:29-1.2 One- and two-unit dwelling registration form

(a) The form of the certificate of registration to be filed with the municipal clerk and distributed to tenants by owners of non-owner occupied one- and two-unit dwellings shall be substantially as follows:

LANDLORD IDENTITY STATEMENT (One and Two-Unit Rental Dwellings)

1. The names and addresses of all record owners of the building or of the rental business (including all general partners in the case of a partnership) are as follows:

2. If the record owner is a corporation, the names and addresses of the registered agent and of the corporate officers are as follows:

[] Record owner is not a corporation.

3. If the address of any record owner is not located in the county in which the dwelling is located, the name and address of a person who resides in the county and is authorized to accept notices from a tenant, to issue receipts for those notices and to accept service of process on behalf of the out-of-county record owner(s) are as follows:

[] The addresses of all record owners are in the county in which the dwelling is located.

4. The name and address of the managing agent are as follows:

[] There is no managing agent.

5. The name and address (including dwelling unit, apartment or room number) of the superintendent, janitor, custodian or other person employed to provide regular maintenance service are as follows:

[] There is no superintendent, janitor, custodian or other person employed to provide regular maintenance service.

6. The name, address and telephone number of an individual representative of the record owner or managing agent who may be reached or contacted at any time in the event of an emergency affecting the dwelling or any dwelling unit, including such emergencies as the failure of any essential service or system, and who has authority to make emergency decisions concerning the building, including the making of repairs and expenditures, are as follows:

7. The names and addresses of all holders of recorded mortgages on the property are as follows:

[] There is no recorded mortgage on the property.

8. If fuel oil is used to heat the building and the landlord furnishes the heat, the name and address of the fuel oil dealer servicing the building and the grade of fuel oil used are as follows:

[] The building is not heated by fuel oil. [] The building is heated by fuel oil, but the landlord does not furnish heat.

Date: _____ Landlord or Authorized Representative

(b) Copies of this form may be obtained from private sources or from:

Office of Landlord-Tenant Information Division of Housing and Development Department of Community Affairs CN 805 Trenton, NJ 08625

5:29-2.2 Form of notice

(a) (No change.)

(b) Copies of this form may be obtained from private sources or from:

Office of Landlord-Tenant Information Division of Housing and Development Department of Community Affairs CN 805 Trenton, NJ 08625

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Manual

Emergency Assistance Shelter

Adopted Amendment: N.J.A.C. 10:85-4.6

Proposed: December 4, 1989 at 21 N.J.R. 3790(a).

Adopted: January 12, 1990, by William Waldman, Acting Commissioner, Department of Human Services.

Filed: January 12, 1990 as R.1990 d.117, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:8-11(d).

Effective Date: January 12, 1990, Readopted Emergency Amendment; February 5, 1990, Change upon Adoption.

Expiration Date: December 20, 1994.

Summary of Public Comments and Agency Responses:

COMMENTS: Comments were received from the Department of the Public Advocate, Division of Public Interest Advocacy, stating, at the outset, that the adopted rule and concurrent proposal is a necessary first step to remove disabled and vulnerable EA recipients from life threatening circumstances upon expiration of EA benefits. The commenter indicated that the Department of Human Services, in having undertaken this measure, further complies "... with the legislative mandate that no person in this State shall suffer unnecessarily from the lack of shelter". The commenter, however, expressed concern that there are certain omissions in the scope of the adopted rule and concurrent amendment that need to be explicitly addressed in order to make the rule responsive to the population it is designed to serve.

Generally, the commenter observed that the amended rule fails to make provision for those HIV Positive with symptoms or terminally ill persons who qualify for SSI eligibility on a presumptive basis and are discharged from that program before having qualified for ongoing SSI benefits, therefore, leaving them without public aid. It was also observed that the rule neglects to require MWDs to refer those who qualify for SSI, and are in need of EA, to the appropriate CWA for continued EA under N.J.A.C. 10:83-1.2.

Additionally, the commenter observed that the amended rule does not expressly provide for exempting such vulnerable individuals from the housing search requirement at N.J.A.C. 10:85-4.6(b)1ii.

In light of the above statements, the commenter urged that the rule be modified to: (1) expressly provide for automatic reinstatement of EA during an interim period which may develop between the expiration of SSI entitlement and the start of ongoing permanent SSI benefits to ensure that these vulnerable individuals are not denied EA reinstatement; (2) require that the affected population served under the SSI program shall be referred by the MWD to the "... CWA for appropriate EA benefits under the SSI program." The commenter parenthetically noted and urged that prompt revision, although not part of this rulemaking, be undertaken to N.J.A.C. 10:83-1.2 to provide comparability "to those provided homeless persons under GA;" and (3) expressly exempt the affected population, who are physically unable to conduct housing searches, from the housing search requirements at N.J.A.C. 10:85-4.6(b)1ii.

RESPONSES: The Department does not agree that there is particular need to provide specific language concerning the automatic reinstatement of GA/EA for those persons whose presumptive SSI eligibility period expires, since unconditional receipt of EA for the subject vulnerable population is embodied in the logic of the rule itself. The Department agrees, however, to insert a technical clarification in the proposed rule to the effect that GA/EA shall be provided for persons otherwise qualified for GA who lose entitlement to presumptively issued SSI benefits.

While the Department agrees with the concept that there should be uninterrupted EA for the impacted population, the formal EA referral function to the CWAs rests with the SSA that administers the SSI program. In any event, the general MWD responsibility to acquaint individuals with other appropriate programs which they may qualify for is set forth at N.J.A.C. 10:85-8.7. The Department, therefore, does not agree to alter the rule for this purpose.

With respect to the observation that N.J.A.C. 10:83-1.2 should be revised, the Department agrees that it is not within the purview of the subject rulemaking and takes note of that fact.

The Department does not agree that the rule should be altered to provide a universal statement categorically exempting all individuals who have been medically diagnosed as having AIDS, HIV Positive with symptoms or are terminally ill, from conducting housing searches, since provisions for good cause and incapacity, on a case by case basis, are already adequately addressed at N.J.A.C. 10:85-4.6(b)1ii.

Summary of Changes Upon Adoption:

Due to the comments received, the proposed rule at N.J.A.C. 10:85-4.6(b)1ii has been revised to provide EA to those vulnerable individuals, medically diagnosed as having AIDS, HIV Positive with symptoms or are terminally ill, pending confirmation of their ongoing entitlement to SSI benefits and/or similar statutory benefits.

Full text of the changes between proposal and adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

10:85-4.6 Emergency grants

(a) (No change.)

(b) Standards for emergency grants are:

1. Emergency shelter: 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. Such emergency shelter, wherever possible, shall be in the municipality in which the eligible individual currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.

i. The temporary time period identified at (b)1 above, as well as the period set forth as an incremental extension time frame at (b)1vii below, shall not apply to EA recipients who have been medically diagnosed as having Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Positive with symptoms and those who are terminally ill.

ii. In order to enable individuals medically diagnosed as having Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Positive with symptoms, and those who are terminally ill, to maintain or secure residence in a permanent housing arrangement, funds shall be authorized, based on the most reasonable housing rates available, to supplement their regular grants of assistance, until such time as they qualify for SSI and/or similar statutory benefits pursuant to filing of application as stipulated at N.J.A.C. 10:85-8.3. ***Individuals who lose entitlement to presumptively issued SSI and/or similar statutory benefits and otherwise qualify for GA shall be provided EA, in accordance with this subparagraph and (b)1i above, pending confirmation of their permanent entitlement to such benefits.***

Recodify i.-vi. as iii.-viii. (No change in text.)

2.-4. (No change.)

(c)-(f) (No change.)

CORRECTIONS

(b)

THE COMMISSIONER

Fiscal Management

Restitution for Items Damaged or Destroyed

Adopted New Rules: N.J.A.C. 10A:2-7

Proposed: November 6, 1989 at 21 N.J.R. 3408(b).

Adopted: January 8, 1990 by William H. Fauver, Commissioner, Department of Corrections.

Filed: January 9, 1990 as R.1990 d.75, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

CORRECTIONS

ADOPTIONS

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

Effective Date: February 5, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Corrections received three comments from interested persons which are addressed below.

COMMENT: A commenter suggested that the words "if possible" be removed from N.J.A.C. 10A:2-7.4(a) because these words are confusing and unnecessary.

RESPONSE: The New Jersey Department of Corrections agrees that the words "if possible" are confusing and has deleted them upon adoption.

COMMENT: A commenter objected to imposition of restitution without consideration of whether the damage or destruction of property was intentional or an accident.

RESPONSE: The forum for consideration of these issues is the Inmate Disciplinary Hearing. The Disciplinary Hearing Officer will make a determination as to the responsibility of the inmate in each situation.

COMMENT: A commenter objected to N.J.A.C. 10A:2-7.6 which permits the Business Manager to withdraw funds in excess of \$15.00 whenever such funds are posted to the inmate's account. The commenter feels that this action will unreasonably restrict purchases of needed items, such as cigarettes and cosmetics.

RESPONSE: The New Jersey Department of Corrections disagrees with the commenter. The purpose of requiring a minimum balance of \$15.00 is to provide adequate funds for basic hygienic needs. The New Jersey Department of Corrections believes that \$15.00 is adequate.

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

**CHAPTER 2
FISCAL MANAGEMENT**

SUBCHAPTERS 1 THROUGH 6 (RESERVED)

SUBCHAPTER 7. RESTITUTION FOR ITEMS DAMAGED OR DESTROYED

10A:2-7.1 Definition of restitution

"Restitution" means a disciplinary sanction recommended by a Disciplinary Hearing Officer or Adjustment Committee which requires the inmate to compensate the correctional facility for the cost of repairing or replacing an item that has been damaged or destroyed by that inmate.

10A:2-7.2 Imposition of restitution

(a) As a result of disciplinary action taken against an inmate, the Institutional Classification Committee (I.C.C.) may impose restitution as a sanction on an inmate upon the recommendation of:

- 1. The Disciplinary Hearing Officer; or
- 2. The Adjustment Committee.

10A:2-7.3 Appeal of restitution

An inmate may appeal the imposition of restitution as a sanction by following the procedures outlined in N.J.A.C. 10A:4-11, Appeals of Disciplinary Decisions.

10A:2-7.4 Amount of restitution

(a) The amount of restitution ordered shall equal the cost of replacement or repair *[if possible]* of the item(s) damaged or destroyed.

(b) Each correctional facility shall develop written policies and procedures for determining the cost of replacing or repairing an item(s) that has been damaged or destroyed.

10A:2-7.5 Role of the Superintendent

(a) When the sanction of restitution has been imposed, the Superintendent shall:

- 1. Review the inmate's appeal, if one is submitted; and
- 2. Affirm or modify the sanction in accordance with N.J.A.C.

10A:4-11.5, Disposition of appeal, as is deemed appropriate.

(b) If the Superintendent affirms the sanction of restitution, the Superintendent shall order the Business Manager to withdraw funds from the inmate's account for the purpose of restitution.

10A:2-7.6 Role of the Business Manager

(a) Upon receipt of the order from the Superintendent, the Business Manager or his or her designee shall remove with the posting of each month's State pay or funds from other sources, any amount of funds in excess of a \$15.00 balance from the inmate's account until restitution has been made in full.

(b) Funds collected for restitution must be deposited and recorded in accordance with the Department of Treasury and the Department of Corrections' policies and procedures.

(c) Each removal of funds from an inmate's account shall be noted on the inmate's account's record. The inmate shall be informed in writing of each removal of funds for restitution from the inmate's account and a copy of the notification shall be placed in the inmate's classification folder.

(d) In the event an inmate is transferred to another correctional facility within the Department of Corrections, the Business Manager or his or her designee shall notify the receiving correctional facility and the inmate, in writing, of the remaining restitution balance. The notification shall also request that funds continue to be removed from the inmate's account until restitution has been made in full.

(e) The Business Manager of the receiving correctional facility shall forward all funds collected for restitution to the correctional facility which suffered the loss involved.

(f) In the event an inmate is released with funds due the correctional facility for restitution, the facility shall regard the debt as uncollectable.

(g) Any amount owed by an inmate upon release shall not be deducted from the financial aid an inmate may receive from the Bureau of Parole, New Jersey Department of Corrections.

(a)

**STATE PAROLE BOARD
Notice of Administrative Correction
Parole Release Hearings
Institutional Infractions; Adult Inmates
N.J.A.C. 10A:71-3.4**

Take notice that the State Parole Board has discovered an error in the text of N.J.A.C. 10A:71-3.4(g) currently appearing in the New Jersey Administrative Code. The first use of the word "decreased" in paragraph (g) is incorrect; the term as proposed and adopted, and as follows logically from the rest of the paragraph, was "increased" (see 12 N.J.R. 335(b); 16 N.J.R. 3391(a) and 17 N.J.R. 1096(a)). This notice is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface thus; deletion indicated in brackets [thus]):

10A:71-3.4 Institutional infractions; adult inmates

(a)-(f) (No change.)

(g) When, in the opinion of the designated hearing officer or Board panel reviewing an infraction pursuant to this section, the inmate's conduct and the characteristics of the inmate warrant an adjustment in the increase in the eligibility date required pursuant to (e) above the eligibility date may be further [decreased] **increased** due to aggravating factors or may be decreased due to mitigating factors by up to the following time periods:

- 1.-7. (No change.)
- (h)-(p) (No change.)

LABOR**(a)****DIVISION OF EMPLOYMENT SERVICES****Worker Adjustment and Retraining Notification
Procedures for Serving Notice to the State
Dislocated Worker Unit****Adopted New Rules: N.J.A.C. 12:40**

Proposed: November 20, 1989 at 21 N.J.R. 3630(a).

Adopted: February 5, 1990 by Charles Serraino, Commissioner,
Department of Labor.

Filed: January 12, 1990 as R.1990 d.105, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), P.L. 100-379 and 20
C.F.R. §639.6(c).

Effective Date: February 5, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 40

WARN NOTIFICATION PROCEDURES

SUBCHAPTER 1. PROCEDURES FOR SERVING NOTICE
TO THE STATE DISLOCATED WORKER
UNIT

12:40-1.1 Purpose and scope

(a) The purpose of this subchapter is to provide procedures for New Jersey employers to follow when submitting a notice of a plant closing or mass layoff to the State Dislocated Worker Unit.

(b) The requirements of this subchapter apply to all employers of 100 or more workers within the State of New Jersey.

12:40-1.2 Definitions

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

"Employer" means any business enterprise that employs:

1. 100 or more employees, excluding part-time employees; or
2. 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of overtime.

"Employment loss" means:

1. An employment termination, other than a discharge for cause, voluntary departure, or retirement;
2. A layoff exceeding six months; or
3. A reduction in hours of work of more than 50 percent during each month of any six-month period.

"Mass layoff" means a reduction in force which is not the result of plant closing, and results in the employment loss at a single employment site of employment, during any 30-day period, for:

1. At least 33 percent of the active employees, excluding any part-time employees, and at least 50 employees; or
2. At least 500 employees, excluding part-time employees.

"Part-time employee" means an employee who is employed for an average of fewer than 20 hours per week, or who has been employed for fewer than six of the 12 months preceding the date on which the notice is required.

"Plant closing" means the permanent or temporary shutdown of a single site of employment, or one or more of the facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees, excluding any part-time employees.

"State Dislocated Worker Unit" means the unit or office created within the Department of Labor pursuant to 29 U.S.C.A. §1661(b).

12:40-1.3 Notification requirements

In addition to providing at least 60 days notice of a plant closing or mass layoff to affected employees, their representatives, and to the appropriate local government officials as required by 20 C.F.R. Part 639, employers shall provide the same notice to the State Dislocated Worker Unit.

12:40-1.4 Content of notice

(a) The notice to the State Dislocated Worker Unit shall be specific and shall contain the following:

1. The name and address of the employment site where the plant closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information;
2. A statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect;
3. The expected date of the first separation and the anticipated schedule for making separations;
4. The job titles of positions to be affected, and the number of affected employees in each job classification;
5. An indication as to whether or not bumping rights exist; and
6. The name of each union representing the affected employees, and the name and address of the chief elected official of each union.

(b) The notice may include additional information useful to the employees such as a statement of whether the planned action is expected to be temporary and, if so, its expected duration.

(c) As an alternative to the notice outline in (a) and (b) above, an employer may give notice to the State Dislocated Worker Unit by providing a written notice stating the name and address of the employment site where the plant closing or mass layoff will occur; the name and telephone number of a company official to contact for further information; the expected date of the first separation; and the number of affected employees. The employer is required to maintain the other information listed in (a) and (b) above on site and readily accessible to the State Dislocated Worker Unit and to the unit of general local government. Should this information not be available when requested, it will be deemed a failure to give required notice.

12:40-1.5 Procedures for notifying State Dislocated Worker Unit

(a) Every employer who is required to serve a notification of a plant closing or of a mass layoff pursuant to the requirements of P.L. 100-379 and 20 C.F.R. §639.6(c) shall serve notice by using any reasonable method designed to ensure receipt of the notice at least 60 days before the separation from employment of any affected employee (for example, first class mail, personal delivery, with optional signed receipt, or facsimile notices). All notices to the State Dislocated Worker Unit shall be addressed to:

Coordinator, Department of Labor Response Team
State Dislocated Worker Unit
Labor Building, Room 1013
Trenton, New Jersey 08625
Fax (609) 396-1685

(b) The State Dislocated Worker Unit shall maintain a file of all notices and copies of all related correspondence in the employer file and information of the notices shall be provided to the following:

1. Employment and Training;
2. Employment Security;
3. Unemployment Insurance; and
4. The representative of the local Job Training Partnership Act (JTPA) Service Delivery Area(s).

12:40-1.6 Acknowledgment of notice

The Coordinator of the State Dislocated Worker Unit shall send a letter to the employer within 10 working days to confirm the date of receipt of the notification. If the employer's notice is deficient, the Coordinator shall notify the employer in the letter acknowledging receipt of the notice and shall indicate the specific deficiencies. The employer shall respond to the notification of deficiencies within 10 days of receipt of the Coordinator's letter.

LAW AND PUBLIC SAFETY**(a)**

**DIVISION OF CONSUMER AFFAIRS
AUDIOLOGY AND SPEECH-LANGUAGE
PATHOLOGY ADVISORY COMMITTEE
Provisional Licensure as Audiologist or Speech-
Language Pathologist**

Adopted Repeal: N.J.A.C. 13:44C-4

Proposed: November 6, 1989 at 21 N.J.R. 3433(a).
Adopted: January 4, 1990 by James J. Barry, Jr., Director,
Division of Consumer Affairs.
Filed: January 12, 1990 as R.1990 d.111, **without change**.
Authority: N.J.S.A. 45:3B-24.

Effective Date: February 5, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

SUBCHAPTER 4. (RESERVED)**(b)**

**DIVISION OF CONSUMER AFFAIRS
Sellers of Health Club Services
Registration Fee**

Adopted Amendment: N.J.A.C. 13:45A-25.2

Proposed: November 20, 1989 at 21 N.J.R. 3657(a).
Adopted: January 4, 1990 by James J. Barry, Jr., Director,
Division of Consumer Affairs.
Filed: January 11, 1990 as R.1990 d.104, **without change**.
Authority: N.J.S.A. 56:8-40 and 56:8-48.

Effective Date: February 5, 1990.

Expiration Date: December 16, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:45A-25.2 Registration; fees

(a) (No change.)

(b) Any person who offers for sale or sells health club services shall pay to the Director of the Division of Consumer Affairs a registration fee of \$200.00 every two years for each health club facility operated, \$100.00 if paid during the second half of the biennial period.

(c)-(g) (No change.)

TRANSPORTATION**(c)**

**DIVISION OF ROADWAY DESIGN
Bureau of Engineering Services
Public Hearings**

Adopted Repeal: N.J.A.C. 16:23

Proposed: September 18, 1989 at 21 N.J.R. 2913(a).
Adopted: January 10, 1990, by Robert A. Innocenzi, Acting
Commissioner, Department of Transportation.
Filed: January 12, 1990 as R. 1990 d.112, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 52:14B-4.

Effective Date: February 5, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

(d)

**DIVISION OF ROADWAY DESIGN
BUREAU OF UTILITY AND RAILROAD
ENGINEERING**

Public Utility Rearrangement Agreements**Adopted Amendments: N.J.S.A. 16:24-1.1, 1.2 and 1.3****Adopted Repeal and New Rule: N.J.A.C. 16:24-1.4**

Proposed: November 6, 1989 at 21 N.J.R. 3435(a).
Adopted: December 7, 1989 by Robert A. Innocenzi, Acting
Commissioner, Department of Transportation.
Filed: December 26, 1989 as R.1990 d.52, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.5 and 52:14B-1 et
seq.

Effective Date: February 5, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 24

PUBLIC UTILITY REARRANGEMENT AGREEMENTS

SUBCHAPTER 1. AGREEMENTS AND ORDERS

16:24-1.1 Requirements

Agreements and/or orders shall be executed for the Department only by the Commissioner or the Commissioner's designated representative after preliminary approval by the Director, Division of Roadway Design (Chief Engineer of Roadway Design).

16:24-1.2 Approval

Schematic plans developed jointly by the Utility Company and the Department are reviewed by the Manager, Bureau of Utility and Railroad Engineering and the most feasible plans approved for more detailed engineering study and cost analysis. After final approval of a mutually acceptable scheme of rearrangement by the Manager, Bureau of Utility and Railroad Engineering, the company is requested to prepare detailed plans and estimates. Utility work may be incorporated in the Department's construction contract in which case plans and specifications are jointly prepared for incorporation in the Department's construction contract plans.

16:24-1.3 Execution and distribution

(a) The Manager, Bureau of Utility and Railroad Engineering shall prepare an agreement or order covering the proposed work for execution by the utility, based on the detailed plans and estimates submitted by the utility. The agreement shall specify the following items:

1.-3. (No change.)

4. The timing of work relative to coordination with the Department's construction contract;

5. Provisions for insurance coverage approved by the Manager, Bureau of Utility and Railroad Engineering;

6.-8. (No change.)

(b) The Manager, Bureau of Utility and Railroad Engineering shall forward two copies to the utility for execution, and as many copies as required for their files. Two copies shall be returned fully executed by the utility.

(c) Following execution of agreement or order by the utility, the Manager, Bureau of Utility and Railroad Engineering, shall forward the agreement or order to the Transportation Section of the Attorney General's office, for approval as to form and execution, after which it shall be initiated by the Manager, Bureau of Utility and Railroad Engineering and the Director, Division of Roadway Design (Chief Engineer of Roadway Design). The agreement shall then be recommended for approval and execution to the Commissioner on a Department action slip, which shall be prepared by the Bureau of Utility and Railroad Engineering.

(d) Upon favorable action or an agreement by the Commissioner, one fully executed copy shall be sent to the Director, Division of Auditing and Accounting and the other returned to the utility.

(e) If the agreement is in the form of an order, upon favorable action or an order by the Commissioner, two copies of the Public Utility Order shall be forwarded to the Board of Public Utility Commissioners for their approval before the Order can be considered effective. Upon approval by the Board of Public Utility Commissioners, one fully executed copy shall be sent to the Director, Division of Auditing and Accounting with the Board's approval certificate attached, and one fully executed copy with the Board's approval certificate attached shall be returned to the utility, and copies with photo reproduced signature sheets and facsimile board approval certificates distributed, as required, to all parties concerned.

16:24-1.4 Railroad agreements

(a) When an existing or proposed grade crossing is involved, the Manager, Bureau of Utility and Railroad Engineering shall schedule a Diagnostic Team meeting to review and make recommendations to the Commissioner of Transportation concerning and describing the necessary protection at the grade crossing.

1. If all parties at interest are in agreement with the recommendations, the matter is referred to the Commissioner for issuance of an order.

2. If meritorious objections are received, the matter is referred to the Office of Administrative Law for adjudication pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, thence to the Commissioner of Transportation for issuance of an order.

3. Upon receipt of the Commissioner's order, the Manager, Bureau of Utility and Railroad Engineering, shall prepare a railroad agreement reflecting the information contained in the order.

4. The Manager, Bureau of Utility and Railroad Engineering, shall forward three copies of the agreement to the railroad for execution. Two copies shall be returned fully executed by the railroad.

5. Following execution of the agreement by the railroad, the Manager, Bureau of Utility and Railroad Engineering, shall forward the agreement to the Transportation Section of the Attorney General's office, for approval as to form and execution, after which it shall be initialed by the Manager, Bureau of Utility and Railroad Engineering, and the Director, Division of Roadway Design (Chief Engineer of Roadway Design). The agreement shall then be recommended for approval and execution to the Commissioner on a Department action slip, which shall be prepared by the Bureau of Utility and Railroad Engineering.

6. Upon favorable action on the agreement by the Commissioner, one fully executed copy shall be sent to the Director, Division of Auditing and Accounting, and the other returned to the railroad.

(b) For bridges or other non-grade crossing matters, schematic plans developed jointly by the railroad and the Department are reviewed by the Manager, Bureau of Utility and Railroad Engineering, and the most feasible plans approved for more detailed engineering study and cost analysis. After final approval of mutually acceptable scheme of rearrangement by the Manager, Bureau of Utility and Railroad Engineering, the railroad is requested to prepare detailed plans and estimates. Railroad work may be incorporated in the road contract in which case plans and specifications are jointly prepared for incorporation in the Department's construction contract plans.

1. The Manager, Bureau of Utility and Railroad Engineering, shall prepare an agreement covering the proposed work for execution by the railroad, based on the detailed plans and estimates submitted by the railroad. The agreement shall specify the following items:

- i. Description of work to be performed and specifications pertaining thereto;
- ii. Regulations to be followed in performance of work and billing procedure where State and/or Federal reimbursement is allowed;
- iii. Responsibility for the cost of the work and the degree of any cost sharing;
- iv. The timing of work relative to coordination with the roadway contract;

v. Provisions for insurance coverage approved by the Manager, Bureau of Utility and Railroad Engineering;

vi. Provisions for temporary railroad reroutes around construction areas if required;

vii. Property rights required and procedure for acquisition; and

viii. Any other provisions required.

2. After approval of the preliminary agreement, the Manager, Bureau of Utility and Railroad Engineering, shall forward three copies to the railroad for execution. Two copies shall be returned fully executed by the railroad.

3. Following execution of agreement by the railroad, the Manager, Bureau of Utility and Railroad Engineering, shall forward the agreement or order to the Transportation Section of the Attorney General's office, for approval as to form and execution, after which it shall be initialed by the Manager, Bureau of Utility and Railroad Engineering, and the Director, Division of Roadway Design (Chief Engineer of Roadway Design). The agreement shall then be recommended for approval and execution to the Commissioner on a Department action slip, which shall be prepared by the Bureau of Utility and Railroad Engineering.

4. Upon favorable action on the agreement by the Commissioner, one fully executed copy shall be sent to the Director, Division of Auditing and Accounting, and the other returned to the railroad.

(a)

**DESIGN AND RIGHT OF WAY
DIVISION OF ROADWAY DESIGN
BUREAU OF UTILITY AND RAILROAD
ENGINEERING**

**Utility Accommodation
Longitudinal Occupancy of Limited Access
Highways
Rights of Way by Utility Facilities**

Adopted Amendments: N.J.A.C. 16:25-1.1, 1.7, 2.1 and 2.2

Adopted New Rules: N.J.A.C. 16:25-7A and 13

Proposed: August 7, 1989 at 21 N.J.R. 2234(b).

Adopted: December 8, 1989 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: December 26, 1989 as R.1990 d.53, 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. 27:1A-5, 27:1A-6, 27:1A-13, 27:7-19, 27:7-44, 27:7A-7, 40:62-35, 40:62-65, 40:62-134, 48:7-1, 48:7-2, 48:9-17, 48:9-2.5.4, 48:13-10, 48:17-8, 48:17-10, 48:17-16, 48:19-17.

Effective Date: February 5, 1990.

Expiration Date: August 15, 1993.

Summary of Public Comments and Agency Responses:

The Department received comments from one entity. A summary of some of the major comments and responses follows:

COMMENT: A general concern was raised that the proposed rules are too restrictive in allowing for the use of limited access right of way.

RESPONSE: The conditions developed are meant to preserve the highway right of way. The Department realizes the benefits associated with utility occupancy; however, the safety of the traveling public must be given top priority.

COMMENT: It was suggested that under the proposed rules, the installing utility company would incur the entire cost of installing the fiber optic facility. It was suggested that the difference in permit fees (\$10,000 per mile versus \$5,000 per mile) was inadequate to offset the difference in cost between the installer and subsequent permittee.

RESPONSE: In recognition of the initial investment of the installing utility, the Department has changed the rules upon adoption to provide the installer with an additional duct. The permit fee paid by the installing utility will remain at \$5,000 per mile, but will now entitle the installer to two ducts instead of one.

COMMENT: It was suggested that since a utility is assessed a one-time administrative fee, and must also reimburse the Department for inspection costs, the utility would be required to pay a double fee to offset the same costs.

RESPONSE: The \$750.00 per mile administration fee does not cover field construction inspection; rather, it covers office preliminary reviews and permit processing. The costs which must be reimbursed are those incurred by the Department for inspection during the construction phase of the installation. In order to further clarify this distinction, the Department has changed the text at N.J.A.C. 16:25-7A.1(h) to state that these costs are incurred during the construction phase. Thus, there is no double payment.

COMMENT: It was suggested that the utility should not bear responsibility for the State's gross negligence or intentional misconduct during highway maintenance.

RESPONSE: The Department agrees and has modified N.J.A.C. 16:25-7A.1(g) accordingly to add "except for gross negligence or intentional misconduct".

COMMENT: It was suggested that the Department should eliminate the annual occupancy fee in favor of a one-time "easement-like" payment.

RESPONSE: A one-time fee would not be in the best interest of the State of New Jersey. It would hinder the Department's flexibility to recover ongoing costs which may be associated with right of way occupancy. In addition, the installing utility will now be entitled to two ducts rather than one in recognition of the installer's initial capital investment.

COMMENT: The original proposal was criticized for requiring the installing utility to provide the Department a free fiber pair whether the Department has a demonstrated need for it or not. The question of whether an operational facility or merely a physical facility was also raised.

RESPONSE: The Department changed the text upon adoption at N.J.A.C. 16:25-7A.1(c) to make this requirement optional at the Department's discretion. Only where the Department determines that conditions would warrant dedication, the Department may require the utility to provide up to one free operational fiber pair.

COMMENT: It was suggested that the proposed rules categorically exclude access to the installation site except from points outside the highway right of way, and that in most cases, this condition would make installation impossible or uneconomic.

RESPONSE: The Department has changed the text upon adoption at N.J.A.C. 16:25-7A.1(g) to provide for exceptions where appropriate.

COMMENT: The proposed rule was criticized for absolutely precluding attachment to bridge structures.

RESPONSE: Any construction or maintenance of facilities on bridges would invariably require access from the bridge, and such access would present a potential safety hazard. Therefore, this section has not been changed.

COMMENT: A concern was raised that the Department was too strict in requiring that four ducts or cables be installed in all cases.

RESPONSE: The Department has decided to retain the four PVC innerduct requirement and, thus, preclude the need for a second installation. However, the Department has changed N.J.A.C. 16:25-2.1(g) to allow for more than four ducts in some cases.

COMMENT: A concern was raised that the rules do not define an "environmentally sensitive location" which utilities must avoid.

RESPONSE: Because the definition of environmentally sensitive locations continues to evolve, and because such definition is not at the sole discretion of the Department of Transportation, the Department has determined to leave the existing text unchanged.

COMMENT: Comment was made that the Department, in eliminating the original rule text requiring the State to pay for relocation costs where such is ordered, appears to change the existing requirements for relocation.

RESPONSE: Current law requires that the Department pay the utility companies where relocation is ordered; therefore, redefinition of the law in this rule was deemed redundant and unnecessary. In addition, the Department is considering a legislative amendment which would relieve the Department from paying such costs. If any such legislative proposal is in fact pursued, the Department will provide for mandated reasonable notice to the utility company.

COMMENT: A commenter recommended that the industry standard definition of "handhole" be used instead of that proposed.

RESPONSE: The Department agrees, and has changed N.J.A.C. 16:25-1.1 and 7A.4 accordingly.

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

16:25-1.1 Definitions

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

"Fiber-optic cable" means a communication cable utilizing hair-thin strands of ultra-pure glass that can carry high volumes of traffic via lightwave signals.

"Fiber-optic system" means a utility facility consisting of either:

1. One four-inch galvanized steel pipe containing four each 1/4-inch PVC innerducts, buried directly in the ground, (hereinafter referred to as a multi-duct system); or

2. Four each of two-inch galvanized steel pipes, each pipe limited to use by one fiber-optic cable, buried directly in the ground, (hereinafter referred to as a single-duct system).

"Handhole" means a small chamber *[not large enough to permit personnel entry but]* ***four feet by four feet*** which:

1. Provides access to a splice enclosure;
2. Is placed periodically along a conduit structure to provide smooth safe cable installation; or
3. Stores excess cable for maintenance purposes.

"Limited access highways" mean, for the purpose of N.J.A.C. 16:25-1.7 and 16:25-7A, freeways, parkways, and interstate highways.

16:25-1.7 Limited access highways

(a) The usage granting statutes discussed in N.J.A.C. 16:25-1.6 apply only to conventional highways, and any usage of limited access highways right-of-way is subject to the discretion of the Commissioner of Transportation.

(b) The Department has excluded longitudinal facilities from limited access highway rights-of-ways, unless extreme cases of need can be demonstrated to the satisfaction of the Department and can further be shown to be in the best public interest, and the Department has established rules for crossings of such roads by utility facilities. Further, in addition to extreme need, the safety criteria enumerated in (d) below shall be met.

(c) The Department will take under consideration claims of extreme cases of need when a public utility can demonstrate that alternate locations are not available or cannot be implemented at reasonable cost, from the standpoint of providing efficient utility services in a manner conducive to safety, durability, and economy of maintenance and operations; that the accommodation will not adversely affect the design, construction, operation, maintenance, or stability of the limited access highway; and that it will not interfere with or impair the present use or future expansion of the limited access highway.

(d) The Department's safety criteria are as follows:

1. The utility facility shall be placed underground;
2. The utility facility shall not be used for transmitting gases or liquids under pressure, or for the transmission of products which are flammable, corrosive, expansive, energized or unstable;
3. The utility facility shall not emit any measurable radiation above the ground surface;
4. The utility facility shall present no hazard to life, health or property, if it fails to function properly, is severed, or otherwise damaged; and
5. After utility facility is installed, it will be virtually maintenance free.

(e) Should the Department determine that an extreme case of need exists, that the issuance of a longitudinal occupancy permit is in the best public interest, and that the safety criteria can be met, the installation shall be made in accordance with the provisions as specifically outlined in N.J.A.C. 16:25-7A.

(f) If the Department finds that utility projects for the installation of a fiber-optic cable or system meet the safety criteria established

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in (d) above, and if extreme cases of need are demonstrated, such projects will qualify for permit approval. The installation of a fiber-optic cable or system shall be in accordance with N.J.A.C. 16:25-7A.

(g) The Commissioner is authorized to order the removal and relocation of utility facilities from limited access highway right-of-way.

16:25-2.1 Location of utility lines

(a)-(f) (No change in text.)

(g) The Department may allow a fiber-optic system to consist of more than four PVC innerducts in the case of a multi-duct system, or more than four galvanized steel pipes in the case of a single-duct system, to be decided by the Department on a case-by-case basis.

16:25-2.2 Design of utility facilities

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

(c) Utility installations on, over, or under the rights-of-way of State highways and utility attachments to highway structures must meet the following minimum requirements:

1.-4. (No change.)

5. Fiber-optic communication facilities installation standards shall conform with the currently applicable sections of the Standard Codes of the American National Standard Institute (ANSI)—E1A472-B, 472B-XX0, incorporated herein by reference. Copies of the Standards may be obtained from the

American National Standards Institute
1430 Broadway
New York, N.Y. 10018

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

SUBCHAPTER 7A. UNDERGROUND FIBER-OPTIC COMMUNICATION LINES AND OTHER UTILITY FACILITIES LONGITUDINALLY OCCUPYING LIMITED ACCESS HIGHWAY

16:25-7A.1 General considerations

(a) Only public utility companies as defined by N.J.S.A. 48:2-13 shall be considered eligible for permission to longitudinally occupy limited access highway right of way.

(b) Installations shall be of the underground type only.

(c) Where the longitudinal occupancy will involve a fiber-optic cable, ***and only where the Department so determines that such dedication would be feasible,*** the public utility company shall provide, free of any cost, ***up to* one *operational* fiber pair** for the sole use of the Department.

(d) Where the longitudinal occupancy will involve a fiber-optic cable, the first public utility company, hereinafter "the installer", to be granted a longitudinal occupancy permit shall be required to install a fiber-optic system. The system may be either the multi-duct system or single-duct system, at the discretion of the installer. The installer shall, by virtue of the permit, be entitled to occupy ***[one]* *two* innerduct*s*** of the multi-duct system or ***[one]* *two* two-inch galvanized steel pipe*s*** of the single-duct system. The installer and future occupants of the multi-duct system shall be completely and equally responsible for the system. The unoccupied ducts of the multi-duct system shall be at the disposal of the Department and the Department may permit occupancy by future permittees. In the case of the single-duct system, the installer shall be completely responsible for any ducts occupied by the installer's fiber-optic cable and any unoccupied ducts, except that any unoccupied ducts shall be at the disposal of the Department and the Department may permit occupancy by future permittees. When, in the case of the single-duct system, ducts become occupied by a fiber-optic cable, the public utility company owner of the fiber-optic cable shall assume all responsibility of the occupied duct and the installer shall be relieved of its responsibility for that duct. The installer, in its initial permit application or in subsequent permit applications, or another public utility company in a future permit application, may apply for occupancy of one or more of the remaining ***[three]* *two* ducts**. Each ***occupied* duct** will be assessed an individual right of way occupancy permit fee. When all four ducts are occupied, the next permittee shall be considered the "first public utility company" and the above

procedure shall be followed. In all cases, a permit issued for a duct shall be considered occupied by a fiber-optic cable and assessed in accordance with this subchapter.

(e) Access to the utility facilities for the purpose of installation, repair or maintenance shall not be achieved from highway ramps or roadways, but rather from local roads or points outside of the limited access highway's control or access line*. **Exceptions may be granted in appropriate cases with prior written consent at the discretion of the Commissioner where the Commissioner determines that such exception would be in the public interest.*** ***[and]* *All access shall be achieved*** in such a manner so as not to impede or disrupt highway traffic movements.

(f) The public utility company shall defend, indemnify, protect and, save harmless the State of New Jersey and the New Jersey Department of Transportation against any and all suits, claims, losses, demands or damages imposed by law as the result of the installation, operation or maintenance of the public utility company's facilities, including, but not limited to, any damage, disruption or interference of other public utility facilities within the limited access highway's right-of-way.

(g) The public utility company shall defend, indemnify, protect and save harmless the State of New Jersey and the New Jersey Department of Transportation from any claims or costs associated with damage to the public utility company's facilities or disruption of utility service resulting from Department personnel's operations within the limited access highway's right-of-way*, **except for gross negligence or intentional misconduct***.

(h) Any and all actual costs incurred by the Department for inspection of the installation and repair, or relocation of the public utility company's facilities ***during construction*** not resulting from a Department administered project, shall be reimbursed to the Department by the public utility company. An estimate of costs for Department forces shall be determined by the Department and shall be remitted to the Department by the public utility company prior to issuance of the permit. Final costs shall be remitted to the Department within 30 days of invoicing for same.

(i) A public utility company which is granted a longitudinal occupancy permit may not sell, lease or otherwise transfer any rights of the permit to another public utility company unless such a transfer is approved by the Department. Under no circumstances shall any transfer take place except with another public utility company.

16:25-7A.2 Occupancy permits

(a) Fees to occupy limited access highway rights-of-way shall consist of an administrative application fee and a yearly right of way occupancy permit fee.

(b) The non-refundable administrative application fee, in the amount of \$750.00 per mile of proposed occupancy, shall accompany any application for a right-of-way occupancy permit. For the purpose of the administrative application fee, joint venture installations will be considered and assessed as a single applicant.

(c) The yearly right-of-way occupancy permit fee per duct shall be in the amount of \$10,000 per mile or fraction thereof for the first year and for every year thereafter, except that the installer of the fiber-optic system shall be assessed at the annual rate of \$5,000 per mile for ***[one]* *two* duct*s*** and shall be assessed at \$10,000 per mile for subsequent ducts for which the installer receives an occupancy permit. The mileage shall be measured along the centerline of the highway. Each ***occupied* duct** or fiber-optic cable shall be considered as an installation and shall be assessed accordingly. The installation shall consist only of those facilities that are covered and installed under each individual permit. Joint venture installations are encouraged. The joint venture may only be comprised of public utility companies and each public utility company shall be named in the permit application. No provision shall be made for future facilities or extensions. The right of way occupancy permit fee must be remitted in full prior to issuance of the occupancy permit. The annual right of way occupancy permit fee shall be remitted each year by the date specified in the permit.

(d) Installation of facilities covered by the permit must be completed within one (1) year of the date of the permit. One 6-month extension may be permitted for just cause. Should said installation

not be completed, any fees remitted shall be forfeited in full. Should the public utility company wish to complete the installation, a new permit application and fee must be filed for the unfinished portion. A new right of way occupancy permit fee will be determined and payable in accordance with 16:25-7A.2(c).

(e) The right of way occupancy permit and administrative fees cited above may be adjusted annually for inflation, at a rate equal to the change in the Consumer Price Index as published July 1 for each year.

(f) Failure to pay permit fees as described in this subsection may result in the public utility company's forfeiture of all its rights and interests associated with its permit and the Department, at its sole discretion, may remove, transfer usage or otherwise dispose of such facilities covered by the permit.

(g) Application for a longitudinal occupancy permit shall be submitted to the Department in accordance with and subject to N.J.A.C. 16:25-10.1 et seq.

(h) The permittee shall include with its application, detailed plans which indicate the type of system to be installed; the location of the system within the right of way; the method of construction; the depth of cover; the materials to be used; the method of accessing the site; the location and design of handholes; and any other data which the Department may request during the application review process. Within one month following the completion of the installation, the permittee shall provide a detailed set of as-built plans in no less than 100 scale, drawn on a reproducible medium.

16:25-7A.3 Location

(a) Where the Department deems utility facility installations feasible, the Department will establish, within the right-of-way of limited access highways, a corridor, *[never]* ***generally not*** closer than 30 feet to the edge of roadway, but contiguous to each side of the roadway's control of access line, for the installation of underground utility facilities*, **with possible exceptions to be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception***.

(b) Prudent utilization of the corridor to provide for multiple occupancy will be required; however, the Department will not reserve space within said corridor for any facility or public utility company.

(c) At interchange areas, the installation corridor shall continue along the control of access boundary outside of the outermost roadway or ramp.

(d) Transverse installations associated with longitudinal occupancy of the limited access highway shall be normal to the roadway's alignment and shall only occur within interchange areas.

(e) Installations shall continue along the respective control of access line even when encountering rest areas, scenic-overlook sites, truck weigh stations, and other such facilities.

(f) Installations shall not be placed longitudinally within the median area of a limited access highway.

(g) Attachment to highway structures shall not be permitted.

(h) Installations crossing local, State or limited access highway ramps or roadways shall be placed within a galvanized steel pipe casing.

(i) Where trees and/or shrubbery act as a buffer for the adjacent property, their removal shall not be permitted. Where removal of vegetation is otherwise necessary, replacement trees and shrubs shall be provided by the permittee as required by the Department. Installation of facilities shall not be permitted in any environmentally sensitive location.

(j) Installation shall be in conformance with NJDOT Soil Erosion and Sediment Control Standards (N.J.A.C. 16:25A).

16:25-7A.4 Design of facilities

(a) Installations shall be of the underground type only and no above ground facilities of any kind will be permitted inside the limited access highway right-of-way.

(b) Above or below ground regenerator or backup power enclosures or manholes shall not be permitted within limited access highway right-of-way.

(c) Handholes for the purpose of cable splicing and/or installation shall be permitted*[], provided that they shall be of a size that will

not permit personnel entry]* and shall be flush with the surrounding ground.

(d) Cable shall be encased in galvanized steel pipe.

(e) All permits required for facility installation, whether from the Department or other outside parties or agencies, shall be the responsibility of the installing public utility company. Proof of permits must be supplied to the Department prior to issuance of the occupancy permit.

(f) Above ground warning signs bearing the public utility owner's name and contact number shall be mounted by the permittee upon adjacent control of access fencing at line of sight intervals or as specified in the occupancy permit.

SUBCHAPTER 13. SEVERABILITY

16:25-13.1 Severability

If any provision of this chapter is held invalid, the remainder of the chapter shall not be affected thereby, and shall remain in full force and effect.

(a)

**DESIGN AND RIGHT OF WAY
DIVISION OF TRAFFIC ENGINEERING AND LOCAL
AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY
PROGRAMS**

Turns

Route U.S. 46 in Morris County

Adopted Amendment: N.J.A.C. 16:31-1.3

Proposed: November 6, 1989 at 21 N.J.R. 3437(a).

Adopted: December 7, 1989 by John F. Dunn, Jr., Director,

Division of Traffic Engineering and Local Aid.

Filed: December 27, 1989 as R.1990 d.63, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.

Effective Date: February 5, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:31-1.3 Route U.S. 46

(a) Turning movements of traffic on the certain parts of State highway Route U.S. 46 described in this subsection are regulated as follows:

1. No left turns in Mount Olive Township, Morris County:
 - i.-ii. (No change.)
 - iii. Westbound to southbound on East Forest Road.
2. (No change.)

(b)

**POLICY AND PLANNING
DIVISION OF TRANSPORTATION ASSISTANCE
Financial and Accounting Conditions and Criteria for
Bus Operating Assistance Program**

Adopted Repeal: N.J.A.C. 16:53A

Proposed: November 20, 1989, at 21 N.J.R. 3633(a).

Adopted: December 21, 1989, by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: December 26, 1989 as R.1990 d.54, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:25-5 et seq.

Effective Date: February 5, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Notice of Administrative Correction Corporation Business Tax Act Receipts; Compensation for Services N.J.A.C. 18:7-8.10

Take notice that the Division of Taxation has discovered errors in the text of N.J.A.C. 18:7-8.10(c) and (c) Example 1. Proposed and adopted language in each (see 16 N.J.R. 3420(b) and 17 N.J.R. 477(a)) was omitted from the subsequent Code update. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (additions indicated in boldface **thus**):

18:7-8.10 Receipts; compensation for services

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

(c) Where a lump sum is received by the taxpayer in payment for services within and without New Jersey, the amount attributable to services performed within New Jersey is to be determined on the basis of the relative values of, or the amounts of time spent in performance of those services within and without New Jersey, or by some **other reasonable method which should reflect the trade or business practice and economic realities underlying the generation of the compensation for services**. Full details must be submitted with the taxpayer's return.

Example 1:

Taxpayer derives advertising revenues in the course of broadcasting television or radio programs. It sets its advertising rates based upon the listening audience it has succeeded in reaching. The appropriate **method of assigning the portion of its advertising** revenues attributable to services performed in New Jersey is based upon the proportion of its listening audience in New Jersey.

Example 2: (No change.)

1. (No change.)

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

(b)

DIVISION OF TAXATION

Corporation Business Tax Effect of Deficiency Notice

Adopted Amendments: N.J.A.C. 18:7-11.3 and 11.8

Proposed: October 2, 1989 at 21 N.J.R. 3079(a).

Adopted: January 5, 1990 by John R. Baldwin, Director, Division of Taxation.

Filed: January 11, 1990 as R.1990, d.102, **with substantive changes** not requiring additional public comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:10A-27.

Effective Date: February 5, 1990.

Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:

One comment was received in connection with the proposal. In the situation posed by the commenter, the Division had billed a taxpayer directly within the stated 90 day period and the taxpayer had paid the deficiency within the 90 day period. The inquiry asked whether the payment of the Division's bill indicated compliance with the rule or whether an amended return was nevertheless required.

The Division replied to the commenter that if the Division of Taxation has obtained information (from the IRS, for example) sufficient for billing a taxpayer within the 90 day period and, if the billed deficiency is paid in full by the taxpayer within the 90 day period, then no amended return need be filed to comply with responsibility.

Summary of Changes Upon Adoption:

In response to a comment received, the Division, upon adoption of the rule, incorporated at N.J.A.C. 18:7-11.8(d) an exception to the IRA-100 filing requirement. This change can be made without reproposal of the rule since it lightens the burden on the taxpayer and is made in response to a comment by the public.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

18:7-11.3 Effect of deficiency notice

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

(c) A taxpayer who for any reason accepts any portion of a deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code is required to report that portion of the deficiency accepted within 90 days in accordance with N.J.A.C. 18:7-11.8 and N.J.S.A. 54:10A-13.

(d) Only the portion of any deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code that is the subject of a timely petition for redetermination in the Tax Court of the United States may delay the reporting requirements set forth in N.J.A.C. 18:7-11.8 and then only to the extent permitted by (a) above.

Example: The Internal Revenue Service redetermined the net income of a taxpayer's 1983 tax return based on three separate issues, A, B and C. These three issues resulted in increases in net income for New Jersey purposes of \$5,000, \$30,000 and \$110,000 respectively. The taxpayer accepted Issue A resulting in a \$5,000 increase in income for New Jersey purposes and requested a hearing before the IRS on Issues B and C. The taxpayer has 90 days from the issuance of the deficiency to report Issue A to the Division of Taxation.

Six months later, the IRS issues a determination that it intends to hold to the entire amount represented by Issues B and C. The taxpayer accepts the determination on Issue B, but appeals Issue C to the Tax Court of the United States. The taxpayer has 90 days from the issuance of the IRS determination to report the \$30,000 increase in net income represented by Issue B to the Division.

One year later, the Tax Court issues an unfavorable decision to the taxpayer on Issue C. The taxpayer accepts the verdict and decides not to appeal the issue any further. The \$110,000 represented by Issue C must be reported to the Division within 90 days of the court decision.

18:7-11.8 Time to report change or correction in Federal net income

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

*** (d) If the Division of Taxation assesses and bills a deficiency to a taxpayer resulting from a Federal change and if the taxpayer pays the deficiency in full within the 90 day period from the issuance of the report, then no separate return need be filed by the taxpayer reflecting the Federal change.***

(c)

DIVISION OF TAXATION

Sales and Use Tax Receipts

Adopted New Rule: N.J.A.C. 18:24-1.4

Adopted Amendment: N.J.A.C. 18:24-12.5

Proposed: May 1, 1989 at 21 N.J.R. 1107(a).

Adopted: January 4, 1990 by John R. Baldwin, Director, Division of Taxation.

Filed: January 5, 1990 as R.1990 d.74, **with substantive changes** not requiring additional public comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:32B-24.

Effective Date: February 5, 1990.

Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:

One comment was received from the New Jersey Society of Certified Public Accountants. The group indicated that, "We believe the phrase 'without any deduction of expenses' means without deducting any costs incurred in producing a product which is included in a sales price. We believe this phrase does not mean without excluding any separately stated costs. A deduction should be construed to reduce a receipt which already includes the item. Since reimbursed costs are not included in the receipt, they cannot be considered for a deduction. Thus, if N.J.S.A. 54:32B-2(d) intended to tax these reimbursed costs, it would have stated 'without any deduction or exclusion for expenses.' These costs are typically billed without a profit element. Additionally, some of these reimbursed costs may have already had sales tax attached when initially transacted. Therefore, double taxation may exist."

The Division replied that there is no discernable legislative intent to treat expenditures categorized as "deductions" differently than those which may be called "exclusions." In fact, the statute itself clearly requires that the tax apply to the gross receipts of sale transactions; every element of cost to the seller, whether or not any of them are separately stated, must be included in the taxable receipt with one exception, the cost of transportation of property from the seller to the buyer. And, these elements of cost are included in the taxable receipt even though the seller may have paid sales tax on them at the time of purchase. Thus, for example, the rental of tools or equipment for the use of a service provider in performing a specific taxable service for his customer is subject to tax. Neither cost of the rental nor the tax paid thereon can be deducted (or excluded) from the taxable service receipt.

The Society commented that Example 1 of N.J.A.C. 18:24-1.4(f) may confuse people because it appears that the discount coupon did not result in a reduction of the tax due on the transaction. The Division agreed and indicated that it would change the example upon adoption.

The Society also commented that the term "on credit" should be placed after equipment in the example following N.J.A.C. 18:24-1.4(1)2. The Division agreed and a change is being made in the adoption.

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

18:24-1.4 Receipt defined

(a) "Receipt" means the amount of the sales price of any property and the charge for any service taxable under the Sales and Use Tax Act, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts, but excluding any credit for property of the same kind accepted in part payment and intended for resale, excluding the cost of transportation where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser, and excluding the amount of the sales price for which food stamps have been properly tendered in full or in part payment pursuant to the Federal Food Stamp Act of 1977, Pub.L. 95-113 (7 U.S.C. §2011 et seq.).

(b) Excise taxes which are imposed on manufacturers, importers, producers, distributors or vendors are included in the receipt on which sales or use tax is computed, even though the excise tax may be separately stated to the purchaser. Thus, the Federal manufacturer excise taxes imposed on the sale or lease of certain automobiles (gas guzzlers) are included in the taxable receipt as are the excise taxes on tires, sporting goods and firearms.

1. Excise taxes which are imposed on the consumer are excluded from the taxable receipt; for example, the Federal retail excise taxes on heavy trucks and trailers sold at retail.

(c) Expenses billed to a customer but incurred by a vendor in making a sale of taxable goods or services, regardless of whether the expenses are taxable or nontaxable, and regardless of whether the expenses are separately billed to a customer, are not deductible from the receipt on which sales tax is computed.

Example 1: An equipment repairman charges \$20.00 per hour plus certain expenses when on a service call. The customer is billed as follows:

Repair time—2 hours @ \$20.00	\$40.00
Travel time	10.00
Parts	20.00
Meals	5.00
Total Due	\$75.00

The receipt subject to tax is \$75.00.

Example 2: A photographer contracts with a customer to sell photographs at \$50.00 each in addition to the reimbursement of certain expenses. The customer is billed as follows:

Photographs (2)	\$100.00
Model fees	60.00
Meals	10.00
Travel	25.00
Props (Flowers)	5.00
Total Due	\$200.00

The receipt subject to tax is \$200.00.

(d) Discounts which are given by a vendor for the purpose of encouraging prompt payment on an account, known as "early payment discounts", are not deductible from receipts.

Example: A vendor gives a purchaser a two percent discount for paying the price of a \$100.00 camera within 10 days. The sales tax is to be computed on the taxable receipt of \$100.00 regardless of which method of payment the customer chooses.

<u>Discount Method</u>	<u>Full Price Method</u>
\$100.00 Price	\$100.00 Price
6.00 Tax at 6 percent	6.00 Tax at 6 percent
\$106.00	\$106.00 Due
2.00 Discount	
\$104.00 Due	

(e) Discounts which represent a reduction in price, such as a trade discount, volume discount or cash and carry discount, are deductible in computing receipts.

Example 1: A vendor gives a purchaser a 30 percent discount for purchasing 1,000 light bulbs. The taxable receipt will be the discount price. The customer is billed as follows:

1,000 bulbs @ \$0.50	\$500.00
Less 30 percent discount	150.00
	\$350.00
Sales tax at 6 percent	21.00
Due	\$371.00

Example 2: A vendor gives a purchaser a 10 percent cash and carry discount. The taxable receipt will be the discounted price. The customer is billed as follows:

Merchandise	\$50.00
Less 10 percent discount	5.00
	\$45.00
Sales tax at 6 percent	2.70
Due	\$47.70

(f) Where a vendor issues a coupon entitling a purchaser to receive a discount upon presentation, and the vendor receives no reimbursement from any person, the sales tax is due from the purchaser on only the discounted price which is the actual receipt.

Example 1: A store issues a coupon entitling the holder to purchase a product for *[\$0.10]* ***\$0.20*** less than the regular sales price. The retailer would bill as follows:

Regular price	*[\$1.00]*	*\$1.00*
Store coupon	*[.10]*	*.20*
Taxable receipt	*[\$.90]*	*\$.80*
Sales tax at 6 percent rate	*[.06]*	*.05*
Amount due from purchaser	*[\$.96]*	*\$.85*

Example 2: A store issues a coupon entitling the holder to receive two items for the price of one. The retailer would bill as follows:

ADOPTIONS

TREASURY-TAXATION

Regular price for one item	\$1.00
Store coupon for free item	
Taxable receipt	<u>\$1.00</u>
Sales tax at 6 percent rate	.06
Amount due from purchaser	<u>\$1.06</u>

(g) Where a vendor issues a coupon, entitling a purchaser to pay a reduced price on an item purchased, and the vendor is reimbursed by a manufacturer, distributor, or other third party, the tax is due on the full regular price of the item. The receipt is composed of the amount paid and the amount of the coupon's stated value.

Example: A store issues a coupon labeled "mfr", entitling the holder to purchase an item for \$1.00 less than the regular purchase price. The retailer would bill as follows:

Regular price	\$10.00
Sales tax at 6 percent rate	.60
	<u>\$10.60</u>
Manufacturer coupon	1.00
Amount due from purchaser	<u>\$ 9.60</u>

(h) Where a manufacturer issues a coupon entitling a purchaser to pay a reduced price on an item purchased, the tax is due on the full regular price of the item. The receipt is composed of the amount paid and the amount of the coupon's stated value. The coupon value reflects the payment or reimbursement by another party to the vendor.

Example: A manufacturer issues a coupon entitling the holder to purchase an item from a retailer for \$0.20 less than the regular purchase price. The retailer would bill as follows:

Regular price	\$1.00
Sales tax at 6 percent rate	.06
	<u>\$1.06</u>
Manufacturer coupon	.20
Amount due from purchaser	<u>\$.86</u>

(i) Where a manufacturer or a vendor issues a coupon involving a reimbursement but does not disclose that fact to the purchaser on the coupon or in an accompanying advertisement, the vendor will collect from the purchaser only the tax due on the reduced price, but will be required to pay the tax applicable to the entire receipt, that is, the amount of the price paid and the reimbursement received from the manufacturer.

(j) Any allowance or credit for property of the same kind accepted in part payment by a vendor on the purchase of tangible personal property and intended for resale by such vendor shall be excluded when arriving at the receipt subject to tax. Only the net sale price of tangible personal property would be subject to tax.

Example 1: An automobile dealer allows a customer \$2,000 for a used automobile, accepted in part payment against the purchase price of \$10,000 for a new automobile. The dealer will hold the used automobile for resale. The customer is billed as follows:

New automobile	\$10,000
Trade in	<u>2,000</u>
Due	\$ 8,000

Receipt subject to tax is \$8,000

Example 2: A motor vehicle dealer allows a customer \$500.00 for a used boat, accepted in part payment against the purchase price of \$10,000 for a new automobile. A boat is not property of the same kind as an automobile. The customer is billed as follows:

New automobile	\$10,000.00
Sales tax at 6 percent	600.00
	<u>\$10,600.00</u>
Trade in	500.00
Due	<u>\$10,100.00</u>

(k) The cost of transportation of tangible personal property, sold at retail, which is separately stated in the written contract, if any, and on the bill rendered to the purchaser is excluded from the receipt subject to the tax (see N.J.A.C. 18:24-27).

(l) Any charges for credit imposed by a vendor and paid by a purchaser in addition to the purchase price under a designation such

as interest, service charge, or finance charge is not deemed to be part of the sales price of tangible personal property or charge for services rendered. Such charges are consideration for the extension of credit and shall not be included in the receipt subject to sales tax.

Example: A vendor sells furniture for \$1,000 and charges 1½ percent interest per month on the outstanding balance. Only the \$1,000 is a receipt subject to tax.

1. The imposition of charges by a credit card company deducted from a participating vendor's account are charges for financial services rendered. Such charges have no bearing on the computation of receipts subject to tax.

Example: A vendor sells furniture for \$1,000. The purchaser uses a bank credit card. The bank, when remitting to the vendor, deducts a five percent service charge (\$50.00). The vendor is required to charge and remit tax on \$1,000.

2. Interest paid by a lessor on the purchase of tangible personal property intended to be leased to a customer is an expenditure of the lessor and is to be included in the receipt subject to tax.

Example: A lessor *[on credit]* purchases equipment *on credit* for a lessee. The agreement provides that the lessee is to pay \$100.00 per month for equipment rented and \$7.00 per month to reimburse the lessor for interest paid. The tax is to be collected on \$107.00.

(m) The amount of the sales price of items of property paid in or eligible for payment with food stamps issued in accordance with the Federal Food Stamp Act of 1977, Pub.L. 96-113 (7 U.S.C. §2011 et seq.) is excluded from taxable receipts.

1. On food stamp eligible purchases, otherwise taxable items will be exempt from sales tax when food stamps are presented in full payment or when cash is submitted with food stamps as a part payment. Nontaxable food, food products and non-carbonated beverages exempt from sales tax under N.J.S.A. 54:32B-8.2 remain exempt whether or not purchased with food stamps.

Example: If a purchaser presents \$10.00 in food stamps and \$32.00 in cash as payment for \$42.00 worth of food stamp eligible items, the entire \$42.00 is exempt from tax. Under these facts, the exemption would apply even if the \$42.00 worth of food stampable items consisted of food stamp eligible but sales taxable food and beverages, such as candy and soda. The purchase of items which are not food stampable remains subject to sales tax.

(n) A manufacturer's rebate, whether or not paid directly to the purchaser, is not deductible from the receipt on which sales tax is computed.

Example: An automobile dealer agrees to sell an automobile to a customer for \$10,000.00. As a sales incentive, the manufacturer agrees to give a rebate of \$500.00 to a customer who purchases an automobile during the month of December. The customer elects to have the rebate paid to the dealer. The customer is billed as follows:

Sales price	\$10,000.00
Sales tax at 6 percent	600.00
Due	<u>\$10,600.00</u>
Rebate	500.00
Net Cost to Purchaser	<u>\$10,100.00</u>

18:24-12.5 Receipts exempt from sales tax

(a) The tax imposed on the sale of food and drink shall not apply to the following:

1.-4. (No change.)

5. Food or drink sold to an enrolled post secondary school student who is not a participant in a student food plan as described in (a)4 above at a restaurant, tavern or other establishment on the premises of the school of his or her enrollment or in a fraternity, sorority or eating club operated in connection therewith. A student purchasing food or drink otherwise subject to the tax can be required to exhibit to the vendor/cashier a valid student identification card at the time of purchase in order to document the exemption.

Renumber existing 5 to 7 as 6 to 8 (No change in text.)

(b) (No change.)

(a)

DIVISION OF TAXATION

**Transfer Inheritance Tax
Renunciation or Disclaimer**

Adopted Amendment: N.J.A.C. 18:26-2.12

Proposed: July 3, 1989 at 21 N.J.R. 1822(a).

Adopted: January 4, 1990 by John R. Baldwin, Director, Division of Taxation.

Filed: January 5, 1990 as R.1990 d.73, **without change**.

Authority: N.J.S.A. 54:50-1.

Effective Date: February 5, 1990.

Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:26-2.12 Renunciation or disclaimer

(a) If a transferee under a will or by operation of law disclaims or renounces his rights thereunder, or any portion thereof, the disclaimer or renunciation is given effect in computing the tax against the estate; provided, the instrument of disclaimer or renunciation is filed within nine months of death in the office of the surrogate or Superior Court in which proceedings have been commenced or will be commenced for the administration of the estate of the decedent or deceased donee of the power.

(b) A copy of the disclaimer or renunciation should be filed with the Transfer Inheritance Tax Bureau.

EDUCATION

(b)

STATE BOARD OF EDUCATION

**Notice of Administrative Correction
Pupil Transportation
State Aid Approval—Other Eligible Items
Statewide Assessment
Levels of Pupil Proficiency**

N.J.A.C. 6:21-7.6 and 6:39-1.2

Take notice that the Department of Education has discovered errors in the adopted text of N.J.A.C. 6:21-7.6(a)14 and in the text of N.J.A.C. 6:39-1.2(a) as published in the New Jersey Administrative Code.

N.J.A.C. 6:21-7.6(a)14, as proposed and adopted as published in the New Jersey Register (see 21 N.J.R. 2724(a) and 3939(a)), contains the term "top arms." As set forth in the proposal document filed with the Office of Administrative Law (see PRN 1989-445), the term should be "Stop arms."

N.J.A.C. 6:39-1.2(a), as proposed and adopted as published in the New Jersey Register (see 21 N.J.R. 1605(a) and 2786(a)), and as published in the New Jersey Administrative Code, contains a reference to N.J.S.A. 18A:17A-6. As set forth in the proposal document filed with the Office of Administrative Law (see PRN 1989-295), the correct citation is N.J.S.A. 18A:7A-6.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

6:21-7.6 State aid approval—other eligible items

(a) In order to be eligible for State transportation aid, the following items shall be directly related to the transportation of pupils to and from school and are subject to documented justifications:

1.-13. (No change.)

14. Safety equipment: [top] **Stop arms**, roof hatches, crossing gates;

15.-16. (No change.)

6:39-1.2 Levels of pupil proficiency

(a) The State Board of Education, after consultation with the Commissioner, shall establish uniform Statewide levels of pupil proficiency in reading, writing and mathematics skills on the Statewide assessment instruments pursuant to N.J.S.A. [18A:17A-6] **18A:7A-6** and for assessment in those grades required for district certification.

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

(c)

STATE BOARD OF EDUCATION

**Approval of Plans and Specifications and School
Space Sizes and Capacity for Private School and
State Facilities for Handicapped Pupils**

**Adopted Amendments: N.J.A.C. 6:22-1.1, 1.3, 1.4
and 1.7**

Adopted New Rule: N.J.A.C. 6:22-1.8

Proposed: October 16, 1989 at 21 N.J.R. 3210(a).

Adopted: January 3, 1990 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: January 12, 1990 as R.1990 d.110, **without change, but with portions not adopted.**

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:7A-5, 18A:18A-16, 18A:18A-18, 18A:18A-39, 18A:20-36, 18A:33-1 et seq., 18A:46-13, 18A:46-15, 52:27D-121, 52:27D-123, 52:27D-130 and 20 U.S.C. 1401 et seq.

Effective Date: February 5, 1990.

Expiration Date: September 3, 1990.

Summary of Agency-Initiated Changes:

On January 3, 1990, the State Board of Education adopted amendments to N.J.A.C. 6:22-1.1, 1.3, 1.4 and 1.7, without change. However, the amendment to N.J.A.C. 6:22-2.5 which was originally part of the proposal was not adopted as it is being repropounded with further change in this issue of the New Jersey Register.

Summary of Public Comments and Agency Responses:

One individual spoke at the public testimony session on October 25, 1989 and one letter of comment was received.

COMMENT: One commenter suggested that private schools for the handicapped are private organizations and should have the absolute right to acquire land and/or facilities without intervention or approval from the Department of Education. Additionally, the commenter objects to the requirement to obtain approval from the Department of Education for the disposal of land used as a school site.

RESPONSE: The Department of Education disagrees. The Commissioner has the authority to approve all special facilities and education programs for both public and private schools for the handicapped pursuant to N.J.S.A. 18A:46-15 and recognized by the courts in *Council of Private Schools for Children with Special Needs, Inc., v. Cooperman*, 205 N.J. Super. 544 (App. Div. 1985), *certif. denied* 103 N.J. 490 (1986). The same standards are proposed for the private schools for the handicapped as are applied to the public schools in order to ensure Statewide standards for educationally adequate, healthy and safe school facilities. The Department of Education requires public schools to submit site plans and information for approval to ensure the proposed site is suitable for a public school facility. Public schools must also seek approval from the Bureau of Facility Planning Services to dispose of land pursuant to N.J.A.C. 6:22-1.3.

COMMENT: The other commenter felt that retrospective square footage application continues to be generally applied to the private school in a different standard as applied to the public schools. The new proposed 6:22-2.5(f)2 also proposes retrospective application to other spaces (non-classroom) and that the standard is applied unequally and offers unequal protection to the private schools.

RESPONSE: The Department of Education disagrees. Public schools previously were required to comply with design guidelines; however, the private schools for the handicapped did not have to meet these design guidelines. N.J.A.C. 6:22-2.5(f) is being repropounded in this issue of the New Jersey Register. This reproposal is made to correct the date which

restricted the applicability of the rules. The reproposal reflects the State Board's intention that the rules apply to all spaces occupied but not previously approved prior to the effective date of adoption of this reproposal. Once adopted, private schools may choose to meet either the previous standards in the School Capacity Bulletin or the new standards repropounded in N.J.A.C. 6:22-2.5(f) for getting non-approved special education classrooms or spaces other than classrooms approved.

COMMENT: The same commenter also felt that the proposed square footage standard (N.J.A.C. 6:22-2.5) is a modification to the nationally accepted Building Officials Code Administrators (BOCA) standard and in regard to special education students is not educationally sound and is unreasonable.

RESPONSE: The Department of Education disagrees. The referenced BOCA standards are for the purpose of health, fire and safety. The State Board enhancements are educational requirements which go beyond the requirements of BOCA and are essential to the maintenance of a thorough and efficient system of education. These enhancements are in existing code and were previously published in the School House Guide which served as the rules and regulations of the State Board of Education prior to the adoption of N.J.A.C. 6:22 and are intended to address the educational adequacy requirements beyond health, fire and safety. BOCA does not address educational needs. The State Board Code (N.J.A.C. 6:22) has been designed to address educational needs. Specific requirements for special education students are contained in N.J.A.C. 6:28.

COMMENT: The same commenter states that requirements that private schools submit plans and specifications for Department approval (N.J.A.C. 6:22-1.8) as well as approval for the disposal or sale of land is unreasonable and not within the Department's jurisdiction.

RESPONSE: The Department of Education disagrees. The Commissioner has the authority to approve all special facilities and education programs for both public and private schools for the handicapped pursuant to N.J.S.A. 18A:46-15 and recognized by the courts in *Council of Private Schools for Children with Special Needs, Inc., v. Cooperman*, 205 N.J. Super. 544 (App. Div. 1985), *certif. denied* 103 N.J. 490 (1986). The same standards are proposed for the private schools for the handicapped as are applied to the public schools in order to ensure Statewide standards for educationally adequate, healthy and safe school facilities. The Department of Education requires public schools to submit plans and specifications for approval. Public schools must also seek approval from the Bureau of Facility Planning services to dispose of land pursuant to N.J.A.C. 6:22-1.3.

COMMENT: The same commenter also states that the Regulatory Flexibility statement as provided is inadequate and the mandates of the Regulatory Flexibility Act have not been followed.

RESPONSE: The Department of Education disagrees. All issues were addressed in accordance with the standards set by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the rules at N.J.A.C. 1:30-3.1, Notice 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]*):

6:22-1.1 Approval of plans and specifications

(a) (No change.)

(b) Plans and specifications for the temporary and permanent construction, erection, reconstruction, alteration, conversion and renovation of private school facilities shall be submitted to the Department of Education, Bureau of Facility Planning Services whenever a review of compliance with this chapter is necessary. An architect or engineer licensed in New Jersey shall submit the plans and specifications on behalf of the district board of education as follows:

1. One set of schematic plans shall be approved before funds are authorized locally via a bond referendum, lease-purchase agreement, gift or any other means of financing building construction, erection, reconstruction, alteration, conversion or renovation. This set of plans shall be submitted with a project cost estimate, site plan, educational specifications and an updated long-range facility plan. The review for educational adequacy shall take into consideration the suitability of the site; size, location and number of instructional and ancillary spaces; furniture and equipment; circulation patterns; provisions for the handicapped; maintenance, security and energy conservation; and locations of future additions. Room sizes shall meet or exceed minimum acceptable net and gross areas as required in N.J.A.C. 6:22-2.5.

i. (No change.)

2. (No change.)

3. Four sets of signed and sealed final plans and specifications shall be submitted for review and approval after preliminary plan approval. This submission shall include the following:

i. A completed final application;

ii-vii. (No change.)

4. Bids may be advertised for and received only after the release of final plans from the Department of Education, Bureau of Facility Planning Services. Following approval of said bids by the Bureau, the district board of education may sign contracts and apply to the municipal construction enforcing official for the required building permits. The local municipal construction enforcing official will issue the construction permit, collect 80 percent of the total construction permit fee, perform the required inspections during construction and issue the required certificate of occupancy upon completion of the project. The district board of education shall send to the New Jersey Department of Education, Bureau of Facility Planning Services a copy of the certificate of occupancy obtained from the local construction agency.

5-8. (No change.)

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

6:22-1.3 Disposal of land

If an approved school site on which there is an operational school building is to be altered through sale, transfer or exchange of all or part of the total acreage, written application for approval shall be made to the Department of Education, Bureau of Facility Planning Services. A copy of the application shall be sent to the county superintendent of schools who shall make recommendations to the Bureau, with a copy of the recommendations to the district board of education.

6:22-1.4 Acquisition of existing buildings

A district board of education planning to acquire any existing building or facility through purchase, gift, lease or otherwise shall comply with all procedures and rules pertaining to the appropriation and use of capital funds as required by N.J.S.A. 18A:20-4 and 18A:20-4.2 and shall also have the building approved in accordance with the rules of this chapter which apply to the construction of a new building.

6:22-1.7 Appeals and hearing process

(a) (No change.)

(b) Requests for variances from the Department of Education requirements as specified in N.J.A.C. 6:22-1.2, N.J.A.C. 6:22-2.4, N.J.A.C. 6:22-2.5 and the State Uniform Construction Code as specified in N.J.A.C. 5:23 may be made in writing by the district board of education to the manager of the Bureau of Facility Planning Services. The manager may approve variances from Department requirements provided the spirit and intent of the standards are observed and the need for the variances is satisfactorily documented. Variations from the State Uniform Construction Code must be acted upon in accordance with N.J.A.C. 5:23.

6:22-1.8 Requirements for Department of Education Approval of Private Schools for Handicapped Pupils and Schools for Handicapped Pupils of the New Jersey State Department of Human Services

(a) This section shall govern review of facilities for private schools for handicapped pupils which are approved or seeking approval pursuant to N.J.A.C. 6:28-7 and schools for handicapped pupils operated by the Department of Human Services. Bureau of Facility Planning Services review is required for the type of work set forth in N.J.A.C. 6:22-1.1(c).

(b) Submission and review of plans and specifications will be conducted as follows:

1. Educational specifications shall be prepared and submitted as per N.J.A.C. 6:22-1.1(a) except that they shall be signed by designated officials of the private schools for handicapped pupils or the State Department of Human Services.

2. An architect registered or an engineer licensed in New Jersey, as required by N.J.A.C. 5:23-2.15, shall submit the plans and speci-

cations for the temporary and permanent construction, erection, reconstruction, alteration, conversion and renovation of facilities to the Bureau of Facility Planning Services on behalf of the private schools for handicapped pupils and the State Department of Human Services for review and subsequent approval for compliance with this chapter. For review and subsequent approval for compliance with the Uniform Construction Code (U.C.C.), N.J.A.C. 5:23, plans and specifications shall be submitted by the private schools for handicapped pupils to the local construction official of the municipality in which the facility will be constructed and by the State Department of Human Services to the Division of Building and Construction, State Department of the Treasury.

3. The plans and specifications shall be submitted to the Bureau of Facility Planning Services as per N.J.A.C. 6:22-1.1(b)1 and 3.

(c) Variances to the State Uniform Construction Code shall be made according to N.J.A.C. 5:23-2.9 through 2.13. Requests for variances to N.J.A.C. 6:22-1.2, 2.4 and 2.5 shall be in writing to the manager, Bureau of Facility Planning Services who may approve them provided the spirit and intent of the standards are observed and the need for variances is satisfactorily documented.

(d) Acquisition of land for a school site shall be according to N.J.A.C. 6:22-1.2(b) and (c).

(e) Disposal of land used as a school site shall be according to N.J.A.C. 6:22-1.3.

(f) Existing buildings to be acquired for use as a school building shall meet the requirements of this subchapter and the State Uniform Construction Code, N.J.A.C. 5:23. The Bureau of Facility Planning Services shall review plans and specifications for compliance with the Uniform Construction Code, N.J.A.C. 5:23, and this chapter.

(g) Appeals and hearings arising from action of the Bureau of Facility Planning Services shall be according to N.J.A.C. 6:22-1.7.

(h) Reviews of plans and specifications of facilities of private schools for handicapped pupils and schools for handicapped pupils operated by the State Department of Human Services shall be done to assure that the design adheres to:

1. School site sizes, N.J.A.C. 6:22-1.2;
2. Enhancements to Uniform Construction Code, N.J.A.C. 6:22-2.3;
3. Educational facility planning standards, N.J.A.C. 6:22-2.4(a) to (h);
4. School space sizes and capacity, N.J.A.C. 6:22-2.5; and
5. N.J.A.C. 5:23, the State Uniform Construction Code.

6:22-2.5 School space sizes and capacity

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

(f) This section will be applied prospectively to new educational facilities and additions, when changes of use, renovations or alterations are made to existing facilities, and to existing facilities which were never approved according to prior standards or codes. [Spaces occupied but not previously approved prior to April 4, 1988 (the effective date of N.J.A.C. 6:22-2.5), in order to be approved for capacity, must meet the following requirements:

1. Special education classrooms in private schools for the handicapped and in schools for the handicapped operated by the Department of Human Services shall be either a minimum of 40 square feet gross per student, as previously set forth in the Department of Education School Capacity Bulletin, or 20 net square feet per student as set forth in N.J.A.C. 6:22-2.5(b); and

2. Spaces, other than special education classrooms in private schools for the handicapped and in schools for the handicapped operated by the Department of Human Services, shall be either the square foot amounts previously set forth in the Department of Education's School Capacity Bulletin or meet the standards set forth in N.J.A.C. 6:22-2.5(b).]*

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Sewage Infrastructure Improvement Act Grants

Adopted New Rules: N.J.A.C. 7:22A-1, 2, 3, and 6

Proposed: July 17, 1989 at 21 N.J.R. 1948(a).

Adopted: December 29, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: January 2, 1990, as R.1990 d.69, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:25-23 et seq., 58:10A-1 et seq., 58:11A-1 et seq., 13:1D-1 et seq., 40:55D-93 et seq.

DEP Docket Number: 031-89-06.

Effective Date: February 5, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

A public hearing on the proposed new rules was held in the Ocean County Administrative Building on August 14, 1989. Comments were received at this public hearing from six commenters and six sets of written comments were received prior to the close of the comment period on August 16, 1989.

General Comments

COMMENT: Grant applications should be kept simple to avoid having the grant applicants spend as much money on the application as they will receive.

RESPONSE: The Department agrees with this comment. The grant applications prepared by the Department require that the grant applicant provide certain necessary information for the awarding of grants, but these requirements are not unreasonable and should not present a hardship to the applicant. Also, the information included in the grant application will assist the Department in properly evaluating the projects for financial assistance.

COMMENT: The cost to apply for and receive grant funding should be an allowable cost.

RESPONSE: The Department believes that the limited funds available under the Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq. ("Act"), should be used to offset the costs of the requirements of the Act. Therefore, the costs for processing a grant for the preliminary mapping of a stormwater system will not be considered an allowable cost. However, as set forth in the application package, the recipients' costs in administering the grant for combined sewer overflow planning and design will be considered allowable up to one percent of the allowable architectural/engineering costs for the project.

COMMENT: Grant applicants should be allowed to perform work before the grants are awarded in order to meet statutory deadlines and should be allowed to request additional funds should they become available. If a municipality began to remediate their sewer system in 1989, would the project be eligible for a grant even if it isn't a 1990 project? The commenter requested that an amendment be included which would make 1989 projects eligible for grants.

RESPONSE: In accordance with N.J.A.C. 7:22A-3.12, stormwater mapping and inventory costs incurred by municipalities after the effective date of this rule will be considered eligible costs. Applicants for combined sewer overflow planning and design grants may be eligible for allowable costs incurred prior to the award of the grant as set forth in N.J.A.C. 7:22A-6.12(b). In order for these costs to be considered eligible, the Municipal Wastewater Assistance Element must review and approve the scope of work for the project and give authorization to award any contract for which cost reimbursement is sought. With respect to the ability to request additional funds, if additional funds are made available by the Legislature, the Department will establish a procedure for the disbursement of those funds.

COMMENT: Two commenters stated that the proposed rules were late. The Act required adoption of rules by February 3, 1989 and they were not proposed until July 17, 1989. One of the commenters stated that on February 14, 1989, Commissioner Daggett informed the Select Committee on Ocean and Beach Protection that the February 3, 1989 deadline would not be met, that the rules would be proposed in April of 1989

and that grant applications would be received in the Spring of 1989. Commissioner Daggett should give this Act and the funding it provides the top priority it deserves and establish a deadline for the adoption of the remaining rules. The commenter stated that the public hearing was held one year after the passage of the Act and six months after the statutory deadline to adopt the rules.

RESPONSE: The Department acknowledges that the proposed rules were late. The Act requires the Department to develop standards for the inventory and mapping of stormwater sewers and sanitary sewer lines by February 3, 1989. Since the Department was not prepared to establish final mapping standards for stormwater sewer systems, the Department decided to propose a rule for the preliminary mapping of stormwater systems. The purpose of the preliminary mapping rules is to distribute grant moneys to municipalities so that the initial work can begin. Such work includes taking inventories of any existing maps and locating stormwater outfalls. Every effort was made by the Department to meet the deadlines established in the Act. The Department will be proposing rules for the final mapping of stormwater systems in the first calendar quarter of 1990. These rules will also include the requirements to perform quarterly monitoring, as required by the Act, at stormwater outfalls discharging to salt waters.

COMMENT: Does the Department plan to enforce the requirement in the Act that abatement measures will be in place by February 3, 1991? It is unrealistic to assume that abatement measures can be in place considering the late proposal date of these preliminary rules.

RESPONSE: The Department will enforce the provisions of the Act which require appropriate abatement for combined sewers and stormwater sewers by February 3, 1991. The Act requires any public entity operating a combined stormwater sewer and sanitary sewage system to provide abatement measures approved by the Department by February 3, 1991, at any combined sewer overflow point for which a permit is required pursuant to N.J.S.A. 58:10A-1 et seq. Those public entities which fail to provide appropriate abatement at combined sewer overflow points, by February 3, 1991, shall be subject to the penalty provisions of N.J.S.A. 58:10A-1 et seq.

The Act also requires all affected municipalities to eliminate or cause to be eliminated any unpermitted interconnection or cross-connection within the municipality. Municipalities who fail to take appropriate abatement measures to eliminate or cause to eliminate unpermitted interconnections by February 3, 1991 or unpermitted cross-connections after receiving written or constructive notice thereof shall be subject to the penalty provisions of N.J.S.A. 58:10A-1 et seq. Any unpermitted interconnection in existence on February 3, 1991 is also subject to the penalty provisions of N.J.S.A. 58:10A-1 et seq. The Act authorizes the Department, the municipality or any other public entity controlling or operating the stormwater sewer system to enforce the penalty provisions of N.J.S.A. 58:10A-1 et seq. Any abatement activities associated with the elimination of unpermitted cross-connections and interconnections must be performed in conformance with the requirements for a treatment works approval, N.J.A.C. 7:14A-12, and any other applicable State or Federal requirement.

Combined Sewer Overflow Comments

COMMENT: One commenter asked whether the combined sewer overflow procedures and requirements address only dry-weather overflows.

RESPONSE: Proposed N.J.A.C. 7:22A-6 addresses both dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points. However, the Department received many grant applications dealing with the alternatives for wet weather overflows from combined sewers such as the separation of the combined sewer into a sanitary line and a separate stormwater line. The Department has decided to extend the application deadline for combined sewer overflow planning and design grants to April 6, 1990 as provided for in the changes to N.J.A.C. 7:22A-6.8(a). The Department has decided not to provide grant money for the planning and design of wet weather alternatives such as combined sewer separation or treatment at the combined sewer overflow points at this time. As set forth in N.J.A.C. 7:22A-6.1 and 6.2(a), the only combined sewer projects eligible for grants are those involving the planning and design for dry weather overflow elimination or solids/floatables reduction at combined sewer overflow points.

With the postponement of the deadline for combined sewer overflow planning and design grant applications, the Department has decided to advise potential applicants of examples of those dry weather elimination projects which will be considered for funding. The planning and design activities for dry weather elimination may include those projects which address the rehabilitation of combined sewer regulators necessary to

prevent dry weather discharges. The Department acknowledges that combined sewer regulators in disrepair or poorly designed systems can enhance the likelihood for dry weather overflows. Therefore, the Department will consider funding those planning or design projects which are necessary to rehabilitate combined sewer regulators or to modify the combined sewer system in such a manner as will ultimately eliminate the possibility for dry weather discharges. With respect to projects for the planning and design of solids/floatables reduction, the Department will consider any project which targets a reduction in solids/floatables and evaluates those technologies, such as swirl separators or mechanical bar screens, which will achieve such reductions at the combined sewer overflow point.

COMMENT: One commenter stated that the rules fail to articulate the type of remediation that would be eligible for funding and that the remediation could include the disconnection of sanitary and storm sewers, the imposition of screens and disinfection at the discharge point or even the replacement of manhole covers.

RESPONSE: As set forth above, the only combined sewer projects eligible for grants are those involving the planning and design for dry weather overflow elimination or solids/floatables reduction at combined sewer overflow points.

COMMENT: Appropriate pollution abatement measures which will be required at combined sewer overflow points should be detailed and abatement measures should be defined. Is screening sufficient or is full secondary treatment required?

RESPONSE: N.J.A.C. 7:22A-6 does not establish the standards for abatement measures at combined sewer overflow points. For combined sewer systems, N.J.A.C. 7:22A-6 only establishes the procedures for the distribution of grant moneys for the planning and design of dry weather elimination and solids/floatables reduction at combined sewer overflow points.

Combined sewer overflow points constitute point sources which discharge pollutants into surface waters of the State and are thus regulated under the NJPDES rules, N.J.A.C. 7:14A. Thus, discharges from combined sewer overflow points are required to comply with the surface water quality standards established pursuant to N.J.A.C. 7:9-4 for the affected receiving waterbody. Abatement measures which target reductions toward this objective will be deemed appropriate. The presence of dry weather overflows or the discharge of solids and floatables during wet weather events at combined sewer overflow points are readily determinable violations of the State surface water quality standards and thus can be considered an initial step in providing appropriate abatement. Although not eligible for funding under N.J.A.C. 7:22A-6 at this time, abatement measures for any additional concerns such as wet weather combined sewer overflow discharge quality will be evaluated by the department on a case-by-case basis.

COMMENT: Will the combined sewer overflow abatement measures, required under the Act, be in conformance with those required under the Clean Water Act, 33 U.S.C. 1251 et seq.? If abatement measures are put in place, the United States Environmental Protection Agency (EPA) may require additional abatement measures. What can be done to make sure that the abatement measures required by the Department will be consistent with EPA requirements?

RESPONSE: The National Combined Sewer Overflow Strategy (National CSO Strategy), which was finalized on August 10, 1989 by the EPA (see 54 Federal Register 37370, September 8, 1989), sets forth three objectives for combined sewer overflow remediation. The CSO Strategy states: 1) that if combined sewer overflows do occur, they should only result from wet weather events, 2) that combined sewer overflows should be brought into compliance with state water quality standards and the technology-based requirements of the Clean Water Act, and 3) that the effects from wet weather overflows on water quality, aquatic biota, and human health should be minimized. The National CSO Strategy states that combined sewer overflow points discharging without a permit are unlawful and that they must either be permitted or eliminated. The minimum technology-based limitations require that dry weather overflows must be prohibited and that solids/floatables materials are controlled. The National CSO Strategy requires that a statewide permitting strategy be developed by January 15, 1990 and that these permitting strategies be approved by the EPA's regional offices by March 31, 1990. The Department is in the process of developing a Statewide combined sewer overflow control and permitting strategy to implement the EPA's National CSO Strategy.

It is the Department's intent that the abatement measures to be implemented under the Act will be in conformance with those required

under the Clean Water Act and the National CSO Strategy. The Department's proposed rules at N.J.A.C. 7:22A-6 are consistent with the National CSO Strategy given that both the elimination of dry weather discharges and the reduction of solids/floatables are addressed. Some discharges from combined sewer overflow points during wet weather may be required to address additional pollutant concerns to meet the water quality standards defined in N.J.A.C. 7:9-4 for the respective receiving waterbody. The Department cannot guarantee that abatement measures required to address these water quality based concerns will not supplant the need for the abatement measures deemed appropriate for the elimination of dry weather discharges and solids/floatables reduction.

COMMENT: The rules should specify that the holder of the combined sewer overflow NPDES/NJPDES permit is responsible for providing the abatement measures.

RESPONSE: N.J.A.C. 7:22A-1.2(c) states "The Act requires any local government unit controlling or operating a combined sewer system within the State to provide appropriate pollution abatement measures at combined sewer overflow points." Although it would be ideal if the combined sewer permittee applied for the planning and design grants, the Department determined that it would be unduly restrictive to make such permittee the only entity eligible to apply. However, in order for other governmental units to receive funding on behalf of a combined sewer permittee, appropriate intergovernmental agreements/resolutions, as required by N.J.A.C. 7:22A-6.8(d), satisfactory to the Department must be in place. N.J.A.C. 7:22A is only intended to address the awarding of grant monies from the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund. The responsibilities of parties with respect to the building, installation, modifying, or operating any facility for the collection, treatment, or discharge of any pollutant is regulated under the NJPDES rules, N.J.A.C. 7:14A.

COMMENT: Priority for combined sewer overflow planning and design grants should be given to the entity that holds the combined sewer overflow NPDES/NJPDES permit if more than one governmental entity applies for a grant for the same project. This is necessary since possible enforcement actions will be brought against the permittee, not the grant applicant.

RESPONSE: Priority for the award of combined sewer overflow planning and design grants shall be based on the project's rank on the Project Priority List, the submission of a complete application in the appropriate time frame and the amount of available funds. Priority will not be based on who holds the NPDES/NJPDES permit.

COMMENT: The definition of "local government unit" should be expanded to include municipal utility or sewerage authorities, and the NPDES/NJPDES permit holders for the combined sewer overflow points.

RESPONSE: The Department agrees with the above comment and the definition of local government unit included in N.J.A.C. 7:22A-1.4 has been amended to incorporate the suggested change, with the exception of NPDES/NJPDES permit holders. NPDES/NJPDES permit holders for combined sewer overflow points are included in the definition of local government units as long as they are public entities authorized to control or operate a combined sewer system.

COMMENT: The proposed rules fail to provide a priority list or a ranking methodology for combined sewer overflow projects. Instead, the proposed rules contemplate still another hearing and public comment period for the adoption of a priority list on an annual basis. The priority list should not be based on the water quality of the receiving water alone.

RESPONSE: The proposed rules do not suggest that another hearing be held for the adoption of the combined sewer overflow priority list. Rather, the priority for the award of combined sewer overflow planning and design grants will be based on the ranking criteria of the Priority System developed for distributing grants and loans for the construction of wastewater facilities, pursuant to the Clean Water Act. The ranking criteria not only considers existing water quality but also evaluates projects on existing water use, discharge classification and population.

Stormwater Mapping Comments

COMMENT: The October 6, 1989 deadline for municipalities to submit applications for the preliminary mapping and inventory should be extended to provide time to insure each affected municipality is contacted.

RESPONSE: Application packages were sent out to each affected municipality in the middle of August. Although a significant number of the affected municipalities submitted applications before the October 6, 1989 deadline, the Department has decided to extend the deadline for submitting an application for the preliminary mapping and inventory

grants to February 19, 1990. The Department has amended N.J.A.C. 7:22A-3.5(a) to extend the application deadline.

COMMENT: If an effort was made to extend the statutory deadlines in the Act, would the Department support and help in determining what would be a reasonable time frame?

RESPONSE: The Department would assist in any effort made to extend the statutory deadlines in the Act.

COMMENT: Three commenters stated that the stormwater sewer mapping rules in N.J.A.C. 7:22A-3 are incomplete. The rules are limited to a voluntary program for the preparation of preliminary map and inventory of stormwater outfalls and appear to have been put together in a hurried fashion to appease critics. The proposed rules do not include requirements and standards for final stormwater sewer system mapping, which under the Act must be completed by February 3, 1990.

RESPONSE: The preliminary mapping and inventory rules proposed as N.J.A.C. 7:22A-3 are not intended to cover all of the mapping requirements of the Act necessary for the affected municipalities to perform the final mapping activities. The Department will propose requirements and standards for completing the final maps during the first quarter of 1990. The final mapping rules will include standards for sampling discharges at stormwater outfalls. The results of this sampling will then be used to identify cross-connections and interconnections on the final map. These rules will also include the Act's requirements to perform quarterly monitoring at stormwater outfalls.

COMMENT: The rules do not include standards for discharge monitoring, guidelines or otherwise address the disconnection of illegal or improper interconnections and cross-connections.

RESPONSE: As stated above, the final mapping rules will address the procedures for discharge monitoring. Subsequent rules will address the requirements for the planning and designing for the elimination of interconnections and cross-connections between stormwater and sanitary sewer systems.

COMMENT: The Department should withhold suggesting criteria for the funding of the additional requirements of the Act until the rules for the final requirements are proposed.

RESPONSE: The Act and the related topics of coastal water quality, nonpoint source pollution and stormwater management have generated great interest and concern throughout the State. The Department decided it would be helpful to discuss, with the parties that would be directly impacted including municipalities and other agencies required to comply with the Act, the possible criteria the Department could use in the distribution of the remaining grant monies.

COMMENT: Would a municipality with a public storm drainage system and a private sewage company which is not aware of any existing illegal cross-connections or interconnections be qualified to receive grant money to update the map of the municipal storm drainage system?

RESPONSE: All affected municipalities, as defined in N.J.A.C. 7:22A-1.4, must adopt a final map of the stormwater sewer system within the geographical boundaries of the municipality and may be eligible for a grant to prepare the preliminary and final map of the stormwater system. The Act requires all affected municipalities to locate, on the final map, all stormwater sewer lines and those sanitary sewage lines which are part of any stormwater sewer system that discharges into surface waters. Affected municipalities must therefore investigate and identify all cross-connections and known interconnections between stormwater and sanitary sewer systems and indicate whether the cross-connections have received a permit from the Department. The fact that the municipality is not aware of any existing illegal cross-connections or interconnections does not relieve them of the responsibility under the Act to investigate their stormwater systems for these problems.

COMMENT: What small business and affirmative action concerns will the towns have to comply with to receive preliminary mapping grants?

RESPONSE: The Department did not intend that recipients of grants for preliminary mapping be required to comply with the rules for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, N.J.A.C. 7:22-9. The Department has amended N.J.A.C. 7:22A-2.4(a)3 to reflect this decision. However, grant recipients for preliminary mapping are required in N.J.A.C. 7:22A-2.4(a)12 to certify that it and any party to a subagreement 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 promulgated pursuant thereto including, but not limited to, N.J.A.C. 17:27. For the combined sewer overflow planning and design grants under N.J.A.C. 7:22A-6, recipients are required to comply with

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all of the above-mentioned rules in accordance with N.J.A.C. 7:22A-6.8(g)3 and 7 and (h)3 and 7.

COMMENT: Is any permit fee anticipated to be assessed from the municipalities after the stormwater sewer systems are mapped similar to the NJPDES permit fees?

RESPONSE: Municipalities must identify in their final map all cross-connections and known interconnections and identify whether or not the cross-connections or interconnections are permitted by the Department. Participation in the program does not waive a municipality's required compliance with other State or Federal rules, nor does it waive the requirement for the payment of fees as may be required by those rules. According to the Act, if an unpermitted cross-connection or interconnection existing within a municipality is identified and not eliminated, civil penalties may be imposed. Thus, interconnections and cross-connections must either be eliminated or receive a NJPDES permit in accordance with N.J.A.C. 7:14A.

In the future, certain municipalities may be required to obtain a NJPDES permit for their stormwater outfalls. The stormwater permit requirements will be imposed as a result of Federal rulemaking pursuant to the 1987 amendments to the Clean Water Act (see 33 U.S.C. 1251 et seq., the Water Quality Act of 1987, Section 405 and proposed stormwater rules at 53 Fed. Reg. 49416). NJPDES permittees are subject to an annual fee as per N.J.A.C. 7:14A-1.8.

Proposed construction activities associated with the correction of a cross-connection or interconnection may trigger the need to obtain a treatment works approval as defined by N.J.A.C. 7:14-12. In order to obtain a treatment works approval, a fee may be required in accordance with N.J.A.C. 7:1C.

COMMENT: The municipalities in Middlesex County should not be excluded from the stormwater sewer mapping provisions of the Act. The exclusion of these municipalities should be considered selective enforcement in violation of the constitutional rights of equal protection.

RESPONSE: The Act specifically states that "all municipalities with stormwater systems discharging into the salt waters of Monmouth, Ocean, Atlantic and Cape May counties shall adopt a stormwater sewer/sanitary sewage map in accordance with the provisions of this act". The Legislature specifically limited the scope of the Act to those municipalities whose stormwater systems discharge into the salt waters of the above-mentioned counties.

COMMENT: The lack of standards, requirements, and guidelines needed to fulfill the remaining requirements of the Act may prove a disincentive to municipalities that wish to proceed with the abatement of illegal cross-connections and interconnections.

RESPONSE: Although the lack of requirements may be a disincentive to municipalities to aggressively proceed with the elimination of illegal cross-connections and interconnections, the Department must first compile an inventory of existing needs in order to be better able to direct the limited amount of available funds to high priority areas. Thus, the Department has chosen a phased approach to proposing rules under the Act whereby this initial set of rules is designed to obtain preliminary information to assess the existing needs of the affected municipalities.

COMMENT: It is unclear whether the outfalls and basins to be mapped during the preliminary mapping phase are to be all outfalls and basins in the town or just those identified during the inventory stage. To identify all outfalls and basins by latitude and longitude with their corresponding drainage area and volume would require a significant amount of field work and surveying for which monies are not adequately being provided.

RESPONSE: Both the preliminary mapping requirements in N.J.A.C. 7:22A-3.10 and the scope of work contained in the application package, which was mailed to the mayors of each of the affected municipalities, specifies that "The preliminary map shall locate and number all stormwater outfalls and all stormwater management basin locations within the geographical boundaries of the affected municipality." The Department, in N.J.A.C. 7:22A-3.11(a)1x and 2vii, required the outfalls and basins to be located by latitude and longitude. The Department has amended the language in the above-mentioned sections to require recipients to use the state plane coordinate system. If all of this information cannot be obtained from the inventory, additional field work will be necessary. However, the approximate drainage area to each outfall can be identified using a land use or zoning map. The Department believes that the money allocated for the preliminary mapping and inventory is adequate to perform the work required.

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COMMENT: Should the items mapped be identified in state planar coordinates or longitude and latitude? Converting mapping requirements from state planar to longitude and latitude would cause significant error.

RESPONSE: The information from the preliminary map will be put into the Geographical Information System in state plane feet. Therefore, it would be more accurate to have this locational information in state plane feet and, as stated above, the rules have been amended to incorporate this standard.

COMMENT: The money being distributed for the preliminary mapping is woefully inadequate. The proposed rules set aside \$6.5 million of the \$31.5 million in the Fund for the mapping of stormwater sewers. The proposed rules, however, contemplate awarding just over \$1 million in preliminary mapping and inventory grants and the balance would be awarded subject to the adoption of further rules. Municipalities are required to pay at least 10 percent of the costs, so if the preliminary mapping costs substantially exceed the maximum amount in Appendix A, municipalities will have to pay the difference. This burden on municipalities could lead to inadequate projects and may deter municipalities from performing environmental projects. The Department should request additional funds from the State legislature for the performance of the other requirements of the Act and should allocate more money for the present task.

RESPONSE: The Department agrees that the money appropriated under the Act is not sufficient to cover the entire scope of work required under the Act. However, the Act establishes a framework where eligible municipalities are given grants to map their stormwater systems. The Act provides that municipalities may apply to the Department for up to 90 percent of the total mapping costs. Municipalities are therefore required to provide at least 10 percent of the total mapping costs. The Department believes that the money allocated for the preliminary mapping and inventory is adequate to cover the phase of work and that a phased mapping approach will allow the municipalities to assess the scope of their stormwater system to be included in the final map as required by the Act.

COMMENT: All of the money that has been allocated to municipalities for stormwater sewer mapping and monitoring should have been distributed by the provisions of the initial proposed rules for preliminary mapping and inventory.

RESPONSE: The Department has allocated \$6.5 million of the \$31.5 million provided by the Act for the mapping of stormwater sewer systems and the identification of cross-connections and interconnections for the municipalities whose stormwater sewer system drains into the salt waters of Monmouth, Ocean, Atlantic, and Cape May Counties. To break the requirements of the Act into workable tasks and to establish the amount of municipal information presently available on stormwater systems, initial grants in the amounts set forth in Appendix A of N.J.A.C. 7:22A are being provided to each of the affected municipalities to inventory the existing available information and to identify outfall locations. The remaining funds, \$5.45 million, will be available to the affected municipalities to complete the final mapping requirements in accordance with the Act.

COMMENT: Two commenters stated that the criteria for establishing grant amounts for the preliminary mapping and inventory phase is inadequate. One commenter stated that money should be allocated based on need. Another stated that the preliminary mapping and inventory grants should be allocated based on road mileage, number of outfalls, a development indicator, and the age of the infrastructure, because older infrastructure will result in greater difficulties for mapping and monitoring. The rules should be changed or be negotiable to include these other criteria.

RESPONSE: The grant awards for preparing the preliminary map and inventory, in accordance with N.J.A.C. 7:22A-3.3 and Appendix A of the proposed rules, were calculated using public road mileage within the municipalities required to prepare a final map under the Act. The preliminary map and inventory is not a requirement of the Act, but rather a voluntary phase to help municipalities work towards the development of the final map. The Department contends that road mileage is a good indicator of the extent of stormwater sewer infrastructure and best represents the needs of the municipalities to complete the preliminary map and inventory.

COMMENT: The February 1990 deadline for municipalities to submit final maps to the Department should be extended.

RESPONSE: The Department agrees with the commenter. However, the Act does not contain provisions for extending the February 1990 deadline. Because the Department failed to establish standards for the final mapping of municipal stormwater systems by February 3, 1989, as required by the Act, the Department will not enforce the provision in

the Act which requires the adoption of a final map by February 3, 1990. In the final mapping rules, the Department will require affected municipalities to adopt a final map within 12 months after the Department's adoption of final mapping rules. The 12-month period is consistent with the Act's requirement for affected municipalities to adopt a map 12 months after the Department has established mapping standards.

COMMENT: A mechanism should be established at the county level which would provide oversight and coordination of the affected municipalities. The rules should state that each county will designate an office to provide oversight. The county should be involved for many reasons including the following: stormwater pipes and problems do not respect municipal boundaries, information on how to solve difficulties could be shared between municipalities, and a uniform numbering system for stormwater sewer outfalls could be developed county-wide. The funding of these county offices should be collected by assessing a reasonable administrative percentage from the money available through the Act.

RESPONSE: Municipalities required to prepare a final map may contract with their counties to complete the mapping work. However, the Act stipulates that the municipalities shall adopt the final map; therefore, the ultimate responsibility lies with the municipalities. Also, several municipalities already have in place a numbering system for their stormwater sewers and would like to continue to use their own system. It should be noted that the Act did not allocate any money for the Department's administrative costs or costs for such a county program. The grants established through the Act are limited to stormwater mapping and the planning and design for the abatement of interconnections, cross-connections, combined sewer overflows and nonpoint source pollution.

COMMENT: What environmental assessment requirements must be complied with for the inventory and preliminary mapping of the stormwater sewer system?

RESPONSE: The environmental assessment requirements for the preliminary map and inventory, as well as the requirements for any grant recipient under the Act, are included in N.J.A.C. 7:22A-2.4(a)16, which requires grant recipients to comply with the Environmental Assessment Requirements for State Assisted Projects in N.J.A.C. 7:22-10.

COMMENT: The quarter quad map is an inadequate scale for mapping the proposed requirements. Most drainage maps that municipalities have completed use a scale of 1:1,200 (1 inch = 100 feet) or 1:3,600 (1 inch = 300 feet). The quarter quads will require such small lettering that it may be illegible. There is no mention as to what minimum drawing size or maximum drawing size will be required for the final maps.

RESPONSE: The Department requests that only the information for the location of outfalls and stormwater management basins be placed on the quarter quad scale, which is 1:12,000 (1 inch = 1000 feet), so that this information can be transferred to the Geographical Information System. The map scale for the final map has not been included in this adoption, but will be included in the final mapping rules.

COMMENT: To what accuracy do the maps have to be made? To locate the outfalls at the end of a street an accuracy of plus or minus 25 feet would be accurate enough for both a data base purpose and to locate items in the field. This accuracy is economically feasible considering the amounts of the grants to be provided and that the outfalls will not have to be field surveyed to complete the initial requirements of the rules at this accuracy level.

RESPONSE: The Department agrees with the above comment. The accuracy level for the preliminary map will be plus or minus 25 feet and the proposed rules, at N.J.A.C. 7:22A-3.10(d), have been changed to include this accuracy standard.

Summary of Agency-Initiated Changes:

1. The Department is amending N.J.A.C. 7:22A-6.8(b) in order to clarify the procedure for notifying a local government unit of the application deadlines for future funding cycles. The Department will notify sponsors of combined sewer overflow projects of application deadlines in future funding cycles either through the Priority System process as proposed or through an independent mass mailing. The Department wishes to retain the flexibility in the determination of application deadlines and is therefore modifying the requirement regarding the notification of sponsors.

Full text of the changes between proposal and adoption follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

CHAPTER 22A SEWAGE INFRASTRUCTURE IMPROVEMENT ACT GRANTS

SUBCHAPTER 1. GENERAL PROVISIONS

7:22A-1.1 Purpose

(a) This chapter prescribes the rules of the Department for the distribution of grant moneys to affected municipalities and other local government units to implement the requirements of the Act. The purpose of these measures is to prevent, control and abate water pollution caused by the discharge of untreated sewage and point and nonpoint source pollutants from stormwater sewer systems and combined sewer systems.

(b) In addition, this chapter is established to assure that the distribution and use of the moneys in the Fund is consistent with the Act and the policies of the State.

7:22A-1.2 Scope

(a) This chapter shall constitute the rules governing the Department's implementation of the Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq.

(b) The Act requires all affected municipalities to adopt a map of their stormwater sewer system, monitor stormwater outfall pipes and take appropriate abatement measures for interconnections, cross-connections and nonpoint sources of pollution.

(c) The Act requires any local government unit controlling or operating a combined sewer system within the State to provide appropriate pollution abatement measures at combined sewer overflow points.

(d) Any affected municipality may apply to the Department for a grant to prepare a preliminary map and inventory of their stormwater sewer system.

(e) Any local government unit authorized to control or operate a combined sewer system may apply to the Department for a grant for the planning and design of dry weather overflow elimination and/or solids/floatables reduction at combined sewer overflow points.

7:22A-1.3 Construction of rules

This chapter shall be liberally construed to permit the Department to discharge its statutory functions under the Act.

7:22A-1.4 Definitions

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

"Act" means the New Jersey Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq.

"Affected municipality" means any municipality with a stormwater sewer system discharging directly into the salt waters of Monmouth, Ocean, Atlantic or Cape May counties.

"Allowable costs" means those costs that are eligible, reasonable, necessary and allocable to the project, permitted by generally accepted accounting principles, approved by the Department in the grant agreement, and/or otherwise determined to be allowable pursuant to this chapter.

"Applicant" means any local government unit or affected municipality that applies for financial assistance pursuant to the provisions of this chapter.

"Certified mail" means any means of delivery where proof of delivery is obtained and date of receipt is recorded.

"Combined sewer system" means a sewer system which carries wastewater at all times and which also serves as the collector and transporter of stormwater from streets or other sources, thus serving a combined purpose.

"Combined sewer overflow" means the excess flow from a combined sewer system which is not conveyed to the plant for treatment, but transmitted by pipe or other channel directly to waters of the State.

"Combined sewer overflow abatement facilities" includes, but is not limited to, any equipment, plants, structures, machinery, or apparatus, or any combination thereof, acquired, used, constructed, or operated by or on behalf of a local government unit for storage, collection, reduction, recycling, disinfection, reclamation, disposal, separation or other treatment essential to the abatement of combined

sewer overflows. Such abatement measures include the elimination of dry weather overflows and the reduction of solids/floatables at combined sewer overflow points.

"Combined Sewer Overflow Fund" means the component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund as determined by the Department specifically dedicated to providing grants to local government units for the planning and design of combined sewer overflow abatement facilities.

"Combined sewer overflow point" means a discrete point in a combined sewer system which provides for the release of combined sewer overflows.

"Cross-connection" means the permitted or unpermitted physical connection of a wastewater line to a stormwater sewer system. A cross-connection shall not include a physical connection where the wastewater line carries only stormwater.

"Department" means the New Jersey Department of Environmental Protection.

"Design" includes, but is not limited to, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications and other action necessary to design appropriate abatement facilities.

"Director" means the Director of the Division of Water Resources.

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department pursuant to N.J.A.C. 7:14A-3.3 which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which will result in a discharge to surface water or a substantial modification in a discharge to surface water.

"Division" means the Division of Water Resources in the Department.

"Dry weather overflow" means a type of combined sewer overflow which is not the direct result of an increase in wastewater flows due to an event of precipitation.

"Economically disadvantaged individuals" as defined in 15 U.S.C. 637(a)(6) means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged individuals.

"Facilities" means any component or appurtenance of any sanitary or stormwater sewer system.

"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 seq.) and any amendments or supplements thereto.

"Final map" means the map, required by N.J.S.A. 58:25-25, adopted by the affected municipality that locates, lists and numbers all stormwater sewer and sanitary sewer lines within the geographical boundaries of the municipality, which are part of any stormwater sewer system that discharges into surface waters. The map shall also identify all cross-connections and known interconnections between stormwater and sanitary sewer systems, and indicate whether the cross-connections have received a permit from the Department.

"Force account work" means the use of the recipient's own employees or equipment for approved planning or design related activities.

"Fund" means the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund established by N.J.S.A. 58:25-23 et seq.

"Grant agreement" means a legal instrument executed between the State and a grant recipient which authorizes financial assistance and establishes the terms and conditions thereof to implement the provisions of this chapter.

"Grant modification" means any written alteration of the terms or conditions, budget or project method or other administrative, technical or financial provisions of the grant agreement.

"Ground water" means water below the land surface in a zone of saturation.

"Governing body" means chief legislative body of a local government unit or affected municipality.

"Interconnection" means the non-physical connection of sanitary sewer system with a stormwater sewer system. Interconnections may include, but are not limited to, leaks, flows or overflows from the sanitary sewer system into the stormwater sewer system, or vice versa.

"Local government unit" means a county, municipality, or county sewerage or utility authority, *municipal sewerage or utility authority,* municipal sewerage district, joint meeting, or any other political subdivision of the State or public entity authorized to control or operate a combined sewer system.

"Municipality" means a city, town, borough, county, village, parish, district, association or other public body created by or under State law.

"Planning" includes, but is not limited to, the preliminary planning to determine the economic and engineering feasibility of appropriate abatement facilities.

"Preliminary map" means the map which identifies the locations of stormwater outfalls and stormwater management basins within the geographical boundaries of an affected municipality in accordance with the requirements in N.J.A.C. 7:22A-3.10.

"Priority System, Intended Use Plan and Project Priority List" means the document through which projects are evaluated and ranked for funding eligibility by the Department in conformance with State law and the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendatory or supplementary acts thereto.

"Project" means the defined services as approved by the Department in the grant agreement.

"Recipient" means any applicant which has received financial assistance pursuant to this chapter.

"Salt waters" means waters having salinities generally greater than 3.5 parts per thousand at mean high tide.

"Sanitary sewer system" means a network of pipes, conduit or other physical facilities used to carry wastewater to a wastewater treatment facility. A sanitary sewer system shall not include a system which carries only stormwater.

"Scope of work" means the detailed description of the extent of services required to complete the project as specified in the grant agreement.

"Socially disadvantaged individuals" as defined in 15 U.S.C. 637(a)(5) means those individuals who have been subjected to racial and ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. 15 U.S.C. 637(d)(3) presumes that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities.

"Solids/floatables" means any wastes or debris floating, suspended or otherwise contained in wastewater or waters of the State.

"State" means the State of New Jersey.

"Stormwater" means waters which result primarily from surface runoff and includes street wash water and drainage.

"Stormwater management basin" means a basin which temporarily impounds stormwater runoff and discharges it through a hydraulic outlet structure or through infiltration to the surrounding soil. A stormwater management basin shall include but not be limited to detention basins, retention basins and infiltration basins.

"Stormwater outfall" means the endpoint of a stormwater sewer system, or any portion thereof, where there is a direct discharge to surface waters.

"Stormwater sewer" means a sewer intended to carry only stormwater.

"Stormwater sewer system" means the designed features within a municipality which collect, convey, channel, hold, inhibit or divert the movement of stormwater.

"Subagreement" means a written agreement between a recipient and another party and any lower tier agreement for services or supplies necessary to complete the project.

"Surface waters" means any waters of the State which are not ground water.

"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, septage, stormwater runoff or any combination thereof, or other residue discharged or collected into a sanitary or stormwater sewer 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 overflows, sewage collection systems, and other equipment, personal property and appurtenances necessary thereto.

"Water Quality Management Plans" means the plans prepared pursuant to Section 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.).

"Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

7:22A-1.5 Fund procedures

(a) The moneys appropriated pursuant to the Act and any interest earned thereon shall be deposited in a separate interest bearing account known as the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund. This non-lapsing fund shall terminate upon disbursement of all moneys appropriated pursuant to the Act.

(b) The Department may provide grants to affected municipalities and other local government units to implement the requirements of this chapter.

(c) Prior to awarding any grant money from the Fund, the Department shall, in writing, notify the presiding officers of both houses of the State Legislature of the applications received, the grant recipients, the amounts requested, the amounts to be awarded and the purposes for which the grants shall be used.

7:22A-1.6 Administration and performance of grant agreements

The grant recipient is responsible for the administration and success of the project, notwithstanding 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. Moneys awarded pursuant to this chapter shall be used in conformance with the Act, this chapter and the provisions of the grant agreement to achieve the grant objectives and to insure that the purposes set forth in the Act are fully executed.

7:22A-1.7 Enforcement (Reserved)

7:22A-1.8 Noncompliance

(a) In addition to any other remedies as may be provided by law or by the grant agreement, in the event of noncompliance with any provision of the Act, any condition of the grant agreement or any requirement of this chapter, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:22A-1.9;
2. Withhold grant moneys pursuant to N.J.A.C. 7:22A-1.10;
3. Order suspension of project work pursuant to N.J.A.C. 7:22A-1.11;
4. Terminate the grant agreement or rescind the grant moneys pursuant to N.J.A.C. 7:22A-1.12 or N.J.A.C. 7:22A-1.13; 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.

7:22A-1.9 Notice of noncompliance

Where the Department determines that the recipient is not in compliance with any provision of the Act, any condition of the grant agreement, or any requirement of this chapter, it will notify the recipient 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 corrective action is not taken or the action taken is inadequate, then the Department may issue a stop-work order, withhold disbursement or seek other relief. The Department may, however, withhold disbursement or issue a stop-work order pursuant to N.J.A.C. 7:22A-1.10 and 1.11 without the prior issuance of a notice pursuant to this section.

7:22A-1.10 Withholding of funds

The Department may withhold, upon written notice to the recipient, grant disbursements or any portion thereof where it determines that a recipient has failed to comply with any provision of the Act, any condition of the grant agreement or any requirement of this chapter.

7:22A-1.11 Stop-work orders

(a) The Department may order work to be stopped for good cause, which shall include, but not be limited to the following:

1. Default by the recipient; or
2. Noncompliance with any provision of the Act, any requirement of this chapter or any provision of the grant agreement.

(b) 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 Department considerations.

(c) Prior to issuance of a stop-work order, the Department shall afford the recipient an opportunity to discuss the stop-work order with the Department. The Department shall consider such discussions in preparing the order.

(d) 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. The duration of the stop-work order; and
5. Other suggestions from the Department to the recipient for minimizing costs.

(e) 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.

(f) 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 shall minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the period of the stop-work order 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. 7:22A-1.12; or
- iii. Authorize resumption of work.

2. If a stop-work order is rescinded 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 project schedule, and/or the project, and the grant agreement shall be modified if necessary. However, additional project costs as a result of the stop-work order shall be the responsibility of the recipient.

7:22A-1.12 Termination of the grant agreement

(a) Termination of the grant agreement by the Department shall be conducted as follows:

1. The Department may terminate the grant agreement in whole or in part for good cause, which shall include but not be limited to:

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- i. Substantial failure to comply with the terms and conditions of the grant agreement;
- ii. Default by the recipient;
- iii. A determination that the grant moneys were obtained by fraud;
- iv. 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. Grant moneys have been used for unallowable costs.

2. The Department shall give a written notice to the recipient (certified mail, return receipt requested) of its intent to terminate the grant agreement 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 grant agreement in whole or in part.

(b) Termination of the grant agreement by the recipient shall be conducted as follows:

1. A recipient shall not unilaterally terminate the project work for which grant moneys have 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 or intent thereof. The term "good cause" shall include, but not be limited to, circumstances beyond the control of the recipient such as fire, flood, riot or strike.

2. If the Department determines that there is good cause for the termination by the recipient of all or any portion of a project for which the grant moneys have been awarded, the Department may enter into a termination agreement or unilaterally terminate the grant agreement effective with the date of cessation of the project work by the recipient. The determination of whether there is sufficient good cause shall be solely within the discretion of the Department. If the Department determines that there is not sufficient good cause, the recipient shall remain bound by the terms and conditions of the grant agreement.

3. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the grant agreement pursuant to this section or rescind the grant pursuant to N.J.A.C. 7:22A-1.13.

(c) The Department and recipient may enter into a mutual agreement to terminate at any time pursuant to terms which are consistent with this chapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of financial assistance.

(d) Upon termination by either the Department or the recipient, the recipient may be required to immediately refund or repay the entire amount of the grant moneys received from the State and waive the undistributed balance. The Department may, at its discretion, require the immediate repayment of a specific portion of the grant and allow the remainder to be repaid in accordance with a repayment schedule. The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of grant moneys awarded under the grant agreement. The recipient, upon termination, shall make no new commitment without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

(e) In addition to any termination action, the Department retains the right to pursue other remedies as may be available under State law as warranted.

7:22A-1.13 Rescission of grant funds

(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 30 days prior to the intended date of rescission, the Department shall give a written notice to the recipient (certified mail,

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return receipt requested) of its 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 State law.

7:22A-1.14 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer moneys pursuant to this chapter and the grant agreement and award subagreements pursuant to those funds free from bribery, graft and corrupt practices. The recipient has 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 Department when such allegation or evidence comes to its attention and shall periodically advise the Department of the status and ultimate disposition of any related matter.

7:22A-1.15 Debarment

(a) No recipient shall enter into a subagreement for work on a 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 subagreement for work on a project a clause stating that any party to any subagreement may be debarred, suspended or disqualified from contracting on any project financially assisted by the State or the Department if the party commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) The recipient, after executing the grant agreement but prior to the acceptance of grant moneys, shall certify that no party to any subagreement 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 the grant moneys are used for disbursement to a debarred firm, the Department reserves the right to immediately terminate the grant agreement pursuant to N.J.A.C. 7:22A-1.12 and/or to take such other action pursuant to this subchapter as may be appropriate.

(d) 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 subagreement which is or shall be funded from the Fund under this chapter, may present information to the Department why this section should not apply to such a 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 contractor 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.

7:22A-1.16 Administrative hearings

(a) To request an administrative hearing on a contested case, an affected municipality, local government unit or other municipality aggrieved by a decision or action of the Department may, within 20 calendar days from receipt of the decision or action, submit a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the party requesting the hearing and its authorized representative, if any;
2. The position of the requester on each question of law and fact at issue and its relevance to the Department's decision;
3. Information supporting the requester's position and copies of other written documents relied upon to support the request for a hearing;
4. An estimate of the time required for the hearing (in days and/or hours); and
5. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 20 days after receipt by the requester of the decision or within 20 days of the Department's action being challenged shall be denied by the Department.

(c) If the requester fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) During the pendency of the review and hearing, the challenged Department decision or action shall remain in full force and effect, unless a stay has been requested in writing and granted by the Director.

(e) Following receipt of request for a hearing pursuant to (a) above, the Department may attempt to settle the dispute by conducting such proceedings, meetings, and conferences as deemed appropriate.

(f) If it grants the request for a hearing, the Department will file the request for a hearing with the Office of Administrative Law. The hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:22A-1.17 Use and disclosure

All applications and submissions, 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 State law.

7:22A-1.18 Access

(a) The recipient and any party to a subagreement shall provide to the Department and any authorized representative of the Department access to the facilities, premises and records related to the project. All subagreements executed by the recipient shall contain provisions allowing 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 parties to a subagreement which contract directly with the recipient to receive a portion of State moneys, may be subject to a financial audit.

(d) All records pertinent to the grant agreement shall be retained and available to the Department for a minimum of three years after issuance of the final payment by the Department, until the final audit has been made by the Department or until otherwise required by law.

7:22A-1.19 Publicity

Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge State financial assistance.

7:22A-1.20 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of this chapter are declared to be severable.

SUBCHAPTER 2. GRANT AGREEMENT PROCEDURES AND REQUIREMENTS

7:22A-2.1 Applicability

This subchapter establishes the Department's procedures and requirements governing the execution of every grant agreement pursuant to the Act. Any affected municipality or local government unit applying for a grant or having received a grant pursuant to the Act shall at a minimum conform with the requirements of this subchapter, as applicable.

7:22A-2.2 Grant award agreements

(a) Subsequent to the receipt of an application, the Department shall prepare and transmit the grant agreement for the grant award to the applicant.

(b) The grant agreement shall set forth the terms and conditions of the grant award, approved project scope, allowable costs, disbursement schedule, and approved commencement and completion dates for the project.

(c) The applicant shall execute the grant agreement within such period of time and pursuant to such terms and conditions as the Department may determine in its sole discretion.

(d) The grant agreement shall be executed by a person authorized by resolution to obligate the applicant to the terms and conditions of the grant agreement. A certified, true sealed copy of the authorizing resolution shall also be submitted to the Department at this time.

(e) 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.

(f) After the State has completed its internal processing and execution of the grant agreement, the Department shall transmit a copy of the executed grant agreement to the recipient.

(g) The State shall not execute a grant agreement if the applicant is in current default on any State loan.

7:22A-2.3 Effect of grant awards

(a) At the time of the execution of the grant agreement by the Department and the recipient, the grant award for the project shall become effective and shall constitute an obligation of moneys in the amount and for the purposes stated in the grant agreement.

(b) Cost overruns shall be the sole responsibility of the recipient. The award of funds shall not commit or obligate the Department to award any continuation or supplemental funds to cover cost overruns of the project.

(c) The award of funds by the State shall not be used as a defense by the recipient to any action by any agency for the recipient's failure to comply with the Act or to obtain all requisite permits, licenses and operating certificates.

7:22A-2.4 Grant conditions

(a) The following requirements, as well as such statutes, rules, terms and conditions which may be applicable, are conditions of each grant, and conditions to each disbursement under the grant agreement:

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 any party to a subagreement maintain their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions;

3. The recipient *, for grants for combined sewer overflows,* shall comply with the rules for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, N.J.A.C. 7:22-9;

4. The recipient shall comply with the permit requirements of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., N.J.A.C. 7:14A and any applicable New Jersey Pollutant Discharge Elimination System permit;

5. The Department shall not be liable for and the recipient shall pay the unallowable costs of the project and shall pay the allowable costs not covered by the grant agreement;

6. The grant 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 grant agreement or any amendment thereto;

7. The recipient shall comply with all applicable requirements of federal, State, and local laws, ordinances, rules and with the requirements of the grant agreement;

8. An amount of any grant disbursement equal to 100 percent of any unpaid portion of a State assessed civil administrative penalty pursuant to N.J.A.C. 7:14-8 shall be withheld until said penalty is paid in full;

9. The recipient shall certify that it has not and shall not enter into any subagreement with, nor has any subagreement 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;

10. The recipient shall certify that the project or phase of the project was initiated and completed in accordance with the time

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schedule specified in the grant agreement or approved amendments thereto;

11. The recipient must submit proof that it and any party to a subagreement shall comply with all insurance requirements of the grant agreement and, when appropriate, certify that the insurance is in full force and effect and that the premiums have been paid;

12. The recipient shall certify that it and any party to a subagreement 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 promulgated pursuant thereto including but not limited to N.J.A.C. 17:27;

13. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 and N.J.A.C. 7:22-9.11; and

14. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any grant agreement for the project in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq.;

15. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8) governing public bodies or utilities created pursuant to New Jersey law to treat wastewater within the territorial boundaries of a service area;

16. The recipient shall comply with the Environmental Assessment Requirements for State Assisted Projects (N.J.A.C. 7:22-10);

17. No Fund moneys shall be disbursed to a local government unit which 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 Fund disbursement where it determines that the affected municipality or 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.

(b) The recipient shall certify that it is in compliance with all other requirements and conditions of the grant 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 Act.

(d) Recipients shall include the following statement in each subagreement awarded pursuant to this chapter:

"This contract or subcontract is or may be funded in part with funds from the New Jersey Department of Environmental Protection. Neither the State of New Jersey nor any of its departments, agencies, or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the requirements contained in N.J.A.C. 7:22A."

(e) The recipient shall insert into any subagreements, and shall ensure that their contractor includes within their subcontracts, the following statement:

"In accordance with the provisions of N.J.S.A. 58:11B-26, the contractor (subcontractor) agrees to comply with all of the provisions of N.J.A.C. 7:22-9."

7:22A-2.5 Project changes and modifications to grant agreements

(a) Due to the limited amount of funds available, there shall be no grant modification increasing the grant amount. Increased costs resulting from a grant modification shall be the responsibility of the recipient.

(b) The recipient shall promptly notify the Division in writing (certified mail, return receipt requested) of events or proposed changes which may require modifications, 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;

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5. Acceleration or deceleration in the time for performance of the project or any major phase thereof; and

6. Changes which may increase or decrease the total cost of a project.

(c) If the Department decides a formal amendment is necessary, the recipient shall be notified and a formal grant amendment shall be processed in accordance with N.J.A.C. 7:22A-2.6. If the Department decides a formal grant amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:22A-2.7 or 2.8, as applicable.

7:22A-2.6 Formal grant amendments

(a) The Department shall require a formal grant amendment to change principal provisions of a grant agreement where project changes substantially alter the objective or scope of the project or time of performance of the project or any major phase thereof.

(b) The State and recipient shall effect a formal grant amendment only by a written amendment to the grant agreement executed by the State and the recipient.

7:22A-2.7 Administrative 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 nonsubstantial alteration of the disbursement schedule for grant moneys, 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 from the Department as specified in the grant agreement.

7:22A-2.8 Other changes

All other project changes, which do not require formal grant amendments as stated in N.J.A.C. 7:22A-2.6, shall be undertaken only upon written approval of the Department.

7:22A-2.9 State disbursements

Disbursement of grant funds shall be made as indicated in the grant agreement at intervals as work progresses and expenses are incurred by the recipient and approved by the Department. Total disbursements shall not exceed the cumulative grant moneys indicated in the disbursement schedule of the grant agreement or the allowable costs which have been incurred at that time. No disbursement, other than an advanced payment for preliminary mapping and inventory pursuant to N.J.A.C. 7:22A-3, 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.

7:22A-2.10 Assignment

The right of a recipient to receive disbursements from the State under a grant agreement may not be assigned.

7:22A-2.11 Unused funds

Where the total amount disbursed under a grant agreement is less than the initial grant award, the grant agreement amount shall be adjusted and the difference retained by the Fund to be reallocated to other projects.

SUBCHAPTER 3. PRELIMINARY MAPPING AND INVENTORY

7:22A-3.1 Applicability

(a) All affected municipalities shall adopt a final map as required by N.J.S.A. 58:25-25.

(b) To facilitate the preparation of a final map, any affected municipality may apply to the Department for a grant to prepare a preliminary map and inventory.

7:22A-3.2 Applicant eligibility

(a) Subject to (b) below, any affected municipality, a list of which is included in Appendix A, may apply for a grant to prepare a preliminary map and inventory.

(b) Any municipality may petition the Department's inclusion or omission from Appendix A by submitting documentary evidence

which proves to the Department's satisfaction that the municipality's stormwater sewer system either does or does not directly discharge into the salt waters of Atlantic, Cape May, Monmouth or Ocean counties. A municipality may contest the Department's decision on the petition in accordance with N.J.A.C. 7:22A-1.16(b).

7:22A-3.3 Funding

Grant amounts from the Department for preliminary mapping and inventory are based on the applicant's estimated project costs and shall not exceed the maximum amounts listed in Appendix A. The Department may agree to provide up to 90 percent of the allowable project costs (subject to the maximum grant amounts set forth in Appendix A) and the applicant shall provide at least 10 percent of the allowable project costs.

7:22A-3.4 Pre-application procedures

(a) Applicants may request a pre-application conference to discuss application procedures, prior to submission of a grant application. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Department.

(b) Unless otherwise specified, any questions concerning the preliminary mapping and inventory requirements of this subchapter should be directed to the Department of Environmental Protection, Division of Water Resources, Planning and Standards Element, CN-029, Trenton, New Jersey 08625, (609) 633-7010.

7:22A-3.5 Application procedures

(a) Each application for preliminary mapping and inventory grant moneys shall be received by the Department by *[October 6, 1989]* ***February 19, 1990*** or as otherwise extended by the Department.

(b) Each applicant shall include full and complete documentation in the application, including but not limited to:

1. A brief description of how the grant shall be used and the method of accomplishing those purposes;

2. A description of how the applicant plans to pay for its share of the project costs, including those costs in excess of the grant award necessary to fully complete the project;

3. A description of the steps the applicant plans to take before receiving grant moneys that shall guarantee that at the time of signing of the grant agreement that the applicant shall be irrevocably committed to pay its share of the project costs;

4. An estimated budget of the applicant's project costs;

5. A list of the salt waters into which the applicant's stormwater sewer system discharges; and

6. Any other supplementary materials the Department requires.

(c) Each applicant shall submit a certified true sealed copy of a resolution passed by the applicant. The resolution shall:

1. Authorize the filing of an application for grant moneys for preliminary mapping and inventory;

2. Specify the individual, by name or title, authorized to sign the application on behalf of the applicant;

3. Commit the applicant to providing at least 10 percent of the project costs; and

4. Commit the applicant to comply with the Department's standards for the preliminary mapping and inventory as specified in N.J.A.C. 7:22A-3.

(d) The governing body of any applicant may contract with the county health department or other county health agency to conduct the inventory and prepare the preliminary map in accordance with the requirements of this subchapter.

7:22A-3.6 Application evaluation

(a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. Incomplete applications will be returned to the applicant with a letter detailing the deficiencies. Incomplete applications which are not amended to conform to the comments of the Department and resubmitted within the timeframe established by the Department may be denied;

2. Budget evaluation to ensure that the proposed project costs are reasonable, applicable and allowable; and

3. Final administrative evaluation.

(b) During the evaluation process, the recipient shall, upon the request of the Department, submit supplemental documents or information necessary for the Department to complete its full review of the application. The Department may suspend its evaluation until the additional information or documents have been received. Failure to submit the additional information or documents may be grounds for denial of the grant application.

7:22A-3.7 Department approval or disapproval

(a) After a final evaluation of a completed application, the Department shall take one of the following actions:

1. Approve the application for a grant and initiate the preparation of a grant agreement; or

2. Disapprove the application.

(b) The applicant shall be notified in writing of the Department's decision to disapprove an application.

(c) An applicant may amend and resubmit an application disapproved by the Department within the timeframe established by the Department.

7:22A-3.8 Reporting requirements

As specified in the grant agreement, the recipient shall submit a copy of the preliminary base map prepared in accordance with N.J.A.C. 7:22A-3.10, a copy of the narrative information prepared in accordance with N.J.A.C. 7:22A-3.11 and a narrative detailing the inventory information gathered in accordance with N.J.A.C. 7:22A-3.9.

7:22A-3.9 Inventory

(a) The recipient shall inventory all existing maps, where available, showing locations of stormwater and sanitary sewer systems. The maps may include tax maps, road maps, paper topographic maps, or other maps or combination of maps.

(b) The recipient shall inventory all existing studies, surveys and reports of the stormwater and sanitary sewer systems.

(c) All maps, studies, surveys, and reports gathered during the inventory shall be maintained on file at one central location that will be identified for the Department by the recipient.

7:22A-3.10 Preliminary mapping

(a) The preliminary map shall locate and number all stormwater outfalls and all stormwater management basin locations within the geographical boundaries of the affected municipality.

(b) At a minimum, stormwater outfalls and stormwater management basins shall be plotted on the March, 1986 quarter-quad mylar transparent 1:12,000 scale air photo maps and necessary overlays which are available through the Department. The recipient shall include street names for reference purposes.

(c) The recipient shall map all outfalls as a cross at the end of the pipe. Stormwater management basins shall be mapped as a cross within a circle at the outlet point.

(d) At a minimum, the locational accuracy for all outfall points and stormwater management basins shall be plus or minus 25 feet.

7:22A-3.11 Additional information

(a) The recipient shall include the following narrative information in the format provided by the Department with the preliminary map:

1. Information regarding all numbered stormwater outfall locations, including:

i. The diameter of each outfall;

ii. The approximate drainage area to each outfall, in acres;

iii. Accessibility to each outfall;

iv. The number and type of any regulating or treatment structures at each outfall (flow gauges, overflows, etc.);

v. The pipe material of each outfall;

vi. The presence of dry weather discharges from each outfall;

vii. The general land use of the drainage area to each outfall;

viii. The name of the receiving water for each outfall;

ix. The owner of each outfall;

x. The *[latitude and longitude]* ***state plane coordinates*** of each outfall; and

xi. A descriptive location of each outfall.

2. Information regarding all numbered stormwater management basins, including:

- i. The size of the basin in acre-feet;
- ii. The type of basin;
- iii. The type of spillway (if applicable);
- iv. The general land use of the drainage area to each basin;
- v. The name of the receiving water for each basin;
- vi. The owner of each basin;
- vii. The *[latitude and longitude]* ***state plane coordinates*** of the outlet point of each basin; and
- viii. A descriptive location of each basin.

7:22A-3.12 Allowable project costs

(a) Project costs shall be allowed to the extent permitted by this chapter and the grant agreement. Allowable project costs may include:

1. Work performed by the recipient's personnel, or any party to a subagreement after the effective date of this chapter including salaries and fringe benefits for the recipient's personnel or persons hired to complete the project; and

2. Equipment and supplies necessary used solely to complete the project which shall include, but not be limited to, graphic materials, maps, vehicle operating costs, and protective clothing.

(b) Notwithstanding (a) above, the Department shall not participate in costs for work that the Department determines is not in compliance with this chapter or the specifications or requirements of subagreements or grant agreements. Costs for work not in compliance with this chapter, the subagreements or grant agreements are unallowable.

SUBCHAPTER 6. COMBINED SEWER OVERFLOW FUND PROCEDURES AND REQUIREMENTS

7:22A-6.1 Applicability

This subchapter shall constitute the rules of the Department governing the award of grants pursuant to the Act to local government units for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points throughout the State. These rules prescribe the procedures for the award of grants from the Combined Sewer Overflow Fund.

7:22A-6.2 Combined Sewer Overflow Fund

(a) The moneys in the Combined Sewer Overflow Fund shall be available for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points pursuant to the provisions of this subchapter.

(b) Any local government unit authorized to control or operate a combined sewer system shall be eligible to receive grant moneys from the Combined Sewer Overflow Fund. Grant moneys shall be provided to the extent available to local government units for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points based on the points awarded to the project in accordance with the Priority System ranking criteria and the submittal of the complete application within the prescribed time frames. As a component of the proposed Priority System, the Department may establish application deadlines for applicable funding cycles and a deadline by which new applications for planning and design grants for dry weather overflow elimination and solids/floatables reduction shall no longer be accepted or acted upon. Any remaining moneys in the Combined Sewer Overflow Fund would be available for other authorized purposes under the Act.

(c) The consideration for a grant award from the Combined Sewer Overflow Fund shall not be used as a defense by the local government unit to any action by any agency for the local government unit's failure to comply with the Act or to obtain and comply with all requisite permits, licenses and operating certificates.

7:22A-6.3 Terms of financial assistance from the Combined Sewer Overflow Fund

(a) The Department may offer grants from moneys made available pursuant to the Act for up to 90 percent of the allowable costs for the planning and/or design of combined sewer overflow abatement facilities.

(b) Moneys will be disbursed to recipients at intervals as work progresses and expenses are incurred and approved by the Department unless otherwise restricted by N.J.A.C. 7:22A-6.11 or unless

otherwise indicated in the grant agreement. Local government units shall submit vouchers and other documentation as may be required by the Department in support of their request for disbursement of funds.

(c) The specific terms and conditions of the financial assistance shall be incorporated into the grant agreement to be executed by the recipient and the State.

7:22A-6.4 Criteria for project priority

(a) Each year, the Division shall develop a Priority System, Intended Use Plan and Project Priority List for the forthcoming federal Fiscal Year. The Priority System shall provide the ranking methodology which evaluates wastewater treatment facilities (including combined sewer overflow abatement facilities) individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions.

(b) Each year, the proposed Priority System, Intended Use Plan and Project Priority List shall be the subject of at least one public hearing, including a public comment period. Local government units desiring to be included on the Project Priority List shall make their request for inclusion before the close of the public comment period, except as provided for in N.J.A.C. 7:22A-6.8(a). The following shall be submitted by the authorized representative of the local government unit when requesting inclusion in the Project Priority List:

1. Brief description of the project;
2. Brief description of receiving water classification, existing water quality characteristics and existing water quality deficiencies;
3. Estimated costs associated with planning and design of the project;
4. Estimated costs associated with building the project; and
5. An estimate of population served by the combined sewer.

(c) All requests for inclusion on the Project Priority List shall be sent to:

Assistant Director
Municipal Wastewater Assistance Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

(d) Only those local government units committing to the project document submittal or application deadlines shall have their project considered for financial assistance in the forthcoming funding cycle.

7:22A-6.5 State and federal funding

Local government units which receive grants from the Combined Sewer Overflow Fund shall be ineligible to receive financial assistance for the same scope of work (planning or design) for the project in the form of a federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6. Further, those local government units which receive financial assistance in the form of a federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6 shall be ineligible to receive grant moneys for the same scope of work (planning or design) for the project pursuant to this subchapter.

7:22A-6.6 Project bypassing

(a) The Department shall consider a local government unit's failure to submit the complete application within the time period specified as a decision to not pursue a grant for the project during the applicable funding cycle. Project applications which do not substantially comply with the requirements of N.J.A.C. 7:22A-6.8 shall be bypassed.

(b) Written notice of a bypass action shall be forwarded to the local government unit. As a result of such action, the project on the Project Priority List shall become ineligible to receive Combined Sewer Overflow Fund moneys in the applicable funding cycle. This action may allow the next highest ranked project to fall within the

fundable range on the Project Priority List. A bypassed project shall remain on the Project Priority List for consideration of financial assistance in future funding cycles.

7:22A-6.7 Pre-application procedures

(a) Local government units are urged to be familiar with the requirements of this subchapter and to contact the Department prior to the initiation of the planning process so that their projects are in a position to proceed in a timely manner.

(b) The Department requires a pre-application conference with potential applicants prior to submission of a formal application for Combined Sewer Overflow Fund moneys. 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 administration of the Combined Sewer Overflow Fund and requests for a pre-application conference should be directed to:

Assistant Director
Municipal Wastewater Assistance Element
Division of Water Resources
NJ Department of Environmental Protection
CN-029
Trenton, NJ 08625
(609) 292-8961

7:22A-6.8 Application procedures

(a) For the initial funding cycle, completed applications by local government units requesting Combined Sewer Overflow Fund moneys must be received by the Division by *[October 6, 1989]* ***April 6, 1990*** or as otherwise extended by the Department. Since the project's rank on the Project Priority List is the first step in determining eligibility for Combined Sewer Overflow Fund moneys, sponsors of projects which are not on the current Project Priority List shall provide the information listed in N.J.A.C. 7:22A-6.4(b) before or concurrently with the complete application and in conformance with the applicable deadlines.

(b) For all future funding cycles, sponsors of combined sewer overflow projects shall be required to have their project placed and ranked on the Project Priority List prior to the close of the comment period for the proposed Priority System, Intended Use Plan and Project Priority List. Sponsors shall be notified of applicable application deadlines through the Priority System *[proposal]* ***or through mailed notice by the Department***.

(c) The Department may establish a date by which new applications for combined sewer overflow abatement measures in future funding cycles (i.e., dry weather overflow elimination and solids/floatables reduction) shall no longer be accepted or acted upon.

(d) Any local government unit, which sponsors a project in a jurisdiction in which it is not the governmental entity responsible for the wastewater conveyance and treatment facilities pursuant to the Water Quality Management Plans, to which the combined sewer system contributes shall obtain a resolution from such governmental agency consenting to the undertaking of the local government unit's project prior to or concurrently with the application for Combined Sewer Overflow Fund moneys.

(e) Each application for Combined Sewer Overflow Fund moneys shall be submitted to the Division in conformance with the time period specified or as otherwise extended by the Department and shall include full and complete documentation and any supplementary materials that the Department requires an applicant to furnish.

(f) Submissions which do not substantially comply with this subchapter shall not be processed further and will be bypassed.

(g) The following shall be submitted when applying for a Combined Sewer Overflow Fund grant for the planning of dry weather overflow elimination and solids/floatables reduction:

1. An application for a Combined Sewer Overflow Fund grant for planning activities. Each application shall constitute an agreement to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for Combined Sewer Overflow Fund

moneys and specifying the individual authorized to sign the 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. 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.A.C. 10:5) (CGA Form LP-5);

4. 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 planning of the proposed project including a schedule for the completion of certain tasks and a proposed public participation program (as appropriate); and

iv. A description of the anticipated construction required for abatement and an estimate of anticipated design and construction costs;

5. Comments or approvals of relevant State, local and federal agencies;

6. Draft engineering agreements and related cost documentation associated with specific planning activities. Project sponsors must receive authorization to award any subagreement from the Municipal Wastewater Assistance Element within the Division prior to the award of any subagreement for which cost reimbursement is sought. Note that the local government unit shall be required to execute the approved subagreements prior to or concurrently with the award of a Combined Sewer Overflow Fund grant for planning activities;

7. Adequate information to ensure compliance with the regulations governing the award of contracts to socially and economically disadvantaged individuals (N.J.A.C. 7:22-9);

8. Proposed intermunicipal or other agreements necessary for the construction and operation of the proposed facilities, if applicable;

9. A schedule for initiation and completion of the design and building of the project including milestones; and

10. Certification from the local government unit that at least 10 percent of the planning costs for the project will be provided by the local government unit.

(h) In addition to evidence of planning documentation approval (including evidence of compliance with appropriate Water Quality Management Plans and the Environmental Assessment Regulations (N.J.A.C. 7:22-10)), the following shall be submitted when applying for a Combined Sewer Overflow Fund grant for the design of dry weather overflow elimination and solids/floatables reduction:

1. An application for a Combined Sewer Overflow Fund grant for design activities. Each application shall constitute an offer to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for Combined Sewer Overflow Fund moneys and specifying the individual authorized to sign the 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. 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.A.C. 10:5) (CGA Form LP-5);

4. A plan of study representing:

i. The proposed project area;

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

iii. The nature and scope of the design of the proposed project including a schedule for the completion of certain tasks and a proposed public participation program (as appropriate); and

iv. A description of the estimated building costs for the project;

5. Comments or approvals of relevant State, local and federal agencies;

6. Draft engineering agreements and related cost documentation associated with specific design activities. Project sponsors must re-

ADOPTIONS

ceive authorization to award any subagreement from the Municipal Wastewater Assistance Element within the Division prior to the award of any subagreement for which cost reimbursement is sought. Note that the local government unit shall be required to execute the approved subagreements prior to or concurrently with the award of a Combined Sewer Overflow Fund grant for design activities;

7. Adequate information to ensure compliance with the regulations governing the award of contracts to socially and economically disadvantaged individuals (N.J.A.C. 7:22-9);

8. Proposed intermunicipal or other agreements necessary for the construction and operation of the proposed facilities, if applicable;

9. A schedule for initiation and completion of the construction of the project including milestones; and

10. Certification from the local government unit that at least 10 percent of the design costs for the project will be provided by the local government unit.

(i) All submittals shall be made in a format compatible with the Department's geographical information system (GIS).

(j) All applications shall be sent to:

Assistant Director
Municipal Wastewater Assistance Element
Division of Water Resources
NJ Department of Environmental Protection
CN-029
Trenton, NJ 08625

7:22A-6.9 Evaluation of application

(a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness 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 Act;

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 certify the project for funding or bypass the project for funding in the funding cycle for which the application was submitted.

(c) The Division shall promptly notify an applicant by certified mail if its project has been bypassed. As a result of a project bypass action, the next highest ranked project on the Project Priority List may fall within the fundable range.

7:22A-6.10 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.

7:22A-6.11 Combined Sewer Overflow Fund disbursements

(a) For dry weather overflow elimination and solids/floatables reduction planning or design grants, disbursements shall be limited as follows:

1. Disbursements for allowable planning costs shall not exceed 50 percent of the allowable planning costs prior to the submission of complete planning documentation to the Department;

2. Disbursements for allowable planning costs shall not exceed 75 percent of the allowable planning costs prior to the issuance of an environmental assessment in accordance with N.J.A.C. 7:22-10;

3. Disbursements for allowable design costs shall not be made until all planning requirements have been completed to the Department's satisfaction;

4. Disbursements for allowable design costs shall not exceed 50 percent of the allowable design costs prior to the submittal of plans, specifications, contract documents and an engineer's technical design report for the project;

5. Disbursement for allowable design costs shall not exceed 75 percent of the allowable design cost prior to receiving approval of the contract documents for the building of the project from the Municipal Wastewater Assistance Element within the Division.

ENVIRONMENTAL PROTECTION

7:22A-6.12 Project initiation

(a) The recipient shall initiate and complete the project in accordance with the project schedule contained in the grant agreement.

(b) The recipient shall not award any subagreement for planning or design of the project until authorization to award has been given by the Municipal Wastewater Assistance Element within the Division.

7:22A-6.13 Allowable project costs

(a) Project costs shall be allowed to the extent permitted by this subchapter and the grant agreement. Allowable project costs may include:

1. The costs of subagreements for planning or design of the project; and

2. The costs for establishing or using small, minority, and women's business liaison services.

(b) Notwithstanding (a), above, unallowable project costs shall include, but not be limited to:

1. The costs for water quality monitoring to obtain a NJPDES permit or Discharge Allocation Certificate;

2. The costs for subagreements for which authorization from the Department to award was not received in advance of the subagreement;

3. The costs for work that the Department determines is not in compliance with the approved scope of work for the project identified in the grant agreement; and

4. The costs for work not in compliance with this subchapter or the subagreements.

7:22A-6.14 Force account work

(a) A recipient can not use force account work for activities related to the scope of work for which the grant was awarded where costs shall exceed \$25,000 unless the recipient has received the Division's prior written approval therefore.

(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.

7:22A-6.15 Value engineering

(a) Recipients of Combined Sewer Overflow Fund design grants shall conduct value engineering for the project if the total estimated building cost exceeds \$10 million.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.

APPENDIX A

Affected Municipalities	Road Mileage	Maximum Grant Amount
ATLANTIC COUNTY		
Absecon City	47.29	\$ 8,600
Atlantic City	104.91	\$19,100
Brigantine City	59.76	\$10,900
Corbin City	9.85	\$ 5,000
Egg Harbor City	54.81	\$10,000
Egg Harbor Township	222.52	\$40,500
Estell Manor City	55.57	\$10,100
Galloway Township	223.75	\$40,750
Hamilton Township	250.41	\$45,000
Linwood City	39.88	\$ 7,250
Longport Borough	13.40	\$ 5,000
Margate City	40.99	\$ 7,450
Pleasantville City	66.99	\$12,200
Port Republic City	19.26	\$ 5,000
Somers Point City	51.29	\$ 9,350
Ventnor City	35.82	\$ 6,500
Weymouth Township	34.09	\$ 6,200
CAPE MAY COUNTY		
Avalon Borough	41.73	\$ 7,600
Cape May City	28.58	\$ 5,200
Cape May Point Borough	7.67	\$ 5,000
Dennis Township	81.06	\$14,750
Lower Township	152.53	\$27,750

Middle Township	147.53	\$26,850
North Wildwood City	35.35	\$ 6,450
Ocean City	107.23	\$19,500
Sea Isle City	32.34	\$ 5,900
Stone Harbor Borough	23.93	\$ 5,000
Upper Township	102.23	\$18,600
West Cape May Borough	12.90	\$ 5,000
West Wildwood Borough	5.75	\$ 5,000
Wildwood City	33.60	\$ 6,100
Wildwood Crest Borough	31.87	\$ 5,800

MONMOUTH COUNTY

Aberdeen Township	58.77	\$10,700
Allenhurst Borough	5.04	\$ 5,000
Asbury Park City	35.81	\$ 6,500
Atlantic Highlands	23.33	\$ 5,000
Avon-By-The-Sea Borough	12.95	\$ 5,000
Belmar Borough	24.34	\$ 5,000
Bradley Beach Borough	14.42	\$ 5,000
Brielle Borough	24.05	\$ 5,000
Deal Borough	18.04	\$ 5,000
Fair Haven Borough	23.37	\$ 5,000
Hazlet Township	65.37	\$11,900
Highlands Borough	16.82	\$ 5,000
Keansburg Borough	26.99	\$ 5,000
Keyport Borough	22.69	\$ 5,000
Little Silver Borough	32.22	\$ 5,850
Loch Arbor Village	2.05	\$ 5,000
Long Branch City	87.00	\$15,850
Manasquan Borough	26.38	\$ 5,000
Matawan Borough	31.18	\$ 5,700
Middletown Township	318.13	\$45,000
Monmouth Beach Borough	13.87	\$ 5,000
Neptune City	18.32	\$ 5,000
Neptune Township	121.23	\$22,050
Oceanport Borough	27.03	\$ 5,000
Red Bank Borough	29.75	\$ 5,400
Rumson Borough	48.22	\$ 8,800
Sea Bright Borough	6.66	\$ 5,000
Sea Girt Borough	16.74	\$ 5,000
Shrewsbury Borough	17.49	\$ 5,000
Spring Lake Borough	28.79	\$ 5,250
Spring Lake Heights	16.87	\$ 5,000
Tinton Falls Borough	60.81	\$11,050
Union Beach Borough	24.47	\$ 5,000
Wall Township	152.79	\$27,800

OCEAN COUNTY

Barneгат Light Borough	9.80	\$ 5,000
Barneгат Township	80.81	\$14,700
Bay Head Borough	10.52	\$ 5,000
Beach Haven Borough	20.41	\$ 5,000
Beachwood Borough	52.10	\$ 9,500
Berkeley Township	206.84	\$37,650
Brick Township	282.16	\$45,000
Dover Township	392.86	\$45,000
Eagleswood Township	22.31	\$ 5,000
Harvey Cedars Borough	9.24	\$ 5,000
Island Heights Borough	11.42	\$ 5,000
Lacey Township	166.84	\$30,350
Lavallette Borough	16.94	\$ 5,000
Little Egg Harbor Township	95.96	\$17,450
Long Beach Township	66.20	\$12,050
Mantoloking Borough	6.36	\$ 5,000
Ocean Gage Borough	12.80	\$ 5,000
Ocean Township	48.98	\$ 8,900
Pine Beach Borough	14.98	\$ 5,000
Point Pleasant Beach	23.64	\$ 5,000
Point Pleasant Borough	77.03	\$14,000
Seaside Heights Borough	12.27	\$ 5,000
Seaside Park Borough	17.18	\$ 5,000
Ship Bottom Borough	16.16	\$ 5,000
South Toms River Borough	15.49	\$ 5,000
Stafford Township	140.40	\$25,550
Surf City Borough	17.80	\$ 5,000
Tuckerton Borough	18.92	\$ 5,000

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Burden of Proof

Discarded Commercial Chemical Products

Adopted New Rule: N.J.A.C. 7:26-1.13

Adopted Amendment: N.J.A.C. 7:26-8.15

Proposed: October 16, 1989 at 21 N.J.R. 3219(a).

Adopted: December 26, 1989 by Christopher J. Daggett,

Commissioner, Department of Environmental Protection.

Filed: December 29, 1989 as R.1990 d.65, **without change**.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 042-89-09.

Effective Date: February 5, 1990.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

The public comment period closed November 15, 1989. **No comments were received.** The proposed new rule and amendment are being adopted without change.

Full text of the adoption follows.

7:26-1.13 Burden of proof

(a) In an enforcement action, persons claiming that they qualify for any exclusion or exemption in N.J.A.C. 7:26 or that they are not otherwise subject to the rules in N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law releasing them from the requirements of N.J.A.C. 7:26.

(b) In an enforcement action, persons claiming that a certain material is not a solid waste shall demonstrate and appropriately document that the material is not a solid waste and that there is a legal disposition for the material.

(c) In an enforcement action, persons claiming that a certain material is conditionally exempt from N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law which renders the material conditionally exempt from N.J.A.C. 7:26 and that there is a legal disposition for the material.

(d) In an enforcement action, an owner or operator claiming that they are actually recycling hazardous waste shall demonstrate and appropriately document that the facility meets the definition of a recycling facility at N.J.A.C. 7:26-1.4.

7:26-8.15 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof

(a) The following discarded commercial chemical products, manufactured for commercial or manufacturing use, their off-specification species, or their container residues or spill residues are hazardous waste if and when they are a solid waste as defined at N.J.A.C. 7:26-1.6:

1.-7. (No change.)

(b)

DIVISION OF WATER RESOURCES

Notice of Administrative Correction

Disposal of Solid Waste

Sanitary Landfill Operational and Maintenance Requirements

N.J.A.C. 7:26-2A.8

Take notice that an error has been discovered in the current text of N.J.A.C. 7:26-2A.8(b)5. The last sentence in the paragraph refers to requirements at N.J.A.C. 7:26-2A.7(i) for the construction of final grades of slopes. While these requirements were proposed by the Department of Environmental Protection at 18 N.J.R. 883(a), they were not adopted by the Department (see 19 N.J.R. 928(b), 939). The Department has, therefore, decided, and the Office of Administrative Law has agreed, to delete the last sentence of N.J.A.C. 7:26-2A.8(a)5, since it refers to non-

existent requirements. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

- 7:26-2A.8 Sanitary landfill operational and maintenance requirements
 - (a) (No change.)
 - (b) The sanitary landfill shall be operated in accordance with the following additional minimum requirements:
 - 1.-4. (No change.)
 - 5. The slope of the working face shall be maintained so as to maximize compaction of the solid waste and minimize infiltration into the solid waste. The slope shall be no steeper than three horizontal to one vertical (3:1). [The slopes of the final grades shall be constructed in accordance with the requirements set forth in N.J.A.C. 7:26-2A.7(i).]
 - 6.-40. (No change.)
 - (c)-(l) (No change.)

(a)

**DIVISION OF HAZARDOUS WASTE MANAGEMENT
Notice of Administrative Correction
Requirements for Hazardous Waste Facilities
Letter of Credit**

N.J.A.C. 7:26-9 Appendix A

Take notice that errors have been discovered in the current text of paragraphs (d) and (d)(2) of N.J.A.C. 7:26-9 Appendix A. The words "N.J.A.C. of" in paragraph (d) were neither proposed nor adopted by the Department of Environmental Protection and their presence is confusing to the cross-reference. The deletion of the last sentence of paragraph (d)(2) was proposed and adopted by the Department effective May 20, 1985 (see 17 N.J.R. 241(a) and 1291(a)). This deletion was inadvertently not reflected in the subsequent update to the New Jersey Administrative Code. This notice of Administrative Correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

APPENDIX A

Appendix A: Wording of the Instruments

- (a)-(c) (No change.)
- (d) A letter of credit, as specified in [N.J.A.C. of] this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:
 - ...
 - (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the New Jersey Solid Waste Management Act".
- This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts. [Expiration may not occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26-9.10(b)2.]
 - ...
 - (f)-(i) (No change.)

(b)

**DELAWARE AND RARITAN CANAL COMMISSION
Delaware and Raritan Canal State Park Review Zone**

**Adopted Amendments: N.J.A.C. 7:45-1.2, 1.3, 2.6, 4.1, 11.1, 11.2, 11.3, 11.4 and 11.5
Adopted New Rules: N.J.A.C. 7:45-2.11, 6 and 9**

Proposed: April 3, 1989 at 21 N.J.R. 828(a).
Adopted: January 11, 1990 by Helen C. Fenske, Acting Commissioner, Department of Environmental Protection, and Delaware and Raritan Canal Commission, Benjamin B. Kirkland, Chairman.
Filed: January 12, 1990 as R.1990 d.106, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:13A-10.
DEP Docket Number: 011-89-03.
Effective Date: February 5, 1990.
Expiration Date: February 6, 1994.

Summary of Public Comments and Agency Responses:

The adopted amendments and new rules were proposed by the Department of Environmental Protection (Department) on April 3, 1989 at 21 N.J.R. 828(a). In the proposal, the Department invited the submission of written comments on or before June 5, 1989. The Department received more than 300 comments from 105 commenters.

1. COMMENT: The proposed rules pertaining to stream corridor impact (N.J.A.C. 7:45-9), as they relate to adjacent development in the review zone, are beyond the limited scope of regulatory authority provided by the Delaware and Raritan Canal State Park of 1974, N.J.S.A. 13:13A-1 et seq. (State Park Act), which provided that: "The department shall, with the approval of the Commission, have power to make such rules and regulations for the use and protection of the park as may, in its judgment, be necessary . . ." (N.J.S.A. 13:13A-10). The proposed rules represent a comprehensive regulation of land uses in the review zone that is not reasonably necessary for the "use and protection of the park."

RESPONSE: The proposed Stream Corridor Impact and Traffic Impact rules at N.J.A.C. 7:45-6 and 9 are a reasonable exercise of the authority of the Department, with the approval of the Delaware and Raritan Canal Commission (Commission), to adopt rules for the protection of the Delaware and Raritan Canal State Park (Park) pursuant to the State Park Act. The proposed rules are reasonably related to carrying out the objectives of the State Park Act as set forth in N.J.S.A. 13:13A-2 and to the principles and objectives of the Master Plan which embody the considerations set forth in N.J.S.A. 13:13A-13b.

In the State Park Act, the Legislature found and declared that the Canal:

is a vital source of water supply and is of historic, ecological, and recreational value to the citizens of New Jersey; that the canal and the narrow band of land along the canal banks owned by the State are also an extremely attractive and lucrative asset to the State; that the quantity and quality of surface water runoff, flooding potential, aesthetic surroundings, and even the structural integrity of the canal, can all be adversely affected by the surrounding developments; that within the State Government decisions which affect the canal and the State-owned land appertaining thereto are often made separately by different State Agencies and local governing bodies; that the surrounding properties are private and public portions of 27 municipalities in four counties, each with its own planning and zoning authority; that, in general, the decisions which are made often reflect local expediences rather than a coherent plan.

To create a coherent regional plan for the protection of the unique characteristics of the Delaware and Raritan Canal (Canal) and the Park, the State Park Act authorizes the Commission to prepare and adopt a master plan for the development and protection of the Park (N.J.S.A.

13:13A-11h and 13) and to delineate a review zone within which the Commission will review State actions and "any structure, land use change, or public improvements for which a permit from, or determination by, the municipality is required, which shall include, but not be limited to, building permits, zoning variances, and excavation permits . . ." to determine the project's conformity with the principles and objectives of the master plan (N.J.S.A. 13:13A-3f, 11h and 14c).

The Legislature's concern about the need to protect the unique characteristics of the Canal on a regional basis is further emphasized in the definition of review zone as the "region appertaining to and including the park . . . in which proposed projects . . . may cause an adverse impact on the park including, but not limited to, drainage, aesthetic and ecological factors . . ." (N.J.S.A. 13:13A-3f). Thus, the Legislature's goal of protecting the Park went well beyond its recreational value and included the goals of avoiding adverse effects on water quality, flooding potential, aesthetics, historic and ecological components as well. Therefore, in authorizing the Commission to prepare a master plan to achieve these goals, the Legislature mandated that the Commission give due consideration to the development and protection of the following components:

(1) the function of the canal as a major water supply facility in the State; (2) the necessity to provide recreational activity to the citizens of this State, including but not limited to, facilities, design capacities, and relationship to other available recreational areas; (3) existing historical sites and potential restorations or compatible development; (4) the range of uses and potential uses of the canal in the urban environments of the older, intensively developed communities through which it passes; and (5) designated wilderness areas to be kept as undeveloped, limited-access areas restricted to canoeing and hiking. (N.J.S.A. 13:13A-13b)

The Commission has adopted a Master Plan (Second Edition adopted in May 1989) which consists of a statement of the principles and objectives for the development of the components set forth in N.J.S.A. 13:13A-13b and protection of the unique characteristics of the Park from the potential adverse impacts of proposed projects and State actions within the review zone.

The proposed regulation of land use in stream corridors is directly related to the legislative objectives set forth in the State Park Act and the principles and objectives of the Master Plan.

The preservation of natural corridors along streams improves water quality in the streams by filtering sediment and other pollutants from overland storm water runoff, by shading and cooling the water, by reducing stream bank and stream bed erosion, and by providing a healthy ecosystem for the organisms in streams that help to cleanse the water. Almost a million people in New Jersey rely upon the Canal as a source of drinking water; its health is therefore of the utmost importance.

The preservation of natural corridors along streams also has a beneficial effect on flood retardation by assuring storage space and absorption of excess water in times of flood. Floods disrupt the canal's ability to function as a water supply system; floods destroy historic structures that are part of the canal and floods interrupt the recreational use of the Park.

Another reason for proposing to regulate the use of stream corridors is that it enhances the Park's function as a wildlife habitat and natural area. Scientists have learned that small patches of natural areas, such as those along the Canal, often fail to maintain themselves when they are isolated from other natural habitats. The plant and wildlife species originally occupying isolated natural areas gradually disappear over time. This disappearance occurs because isolation limits the genetic variability for reducing the chances for plant and animal survival through changes in the environmental conditions. In addition, when natural or human disturbance kills off a large number of plants or animals in isolated natural areas, there is no close source of replacement—a seed source for plants or a migratory path for emigration of wildlife.

The Department has determined that the traffic impact review rules are necessary to protect the Park from the potentially harmful impact on the Park's drainage, aesthetic and ecological features from either increased traffic on existing roads in or next to the Park, or from the construction of new or wider roads in or next to the Park. Increases in traffic volumes or the construction of new or wider roads are potentially in conflict with several of the principles and objectives established in the Master Plan, including:

1. The principle that the Park is a connector. New roads through the Park or increased traffic on existing roads can disrupt the continuity of the Park, making it less effective as a connecting element.

2. The principle that the Park must retain a degree of serenity and separation from the man-made world. Increased traffic inevitably means increased noise. New roads and wider roads also can bring more noise into the Park.

3. The objective of preserving historic elements within the Park's immediate surroundings. Roads can become barriers if they are big enough or busy enough. Such barriers on the edge of the park could separate the Park from its historic context.

4. The principle that the Park is to be a site of appropriate recreational activities. The kind and quality of recreational activities that are most appropriate to a linear park—jogging, bicycling, canoeing, or walking—could be severely impaired by repeated interruptions for new roads crossing the Park.

5. The principle that the Park should be maintained in its natural state. New roads or more traffic in or next to the Park could have a harmful impact on the flora and fauna that make their home in the Park.

The proposed traffic impact regulation is designed to allow the Commission the opportunity to review projects for their potentially harmful traffic impact and to provide guidelines to applicants for a Certificate of Approval.

N.J.A.C. 7:45-1.2

2. COMMENT: The proposal to limit the definition of stream corridor to provide that the stream corridor impact review will apply from the point where the tributary feeds into the designated stream up to the point where the tributary begins to drain less than 50 acres creates a drainage area that will involve the Commission in the protection of very small, probably intermittent streams, far from the Park. The Commission should limit the proposed stream corridor impact review to the point where the tributary begins to drain less than 1,000 acres.

RESPONSE: The Department does not agree. The Stream Encroachment Program applies its rules to streams that drain 50 acres or more. The Department is adopting that limitation for the purpose of defining the extent of the designated stream which is subject to stream corridor impact review.

3. COMMENT: The definition of a stream corridor as the 100 year flood line plus a 100 foot buffer is excessive, arbitrary, and unreasonable.

RESPONSE: The width of the stream corridor defined in these rules is intended to meet the objectives of the rules and be relatively simple for applicants and reviewers to locate. The studies of the effect of preserving stream corridors make it clear that the wider the preserved corridor, the more effective it is for preserving water quality, for prevention of flood damage, and for preserving natural lands. In his study "Protecting Natural Areas in Fragmented Landscapes", (Natural Areas Journal, Vol. 7(1), 1987), Reed F. Noss states, "Planners often ask how wide corridors must be, but there is no general answer. Habitat and land use, and the particular organisms in question will determine optimal corridor width . . . The closest we can come to a general recommendation on corridor width is "the wider, the better." In their study for the Office of State Planning, Rogers, Golden & Halpern include a table of "Buffer Widths" which they attribute to "a review of current literature as cited in Appendix C." This table recommends buffer widths of 65 to 150 feet for sediment control, 65 to 150 feet for nutrient removal, and 100 to 300 feet for wildlife habitat. (Op. cit., p.20). In her chapter on "Buffer Strips" in the previously cited Cook College book, *Watershed Management Strategies for New Jersey*, Sandra M. Holler notes that there is no single accepted standard for the width of buffers. The scientific studies she reviews conclude that buffer widths should be designed as follows: for sediment control—50 to 200 feet; for stream bank and stream bed erosion control—25 to 213 feet; for nutrient and pollutant removal—150 to 300 feet; for reservoir protection—75 to 300 feet; for aquatic species protection—25 to 50 feet; for wildlife habitat—200 to 300 feet.

The width that is set in the adoption is consistent with the buffer widths cited above. The 100 year flood line has been selected because the Federal Insurance Program recognizes it as a critical determinant for stream protection, and because all, or nearly all, municipalities require that it be included on any plans submitted for review. The additional 100 foot buffer around streams and their tributaries is valuable for preserving water quality during floods, which is when most pollutants enter streams.

4. COMMENT: A number of requests were made to provide more definitions than are proposed at present at N.J.A.C. 7:45-1.2. Included among the words or phrases for which commenters requested definitions are:

adverse impact
satisfied
substantially

significantly modifies
reasonably available
substantial
clear and convincing demonstration
significant impact
intended benefits
to the satisfaction of the DRCC

RESPONSE: The Department has used all of these words in a common sense plan meaning manner, assuming that the definitions as found in standard American dictionaries will be understood as being applicable. The Department recognizes, however, that the reason definitions are requested for many of these terms and phrases is because commenters believe that it is advantageous and possible to have rules that are totally free from subjective decisions. The Department agrees that it is important to strive toward value-free criteria for reviewing applications where that is possible. However, if the Commission is to review projects for their potential to cause an adverse impact on the Park, some amount of subjectivity is inevitable. Such decisions cannot be totally objective or value-free. The Department believes that it has succeeded in striking a balance between providing objective guidelines for reviewing applications and recognizing that ultimately many decisions must be made at least partly on the basis of the merits of the individual, unique case.

5. COMMENT: The Commission is understaffed for the workload that these new rules will generate.

RESPONSE: These proposed rules will not extend the area of the Commission's review zone, nor increase the number of projects it must review. The proposed stream corridor and traffic impact rules will apply only to projects which the Commission already reviews. These proposed rules will increase the number of issues that must be reviewed on some projects, but, based upon a careful review of the Commission's workload since the original Delaware and Raritan Canal State Park River Zone rules were adopted in 1980, the Department is confident that the Commission staff will be able to continue to conduct its project review in an efficient manner.

N.J.A.C. 7:45-2.11

6. COMMENT: The exemption of private projects from project review under N.J.A.C. 7:45-2.11 should be broadened to include substantially complete applications submitted to the municipal approving agency prior to the effective date of the proposed rules in recognition of the length of the permitting process and the costs invested in project planning.

RESPONSE: As proposed, N.J.A.C. 7:45-2.11 exempts all private projects which have received at least preliminary approval by the municipal approval agency prior to the effective date of the new rule. The Department is satisfied that this is a fair provision.

N.J.A.C. 7:45-6

7. COMMENT: Several commenters asserted that there is no scientific support for the proposed stream corridor rules and that the proposed rules are arbitrary and capricious.

RESPONSE: The Department does not agree. Preservation of stream corridors is a land use planning technique that has wide acceptance by public and private bodies. The master plans of many of the municipalities in the Commission's review zone identify the importance of stream corridors. Lawrence, Hopewell, Cranbury, Plainsboro, Delaware, South Brunswick, Franklin, Hillsborough, West Windsor and Princeton all cite the value of stream corridor preservation. Regional organizations also agree on the value of this measure, as is exemplified by the "208" Water Quality Management Plans of Middlesex and Mercer Counties, and the report of the Regional Forum, prepared by the Middlesex-Somerset-Mercer Regional Council.

Public and private national organizations have also recognized the value of preserving stream corridors. The U.S. Environmental Protection Agency, the U.S. Forest Service, and the U.S.D.A. Soil Conservation Service all promote this concept. The National Association of Homebuilders in their 1976 book, *Cost Effective Site Planning*, joins in advocating the preservation of stream corridors. The American Planning Association has recently recommended that planners adopt regulations that "reflect a respect for natural systems that play a major role in controlling storm water pollution" ("Zoning News"; May, 1989, p.2). This recommendation is part of the conclusion to a report on provisions in York, Virginia, and Raleigh, North Carolina, to protect buffer areas on streams.

Land use regulations in many other states in addition to Virginia and North Carolina, including Connecticut, Massachusetts, and Wisconsin, have adopted provisions which require the preservation of stream corridors. The Wisconsin provision for protection of land within 300 to 1,000

feet of navigable waters was upheld by the Wisconsin Supreme Court in *Just v. Marinette County*, 201 N.W. 2d 761, (1972). The court specifically noted the "interrelationship of the wetlands, swamps, and the natural environment of shore lands to the purity of the water and to such natural resources as navigation, fishing, and scenic beauty." Id. at 768.

Scientific studies on the value of preserving stream corridors have proliferated in recent years. Cook College's Department of Environmental Resources has recently published a book entitled *Watershed Management Strategies for New Jersey* (George H. Nieswand, et al.), which includes a chapter that summarizes information on stream corridors. This chapter concludes with a bibliography of over 70 books, articles, etc., which report on stream corridor studies. Similarly, the New Jersey Office of State Planning has published a study of "The New Jersey Freshwater Wetlands Protection Act as it Relates to Stream Corridor Buffer Considerations in the State Development and Redevelopment Plan" (Rogers, Golden and Halpern), which includes a bibliography of 30 items. In 1983, the Department's Division of Water Resources published "Technical Basis for 25 foot wide and 50 foot wide Buffer Strips."

In 1977, the Commission employed the ecological consultants Rogers, Golden and Halpern to prepare a study entitled "Delaware and Raritan Canal State Park Vegetation and Aquatic Buffer Zone Study."

The Department concludes that these and other studies establish a more than adequate scientific basis to support the concept that preserving stream corridors will be beneficial to the Park.

8. COMMENT: With the existing regulatory programs governing development in flood plains, that is, Flood Hazard Area Control Act, Freshwater Wetlands Protection Act, Coastal Area Facility Review Act, and the Water Quality Management Planning Goals and Objectives, the proposed stream corridor impact review is not necessary.

RESPONSE: The stream corridor impact review proposal is consistent with the Commission's statutory responsibility to review any proposed project within the review zone to determine its conformity with the Commission's Master Plan for the development and protection of the Park. The stream corridor proposal, however, is not entirely consistent with the other regulatory programs because the goals and objectives of the Commission as set forth in the State Park Act and the Master Plan are significantly different. For example, the goal of the Flood Hazard Area Management rules is to protect against damage to property and the goal of the Freshwater Wetlands rules is to protect those specific lands designated as freshwater wetlands. The relevant goals of the Commission, as the only agency charged with the regional protection of the Canal and the Park, include protection of the Canal as a potable water supply and wildlife habitat as well as the recreational and historical aspects of the park. For those projects that require review by one or more State agencies other than the Commission, the Commission's review will be for aspects of the project other than those included in the review of the other agencies. The Commission's review will be coordinated with other State reviewing agencies to avoid conflicting determinations.

9. COMMENT: Storm water management measures will be required under N.J.A.C. 7:45-5, so there is no need to have buffer areas on stream corridors as proposed in N.J.A.C. 7:45-6.

RESPONSE: The storm water management measures will not address all of the beneficial effects of preserving stream corridors as listed in the summary section of the proposed rules.

10. COMMENT: A number of commenters suggested that the proposed rule for stream corridor impact is insufficiently protective. It was suggested that all streams with watersheds over 1,000 acres be included instead of using a two square mile threshold; that "finger" streams in headwaters be included; and that a 200 foot wide buffer on the 100 year flood plain is needed.

RESPONSE: The Department is satisfied that the proposed rule is adequately protective of the Park. The scientific studies cited above indicate that the standards proposed for the width of the corridor, the length of the stream affected and the size of the stream affected are reasonable limits for the protection of the Park.

11. COMMENT: The definition of stream corridor violates the State Park Act because it extends the authority of the Commission beyond the Park and the designated review zone.

RESPONSE: For the reasons set forth in the response to comment number 1 above, the proposed Stream Corridor Impact rules at N.J.A.C. 7:45-6 are a reasonable exercise of the authority of the Department to adopt rules for the review of projects within a delineated review zone in order to protect the Park.

The Department does not agree that the definition of stream corridor extends the authority of the Commission beyond the review zone de-

lined by the Commission pursuant to the State Park Act, (N.J.S.A. 13:13-14a,) and within which the Commission is authorized to review State actions and "any structure, land use change or public improvements for which a permit from, or determination by, the municipality is required . . ." to determine the project's conformity with the principles and objectives of the Master Plan (N.J.S.A. 13:13A-3f, 11h and 14c). The definition of stream corridor must be read in light of N.J.A.C. 7:45-1.1, which provides that the purpose of N.J.A.C. 7:45 is to establish the procedure for the review and set forth the standards that will be considered by the Commission in its review of projects within the designated review zone. Furthermore, the proposed stream corridor impact review rules clearly provide at N.J.A.C. 7:45-6.1(a) that the scope of stream corridor review is limited to major projects within the review zone.

12. COMMENT: The stream corridor impact review rules impose a severe restriction on land use to the extent that no development is permitted within the stream corridor and that all owners of property within the stream corridor will be required to obtain Commission approval prior to beneficially using such land. This constitutes a taking of private property without compensation.

RESPONSE: The Department does not agree. The proposed stream corridor impact review rules do not restrict the present use of land and do not require that all owners of property within the stream corridor must obtain the approval of the Commission prior to beneficially using their land. The rules apply only to major projects within the stream corridor which require a municipal permit or approval. As defined in N.J.A.C. 7:45-1.2, major project includes among other things the construction, development or redevelopment of four or more dwelling units or a project that includes no dwelling units but will cover with impervious surfaces 10,000 square feet or more of previously uncovered land. The stream corridor impact review rules would not apply to minor projects defined as any project not included in the definition of a major project. Consequently, the stream corridor rules would not apply to the construction, development or redevelopment of fewer than four dwelling units or a project that includes no dwellings and will result in less than 10,000 square feet of impervious cover over previously uncovered land. Additionally, with the exception of livestock pens, corrals or feedlots which are included in the definition of a major project, agricultural uses are permitted within the designated stream corridors. Landowners who believe that they are denied fair use of their land have an opportunity to request a waiver from the proposed stream corridor rule under N.J.A.C. 7:45-11.

N.J.A.C. 7:45-6.3

13. COMMENT: With the Department's concern about the impact of activities on receiving streams' water quality, it is not clear why the proposed rules permit any agricultural use or activity within a designated stream corridor but prohibit construction of new structures such as a single family home. Agricultural activity entails the large scale use of fertilizers, herbicides, fungicides, and rodenticides which readily run-off the land and enter streams.

RESPONSE: The State Park Act does not authorize the Commission to regulate any land use that does not require a permit or approval from a municipal reviewing agency. Agricultural uses generally do not require a municipal permit or approval.

14. COMMENT: Structures associated with fish hatcheries should be permitted in stream corridors.

RESPONSE: N.J.A.C. 7:45-6.3(a)3 allows open structures associated with fish hatcheries to be located within stream corridors. Enclosed structures however should be located out of the corridor because of their greater potential for significant direct and indirect environmental impacts on the Canal and Park particularly with regard to flood control and water quality.

N.J.A.C. 7:45-6.4

15. COMMENT A: N.J.A.C. 7:45-6.4(a)2 provides that on-site sewage disposal systems are prohibited in the designated stream corridors. On-site sewage disposal systems that are located, designed and constructed in accordance with local requirements and the Department's Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, should not be a prohibited use in stream corridors.

COMMENT B: What is the authority and technical basis for the Department to institute more stringent on-site wastewater requirements for the designated stream corridors than the Department requires in N.J.A.C. 7:9A?

RESPONSE: For the reasons set forth in the response to Comment number 1 above, the proposed Stream Corridor Impact rules at N.J.A.C. 7:45-6, including the provision at N.J.A.C. 7:45-6.4(a)2 prohibiting on-

site disposal systems within the designated stream corridors, are a reasonable exercise of the authority of the Department under the State Park Act to adopt rules for the protection of the Park.

The Department does not agree with the assertion that it should not prohibit on-site sewage disposal systems from designated stream corridors if the system is designed and constructed in accordance with local requirements, N.J.A.C. 7:9A, and other pertinent rules. Even if an on-site sewage disposal system could be designed and constructed in a designated stream corridor in compliance with all local requirements, N.J.A.C. 7:9A, and other pertinent rules, the location of the system within a designated stream corridor has the potential for significant direct and indirect environmental impacts on the Canal and Park particularly with regard to water quality and encouragement of development that are not consistent with the principles and objectives of the Master Plan for the protection of the Park.

16. COMMENT: The proposed rules prohibit the "construction of new structures and retaining walls." Since structure and retaining wall are not defined, it is unclear exactly what is prohibited. Is the Department proposing to prohibit structures such as above ground pools, garden sheds and children's playhouses which generally do not require a municipal permit?

RESPONSE: The Commission is authorized to review "projects," which is defined as "any structure, and use change or public improvements for which a permit from, or determination by, the municipality is required, which shall include but not be limited to, building permits, zoning variances, and excavation permits" (N.J.S.A. 13:13A-14c). The uses described in N.J.A.C. 7:45-6.4(a) are prohibited only if the municipality requires a permit or approval for the described use. The Department agrees to clarify the rule by revising N.J.A.C. 7:45-6.4(a) to provide, "The following uses shall be prohibited within a stream corridor of a stream designated in N.J.A.C. 7:45-6.1(a) if a permit from or determination by a municipal approving agency is required."

17. COMMENT: N.J.A.C. 7:45-6.4(a)6, which provides that roads that are parallel with the stream are prohibited uses within the stream corridors, is arbitrary. Parallel roads should be a conditional use in stream corridors under N.J.A.C. 7:45-6.5 so long as appropriate stormwater control measures are implemented. N.J.A.C. 7:45-6.4(a)6 prohibits all parallel roads even if they are at the outer fringe of the 100 foot buffer zone, and, by virtue of detention facilities, or natural grade, the direction of water run-off from the road is away from the stream.

RESPONSE: The Department disagrees. The prohibition of parallel roads in the stream corridor is not arbitrary. The construction of parallel roads greatly increases the impervious area within the stream corridor thereby increasing stormwater run-off and the resultant pollution associated with roads. While parallel roads may be designed and constructed in a manner that will restrict run-off during normal rainfall such may not be the case when the stream is flooded and the 100-year flood plain is full. The time of greatest potential pollution of a stream is when it is flooded. In the absence of at least a 100-foot buffer area, the stormwater and pollutants would run-off directly into the water column of the flooded stream. The proposed buffer area provides the minimum area necessary to filter pollutants out of the stormwater run-off before the run-off enters the flooded stream. Construction of parallel roads would constitute a significant permanent reduction of the area within the buffer available for filtration of pollutants and protection of the stream at the time when such protection is most needed.

N.J.A.C. 7:45-6.5

18. COMMENT: "Sanitary or storm sewers" should not be classified as conditional uses but rather should be classified as permitted uses in stream corridors.

RESPONSE: The Department disagrees. The construction and operation of sanitary or storm sewers within the stream corridor has the potential for significant direct and indirect environmental impacts on the Canal and Park particularly with regard to water quality and facilitating development. While good planning, engineering practice and design, and compliance with other State rules may alleviate many of the concerns, the classification of sanitary or storm sewers as a conditional use in stream corridors, thereby requiring that the applicant satisfy the Commission that the proposed use complies with the Master Plan and these rules, is consistent with its statutory authority as the only State agency directly responsible for protection of the Canal and Park.

19. COMMENT: N.J.A.C. 7:45-6.5(a)10 should be revised to delete the word "building" and include the word "structure."

RESPONSE: The Department agrees to revise N.J.A.C. 7:45-6.5(a)10 to delete the word "building" and include the word "structure" because

it is the intent of the Department to allow the reconstruction of any existing structural improvement that is damaged or destroyed, in whole or in part, by fire, storms, natural hazards, or other acts of God.

20. COMMENT: The stream corridor impact review rules need to set forth objective standards for guiding the Commission and the regulated public as to when a conditional use approval would be granted under N.J.A.C. 7:45-6.5.

RESPONSE: The Department disagrees. A conditional use approval will be granted under N.J.A.C. 7:45-6.5 if the applicant demonstrates to the satisfaction of the Commission that the proposed project complies with the Master Plan and pertinent standards in N.J.A.C. 7:45. The Master Plan and rules are intended to provide a framework for the applicant in the development of site and building plans for major projects within the designated stream corridors. The Department has determined that the standards set forth in N.J.A.C. 7:45 must be flexible to accommodate the characteristics of each project through case-by-case review while achieving the goals of the proposed stream corridor impact review rules and the Master Plan.

N.J.A.C. 7:45-6.6

21. COMMENT: It is an illegal delegation of authority for the Commission to apply standards for stream corridors that have been adopted by municipalities or counties as provided in N.J.A.C. 7:45-6.6.

RESPONSE: The Department agrees to clarify N.J.A.C. 7:45-6.6 to provide: "When the Commission determines that a municipality or county has adopted a stream corridor ordinance that is more stringent than this subchapter, then compliance with the stricter requirements in said ordinance shall be required as a condition of the Commission's Certificate of Approval, the provisions of this Subchapter being considered as minima not maxima."

22. COMMENT: To help applicants comply with N.J.A.C. 7:45-6.6, the Department should publish a list of those municipalities with stream corridor regulations that are more stringent than these proposed rules.

RESPONSE: The Department will not publish such a list for two reasons. Updating this list would be an improper burden on the Department. Second, publishing and updating this list is unnecessary since an applicant for the Commission's Certificate of Approval will have already made application to the appropriate municipal reviewing agency and learned from it its policy regarding stream corridors.

N.J.A.C. 7:45-9

23. COMMENT: The Commission should not be involved in area traffic management. Rather, the Commission should coordinate with the appropriate State, county and municipal agencies to assure that its traffic concerns are implemented.

RESPONSE: The Department does not agree. The proposed traffic impact review rules are necessary to implement the principles and objectives set forth in the Master Plan for the protection and development of the Park. The Commission, consistent with its statutory mandate, will, however, continue to work with the appropriate State, county and municipal agencies to achieve a coordinated regional implementation of the Master Plan.

N.J.A.C. 7:45-9

24. COMMENT: The proposed traffic impact review rules may create conflicts with provisions of municipal approvals.

RESPONSE: The procedures for the review of projects under N.J.A.C. 7:45-2 provide for interaction between the Commission and municipal reviewing agencies which is intended to eliminate conflicts between the Commission and municipal reviewing agencies. These procedures are nearly identical with those that have been in effect for 10 years and have proven to be effective at eliminating conflict.

25. COMMENT: The Commission staff does not include trained traffic engineers so the Commission will not be able to assess traffic impact.

RESPONSE: The Department does not agree. Although it is necessary for traffic studies to be prepared by trained experts on traffic issues, it is not necessary for the Commission to have trained traffic engineers to review the studies in order to assess the traffic impact on the Park.

N.J.A.C. 7:45-9.1

26. COMMENT: The proposed traffic impact review rules fail to establish sufficient standards which will be applied by the Commission in determining whether the additional traffic generated by a project will have an adverse effect on the Park. N.J.A.C. 7:45-9.1 provides that "if the Commission determines that the additional traffic will have an adverse impact on the Park, the applicant shall use any feasible on-site planning techniques that will direct any additional traffic away from the Park".

The proposal's failure to identify those factors it will consider when making a determination as to where an impact will be considered "adverse" leaves an unreasonable amount of discretion in the Commission.

RESPONSE: The Department disagrees. The Commission will make a determination of adverse effect based on its review of the traffic impact statement submitted by the applicant and whether the direction of the additional traffic conforms with the objectives and strategy for the protection of the unique characteristics of the Park set forth in the Master Plan. The Master Plan and rules are intended to provide a framework to the applicant in the development of "feasible on-site planning techniques that will direct any additional traffic away from the Park." The standards set forth in N.J.A.C. 7:45 must be flexible to accommodate the characteristics of each project while conforming as closely as possible to the Master Plan.

27. COMMENT: The ability of the Commission to require "any feasible on-site planning technique" to direct traffic away from the Park can place significant additional costs and limitations on an applicant's design alternatives without a corresponding benefit to either the developer or public.

RESPONSE: The Department disagrees. The Department is not convinced that the requirement for the use of "any feasible on-site planning technique" will impose significant additional costs and limitations on an applicant's project design, certainly not without corresponding benefit to either the developer or the public. The intent of the traffic impact review and the requirement for the submission of a traffic impact statement is to identify the amount of additional traffic that will be generated by the proposed project and the direction in which the additional traffic will move. The primary concern is how much of the additional traffic will be directed towards the Park and whether the applicant has implemented all feasible on-site planning techniques reasonably calculated to minimize any additional traffic being directed toward the Park. The type of feasible on-site planning techniques will necessarily depend upon the characteristics of each project site and the type of project proposed but will usually consist of the location of parking lots and entrances and exits in a manner that will direct or discourage additional traffic from the Park. The Commission encourages innovative plans and designs which, taking into account the characteristics of the project site and the project, will achieve the goal of the Master Plan to reduce the impact of additional traffic on the unique characteristics of the Park.

28. COMMENT: N.J.A.C. 7:45-9.1 allows the Commission to require only "on-site planning" measures to mitigate harmful traffic. The phrase "on-site planning" should be deleted because it sharply restricts the Commission's ability to deal with prospective traffic conditions that might adversely impact the Park.

RESPONSE: The Department does not agree. The Department is satisfied that the review of on-site planning techniques is the appropriate method of review under the authority of the State Park Act for the Commission to determine whether the project design includes feasible planning techniques intended to direct additional traffic caused by the project away from the Park.

29. COMMENT: Directing traffic away from the Park will increase regional traffic problems.

RESPONSE: The Department agrees that directing traffic away from the Park will impact regional traffic plans to the extent that such plans rely on increased vehicular traffic on roads that enter the Park or any part of Zone A. However, encouragement of or reliance on the use of such roads to help relieve regional traffic problems caused by additional traffic generated by new development does not conform with the Master Plan for the protection and development of the Park. The Commission, consistent with its statutory mandate, will continue to work with the appropriate State, county and municipal agencies to achieve a coordinated regional implementation of the Master Plan.

30. COMMENT: N.J.A.C. 7:45-9.1 establishes the area within one mile of the Park as the area affected by the traffic impact rules. How was this distance determined?

RESPONSE: The Commission examined the road and traffic patterns in the region around the Park and concluded that a one-mile corridor for traffic impact review would include the areas of greatest potential impact and exclude areas in which the traffic impact on the Park would be likely to be too diffuse to quantify.

N.J.A.C. 7:45-9.2

31. COMMENT: The term "substantially" in N.J.A.C. 7:45-9.2(b) is too subjective. The Department must adopt quantitative standards to provide guidance in this subsection. Such standards must acknowledge existing and background conditions for a variety of situations.

RESPONSE: The Department does not agree. Whether a new or improved road will "substantially increase vehicular traffic to roads adjacent to the Canal" will be determined by the Commission based on the traffic impact statement submitted by the applicant. A properly prepared traffic impact statement will develop the existing and background conditions for the specific project under review. Furthermore, because of the great variety of circumstances found throughout the 60-mile length of the Park, it would be counterproductive to establish specific standards that would apply everywhere. The Commission will review such projects, just as it does all others, to determine how the proposed project is in conformity with, or divergence from, the objectives of the Master Plan.

N.J.A.C. 7:45-11.2

32. COMMENT: A number of commenters objected to the requirement for giving notice of the application for a waiver as described in N.J.A.C. 7:45-11.2(b) through (e). It was pointed out that the provisions for notice of application for a waiver as described in this proposed rule are usually followed when the decision-making agency must consider the interests of neighboring properties in reaching its decision. The Commission is authorized only to protect the Park, not the interests of other property owners. It was also pointed out that prior to the Commission's decision, an applicant will have been through the municipal approval process, which is carried out through publicly noticed open meetings. The public will, therefore, have had ample opportunity for comment on the project in a forum which is more appropriate for the consideration of local issues than the Commission's meeting.

RESPONSE: The Department agrees to delete the requirements for notice of an application for waiver because, as stated in the comment, adequate notice and opportunity for comment is afforded through the municipal approval process. N.J.A.C. 7:45-11.2(b) through 2(e) will be deleted.

N.J.A.C. 7:45-11

33. COMMENT: The standards that are proposed to guide the Commission in reviewing applications for waiver as set forth in N.J.A.C. 7:45-11.3 through 11.5 are both vague and excessively harsh. One commenter stated that the standard in N.J.A.C. 7:45-11.3 should be based upon a determination that the applicant cannot yield a reasonable return on the property for reasons that do not result from "any attempt by the owner or applicant to create circumstances of extreme economic hardship." Another commenter objected to the idea that the basis for a waiver must be demonstrated "to the satisfaction of the Commission." The term "clear and convincing" was described as an onerous standard for an applicant who is attempting to establish the grounds for a waiver.

RESPONSE: The Department disagrees with these comments and chooses to leave N.J.A.C. 7:45-11.3 through 11.5 unchanged. The Commission is the deliberative agency on waiver applications and it is the only logical agency to be satisfied that the basis for a waiver has been established. "Clear and convincing" as a standard for considering the applicant's grounds for a waiver is not onerous; it is reasonable. Waivers are expected to be exceptions. If an applicant wishes a waiver it is reasonable to require that the applicant provide clear and convincing grounds for that request. It would be far too difficult for the Commission to determine "attempts" by owners to create "circumstances of extreme economic hardship." By relying instead upon circumstances that relate to the property itself, as N.J.A.C. 7:45-11.3 proposes, the Department is proposing a more objective and precise standard.

34. COMMENT: The standards contained in N.J.A.C. 7:45-11.3(a) and 7:45-11.4(a) are excessive. They should state that the Commission "shall" rather than "may" waive reviews or waive requirements if specific conditions are met.

RESPONSE: There is no intent to establish automatic waiver procedures which would be the result of changing "may" to "shall" in N.J.A.C. 7:45-11.3(a) and 7:45-11.4(a). The discretion of the reviewing agency is an essential part of the process of considering waiver requests.

N.J.A.C. 7:45-11.3

35. COMMENT: the conjunctive word between N.J.A.C. 7:45-11.3(b)1 and 2 should be changed from "and" to "or".

RESPONSE: The Department does not agree. N.J.A.C. 7:45-11.3(b)1 and 2 are to be read together. N.J.A.C. 7:45-11.3(b)2 sets forth the standards for establishing the existence of an extreme economic hardship under N.J.A.C. 7:45-11.3(b)1.

36. COMMENT: The phrase "if continued" in N.J.A.C. 7:45-11.3(b)2 should be changed to "is continued".

RESPONSE: The Department agrees and corrects the paragraph.

N.J.A.C. 7:45-11.4

36. COMMENT: The phrase "harmful effect" in N.J.A.C. 7:45-11.4(a)1 is not defined and is too vague.

RESPONSE: The Department agrees and revises N.J.A.C. 7:45-11.4(a)1 so that the phrase "harmful effect" is replaced with "adverse impact".

37. COMMENT: The Department received 105 comments in support of the adoption of the proposed rules.

RESPONSE: The Department acknowledges the comments received in support of the adoption of the proposed rules.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

7:45-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings:

"Stream corridor" means a stream designated in N.J.A.C. 7:45-6.1(a), including any tributary from the point where it feeds into the designated stream up to the point where the tributary drains 50 acres, all of the land within the 100 year flood line on either side of the designated stream and any tributary to the extent included in the stream corridor, and all of the land within a 100 foot wide buffer around the 100 year flood line on either side of the designated stream and any tributary to the extent included in the stream corridor from the point where the designated stream feeds into the Park up to the point where the designated stream drains 50 acres.

7:45-1.3 Scope of review

(a) In the Review Zone, the Commission shall review governmental and private projects which have the potential to cause an adverse impact on the Park including drainage, aesthetic and ecological factors. In addition, the Commission shall approve all State actions that impact on the Park. Each project and State action shall be reviewed for its conformance with the overall objectives of the Master Plan of the Delaware and Raritan Canal State Park and with the specific standards of this chapter. Review will address four specific types of impact:

1. Storm drainage and water quality impact;
2. Visual and natural quality impact;
3. Stream corridor impact; and
4. Traffic impact.

(b) In each case, the scope and depth of review will depend upon the size and location of the land-use activity.

1. Zone A:

i. Major projects are reviewed for storm drainage and water quality impact, visual and natural quality impact, traffic impact, and major projects, any portion of which is located in any of the stream corridors designated in N.J.A.C. 7:45-6.1(a), are reviewed for stream corridor impact.

ii. (No change.)

2. In Zone B, major projects are reviewed for storm drainage and water quality impact. Major projects in Zone B, any part of which is within one mile of any portion of the Park and having direct access to a road which enters Zone A, are reviewed for traffic impact. Major projects, any portion of which is located in any of the stream corridors designated in N.J.A.C. 7:45-6.1(a), are reviewed for stream corridor impact.

7:45-2.6 Project review and decision

(a) Within 20 days after the date that an application for project review is received in the Office of the Commission, the Commission staff shall review the application to determine if all the items required for a complete application have been submitted and take one of the following actions:

1. Notify the applicant by certified mail of any missing items required for a complete application; or
2. Notify the applicant by certified mail that the application is complete and notify the appropriate municipal approving agency.

(b) If no action is taken by the Commission staff within a period of 20 days from the date that an application for project review is

received in the Office of the Commission, the application shall be deemed to be complete.

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

7:45-2.11 Private projects exempt from project review

Any private project which has received preliminary site plan or preliminary subdivision approval from the appropriate municipal approving agency prior to the effective date of this section shall be exempt from review by the Commission under N.J.A.C. 7:45-6 and 9.

7:45-4.1 Request for an adjudicatory hearing

(a) When the Commission denies, approves, or approves with conditions a project or waiver request, the notice of decision shall advise the applicant, municipality, municipal reviewing agency and those affected parties who specifically requested notice of the Commission's decision of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The notice shall include the following:

1.-3. (No change.)

(b) Within 30 calendar days following the service of the notice of decision under N.J.A.C. 7:45-2.8 or N.J.A.C. 7:45-11.2(g), the applicant, municipality, municipal approving agency or an affected party may submit a request to the Commission for an adjudicatory hearing to contest the denial, approval, or approval with conditions of a project under N.J.A.C. 7:45-2.8 or a waiver request under N.J.A.C. 7:45-11.

(c) (No change.)

SUBCHAPTER 6. STREAM CORRIDOR IMPACT

7:45-6.1 Scope of review

(a) Except for specific projects expressly waived by the Commission pursuant to N.J.A.C. 7:45-11, all major projects within Zone A or Zone B, or both, of the Review Zone shall be subject to review by the Commission for stream corridor preservation if the project includes a portion of any of the stream corridors of the following designated streams within the Review Zone:

- | | |
|----------------------------|------------------------|
| 1. Alexauken Creek; | 10. Moore's Creek; |
| 2. Beden's Brook; | 11. Shabakunk Creek; |
| 3. Duck Pond Run; | 12. Shipetauken Creek; |
| 4. Fiddler's Creek; | 13. Simonson Creek; |
| 5. Heathcote Brook; | 14. Six Mile Run; |
| 6. Jacob's Creek; | 15. Stony Brook; |
| 7. Little Shabakunk Creek; | 16. Swan Creek; |
| 8. Lockatong Creek; | 17. Ten Mile Run; and |
| 9. Millstone River; | 18. Wickecheoke Creek. |

7:45-6.2 Submission requirements

(a) For all major projects within Zone A, or Zone B, or both, of the Review Zone and which include a portion of the stream corridor of any designated stream under N.J.A.C. 7:45-6.1(a), the applicant shall submit to the Commission a map of the project site delineating the stream corridor at a scale of one inch equals 200 feet and containing the following:

1. The 100 year flood line;
2. The 100 foot wide buffer along the 100 year flood line; and
3. The location of all improvements proposed to be located within the stream corridor.

7:45-6.3 Permitted uses within designated stream corridors

(a) In addition to preserving land in its natural state and only to the extent not prohibited at N.J.A.C. 7:45-6.4(a), only the following uses shall be permitted within the stream corridor of a stream designated in N.J.A.C. 7:45-6.1(a):

1. Any agricultural use or activity which does not require a permit from a municipal approving agency;
2. Wildlife sanctuary, woodland preserve, and arboretum, except facilities subject to damage by flooding; and
3. Game farms, fish hatcheries, or hunting and fishing reserves, operated for the protection and propagation of wildlife, but excluding enclosed structures.

7:45-6.4 Prohibited uses within stream corridors of designated streams

(a) The following uses shall be prohibited within a stream corridor of a stream designated in N.J.A.C. 7:45-6.1(a) ***if a permit from or determination by a municipal approving agency is required***:

1. Construction of new structures, buildings and retaining walls;
2. On-site sewage disposal systems;
3. Any solid or hazardous waste facilities, as defined in N.J.A.C. 7:26, including but not limited to sanitary landfills, transfer stations, wastewater lagoons and impoundments;
4. Junk yards, commercial and industrial storage facilities and the open storage of vehicles and materials;
5. Barns, stables, feedlots, barnyards, poultry buildings, and farm waste disposal facilities; and
6. Parking facilities and roads that are parallel with the stream.

7:45-6.5 Conditional uses within stream corridors of designated streams

(a) The following uses shall be permitted within a stream corridor of a stream designated in N.J.A.C. 7:45-6.1(a) if the applicant demonstrates to the satisfaction of the Commission that the proposed use complies with the Master Plan and this chapter:

1. Recreational use, whether open to the public or restricted to private membership, such as parks, camps, picnic areas, golf courses, fishing areas, hiking, bicycle and bridle trails, sport or boating clubs, not to include enclosed structures, but permitting piers, docks, floats or shelters usually found in developed outdoor recreational areas;
2. Outlet installation for sewage treatment plants and sewage pumping stations, and the expansion of existing sewage treatment facilities if the project meets all applicable provisions of this chapter and other Department rules;
3. Private or public water supply wells that have a sanitary seal, flood proofed water treatment facilities, or pumping facilities;
4. Quarrying, excavating, digging, dredging or grading, when incidental to permitted structures or uses including stream cleaning, and stream rehabilitation work undertaken to improve hydraulics or to protect public health;
5. Dams, culverts and bridges that have received approval from the appropriate municipal, county and State agencies having such authority;
6. Sanitary or storm sewers;
7. Detention or retention basins;
8. Utility transmission lines installed during periods of low stream flow in accordance with soil erosion and sediment control practices approved by the United States Soil Conservation Service and the State Soil Conservation Committee and in a manner which will not impede flows or cause ponding of water;
9. Structures, buildings and retaining walls comprising part of a regional flood retention project, water supply impoundments, culverts, or bridges; and
10. In the event of damage or destruction, in whole or in part, by fire, storms, natural hazards, or other acts of God, reconstruction of any existing ***[building]* *structure*** not resulting in a greater footprint or total area than that of the damaged or destroyed ***[building]* *structure*** and provided that no change in land use results. The reconstruction of a single family dwelling shall not be subject to review by the Commission under this subchapter.

7:45-6.6 Local stream corridor ordinance

When the Commission determines that a municipality or county has adopted a stream corridor ordinance that is more stringent than this subchapter, ***[the Commission shall apply the standards set forth in the ordinance for the review of a project for stream corridor impact]* *then compliance with the stricter requirements in said ordinance shall be required as a condition of the Commission's Certificate of Approval, the provisions of this subchapter being considered as minima not maxima***.

SUBCHAPTER 9. TRAFFIC IMPACT

7:45-9.1 Review of major projects for traffic impact

The Commission shall review major projects in Zone A of the Review Zone, or major projects in Zone B of the Review Zone that

are within one mile of any portion of the Park and have direct access to a road which enters Zone A, for their traffic impact on roads that enter the Park or any part of Zone A. The applicant shall submit a traffic impact study which shows the amount of additional traffic generated by the project and the directions in which this traffic will move. If the Commission determines that the additional traffic will have an adverse impact on the Park, the applicant shall use any feasible on-site planning techniques that will direct any additional traffic away from the Park. If the Commission is satisfied that there are no feasible on-site planning techniques other than as set forth in the project proposal that can direct any additional traffic away from the Park, the project shall be approved for traffic impact review.

7:45-9.2 Review of road construction, road improvements, and new traffic loads

(a) The Commission shall not approve projects that include new vehicular crossings of the Canal unless the applicant demonstrates to the satisfaction of the Commission that the project conforms with the following goals:

1. A new interstate or similar major road crossing shall relieve congestion on existing local vehicular crossings;
2. Any new local vehicular crossing shall eliminate an existing local vehicular crossing;
3. The materials, colors, size, and design of the vehicular crossing shall be compatible with the Park;
4. Recreational access to the Park and recreational continuity within the Park shall be accommodated by new crossings;
5. Noise retardation measures shall be utilized wherever appropriate; and
6. Connections between new vehicular crossing roads and existing or new parallel roads shall not increase traffic flow on the parallel roads.

(b) Proposals for new or improved roads in Zone A and Zone B of the Review Zone that are within one mile of any portion of the Park that will substantially increase vehicular traffic to roads adjacent to the Canal will not be approved unless the applicant can demonstrate to the satisfaction of the Commission that:

1. Recreational access to the Park is not impeded;
2. Historic features of the Park are not adversely impacted;
3. The ecological character of the Park is not adversely impacted; and
4. The increased traffic will not have a visual or noise impact on the Park.

SUBCHAPTER 11. WAIVER OF GOVERNMENTAL AND PRIVATE PROJECTS REVIEW

7:45-11.1 Purpose

This subchapter establishes procedures and standards pursuant to which the Commission may waive strict adherence to the review procedure or to a specific requirement of this chapter. Waivers granted pursuant to this subchapter are intended to provide relief where strict adherence to the review procedure or to a specific requirement of this chapter will create an extreme economic hardship or where the waiver is necessary on the grounds that the project serves a compelling public need or where a specific impact review is not necessary.

7:45-11.2 Procedure

(a) An applicant who wants to obtain a waiver shall submit a written request for waiver along with all materials required to be submitted for a complete project application including the materials that are required to be submitted for the specific review for which a waiver is requested. If during review of a project application it appears necessary to obtain a waiver, the applicant may apply for a waiver. Application for waiver shall stay the time period that may be set forth in this chapter for review of the project application pending resolution of the waiver request.

*[(b)] In addition to the requirements in (a) above, an applicant requesting waiver of project review shall provide notice of the application as follows:

1. Notice shall be given to owners of all real property within 200 feet of the subject property. The applicant can obtain a certified list

of property owners from the administrative office of the municipality in which the property is located; and

2. Notice shall be given by publication in the official newspaper of the municipality in which the property is located, if there is one, or in a newspaper of general circulation in the municipality.

(c) The notice in (b) above shall state:

1. The nature of the application pending before the Commission, including a description of the proposed development and a statement of all waivers sought;

2. That written comments on the waiver application may be submitted to the Commission and that all such comments received at least five days prior to the Commission meeting at which the waiver application is reviewed will be considered in the review of the application;

3. That the waiver application is available for inspection at the Commission's office;

4. The address and phone number of the Commission;

5. The date on which the Commission will consider the waiver application; and

6. That any person who provides comments or requests a copy of the Commission's determination on the waiver application shall be provided a copy of said determination.

(d) If the applicant significantly modifies either the proposed development or the requested waivers from that described in the most recent notice given pursuant to (b) and (c) above, then the applicant shall again provide notice pursuant to (b) and (c) above so that the notice accurately describes the proposed development and the requested waiver.

(e) No application for a waiver of project review shall be deemed complete until proof is received that the notice required pursuant to (b) and (c) above has been given.]*

*[(f)]***(b)* The Commission shall determine whether to deny, approve or approve with conditions an application for a waiver from project review within 45 days after the Commission receives a complete waiver application. The Commission shall issue a notice of decision containing its determination on the waiver application. The notice of decision shall be issued in accordance with N.J.A.C. 7:45-2.8.

*[(g)]***(c)* The notice of decision shall advise the applicant, municipality and municipal reviewing agency and those affected parties who specifically requested notice of the Commission's decision of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The request for a hearing shall be submitted and acted on pursuant to N.J.A.C. 7:45-4.

7:45-11.3 Waiver of governmental and private project review due to extreme economic project hardship or compelling public need

(a) Commission may waive review or waive any requirement of this chapter, upon a clear and convincing demonstration by the applicant that strict adherence to the review procedure, or to a specific requirement of this chapter, would result in extreme economic hardship or extraordinary and unjustified expense, or would conflict with a compelling public need, and that the project will not impair the intent and propose of the Master Plan or this chapter.

(b) The Commission shall use the following standards in reviewing economic hardship waiver applications:

1. The literal enforcement of this chapter would result in an extreme economic hardship, as distinguished from a mere inconvenience, because of the particular physical surroundings, shape or topographical conditions of the property involved. The necessity of acquiring additional land to meet the setback requirements of this chapter shall not be considered an extreme economic hardship unless the applicant can demonstrate that there is no adjacent land which is reasonably available; and

2. An applicant shall be deemed to have established the existence of an extreme economic hardship only if the applicant demonstrates, based on specific facts, that the subject property is not capable of yielding a reasonable return if its present use *[(if)]* *is* continued, or if it is developed as authorized by the provisions of this chapter

and that this inability to yield a reasonable return results from unique circumstances peculiar to the subject property which:

- i. Do not apply to or affect other property in the immediate vicinity;
- ii. Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and
- iii. Are not the result of any action or inaction by the applicant or the owner or his predecessors in title.

(c) An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, that:

1. The proposed project will serve an essential public health or safety need;
2. The public health and safety require the requested waiver;
3. The proposed use is required to serve existing public health or safety needs;
4. There is no alternative available to meet the established public health or safety need;
5. The granting of the waiver will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, will not endanger public safety or result in substantial impairment of the resources of the Park;
6. The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the Act; and
7. The waiver granted is the minimum relief necessary to relieve the compelling public need.

7:45-11.4 Waiver of stream corridor impact review of governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for stream corridor impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project will not have a *[harmful effect]* upon the stream corridor's present ability to function as a buffer for the stream's ecological health and as a natural area; or
2. The project incorporates environmentally sound site planning techniques, or preserves other natural areas, either of which can be demonstrated to have an equivalent effect as would compliance with this chapter.

7:45-11.5 Waiver of traffic review for private and governmental projects

Private and governmental projects otherwise subject to review by the Commission for traffic impact will be waived for such review if the applicant establishes to the satisfaction of the Commission that the project will not have a direct traffic impact on the Park.

Recodify existing 7:45-11.1 to 7:45-11.5 as 7:45-11.6 to 7:45-11.10 (No change in text.)

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Administrative Orders and Declarations

Adopted Amendment: N.J.A.C. 11:1-5.2

Proposed: October 16, 1989 at 21 N.J.R. 3240(b).

Adopted: January 12, 1990 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: January 12, 1990 as R.1990 d.107, 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. 17:1-8.1; N.J.S.A. 17:1C-6(e); N.J.S.A. 17:29C-1 et seq.; N.J.S.A. 17:37A-26.

Effective Date: February 5, 1990.

Expiration Date: February 3, 1991.

Summary of Public Comments and Agency Responses:

Two public comments were received. One comment was submitted by the Professional Insurance Agents of New Jersey, which generally supported the proposed amendment.

The second comment was submitted by the New Jersey Insurance Underwriting Association ("FAIR Plan"). While generally supportive of the proposed amendments, the FAIR Plan expressed a concern about the concluding sentence of the proposed amendment to N.J.A.C. 11:1-5.2(b)3vii which reads as follows:

"If the owner remedies the conditions that left the unit or units unprotected against trespass and so notifies the association within the 15 day time period for appeal to the association as provided by N.J.A.C. 11:1-5.3(c) then the associations shall rescind the notice of cancellation and the insurance shall continue without lapse."

The Association expressed a concern that under the appeal procedure set forth at N.J.A.C. 11:1-5.3(c)2, the association has five working days to verify that the condition has been corrected. It was concerned that the quoted wording takes away this important verification, and suggested that the sentence be deleted.

The Department has determined to alter, but not to delete, the proposed wording. This sentence simply confirms the present practice and advises the public of the effect of remedying the condition. As the commenter indicated, if an appeal is filed advising that the condition is corrected, the association performs an inspection and if the conditions have been corrected, the coverage is reinstated without lapse pursuant to N.J.A.C. 11:1-5.3(c)2i, which states:

"The N.J.I.U.A. appeals committee will review and determine the appeal within five working days from receipt of request for appeal. If the result of the appeal is favorable, a letter advising the insured or his representative, the producer and the mortgagee (if any) of favorable action will be sent together with reinstatement notice stating that no lapse in coverage has occurred." (Emphasis added)

Nothing in the rule prohibits the Association from verifying that the conditions have been corrected, in accordance with the present procedure. The cross reference to the appeals procedure is intended to reconfirm present practice.

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

11:1-5.2 Notice of cancellation and nonrenewal of fire and casualty coverage

(a) (No change.)

1.-3. (No change.)

(b) Provisions of policies to be effective on or after July 1, 1987, which are issued by any company doing business in New Jersey and provide for less than 30 days' notice of cancellation and nonrenewal shall be null and void, with the following exceptions:

1.-2. (No change.)

3. Provisions in New Jersey FAIR Plan policies for five days notice to the insured and 10 days notice to the mortgagee with respect to any of the following properties or in any of the following circumstances:

i.-iii. (No change.)

iv. The insured has been indicted for or convicted of arson or burning with intent to defraud, or there is evidence of incendiarism or attempt threat by the insured or representative of the insured.

v. Buildings which have an exceptional degree of hazard, such as fire ruins or dilapidated condition.

vi. Buildings which have any of the following conditions existing: (1)-(3) (No change.)

(4) Failure to pay property taxes for two quarters.

vii. Building with any of the rental units in the building unoccupied and left unprotected against trespass. A rental unit will be deemed to be unprotected against trespass when an entrance door to such unit or an exterior door to a hall, stairway, or other common passage leading to such unit is missing, unlocked, not capable of being locked, or otherwise unsecured, or when a door or window in such unit which is accessible to entry has not been replaced or boarded up. If the owner remedies the condition that left the unit or units unprotected against trespass and so notifies the association within the 15-day time period for appeal to the association as provided by N.J.A.C. 11:1-5.3(c), then the association shall *[rescind

the notice of cancellation]* ***grant the appeal*** and the insurance shall continue without lapse.

viii-x. (No change.)

(a)

DIVISION OF ACTUARIAL SERVICES

Notice of Clarification of Summary of Public Comments

Credit Life Insurance and Credit Accident and Health Insurance Premium Rate Standards

Adopted Amendments: N.J.A.C. 11:2-3.1 and 3.12

Take notice that the Department of Insurance, to provide an accurate reflection of the public comments received on the proposed amendments to N.J.A.C. 11:2-3.1 and 3.12, the adoption of which was published in the January 16, 1990, New Jersey Register at 22 N.J.R. 233(a), herein provides notice that the use of the term "commenters" and plural pronoun forms resulting therefrom, in the eleventh through the fourteenth comments summarized in the referenced notice of adoption, was not correct. The commenter in each case was a company, and the word forms in the comment summaries should have been singular.

(b)

DIVISION OF ADMINISTRATION

Commercial Automobile Insurance Plan

Adopted Repeal and New Rules: N.J.A.C. 11:3-1

Proposed: November 20, 1989 at 21 N.J.R. 3613(a).

Adopted: January 12, 1990 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: January 16, 1990 as R. 1990 d. 118, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: 17:29D-1.

Effective Date: February 5, 1990.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: One commenter suggested that N.J.A.C. 11:3-1.4 should be changed to allow the insurance industry members of the Board to be selected by the insurers whose assets may be affected by the Commercial Automobile Insurance Plan (CAIP).

RESPONSE: N.J.A.C. 11:3-1.4 allows for this type of selection by the industry in the form of a nomination. However, the Department believes that the Commissioner should have the right to approve or disapprove the nominations.

COMMENT: Two comments were received regarding item 2 of the Summary which makes a reference to "Non-servicing Companies". One commenter suggested that the last sentence beginning with "Nonservice" be deleted. Denying such credit might be contrary to efforts to voluntarily depopulate CAIP. The other commenter suggested that "Nonservice" should be changed to "servicing" since the intent is to disallow credit for CAIP servicing carriers for business processed by them in the residual market.

RESPONSE: The Department agrees with the second commenter that "Nonservice" should read "servicing". The intent is to disallow credit from CAIP servicing carriers for business processed by them in the residual market.

COMMENT: A commenter questioned the economic impact statement which indicated the rules will result in lower premiums paid by risks in the voluntary market. It argues that since voluntary rates do not contain an explicit loading for CAIP deficiencies, it is questionable whether the reduction of CAIP operating losses will result in significant savings to voluntary insureds.

The commenter recommended that language be added to eliminate the possibility of negative net participation in the event that the company's depopulation credits exceed its gross participation.

RESPONSE: The Department agrees with the commenter. Currently CAIP rates are established by CAIP experience; therefore, no demon-

strable subsidies exist. The Department hopes to depopulate CAIP by incentives which should encourage insurers to write more business voluntarily.

COMMENT: One commenter suggested that proposed N.J.A.C. 11:3-1.1(a)1 should contain the phrase "eligible vehicle", instead of "motor vehicles other than those vehicles subject to the New Jersey Automobile Full Insurance Underwriting Association . . .".

RESPONSE: The Department disagrees. This section is consistent with the purpose of the present plan of operation. This section has been carefully worded to provide flexibility, even though the Plan of Operation can be more specific. However, the intent is to provide a residual market mechanism that provides for a method of insuring motor vehicles which need insurance coverage.

COMMENT: One commenter suggested that the definition of "CAIP" should be broadened to provide specific detail of the purpose and functions of the New Jersey Plan's CAIP.

RESPONSE: The Department disagrees with the commenter. The purpose and scope address this matter.

COMMENT: A commenter suggested the definition of "eligible applicant" contained in N.J.A.C. 11:3-1.2 be changed by inserting "in good faith" between the words "not" and "qualified". This change reflects the language included in N.J.A.C. 11:3-1.1(a)2.

RESPONSE: The Department agrees and the definition of "eligible applicant" and this section is changed accordingly.

COMMENT: One commenter argued that the term "depopulation credit" needs to be more specifically defined, and that the Depopulation Credit Program should be included in the Plan of Operation, and not in the rule.

RESPONSE: The Department disagrees and believes that the definition of "eligible for depopulation credit" provides sufficient clarity. Furthermore, the Depopulation Credit Program is a key element of the assessment formula and should be included as part of the regulation. The rule only defines "eligible for depopulation credit" as that term is used in N.J.A.C. 11:3-1.5. This approach permits the Plan of Operation to provide specific details.

COMMENT: One commenter suggested that a definition be provided for the term "credit".

RESPONSE: The Department sees no need to provide a separate definition for credit as the term is used in this subchapter.

COMMENT: One commenter stated that paragraph 2 of the definition of "eligible for depopulation credit" includes a reference to "CAIP or the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure". The commenter suggests that the words "CAIP or" be deleted as there is redundancy in the reference noted above.

RESPONSE: The Department believes that there is a need for both; one refers to the existing organization and the other refers to the one established by this subchapter. The Department has changed the definition of "CAIP" in N.J.A.C. 11:3-1.2 for clarification purposes.

COMMENT: One commenter argued that the plan proposes that business insured in CAIP immediately prior to being written voluntarily by an insurer, will be eligible for depopulation credit. The commenter also questioned whether a risk could qualify for depopulation credit if an insurer declines to provide coverage, so that the risk goes to CAIP (where coverage is immediately effective), and 30 days later the original insurer offers to write the business voluntarily for a lower premium.

RESPONSE: The Department has changed the definition of "eligible for depopulation credit" to clarify that the risk must be insured by CAIP for at least one year before it is eligible for credit under the program.

COMMENT: One commenter argued that CAIP servicing carriers are precluded from receiving depopulation credit for business they wrote as a servicing carrier one year before being written voluntarily. The commenter also asked the following questions: Does this mean the servicing carrier must have written the risk for one entire year for it to be precluded from depopulation credit? Does the term of the CAIP policy have any impact on whether or not the servicing carrier can write business voluntarily for a depopulation credit?

RESPONSE: A servicing carrier cannot receive credit for a voluntarily written risk which it insured as a CAIP risk at any time during the previous 12 months prior to that servicing carrier voluntarily writing the risk. The term of the CAIP policy does not have any impact on whether or not the servicing carrier can write business voluntarily for a depopulation. The determining factor as to what is eligible for depopulation credit are the criteria stated under "eligible for depopulation credit".

COMMENT: One commenter argued that the depopulation credit program is unfair to servicing carriers who would be precluded from

considering up to one quarter of the risks in the CAIP program depending on their share of the CAIP business. The commenter also stated that, on the other hand, non-servicing carriers are able to consider 100 percent of the risks in CAIP for depopulation credit. The commenter argued that this policy is unfair to servicing carriers and strongly objected to this.

The commenter also questioned how the Department would establish an even playing field for all commercial insurers in New Jersey.

RESPONSE: To permit service carriers to receive credit for voluntarily written risks they previously insured as a CAIP risk would give service carriers an unfair advantage over non-service carriers. Under the CAIP program, a service carrier already receives other economic advantages for being a service carrier, and the purpose of this restriction is to create a level playing field between service carriers and non-service carriers.

COMMENT: One commenter questioned how compliance with the depopulation credit program can be adequately policed? The commenter questioned whether insurers will be required to maintain a copy of the preceding insurers' declaration page as proof that the coverage was a CAIP risk before it was written voluntarily. The commenter also stated that the credit would obviously have to be based on each policy's earned premium. The commenter further questioned who would keep track of this program. The commenter wanted to know if it would be on a policy-by-policy basis to ensure that carriers are getting their fair depopulation credit.

Additionally, the commenter questioned whether a CAIP risk is a private passenger risk under the depopulation program (a pick-up truck previously used for commercial purposes changes to personal use, or a student driver living out-of-State who obtains coverage written voluntarily), and whether the risk is still eligible for depopulation credit. The commenter also questioned whether voluntarily written private passenger premium and CAIP depopulation credit plan mesh statistically in terms of car years.

RESPONSE: One of the purposes of the plan of operation is to establish the accounting details of the depopulation credit program. Companies have a statutory obligation to report true statistics. These statistics are subject to oversight by examinations by both internal company accounting examinations and external examinations by independent accounting firms and the Department of Insurance. Existing law provides for adequate oversight penalties for various violations.

Credits are only provided for those vehicles written voluntarily which are eligible for coverage through the "NJAIP".

COMMENT: One commenter argued that the depopulation program will only increase the size of the CAIP, not decrease it, and will allow sophisticated writers to manipulate the system so as to put losing business in the CAIP while keeping all profitable business. The commenter also stated that a sophisticated carrier can simply place some or all of its new business in the CAIP for one year; the sophisticated writer can also "season" business for free, that is, take a look at the new business for a year to see if it will be profitable without taking any risk itself. The commenter believed that losing business will stay in the CAIP. The commenter also stated that this will mean that the CAIP will increase in size as new business is placed in it and that the losses of the CAIP will increase as it "seasons" business and the "seasoned" losing business remains.

The commenter suggested that the best approach would be to simply allow the plan of operation to contain a depopulation credit program approved by the Commissioner, which the Commissioner can subsequently disapprove if it fails to depopulate the CAIP or becomes a tool for manipulation by some carriers. The commenter believed that this approach gives the CAIP and the Commissioner complete flexibility in designing a depopulation credit program that may be manipulation proof and may depopulate CAIP.

RESPONSE: The Department believes that the definition for "eligible for depopulation credit" contained in N.J.A.C. 11:3-1.2 will resolve this problem. This is one of the reasons a service carrier cannot receive credit for voluntarily written business it insured as a CAIP service carrier for one year prior to the business being written voluntarily.

COMMENT: Two commenters argued that under the definition of "eligible for depopulation credit", a company cannot get credit if it has written the same business during the prior five years. The commenters argued that if depopulation is indeed the goal of these rules, the five year period be reduced to two, thereby encouraging greater depopulation.

RESPONSE: The Department agrees and has changed this section accordingly.

COMMENT: Two comments stated that the definition of gross participation contained in N.J.A.C. 11:3-1.2 should include the time frame

on which participation ratios are determined and that this basis should be the second policy year instead of "that policy year".

RESPONSE: The Department agrees and has changed the sections that use the term "that policy year" accordingly.

COMMENT: One commenter stated that the definition of "eligible for depopulation credit" should be deleted as unnecessary. The commenter also felt that the reference to "eligible for depopulation credit" should be deleted from the definitions of "gross participation" and "net participation".

RESPONSE: The Department disagrees. The definition of "eligible for depopulation credit" is necessary and essential to the rules because it sets forth the criteria for defining the type of business that can qualify for depopulation credit. It is also a part of the formula for determining "gross" and "net" participation.

COMMENT: One commenter argued that the definition of "motor vehicle" contained in N.J.A.C. 11:3-1.2 should be changed by deleting the reference to "trailers and semi-trailers". Trailers and semi-trailers are excluded from motor vehicles when premium for certain coverages is calculated or when an insured's fleet size is determined.

RESPONSE: Since trailers and semi-trailers are insured under commercial policies, they must be included in the definition. However, N.J.A.C. 11:3-1.7(d)2 and N.J.A.C. 11:3-1.9(d) have been changed to clarify that trailers and semi-trailers shall not be counted when determining whether a risk is a fleet.

COMMENT: One commenter suggested that the definition of "private passenger automobile" should be changed to include vehicles owned by entities other than an individual or husband or wife where such vehicles are not customarily used in the business or occupation of the insureds.

RESPONSE: The Department disagrees. This rule uses a definition that is consistent with the statutory definition of private passenger automobile.

COMMENT: A commenter suggested that the definition of "private passenger type automobile" should be changed to exclude vehicles not customarily used in the occupation or business of the insured, except where such vehicles are part of a fleet.

RESPONSE: The Department disagrees. The purpose of this definition is to provide coverage for all private passenger type vehicles that cannot be insured by the JUA. If the suggested language is used, it will create a void, and certain types of vehicles may not be covered by the JUA or CAIP.

COMMENT: Two commenters suggested that the term "Voluntary All Other Automobile Direct Written Premiums" should be amended at N.J.A.C. 11:3-1.2 to include the word "net" before "automobile" and "direct". The comments also suggested that, wherever mentioned, the term "Voluntary Direct Written Premium" should be changed to include the term "all other automobile" inserted between "voluntary" and "direct".

RESPONSE: The Department disagrees that there is a need to insert the word "net" in the definition for "Voluntary All Other Automobile Direct Written Premiums", but agrees with the comments regarding the definition of "Voluntary Direct Written Premium" and has changed such term accordingly.

COMMENT: Two commenters suggested that N.J.A.C. 11:3-1.3(c) be changed by deleting the words "and provide insurance coverage" since only servicing carriers provide insurance coverage.

RESPONSE: The Department agrees and proposed N.J.A.C. 11:3-1.3 has been changed accordingly.

COMMENT: Three comments addressed N.J.A.C. 11:3-1.4(a), (b), (c) and (e), regarding the Governing Committee appointments by the Commissioner. The comments stated that insurers should designate their own representatives on the Governing Committee and that the rule should set forth factors that would justify the Commissioner's rejection of nominees. The comments stated that there were two problems with this approach. First, the insurers and their trade associations will not be represented proportionately to their share of the market. Since assessments are based on market share, net of any depopulation credit, insurers should be represented according to market share. Second, the Commissioner is given the right to reject nominations without any standards governing its conduct. Thus, an unreasonable Commissioner can exclude persons with needed expertise and who represent the insurance industry. At the very least, language should be adopted which would require the insurance trade and producer groups to submit to the Commissioner their respective nominees no later than 60 days prior to the annual meeting and more importantly, require the Commissioner to disapprove or approve the nominations not less than 30 days prior to the annual meeting date.

RESPONSE: The Department does value and recognize the need for the input and adequate representation of the insurance industry. This provision allows this input by allowing the insurance industry to nominate persons who they feel are qualified to serve on the Governing Committee, subject to the Commissioner's approval.

The basis for representation on the Governing Committee was the present plan of operation for CAIP, with the exception of the provisions regarding the addition of two public members.

COMMENT: One commenter expressed concern with 11:3-1.4(h)4ii which empowers the Governing Committee to appoint at least two servicing carriers. The commenter suggested that the Committee select from a list of carriers interested in serving in this capacity. Fair remuneration for services rendered will insure carrier participation on a voluntary basis.

RESPONSE: The proposed new rules only establish that the Governing Committee must appoint at least two servicing carriers. They do not prohibit the Governing Committee from selecting from a list of interested carriers. However, it gives the Governing Committee the power to appoint if no insurers are interested in being servicing carriers.

COMMENT: Three commenters addressed proposed N.J.A.C. 11:3-1.4(h)4iii, regarding the Governing Committee's power to appoint, conditionally appoint or terminate producers. The commenters argued that this provision, as written, implies an agency relationship with CAIP. The commenters suggested that a more feasible approach is a Producer Certification Program or a modified version of such a program.

RESPONSE: The Department agrees and proposed N.J.A.C. 11:3-1.4(h)3 and 4 have been changed accordingly.

COMMENT: Two comments recommended proposed N.J.A.C. 11:3-1.4(h)1, 2 and 11 be changed to include the limitation of "on behalf of the member insureds," to clarify for whom the Governing Committee is acting.

RESPONSE: The Department agrees with the commenter's amendment and has changed N.J.A.C. 11:3-1.4(h)1, 2 and 11 accordingly.

COMMENT: Two commenters stated that proposed N.J.A.C. 11:3-1.4(h)7 regarding an audit of CAIP each year should be changed to read that an audit shall be conducted every two to 2 1/2 years.

RESPONSE: The Department is willing to have in the Plan of Operation different schedules of an audit, but the Department strongly believes that some form of annual audit should take place.

COMMENT: One commenter suggested N.J.A.C. 11:3-1.4(h)8 be amended as follows: "ii. The approved annual budget **upon request**;" subparagraph iii should be amended as follows: "A copy of the annual **CAIP financial** audit upon request;" subparagraph iv should be amended as follows: "A copy of the minutes from all meetings **upon request**". The commenter believes that these amendments would reduce the costs to participants for what would otherwise be voluminous mailings.

RESPONSE: The Department sees no need to add "CAIP financial" to subparagraph iii. The Department agrees with the comments regarding subparagraphs ii and vi and has changed proposed N.J.A.C. 11:3-1.4(h)8ii and vi accordingly.

COMMENT: One commenter stated that with regard to N.J.A.C. 11:3-1.4(h)9, the Governing Committee should not mandate a servicing carrier how to keep their records as long as the carrier meets the accounting and statistical guidelines established for CAIP servicing carriers countrywide.

RESPONSE: This provision gives the Governing Committee the power to establish the accounting and statistical guidelines which they deem appropriate, and the committee could adopt the countrywide guidelines if the Committee determines that these are adequate. Also, these records have to be kept in accordance with statistical manuals filed with the Department.

COMMENT: The commenter suggested that the definition of "profit or loss" is needed since the terms remain undefined in N.J.A.C. 11:3-1.5(a).

RESPONSE: The Department sees no need to define profit and loss since those terms are used in the same manner in the current plan of operation. The Department has, however, changed this provision to include the word "operating" profit and loss for clarification purposes.

COMMENT: One commenter argued that N.J.A.C. 11:3-1.6 should be changed to provide that the Commissioner should provide a response to amendments within a required time period in order to allow proper administration of the plan. The commenter suggested that a deemer provision be provided which would allow implementation of amendments should the Commissioner fail to respond to filed amendments.

RESPONSE: The Department disagrees. The Commissioner must have sufficient time to review the Plan filed with the Department without

being subject to arbitrary deadlines. Therefore, a deadline for approval or a deemer provision is not necessary.

COMMENT: One commenter argued that according to N.J.A.C. 11:3-1.6(a)2, CAIP will license agents. The commenter suggested that a better alternative would be to provide for the certification of producers.

RESPONSE: The Department agrees and has changed N.J.A.C. 11:3-1.6(a)2 to reflect the suggested change.

COMMENT: Two comments address N.J.A.C. 11:3-1.6(a)9, regarding "... the cancellation of insurers ..." The commenters suggested that the phrase should be changed to read "cancellation of insureds".

RESPONSE: The Department agrees and has changed this paragraph accordingly.

COMMENT: One commenter argues that N.J.A.C. 11:3-1.7 establishes mandatory and optional coverages. The commenter strongly urged the Department to rewrite this section so that it would not require any new additional coverages.

RESPONSE: The Department has changed this section so that it is consistent with present statutory requirements.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-1.7(d)2iii. The commenter is in favor of increasing the limit for physical damage coverage from \$30,000 to \$40,000, but felt that eligibility should not be based on cost but rather actual cash value.

RESPONSE: The Department disagrees. The actual cash value of a car varies with each car and can create disputes, whereas the cost can be more easily verified.

COMMENT: One commenter questioned whether tow trucks are eligible for physical damage coverage in CAIP. The commenter did not believe that tow trucks were excluded unless they are considered an "emergency type vehicle".

RESPONSE: Tow trucks are excluded from physical damage coverage in CAIP. A tow truck is categorized by gross vehicle weight plus the vehicle it might tow.

COMMENT: One commenter argued that N.J.A.C. 11:3-1.7(d)2i and 11:3-1.8(b) define fleet risks as 10 or more vehicles and they should be amended to comply with current industry practice of defining such fleets as five or more.

RESPONSE: The Department disagrees. The Department recognizes that the current industry practice is to define such fleet risks as five or more vehicles. However, the rules do not define fleet size. They only specify that fleets of 10 or more vehicles are not eligible for physical damage coverage.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-1.8(b)2 which states that on fleet risks of 10 or more vehicles the applicant must provide, in addition to certification, a list of three insurers who have refused to insure the applicant.

The commenter states that an applicant's "certification" would be sufficient to verify an insurance refusal, and that the CAIP application should not require that specific companies be listed. The commenter also stated that this requirement could seriously jeopardize an agent's relationship with his or her company.

RESPONSE: The Department believes that this is a reasonable requirement. A similar provision has recently been implemented in the FAIR Plan Depopulation program with much success. The Department sees no reason why this provision will not be successful in the CAIP depopulation program.

COMMENT: One commenter expressed concern that the requirement under N.J.A.C. 11:3-1.8(c) that "no producer shall bind a risk for CAIP or submit an application for insurance to CAIP if such producer knows that the risk has coverage available from the voluntary market" sets a condition of which producers could not possibly have knowledge, that is, the specific requirements of acceptance for each and every available voluntary market in New Jersey. The commenter recommended that this entire section be eliminated, or rewritten to state that such producers know that the risk currently has or has been offered coverage in the voluntary market and that the agent must make a reasonable effort to place the risk in the voluntary market before submitting the risk to CAIP.

RESPONSE: The Department agrees, and has changed N.J.A.C. 11:3-1.8(c) to state that no risk may be submitted to CAIP if it has coverage, or has been offered coverage in the voluntary market.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-1.9(b) and urged that applications for insurance not be considered in effect when submitted, but 15 days later, to give the insurer an opportunity to analyze the risk and to assure that it is in compliance with appropriate risk management standards.

RESPONSE: The Department disagrees because this 15 day delay could lead to coverage gaps.

COMMENT: One commenter suggested that N.J.A.C. 11:3-1.8(d)3 should be changed to read as follows: "Is accepted for coverage by CAIP as provided for in the Plan of Operation; and . . .". The commenter stated that the proposed rule should not imply any agency relationship between producers and CAIP.

RESPONSE: The Department agrees with the amendment and this subsection is changed accordingly.

COMMENT: One commenter argued that N.J.A.C. 11:3-1.8(d)4 should be more specific as to what additional requirements can be set forth "in the plan of operation" and what "other requirements" may be included in the plan of operation. The commenter also questioned whether such requirements would be instituted by CAIP or the Insurance Commissioner.

RESPONSE: The Department believes that "other requirements" will be determined by the Governing Committee upon its submittal of the Plan of Operation subject to the approval of the Commissioner.

COMMENT: One commenter suggested that N.J.A.C. 11:3-1.9(b) should be amended to read, "The governing committee shall authorize the filing of all rates, rules . . .". The commenter argued that the Governing Committee has no authority to make such filings on its own and should rely on the filing authority of the Plan's Central Processor.

RESPONSE: The Department disagrees. The Governing Committee is authorized to make filings and the central processor acts as the agent for the Governing Committee.

COMMENT: One commenter argued that N.J.A.C. 11:3-1.9(b) should be changed to state that every rate filing should be based on CAIP experience. The commenter stated that CAIP rates should not be allowed to be lower than voluntary market rates (rate parity clause). The commenter argued that CAIP rates below the voluntary market would be counter to an effective depopulation plan. The commenter also stated that CAIP rates currently appear to be inadequate, and that they should be based on CAIP experience.

RESPONSE: Current CAIP rates are based on CAIP experience as agreed to by the filer, the Public Advocate, and the Department. The intent of this rule is to allow CAIP to establish rates based on its own experience to the extent possible.

COMMENT: One commenter suggested that N.J.A.C. 11:3-1.9(b) should be changed so that the Automobile Insurance Plan Service Office will be allowed to make the filings, instead of the Governing Committee.

RESPONSE: The Automobile Insurance Plan Service Office will be allowed to make filings on behalf of the Governing Committee if the Governing Committee authorizes it to do so.

COMMENT: One commenter argues that N.J.A.C. 11:3-1.9(f) calls for the financing of retrospective rating plans. The commenter urged that the plan allow companies to require 100 percent of the premium up front, because recovery of amounts due under the plans is highly unlikely.

RESPONSE: The Department disagrees with the commenter in that this provision does not call for the financing of retrospective rating plans, but it does provide for such plans under verifiable conditions.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-1.10, Right to petition for appeal to the Commissioner. The commenter believes that in cases of producer termination, which directly affects a producer's livelihood, the producer should have an automatic recourse to appeal to the Department.

The commenter believes that anything less is a violation of due process. The commenter also suggested that there should be a maximum time limit within which the appeal should be heard; and the producer's ability to transact CAIP business should not become affected prior to the outcome of the appeal.

RESPONSE: The Department sees no reason for an automatic appeal where a termination may have occurred based upon factual matters in dispute applied to the governing rules. Such a determination needs to be made by the Commissioner in that regard.

COMMENT: One commenter argued that there is no specific statement to the effect that all CAIP business shall be serviced by servicing carriers and recommends that this issue be addressed.

RESPONSE: There is no need for a specific statement because the Governing Committee and the Commissioner should have the flexibility to decide this issue in accordance with this regulation and the plan of operation.

COMMENT: One commenter stated that the Committee does not have representation by the commercial automobile purchaser. The commenter felt that representation by the purchaser is of utmost importance. The commenter also suggested that a representative of the Risk Insurance Management Society (RIMS) be included on the Committee.

RESPONSE: The Governing Committee will have two public members, and the rules permit the Commissioner to select a member or members from RIMS to serve in this capacity. It should be noted that the Commissioner has previously appointed RIMS members to serve on the FAIR Plan, JUA and AIRE Boards as public members.

COMMENT: One commenter suggested that should any surcharge be approved applying to insured or self-insured motor vehicles, that said surcharge should not apply to any government body, that is, state, county, municipal or authority.

RESPONSE: Under these rules, there are no surcharges, but only assessments against insurers as under the current program.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 1. COMMERCIAL AUTOMOBILE INSURANCE PLAN

11:3-1.1 Purpose and scope

(a) The purpose of this subchapter is to establish a plan pursuant to N.J.S.A. 17:29D-1:

1. To provide the coverages described herein, subject to the conditions stated, for motor vehicles other than those vehicles subject to the New Jersey Automobile Full Insurance Underwriting Association;

2. To provide for the apportionment of insurance coverage for eligible applicants who are in good faith entitled to but are unable to procure the same, through the voluntary market;

3. To establish a procedure for the sharing of premiums, losses, and expenses among all insurers who are participants in New Jersey as defined within this subchapter for all risks eligible for coverage under the provisions of this subchapter; and

4. To encourage risk management to prevent accidents and losses.

11:3-1.2 Definitions

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

"CAIP" means the Commercial Automobile Insurance Procedure ***pursuant to this subchapter***.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Eligible applicant" means the owner or registrant of a motor vehicle registered in New Jersey or to be registered within 60 days who is not ***in good faith*** qualified for automobile insurance coverage in the New Jersey Automobile Full Insurance Underwriting Association as defined in N.J.S.A. 17:30E-3m. For multi-state operations, the applicant must have its operating headquarters in New Jersey but vehicles may be registered in other states. Members of the United States military forces with vehicles registered in other states shall be deemed eligible applicants if they are otherwise eligible; are stationed in New Jersey; and the vehicle is garaged in New Jersey at the time application is made. No applicant shall be deemed eligible if the principal operator of the vehicle to be insured does not hold a driver's license which is valid in New Jersey, or if a regular operator of the vehicle other than the principal operator does not hold such a license.

"Eligible for depopulation credit" means business which meets all of the following criteria:

1. Business first written voluntarily by the participant after ***[the effective date of this subchapter]* *February 5, 1990***;

2. Business that was insured ***[by]* *through*** CAIP or the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure ***for at least one year*** immediately prior to being written voluntarily by the participant;

3. Business first written voluntarily ***during the period for which the credit is being claimed. Credits shall be claimed for only the first or second year written voluntarily, but must be claimed annually. Servicing Carriers may claim credits for the second and third year of business written voluntarily (for business which is ineligible for a credit the first year in accordance with paragraph 2 above)***; ***[by the participant no more than five years before the end of the policy year for which the credit is being claimed.]*** and

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4. Business which was not written by the participant as a servicing carrier for CAIP or the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure for one year before being written voluntarily by the participant.

"Emergency type vehicle" means any land vehicle, used to respond to distress calls, fires, or rescue, propelled by other than muscular power and not run upon rails or tracks. This term includes, but is not limited to, fire trucks, rescue trucks, police cars and ambulances.

"Gross participation" means a participant's Voluntary All Other Automobile Direct Written Premiums derived from information contained in the annual statement times a fraction, the numerator of which is the sum of the plan's total written premiums for that year and the Statewide total Voluntary All Other Automobile Direct Written Premiums which are eligible for depopulation credit for that policy year, and the denominator of which is the Statewide total Voluntary All Other Automobile Net Direct Written Premiums of all participants for that *[policy]* ***second prior*** year.

"Light truck" means a vehicle with a gross vehicle weight (G.V.W.) of 10,000 pounds or less.

"Motor vehicle" means any land vehicle propelled otherwise than by muscular power including trailers and semi-trailers, except such vehicles that run only upon rails or tracks.

"Net participation" means a participant's gross participation for that policy year less its business eligible for depopulation credit for that policy year.

"Net participation percentage" means a participant's net participation for that policy year in proportion to the comparable Statewide total net participation for all participants.

"New Jersey Automobile Full Insurance Underwriting Association" (NJAFIUA) means the private passenger automobile insurance residual market established pursuant to N.J.S.A. 17:30E-1 et seq.

"Operating headquarters" means the chief place of business where the principal officers generally transact business, and the place to which reports are made and from which orders emanate. It is the location where the executive offices are, corporate decisions are made and corporate functions are performed.

"Participant" means an insurer licensed and authorized to write motor vehicle liability and physical damage insurance and specifically includes any insurer who writes all other automobile liability and all other automobile physical damage insurance.

"Policy year" means the exposure and premiums for all policies written during a calendar year and all losses attributable to policies written during the same calendar year.

"Private passenger automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a, that is not eligible for coverage through the New Jersey Automobile Full Insurance Underwriting Association, and is owned by an individual or husband and wife.

"Private passenger type automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a and is owned by a corporation, partnership or any other entity except an individual or husband and wife.

"Voluntary All Other Automobile Direct Written Premiums" means automobile liability, personal injury protection, and physical damage premiums written by a participant on New Jersey risks, minus:

1. CAIP direct written premiums included in the figures which the participant wrote as a service carrier for CAIP;
2. Any direct written premiums included in the figures from insureds who are eligible applicants for the New Jersey Full Insurance Underwriting Association as defined in N.J.S.A. 17:30E-3m;
3. Any reinsurance premiums assumed from other insurers included in the figures; and
4. Any premiums for Death and Disability coverage included in the figures.

11:3-1.3 Creation of the plan

(a) There is created in the State of New Jersey a plan for the administration and apportionment of automobile insurance for qualified applicants to be known as the New Jersey Commercial Automobile Insurance Procedure, hereafter referred to as "CAIP."

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(b) CAIP shall be administered by the governing committee pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) Every insurer admitted to transact and transacting motor vehicle insurance in the State of New Jersey shall participate in CAIP ***[and provide insurance coverage]*** to the extent required by this subchapter and the plan of operation.

11:3-1.4 Governing committee

(a) CAIP shall be administered by a governing committee of 13 members.

1. Eight members shall be salaried employees of an insurer which is a participant of CAIP.

2. Three members shall be licensed producers.

3. Two members shall be public representatives who are knowledgeable about automobile insurance matters but who are not employed by, or otherwise affiliated with, insurers, insurance producers, or other entities of the insurance industry.

4. The Commissioner or his designee shall be an ex-officio member of the committee.

(b) The following organizations shall each nominate two members to represent participants of CAIP:

1. The Alliance of American Insurers;

2. The American Insurance Association; and

3. The National Association of Independent Insurers.

(c) Participants which are not members of the organizations in (b) above shall nominate two members to represent participants in accordance with a fair method set forth in the plan of operation.

(d) The following organizations shall each nominate one member to represent producers:

1. Independent Insurance Agents of New Jersey;

2. Insurance Brokers Association of New Jersey; and

3. Professional Insurance Agents of New Jersey.

(e) All members shall be appointed by the Commissioner and shall serve for one year or until a successor is appointed. Each member may designate an alternate. In the event the Commissioner fails to appoint a nominee, the organization shall nominate another representative.

(f) The governing committee of the existing New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure shall act as the governing committee for CAIP until the CAIP governing committee is appointed pursuant to this section.

(g) All meetings of the governing committee shall be conducted in accordance with this subchapter and the plan of operation.

(h) Pursuant to this subchapter and the plan of operation, the governing committee shall have the following duties:

1. To assume the assets and liabilities of the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure ***on behalf of the member insurers***;

2. To assume the rights and obligations of the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure ***on behalf of the member insurers***;

3. To develop and submit for approval by the Commissioner:

i. A plan of operation; ***[and]***

ii. Premium rules, rates, surcharges, pursuant to N.J.S.A. 17:29A-1 et seq.; ***and***

iii. A plan for a producer certification program.

4. To appoint, conditionally appoint or terminate:

i. A CAIP manager;

ii. At least two servicing carriers; ***and***

[iii. Producers to act as agents; and]

***[iv.]*iii.* Other employees, professionals, and contractors required to administer CAIP.**

5. To budget expenses, levy assessments, and disburse funds;

6. To investigate complaints and hear appeals from applicants, insureds, producers, servicing carriers or participants about any matter pertaining to the proper administration of the CAIP;

7. To arrange for an independent audit of CAIP each year which shall include all servicing carriers;

8. To furnish all participants with:

i. An annual written operations report;

ii. The approved annual budget ***upon request***;

- iii. A copy of the annual audit upon request;
 - iv. A copy of the plan of operation, and all amendments;
 - v. A copy of all rates, rules and manuals upon request; and
 - vi. A copy of the minutes from all meetings ***upon request***;
9. To audit the records of any participant relating to the subject matter of CAIP and establish such policies, records, books of account, documents and related material which shall be maintained for the proper administration of CAIP;
10. To perform such other functions as may be necessary and proper to administer CAIP in accordance with this subchapter and the approved plan of operation; and
11. To indemnify ***on behalf of the member insurers*** each member of the governing committee, and employees for any and all claims, suits, costs of investigations, costs of defense, settlements or judgments against them on account of an act or omission in the scope of the member's duties or employee's employment. CAIP shall refuse to indemnify if it determines that the act or failure to act was due to actual fraud, willful misconduct or actual malice.

11:3-1.5 Participation

(a) At the end of each fiscal period, CAIP's ***operating*** profit or loss shall be determined separately for each policy year. Profit shall be credited or distributed to each participant and loss shall be charged against each participant in proportion to each participant's "net participation percentage" for the ***[policy]* *second prior*** year which resulted in the profit or loss.

(b) If the Commissioner finds that the continuation of the depopulation credit program is no longer in the best interests of the public, he or she may order that business first written voluntarily after that date may no longer be eligible for depopulation credit.

1. The Commissioner may also order that specific lines or sublines are no longer eligible for depopulation credit.

2. The Commissioner may also reinstate the depopulation credit program for specific lines or sublines.

(c) All data necessary to comply with the foregoing participation procedures shall be reported to the CAIP's central statistical agent in the manner described in the approved statistical plan.

(d) Groups of participants under the same ownership and management shall be treated as a single participant. Groups of participants under either the same ownership or management, but not both, may elect to be treated either separately or as a single company.

(e) In the event a participant discontinues writing motor vehicle liability or physical damage insurance in this State, it shall continue to pay assessments, provided, however, that if the automobile liability or physical damage business of a participant discontinuing the writing of automobile liability or physical damage insurance in this State has been purchased by, transferred to, or reinsured by another company, the latter shall receive the assessments of the former.

(f) In the event a participant is merged with another company or there is a consolidation of companies, the continuing company shall receive the assessments of the company merged or consolidated, provided, however, the continuing company may be relieved from such obligations if another company has agreed, in a manner satisfactory to the governing committee, to assume such obligations.

(g) Participation shall be suspended upon order of the Commissioner of Insurance if he or she finds that such action is required by the financial condition of that participant.

(h) All participants in CAIP shall participate in the business written by the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure pursuant to an approved plan of operation.

11:3-1.6 Plan of operation

(a) The plan of operation shall provide for the prompt and efficient provision of automobile insurance to eligible applicants. The plan of operation shall provide for, among any other matters:

1. The internal organization and proceedings of the governing committee;

2. Standards and procedures for the appointment, compensation, and termination of and performance standards for servicing carriers, the CAIP manager, ***[producers,]*** other employees, professionals and contractors required to administer CAIP ***along with a producers certification program***;

3. The extent of coverage to be offered by CAIP to eligible applicants;

4. Procedures to apply for coverage;

5. Premium rules, surcharges and minimum premiums;

6. Provisions for the cancellation or the nonrenewal of policies;

7. Methods and means for the collection, investment and disbursement of funds;

8. Development and maintenance of a statistical plan, and manuals incorporating that plan, which shall be subject to the prior approval by the Commissioner in the same manner as the plan of operation; and

9. Development and maintenance of a risk management plan which shall provide for safety inspections, safety education, follow-up on hazardous conditions and operations and procedures for the cancellation of ***[insurers]* *insureds*** who fail to comply with the procedures of the plan. The risk management plan shall be subject to the prior approval by the Commissioner in the same manner as the plan of operation.

(b) The governing committee shall, ***[within 90 days of the effective date of this subchapter]* *by May 6, 1990***, submit to the Commissioner, for his or her review and approval, a proposed plan of operation. The governing committee may propose an amendment to the plan of operation at any time.

(c) The proposed plan and any amendments shall be reviewed by the Commissioner and approved by him or her if he or she finds it fulfills the purposes provided by this subchapter. If approved, the Commissioner shall certify approval to the governing committee and the plan of operation or amendments shall take effect 10 days after such certification.

1. If the Commissioner disapproves all or any part of the plan of operation or any amendment he or she shall return same to the governing committee with a statement, that sets forth the reasons for his or her disapproval and may include other recommendations he or she may wish to make.

2. If the governing committee does not submit a plan of operation ***[within 90 days after the effective date of this subchapter]* *by May 6, 1990***, or a new plan which is acceptable to the Commissioner within 90 days after the disapproval of a proposed plan, the Commissioner may promulgate a plan of operation and certify same to the governing committee.

3. Any such plan approved by the Commissioner shall take effect 10 days after the certification to the governing committee; provided, however, that until a plan of operation is in effect pursuant to the provisions of this subchapter, the existing New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure temporary placement facility shall be continued in effect. Each participant shall continue to comply with the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure with respect to all business written under that procedure prior to the effective date of the CAIP plan of operation.

(d) The Commissioner may propose an amendment to the plan of operation by communicating the proposed amendment to the governing committee.

11:3-1.7 Coverage

(a) CAIP shall provide to eligible applicants, bodily injury liability and property damage liability coverages as follows:

1. CAIP shall ***[offer basic limits]* *provide basic combined single limit*** of \$35,000 ***[combined single limit]*** and statutory uninsured motorist coverage except:

i. When limits in excess of the basic combined single limit of \$35,000 are required by law, the plan shall offer limits adequate to comply with the minimum requirements of that law, except with respect to limits over \$5 million in which case excess coverage is conditioned upon the plan being able to secure facultative reinsurance. CAIP shall provide a policy for limits less than the minimum requirements of the law when evidence of adequate excess insurance is provided by the producer or the insured.

ii. CAIP shall provide limits adequate to comply with the provisions of the financial responsibility law of any state in which the motor vehicle will be operated, but only while the vehicle is being operated in that state.

iii. CAIP shall also offer the optional limits of liability as specified in the plan of operation.

(b) CAIP shall ***[provide]*** ***offer*** to eligible applicants, ***additional*** uninsured or underinsured motorist coverage as follows:

1. ***Additional*** ***[Uninsured]*** ***uninsured*** and underinsured motorist coverage shall be provided as an option to the named insured up to the ***[maximum]*** ***limits set forth in N.J.S.A. 17:28-1.1b*** and subject to the deductibles specified in the plan of operation. The limits for uninsured and underinsured motorist coverage shall not exceed the insured's motor vehicle liability policy limits for bodily injury and property damage respectively.

2. Uninsured and underinsured motorist coverage shall not be increased by stacking the limits of coverage of multiple motor vehicles covered under the same policy of insurance nor shall these coverages be increased by stacking the limits of coverage of multiple policies available to the insured. If the insured had uninsured motorist coverage available under more than one policy, any recovery shall not exceed the higher of the applicable limits of the respective coverages and the recovery shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits.

3. Uninsured motorist coverage shall be subject to the policy terms, conditions and exclusions approved by the Commissioner, including, but not limited to, unauthorized settlements, nonduplication of coverage, subrogation and arbitration.

(c) CAIP shall provide to eligible applicants, basic and additional personal injury protection coverage as follows:

1. With respect to those automobiles subject to the New Jersey Automobile Reparation Reform Act, CAIP shall provide basic personal injury protection coverage under every automobile liability policy as required by the Act and shall also offer to the named insured Additional Personal Injury Protection as required by the Act and by regulations promulgated by the Commissioner thereunder.

(d) CAIP shall provide to eligible applicants, physical damage coverage as follows:

1. CAIP shall only offer physical damage coverage to:

- i. Private passenger vehicles;
- ii. Private passenger type vehicles;
- iii. Light trucks;
- iv. Motorcycles;
- v. Recreational trailers (excluding trailers used as residences); and
- vi. Social services vehicles of the private passenger, station wagon, van or mini-bus type owned by or operated on behalf of a non-profit entity used to transport, without charge, the elderly or handicapped.

2. Notwithstanding (d)1 above, CAIP shall not offer physical damage coverage to:

- i. Risks consisting of fleets of 10 or more vehicles ***not including trailers and semi-trailers***;
- ii. Vehicles more than 25 or more years old;
- iii. Vehicles with an original cost new of \$40,000 or more;
- iv. Vehicles with a seating capacity in excess of 20;
- v. Any emergency type vehicle; and
- vi. Any vehicle which is operated under a registration plate not issued for a specific vehicle.

3. Comprehensive and collision coverage shall be provided on an actual cash value basis subject to a minimum deductible specified in the plan of operation applicable to each loss to each vehicle. CAIP shall also offer optional higher deductibles as specified in the plan of operation.

4. Physical damage coverage shall be offered only in connection with a policy written by the plan affording bodily injury and property damage coverage.

5. Upon request, CAIP shall issue a loss payable clause for the benefit of a lienholder.

11:3-1.8 Eligibility

(a) As a prerequisite for insurance from CAIP, a prospective insured must attempt, within 60 days prior to the date of the application, to obtain automobile insurance in New Jersey, and be unable to obtain such insurance. The prospective insured must certify, in the application form prescribed by CAIP, that the applicant has attempted, but has been unable, to obtain automobile insurance in New Jersey through ordinary methods.

(b) For any ***[fleet]*** risk ***consisting*** of 10 or more vehicles, the applicant must also provide:

1. A copy of the notice of cancellation or nonrenewal from the applicant's previous insurer, or an explanation concerning why the applicant was not insured; and

2. A certification that the applicant has been refused insurance within 60 days of the date of application from at least three named insurers licensed to transact automobile business in New Jersey. Such certification shall list the three insurers.

(c) No producer shall bind a risk for CAIP or submit an application for insurance to CAIP if such producer knows that the risk ***currently*** has ***or has been offered*** coverage ***[available]*** from the voluntary market.

(d) An eligible applicant shall not be afforded coverage until it:

1. Submits an application as prescribed in the plan of operation;
2. Pays the premium, or portion thereof, required in the plan of operation;
3. Is accepted for coverage by CAIP ***[or its authorized agent]*** as provided for in the plan of operation; and
4. Completes such other requirements as set forth in the plan of operation.

11:3-1.9 Rates and policy forms

(a) CAIP shall continue to use the rates, rules, surcharges, minimum premiums, classifications and policy forms approved for the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure until modified or changed pursuant to this subchapter.

(b) The governing committee shall file all rates, rules, surcharges, minimum premiums, classifications and policy forms to be used by CAIP for the prior approval of the Commissioner. Proceedings to review these filings shall be conducted pursuant to N.J.S.A. 17:29A-1 et seq. All rates shall consider the experience of risks insured by the plan and shall not be excessive, inadequate or unfairly discriminatory.

(c) For any risk with less than 10 vehicles, the premium shall be subject to a merit rating plan established in the plan of operation. Every rate filing shall include an analysis of the adequacy of the merit rating plan.

(d) Any risk with 10 or more vehicles ***not including trailers and semi-trailers*** shall be considered as a fleet. CAIP shall file base rates for fleets with the Commissioner for his or her prior approval which are different than the rates for non-fleet risks if CAIP determines that the loss expectancy of fleet risks insured by CAIP is different than the loss expectancy of non-fleet risks insured by CAIP.

(e) Fleet risks shall be subject to an experience rating plan established in the plan of operation, which shall set forth the criteria for eligibility of the experience rating plan. If any fleet risk is determined to be ineligible for the experience rating plan, the risk shall be subject to a merit rating plan established in the plan of operation.

(f) Any risk with basic limits premium of \$100,000 or greater shall also be subject to a retrospective rating plan established in the plan of operation. In the event CAIP finds that the premium from all retrospectively rated risks combined is inadequate, or excessive, CAIP shall file with the Commissioner for his or her prior approval a change in the retrospective rating formulas, including a percentage surcharge on all retrospectively rated risks if necessary, so that the total premium from retrospectively rated risks is adequate based on the combined experience of retrospectively rated risks insured by the plan.

11:3-1.10 Right to petition for appeal to the Commissioner

(a) An applicant, insured, producer, servicing carrier or participant may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.

2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.

3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(a)

DIVISION OF ADMINISTRATION

Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance

Adopted New Rules: N.J.A.C. 11:3-16

Proposed: August 7, 1989 at 21 N.J.R. 2182(a).

Adopted: January 12, 1990 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: January 12, 1990 as R.1990 d.116, 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. 17:1-8.1; 17:1C-6(e); 17:29A-1 et seq.; 17:29A-36.2 and 36.3; 17:29A-44.

Effective Date: February 5, 1990.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

Eleven public comments were received from insurance companies, a rating organization, insurance company trade associations and the Public Advocate. Rule citations in the comments below refer to the provisions of the August 7, 1989 proposal.

COMMENT: Many commenters objected generally to the volume and detail of data required to be submitted in support of automobile insurance rate requests. Commenters stated that the filing requirements were burdensome and would be expensive to implement; that the data required was not necessary to develop rates or support flex rate filings; and that the Commissioner did not have statutory authorization to require information in such detail.

RESPONSE: These comments were addressed in connection with the repropoed new rules (see 21 N.J.R. 2182(a)). As stated therein, the Department believes that the rate filing requirements set forth in the repropoed rules are necessary to provide the degree of regulatory oversight of private passenger automobile insurance rates contemplated by the 1988 amendments to the automobile insurance laws, P.L. 1988, c.119 and c.156. The rules will ensure that automobile insurance rates are fully justified by the costs of providing the coverage.

The Department seeks to have all relevant data and calculations submitted with the filing in order to avoid extended requests for additional data and explanation that in the past have delayed the Department's review of automobile insurance rate filings.

COMMENT: Several commenters incorporated by reference comments to the previous proposals for these repropoed rules.

RESPONSE: The Department likewise incorporates by reference its responses to comments in previous proposals, specifically those set forth when these rules were repropoed August 7, 1989 at 21 N.J.R. 2182(a).

COMMENT: Several commenters identified editorial errors in N.J.A.C. 11:3-16.4(b), 11:3-16.7(d) and 11:3-16.10(e)-(g).

RESPONSE: These corrections have been incorporated in the adopted rules.

COMMENT: Two commenters objected to the definition of "small filer" in N.J.A.C. 11:3-16.2. One commenter suggested that insurers with less than five percent of the market be considered "small filers." Another stated that filers with significantly more than 0.5 percent of the market are too small to derive statistically credible data concerning territorial experience and classification differentials.

RESPONSE: The Department has determined to leave the definition as repropoed. It should be noted that 0.5 percent of the market in 1988 comprised premium income of \$7,256,175. This figure will grow significantly as insurers depopulate the New Jersey Automobile Full Insurance Underwriting Association ("the JUA") over the next several years.

COMMENT: Several commenters objected to the requirement of N.J.A.C. 11:3-16.3(j) that a rating system be submitted on computer disks for use by the Department. The commenters stated that such a system would be difficult and expensive to develop; that the program would

reveal proprietary and trade secret information; and that differences among rating systems will make it impossible for the Department to compile a useful data base. One commenter estimated development of such a system would exceed \$500,000 and suggested that the Department develop a mainframe computer system on which all insurers' rating systems would be maintained.

RESPONSE: The Department notes that many insurers have developed the systems required for the use of their agents or employees. As stated when the rules repropoed, this requirement is necessary both to determine that the rates are properly implemented and to respond to consumer inquiries. Nevertheless, the Department has decided to delete the requirement for insurers with less than 1,000 earned exposures in the prior year and to delay the requirement until January 1, 1991. For filers with less than 1,000 exposures, the limited use of the disks by the Department may not justify the cost for so few insureds.

COMMENT: Several commenters objected to the requirement that territorial and classification differential data be included with all prior approval filings, or with the informational filing at least every three years, as set forth at N.J.A.C. 11:3-16.4(d)8. Commenters noted that the citation should require submission of data in accordance with N.J.A.C. 11:3-16.8(a)5 and (a)6i and ii. One commenter stated that most companies carry about 200 primary classes, which are further divided into subclasses, and it inquired whether the classes may be grouped so as to improve credibility and keep the number of cells to a manageable level. A rating organization said that compliance with the requirements is an undue burden on filers. One commenter suggested that territorial and classification data be required only when an insurer is changing its relatives. It suggested submissions not more frequently than five years. Another commenter suggested that the analysis required would be expensive.

RESPONSE: The Department notes that when the rule was repropoed the requirement to report this data was reduced from every year to every three years or when a rate filing prior approval is submitted. Territorial and classification differentials determine the final rates charged to insureds from the general rate level approved or in use. This information is necessary to determine that the territorial and classification system used by an insurer does not provide excessive or discriminatory rates for any territory or class. The Department does not believe that requiring insurers to review and file the data every three years is an undue burden; the number of territories and classes are established by the insurers themselves. There is no prohibition against compiling or grouping data from a number of classes, so long as the methodology is adequately described.

COMMENT: Several commenters restated objections to the flex rate filing requirements set forth in N.J.A.C. 11:3-16.5 and the potential sanction for the failure to cure a deficiency in a flex rate filing set forth at N.J.A.C. 11:3-16.11(d). One commenter stated that the Commissioner had no statutory authority to disapprove a flex rate filing and order the return of premium; that the threat of disapproval converted this procedure into a prior approval procedure; and that it would be arbitrary and capricious to disapprove such a filing when the rate changes are within the flex band. Another stated that the flex rating law (N.J.S.A. 17:29A-44) merely requires a "statement of reasons" together with the claim and expense experience to support a rate change within the flex band, and that the purpose of flex rating is to eliminate rate filing requirements. Another commenter interpreted the flex rate law to provide for inflation-related increases without prior approval or specific justification regarding the need for such changes.

RESPONSE: The Department interprets the flex rate law, N.J.S.A. 17:29A-44, as altering the procedure for implementation of certain limited rate changes, but not altering the requirement that those changes be justified by the cost of providing the coverage. These comments were adequately addressed when the rules were repropoed August 7, 1989 (see 21 N.J.R. 2182(b), 2190).

COMMENT: Several commenters objected to the amount of loss development and trend data required by N.J.A.C. 11:3-16.8(c)2 and 16.8(d). The commenters stated generally that the amount of data and calculations required by these rules was more extensive than required for their internal use and was burdensome to provide. Some commenters made suggestions to limit the amount of loss development and trend data required to be submitted.

RESPONSE: After consideration of the commenter's suggestions to limit the data and calculations required to be submitted, the Department has determined not to make any change in these provisions. The Department believes this data is necessary for its review and is not an undue burden on filers.

COMMENT: Several commenters objected to the requirements of N.J.A.C. 11:3-16.8, which requires certain data to be supplied at both basic and total limits. These commenters stated that their recording system presently does not collect basic limits data, and that it would be expensive to develop and maintain a system to report and compile this data simply for filing in New Jersey. One commenter suggested that basic limits data could be approximated in an actuarially sound method and suggested a modification of the rule for those insurers which do not currently collect basic limits data. Another commenter stated that it does not offer any basic limits policies, and thus has no data to collect and report.

RESPONSE: After consideration of the comments, the Department has determined to make an exception only in the case of insurers which offer only minimum limits higher than basic limits and thus have no data to report. All insurers which offer basic limits policies must break out the basic limits data and report it separately as required.

COMMENT: Several commenters objected to the requirement of N.J.A.C. 11:3-16.8(d)2 that the trend data reflect seasonality factors.

RESPONSE: This requirement has been eliminated upon adoption. Quarterly and quarterly year-ending data as required should provide a sufficient basis for a trend.

COMMENT: Several commenters objected to the Department's preferred ratemaking methodology set forth in N.J.A.C. 11:3-16.10, in that it did not consider policyholder dividends for mutual companies. These commenters noted the provisions of N.J.S.A. 17:29A-11 that require due consideration be given to policyholder dividends in ratemaking.

RESPONSE: The Department notes that automobile insurance rates should be based upon the cost of providing coverage. Mutual insurers which year after year return significant dividends to policyholders appear to be charging higher than necessary rates in the first instance. Return of the excess to the policyholder is discretionary with the insurer. The Department believes that the law requires it to see that rates are set properly in the first place. After giving due consideration to policyholder dividends and N.J.S.A. 17:29A-11, it has determined not to make any changes in its standard ratemaking methodology. The commenters are advised that they are free, of course, to propose an alternative methodology.

COMMENT: Two commenters objected to the inclusion of the Clifford formula in the Department's standard ratemaking methodology. A mutual insurance company stated that this methodology was not applicable to mutual insurance companies. The Public Advocate stated that the formula fails to reflect current economic conditions, such as the cost of equity funds, and that it fails to acknowledge that the current premium-to-surplus of the industry is approximately 2:1; furthermore it ignores total investment income and gain by not accounting for the amount attributable to policyholders' surplus. It suggested the adoption of a total-return methodology for the calculation of the profit and contingency loading.

RESPONSE: After careful consideration, the Department has determined not to make any significant changes in the proposed standard ratemaking methodology. The Department notes that ratemaking in accordance with the Clifford formula has been used by New Jersey insurers for many years, and has been determined to be reasonable by New Jersey courts. The Department notes that all filers are free to propose an alternate ratemaking methodology in whole or in part (see N.J.A.C. 11:3-16.10(g)) and that the Public Advocate may likewise propose an alternative methodology in its report and recommendation submitted in connection with rate filings requiring prior approval (see proposed N.J.A.C. 11:3-18, 21 N.J.R. 3422(b)).

COMMENT: Several commenters objected to the provision of the standard ratemaking methodology which used an interest rate for investment income calculated from the Internal Revenue Service discounting rate plus 200 basis points. One commenter noted that this would currently produce a rate of 10.17 percent, which it stated was a greater rate of return on its investment portfolio than it has achieved in recent history. It stated that such a level of return would encourage abandonment of government and municipal bonds in favor of corporate bonds and stocks, which would adversely impact insurer solvency. Another suggested that the rate of return should be determined using the filer's national overall investment income rate of return, and provided information that showed that the rate as calculated would be less than the triple-A corporate bond rate. Another expressed a concern that it did not reflect an appropriate split between taxable and tax-exempt investments. Another commenter said that the rate was arbitrary.

RESPONSE: This comment was addressed when the rule was repropounded (see 21 N.J.R. 2182(b), 2188). The Department has determined to retain this provision as repropounded. The IRS discount rate plus 200 basis points represents a conservative overall rate of return on an investment portfolio, which includes both current income and realized and unrealized capital gains.

COMMENT: Several commenters objected to the use of the most recent Unsatisfied Claim and Judgment Fund ("UCJF") assessment as the percentage loading for that factor in the standard ratemaking methodology. The commenters stated that this assessment is expected to rise over time, and that use of the most recent assessment would be inadequate. A commenter suggested that a better method would be to project the amount needed to cover incurred UCJF losses on policies issued while the proposed rates are in effect. The commenter stated that this would result in an underpricing of PIP coverage.

RESPONSE: The Department has determined to adopt this provision as proposed. UCJF assessments are assessed each year on a cash flow basis.

COMMENT: Several commenters objected to the provisions of N.J.A.C. 11:3-16.10(b)8, which prohibit including certain listed expenses in the rates, specifically lobbying expenses and advertising and other expenses incurred in connection with proposed changes in the regulation of insurance. The commenters stated that these expenses ultimately benefit policyholders and are considered legitimate business expenses in New Jersey.

RESPONSE: These comments were addressed when the rules were repropounded (see 21 N.J.R. 2182(b), 2189).

COMMENT: A commenter suggested that the Excess Profits Report (or a certification confirming that it was filed) not be required as part of a flex rate filing. The commenter noted that the report was required by an independent rule (N.J.A.C. 11:3-20) and a certification that it has been filed is also necessary for the annual informational filing.

RESPONSE: The Department has determined not to make the change suggested. As written, the rule would prevent a filer from obtaining a flex rate increase until it filed its Excess Profits Report. The Department does not believe that the requirement to include the certification in a flex rate filing is an undue burden.

COMMENT: Several commenters addressed N.J.A.C. 11:3-16.10(g), which specifically permits filers to propose an alternate ratemaking methodology. One commenter objected to the language in the rule that the filer demonstrate the superiority of the alternate procedure, stating that N.J.S.A. 17:29A-14 does not require the insurer prove the superiority of an alternate method, but only that the rates proposed not be unreasonably high, inadequate, or unfairly discriminatory.

RESPONSE: While N.J.S.A. 17:29A-14 sets a general standard that must be met by insurance rates, N.J.S.A. 17:29A-36.2(a) specifically requires the Commissioner to adopt a standard ratemaking methodology. Approving rates based on any deviation from that standard should be done only for good reason, that is, that the proposed alternative is superior to the standard with regard to a specific filing. To provide otherwise, and therefore to calculate rates by a methodology that may be less appropriate than the standard methodology, would be arbitrary and capricious. This rule places the burden of proof on those proposing an alternate methodology to demonstrate that it is better than the standard in that particular case.

COMMENT: Several commenters objected to various provisions of the repropounded rules on the grounds that they called for confidential or proprietary information to be included in their rate filing and thus become a "public record" pursuant to N.J.S.A. 47:1A-2.

Information alleged to be confidential by various commenters included the following:

1. The final rates and the rating system on a computer disk;
2. Products or services supplied or received in transactions between the filer and an affiliate;
3. Information related to the derivation of classification differentials;
4. Information related to the derivation of credibility factors;
5. Information related to the derivation of loss development factors;
6. A statement regarding any changes in the filer's case loss reserving practices;
7. Information related to the derivation of trend factors;
8. Information or studies concerning the effects of changes in external factors, for example changes in seat belt use, changes in the drinking age, etc.;
9. Information concerning changes in the premium base and exposures;
10. Information related to the derivation of expense provisions;

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11. Information regarding any expense-saving activities;
12. Average incurred expenses per exposure in New Jersey and countrywide;
13. Information regarding the various preliminary and intermediate steps taken in preparing the filing; and
14. Information regarding the selection of an alternative ratemaking methodology.

RESPONSE: These comments were addressed when the rule was repropoed (see 21 N.J.R. 2182(b), 2183-84). In its response, the Department invited information about what the commenters considered to be "trade secrets" or "proprietary information."

The examples above include data that has been reported to the Department, other states and statistical collection agents for many years, or otherwise been routinely disclosed in rate filings and hearings.

As previously stated, the Department is not adverse to providing appropriate means to protect unwarranted disclosure of information needed to regulate rates when there is an identifiable public purpose in doing so.

COMMENT: A commenter objected to N.J.A.C. 11:3-16.4(b)7v, which requires expense data to be allocated by state and line of business.

RESPONSE: The Department requires this data to evaluate the rate filing. It notes that much of the data required is subject to allocation. The filer must make that allocation and explain its method of doing so.

COMMENT: An insurer stated that it writes liability coverage as a package including both bodily injury and property damage liability. Since the premium for this package is indivisible, it inquired how to report single limit liability coverage.

RESPONSE: This data can be broken down by coverage. Insurers do so when filing the statutorily required Annual Statement and excess profits report. The filing must contain an explanation of methodology when this is done.

COMMENT: A company suggested that loss development for un-insured motorist and PIP coverages be developed to the same evaluation date as bodily injury liability.

RESPONSE: The Department has determined to make no change in this provision. It notes that these are first party coverages and reported promptly. Loss development must be cut off at some point.

COMMENT: A company stated that reported unallocated loss adjustment expense will be, at least partially, the result of allocation of countrywide values, and will not be compiled directly but will depend upon an allocation procedure.

RESPONSE: The Department is aware that this data, as well as other data required, will be subject to an allocation. When doing so, the filing must set forth the method of allocation.

COMMENT: With regard to N.J.A.C. 11:3-16.10, a company commented that many companies develop a bulk value for incurred allocated loss adjustment expenses, rather than determine them on an individual case basis. It stated that reserves thus determined will be subject to an allocation procedure. While a case-basis determination is theoretically possible, it would be unduly burdensome and not provide more useful information than an allocation of bulk reserves.

RESPONSE: The Department is aware that an allocation of bulk values may be required to provide this information. When doing so, the filer must include an explanation of the method of allocation. The Department does not consider that reporting this information is an undue burden.

COMMENT: A company requested clarification of the internal expense trend that is required. It contends that reporting any internal expense trend seems unnecessary since the standard ratemaking method specifies expense trending based on external data.

RESPONSE: This comment relates to N.J.A.C. 11:3-16.8(d). This requirement has been eliminated upon adoption and the provision corrected to state loss data.

COMMENT: A company commented that information about premium cash flow by coverage would necessarily be an estimate; it noted that premium flows are obscured by the inclusion of residual market equalization charges (RMECs).

RESPONSE: If premium cash flow by coverage is the product of an allocation, the filing must so state and explain how the allocation was made. The Department does not believe that the inclusion of the RMECs will hinder analysis.

COMMENT: A company requested clarification whether separate cash flow patterns are required for losses, allocated loss adjustment expenses and unallocated loss adjustment expenses.

RESPONSE: Combined data is satisfactory.

INSURANCE

COMMENT: A company objected to the requirement of N.J.A.C. 11:3-16.4(b)2, which requires informational filings report the number of automobiles recovered and resale/salvage proceeds. It stated that information on stolen vehicles is part of the salvage proceeds reported for comprehensive coverage generally, and should not need to be reported separately.

RESPONSE: This provision and N.J.A.C. 11:3-16.4(b)3 and 4 have been revised to reduce the data required.

COMMENT: A company suggested that Exhibit B (comprehensive cause of loss report) be changed to eliminate the separate reporting of particular items, and therefore list the causes of loss as just fire, theft, glass and all others.

RESPONSE: The Department has revised the comprehensive cause of loss report to reduce the data required as suggested by the commenter.

COMMENT: A company suggested that the catastrophe loading be based on a maximum of 10 years of data rather than "as many years of data as possible" as provided in the repropoed rules.

RESPONSE: A stated in response to a similar comment when the rules were repropoed, 10 years of data may not be enough (see 21 N.J.R. 2182(b), 2185). Because the rule as proposed would appear to require that the data be collected and reported in perpetuity, however, it has been changed to require as many years as available with a minimum of 10 years.

COMMENT: A company objected to the provisions of N.J.A.C. 11:3-16.8(c)2-9 which requires paid loss development parallelograms, stating that they are unnecessary for physical damage coverages. It stated that paid losses will not be significantly different from incurred losses after a few months of development and suggested that this requirement be eliminated.

RESPONSE: Paid and incurred losses are different; the Department does not agree with this suggestion.

COMMENT: A company suggested that the requirement of providing incurred loss development parallelograms be eliminated for companies that include incurred but not reported loss ("IBNR") in its incurred losses.

RESPONSE: The Department disagrees. IBNR should be reported separately to project future loss development on loss development parallelograms. This requirement is made clear by additional language in the definition of loss development parallelogram.

COMMENT: A company objected to the provisions of N.J.A.C. 11:3-16.8(d)2, which requires "T" statistics be computed on the trend data. It stated that these statistics are unnecessary in that they do not measure trends but merely how well the formula fits certain historical data.

RESPONSE: "T" statistics are necessary to assess trend data. They are routinely available as a function of an insurer's data system and should be reported.

COMMENT: Several commenters objected to the provisions of N.J.A.C. 11:3-16.8(h), which requires that the amount of the rate change be broken down by the amount of change attributable to various factors.

RESPONSE: Upon consideration of these comments, the Department has decided to eliminate this requirement because the results may vary depending upon how each filer undertook the calculation, and this has limited value as a standard for comparison.

COMMENT: A commenter stated with respect to N.J.A.C. 11:3-16.9(c)1 and (f)1, that while the loss, loss adjustment expense and unearned reserves in relation to earned premium in New Jersey can be computed, the investment income earned on those reserves would be an allocation of overall investment income. It suggested that this methodology be specifically provided in the rules.

RESPONSE: The Department disagrees. This is not an allocation; it is a method of calculation. Unearned premium reserves is derived from the accounting definitions of written and earned premiums.

COMMENT: Several commenters objected to the requirement of N.J.A.C. 3-16.9(d) that the filer identify all statistical plans used and a description of the data compiled by each. The commenters stated that this requirement is burdensome to those who use their own statistics and suggested that the rule simply require identification of any external statistical plans.

RESPONSE: The Department disagrees that this provision is burdensome. It requires the filer to identify the statistical plan or plan used; to identify what data was derived from what plan; and to include a certifying statement.

COMMENT: Regarding N.J.A.C. 11:3-16.10(b)5, a company noted that acquisition expense trending is likely to ignore the need to hire more

employees to cover the expansion of the voluntary market mandated by JUA depopulation, as well as to reflect changes in employee productivity. It suggested that the provision permit the trending of acquisition and general expenses in the same manner as losses are trended.

RESPONSE: This requirement is part of the standard ratemaking methodology. The commenter seems to be confusing the calculation of an expense trend with the application of a trend that the standard ratemaking methodology requires that they apply. Nothing in this rule prohibits taking into account expenses reasonably required to write the volume of business transacted in determining the final rate.

COMMENT: An insured objected to the provision of N.J.A.C. 11:3-16.10(b)6, a provision of the standard ratemaking methodology which provides for the use of industry average expenses for commission and brokerage, other acquisition expenses and general expenses. The commenter stated that the differences are not necessarily between stock or mutual companies, but among companies with various marketing systems. It further stated that applying a maximum allowable expense percentage is arbitrary.

RESPONSE: This comment was addressed when the rules were repropose (see N.J.R. 2182(b), 2188-89). A filer may propose an alternative.

COMMENT: A commenter objected to the provisions of N.J.A.C. 11:3-16.10(g), which requires supporting information when an alternative ratemaking methodology is proposed. It suggested that the information be limited to a description of the methodology used; a statement as to why the methodology is being used; whether a different methodology than the alternate methodology is being used in other states for automobile insurance (except where the different methodology is mandated); and exhibits containing the supporting information for the calculations in the alternate methodology.

RESPONSE: A filer may support its proposal to use an alternative methodology with whatever it believes may be persuasive. This provision requires that information related to any profit and contingency factor specifically be included.

COMMENT: A rating organization suggested that N.J.A.C. 11:3-16.6(c)1 include the actual effective date of the last approved rates of the rating organization, August 1, 1988.

RESPONSE: This kind of statement in an administrative rule becomes obsolete very quickly and leads to confusion in the future.

COMMENT: A rating organization commented that once it has received approval of a filing, the calculation of premiums at present rates is no longer meaningful or possible. It requested clarification of N.J.A.C. 11:3-16.8(a)1.

RESPONSE: While the Department acknowledges that this is literally true, for rating organization filings a history of the change of loss costs is required and has been provided in the past.

COMMENT: A company noted that insurance ratemaking is not a precise actuarial science and that a rate is never going to be 100 percent correct. It requested that insurers be permitted to return to making rates based upon a combination of actuarial data and judgment which considers changing trends which affect rates.

RESPONSE: N.J.S.A. 17:29A-36.2 requires that the Commissioner establish filing requirements for automobile insurance rate data and a standard ratemaking methodology. The repropose rules do that. They recognize that ratemaking is based on data and actuarial judgment. They require that the data and judgments be set forth in the filing.

COMMENT: A company requested that the requirement that the pages of a filing be "consecutively numbered" be eliminated, as it would make it difficult to insert and remove pages in a large filing.

RESPONSE: While the Department recognizes the problem posed by the commenter, an absence of any numbering system would make a large filing extremely difficult to review and resolve for the Department, the filer and the Public Advocate. The requirement that the pages be consecutively numbered would be satisfied not only by a unitary numbering system ("1, 2, 3, 4," etc.) but by a decimal or lettered system ("1, 2, 2.1, 2.2, 3," etc. or "1, 1a, 2, 3, 3a, 3b," etc.).

COMMENT: A company objected to the requirements that the filer include "worksheets" and "all information . . ." in N.J.A.C. 11:3-16.8 and 16.9. It stated that the requirement was unclear and viewed it as over-regulation.

RESPONSE: This requirement does not mean that every piece of paper related to the filing be included. Rather it requires the filer to provide the Department with the information upon which the filing is based, and documents containing calculations that set forth the process of determining rates from that information.

COMMENT: A company objected to the "requirement for both company and group data when excess profits calculations are company based," apparently referring to N.J.A.C. 11:3-16.5(b).

RESPONSE: The rules do not require groups to file combined data. N.J.A.C. 11:3-16.3(b) provides that if an insurer chooses to file as a group, it must also file separately for each company. This is consistent with N.J.S.A. 17:29A-6.1(a)(1).

COMMENT: A company inquired about the use of the phrase "identical for each company" in N.J.A.C. 11:3-16.3(b). It stated that it believed this means separate rate level calculations are not required when one of the companies in a group has little or no data.

RESPONSE: The commenter's interpretation was not the intent of this provision. The Department has decided to eliminate this provision and thus avoid any confusion.

COMMENT: A company objected to the requirement of N.J.A.C. 11:3-16.4(b)2, 3 and 4, which require the annual informational filing to include data concerning automobile thefts, subrogation and salvage recovery as unnecessary to ratemaking.

RESPONSE: These items are to be included in the annual informational filing due July 1 of each year in furtherance of the Department's automobile insurance rate monitoring function. As noted above, the reporting requirements have been reduced.

COMMENT: The same commenter objected to the requirement of N.J.A.C. 11:3-16.4(b)6, which requires information be supplied about investment income for the previous year and be estimated for the current year and two following years. It stated that the estimates will require assumptions about future rates of return, cash flow, rate changes, exposure writings and loss experience which will not be reliable and should not be required.

RESPONSE: The Department acknowledges that estimates, assumptions or projections about the future are required to develop this exhibit. The Department does not consider this unusual in insurance rate filings.

COMMENT: A company inquired about N.J.A.C. 11:3-16.4(b)8, which requires the filing of data at least every three years to support territorial relativities and classification differentials. It asked whether ISO rating organization filings qualify or whether individual company data was necessary.

RESPONSE: The Department understands that ISO will continue to make filings limited to its qualified members in accordance with N.J.S.A. 17:29A-6.1(a)(2), pursuant to N.J.A.C. 11:3-16.7. Any ISO prior approval filing will include this data, required by N.J.A.C. 11:3-16.8(b)5 and 6i and ii, which its qualified members may incorporate by reference in a statement accompanying their annual informational filing. Insurers that are not qualified members of a rating organization shall submit their own data.

COMMENT: Several companies objected to the provisions of N.J.A.C. 11:3-16.6(a) and 7 which requires submission of the data described in N.J.A.C. 11:3-16.8, 16.9 and 16.10 on a computer disk when a prior approval filing is being made. Several commenters objected to the expense; another stated that this requirement will not result in development of a useful data base because of variations among different systems.

RESPONSE: As noted when the rules were repropose, this is only required for prior approval filings (see 21 N.J.R. 2182(b), 2184). Submitting the data on a computer disk will expedite review. The Department does not anticipate combining information from the various disks on to a single system.

COMMENT: A company commented that N.J.A.C. 11:3-16.8 is not clear about the information required, because "coverage" is defined to include basic PIP and "all other coverages" includes additional PIP.

RESPONSE: This has been clarified at N.J.A.C. 11:3-16.8(c)2 on adoption in accordance with the definition of "coverage" in N.J.A.C. 11:3-16.2. The data is required for each "coverage" as defined in that section.

COMMENT: A company commented with respect to N.J.A.C. 11:3-16.8(c)2 that the loss development parallelogram would appear to require the evaluation for the 11th through 20th years for PIP and BI. It stated that 10 years of loss data is neither available nor relevant.

RESPONSE: The Department disagrees; if the information is not currently available the filer should develop systems to provide it in the future.

COMMENT: A company objected to the provisions of N.J.A.C. 11:3-16.8(e), which requires certain data regarding premium base and exposures. It stated that this information is of questionable relevance and not required for a company's internal use.

RESPONSE: The Department disagrees and believes the data to be relevant with respect to both its rate review and rate monitoring functions.

COMMENT: A company commented that N.J.A.C. 11:3-16.10(a)5 should specify net loss reserves since direct losses for BI and especially for PIP are subject to substantial fluctuations.

RESPONSE: The Department disagrees. All data should be reported on a direct basis. This is consistent with past practice. The Department has included clarifying language specifying this as an additional provision in the general section of the rule.

COMMENT: With respect to N.J.A.C. 11:3-16.8(a)5, a rating organization suggested that territorial rate data be required only on an earned/incurred basis. This would make the requirement consistent with the presently approved statistical plan.

RESPONSE: The Department agrees and has made the appropriate changes.

COMMENT: A rating organization stated that it interpreted N.J.A.C. 11:3-16.8(a)6 to require that support for classification differentials be included with every filing.

RESPONSE: The rule states that this information is required for prior approval filings only. N.J.A.C. 11:3-16.4(b)8 requires that an informational filing submitted on behalf of an insurer shall include this information if the filer has not submitted data in the last three years to support its territorial relativities and classification differentials, that is, has not submitted a prior approval filing in the last three years.

COMMENT: A rating organization commented with regard to N.J.A.C. 11:3-16.8(d)liii that the requirement to provide fast track trend data will have an impact on its ability to collect and report the data. It further stated that, because of the limited number of qualified members from whom the data would be collected, that it would be of limited value. It stated that the purpose of the Fast Track Monitoring System was to provide the N.A.I.C. with a sampling of data by line of insurance at the earliest possible date.

RESPONSE: The Department has decided not to make any change in this provision. Automobile insurance rate data developed from the fast track monitoring system will serve as the external loss data required for the rating organization's qualified members. The Department recognizes that reporting requirements for the NAIC are different.

COMMENT: A rating organization commented with respect to N.J.A.C. 11:3-16.9 that company expense and profit provision, as well as other items used to measure profitability, are unclear as to their applicability to a rating organization.

RESPONSE: In accordance with N.J.A.C. 11:3-16.7(e), this data is required whenever the rating organization representing the greatest number of insurers in the private passenger insurance market submits a flex rate or prior approval filing. It is necessary to establish final rates for the New Jersey Automobile Full Insurance Underwriting Association. It should be submitted in the aggregate and derived from the rating organization's qualified companies. The Department considers it necessary to establish an appropriate rate for the residual market mechanisms.

COMMENT: A rating organization commented with respect to N.J.A.C. 11:3-16.10(a) that since the standard investment income methodology uses four years' ratio of reserves to incurred losses, it could be biased by the presence of assigned risk (AIP) reserves in the reserves but not the incurred (as the incurred should net this out). It stated that the result may well be that the ratio of reserves to incurred losses could be misleading.

RESPONSE: The Department does not believe that the effect, if any, would be material.

COMMENT: A rating organization commented with respect to N.J.A.C. 11:3-16.10(d)2 that a filing due July 1 of any year would result in 15 months between the end of the evaluation and the submission of the filing.

RESPONSE: The Department acknowledges that this is true, but the loss development would be indicative of what is needed to evaluate the filing.

COMMENT: Several commenters objected to a provision of N.J.A.C. 11:3-16.11(d) which requires filers to request a hearing on the issue of completeness of their flex rate filings within 10 days of notice of incompleteness. The commenters suggested 30 days, which is the time allowed to remedy an incomplete filing.

RESPONSE: The adopted rule incorporates this suggestion.

In addition to the changes adopted as a result of the Department's consideration of comments received, the adoption also contains minor editorial changes or additions that correct errors in the original reproposal, incorporate changes that have occurred by the passage of time

or that more clearly or completely express the Department's intent. The definition of "qualified member" has been revised to conform with the adopted definition of the term at N.J.A.C. 11:3-18.2, published elsewhere in this issue of the New Jersey Register. These changes do not require additional public notice and comment pursuant to N.J.A.C. 1:30-4.3.

It should be noted that the rule as adopted contains references to N.J.A.C. 11:3-18 (dealing with procedural matters for review of these filings), adopted elsewhere in this issue of the New Jersey Register, and N.J.A.C. 11:3-16A (dealing with calculation of the annual permitted flex rate), which will be adopted in the near future.

Full text of the adoption follows: (Additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 16. RATE FILING REQUIREMENTS: VOLUNTARY MARKET PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-16.1 Purpose and scope

(a) This subchapter establishes data, filing format and preferred ratemaking requirements for all private passenger automobile rate filings for the voluntary market, in implementation of N.J.S.A. 17:29A-1 et seq. and as required by N.J.S.A. 17:29A-36.2.

(b) This subchapter applies to all rating organizations and to all insurers making private passenger automobile insurance rate filings for the voluntary market in this State.

(c) These requirements apply to all rate filings made by insurers and rating organizations for the revision of base rates; informational filings to be made on July 1*[, 1989 and annually thereafter]* *of each year* pursuant to N.J.S.A. 17:29A-36.2b; and those filings made under the flex rate provisions of N.J.S.A. 17:29A-44.

(d) This subchapter does not apply to rule and form filings that do not change base rates.

11:3-16.2 Definitions

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

"Accident year" means the 12-month period covering the occurrences during that period.

"AIRE" means the Automobile Insurance Risk Exchange, established pursuant to N.J.S.A. 39:6A-21.

"All other coverages" means insurance for towing and labor, accidental death and dismemberment, extended medical benefits, additional personal injury protection, rental reimbursement and any other items included in Lines 19.1, 19.2 or 21.1 of Page 14 of the Statutory Annual Statement, which are for private passenger automobile non-fleet exposures, except those items defined as "coverages".

"Basis point" means an annual interest rate of .01 percent (one one-hundredth of one percent).

"Case reserves" means the estimated value of the liability assigned to specific known claims whether determined by claim adjusters or set by formula.

"Claim" means a request for payment for a loss which comes under the terms of an insurance contract.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Coverages" means insurance for bodily injury liability, property damage liability, basic personal injury protection, collision, comprehensive and uninsured/underinsured motorists.

"Department" means the New Jersey Department of Insurance.

"Exposure" means one car insured for one year, or two cars insured for six months each, etc.

"External trend data" means trend data derived from experience outside of insurance industry statistics.

"Filer" means a rating organization or any insurer who makes an annual informational filing, flex rate filing or rate filing requiring prior approval pursuant to these rules.

"Flex rate" means a Statewide average rate change as set forth in N.J.S.A. 17:29A-44.

"Flex rate filing" means a filing made to adjust rates within the limits provided by N.J.S.A. 17:29A-44 and any applicable Orders of the Commissioner ***issued pursuant to N.J.A.C. 11:3-16A***.

"IBNR" or "incurred but not reported loss" means losses which have occurred but have not yet been reported as of a specified date including, if applicable, deficiencies/redundancies in case reserves.

"Informational filing" means a filing made annually on July 1 in accordance with N.J.S.A. 17:29A-36.2b.

"Internal trend data" means trend data derived from the experience of the filer related to the policies it issues if an insurer, or the policies issued by its qualified members and subscribers if a rating organization.

"Loss development parallelogram" means a display of losses showing accident year data by evaluation date, with the same number of accident years shown at each evaluation date. The accident years shall be shown vertically and the evaluation dates shown horizontally. The first evaluation date shall be three months after the end of the accident year; subsequent evaluations shall be at 12-month intervals. ***IBNR shall be shown as a separate number at the latest evaluation date for each year displayed.***

"Public Advocate" means the Division of Rate Counsel, New Jersey Department of the Public Advocate.

"Qualified member" of a rating organization means an insurer member or subscriber of a rating organization whose total written ***private passenger*** car years insured, on a calendar basis, is ***[equal to or]*** less than ***[two percent on January 1, 1989,]*** 1.5 percent on January 1, 1990 and one percent on January 1, 1991, of the total written ***private passenger*** car years insured by all insurers writing motor vehicle insurance in this State in the voluntary market, pursuant to N.J.S.A. 17:29A-6.1a2.

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table, rating plan or compilation by whatever name described containing the rates used by any rating organization or by any insurer, or used by any insurer or by any rating organization in determining or ascertaining a rate.

"Reasonable total rate of return" means that rate of return appropriate for an enterprise given the risk involved.

"Small filer" means a filer with less than 0.5 percent of the New Jersey written premiums in the voluntary market for private passenger automobile insurance for the most recently available prior calendar year.

"Total rate of return" means underwriting return and investment return on both reserves plus capital and surplus, related as a percentage to capital and surplus.

"UCJF" means the Unsatisfied Claim and Judgment Fund, established pursuant to N.J.S.A. 39:6-61 et seq.

11:3-16.3 General requirements and filing format

(a) The data requirements set forth in this subchapter are minimum requirements. The filer may submit any other data it believes to be relevant in justifying proposed rate changes. If the filer has not collected portions of this information in the past, or has not collected it in a form so as to facilitate reporting, it is not required to compile it retrospectively. All filers shall begin collecting this information in a manner so as to facilitate reporting no later than January 1, ***[1990]* *1991***, and report data so collected on filings made or required to be made on or after ***[July 1, 1991]* *April, 1992***.

(b) Separate insurance companies that are affiliated by a parent-subsidiary or any group relationship and that ***[chose]* *choose*** to submit a single filing for the group shall provide the minimum data requirements set forth in N.J.A.C. 11:3-16.8 and 16.9, and make the rate level calculation set forth in N.J.A.C. 11:3-16.10, both separately for each company and combined for the group⁴, except when the data is identical for each company and the filing contains an explanation⁴.

(c) Small filers need not provide all of the information required by N.J.A.C. 11:3-16.8(c), (d), and (e); more limited requirements are set forth in those sections. Notwithstanding this, any filing by a small filer for a rate change, including flex rate filings shall include sufficient justification for all factors used.

(d) All filings shall be submitted to the Department at the following address:

New Jersey Department of Insurance
Property/Liability Division
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

(e) A copy of all filings submitted pursuant to N.J.S.A. 17:29A-14 that require the Commissioner's approval prior to implementation of a rate change shall be submitted simultaneously to the Public Advocate at the following address:

Department of the Public Advocate
Division of Rate Counsel
744 Broad Street
Newark, New Jersey 07102

(f) All filings shall be accompanied by a New Jersey Department of Insurance transmittal form (Form AMB-10, incorporated herein by reference Exhibit D in the Appendix).

(g) All filings shall be accompanied by the following certification signed by an officer of the filer: "I _____ certify that the attached filing complies with all statutory and regulatory requirements and contains information that is true and accurate. I further certify that I am authorized to execute this certification on behalf of the filer."

(h) Each filer shall submit filings in loose leaf form inserted into standard three-ring binders. The loose leaf sheets used in the filing shall be eight and one-half inches wide and 11 inches long and punched for three hole standard binders. Only one side of the page shall be used. Each page shall be consecutively numbered.

(i) The margin at the top of each page shall show the filer's name, filer's identifying number for this filing, NAIC company number(s) and NAIC group number. The right hand side of the page shall show the section, exhibit and sheet number.

(j) ***Except for filers with less than 1,000 exposures in the prior year, after January 1, 1991, each* *Each*** flex rate filing when made, or other rate ***change*** filing when effective, shall be accompanied by a computer disk(s) that contains the rating system to be implemented.

1. The computer disk may be either 5.25 inch 360 KB or 3.5 inch 1.44 MB.

2. The computer disk shall include a program and data such that when an insured's characteristics (for example, coverage, policy limits, use of auto, territory, etc.) are input, the rate to be charged by coverage is determined. The program shall allow both the input and the output information to be printed in hard copy.

3. The computer disk(s) shall be accompanied by complete and straightforward instructions for use of the program.

k) All data shall be reported on a direct basis exclusive of business ceded to reinsurers or reinsurance assumed from other companies. Notwithstanding this provision, transactions with the UCJF shall be reported as set forth in N.J.A.C. 11:3-16.8(d), 11:3-16.9(a)4 and 11:3-16.10(d)4.

11:3-16.4 Insurer informational filings due July 1 of each year

(a) Informational filings shall be made by all insurers transacting private passenger automobile insurance in the voluntary market, including all individual members and subscribers of rating organizations, pursuant to N.J.S.A. 17:29A-36.2b.

(b) The informational filing shall consist of the following documents and exhibits:

1. The insurer's Excess Profits Report to be filed on or before July 1, 1989, pursuant to N.J.A.C. 11:3-20⁴; ***In lieu of providing copies, the filer may submit a certification of an officer that the report has been filed and is incorporated by reference.***

2. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the number of insured automobiles for which payment was made under the theft portion of comprehensive coverage as a result of the theft of the automobile; ***and*** the aggregate payments made on account of those thefts⁴; the number of automobiles recovered; and the total amount received from the resale of the automobiles⁴.

3. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the total amount of dollars recovered by subrogation for each coverage ***[and the percentage recovered of the total amount subject to subrogation for each coverage]*.**

4. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the total amount of dollars recovered by salvage for each physical damage coverage *[and the percentage recovered of the total amount subject to salvage for each coverage]*.

5. A Cause of Loss Report for comprehensive coverage for the latest five complete calendar years that sets forth the information shown in Exhibit B.

6. An exhibit of investment earnings that contains the amount of investment income earned on loss, loss adjustment expense, and unearned premium reserves in relation to earned premium for private passenger automobile insurance in New Jersey. This information shall be provided for the last two years, estimated for the current year, and estimated for the two following years. Calculations shall be provided in detail including the amount of the composite reserves of each type (that is, loss, loss adjustment expense and unearned premium) at the beginning and end of the specified calendar years.

7. An exhibit that provides for the following data regarding expenses:

i. Earned premium, incurred losses, incurred allocated loss adjustment expenses and incurred unallocated loss adjustment expenses for each of the latest five complete calendar years. Provide such information by coverage and group of coverages (that is, liability and physical damage);

ii. A statement regarding any expense saving activities undertaken in the last five years;

iii. Number of claims (all limits and all deductibles) and allocated loss adjustment expenses for each of the latest five complete years. Provide such information by coverage and by group of coverages (that is, liability and physical damage);

iv. Average incurred expenses per exposure on a New Jersey basis (explain the basis of allocation) and on a countrywide basis for each of the latest five complete calendar years for the following expense categories: commission and brokerage; other acquisition expenses; and general expenses; and

v. New Jersey private passenger automobile insurance expense data shown separately for the most recent three complete calendar years using the format of the Underwriting and Investment Exhibit, Part 4 Expenses of the Statutory Annual Statement.

8. If the filer has not submitted data in the last three years to support its territorial relativities and classification differentials, it shall submit an exhibit containing the data set forth in N.J.A.C. 11:3-16.8(a)*5 and 6*i and ii. If the filer has submitted this data during the last three years, it shall include a statement that sets forth the date and Department filing number of the filing that contained this data.

[9. A duplicate copy of the Excess Profits Report does not need to be filed; nevertheless, each insurer shall include with the exhibits described above a certification by an officer of the company that the Excess Profits Report was filed as required by N.J.S.A. 17:29A-5.6 and N.J.A.C. 11:3-20.]

11:3-16.5 Insurer flex rating filings

(a) Any insurer that desires to increase its rates in accordance with the flex rate provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner ***issued pursuant to N.J.A.C. 11:3-16A*** shall provide the following information in support of its flex rate filing:

1. A cover letter notifying the Department of its intention to adjust rates according to the provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner ***issued pursuant to N.J.A.C. 11:3-16A***; a statement of the percentage and dollar amount of the increase in rates by coverage (including the variable portion plus expense fees but excluding the policy constant and RMEC); a statement containing the effective date of the change; and the name, telephone number and mailing address of the company officer familiar with the filing to whom further inquiries about the filing may be directed;

2. A checklist that sets forth the information in Exhibit AI in the Appendix incorporated herein by reference;

3. The Excess Profits Report (required by N.J.A.C. 11:3-20) and the Financial *[Disclosure Information]* ***Experience Report*** (required by *[Order of the Commissioner]* ***N.J.A.C. 11:3-31***). In lieu

of providing copies, the filer may submit a certification by an officer that the documents have been filed and are incorporated into the filing by reference;

4. Data concerning the losses and loss adjustment expenses, as set forth in N.J.A.C. 11:3-16.8;

5. Data concerning the expense and profit provisions, as set forth in N.J.A.C. 11:3-16.9;

6. Rate calculations, as set forth in N.J.A.C. 11:3-16.10; and

7. The manual rating pages and computer disk(s) containing the flex rate system to be implemented.

(b) In accordance with N.J.S.A. 17:29A-6.1(a)2, all independent rate filers and all members or subscribers of rating organizations not defined as "qualified members" of rating organizations in N.J.A.C. 11:3-16.2 shall submit data and rate calculations in support of their flex rate filings based on their own loss experience and their own expenses.

(c) Qualified members of rating organizations may incorporate by reference the loss and loss adjustment expense data set forth in N.J.A.C. 11:3-16.8 and filed by the rating organization pursuant to N.J.A.C. 11:3-16.7, in lieu of providing their own data.

1. Qualified members of rating organizations who have been precluded by Order of the Commissioner from implementing the last approved rates of the rating organization may incorporate by reference the rating organization flex rate filing, as set forth in N.J.A.C. 11:3-16.7. Any flex rate change based upon an increase in losses and loss adjustment expenses shall, however, be limited to the percentage of increase in the rating organization flex rate filing as applied to the company's own current rates.

(d) Nothing in this section shall prohibit any member or subscriber of a rating organization from filing its own loss and allocated loss adjustment expense data, as set forth in N.J.A.C. 11:3-16.8.

1. Qualified members of rating organizations that seek to use losses and loss adjustment expenses higher than those implemented by the rating organization pursuant to the provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner ***issued pursuant to N.J.A.C. 11:3-16A*** shall file the required exhibits set forth in N.J.A.C. 11:3-16.8.

2. Qualified members of rating organizations that seek to use losses and loss adjustment expenses lower than those implemented by the rating organization pursuant to the provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner ***issued pursuant to N.J.A.C. 11:3-16A*** need only to file a statement justifying the downward deviation in the form of Exhibit E in the Appendix incorporated herein by reference. (See (c)1 above for insurers precluded by Order from using current rating organization rates.)

11:3-16.6 Insurer filings for rates requiring prior approval

(a) Any insurer that desires to modify its rates or rating system in a manner other than that provided by N.J.S.A. 17:29A-44 and Orders of the Commissioner ***issued pursuant to N.J.A.C. 11:3-16A*** regarding flex rates shall provide the following information in support of its application:

1. A cover letter notifying the Department of its intention to modify its rating system in a manner that requires prior approval, pursuant to N.J.S.A. 17:29A-14; a statement describing the proposed changes, which shall include the percentage and dollar amount of any change in rates (including the variable portion plus expense fees, but excluding the policy constant and RMEC) by coverage and overall; and the name, telephone number and mailing address of the company officer familiar with the filing, to whom further inquiries about the filing may be directed;

2. A checklist that sets forth the information in Exhibit AII in the Appendix incorporated herein by reference;

3. A narrative overview that sets forth the contents of the filing, and explains the reasons and procedures used to derive the rate change requested;

4. Data concerning the losses and loss adjustment expenses, as specified in N.J.A.C. 11:3-16.8;

5. Data concerning the expense and profit provisions, as set forth in N.J.A.C. 11:3-16.9;

6. Rate calculation, as set forth in N.J.A.C. 11:3-16.10; and

7. Data described in N.J.A.C. 11:3-16.8, 16.9 and 16.10 shall be submitted in written copy and, except for purely textual information, on an MS-DOS formatted disk(s). The disk(s) may be either 5.25 inch 360 KB or 3.5 inch 1.44MB. The information shall be provided in a Lotus 1-2-3 or compatible spreadsheet. The left and top margins of each page shall indicate the row and column respectively of all data on the page. Each page of written copy shall also display in the bottom right corner the name of computer file and disk on which it is contained. All calculated values shall be given as a formula in the spreadsheet.

(b) All independent rate filers and all members or subscribers of rating organizations not defined as "qualified members" shall submit data in support of their application for approval of their proposed rating system based on their own loss experience (N.J.A.C. 11:3-16.8), their own expense and profit provisions (N.J.A.C. 11:3-16.9) and their own rate calculation (N.J.A.C. 11:3-16.10).

(c) Qualified members of rating organizations may incorporate by reference the loss and loss adjustment expense data filed by the rating organization, and approved by the Department, in lieu of providing their own data.

(d) Nothing in this section shall prohibit any member or subscriber of a rating organization from filing for approval its own data regarding losses and loss adjustment expenses, as set forth in N.J.A.C. 11:3-16.8.

1. Qualified members of rating organizations that seek to use losses and loss adjustment expenses higher than those approved for the rating organization shall file all exhibits set forth in N.J.A.C. 11:3-16.8.

2. Qualified members of rating organizations that seek to use losses and loss adjustment expenses lower than those approved for the rating organization need only to file a statement justifying the downward deviation in the form of Exhibit E in the Appendix.

(e) Upon approval insurers shall file manual rating pages and computer disk(s) containing the rating system on or before the effective date of the rates.

11:3-16.7 Rating organization filings

(a) As its annual informational filing, each rating organization shall file the loss and loss adjustment expense data set forth in N.J.A.C. 11:3-16.8, and shall develop the data base and trend methodology set forth in N.J.A.C. 11:3-16.10(a)4 and 5. Rating organizations shall compile the data required using only information from its qualified members.

(b) The rating organization's annual informational filing shall also include the following exhibits compiled from the data of its qualified members.

1. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the number of insured automobiles for which payment was under made the theft portion of comprehensive coverage as the result of theft of the automobile; *and* the aggregate payments made on account of those thefts*; the number of automobiles recovered; and the total amount received from the resale of the automobiles*;

2. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year, the total amount of dollars recovered by subrogation for each coverage;

3. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year, the total amount of dollars recovered by salvage for each physical damage coverage;

4. A Cause of Loss Report for comprehensive coverage for the latest five complete calendar years that sets forth information shown in Exhibit B in the Appendix incorporated herein by reference;

(c) As its flex rate filing, the rating organization may submit a loss and loss adjustment expense filing containing the data required by N.J.A.C. 11:3-16.8 for use by its qualified member companies in their individual flex rate filings if the rate level change requested is within the limits established by N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner *[regarding flex rates]* **issued pursuant to N.J.S.A. 11:3-16A***, and the rating organization submits the filing with a cover letter setting forth:

1. Notice to the Department that the filing is being submitted pursuant to N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner **issued pursuant to N.J.S.A. 11:3-16A*** as a flex rate filing;

2. The percentage and dollar amount of the increase in rates by coverage and overall (including the variable portion plus expense fees but excluding the policy constant and RMEC);

3. The effective date of the change, on or after which its qualified members may submit individual flex rate filings incorporating by reference the rating organization filing; and

4. The name, telephone number and mailing address of the rating organization officer familiar with the filing, to whom further inquiries about the filing may be directed.

(d) As its filing for rate changes requiring prior approval, the rating organization may submit a loss and loss adjustment expense filing for use by its qualified member companies in their individual filings submitted for prior approval pursuant to N.J.S.A. *[17:29A-44]* **17:29A-14***, that provides the information set forth in N.J.A.C. 11:3-16.8 and that also includes the requirements set forth in N.J.A.C. 11:3-16.6(a)1, 2 and 6. A copy of such filings shall be transmitted to the Commissioner and simultaneously to the Public Advocate.

(e) Each time the rating organization that represents the greatest number of insurers in the private passenger automobile insurance market submits a flex rate filing pursuant to N.J.A.C. 11:3-16.7(c), or a filing requiring prior approval pursuant to N.J.A.C. 11:3-16.7(d), it shall also file the following information required to establish rates for the New Jersey Automobile Full Insurance Underwriting Association in accordance with the provisions of N.J.S.A. 17:30E-13:

1. The information concerning expenses and profit provisions, as set forth in N.J.A.C. 11:3-16.9 compiled from its qualified member companies;

2. The rate calculation, as set forth in N.J.A.C. 11:3-16.10 below, as calculated based upon its data submitted pursuant to N.J.A.C. 11:3-16.8 and 16.9; and

3. Upon making the flex rate filing or no later than the effective date for filings requiring prior approval, the manual rate pages both excluding and including provisions for company expenses and profit.

11:3-16.8 Loss and loss adjustment expense data

(a) Filers shall provide the following data regarding New Jersey premium, loss and loss adjustment expense:

1. For each coverage, calculate premium at present rates using either the extension of exposures or on level factor methodologies. Indicate how such calculations were produced and supply supporting documentation for a sample of such calculations and justification of any factors used. Provide the justification for the selected use of a particular method in calculating the rate level. Provide this information both at basic limits and at total limits.

2. Rating organization filings shall include data from all qualified member companies writing non-fleet private passenger automobile insurance in New Jersey for which the organization has been given filing authorization. If data from such a company is excluded from, or if data from a non-authorized company is included with, the rate level, trend, loss development, catastrophe factor, expense determination, territorial development, classification relativity, or investment income calculations for any coverage, identify the coverage, the company and its market share and provide an explanation for its exclusion/inclusion.

3. For each coverage and each year used in setting the overall rate level, the following information both at basic limits and total limits:

- i. Paid losses;
- ii. Case reserves;
- iii. Loss development factor;
- iv. Incurred allocated loss adjustment expenses;
- v. Incurred unallocated loss adjustment expenses;
- vi. Trend factor;
- vii. Total trended and developed incurred losses;
- viii. Total trended and developed allocated loss adjustment expenses;
- ix. Total trended and developed unallocated loss adjustment expenses; and

x. Total trended losses and all loss adjustment expenses (that is, (a)3 vii plus viii plus ix above)

4. Whenever New Jersey losses are separated into catastrophe and non-catastrophe losses, include a clear description and justification of the standard used to separate such losses. In determining a catastrophe loading, include as many years of data as *[possible. If the number of years included differs from the number available, provide an explanation]* ***available but at least 10 years***. Provide an explanation if the data base from which the catastrophe loading is derived differs from that on which the rate level change is based.

5. For prior approval filings only, territorial rate calculations including *[written premiums,]* earned premiums, earned exposures, *[paid losses,]* incurred losses, and the number of claims by territory separately for each coverage and each of the years used to determine the territorial relativities, or for each of the last five years, whichever is greater.

6. For prior approval filings only, all information related to the derivation of classification differentials contained in the filing. Include the following minimum information:

- i. All data reviewed, worksheets used and judgments made;
- ii. A description of the methodology used to arrive at the differentials;
- iii. A description of alternate methodologies used by the filer in other states;
- iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- v. A description regarding the application of these criteria in the selection of a methodology for this filing; and
- vi. A description of the application of the methodology to this filing.

7. For all incurred loss adjustment expense data contained in the filing, show the related incurred losses used to determine any loss adjustment expense loadings.

(b) Filers shall provide all information related to the derivation of credibility factors contained in the filing, specifically including the following information:

1. All data reviewed, worksheets used and judgments made;
2. A description of the methodology used to derive the factors;
3. A description of alternate methodologies used by the filer in other states (provide upon request for prior approval filings only);
4. A description of the criteria used to select one of the various methodologies for inclusion in the filing (provide upon request for prior approval filings only);
5. A description regarding the application of these criteria in the selection of a methodology for this filing (provide upon request for prior approval filings only); and
6. A description of the application of the methodology to this filing (provide upon request for prior approval filings only).

(c) Each filer, except small filers, shall provide the data in (c) 1 through 10 below. Small filers shall provide the data in (c) 4, 5, 7, 9, and 10 below:

1. All information related to the derivation of loss development factors contained in the filing specifically including:

- i. All data reviewed, worksheets used and judgments made;
- ii. A description of the methodology used to derive the factors;
- iii. A description of alternate methodologies used in other states (provide upon request for prior approval filings only);
- iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing (provide*[d]* upon request for prior approval filings only);
- v. A description regarding the application of these criteria in the selection of the methodology for this filing (provide upon request for prior approval filings only); and
- vi. A description of the application of the methodology to this filing (provide upon request for prior approval filings only).

2. For each coverage, complete total limits paid loss development parallelograms for the 10 latest available accident years at each and every annual evaluation date from 15 months to 123 months for ***basic* Personal Injury Protection ("PIP") and Bodily Injury *Liability* ("BI")**, 15 months to 75 months for Property Damage Liability ("PD"), and 15 months to 51 months for ***[all other coverages]***

collision and comprehensive and uninsured/underinsured motorists. Provide the corresponding nine-year, five-year and three-year average loss development factors derivable from these parallelograms;

3. The information in (c)2 above for basic limits paid losses;
4. The information in (c)2 above for total limits incurred losses;
5. The information in (c)2 above for basic limits incurred losses;
6. The information in (c)2 above for paid allocated loss adjustment expenses;
7. The information in (c)2 above for incurred allocated loss adjustment expenses;
8. The information in (c)2 above for the number of paid claims;
9. The information in (c)2 above for the number of incurred claims; and

10. A statement regarding any changes in the filer's case loss reserving practices during the last five years (for rating organization filings, this shall be provided for the 10 largest qualified members).

(d) Each filer except small filers shall provide the following data regarding trend factors and their application:

1. Include the following trend data set forth in (d)1i and ii below (if an insurer) or (d)1i and iii below (if a rating organization), shown separately for frequency and severity for the latest available five calendar years on both a quarterly and quarterly year ending basis for all coverages on both a countrywide and New Jersey basis. Bodily injury liability data shall be given at basic and total limits. Property damage liability data shall be given at basic and total limits. Personal injury protection ("PIP") data shall be given at a per person limit retained by the insurer according to N.J.S.A. 36:6-73.1 (\$75,000 of insurer payments). Physical damage coverages shall be shown on the basis of a \$500.00 deductible; all deductibles less than \$500.00 combined; all deductibles greater than \$500.00 combined; and all deductibles combined. Provide this for the following:

- i. All internal loss trend data on both a calendar year paid and incurred basis; and either
- ii. ***[Internal and external expense]* *External loss*** trend data (severity only); or
- iii. Fast-track loss trend data.

2. For all trend data described above, calculate annual trend factors along with "T" statistics*[,]* ***and*** the coefficient of correlation*[, and seasonality factors]*. This shall be done from a least-squares regression with time being the independent variable. ***[For the purpose of this section, "seasonality factor" is the ratio between the expected value for a particular season (that is, first quarter, second quarter, third quarter and fourth quarter of a year) taking into account seasonal influences and the expected value excluding seasonal influences.]***

- i. Include calculations for the latest six, nine, 12, 16 and 20-point periods;
- ii. Provide a side-by-side comparison of the actual data, fitted data and differences; and
- iii. Include calculations on both an exponential and straight line basis.

3. All information related to the derivation of trend factors contained in the filing specifically including:

- i. All data reviewed, worksheets used, and judgment*s* made;
- ii. A description of the methodology used to derive the factors;
- iii. A description of alternative methodologies used by the filer in other states (provide upon request for prior approval filings only);
- iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing (provide upon request for prior approval filings only);
- v. A description regarding the application of these criteria in the selection of a methodology for this filing (provide upon request for prior approval filings only); and
- vi. A description of the application of the methodology to this filing (provide upon request for prior approval filings only).

4. For prior approval filings only, information, including studies, analyses, and fact sheets regarding the effects (both countrywide and in New Jersey) of the items described in (d)4i through v below if the filer has either compiled the information itself or relied upon outside information in the support of the filing. If the effects of such studies, etc., have been incorporated into the rate filing, describe in detail the methodologies used. Provide this information for the following:

- i. Changes in seatbelt use;
- ii. Changes in the drinking age;
- iii. Changes in the price and amount of gasoline purchased;
- iv. Changes in the average miles driven; and
- v. Other legislative, regulatory, social, or economic factors that *could* have an impact on loss frequency or severity.

(e) *All* *Each* filer*[s]* except small filers shall provide the following regarding changes in premium base and exposures:

- 1. Data on the mix of written exposures by different policy terms for the latest five years. Include both the number of written exposures and the amount of written premium for different policy terms;
- 2. *[Calculations on the average]* *Average* age *of insured vehicles* and symbol relativities for the latest five years;
- 3. Calculate the trend in the average model year and symbol relativities for physical damage coverages during the most recent five calendar years. Explain how these trends were calculated and provide all intermediate calculations;
- 4. The most recent five-year history of the distribution, by deductible amount, of written exposures and premium of comprehensive and collision coverages purchased;
- 5. The actual model year written exposure and premium distribution for comprehensive and collision coverages separately for each of the latest five calendar years; and
- 6. The most recent five complete calendar year history of the distribution, by limit of liability, of written exposures and premiums, separately for bodily injury, property damage, and combined single limit liability coverages.

(f) Filer*s* shall provide the following regarding limiting factor development and application:

- 1. Limitations on losses and/or loss adjustment expenses included in the statistical data used in the filing;
- 2. Limitations on the extent of the rate level change by coverage;
- 3. Limitations on the extent of territorial rate changes;
- 4. Limitations on the extent of classification rate changes; and
- 5. Any other limitations applied.

(g) Filers shall provide by coverage and group of coverages (that is, liability and physical damage) the following information:

- 1. The amount of earned premium, incurred losses, incurred allocated and unallocated loss adjustment expenses for each of the latest five complete calendar years; and
- 2. The number of claims (all limits and all deductibles) by coverage and allocated loss adjustment expenses for each of the latest five complete calendar years.

(h) Filers shall show the overall Statewide rate change indicated by coverage *[as well as the amount of the change attributable to each of the following: loss experience, the loss trend factor, the premium trend factor, expenses, premium taxes, assessments, underwriting profit, law changes, and any other changes]*.

(i) Rating organizations only shall provide a copy of the most recent corporate annual report (not the Statutory Annual Statement) and 10K Statements of its 10 largest qualified member companies.

(j) Provide any additional information specifically requested by the Commissioner which may be necessary to constitute a proper rate filing.

11:3-16.9 Data requirements for company expense and profit provisions

(a) Filers shall provide the data in (a)1 through 6 below regarding expenses:

- 1. All information related to the derivation of expense provisions contained in the filing specifically including:
 - i. All data reviewed, worksheets used and judgment made;
 - ii. A complete description of the methodology used to derive the provisions;
 - iii. A description of alternative methodologies used by the filer in other states (provide upon request for prior approval filings only);
 - iv. A description of the criteria used to select one of the various methodologies for inclusion in this filing (provide upon request for prior approval filings only);
 - v. Details regarding the application of these criteria in the selection of a methodology for this filing (provide upon request for prior approval filings only);

vi. Details on the application of the methodology to this filing (provide upon request for prior approval filings only);

2. A statement regarding any expense saving activities undertaken in the last five years.

3. Average incurred expenses per exposure on a New Jersey basis (explain the basis of allocation) and on a countrywide basis for each of the last five complete calendar years for the following expense categories:

- i. Commission and brokerage;
- ii. Other acquisition expenses; and
- iii. General expenses;

4. The derivation of the expense flattening as required by N.J.S.A. 17:29A-37. The expense flattening calculation shall exclude the UCJF assessment for the excess medical benefits reimbursed to insurers by that fund. The expense shall be applied by coverage;

5. New Jersey private passenger automobile insurance expense data separately for the most recent three complete calendar years using the format of the Underwriting Investment Exhibit, Part 4—Expenses of the Statutory Annual Statement; and

6. AIRE assessment and reimbursements in dollars and as a percent of bodily injury liability paid losses for the most recent five complete accident years evaluated as of March 31 of the current year.

(b) Filers shall provide the following data regarding proposed rates:

1. Proposed rates for each territory and coverage together with their derivation;

2. Classification differentials, with descriptions, if any proposed changes are being made to the currently approved classification plan. Include an explanation of how classification rates are determined and a sample calculation;

3. The calculations showing that the proposed rates are in compliance with N.J.S.A. 17:29A-36. The base class rates for the territorial calculations shall be inclusive of expense fees but exclusive of residual market equalization charges and policy constants, and all driving record surcharges and discounts. The filer's Statewide average base rate shall be determined from the territorial distribution for the latest year of data contained in the filing. In determining rates for principal operators 65 years of age or older, ratios of rates shall be inclusive of expense fees and exclusive of surcharges, discounts and policy constants (Residual Market Equalization Charges do not apply to these risks); and

4. By coverage, a comparison of average statewide variable rates and expense fees proposed and currently in use, along with the number of exposures by coverage.

(c) Filers shall provide the following data regarding investment earnings:

1. The amount of investment income earned on loss, loss adjustment expense and unearned premium reserves in relation to earned premium for private passenger automobile insurance in New Jersey shall be calculated for the latest two years and estimated for the current year the two following years. Calculations should be provided in detail including the amount of the composite reserves of each type (that is, loss, loss adjustment expense and unearned premium) at the beginning and end of each of the specified years;

2. The cash flow pattern from policy inception date until receipt of premium. This shall be provided by coverage;

3. The cash flow pattern from policy inception date for commission and brokerage, other acquisition expenses, general expenses, assessments, premium taxes, licenses and fees and any other expense payments; and

4. The cash flow pattern from policy inception date for losses, allocated loss adjustment expenses, and unallocated loss adjustment expenses.

(d) Filers shall provide the following regarding identification and certification of statistical plans:

1. Identification of all statistical plans used or consulted in preparing the filing, and a description of the data compiled by each plan; and

2. A certification by an officer on behalf of the filer that the data utilized in the rate filing was collected in accordance with such plans and is a true and accurate representation of the insurer's experience.

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The certification shall identify any data included in the filing that was not collected in accordance with the statistical plan.

(e) Filers shall provide the following information regarding investment earnings on capital and surplus:

1. Given the selected underwriting profit and contingency loadings contained in the filing, the resulting rate of return on equity capital and on total assets, showing the derivation on all factors used to produce the calculations; and

2. Justification that these rates of return are fair and reasonable. These calculations shall be performed by coverage.

(f) Filers shall provide the following data regarding the level of capital/surplus needed:

1. Premium to policyholders' surplus ratios, and their derivation, for the latest three calendar years for non-fleet private passenger automobile insurance in New Jersey;

2. Estimates of comparable ratios and their derivation for the current and the following two years; and

3. The information in (f)1 and 2 above for the loss plus loss adjustment expense reserve to policyholders' surplus ratio.

(g) Filers shall provide also the following:

1. For prior approval filings only, upon request, copies of documents relating to the various preliminary and intermediate steps taken in preparing the filing, including, but not limited to, agendas and minutes of all meetings concerning the filing for which agenda or minutes were produced. Both meetings dealing specifically with this filing and those dealing implicitly (for example, through the establishment of countrywide practices, etc.) shall be included. Include a list of attendees at any meeting for which minutes are supplied, their titles and their affiliations;

2. A copy of the most recent annual report (not the Statutory Annual Statement filed with Insurance Departments) and the latest 10-K statement;

3. The amount of finance and other miscellaneous charges collected in New Jersey in connection with the sale of private passenger automobile insurance;

4. For prior approval filings only, a description of all products and services supplied or received in transactions between the filer and a parent company, a wholly-owned subsidiary or an affiliated company; and

5. Any additional information specifically requested by the Commissioner which may be necessary to constitute a proper rate filing.

11:3-16.10 Rate calculation using standard ratemaking methodology

(a) Investment income shall be treated as follows:

1. The calculation of the underwriting profit and contingency loading taking into account investment income on loss, loss adjustment expense, and unearned premium reserves shall be calculated in accordance with the Clifford Formula methodology, wherein the combined after-tax profit from underwriting and investment income on loss, loss adjustment expense, and unearned premium reserves is 3.5% of premium.

2. No deductions shall be made for prepaid expenses unless there is specific documentation included in the filing that supports the prepayment of those expenses.

3. No deductions shall be made for the delayed remission in premiums unless there is specific supporting documentation in the filing verifying such delay in the remission of premiums.

4. The ratio of unearned premium reserves to premium shall be obtained from the appropriate line of business from Page 14 of the statutory Annual Statement for New Jersey. The calculations shall be the direct unearned premium reserve divided by the direct premiums written.

5. The ratio of loss reserves to incurred losses shall be derived from the appropriate line of business from Page 14 of the statutory Annual Statement for New Jersey. The calculations shall be as follows:

i. The average of the loss reserve at the beginning of the year and at the end of the year divided by the incurred losses during the year;

ii. The ratio of reserves to losses incurred shall be calculated for the most recent four calendar years; and

iii. If there is a monotonic trend in these ratios, either up or down, the most recent ratio shall be used in the calculation. If no such trend

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exists, the unweighted average of the four ratios shall be used in the calculation.

6. The ratio of loss adjustment expense reserves to loss reserves shall be derived from the appropriate line of business from Part 3A—Unpaid Losses and Loss Adjustment Expenses of the Annual Statement. The calculations shall be as follows:

i. The unpaid loss adjustment expense divided by the net losses unpaid excluding loss adjustment expense;

ii. This ratio shall be calculated for the most recent four calendar years; and

iii. If there is a monotonic trend in these ratios, either up or down, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.

7. The expected loss and loss adjustment expense ratio shall be one minus the underwriting expense ratio, minus the underwriting profit and contingency ratio derived from the Clifford Formula.

8. The interest rate used in the calculation shall be the most recently published value by the Internal Revenue Service to be used in discounting loss and loss adjustment expense reserves for investment income plus 200 basis points.

(b) Underwriting expense provisions shall be determined as follows:

1. New Jersey specific data shall be used to determine the expense provision for commission and brokerage. Countrywide data for commissions and brokerage is not acceptable.

2. New Jersey specific data shall be used for premium taxes, licenses and fees.

3. New Jersey specific data shall be used for assessments.

4. New Jersey specific data shall be used, if available, for general expenses and other acquisition expenses. When New Jersey specific data is not available, countrywide data allocated to New Jersey may be used. In such cases, the basis of allocation of countrywide data to New Jersey shall be explained in specific detail.

5. The projected provision for other acquisition expenses and general expenses shall be based on a separate trending of the dollar amounts of these items. These shall not be determined by simply assuming the same ratio of these items to premium in the future as has been the case in the past. The basis of the trend shall be a 50/50 weighting of the trend during the past two years of the monthly All Items Consumer Price Index and monthly average weekly wages for fire and casualty insurance employees as published by the Federal Bureau of Labor Statistics. This shall be performed by calculating through regression analysis the annual trends for the two indices and then averaging these values on an equal basis.

6. In determining the historic expense provision for commission and brokerage, other acquisition expenses and general expenses on a combined basis, the percentage to premium for each year of experience shall be limited to a maximum of the percentage shown in "Best's Aggregates and Averages" for the same period for comparable property/casualty insurance companies. If a stock company, the filer shall use the percentage for stock companies; if a mutual company, the filer shall use the percentage for mutual companies; and if a reciprocal company, the filer shall use the percentage for reciprocal companies.

7. The percentage loading for the UCJF assessment shall be the most recent value established by the Commissioner.

8. The following expense items shall not be incorporated into the expense base for determining rates:

i. Fines against the company;

ii. Lobbying expenses;

iii. Charitable contributions;

iv. Political contributions;

v. Awards against the company itself for punitive damages and for bad faith claims; and

vi. Advertising and other expenses incurred in connection with proposed changes in the regulation of insurance.

9. The filing shall include for each of the categories in (b)8 above the dollars of expense that were excluded from the rate base, separately for each year of historic information and separately for each of the above six categories. If the filer submits a ratemaking method-

ology that includes these expenses pursuant to *N.J.A.C. 11:3-16.10(g)]* *(f) below*, specific justification for including these expenses shall be included.

10. Commissions for bodily injury liability coverage for the \$0 and verbal threshold shall be equalized in accordance with the Exhibit C in the Appendix incorporated herein by reference.

*[(d)]**(e)* The data base to be used shall be as follows:

1. Accident year data shall be used for all coverages, both liability and physical damage.

2. The most recent accident year data used in the filing shall end no more than 15 months prior to the date of submission of the filing.

3. For prior approval filings only, each filing for a change in basic limit rates shall also include an experience review of increased limits data.

4. Personal injury protection experience shall be limited to the direct "before reinsurance" exposure retained by the insurance company according to N.J.S.A. 36:6-73.1. Any losses reimbursed or subject to reimbursement to the insurer by the UCJF for excess medical benefits shall not be included with the experience contained in the filing.

*[(e)]**(d)* The trend methodology to be used shall be as follows:

1. With regard to loss trends, the filing shall contain separate determinations of the loss severity from loss frequency trends.

2. The filing shall contain an adjustment for symbol drift, and where appropriate for model year rating.

*[(f)]**(e)* The filer shall demonstrate that a reasonable total rate of return on its capital investment attributable to the New Jersey private passenger automobile insurance market will result from the proposed rates.

*[(g)]**(f)* The ratemaking methodology set forth in (a) through *[(f)]** *(e)* above is the Department's preferred procedure and must be included in the filing. The filer may, however, propose an alternate procedure in total or in part and support it with such calculations and other information it deems appropriate to demonstrate the superiority of the alternate procedure in the determination of the filer's rates.

1. In the event the filer has computed the rates using an alternate methodology, it shall provide all information related to the derivation of the profit and contingency loading contained in the filing, specifically including:

i. All data reviewed, worksheets used and judgments made;

ii. A description of the methodology used to arrive at the selected loading;

iii. A description of alternative methodologies used by the filer in other states (prior approval filings only);

iv. A description of the criteria used to select one of the various methodologies for inclusion in this filing (prior approval filings only);

v. Details regarding the application of these criteria in the selection of a methodology for this filing (prior approval filings only); and

vi. Details on the application of the methodology to this filing (prior approval filings only).

11:3-16.11 Incomplete filings and further proceedings

(a) Failure to submit the data and calculations required by this subchapter may result in a finding that the filing is incomplete. The Department shall promptly notify a filer of a finding that its filing is incomplete.

(b) No finding that a filing is incomplete shall be based solely on the filer's failure to include data that was either not being collected, or was not collected in a manner so as to facilitate reporting, on *(the effective date of this subchapter)* *February 5, 1990*, provided that the filer includes with the filing a statement that identifies the item or items not included; specifies the reason; and certifies that the filer is undertaking action to collect and report such data in the future pursuant to N.J.A.C. 11:3-16.3(a).

(c) For informational filings, failure to submit a filing or failure to cure the deficiency of an incomplete filing within 30 days of notice shall authorize the Department to impose penalties as provided by N.J.S.A. 17:29A-23. Any penalty imposed shall be in addition to penalties imposed for failure to file an Excess Profits Report.

(d) For flex rate filings, failure to cure the deficiency of an incomplete filing within 30 days of notice, or failure to request a

hearing on the issue of incompleteness within *[10]* *30* days of notice, shall authorize the Commissioner to issue an Order directing the filer to cease using any flex rate increase, to refund any increased premiums collected, and to impose penalties as provided by N.J.S.A. 17:29A-23.

(e) For filings requiring prior approval, a notice that the filing is incomplete shall include a statement that the filing is disapproved as a nonconforming filing. The filer may thereafter resubmit the filing for approval with the deficiencies cured as noted.

APPENDIX EXHIBIT AI FLEX RATE FILINGS

COMPANY _____

COMPANY FILE NO. _____

RATE FILING DATA REQUIREMENTS: PAGE NO.

(1) Cover Letter notifying dept. of intention to increase rates in accordance with *[Order A89-119]* *N.J.S.A. 17:29A-44*

Statement of % of increase by coverage (including variable portion & exp. fees excluding policy constant & RMEC) _____

Statement of dollar amount of increase by coverage _____

Effective Date of the Change _____

Name, address and telephone number of company officer familiar with filing _____

Excess Profit Report & Financial *[Disclosure Information]* *Experience Report* or certification by company officer that it has been filed _____

Manual pages containing the flex rating pages _____

(2) Independent Filer or Non-qualified member of rating organization _____

Has submitted data & rate calculations based on own loss experience & expenses _____

Qualified member _____

Has incorporated ISO Loss & LAE by reference into filing _____

Has filed its own loss & LAE data _____

Qualified member not granted *[8/1/88]* *latest* rate increase _____

Has incorporated ISO Loss & LAE data; however flex change is limited to % of increase applied to company's current rates. _____

Qualified Member using loss & loss adjustment expense higher than ISO _____

Has filed information requested in (3) thru (9) below _____

Qualified Member using loss & loss adjustment expenses lower than ISO _____

Has filed deviation application form _____

(3) The following data must be filed for independent filers, non-qualified members, and qualified members using higher loss and loss adjustment expense than ISO _____

PREMIUM DATA: Premium at present rates for each coverage using extension of exposures or on level factors _____

Explanation as to how calculations were produced & documentation for sample of such calculation & justification for factors used _____

Justification for the selected method _____

Data on a basic & total limits basis _____

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LOSS DATA:

For each coverage and each year used in calculating rate level loss data is provided on a basic & total limits basis _____

Each year and each coverage includes: _____

Paid Losses _____

Case Reserves _____

Loss Development Factor _____

Incurred Unallocated Loss Adj. Expense _____

Incurred Allocated Loss Adj. Expense _____

Trend Factor _____

Total Trended & Developed Inc. Losses _____

Total Trended & Developed Allocated Loss Adjustment Expenses _____

Total Trended and Developed Unallocated Loss Adjustment Expenses _____

Total Trended Losses and all Loss Adjustment Expense _____

If N.J. losses are separated into catastrophic & non-catastrophic, a description of method used to separate losses is provided _____

If number of years used to determine catastrophe loading is different than number of years available, an explanation is provided _____

If data base from which catastrophe loading is derived differs from the one rate level is based upon an explanation is provided _____

For loss adjustment expense data show related incurred losses used to determine any loss adjustment expense loadings _____

(4) DERIVATION OF CREDIBILITY FACTORS

Provide all data reviewed & judgments made _____

Provide description of methodology used to derive factors _____

(5) LOSS DEVELOPMENT

All data reviewed, worksheets used and judgments made _____

Description of the methodology used to derive the loss development factors _____

By coverage provide total limits paid loss development parallelograms for the latest 10 accident yrs. at each annual evaluation date from 15 months to 123 months for PIP, 15 months to 75 months for PD, and 15 to 51 months for *[all other coverages]* ***collision, comprehensive and uninsured/underinsured motorists*** _____

Nine, five, and three year average loss development factors by coverage _____

Paid Loss Development Data must be provided by: _____

Basic Limits Paid Losses _____

Total Limits Incurred Losses _____

Basic Limits Incurred Losses _____

Paid Allocated Loss Adj. Expenses _____

Incurred Allocated Loss Adj. Expenses _____

Number of Paid Claims _____

Number of Incurred Claims _____

Statement regarding any changes in loss reserving practices during last five years _____

(6) TREND FACTORS:

All internal loss trend data on both a calendar yr. paid and incurred basis for the latest five yrs. on both a quarterly and quarterly yr. ending basis _____

Bodily Injury Liability data on a basic and total limits basis (Frequency & Severity shown separately) _____

Property Damage Liability shown on a basic and total limits basis (Frequency & Severity shown separately) _____

PIP shown at a per person limit retained by insurer _____

Collision & Comprehensive shown on basis of: _____

\$500 Deductible _____

All deductibles less than \$500 combined _____

All deductibles greater than \$500 combined _____

All deductibles combined _____

[Internal or] External *[Expense]* ***Loss*** Trend Data on both a calendar paid and incurred basis for the latest five yrs. on both a quarterly and yr. ending basis _____

Bodily Injury Liability data on a basic and total limits basis (Severity Only) _____

Property Damage Liability shown on a basic and total limits basis (Severity Only) _____

PIP shown on a per person limit retained by insurer _____

Collision and Comprehensive shown separately on the basis of: _____

\$500 Deductible _____

All deductibles less than \$500 combined _____

All deductibles greater than \$500 combined _____

All deductibles combined _____

Calculate Annual Trend Factors along with "T" statistics*[,]* ***and*** coefficient of variation*[, and seasonability factors]* using least squares regression for all trend data _____

Calculations for 6, 9, 12, 16, 20 point periods on both exponential and straight line basis _____

Side by side comparison of actual data, fitted data and differences _____

All data reviewed, worksheets used and judgments made regarding trend _____

Description of methodology used to derive factors _____

(7) PREMIUM BASE AND EXPOSURES

Data on mix of written exposures by different policy terms for latest 5 yrs. Include both written exposures and amount of written premium for different policy terms _____

Calculations on average age and symbol relativities for latest 5 yrs. _____

Calculation of trend showing all steps for average model yr. and symbol relativities for most recent 5 calendar yrs. _____

Five yr. history of distribution by written exposures and premium of comprehensive and collision by deductible amount _____

Actual model yr. written exposure and premium distribution for comprehensive and collision separately for each of last 5 calendar yrs. _____

Five calendar yr. history of distribution by limit of liability of written exposures and premiums separately for BI, PD and combined single limit coverages _____

(8) LIMITING FACTOR DEVELOPMENT

Limitations on losses and/or loss adjustment expenses included in statistical data used in filing _____

Limitations on extent of rate level change by coverage _____

Limitations on extent of territorial rate changes _____

Limitation on extent of classification rate changes _____

(9) BY COVERAGE AND GROUP OF COVERAGES:

Amount of Earned Premium, incurred losses, incurred allocated and unallocated loss adjustment expense for each of the latest 5 calendar yrs. _____

of Claims-all limits and deductibles by coverage _____

Allocated Loss adjustment expenses for each of latest 5 calendar yrs. _____

Overall statewide rate change indicated by coverage _____

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*[Amount of change attributable to each of the following:
 Loss Experience, Loss trend factor, premium trend factor, expenses, premium taxes, assessments, underwriting profit, law changes, or other changes _____]*

(10) EXPENSE AND PROFIT PROVISIONS

For each company provide all information related to derivation of expense provisions including all data reviewed, worksheets used, and judgments made _____
 Description of methodology used to derive provisions _____
 Statement regarding expense savings activities in last 5 yrs. _____
 For each of the latest 5 calendar yrs. provide:
 Average Incurred Expenses per exposure on a N.J. basis for: _____
 Commission & Brokerage _____
 Other Acquisition _____
 General Expense _____
 Explanation of basis of allocation _____
 Average Incurred Expenses per exposure on a countrywide basis for:
 Commission & Brokerage _____
 Other Acquisition _____
 General Expense _____
 Provide Derivation of Expense _____
 Flattening (Exclude UCJF assessment for excess medical) _____
 Provide AIRE assessments & reimbursements for last 5 yrs. evaluated as of 3/31*[/89]* *of latest year* in _____
 Dollars % of BI Paid Losses _____

DATA REGARDING PROPOSED RATES

Proposed rates for each territory and coverage with their deviation _____
 If classification plan is changed describe classification differentials _____
 Provide explanation of how classification rates are determined and provide a sample calculation _____
 Provide calculations showing how base rates are in compliance with N.J.S.A. 17:29A-36 _____
 Base class not greater than 1.35 statewide average base rate (include expense fees) _____
 Principal operator over 65 not greater than 1¼ times statewide average rate for principal operators over 65 _____
 Comparison of avg. statewide variable rates & expense fees proposed & currently in use and # of exposures by coverage _____

INVESTMENT EARNINGS:

Amount of investment income earned on loss, loss adjustment expense & unearned premiums reserve to earned premium for the latest 2 yrs., estimated for current & two following yrs. _____
 Reserves at beginning and end of specified yrs.:
 Loss Reserve _____
 Loss Adjustment Reserve _____
 Unearned Premium Reserve _____
 By coverage cash flow pattern from policy inception until premium received _____
 Cash flow pattern from inception for commission & brokerage, other acq. expenses, general expenses, assessments, premium taxes, licenses, fees, other expense payments _____
 Cash flow pattern from inception for losses, allocated loss adj. expense, and unallocated loss adj. expense _____

STATISTICAL PLANS

Identify plans used or consulted in preparing filing _____
 Describe data compiled by each plan _____
 Certification by officer that data was collected by such plans & is true & accurate _____
 Identify data not collected in accordance with plan & used in filing _____
 Using the underwriting profit & contingency loadings selected for use in the filing, provide the rate of return on equity & assets by coverage _____
 Provide justification that rates of return are fair & reasonable _____
 Provide premium to policyholders surplus for latest 3 yrs., and comparable ratios & their derivation for current & following 2 yrs. _____
 Provide the loss plus loss adj. reserve to policyholders surplus for the latest 3 yrs., and comparable ratios & their derivation for current & following 2 yrs. _____
 Provide copy of most recent annual report and the latest 10-K statement _____
 Provide amount of finance & other miscellaneous charges collected in NJ for auto _____

(11) STANDARD RATEMAKING METHODOLOGY

INVESTMENT INCOME

Underwriting profit calculated using the Clifford Formula so that after tax profit from underwriting & investment income on loss & LAE & unearned premium reserve is 3.5% of premium _____
 If there is deduction for prepaid expenses or delayed remission of premiums support is provided _____
 The ratio of unearned premium reserved to premium from Pg. 14 of annual statement. (Direct E.P. divided by Direct Prem. Written) is provided _____
 The ratio of loss reserves to incurred losses from Pg. 14 of annual statement for 4 yrs. (Avg. of LR at beg. of yr & at end of yr. divided by incurred losses during yr.) Monotonic trend use latest ratio, otherwise use avg. of 4 yrs. _____
 The ratio of loss adj. expense reserves to loss reserves from annual statement for 4 yrs. (Unpaid LAE divided net losses unpaid exc. LAE) Monotonic trend use latest ratio, otherwise use avg. of 4 yrs. _____
 The expected loss & LAE ratio 1—(Underwriting Exp. Ratio + Underwriting Profit & Cont. Ratio) Interest Rate = latest value published by IRS + 200 basis pts. _____

UNDERWRITING EXPENSE PROVISIONS

NJ data for commission & brokerage _____
 NJ data for taxes, licenses, fees _____
 Basis of allocation for gen. exp. if NJ data is not used _____
 Provision for other acq. & general expense based on separate trending of dollar amounts for these items. (50/50 weighting of trend using AICP index & MAWWFCIE index & regression analysis) _____
 Historic Exp. Provisions limited by % in Best Aggregates & Avgs. for comparable company _____
 UCJF loading = *[3.3%]* *latest year* _____
 Fines against cos, lobbying expenses charitable & political contributions awards against co. for punitive dam., advertising & expenses in connection with changes in regulation of ins. are "not included" Company must show dollar amt. of expense excluded separately & by yr. _____
 Commissions for BI for \$0 & verbal threshold are equalized _____

ADOPTIONS

INSURANCE

DATA BASE

Accident yr. used for liab. & phy. dam. _____
 Most recent data yr. ends no more than 15 months prior to submission PIP limited to direct exposure retained by co. _____

TREND

Separate determinations of loss severity and frequency trends _____
 Adjustment for symbol drift & model yr. rating _____

TOTAL RATE OF RETURN

Demonstrate reasonable rate of return from capital investment will result from proposed rates. _____

(12) ALTERNATIVE RATEMAKING METHODOLOGY

Is one used? _____
 If yes, provide: all data reviewed, worksheets used, description of methodology to arrive at selective loading _____

(13) GENERAL & FORMAT REQUIREMENTS

Separate insurance companies affiliated by a parent or other groups relationship must submit data shown in (3-9) & (10) and make rate calculation as shown in (11) separately and combined as a group Form AMB 10 must be included _____
 Certification by company officer (meets statutory & regulatory requirements) _____
 Loose leaf binder, one side of page, consecutively numbered _____
 Filer's name shown _____
 Filer's identifying numbers _____
 Filer's NAIC # _____
 Group NAIC # _____

(14) List of items the filer states are not included and the reason why.

**EXHIBIT AII
 PRIOR APPROVAL FILINGS**

COMPANY _____

COMPANY FILE NO. _____

RATE FILING DATA REQUIREMENTS: PAGE NO.

- (1) Cover Letter notifying dept. of intention to modify rates which requires prior approval _____
 Statement of % of increase by coverage and overall (including variable portion & expense fees exc. policy constant & RMEC) _____
 Statement of dollar amount of increase by coverage and overall _____
 Effective Date of the Change _____
 Name, address and telephone number of company officer familiar with filing _____
 An overview of the contents of filing and the reasons and procedures used to derive the rate change requested _____
 Manual pages on or before the effective date of the rates _____
- (2) Independent Filer or Non-qualified member of rating organization _____
 Has submitted data & rate calculations based on own loss experience & expense rate calculation (3-11) below _____
 Qualified member _____

Has incorporated ISO Loss & LAE by reference into filing & has submitted data for (10) & (11) below _____
 Has filed its own loss & LAE data and data for (10) & (11) below _____

Data in (3-9), (10) and (11) below is submitted on an MS-DOS disk-3.5 or 5.25, Lotus or compatible spreadsheet, left & top margins of each page indicate row and column. Calculated values given as formula in worksheet. A written copy of filings indicate name of computer and location _____

Qualified Member using loss & loss adjustment expense higher than ISO _____

Has filed information requested in (3-9) and (10,11) below _____

Qualified Member using loss & loss adjustment expenses lower than ISO _____

Has filed deviation application form and data in (10) & (11) below _____

(3) The following data must be filed for independent filers, non-qualified members, and qualified members using higher loss and loss adjustment expense than ISO

PREMIUM DATA:

Premium at present rates for each coverage using extension of exposures or on level factors _____

Explanation as to how calculations were produced & documentation for sample of such calculation & justification for factors used _____

Justification for the selected method _____

Data on a basic & total limits basis _____

LOSS DATA:

For each coverage and each year used in calculating rate level loss data is provided on a basic & total limits basis _____

Each year and each coverage includes: _____

Paid Losses _____

Case Reserves _____

Loss Development Factor _____

Incurred Unallocated Loss Adj. Expense _____

Incurred Allocated Loss Adj. Expense _____

Trend Factor _____

Total Trended & Developed Inc. Losses _____

Total Trended & Developed Allocated Loss Adjustment Expenses _____

Total Trended and Developed Unallocated Loss Adjustment Expenses _____

Total Trended Losses and all Loss Adjustment Expense _____

If N.J. losses are separated into catastrophic & non-catastrophic, a description of method used to separate losses is provided _____

If number of years used to determine catastrophe loading is different than number of years available, an explanation is provided _____

If data base from which catastrophe loading is derived differs from the one rate level is based upon an explanation is provided _____

Territorial Rate Calculations include *[written premiums,]* earned premiums, earned exposures, *[paid losses,]* incurred losses, & number of claims by territory for each coverage and each of the years used to determine territorial relativities or last five years, whichever is greater _____

Provide the following information with regard to classification differentials: Data reviewed, worksheets used & judgments made _____

Methodology used to arrive at differentials _____

Description of alternate methodologies used by filer in other states _____

Criteria used to select a particular methodology used in a filing _____
 Description of criteria used in selection of methodology for this filing _____
 Description of application of the methodology to this filing _____
 For loss adjustment expense data show related incurred losses used to determine any loss adjustment expense loadings _____

(4) DERIVATION OF CREDIBILITY FACTORS _____
 Provide all data reviewed & judgments made _____
 Provide description of methodology used to derive factors _____

(5) LOSS DEVELOPMENT _____
 All data reviewed, worksheets used and judgments made _____
 Description of the methodology used to derive the loss development factors _____
 By coverage provide total limits paid loss development parallelograms for the latest 10 accident yrs. at each annual evaluation date from 15 months to 123 months for PIP, 15 months to 75 months for PD, and 15 to 51 months for *[all other coverages]*
collision, comprehensive and uninsured/underinsured motorists _____
 Nine, five, and three year average loss development factors by coverage _____
 Paid Loss Development Data must be provided by: _____
 Basic Limits Paid Losses _____
 Total Limits Incurred Losses _____
 Basic Limits Incurred Losses _____
 Paid Allocated Loss Adj. Expenses _____
 Incurred Allocated Loss Adj. Expenses _____
 Number of Paid Claims _____
 Number of Incurred Claims _____
 Statement regarding any changes in loss reserving practices during last five years _____

(6) TREND FACTORS: _____
 All internal loss trend data on both a calendar yr. paid and incurred basis for the latest five yrs. on both a quarterly and quarterly yr. ending basis _____
 Bodily Injury Liability data on a basic and total limits basis (Frequency & Severity shown separately) _____
 Property Damage Liability shown on a basic and total limits basis (Frequency & Severity shown separately) _____
 PIP shown at a per person limit retained by insurer _____
 Collision & Comprehensive shown on basis of: _____
 \$500 Deductible _____
 All deductibles less than \$500 combined _____
 All deductibles greater than \$500 combined _____
 All deductibles combined _____
 [Internal or] External *[Expense]* *Loss* Trend Data on both a calendar paid and incurred basis for the latest five yrs. on both a quarterly and yr. ending basis _____
 Bodily Injury Liability data on a basic and total limits basis (Severity Only) _____
 Property Damage Liability shown on a basic and total limits basis (Severity Only) _____
 PIP shown on a per person limit retained by insurer _____
 Collision and Comprehensive shown separately on the basis of: _____
 \$500 Deductible _____
 All deductibles less than \$500 combined _____
 All deductibles greater than \$500 combined _____
 All deductibles combined _____

Calculate Annual Trend Factors along with "T" statistics*[,] *and* coefficient of variation*[, and seasonability factors]* using least squares regression for all trend data _____
 Calculations for 6, 9, 12, 16, 20 point periods on both exponential and straight line basis _____
 Side by side comparison of actual data, fitted data and differences _____
 All data reviewed, worksheets used and judgments made regarding trend _____
 Description of methodology used to derive factors _____
 Description of methodology used to select one of the various methodologies in a particular filing _____
 If filer has included the effects of any studies, analysis, or fact sheets, describe in detail the methodologies used for the following: _____
 Changes in seatbelt use _____
 Changes in Drinking Age _____
 Changes in price & amount of gasoline purchased _____
 Changes in avg. miles driven _____
 Legislative, regulatory, social or economic factors _____

(7) PREMIUM BASE AND EXPOSURES _____
 Data on mix of written exposures by different policy terms for latest 5 yrs. Include both written exposures and amount of written premium for different policy terms _____
 Calculations on average age and symbol relativities for latest 5 yrs. _____
 Calculation of trend showing all steps for average model yr. and symbol relativities for most recent 5 calendar yrs. _____
 Five yr. history of distribution by written exposures and premium of comprehensive and collision by deductible amount _____
 Actual model yr. written exposure and premium distribution for comprehensive and collision separately for each of last 5 calendar yrs. _____
 Five calendar yr. history of distribution by limit of liability of written exposures and premiums separately for BI, PD and combined single limit liability coverages _____

(8) LIMITING FACTOR DEVELOPMENT _____
 Limitations on losses and/or loss adjustment expenses included in statistical data used in filing _____
 Limitations on extent of rate level change by coverage _____
 Limitations on extent of territorial rate changes _____
 Limitation on extent of classification rate changes _____

(9) BY COVERAGE AND GROUP OF COVERAGES: _____
 Amount of Earned Premium, incurred losses, incurred allocated and unallocated loss adjustment expense for each of the latest 5 calendar yrs. _____
 # of Claims—all limits and deductibles by coverage _____
 Allocated Loss adjustment expenses for each of latest 5 calendar yrs. _____
 Overall statewide rate change indicated by coverage _____
 *[Amount of change attributable to each of the following: _____
 Loss Experience, Loss trend factor, premium trend factor, expenses, premium taxes, assessments, underwriting profit, law changes, or other changes _____]*

(10) EXPENSE AND PROFIT PROVISIONS _____
 For each company provide all information related to derivation of expense provisions including all data reviewed, worksheets used, and judgments made _____

ADOPTIONS

Description of methodology used to derive provisions _____

Statement regarding expense savings activities in last 5 yrs. _____

For each of the latest 5 calendar yrs. provide:

Average Incurred Expenses per exposure on a N.J. basis for: _____

Commission & Brokerage _____

Other Acquisition _____

General Expense _____

Explanation of basis of allocation _____

Average Incurred Expenses per exposure on a countrywide basis for: _____

Commission & Brokerage _____

Other Acquisition _____

General Expense _____

Provide Derivation of Expense _____

Flattening (Exclude UCJF assessment for excess medical) _____

Provide AIRE assessments & reimbursements for last 5 yrs. evaluated as of 3/31*[89]* *of latest year* in _____

Dollars % of BI Paid Losses _____

DATA REGARDING PROPOSED RATES

Proposed rates for each territory and coverage with their deviation _____

If classification plan is changed describe classification differentials _____

Provide explanation of how classification rates are determined and provide a sample calculation _____

Provide calculations showing how base rates are in compliance with N.J.S.A. 17:29A-36 _____

Base class not greater than 1.35 statewide average base rate (include expense fees) _____

Principal operator over 65 not greater than 1¼ times statewide average rate for principal operators over 65 _____

Comparison of avg. statewide variable rates & expense fees proposed & currently in use and # of exposures by coverage _____

INVESTMENT EARNINGS:

Amount of investment income earned on loss, loss adjustment expense & unearned premiums reserve to earned premium for the latest 2 yrs., estimated for current & two following yrs. _____

Reserves at beginning and end of specified yrs.:

Loss Reserve _____

Loss Adjustment Reserve _____

Unearned Premium Reserve _____

By coverage cash flow pattern from policy inception until premium received _____

Cash flow pattern from inception for commission & brokerage, other acq. expenses, general expenses, assessments, premium taxes, licenses, fees, other expense payments _____

Cash flow pattern from inception for losses, allocated loss adj. expense, and unallocated loss adj. expense _____

STATISTICAL PLANS

Identify plans used or consulted in preparing filing _____

Describe data compiled by each plan _____

Certification by officer that data was collected by such plans & is true & accurate _____

Identify data not collected in accordance with plan & used in filing _____

Using the underwriting profit & contingency loadings selected for use in the filing, provide the rate of return on equity & assets by coverage _____

INSURANCE

Provide justification that rates of return are fair & reasonable _____

Provide premium to policyholders surplus for latest 3 yrs., and comparable ratios & their derivation for current & following 2 yrs. _____

Provide the loss plus loss adj. reserve to policyholders surplus for the latest 3 yrs., and comparable ratios & their derivation for current & following 2 yrs. _____

Provide copy of most recent annual report and the latest 10-K statement _____

Provide amount of finance & other miscellaneous charges collected in NJ for auto _____

Provide a description of all products and services supplied between filer and a parent company _____

(11) STANDARD RATEMAKING METHODOLOGY

INVESTMENT INCOME

Underwriting profit calculated using the Clifford Formula so that after tax profit from underwriting & investment income on loss & LAE & unearned premium reserve is 3.5% of premium _____

If there is deduction for prepaid expenses or delayed remission of premiums support is provided _____

The ratio of unearned premium reserves to premium from Pg. 14 of annual statement. (Direct E.P. divided by Direct Prem. Written) is provided _____

The ratio of loss reserves to incurred losses from Pg. 14 of annual statement for 4 yrs. (Avg. of LR at beg. of yr. & at end of yr. divided by incurred losses during yr.) Monotonic trend use latest ratio, otherwise use avg. of 4 yrs. _____

The ratio of loss adj. expense reserves to loss reserves from annual statement for 4 yrs. (Unpaid LAE divided net losses unpaid exc. LAE) Monotonic trend use latest ratio, otherwise use avg. of 4 yrs. _____

The expected loss & LAE ratio 1—(Underwriting Exp. Ratio + Underwriting Profit & Cont. Ratio) _____

Interest Rate = latest value published by IRS + 200 basis pts. _____

UNDERWRITING EXPENSE PROVISIONS

NJ data for commission & brokerage _____

NJ data for taxes, licenses, fees _____

Basis of allocation for gen. exp. if NJ data is not used _____

Provision for other acq. & general expense based on separate trending of dollar amounts for these items. (50/50 weighting of trend using AICP index & MAWWFCIE index & regression analysis) _____

Historic Exp. Provisions limited by % in Best Aggregates & Avgs. for comparable company _____

UCJF loading = *[3.3%]* *latest year %* _____

Fines against cos, lobbying expenses charitable & political contributions awards against co. for punitive dam., advertising & expenses in connection with changes in regulation of ins. are "not included" Company must show dollar amt. of expense excluded separately & by yr. _____

Commissions for BI for \$0 & verbal threshold are equalized _____

DATA BASE

Accident yr. used for liab. & phy. dam. _____

Most recent data yr. ends no more than 15 months prior to submission PIP limited to direct exposure retained by co. _____

Change in basic rates in filing should also include experience review of increased limits data _____

INSURANCE

ADOPTIONS

TREND

Separate determinations of loss severity and frequency trends
 Adjustment for symbol drift & model yr. rating

TOTAL RATE OF RETURN

Demonstrate reasonable rate of return from capital investment will result from proposed rates.

(12) ALTERNATIVE RATEMAKING METHODOLOGY

Is one used?
 If yes, provide: all data reviewed, worksheets used, description of methodology to arrive at selective loading
 Description of alternate methodologies used in other states
 Description of criteria used to select one of the methodologies
 Details on application of selected methodology used for this filing

Details on application of methodology to this filing

(13) GENERAL & FORMAT REQUIREMENTS

Separate insurance companies affiliated by a parent or other groups relationship must submit data shown in (3-9) & (10) and make rate calculation as shown in (11) separately and combined as a group
 Form AMB 10 must be included
 Certification by company officer (meets statutory & regulatory requirements)
 Loose leaf binder, one side of page, consecutively numbered
 Filer's name shown
 Filer's identifying numbers
 Filer's NAIC #
 Group NAIC #

(14) List of items the filer states are not included and the reason why.

**EXHIBIT B
 CAUSE OF LOSS REPORT
 COMPREHENSIVE**

	NEW JERSEY				CALENDAR YEAR ENDING 12/31_____					
	WRITTEN EXPOSURES	EARNED EXPOSURES	WRITTEN PREMIUM	EARNED PREMIUM	NO. OF LOSSES	LOSSES PAID	% LOSS PAID	LOSS FREQ.	AVG. LOSS	PURE PREMIUM (LOSS COST)
FIRE	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
THEFT	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
GLASS	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
[PERSONAL EFFECTS	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____]
[MALICIOUS MISCHIEF VANDALISM	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____]
[WINDSTORM, EARTHQUAKE, ETC.	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____]
[FLOOD & RISING WATERS	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____]
ALL OTHER CAUSES	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____

EXHIBIT C

Worksheet to Determine Zero Threshold Premium and Commission for BI and UMBI

Page 1 of 4

Insurance Group Name _____
 Insurance Company Name _____
 Group NAIC Number _____
 Company NAIC Number _____

Check one: This is a filing for (check one):
 BI _____ Flex Rating Increase _____
 UMBI _____ Prior Approval Increase _____
 _____ Prior Approval Decrease _____

BEFORE COMPLETING THIS FORM, PLEASE READ THE INSTRUCTIONS ON PAGE 4.

Section A

Section A develops the revised verbal threshold base rate after the rate change.

Item 1A: Current verbal threshold base rate

State the territory number _____
 Number of exposures _____
 Percent of statewide total _____

Item 2A: Verbal threshold rate change, expressed as a multiplicative factor _____

[NOTE: For a flex filing rate increase, the maximum value of Item 2A is 1.049.]

Item 3: Revised verbal threshold base rate _____ (Item 1A multiplied by Item 2A)

NOTE: Item 3A is the new verbal threshold base rate after the rate change.

Section B

The dollars of commission for the verbal threshold base rate and the zero threshold base rate are to be identical after the rate change. Section B develops the dollars of commission which can be included in the rate. The insurer may pay a higher commission. However, the portion of the commission above the amount stated in Item 2B is not to be included in the rate and is not to be charged to the policyholder.

Page 2 of 4

Item 1B: Current filed and approved commission rate for the VERBAL threshold base rate, expressed as a decimal and rounded to the third decimal place _____

State the relevant DOI filing number: _____

Item 2B: Dollars of commission for the increased/decreased verbal threshold base rate _____
(Item 3A multiplied by Item 1B)

NOTE: Item 2B is the dollars of commission for the verbal threshold base rate after the rate change, and it is also the dollars of commission for the zero threshold base rate after the rate increase/decrease.

Section C

Section C develops the zero threshold rate change.

For a prior approval rate increase, or a flex rating increase, complete Item 1C, Item 2C, Item 3C, and Item 4C. For a rate decrease, complete Item 5C, Item 6C, Item 7C, and Item 8C.

COMPLETE ITEMS 1C, 2C, 3C, AND 4C ONLY FOR A PRIOR APPROVAL RATE INCREASE, OR A FLEX RATING RATE INCREASE, BUT NOT FOR A RATE DECREASE.

Item 1C: Item 2A minus 1.000 _____

Item 2C: Item 1C times 2.000 _____

Item 3C: Item 2C plus 1.000 _____

Item 4C: Zero threshold rate increase expressed as a multiplicative factor

NOTE: Item 4C is the amount the insurer selects as the zero threshold rate increase. However, for a flex filing rate increase, Item 4C cannot be smaller than Item 3C. *[For a flex filing rate increase, Item 4C cannot be larger than 1.098.]*

Page 3 of 4

COMPLETE ITEMS 5C, 6C, 7C, AND 8C ONLY FOR A PRIOR APPROVAL RATE DECREASE, AND NOT FOR A PRIOR APPROVAL RATE INCREASE, AND NOT FOR A FLEX RATING INCREASE.

Item 5C: 1.000 minus Item 2A _____

Item 6C: Item 5C divided by 2.000 _____

Item 7C: 1.000 minus Item 6C _____

Item 8C: Zero threshold rate decrease expressed as a multiplicative factor

NOTE: Item 8C is the amount the insurer selects as the zero threshold rate decrease.

Section D

Item 5D of Section D is the zero threshold base rate with the rate increase/decrease.

Item 1D: Current zero threshold base rate _____

Item 2D: Filed and approved dollars of commission for the current zero threshold base rate _____

State the relevant DOI filing number: _____

Item 3D: Current zero threshold base rate excluding commissions (Items 1D minus Item 2D) _____

Item 4D: Increased/decreased zero threshold base rate, excluding commissions _____

(Item 3D multiplied by Item 4C, or Item 3D multiplied by Item 8C, as appropriate.)

Item 5D: Increased/decreased zero threshold base rate, including commissions _____

(Items 2B plus Item 4D)

Page 4 of 4

Instructions:

1. Data are for base rates for the territory with the largest number of the filer's exposures. Following Item 1A state the number of the territory in question; the number of exposures in that territory; and the portion of the statewide exposures for the filer in that territory.

2. File one worksheet for BI and one for UMBI.

3. For combined single limits, fill out the worksheets using the BI and UMBI portions of the rate.

4. Item 2A is to be expressed as a decimal and rounded to the third digit. For example, if the rate change is an increase of 2%, Item 2A is 1.020. As another example, if the rate change is a decrease of 3.2%, then Item 2A is 0.968. *[IN A FLEX RATE INCREASE FILING, THE MAXIMUM FOR ITEM 2A IS 1.049.]*

5. The commission rate in Item 1B to be expressed as a decimal and rounded to the third digit. For example, if the commission rate is 15.3%, Item 1B is 0.153. As another example, if the commission rate is 19%, Item 1B is 0.190.

6. The commission allowable in the zero threshold base rate is Item 2B. The insurer may pay a higher commission. However, the portion of the commission above the amount stated in Item 2B is not to be included in the rate and is not to be charged to the policyholder.

7. Following Items 1B and 2D, provide the DOI filing number of the filing in which the commission rate was approved.

EXHIBIT D

New Jersey Department of Insurance - General Filing Questionnaire

(complete for property and casualty filings submitted for approval)

COMPLETE ITEMS 1, 2, and 3 FOR ALL FILINGS.

1 Name all filing companies (and group, if applicable) and their NAIC identification code.

Table with columns for Grp., Company, and NAIC Code. Multiple rows for listing companies and their codes.

2 A. Indicate type of filing: place "x" for all applicable items.

Form with checkboxes for Rate, Deviation, Rule, Form, End't, Other, and Explain.

2 B. Indicate category of filing: place "x" for all applicable items.

Form with checkboxes for New, Revision, Reference, and Withdrawal.

2 C. Indicate kinds and lines of insurance affected by this filing.

Form with checkboxes for Kind and Line of insurance.

2 D. Indicate overall percent rate impact, if any.

Form with checkboxes for percentage and indeterminable.

3 A. Is this filing similar to filing previously approved in New Jersey?

Form with checkboxes for Yes, No, and Unknown.

3 B. If answer to 3 A. is yes, complete the following:

Form with fields for Name of Filer, Dept. File No., and Effective Date.

Stop Here if the Answer to 3 A. is Yes

COMPLETE ITEM FOR FORMS OR ENDORSEMENTS AFFECTING EXISTING OR NEW COVERAGES - USE ADDITIONAL SHEETS AS REQUIRED. IF INFORMATION IS DESCRIBED IN FILING IDENTIFY EXHIBIT AND SPECIFIC PAGES.

A. Does this filing change coverages provided in the policy?
 Yes No • Explain "No" Answer

B. If answer to A. is yes, describe the coverages affected.

1 Added Changed Deleted



2 Added Changed Deleted



3 Added Changed Deleted



4 Added Changed Deleted



5 Added Changed Deleted



◆ State Below Amount of Business Written for Each Enumerated Coverage, Using Direct Written Premiums for Latest Year Available.

New Jersey Premiums	Countrywide Premiums
1	1.
2.	2.
3.	3.
4	4.
5.	5.

C. State the reasons for the described coverage changes.

1.

2.

3.

4.

5.

D. State the estimated premium impact of the described coverage changes.

- | | | |
|---------------------------------|---|---------|
| 1 <input type="checkbox"/> None | <input type="checkbox"/> Indeterminable | Other ▶ |
| 2 <input type="checkbox"/> None | <input type="checkbox"/> Indeterminable | Other ▶ |
| 3 <input type="checkbox"/> None | <input type="checkbox"/> Indeterminable | Other ▶ |
| 4 <input type="checkbox"/> None | <input type="checkbox"/> Indeterminable | Other ▶ |
| 5 <input type="checkbox"/> None | <input type="checkbox"/> Indeterminable | Other ▶ |

**COMPLETE ITEM 3 FOR FILINGS AFFECTING EXISTING OR NEW RULES
 - USE ADDITIONAL SHEETS AS REQUIRED. IF THE INFORMATION
 IS DESCRIBED IN FILING, IDENTIFY EXHIBIT AND SPECIFIC PAGES.**

3 A. Does this filing change rules of the approved rating system?

- Yes No • Explain "No" Answer

3 B. If answer to 3 A. is yes, describe the rules affected

- 1 Added Changed Deleted



- 2 Added Changed Deleted



- 3 Added Changed Deleted



- 4 Added Changed Deleted



- 5 Added Changed Deleted



**◆ State Below Amount of Business Written for Each Enumerated ◆
 Rule, Using Direct Written Premiums for the Latest Year Available.**

New Jersey Premiums	Countrywide Premiums
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

3 C. State the reasons for the described rule changes.

- 1.
- 2.
- 3.
- 4.
- 5.

3 D. State the estimated premium impact of the described rule changes.

- 1 None Indeterminable Other ▶
- 2 None Indeterminable Other ▶
- 3 None Indeterminable Other ▶
- 4 None Indeterminable Other ▶
- 5 None Indeterminable Other ▶

EXHIBIT E
DEVIATION APPLICATION FORM
 (All Items based on Direct premiums & expenses)
 Latest 5 Years Of Data

DATE:

COMPANY:

RATING ORGANIZATION:

KIND OF INSURANCE:

PERCENTAGE OF DEVIATION REQUESTED:

COUNTRYWIDE

	Dollar Amt 19__	%*	Dollar Amt 19__	%*	Dollar Amt 19__	%*
1. Premiums written	_____	_____	_____	_____	_____	_____
2. Premiums earned	_____	_____	_____	_____	_____	_____
3. Losses, excluding all adjustment expense	_____	_____	_____	_____	_____	_____
4. All loss adjustment expense	_____	_____	_____	_____	_____	_____
5. Total (lines 3 and 4)	_____	_____	_____	_____	_____	_____
Underwriting Expenses						
6. Commission	_____	_____	_____	_____	_____	_____
7. Other Acquisition	_____	_____	_____	_____	_____	_____
8. General Expense	_____	_____	_____	_____	_____	_____
9. Taxes, fees, et al	_____	_____	_____	_____	_____	_____
10. Total (lines 6 to 9)	_____	_____	_____	_____	_____	_____
11. Total (lines 5 & 10)	_____	_____	_____	_____	_____	_____
12. Net Underwriting gain or loss	_____	_____	_____	_____	_____	_____
New Jersey						
13. Premiums written	_____	_____	_____	_____	_____	_____
14. Premiums earned	_____	_____	_____	_____	_____	_____
15. Losses incurred	_____	_____	_____	_____	_____	_____
16. Loss Ratio	_____	_____	_____	_____	_____	_____
17. Average Countrywide Deviated Rate Level	_____	_____	_____	_____	_____	_____
18. Average N.J. Commission	_____	_____	_____	_____	_____	_____
19. Maximum N.J. Commission	_____	_____	_____	_____	_____	_____
20. N.J. Taxes & UCJF assessment	_____	_____	_____	_____	_____	_____

*Note: All lines (except 6 & 9) related to premiums earned; lines 6 & 9 related to premiums written. All based on direct premiums and expenses.

(a)

DIVISION OF ADMINISTRATION
Rate Filing Review Procedures: Voluntary Market
Private Passenger Automobile Insurance
Adopted New Rules: N.J.A.C. 11:3-18

Proposed: November 6, 1989 at 21 N.J.R. 3422(b).
 Adopted: January 12, 1990 by Kenneth D. Merin, Commissioner, Department of Insurance.
 Filed: January 12, 1990 as R.1990 d.109, **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. 17:1-8.1; N.J.S.A. 17:1C-6(e); N.J.S.A. 17:29A-14; N.J.S.A. 17:29A-36.2; N.J.S.A. 17:29A-44e; and N.J.S.A. 17:29A-36.3.
 Effective Date: February 5, 1990.
 Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:
 Seven written comments were received from automobile insurance companies and a rating organization. Rule citations in the comments and

responses refer to the provisions of the November 6 reproposal.
COMMENT: Two commenters objected to the provisions of N.J.A.C. 11:3-18.4, 18.5 and 18.6 that provide the Department 60 days to determine if an annual informational or flex rate filing is complete and 25 days to determine whether a prior approval filing is incomplete. One commenter suggested that the Department make the determination for all filings within 25 days; a second commenter suggested 10 days for all filings.
RESPONSE: A similar comment was addressed when these rules were repropounded (see 21 N.J.R. 3422(b), 3425). The Department has considered the concerns of these commenters, and decided not to make any changes.
 The Department notes that all insurers writing private passenger automobile insurance are required to make an annual informational filing by July 1 of each year. This means that several hundred filings will be made. Many filers may also seek a flex rate increase at the same time; some filers may also make a prior approval filing at about the same time. Additionally, excess profits reports are also due July 1.
 The Department's experience has been that virtually all insurers wait until the deadline to make the excess profits report and the annual informational filing. All of these documents must be reviewed by a limited number of Department personnel.
 As adopted, the rules provide 60 days to determine the completeness of informational and flex rate filings. The shorter time limit of 25 days for prior approval filings is required so as to expedite their disposition.

Significantly shorter time frames for informational and flex rate filings would affect the manner of review. As a practical matter, the review of completeness will resolve virtually all of these matters and serve as the substantive review as well. Any shorter time frame for review for completeness, as suggested by the commenters, would likely result in a simple checklist review and the issuance of notices of incompleteness in cases where a more thorough review, including opportunity for communication with the filer, would obviate the need for further proceedings.

COMMENT: Several filers objected to the provisions of N.J.A.C. 11:3-18.5(b) and (c) which set forth procedures for issuance of an order directing a filer to roll back a flex rate increase when an incomplete filing is not cured within the time provided, or a hearing on the issue of completeness is not requested. Several commenters stated that this remedy was not authorized or was contrary to N.J.S.A. 17:29A-44e. One commenter stated that the use of the word "informational filing" in the statute establishes a legislative intent to require the same kind of filing and the same penalty for incompleteness. Several commenters stated that the remedy is unwarranted because of a "few missing items of information" or "a dispute concerning the information required". One commenter asserted that rate changes reflecting inflation are almost always not excessive. Another asserted that the statute does not require insurers to demonstrate that the increased rates are not excessive. Some commenters asserted that a monetary penalty would be a sufficient deterrent to ensure that flex rate filings were complete.

RESPONSE: These comments were addressed when the rules were repropounded (see 21 N.J.R. 3422(b), 3423).

The Department views the flex rate provisions of N.J.S.A. 17:29A-44e as a change in proceedings; that is, that a limited rate increase may be implemented without the prior approval of the Commissioner. Nevertheless, that statute did not repeal N.J.S.A. 17:29A-7 or 17:29A-14, which require that rates charged not be excessive, inadequate or unfairly discriminatory. When rates are changed the Department must review them to determine whether they meet the statutory criteria; to do so requires adequate data.

N.J.S.A. 17:29A-44e conditions the right to implement a flex rate increase on an informational filing being made. If that filing is not made, the insurer has no right to implement increased rates. The necessary remedy for an illegal rate increase is to require the insurer to stop charging the illegal rates immediately, and to refund monies illegally collected.

COMMENT: Several commenters objected to the provision of N.J.A.C. 11:3-18.5(c) which requires filer to request a hearing on the completeness of a flex rate filing within 10 days of receipt of notice that the filing is incomplete. The commenters stated this was an insufficient time, and that it did not provide an opportunity for informal communication to resolve differences of interpretation. One commenter expressed a concern that, by demanding a hearing within 10 days, cooperation could be frustrated and resources would be wasted in demanding and scheduling hearings that may later be unnecessary.

RESPONSE: The commenters' suggestion has been accepted and the change made upon adoption. A similar change has been made in N.J.A.C. 11:3-16.

COMMENT: One commenter stated that N.J.A.C. 11:3-18.5(e) is unclear. The commenter suggested that if the Commissioner would only deny a hearing in these contexts because the filing was complete, the provision should be changed as follows:

"If the Commissioner determines that the written request for a hearing contains sufficient facts or legal arguments that lead to a conclusion that the filing is complete, then no hearing will be required and the filer may continue to use the flex rates."

RESPONSE: As previously noted when these rules were repropounded, the determination that a matter is a contested case is a procedural step (see 21 N.J.R. 3422(b), 3424). A finding by the Commissioner that the matter is a contested case delineates the end of internal Department review and commences contested case hearing proceedings in accordance with the Administrative Procedure Act. This rule does not create nor limit substantive rights; it merely sets forth processes.

The Commissioner cannot deny a hearing when the filer has a right to one. The Commissioner may find, however, that the matter does not constitute a contested case because the filing has been determined to be complete, as the commenters suggested, or because the dispute has otherwise been resolved to the satisfaction of both the filer and the Department, for example, by filing a missing exhibit or substitute data within a limited time. The suggested language is too constraining in such contexts.

COMMENT: Several commenters objected to the provisions of N.J.A.C. 11:3-18.6(b) and (e) which provide for limited discovery between the filer and the Public Advocate during the period of Department review. One commenter stated that this was an undue burden and would waste time and expense. Another commenter stated it was unable to identify any statutory authority for the creation of discovery rights in the Public Advocate. Another commenter stated that the restrictions should be more limited, although it did not suggest precisely in what manner. Another commenter expressed concern about repeated information requests.

RESPONSE: These comments were addressed generally when these rules were repropounded (see 21 N.J.R. 3422(b), 3425). The Public Advocate is authorized to represent and protect the public interest in insurance rate matters. N.J.S.A. 52:27E-18. When it does so, it is a party to those proceedings and is entitled to the rights of due process of law as provided in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Nevertheless, automobile insurance rate hearings are subject to being resolved within time limits set forth in N.J.S.A. 17:29C-14c. Historically the process has been delayed as both the Department and the Public Advocate seek from the filer information necessary to perform their functions.

With regard to the hearing process itself, the Uniform Administrative Procedure Rules provide for discovery during the hearing process. N.J.A.C. 1:1-10. Delaying the exchange of pertinent information until the formal hearing process begins, however, is incompatible with the limited time for resolution provided by N.J.S.A. 17:29A-14c.

Therefore, the Department intends, both through these repropounded rules regarding procedures and the rules regarding rate filing requirements, N.J.A.C. 11:3-16, to establish a system by which automobile insurance rate filings are thoroughly but expeditiously resolved. First, N.J.A.C. 11:2-16 requires extensive data be submitted when the filing is first made. Thereafter, N.J.A.C. 11:3-18.6 provides a limited opportunity to obtain information during the Department's internal review. Finally, the Office of Administrative Law on December 18 proposed a rule that severely limits otherwise permissible discovery in contested case hearings on automobile insurance rate filing matters (see 21 N.J.R. 3851(a)).

COMMENT: One commenter expressed concern about the protection of an insurer's trade secrets. It suggested that a provision be added to N.J.A.C. 11:3-18.6(e)2 as follows:

"If the information or documents to be provided include a filer's trade secrets, then the Commission shall issue a protective order."

RESPONSE: Similar comments expressing concern regarding the protection of proprietary information and trade secrets were made regarding the rate filing requirements rule, N.J.A.C. 11:3-16.

It remains unclear, however, what the commenter considers to be a "trade secret"; the commenter does not define it. Undefined, the term could include statistical data collected as a result of the insurer's own efforts; the assumptions, judgments, insights and professional opinions of its paid actuarial staff or consultants; marketing strategies; or technical achievements, such as computer software or systems.

To regulate and approve automobile insurance rates, the Department is obligated to determine the relationship between the rate sought to be charged and the costs of providing the coverage. This requires comprehensive submissions of both data and explanations of how that data was used to derive final rates. Information from the insurer filed or disclosed during the process is likely to become part of the public record (see N.J.S.A. 47:1A-2). Disclosure of this information is nothing new; it is a process used in the past and which is sought to be improved by these rules and N.J.A.C. 11:3-16.

Nevertheless, the Department does not wish to inhibit innovations in systems and methods that improve the efficiency of insurers, and which may thus help contain the cost of insurance. Therefore, while not adopting the commenter's suggestion, the Department welcomes such further information from the industry as may assist it in identifying and protecting legitimate proprietary interests within the context of insurance rating laws.

COMMENT: One commenter objected to the provisions of N.J.A.C. 11:3-18.6(h) and (i), which address requests for hearings in connection with prior approval filings. The commenter expressed concern that the filer's request for a hearing accompanying the filing would not be able to include a statement of facts and issues. Additionally, the commenter was concerned that the filer be advised in the some manner of any areas of concern or difficulty that the Department has with the filing. The commenter suggested amendments to the language of N.J.A.C. 11:3-18.5(h) to excuse the filer from including a statement of facts and issues in a hearing request submitted as part of the filing. It further suggested additional language for N.J.A.C. 11:3-18.6(i) to provide that

the notice to all parties that a hearing will be held include a listing of all issues, including those raised by the Department.

RESPONSE: The Department has considered the suggestions of the commenter, but does not believe that these changes are necessary.

With regard to the requirement that a hearing request include a statement of issues, the Department notes that N.J.A.C. 11:3-16.6(a) and 3 require a prior approval filing to include a cover letter and narrative overview that should adequately address the issues as they are known at the time. Creating a special exception may inhibit further refinement of the issues during normal communications that occur during the period of Department review of a filing.

With regard to the suggestion that the notice that a hearing is to be held include a statement or listing of the Department's concerns, it does not appear to be appropriate to do so. The Department agrees with the commenter as to the importance of identifying issues and focusing the hearing on disputed items so as not to waste any parties' time and resources. Nevertheless, since the Commissioner must make the final determination on the filing, to have the Commissioner identify areas of "concern" (or disagreement) with the filer's position at that time may be construed either to be an expression of prejudice or to skew further proceedings unnecessarily only toward resolution of those issues.

More importantly, the Department expects that the current processes of informal communications with the Department and among the parties during the period of Department review will continue upon adoption of these rules.

COMMENT: A commenter suggested that N.J.A.C. 11:3-18.5(c) be changed so that the Commissioner, in the event of a deficiency in a flex rate filing, may permit a filer to use a lesser increase than that included in the filing to the extent the lesser increase is substantiated.

RESPONSE: The Department does not believe that it is necessary to articulate all of the possible consent resolutions of such disputes. A list that did not exhaust all possibilities may be interpreted to exclude some.

COMMENT: A commenter suggested that a provision be added to N.J.A.C. 11:3-18.5 that a flex rate filing not found to be incomplete within 60 days, or challenged substantively within a specified time, be "deemed approved".

RESPONSE: The Department does not believe it has authority to "approve" the rates in a flex rate filing either as these filings are made or by a "deemer" provision in a rule. As a practical matter the result is the same: if the rates are within the flex rating band and the filing not determined to be incomplete, the Department's only method to challenge the rates would be in accordance with N.J.S.A. 17:29A-7. That statute authorizes the Commissioner to order that rating systems be altered or revised prospectively, after finding that the rates in effect do not meet the statutory standards. N.J.A.C. 11:3-18.7 states that these rules are not intended to prevent use of that remedy.

COMMENT: The same commenter suggested that N.J.A.C. 11:3-18.6 provide a "deemer" provision for prior approval filings if the filer is not notified that the filing is incomplete.

RESPONSE: This provision is not authorized by statute. N.J.S.A. 17:29A-14 requires prior approval of rate changes (see *Insurance Company of N. America v. Howell*, 80 N.J. Super. 236 (App. Div. 1963)). This is an affirmative obligation that may not be exercised passively by allowing time to run. The Department notes that N.J.A.C. 11:3-18.6(i) provides for the issuance of a final Order not later than 90 days from receipt of the filing when no hearing is requested.

COMMENT: A commenter stated that N.J.A.C. 11:3-18.6(a) does not appear to have statutory authority.

RESPONSE: This provision requires the filer to serve a copy of the filing on the Public Advocate and include a certification that a copy was so served. The Department believes that both N.J.S.A. 52:27E-18 (which authorizes the Public Advocate to participate in the proceedings) and N.J.S.A. 17:29A-14c (which authorizes the Public Advocate to request a hearing) authorize this provision. The Public Advocate would be unable to carry out its role as set forth in these statutes without being notified that a filing has been made. The certification requirement is minimal, and provides the Department with necessary documentation to enter a final Order disposing of the matter when the Public Advocate chooses not to intervene.

COMMENT: A commenter suggested that the Public Advocate be required to submit its report and recommendation within 30 days of the date of filing.

RESPONSE: This would appear to be an unrealistic time frame. To so provide may effectively prevent meaningful participation in the Department review process. It would preclude any opportunity to obtain

and review information, and formulate a report and recommendation. It would be likely to result in the Public Advocate requesting a full hearing in every case in order to perform its function. The filer has an unlimited time to prepare the filing; the Public Advocate deserves sufficient time to conduct its review.

COMMENT: One commenter suggested that N.J.A.C. 11:3-18.1 include a statement that the goal of these regulations is to ensure the expeditious review of rate filings.

RESPONSE: The Department has adopted this suggestion and included this goal, consistent with the applicable provisions of N.J.S.A. 17:29A-1 et seq. and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The adoption also contains minor editorial changes or additions that correct errors in the original reproposal, incorporate changes that have occurred by the passage of time or that more clearly or completely express the Department's intent. These changes do not require additional public notice and comment pursuant to N.J.A.C. 1:30-4.3.

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

SUBCHAPTER 18. PRIVATE PASSENGER AUTOMOBILE INSURANCE: RATE FILING REVIEW PROCEDURES

11:3-18.1 Purpose and scope

(a) This subchapter sets forth the procedures used by the Department to review voluntary market private passenger automobile insurance rate filings and implements N.J.S.A. 17:29A-1 et seq. ***It is intended to provide for the expeditious review and disposition of automobile insurance rate filings consistent with applicable statutes regarding insurance and administrative procedures.***

(b) This subchapter applies to the following kinds of automobile insurance rate filings submitted to the Department:

1. Annual informational filings made pursuant to N.J.S.A. 17:29A-36.2b;
2. Flex rate filings made pursuant to N.J.S.A. 17:29A-44; and
3. Rate change filings that require prior approval of the Commissioner made pursuant to N.J.S.A. 11:29A-14.

(c) This subchapter shall be construed so as to be compatible with the rules that set forth requirements for rate filings, N.J.A.C. 11:3-16; the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.; and the administrative procedure rules, N.J.A.C. 1:1 and 1:11 concerning the disposition of matters after they have been determined to be a contested case.

11:3-18.2 Definitions

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

"Annual informational filing" means a filing made in accordance with the provisions of N.J.S.A. 17:29A-36.2b and N.J.A.C. 11:3-16.4 or 16.7(a).

"Contested case" means any proceeding so defined in N.J.S.A. 52:14B-2(b), specifically including a prior approval filing when request for a hearing has been made by any party or when the Commissioner determines that a hearing on the filing is necessary.

"Department" means the New Jersey Department of Insurance.

"Day" means a calendar day.

"Filer" means a rating organization or any insurer making its own rates or a portion thereof, establishing or proposing to establish a new rate or rate change, or making an annual informational filing.

"Flex rate filing" means a filing made pursuant to N.J.A.C. 11:3-16.5 or 16.7(c) to adjust rates within limits set in accordance with the provisions of N.J.S.A. 17:29A-44 and applicable orders of the Commissioner ***issued pursuant to N.J.A.C. 11:3-16A***.

"Prior approval filing" means a filing made pursuant to N.J.S.A. 17:29A-14 and N.J.A.C. 11:3-16.6 or 16.7(d) to alter, supplement, or amend rating systems or any part thereof, except flex rate filings.

"Parties" includes the filer, the Public Advocate, and any other person with a legal right to participate in the proceedings who has served notice on the Commissioner of its intention to participate.

"Public Advocate" means the Division of Rate Counsel, Department of the Public Advocate of New Jersey.

"Qualified member" of a rating organization means an insurer member or subscriber of a rating organization whose total written ***private passenger*** car years insured on a calendar year basis, is ***[equal to or]*** less than ***[two percent on January 1, 1989,]*** 1.5 percent on January 1, 1990 and one percent on or after January 1, 1991, of the total written ***private passenger*** car years insured by all insurers writing motor vehicle insurance in this State in the voluntary market, pursuant to N.J.S.A. 17:29A-6.1a2.

"Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of making rates or a portion thereof for two or more insurers and licensed in accordance with N.J.S.A. 17:29A-2.

11:3-18.3 General provisions applicable to all filings

(a) Filings may be submitted by insurers or licensed rating organizations which are authorized to file rates for insurers which are members or subscribers of the rating organization.

1. Insurers required to make their own rates pursuant to N.J.S.A. 17:29A-6.1a(2), which are not qualified members of rating organizations as defined in N.J.A.C. 11:3-18.2 shall make filings themselves.

2. Filings submitted by rating organizations shall be submitted only for and on behalf of their qualified member companies.

(b) In computing any period of time fixed by this subchapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is on a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

(c) All documents filed with the Commissioner, except initial filings, shall contain a statement certifying that the item is being submitted within the time provided by this subchapter.

(d) Provisions of this subchapter that establish time limits may be relaxed or modified by the Commissioner for good cause shown.

(e) A determination by the Department that a filing is complete relates solely to the presence in the filing of the items required by N.J.A.C. 11:3-16 and shall not be considered a finding regarding the accuracy or reasonableness of the information or calculations.

(f) All filings and other items submitted to the Commissioner shall be sent to the Department at the following address:

New Jersey Department of Insurance
Property/Liability Division
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

(g) Any filing or other item submitted to the Public Advocate shall be sent to the Public Advocate at the following address:

Department of the Public Advocate
Division of Rate Counsel
744 Broad Street—30th Floor
Newark, New Jersey 07102

11:3-18.4 Procedures for review of annual informational filings

(a) The ***time period for the*** Department's review of an annual informational filing shall commence upon the day that the filing is received.

(b) If the filing is incomplete, the Department shall so advise the filer not later than 60 days after receipt of the filing.

1. The filing shall be deemed to be complete if the filer is not notified that the filing is incomplete.

2. Notice to the filer that the filing is incomplete shall specify the missing item(s) or information. The notice shall advise the filer that the deficiency must be cured within 30 days of receipt of notice, and that failure to cure the deficiency within 30 days of receipt of notice may result in imposition of penalties as provided by law.

(c) If any annual informational filing is not made, or if an incomplete filing is not cured within 30 days of receipt of notice, the Commissioner may commence proceedings to impose penalties on the filer as provided by law.

11:3-18.5 Procedures for review of flex rate filings

(a) The ***time period for the*** Department's review of a flex rate filing shall commence upon the day that the filing is received.

(b) The Department shall advise the filer if the filing is incomplete not later than 60 days after receipt of the filing.

1. The filing shall be deemed to be complete if the filer is not notified that the filing is incomplete.

2. A notice to the filer that the filing is incomplete shall specify the missing item(s) or information. The notice shall advise the filer that the deficiency must be cured within 30 days of receipt of the notice. The notice shall further advise the filer of its right to a hearing on the issue of completeness, and of the consequences of failure to cure the deficiency, as provided in (c) below.

(c) If the filer has not cured the deficiency within 30 days of notice, or if the filer has not requested a hearing in writing within ***[10]* *30*** days of notice, the Commissioner may enter an Order directing the filer to cease using the flex rates set forth in the filing; directing the filer to use its rates in effect prior to making the flex rate filing; and directing the filer to file a plan to refund or adjust the rates of any insured whose policy was issued or renewed using the rates set forth in the flex rate filing.

(d) A filer may request a hearing on the issue of completeness. Any such request shall be made in writing and shall contain facts or legal arguments that adequately support the filer's contention that the filing is complete as submitted.

(e) Not later than 10 days after receipt of a request for hearing, the Commissioner shall determine whether the matter requires a hearing and so notify the filer in writing.

1. If the matter is found to require a hearing, the Commissioner may hear the matter; direct that the matter be transmitted to the Office of Administrative Law for further proceedings; or appoint a salaried employee of the Department to hear the matter pursuant to N.J.S.A. 17:29A-14c.

2. As a condition to scheduling the hearing, the Commissioner may order the filer to establish a separate interest-bearing escrow account, into which the funds collected on account of the flex rate increase shall be deposited, pending the outcome of the hearing.

(f) Further proceedings on the matter shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

11:3-18.6 Procedures for review of prior approval filings

(a) The ***time period for the*** Department's review of a prior approval filing shall commence the day the filing is received. The filer shall serve a copy of the filing on the Public Advocate simultaneously with making the filing with the Department, pursuant to N.J.A.C. 11:3-16.3(e), and the filing shall contain a certification by an officer of the filer that a copy was so served.

(b) The Public Advocate shall notify the Department and the filer if it intends to intervene no later than 10 days after receipt of a filing.

(c) The Department shall advise the filer if the filing is incomplete not later than 25 days after receipt of the filing.

1. The filing shall be deemed to be complete if the filer is not notified that the filing is incomplete.

2. Notice to the filer that the filing has been found to be incomplete shall specify the missing item(s) or information.

3. The Department shall send a copy of the notice that the filing is incomplete to the Public Advocate, if notice of intent to intervene has been received.

4. The Department may return the filing to the filer with the notice that it is incomplete with a statement that it has been disapproved as a nonconforming filing. Any resubmission of the filing after the deficiency has been cured shall be considered initial receipt.

(d) If the Department requests further information from the filer, which information must be provided to the Department upon request pursuant to N.J.A.C. 11:3-16.8, 16.9 or 16.10, the filer shall submit the information to the Department, and simultaneously to the Public Advocate, within 15 days of the receipt of the request.

(e) The Department deems the filing requirements set forth in N.J.A.C. 11:3-16 to be sufficient information to review and evaluate any rate change requested. Therefore, no supplemental information beyond limited discovery to seek clarifying or explanatory infor-

mation should be required. The following procedures may be used to obtain clarifying, explanatory or supplemental information if necessary:

1. Not later than 20 days after receipt of a filing, the Public Advocate may request in writing that the filer provide information that may be necessary to clarify or explain information contained in the filing. Not later than 10 days after receipt of any such request, the filer shall provide the clarifying or explanatory information to the Public Advocate and simultaneously to the Department.

2. Not later than 20 days after receipt of a filing, the Public Advocate may petition the Commissioner for an Order directing the filer to provide additional data, information or documents, other than that required to clarify or explain information contained in the filing.

i. The petition shall include a list of the data, information or documents to be provided and show good cause why the additional information or documents are required. A copy of the petition shall be sent simultaneously to the filer, which may file a responsive statement within five days.

ii. Upon receipt of such a petition, and after consideration of any responsive statement by the filer, the Commissioner may either direct the filer to provide all or part of the information or documents within a specified time, or deny the petition.

iii. A decision of the Commissioner directing the filer to provide additional data, information or documents in accordance with this section may include a reasonable extension of time within which the Public Advocate may file its report and recommendation, and further include a reasonable extension of time within which any party may request a hearing.

iv. Copies of any correspondence between the parties, and any additional information or documents supplied at the direction of the Commissioner, shall also be provided to the Department.

[(g)](f)* Not later than 60 days after receipt of a filing, the Public Advocate shall file with the Department its report and recommendations, and simultaneously submit a copy to the filer.

[(h)](g)* Not later than 60 days after receipt of a filing by the Department, either the Public Advocate or the filer may request in writing a hearing on the filing. A request for hearing shall include a statement of facts and issues in sufficient detail so as to notify the Department and any other party of the matters in dispute.

[(i)](h)* Upon receipt of a request for a hearing, or not later than 75 days after receipt of a filing by the Department, the Commissioner shall determine whether the matter is a contested case and notify all parties in writing.

1. If no hearing is requested the Commissioner shall enter an appropriate final order disposing of all issues raised by the filing. The final order shall be issued not later than 90 days from receipt of the filing, except for good cause the Commissioner may extend the time to issue a final Order by not more than 30 days.

2. If a hearing is requested the Commissioner may hear the matter; direct that the matter be transmitted to the Office of Administrative Law; or may appoint a salaried employee of the Department to hear the matter pursuant to N.J.S.A. 17:29A-14c.

[(j)](i)* The hearing shall be conducted pursuant to the provisions of N.J.S.A. 17:29A-14c and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and applicable administrative rules, N.J.A.C. 1:1 and 1:11.

11:3-18.7 Other remedies preserved

Nothing in this subchapter shall prevent the Commissioner from at any time initiating an action pursuant to N.J.S.A. 17:29A-1 et seq. to direct that rating systems be altered or revised if found to provide for, result in, or produce rates which are unreasonable, inadequate, or which discriminate unfairly between risks in this State involving essentially the same hazards and expense elements.

(a)

DIVISION OF ACTUARIAL SERVICES

Examination of the Financial Experience of Private Passenger Automobile Insurers

Adopted New Rules: N.J.A.C. 11:3-31

Proposed: December 4, 1989 at 21 N.J.R. 3726(a).

Adopted: January 12, 1990 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: January 12, 1990 as R.1990 d.108, 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. 17:1-8.1, 17:1C-6(e), 17:23-1 et seq., 17:29A-1 et seq. and 17:29B-1 et seq.

Effective Date: February 5, 1990.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

Five commenters stated that the reports required by these rules are redundant, burdensome and unnecessarily add to the cost of doing business in New Jersey. The commenters also suggested that since the information contained in the Financial Data Report required by these rules is substantially similar to that contained in the Excess Profit Report, the Annual Informational filing and the Flex Rate filing, these various reports should be combined into one comprehensive report.

One of the commenters additionally indicated that Exhibit A, Parts One and Two are identical in content to the exhibits contained in the Excess Profit Report, except that Liability experience is combined in the Financial Data Report and is separated into Bodily Injury, Property and Uninsured Motorists experience in the Excess Profits Report.

Another of the commenters stated that it is redundant and unnecessary to file 1988 data since a report nearly identical to the report required by these rules was filed in 1989 containing 1988 and 1987 data.

Another of the commenters further stated that if the various reports cannot be combined, they should be integrated in order to create similar reporting requirements between the various reports so that data may be more readily extracted from one report and used in another report. For example, the commenter suggested that the rounding requirements be made uniform in the Financial Data Report and in the Excess Profits Report.

Finally, one of the commenters suggested that the information required by these rules should only be required on an "as needed" basis.

RESPONSE: The Department disagrees. While there is some similarity or overlap in the data reported in the Excess Profits Report, Annual Informational filing, Flex Rate filing and the Financial Data Report required by these rules, the Department believes that since these reports are distinct in form, and the data contained in these various reports are evaluated by different Department personnel for different purposes, it is both necessary and appropriate to require the filing of this data in separate reports in order to effectively review and evaluate the data contained in such reports.

The Department also disagrees with the comment that it is unnecessary to file 1988 data since the report filed in 1989 contained 1988 and 1987 data. Changes to the Annual Statement form occur regularly in that the NAIC Blanks Committee continually reviews the Annual Statement form and recommends changes to such form if it determines that such changes are necessary. In addition, while less frequent, insurers occasionally restate data in order to reflect corrections to data previously submitted or to reflect changes in data that result from changes in the insurer's organization. While all insurers may not restate data each year, some insurers may do so. Therefore, in order to ensure that the Department receives current information reflecting any changes in the Annual Statement form or restatement of data that may have occurred since the previous filing, the Department requires that data be filed for the two years immediately preceding the due date of the Financial Data Report notwithstanding the fact that the second most recent calendar year data may have been submitted as part of the previous year's filing.

Regarding the comment that the reporting requirements be integrated so that data may be extracted from one report and used in another, the Department believes that these reporting requirements, while different, are necessary to effectuate the purpose for which the data is being collected. Therefore, no change is warranted.

Finally, the Department disagrees that this information should be required only on an "as needed" basis. The Department requires this information on an annual basis in order to evaluate more completely the data filed pursuant to N.J.S.A. 17:23-1 et seq., 17:29A-1 et seq. and 17:29B-1 et seq. Therefore, it is appropriate to require the filing of the Financial Data Reports by the promulgation of these rules which will ensure that insurers are fully apprised of the reporting requirements, thus ensuring the filing of complete and accurate reports.

COMMENT: One commenter suggested that a number of the exhibits be combined to reduce the redundancy of the row descriptions in such exhibits. For example, the commenter stated that DOI Exhibit A, Part One, pages 1, 2, 3, and 4 could be combined into one page in a grid-like format using the row descriptions from page one and the column headings from pages 1, 2, 3, and 4.

RESPONSE: The Department disagrees. The Department believes that the format requirements are appropriate and will expedite the use of the data submitted.

COMMENT: One commenter stated that it does not have unpaid general and acquisition expenses available on a state basis as required by DOI Exhibit One, Part Two, Sections One and Two, respectively.

The commenter further stated that incurred numbers are used consistent with generally accepted industry practice and should be sufficient for determining profitability, especially when several years of data are being filed.

RESPONSE: The Department requires unpaid general and acquisition expenses be filed on a state basis in that this data is utilized to evaluate more completely the data filed by insurers pursuant to N.J.S.A. 17:23-1 et seq., 17:29A-1 et seq. and 17:29B-1, which is filed on a state basis, and to evaluate more completely the financial experience of private passenger automobile insurers in this State. Therefore, where this information is not available on a state basis, the insurer will be required to make a reasonable estimate of these expenses on a state basis in order to complete the Financial Data Report.

COMMENT: One commenter suggested that the filing date for the Financial Data Report be July 15 rather than July 1 in that much of the data for the Financial Data Report must be extracted from the Excess Profits Report, which is due July 1. In addition, the commenter stated that this additional time is necessary since March 31 data serves as the basis of the data submitted for the Financial Data Report.

RESPONSE: The Department disagrees. Since the data extracted from the Excess Profits Report is developed for inclusion in the Excess Profits Report, it is similarly developed for inclusion in the Financial Data Report as well. Thus, to the extent that data is extracted from the Excess Profits Report, no additional data need be developed for its inclusion in the Financial Data Report. Therefore, the Department believes that the July 1 deadline for the Financial Data Report is appropriate and imposes no undue burden on insurers.

In addition, the data contained in the Financial Data Report is utilized to evaluate the data contained in the Excess Profits Report, the Annual Informational filing and the Flex Rate filing. Therefore, in order to effectively evaluate the data contained in these reports, which are due July 1, it is necessary that the Financial Data Report be filed by July 1 as well.

COMMENT: One commenter stated that Exhibit Five includes realized capital gains in the investment income allocated to insurance operations while other reports exclude this item from allocated investment income and treat it entirely as an adjustment to surplus.

RESPONSE: Since the inclusion of dividends by itself does not adequately reflect an insurer's total income from stocks and other investments, it is necessary to include realized capital gains in the investment income allocated to insurance operations in order to calculate the investment income rate of return on a country-wide basis as required by Exhibit Five. Therefore, no change is warranted.

COMMENT: One commenter noted that Exhibit Nine includes reinsurance from unauthorized companies, non-admitted assets and equity in the unearned premium reserve in the compilation of "Restated Surplus." The commenter stated that in the interests of stability and policyholder protection, these types of assets are eliminated from statutory surplus and thus should be omitted from Exhibit Nine in the interest of consistency.

RESPONSE: These adjustments to stated surplus contained in Exhibit Nine are necessary in order for the insurer to restate surplus on a Generally Accepted Accounting Principles basis as required by this exhibit. Therefore, no change is warranted.

COMMENT: One commenter requested clarification as to the use of the ratios produced by the calculations in Exhibit Eleven in that the ratios produced are not generally a part of standard financial analysis.

RESPONSE: These ratios measure the various components of the rate of return. The Department believes that these ratios are necessary to effectively utilize the data submitted in the Financial Data Report.

COMMENT: One commenter stated that it should not be required to file a Financial Data Report pursuant to these rules in that it writes motor home and recreation vehicle insurance only and thus does not write private passenger automobile insurance. The commenter stated that motor homes and recreational vehicles are not private passenger automobiles as defined in N.J.S.A. 39:6A-2a. This statute states in part that "automobile means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes . . ." The definition of automobile thus includes several kinds of vehicles subdivided into two classes: private passenger automobiles (either sedans or station wagons); and other vehicles including "camper type vehicles." The commenter writes policies covering the latter only and, therefore, does not write private passenger automobile insurance as defined in the statute. Since the commenter does not write private passenger automobile insurance, the information that it could provide on the motor home insurance business would be irrelevant to the Department's evaluation of the cost of private passenger automobile insurance.

Finally, since the commenter does not operate as a private passenger automobile insurer, it does not have established systems to provide information relating to that line of business and thus it would be arbitrary and unreasonable to impose the burden and expense on the commenter by requiring it to comply with these rules.

RESPONSE: The Department disagrees. The Department considers motor homes to be private passenger automobiles in that they are not used for commercial purposes, carry passengers and are designed for use on the public roads and highways and not on rails. In addition, insurers that write motor home insurance are required to file an Excess Profits Report, the Annual Informational filing and the Flex Rate filing. Since the data contained in the Financial Data Report is used to evaluate the data contained in these other reports, insurers writing motor home insurance are similarly required to file a Financial Data Report. Since the Department considers insurers writing motor home insurance to be private passenger automobile insurers, the information provided by such insurers is not irrelevant to the Department's evaluation of the cost of private passenger automobile insurance.

Finally, the Department disagrees that it is arbitrary and unreasonable to require an insurer that writes motor home insurance to file a Financial Data Report in that all such insurers are required to do so and in that the data contained in this report is utilized to evaluate other reports which must be filed by all such insurers. Therefore, this insurer will be required to establish systems to collect and report the data required in order to complete the Financial Data Report.

Summary of Agency-Initiated Changes:

1. Two pages of exhibits were inadvertently not published with the proposal. These pages are: DOI Exhibit One, Part-Two, Section Four-A and DOI Exhibit Seven—continued.

DOI Exhibit One, Part-Two, Section Four-A requires information relating to an insurer's incurred commission and brokerage fees for the year immediately preceding the date the Financial Data Report is due. This information is required to complete other exhibits in the report and is an integral part of the Financial Data Report. Insurers currently must develop this information in order to complete the Excess Profits Report pursuant to N.J.A.C. 11:3-20. Therefore, this exhibit requires no additional information be developed and thus imposes no undue burden on insurers.

DOI Exhibit Seven—continued contains Items 6A through 13 for Exhibit Seven. The data filed for these items of this exhibit summarizes the data filed in the other exhibits and is obtained directly from specified items of the other exhibits that comprise the Financial Data Report. Thus, completion of this exhibit requires no additional information be developed and thus imposes no additional burden on insurers.

Since, as explained above, these changes do not enlarge or curtail who and what will be affected by the proposed rule, change what is being prescribed, proscribed or otherwise mandated or enlarge or curtail the scope of the proposed rule and its burden on those affected by it, these changes are not so substantial as to destroy the value of the original notice

of the rule. Therefore, these changes may be made upon adoption in accordance with N.J.A.C. 1:30-4.3.

2. Changes are made to the following exhibits to correct printing errors: The word "part" is changed to "page" in DOI Exhibit One, Part Two, Section One, Page 2, and the "calendar year" heading is added to DOI Exhibit One, Part Two, Section Seven.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 31. EXAMINATION OF THE FINANCIAL EXPERIENCE OF PRIVATE PASSENGER AUTOMOBILE INSURERS

11:3-31.1 Purpose

This subchapter requires private passenger automobile insurers to complete and file financial data reports in order to evaluate more completely the financial data filed pursuant to N.J.S.A. 17:23-1 et seq., 17:29A-1 et seq. and 17:29B-1 et seq.

11:3-31.2 Scope

This subchapter applies to all insurers authorized to transact private passenger automobile insurance in this State.

11:3-31.3 Definitions

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

"Car year" means the unit of exposure equivalent to the insuring of one automobile for 12 months, two automobiles for six months each, three automobiles for four months, and so on.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Insurer" means an entity authorized or admitted to transact private passenger automobile insurance business in New Jersey. Where an insurer is part of an insurance holding company system, insurer means each individual insurer within that insurance holding system. Insurer does not include the New Jersey Automobile Full Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq.

"Private passenger automobile insurance business" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2, excluding personal excess liability insurance and insurance on commercial vehicles.

11:3-31.4 Financial data report; filing requirements

(a) Each private passenger automobile insurer, except as provided at (e) below, shall annually file with the Commissioner a financial data report for the two calendar years immediately preceding the date the financial data report is due, containing the data and information required by and in the format of the exhibits appended to this subchapter and the instructions thereto, which exhibits and instructions are hereby incorporated by reference as part of these rules. Each insurer shall file this report so that it is received by the Commissioner not later than July 1 of each year.

(b) A separate financial data report shall be filed for each insurer and each insurer in an insurance holding company system. Each insurance holding company system shall file a separate combined financial data report for all insurers in its system.

(c) The data required to be reported in the exhibits shall be submitted on a 3.5 inch, double-sided high density disk, on a format to be prescribed by the Commissioner and presented in a Lotus 1-2-3 or compatible spread sheet.

(d) An officer of each insurer required to file a financial data report pursuant to this subchapter shall file a certification, in the format of Exhibit B appended to this subchapter, which is hereby incorporated by reference as part of these rules, signed by such officer and stating that the report is accurate and complete to the best of his or her knowledge. This certification shall be attached to the front of the financial data report submission.

(e) Any insurer having fewer than 150 car years of exposure for private passenger automobile insurance in New Jersey during the two calendar years immediately preceding the date the financial data

report is due shall file a certification to that effect in lieu of all other requirements of this subchapter.

(f) All filings required by this subchapter shall be sent to:

New Jersey Department of Insurance
Division of Property and Liability
20 West State Street
CN-325
Trenton, New Jersey 08625
Attention: Financial Data Reports

11:3-31.5 Changes to financial data report prohibited; exceptions

(a) No change shall be made to the financial data report, except as provided at (b), (c) and (d) below.

(b) For the sole purpose of conforming the financial data report to the statutory annual statement and statutory insurance expense exhibit, an insurer required to file a financial data report pursuant to this subchapter shall make any required changes to the sources of data that are contained in the financial data report. Each change made shall be listed in a separate letter accompanying the report showing the previous source of data and the source of data used in the report as changed.

(c) The exhibits appended to this subchapter are 1989 exhibits. Where exhibits for prior years or later years must be reported, an insurer shall submit exhibits which are substantially similar to the appended exhibits to report the prior years' or later years' data and which contain all information, including dates, adjusted accordingly.

(d) All references in the exhibits to the statutory annual statement and insurance expense exhibit are for 1988. For any year prior to 1988 an insurer shall use the corresponding source of data contained in that year's statutory annual statement or statutory insurance expense exhibit. If the data is not reported in the statutory annual statement or insurance expense exhibit, the insurer shall use its internal company data.

11:3-31.6 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

APPENDIX

Financial Data Report Instructions

One: General Instructions

- In all exhibits, dollars are stated as rounded to the nearest thousand dollars. For example, \$10,321 is written as 10; and \$4,728 is written as 5.
- Ratios and fractions are expressed as decimals and rounded to the third decimal place. For example, 3/10 is written as .300; and 2/3 is written as .667.
- A ratio may be expressed in words as follows. The ratio of Item 1 to Item 2 may be written as "Ratio Item 1 divided by Item 2."
- Where a three year sum is expressed as a ratio, the ratio required is the ratio of the three years' data and not the sum of the three ratios.
- An "X" in the data portion of an exhibit means that no data is required to be entered.
- "AS" refers to the 1988 statutory annual statement, and "IEE" refers to the 1988 statutory insurance expense exhibit.
- "AIRE Charges" and "AIRE Compensation" mean, respectively, amounts paid to or received from the New Jersey Automobile Insurance Risk Exchange pursuant to N.J.S.A. 39:6A-22. These are reported in DOI Exhibit Seven.
- "UCJF Assessments" means amounts paid by insurers to the Unsatisfied Claim and Judgement Fund pursuant to N.J.S.A. 39:6-63, and "UCJF Reimbursements" means amounts received by an insurer from the Unsatisfied Claim and Judgement Fund as a result of excess medical expense benefit payments by the insurer pursuant to N.J.S.A. 39:6-73.1. In DOI Exhibit A, UCJF Reimbursements are referred to as "Excess Medical Benefits."
- For several of the Items in the various exhibits, the source of data, or the formula for calculating the data, or both, may be included in parentheses following the Item.

INSURANCE

ADOPTIONS

Two: DOI Exhibit A

1. DOI Exhibit A is to provide information with respect to the insurer's New Jersey private passenger auto insurance for the coverages and years indicated. "Private passenger auto insurance" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2, excluding personal excess liability insurance and insurance on commercial vehicles.
2. The sources of data for Item 1 for 1988 follows:
 Liability AS New Jersey Page 14 Line 19.2
 PIP AS New Jersey Page 14 Line 19.1
 Physical Damage AS New Jersey Page 14 Line 21.1
 For years prior to 1988, see N.J.A.C. 11:3-31.5(d), herein.
3. The source of Item 1A is DOI Exhibit A Part Three.
4. With regard to Item 5 please note that the New Jersey Automobile Full Insurance Availability Act (see N.J.S.A. 17:30E-1 et seq.) which established the JUA was effective 01 January 1984.
5. Premiums, losses, and dividends for private passenger type commercial vehicles are to be listed in Item 7 as a "write in," but only if they are contained in Item 1, for loss data or dividend data, or Item 1B, for premium data, and then only the premiums, losses, and dividends not included in Items 2 through 6.
6. Provision is made for other "write in" exclusions in Items 8, 9, and 10. A filer may modify the exhibit to add more lines for exclusions if three lines are not sufficient. Where any write in exclusion is used, a written explanation as to what is listed as an exclusion, and why it is appropriate to list the exclusion, is to be provided on a piece of paper attached to Exhibit A.
7. Premiums, losses, and dividends for private passenger motor homes are NOT to be listed as exclusions.

Three: DOI Exhibit ONE

1. The source of data for DOI Exhibit One Part One is the IEE.
2. The general expenses and acquisition expenses shown on DOI Exhibit One Part Two, Sections One and Two, are the expenses that are related to the business the earned premium of which is shown in Item 1 of DOI Exhibit One Part Two Sections One and Two.
3. In DOI Exhibit One Part Two, Sections Three, Four-A, Four-B, Five, Six, and Seven, Item 3 refers to the dollars of written premium shown in Item 1 that are earned in the year stated in Item 3, and Item 8 refers to the dollars of written premium shown in Item 6 that are earned in the year stated in Item 8.

Four: DOI Exhibit Three

1. In Parts One and Two of DOI Exhibit Three, the loss adjustment expense shown in Items 7, 8 and 9 are the claim settlement expenses that are associated with the incurred losses shown in Item 6.

Five: DOI Exhibit Five

1. DOI Exhibit Five Part Three contains 10 Items which continue as Items 11 through 20 in DOI Exhibit Five Part Four.

Six: DOI Exhibit Six

1. In DOI Exhibit Six Parts One and Two, do not round Item 6 to the nearest thousand. It is not a dollar figure.

Financial Data Reports for New Jersey
Private Passenger Auto

THESE EXHIBITS MUST BE SENT SO THAT THEY ARE
RECEIVED BY THE DEPARTMENT OF INSURANCE
By 01 July 1989

Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____

BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS

DOI EXHIBIT A Part One

Page 1 of 4

Coverage:

Please state:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____
 Total of above three coverages _____

BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS

Year:

Calendar Year 1988 _____

Calendar Year 1987 _____

Sum of the two
calendar years 1988 and 1987 _____

A separate DOI Exhibit A Part One is to be completed for each coverage and year listed above.

BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS

DOI EXHIBIT A Part One

Page 2 of 4

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____
 Coverage _____
 Year _____

	Col (1) Direct Premiums Written	Col (2) Direct Premiums Earned	Col (3) Direct Losses Paid
--	--	---	-------------------------------------

Item 1	Source: line _____ of Page 14	_____	_____
Item 1A	UCJF Assessments	_____	X
Item 1B	Item 1 minus Item 1A	_____	X

NOTE: LIST DATA IN EXCLUSIONS
(ITEMS 2 THROUGH 10) ONLY IF
THE DATA IS INCLUDED IN ITEM ONE.

Exclusions:

Item 2	Excess Medical Benefits	X	X	_____
Item 3	Motorcycles	_____	_____	_____
Item 4	"Off Road" Vehicles	_____	_____	_____
Item 5	JUA Business	_____	_____	_____
Item 6	Excess/Umbrella Policies	_____	_____	_____

Other Exclusions
(list):

Item 7	_____	_____	_____	_____
Item 8	_____	_____	_____	_____
Item 9	_____	_____	_____	_____
Item 10	_____	_____	_____	_____
Item 10A	Finance and Service Charges	_____	_____	X

ADOPTIONS

INSURANCE

Item 11 Subtotal
(Sum Items 2 through 10A) _____

Item 12 Financial Data
(Item 1B minus Item 11) _____

DOI EXHIBIT A Part One
Page 3 of 4

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____
Coverage _____
Year _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS**

	Col (4) Direct Losses Incurred	Col (5) Dividends on Direct Business	Col (6) Direct Unearned Premium Reserves
Item 1 Source: line _____ of Page 14	_____	_____	_____
Item 1A UCJF Assessments	X	X	_____
Item 1B Item 1 minus Item 1A	X	X	_____

**NOTE: LIST DATA IN EXCLUSIONS
(ITEMS 2 THROUGH 10) ONLY IF
THE DATA IS INCLUDED IN ITEM ONE.**

Exclusions:

	Col (4)	Col (5)	Col (6)
Item 2 Excess Medical Benefits	_____	X	X
Item 3 Motorcycles	_____	_____	_____
Item 4 "Off Road" Vehicles	_____	_____	_____
Item 5 JUA Business	_____	_____	_____
Item 6 Excess/Umbrella Policies	_____	_____	_____

Other Exclusions
(list):

Item 7 _____	_____	_____	_____
Item 8 _____	_____	_____	_____
Item 9 _____	_____	_____	_____
Item 10 _____	_____	_____	_____

Item 10A Finance and Service Charges	X	X	_____
Item 11 Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12 Financial Data (Item 1B minus Item 11)	_____	_____	_____
Item 12A Refund of Excess Profits Included in Item 12, Col (5)	X	_____	X
Item 12B All Other Dividends Included in Item 12, Col (5)	X	_____	X

DOI EXHIBIT A Part One
Page 4 of 4

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____
Coverage _____
Year _____

(Col (7)
Direct
Losses
Unpaid

Item 1 Source: line _____ of Page 14	_____
Item 1A UCJF Assessments	X
Item 1B Item 1 minus Item 1A	X

**NOTE: LIST DATA IN EXCLUSIONS
(ITEMS 2 THROUGH 10) ONLY IF
THE DATA IS INCLUDED IN ITEM ONE.**

Exclusions:

Item 2 Excess Medical Benefits	_____
Item 3 Motorcycles	_____
Item 4 "Off Road" Vehicles	_____
Item 5 JUA Business	_____
Item 6 Excess/Umbrella Policies	_____

Other Exclusions
(list):

Item 7 _____	_____
Item 8 _____	_____
Item 9 _____	_____
Item 10 _____	_____

Item 10A Finance and Service Charges	_____	X
Item 11 Subtotal (Sum Items 2 through 10A)	_____	_____
Item 12 Financial Data (Item 1B minus Item 11)	_____	_____

DOI EXHIBIT A Part Two
Page 1 of 3

Group Name _____ Coverage:
Group NAIC Number _____ Liability _____
Company Name _____ PIP _____
Company NAIC Number _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS**

Physical Damage _____

Total of above
three coverages _____

A separate DOI Exhibit A Part Two is to be completed for each coverage listed above.

INSURANCE

ADOPTIONS

DOI EXHIBIT A Part Two
Page 2 of 3

Calendar Year 1986

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____
Coverage _____

	Col (1) Direct Premiums Written	Col (2) Direct Unearned Premium Reserve	Col (3) Direct Losses Unpaid
Item 1 Source: line _____ of Page 14	_____	_____	_____
Item 1A UCJF Assessments	_____	_____	X
Item 1B Item 1 minus Items 1A	_____	_____	X

NOTE: LIST DATA IN EXCLUSIONS
(ITEMS 2 THROUGH 10) ONLY IF
THE DATA IS INCLUDED IN ITEM ONE.

Exclusions:

Item 2 Excess Medical Benefits	X	X	_____
Item 3 Motorcycles	_____	_____	_____
Item 4 "Off Road" Vehicles	_____	_____	_____
Item 5 JUA Business	_____	_____	_____
Item 6 Excess/Umbrella Policies	_____	_____	_____

Other Exclusions
(list):

Item 7 _____	_____	_____	_____
Item 8 _____	_____	_____	_____
Item 9 _____	_____	_____	_____
Item 10 _____	_____	_____	_____
Item 10A Finance and Service Charges	_____	_____	X
Item 11 Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12 Financial Data (Items 1B minus Item 11)	_____	_____	_____

DOI EXHIBIT A Part Three
Page One

UCJF Assessments

Exclusions:

Item 2 Excess Medical Benefits	X	X	_____
Item 3 Motorcycles	_____	_____	_____
Item 4 "Off Road" Vehicles	_____	_____	_____
Item 5 JUA Business	_____	_____	_____
Item 6 Excess/Umbrella Policies	_____	_____	_____

Other Exclusions
(list):

Item 7 _____	_____	_____	_____
Item 8 _____	_____	_____	_____
Item 9 _____	_____	_____	_____
Item 10 _____	_____	_____	_____
Item 10A Finance and Service Charges	_____	_____	X
Item 11 Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12 Financial Data (Item 1B through Item 11)	_____	_____	_____

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Calendar Year 1988 Calendar Year 1987 Calendar Year 1986

Item 1: Assessed during the calendar year	_____	_____	_____
Item 2: Assessed during the prior calendar year	_____	_____	_____
Item 3: UCJF Assessments Incurred [(3 x Item 1) minus (2 x Item 2)]	_____	_____	_____

Note:

Item 1 is the amount the insurer was informed by the UCJF that the insurer was assessed during the calendar year.

Item 2 is the amount the insurer was informed by the UCJF that the insurer was assessed during the prior calendar year.

Item 3 has to be reported on DOI Exhibit A Parts One and Two.

DOI EXHIBIT A Part Two
Page 3 of 3

Calendar Year 1985

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____
Coverage _____

	Col (1) Direct Premiums Written	Col (2) Direct Unearned Premium Reserve	Col (3) Direct Losses Unpaid
Item 1 Source: line _____ of Page 14	_____	_____	_____
Item 1A UCJF Assessments	_____	_____	X
Item 1B Item 1 minus Item 1A	_____	_____	X

NOTE: LIST DATA IN EXCLUSIONS
(ITEMS 2 THROUGH 10) ONLY IF
THE DATA IS INCLUDED IN ITEM ONE.

DOI EXHIBIT A Part Three
Page Two

UCJF Assessments

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Calendar Year 1985

Item 1: Assessed during the calendar year	_____
Item 2: Assessed during the prior calendar year	_____
Item 3: UCJF Assessments Incurred [(3 x Item 1) minus (2 x Item 2)]	_____

ADOPTIONS

Note:

Item 1 is the amount the insurer was informed by the UCJF that the insurer was assessed during the calendar year.

Item 2 is the amount the insurer was informed by the UCJF that the insurer was assessed during the prior calendar year.

Item 3 is to be reported on DOI Exhibit A Parts One and Two.

DOI EXHIBIT A Part Four

Physical Damage Rating
Questionnaire

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Does the filer use model year rating in its physical damage rating system?

Check one:
Yes _____
No _____

DOI EXHIBIT ONE Part One

A separate DOI Exhibit One Part One is to be completed containing data for each of the calendar years 1988 and 1987, and also for the sum of the two years' data, for a total of three DOI Exhibits.

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Note:
Columns (1) and (3) show dollars in thousands.
Columns (2) and (4) show ratios to Net Earned Premium.
Data is from the statutory Insurance Expense Exhibit ("IEE"), columns 19.1, 19.2 (for liability) and column 21.1 (for physical damage).

Check one:

Please state:
Group Name _____ Calendar Year 1988 _____
Group NAIC Number _____
Company Name _____ Calendar Year 1987 _____
Company NAIC Number _____
Sum of the two calendar years _____

Private Passenger Auto Liability Private Passenger Auto Physical Damage

Col (1) Col (2) Col (3) Col (4)

Net Earned Premium (IEE Line 2)	_____	1.000	_____	1.000
Other Acquisition (IEE Line 6)	_____	_____	_____	_____
General Expenses (IEE Line 7)	_____	_____	_____	_____
Commission and Brokerage (IEE Line 5)	_____	_____	_____	_____
Taxes, Licenses, Fees (IEE Line 8)	_____	_____	_____	_____
Losses Incurred (IEE Line 3)	_____	_____	_____	_____

INSURANCE

Loss Adjustment Expenses Incurred (IEE Line 4) _____

DOI EXHIBIT ONE Part Two Section One Page 1

Check one:

Please state:
Group Name _____ Liability _____
Group NAIC Number _____ PIP _____
Company Name _____
Company NAIC Number _____ Physical Damage _____

BEFORE COMPLETING THE EXHIBITS PLEASE READ THE INSTRUCTIONS

Total of above three coverages _____

Direct General Expenses

	Col (1) Calendar Year 1988	Col (2) Calendar Year 1987
--	-------------------------------------	-------------------------------------

Item 1: Direct Premiums Earned (DOI Exhibit A, Part One, Page 2, Item 12, Col (2))	_____	_____
Item 2: Direct General Expenses paid during calendar year	_____	_____
Item 3: Direct General Expenses unpaid as of 31 December of the calendar year	_____	_____
Item 4: Direct General Expenses unpaid as of 31 December of the prior calendar year	_____	_____
Item 5: Direct General Expenses Incurred (Item 2 + Item 3 - Item 4)	_____	_____
Item 6: Ratio Item 5 divided by Item 1	_____	_____

DOI EXHIBIT ONE Part Two Section One Page 2

Check one:

Please state:
Group Name _____ Liability _____
Group NAIC Number _____ PIP _____
Company Name _____
Company NAIC Number _____ Physical Damage _____

BEFORE COMPLETING THE EXHIBITS PLEASE READ THE INSTRUCTIONS

Total of above three coverages _____

Direct General Expenses

Calendar Year 1986

Item 1: Direct Premiums Earned (DOI Exhibit A Part Two, *[Part]* *Page* 2 of 3, Col (1), Item 12 MINUS DOI Exhibit A, Part Two, Page 2 of 3, Col (2), Item 12 PLUS DOI Exhibit A, Part Two, Page 3 of 3, Col (2), Item 12)	_____
Item 2: Direct General Expenses paid during calendar year	_____

INSURANCE

ADOPTIONS

Item 3: Direct General Expenses unpaid as of 31 December of the calendar year _____
 Item 4: Direct General Expenses unpaid as of 31 December of the prior calendar year _____
 Item 5: Direct General Expenses Incurred (Item 2 + Item 3 - Item 4) _____
 Item 6: Ratio Item 5 divided by Item 1 _____

Item 3: Direct Other Acq unpaid as of 31 December of the calendar year _____
 Item 4: Direct Other Acq unpaid as of 31 December of the prior calendar year _____
 Item 5: Direct Other Acq Incurred (Item 2 + Item 3 - Item 4) _____
 Item 6: Ratio Item 5 divided by Item 1 _____

DOI EXHIBIT ONE Part Two
Section Two Page 1

DOI EXHIBIT ONE Part Two
Section Three

Check one:

Check one:

Please state:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____

Please state:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Total of above three coverages _____
 Commission and Brokerage Fees Incurred _____

Direct Other Acquisition Expenses

	Col (1) Calendar Year 1988	Col (2) Calendar Year 1987
Item 1: Direct Premiums Earned (DOI Exhibit A, Part One, Page 2, Item 12)	_____	_____
Item 2: Direct Other Acq paid during calendar year	_____	_____
Item 3: Direct Other Acq unpaid as of 31 December of the calendar year	_____	_____
Item 4: Direct Other Acq unpaid as of 31 December of the prior calendar year	_____	_____
Item 5: Direct Other Acq Incurred (Item 2 + Item 3 - Item 4)	_____	_____
Item 6: Ratio Item 5 divided by Item 1	_____	_____

Calendar
Year
1988

Item 1: 1988 Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col (1)) _____
 Item 2: Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1 _____
 Item 3: Dollars of 1988 Direct Written Premium that are earned in 1988 _____
 Item 4: Ratio Item 3 divided by Item 1 _____
 Item 5: Item 2 x Item 4 _____
 Item 6: 1987 Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col (1)) _____

DOI EXHIBIT ONE Part Two
Section Two Page 2

Check one:

Please state:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____

Item 7: Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6 _____
 Item 8: Dollars of 1987 Direct Written Premium that are earned in 1988 _____
 Item 9: Ratio Item 8 divided by Item 6 _____
 Item 10: Item 9 x Item 7 _____
 Item 11: 1988 Commission and Brokerage Incurred (Item 10 + Item 5) _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Total of above three coverages _____

Direct Other Acquisition Expenses

	Calendar Year 1986
Item 1: Direct Premiums Earned (DOI Exhibit One, Part Two, Section One, Page 2, Item 1)	_____
Item 2: Direct Other Acq paid during calendar year	_____

ADOPTIONS

INSURANCE

***DOI EXHIBIT ONE Part Two
Section Four--A**

Calendar
Year
1986

Check one:
 Please state:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____
 Total of above
 three coverages _____
 Commission and Brokerage
 Fees Incurred _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS**

Calendar
Year
1987

Item 1: 1987 Direct Written Premium
(DOI Exhibit A, Part One, Page 2, Item 12,
Col (1)) _____
 Item 2: Commission and Brokerage Fees
that arise from the writing
of policies, the premium of
which is listed in Item 1 _____
 Item 3: Dollars of 1987 Direct
Written Premium that are
earned in 1987 _____
 Item 4: Ratio Item 3 divided by Item 1 _____
 Item 5: Item 2 x Item 4 _____
 Item 6: 1986 Direct Written Premium
(DOI Exhibit A, Part Two, Page 2, Item 12) _____
 Item 7: Commission and Brokerage Fees
that arise from the writing
of policies, the premium of
which is listed in Item 6 _____
 Item 8: Dollars of 1986 Direct
Written Premium that are
earned in 1987 _____
 Item 9: Ratio Item 8 divided by Item 6 _____
 Item 10: Item 9 x Item 7 _____
 Item 11: 1987 Commission and Brokerage Incurred
(Item 10 + Item 5) _____*

Item 1: 1986 Direct Written Premium
(DOI EXHIBIT A Part Two, Page 2, Item 12,
Col (1)) _____
 Item 2: Commission and Brokerage Fees
that arise from the writing
of policies, the premium of
which is listed in Item 1 _____
 Item 3: Dollars of 1986 Direct
Written Premium that are
earned in 1986 _____
 Item 4: Ratio Item 3 divided by Item 1 _____
 Item 5: Item 2 x Item 4 _____
 Item 6: 1985 Direct Written Premium
(DOI Exhibit A, Part Two, Page 3 of 3,
Item 12, Col (1)) _____
 Item 7: Commission and Brokerage Fees
that arise from the writing
of policies, the premium of
which is listed in Item 6 _____
 Item 8: Dollars of 1985 Direct
Written Premium that are
earned in 1986 _____
 Item 9: Ratio Item 8 divided by Item 6 _____
 Item 10: Item 9 x Item 7 _____
 Item 11: 1986 Commission and Brokerage Incurred
(Item 10 + Item 5) _____

**DOI EXHIBIT ONE Part Two
Section Five**

Check one:

Please state:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____
 Total of above
 three coverages _____
 Taxes, Licenses, Fees
 Fees Incurred _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS**

Taxes, Licenses, Fees
Fees Incurred

Calendar
Year
1988

**DOI EXHIBIT ONE Part Two
Section Four--B**

Check one:
 Please state:
 Group Name _____ Liability _____
 Group NAIC Number _____ PIP _____
 Company Name _____ Physical Damage _____
 Company NAIC Number _____
 Total of above
 three coverages _____
 Commission and Brokerage
 Fees Incurred _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS**

Item 1: 1988 Direct Written Premium
(DOI Exhibit A, Part One, Page 2, Item 12,
Col (1)) _____
 Item 2: Taxes, Licenses, and Fees
that arise from the writing
of policies, the premium of
which is listed in Item 1 _____
 Item 3: Dollars of 1988 Direct
Written Premium that are
earned in 1988 _____
 Item 4: Ratio Item 3 divided by Item 1 _____
 Item 5: Item 2 x Item 4 _____

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Item 6: 1987 Direct Written Premium
(DOI Exhibit A, Part One, Page 2, Item 12,
Col (1)) _____

Item 7: Taxes, Licenses, and Fees
that arise from the writing
of policies, the premium of
which is listed in Item 6 _____

Item 8: Dollars of 1987 Direct
Written Premium that are
earned in 1988 _____

Item 9: Ratio Item 8 divided by Item 6 _____

Item 10: Item 9 x Item 7 _____

Item 11: 1988 Taxes, Licenses, and Fees Incurred
(Item 10 + Item 5) _____

**DOI EXHIBIT ONE Part Two
Section Seven**

Check one:

Please state:
Group Name _____ Liability _____
Group NAIC Number _____ PIP _____
Company Name _____
Company NAIC Number _____ Physical Damage _____

Total of above
three coverages _____

Taxes, Licenses, Fees
Fees Incurred _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS**

***Calendar
Year
1986***

**DOI EXHIBIT ONE Part Two
Section Six**

Check one:

Please state:
Group Name _____ Liability _____
Group NAIC Number _____ PIP _____
Company Name _____
Company NAIC Number _____ Physical Damage _____

Total of above
three coverages _____

Taxes, Licenses, Fees
Fees Incurred _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS**

**Calendar
Year
1987**

Item 1: 1987 Direct Written Premium
(DOI Exhibit A, Part One, Page 2, Item 12,
Col (1)) _____

Item 2: Taxes, Licenses, and Fees
that arise from the writing
of policies, the premium of
which is listed in Item 1 _____

Item 3: Dollars of 1987 Direct
Written Premium that are
earned in 1987 _____

Item 4: Ratio Item 3 divided by Item 1 _____

Item 5: Item 2 x Item 4 _____

Item 6: 1986 Direct Written Premium
(DOI Exhibit A, Part Two, Page 2, Item 12,
Col (1)) _____

Item 7: Taxes, Licenses, and Fees
that arise from the writing
of policies, the premium of
which is listed in Item 6 _____

Item 8: Dollars of 1986 Direct
Written Premium that are
earned in 1987 _____

Item 9: Ratio Item 8 divided by Item 6 _____

Item 10: Item 9 x Item 7 _____

Item 11: 1987 Taxes, Licenses, and Fees Incurred
(Item 10 + Item 5) _____

Item 1: 1986 Direct Written Premium
(DOI Exhibit A, Part Two, Page 2, Item 12,
Col (1)) _____

Item 2: Taxes, Licenses, and Fees
that arise from the writing
of policies, the premium of
which is listed in Item 1 _____

Item 3: Dollars of 1986 Direct
Written Premium that are
earned in 1986 _____

Item 4: Ratio Item 3 divided by Item 1 _____

Item 5: Item 2 x Item 4 _____

Item 6: 1985 Direct Written Premium
(DOI Exhibit A, Part Two, Page 3, Item 12,
Col (1)) _____

Item 7: Taxes, Licenses, and Fees
that arise from the writing
of policies, the premium of
which is listed in Item 6 _____

Item 8: Dollars of 1985 Direct
Written Premium that are
earned in 1986 _____

Item 9: Ratio Item 8 divided by Item 6 _____

Item 10: Item 9 x Item 7 _____

Item 11: 1986 Taxes, Licenses, and Fees Incurred
(Item 10 + Item 5) _____

DOI EXHIBIT TWO

Check one:

New Jersey Expenses
Liability _____
PIP _____
Physical Damage _____

Total of above
three coverages _____

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Calendar Year 1987 _____
Calendar Year 1988 _____

Sum of the two
calendar years _____

**BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS**

ADOPTIONS

INSURANCE

	Col (1)	Col (2)
1) Direct Earned Premium (DOI EXHIBIT A, Part One, Page 2, Item 12, Col (2))	_____	100.0%
2) Direct Commission and Brokerage Fees Incurred (DOI EXHIBIT ONE, Part Two, Section Three for 1988, and Section Four-A for 1987)	_____	_____
3) Direct Other Acquisition, Field Supervision, Collection Fees Incurred (DOI EXHIBIT ONE, Part Two, Section Two, Page 1, Col (1) for 1988, and Col (2) for 1987)	_____	_____
4) Direct General Expenses Incurred (DOI EXHIBIT ONE, Part Two, Section One, Page 1, Col (1) for 1988 and Col (2) for 1987)	_____	_____
5) Direct Taxes, Licenses, Fees Incurred (DOI EXHIBIT ONE, Part Two, Section Five for 1988 and Six for 1987)	_____	_____
6) Direct Losses Incurred (DOI EXHIBIT A, Part One, Page 3, Item 12, Col (4))	_____	_____
7) Direct Loss Adjustment Expenses Incurred (DOI EXHIBIT THREE, Part One for 1988 and Part Two for 1987, Item 9)	_____	_____

5) Direct Unpaid Losses at 12/31 (DOI EXHIBIT A, Part One, Page 4, Item 12)	_____	_____	_____
6) Direct Incurred Losses (Item 4 plus Item 5, Col (3))	_____	X	X
7) Direct Paid Loss Adjustment Expenses	_____	X	X
8) Direct Unpaid Loss Adjustment Expenses at 12/31	_____	_____	_____
9) Direct Incurred Loss Adjustment Expense	_____	X	X

DOI EXHIBIT THREE Part Two

Premiums, Losses, Expenses
Calendar Year 1987

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Total of above three coverages _____

DOI EXHIBIT THREE Part One

Premiums, Losses, Expenses
Calendar Year 1988

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Total of above three coverages _____

	Col (1) 1988	Col (2) 1987	Col (3) Difference (= Col (1) - Col (2))
1) Direct Written Premiums (DOI EXHIBIT A, Part One Page 2, Item 12)	_____	X	X
2) Direct Unearned Premium Reserve at 12/31 (DOI EXHIBIT A, Part One, Page 3, Item 12, Col (1))	_____	_____	_____
3) Direct Earned Premiums (Item 1 minus Item 2, Col (3))	_____	X	X
4) Direct Paid Losses (DOI EXHIBIT A, Part One, Page 2, Item 12, Col (3))	_____	X	X

1) Direct Written Premiums (DOI EXHIBIT A, Part One Page 2, Item 12, Col (1))	_____	X	X
2) Direct Unearned Premium Reserve at 12/31 (DOI EXHIBIT A, Part One, Page 3, Item 12, Col (6) for 1987, and Part Two, Page 2, Item 12, Col (2) for 1986)	_____	_____	_____
3) Direct Earned Premiums (Item 1 minus Item 2, Col (3))	_____	X	X
4) Direct Paid Losses (DOI EXHIBIT A, Part One, Page 2, Item 12, Col (3))	_____	X	X
5) Direct Unpaid Losses at 12/31 (DOI EXHIBIT A, Part One, Page 4, Item 12 for 1987, and Part Two, Page 2, Item 12, Col (3) for 1986)	_____	_____	_____
6) Direct Incurred Losses (Item 4 plus Item 5, Col (3))	_____	X	X
7) Direct Paid Loss Adjustment Expenses	_____	X	X
8) Direct Unpaid Loss Adjustment Expenses at 12/31	_____	_____	_____
9) Direct Incurred Loss Adjustment Expense	_____	X	X

INSURANCE

ADOPTIONS

DOI EXHIBIT FOUR
Equity in the Unearned Premium Reserve

Please state: _____ Check one:
 Group Name _____
 Group NAIC Number _____ Liability _____
 Company Name _____ PIP _____
 Company NAIC Number _____
BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS
 Physical Damage _____
 Total of above three coverages _____

	Col (1) 1988	Col (2) 1987	Col (3) 1986
1) Direct Unearned Premium Reserve at 12/31 (DOI EXHIBIT A, Part One, Page 3, Item 12, Col (6) for 1988 and 1987, and Part Two, Page 2, Item 12, Col (2) for 1986)	_____	_____	_____
2) Direct Written Premium (DOI EXHIBIT A, Part One, Page 2, Item 12, Col (1) for 1988 and 1987 and Part Two, Page 2, Item 12, Col (1) for 1986)	_____	_____	_____
3) Direct Commission and Brokerage Fees Incurred (DOI EXHIBIT ONE Part Two, Item 11, Sections Three, Four-A, and Four-B for 1988, 1987, and 1986, respectively)	_____	_____	_____
4) Direct Other Acquisition Expenses Incurred (DOI EXHIBIT ONE Part Two, Section Two, Page 1, Item 5, for 1988 and 1987, and Page 2, Item 5, for 1986)	_____	_____	_____
5) Direct General Expenses Incurred (DOI EXHIBIT ONE, Part Two, Section One, Page 1, Item 5 for 1988 and 1987, and Page 2 Item 5 for 1986)	_____	_____	_____
6) Direct Taxes, Licenses, Fees Incurred (DOI EXHIBIT ONE Part Two Section Five, Item 11 for 1988, Section Six, Item 11 for 1987, Section Seven, Item 11, for 1986)	_____	_____	_____
7) Prepaid Expenses (1/2 x (Item 4 + Item 5)) + (Item 6 + Item 3)	_____	_____	_____
8) Ratio, Item 7 divided by Item 2	_____	_____	_____
Note: Limit Item 8 to a maximum of 1.000.			
9) Equity at 12/31 (Item 8 x Item 1)	_____	_____	_____
10) Change 1987 to 1988 Item 9 Col (1) minus Item 9 Col (2)	_____	X	X
11) Change 1986 to 1987 Item 9, Col (2) minus Item 9, Col (3)	_____	X	X

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

DOI EXHIBIT FIVE Part One

Please state: _____
 Group Name _____
 Group NAIC Number _____ Investment Income Data
 Company Name _____ Countrywide Data
 Company NAIC Number _____

	Col (1) 1988	Col (2) 1987	Col (3)
1) Interest, Dividends, Real Estate Income (AS, Page 6, Part 1, Col 8, Line 15)	_____	X	X
2) Realized Capital Gains (AS, Page 6, Part 1A, Col 7, Line 11)	_____	X	X
3) Total, Item 1 plus Item 2	_____	X	X
4) Invested Assets (AS, Page 2, Line 8A, Col 1 for 1988, Col 2 for 1987)	_____	_____	X
5) Average [1/2 x (Item 4 Col (1) + Item 4 Col (2))]	X	X	_____
6) Rate of Return Ratio Item 3, Col (1) divided by Item 5, Col (3)	X	X	_____
7) Agents Balances (AS, Page 2, Col 1, Line 9.1 plus Line 9.2 plus 9.3 plus Line 10 plus Line 11)	_____	X	X
8) Unearned Premium Reserve (AS, Page 3, Line 9, Col (1))	_____	X	X
9) Ratio Item 7 divided by Item 8	X	X	_____

DOI EXHIBIT FIVE Part Two

New Jersey Data

Please state: _____ Check one:
 Group Name _____ Liability _____
 Group NAIC Number _____ Company Name _____
 Company NAIC Number _____ PIP _____
 Physical Damage _____
 Total of above three coverages _____

	Col (1) 1988	Col (2) 1987	Col (3)
10) Direct Prepaid Expenses (DOI Exhibit Four, Item 7, Col (1))	_____	X	X
11) Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col (1))	_____	X	X
12) Ratio Item 10 divided by Item 11	X	X	_____

ADOPTIONS

INSURANCE

13) Direct Unearned Premium Reserve (DOI Exhibit A, Part One, Page 3, Item 12, Col (6))	_____	_____	X
14) Average [1/2 x (Item 13 Col (1) + Item 13 Col (2))]	X	X	_____
15) Investable Unearned Premiums [(1.000 - Item 9 - Item 12) x Item 14] Limit to a minimum of zero.	X	X	_____
16) Average Direct Unpaid Losses 1/2 x (DOI Exhibit Three, Part One, Item 5, Col (1) + Col (2))	X	X	_____
17) Average Direct Unpaid Loss Adjustment Expenses 1/2 x (DOI Exhibit Three Part One, Item 8, Col (1) + Col (2))	X	X	_____
18) Subtotal (Item 16 plus Item 17)	X	X	_____
19) Investable Reserves (Item 18 plus Item 15)	X	X	_____
20) Investment Income (Item 19 x Item 6)	X	X	_____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

DOI EXHIBIT FIVE Part Three

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____

	Col (1) 1987	Col (2) 1986	Col (3)
1) Interest, Dividends, Real Estate Income (AS, Page 6, Part 1, Col 8, Line 15)	_____	X	X
2) Realized Capital Gains (AS, Page 6, Part 1A, Col 7, Line 11)	_____	X	X
3) Total, Item 1 plus Item 2	_____	X	X
4) Invested Assets (AS, Page 2, Line 8A, Col 1 for 1987 Col 2 for 1986)	_____	_____	X
5) Average [1/2 x (Item 4 Col (1) + Item 4 Col (2))]	X	X	_____
6) Rate of Return Ratio Item 3, Col (1) divided by Item 5, Col (3)	X	X	_____
7) Agents Balances (AS, Page 2, Col 1, Line 9.1 plus Line 9.2 plus Line 10 plus Line 11)	_____	X	X

8) Unearned Premium Reserve (AS, Page 3, Line 9, Col (1))	_____	X	X
9) Ratio Item 7 divided by Item 8	X	X	_____

DOI EXHIBIT FIVE Part Four

New Jersey Data

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____

Check one:
 Liability _____
 PIP _____
 Physical Damage _____
 Total of above three coverages _____

	Col (1) 1987	Col (2) 1986	Col (3)
10) Direct Prepaid Expenses (DOI Exhibit Four, Item 7, Col (2))	_____	X	X
11) Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, and Part Two, Page 2, Item 12)	_____	X	X
12) Ratio Item 10 divided by Item 11	X	X	_____
13) Direct Unearned Premium Reserve (DOI Exhibit A, Part One, Page 3, Item 12, Col (6) for 1987, and Part Two, Page 2, Item 12, Col (2) for 1986)	_____	_____	X
14) Average [1/2 x (Item 13 Col (1) + Item 13 Col (2))]	X	X	_____
15) Investable Unearned Premiums [(1.000 - Item 9 - Item 12) x Item 14] Limit to a minimum of zero.	X	X	_____
16) Average Direct Unpaid Losses 1/2 x (DOI Exhibit Three, Part Two, Item 5, Col (1) + Col (2))	X	X	_____
17) Average Direct Unpaid Loss Adjustment Expenses 1/2 x (DOI Exhibit Three Part Two, Item 8, Col (1) + Col (2))	X	X	_____
18) Subtotal (Item 16 plus Item 17)	X	X	_____
19) Investable Reserves (Item 18 plus Item 15)	X	X	_____
20) Investment Income (Item 19 x Item 6)	X	X	_____

INSURANCE

ADOPTIONS

DOI EXHIBIT SIX Part One

DOI EXHIBIT SEVEN—Financial Result

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____

Other Income
 Check one:
 Liability _____
 PIP _____
 Physical Damage _____
 Total of above three coverages _____

	Col (1) 1988	Col (2)
1) Total Other Income (AS, Page 4, Line 13, Col (1))	_____	X
2) Aggregate Write In Deductions (AS, Page 4, Line 5, Col (1))	_____	X
3) Item 1 minus Item 2	_____	X
4) Direct Earned Premiums (DOI Exhibit Three, Part One Item 3, Col (1))	_____	X
5) Net Earned Premiums (AS, Page 4, Line 1, Col (1))	_____	X
6) Item 4 x Item 3	X	_____
7) Other Income Item 6 divided by Item 5	_____	X

DOI EXHIBIT SIX Part Two

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Other income
 Check one:
 Liability _____
 PIP _____
 Physical Damage _____
 Total of above three coverages _____

	Col (1) 1987	Col (2)
1) Total Other Income (AS, Page 4, Line 13, Col (2))	_____	X
2) Aggregate Write In Deductions (AS, Page 4, Line 5, Col (2))	_____	X
3) Item 1 minus Item 2	_____	X
4) Direct Earned Premiums (DOI Exhibit Three, Part Two Item 3, Col (1))	_____	X
5) Net Earned Premiums (AS, Page 4, Line 1, Col (2))	_____	X
6) Item 4 x Item 3	X	_____
7) Other Income Item 6 divided by Item 5	_____	X

Check one:
 Liability _____
 PIP _____
 Physical Damage _____
 Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____

	Col (1) 1988	Col (2) 1987	Col (3) Col (1) plus Col (2)
1) Direct Written Premiums (DOI Exhibit Three, Part One, Item 1 for 1988, and Part Two, Item 1 for 1987)	_____	_____	_____
2) Direct Earned Premiums (DOI Exhibit Three, Part One, Item 3, for 1988, and Part Two, Item 3, for 1987)	_____	_____	_____
3) Direct Losses Incurred (DOI Exhibit Three, Part One, Item 6, for 1988, and Part Two, Item 6, for 1987)	_____	_____	_____
4) Direct Loss Adjustment Expenses Incurred (DOI Exhibit Three, Part One, Item 9 for 1988, and Part Two, Item 9 for 1987)	_____	_____	_____
4A) Item 3 plus Item 4	_____	_____	_____
4B) Ratio Item 4A divided by Item 2	_____	_____	X
5) Direct Underwriting Expense Incurred (DOI Exhibit Four, Item 3 plus Item 4 plus Item 5 plus Item 6, all Col (1) for 1988, and Col (2) for 1987)	_____	_____	_____
6) Change in Equity in the UEPR (DOI Exhibit Four Item 10 for 1988; Item 11 for 1987)	_____	_____	_____

***DOI EXHIBIT SEVEN—continued**

6A) Item 5 minus Item 6	_____	_____	_____
6B) Ratio Item 6A divided by Item 2	_____	_____	X
7) Excess Profit Credit or Refund Incurred (DOI Exhibit A, Part One Page 3 of 4, Item 12A, for the appropriate year)	_____	_____	_____

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7A) Dividends Other Than Excess Profit Credit or Refund (DOI Exhibit A, Part One Page 3 of 4, Col (5), Item 12B, for the appropriate year)	_____	_____	_____
7B) AIRE Charges	_____	_____	_____
7C) AIRE Compensation	_____	_____	_____
8) Underwriting Result (Item 2 minus Item 3 minus Item 4 minus Item 5 plus Item 6 minus Item 7 minus Item 7A minus Item 7B plus Item 7C)	_____	_____	_____
9) Ratio Item 8 divided by Item 2	_____	_____	X
10) Other Income (DOI Exhibit Six, Part One, Item 7 for 1988, DOI Exhibit Six, Part Two, Item 7 for 1987)	_____	_____	_____
11) Total (Item 8 plus Item 10)	_____	_____	_____
12) Ratio Item 11 divided by Item 2	_____	_____	X
13) Item 7 plus Item 7A	_____	_____	_____*

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

DOI EXHIBIT EIGHT

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____

Equity in the Unearned Premium Reserve All Lines Combined

	Col (1) 1988	Col (2) 1987
1) Net Written Premiums All Lines (IEE, Col (34), Line 1)	_____	_____
2) Commission and Brokerage All Lines (IEE, Col (34), Line 5)	_____	_____
3) Other Acquisition All Lines (IEE, Col (34), Line 6)	_____	_____
4) General Expenses All Lines (IEE, Col (34), Line 7)	_____	_____
5) Taxes, Licenses, Fees All Lines (IEE, Col (34), Line 8)	_____	_____
6) Prepaid Expenses (1/2 x [Item 3 + Item 4] (Item 2 + Item 5))	_____	_____
7) Item 6 as a ratio to Item 1 Limit Item 7 to a maximum of 1.000.	_____	_____

8) Unearned Premium Reserve All Lines (AS, Page 3, Line 9, Col (1) for 1988, Col (2) for 1987)	_____	_____
9) Equity in the Unearned Premium Reserve (Item 7 x Item 8)	_____	_____
10) Average (1/2 x [Item 9, Col (1) + Item 9, Col (2)])	_____	X

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

DOI EXHIBIT NINE

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____

Restated Surplus

	Col (1) 1988	Col (2) 1987
1) Stated Surplus (AS, Page 3, Line 26, Col (1) for 1988, Col (2) for 1987)	_____	_____
2) Excess of Statutory Over Statement Reserves (AS, Page 3, Line 15, Col (1) for 1988, Col (2) for 1987)	_____	_____
3) Reinsurance From Unauthorized Companies (AS, Page 3, Line 14, Col (1) for 1988, Col (2) for 1987; include only amounts deemed sound)	_____	_____
4) Non Admitted Assets (AS, Page 13, Exhibit 2, Col (2), sum of Lines 22 through 30; include only amounts deemed sound)	_____	_____
5) Equity in the Unearned Premium Reserve (DOI Exhibit Eight, Item 9, Col (1) for 1988, Col (2) for 1987)	_____	_____
6) Total of Items 1, 2, 3, 4 and 5	_____	_____
7) (Item 6, Col (1) + Item 6, Col (2)) x 1/2	_____	X

INSURANCE

ADOPTIONS

DOI EXHIBIT TEN

DOI EXHIBIT ELEVEN

Allocation of Surplus
 Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____
 Check one:
 Liability _____
 PIP _____
 Physical Damage _____
 Total of above three coverages _____
BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Please state:
 Group Name _____
 Group NAIC Number _____
 Company Name _____
 Company NAIC Number _____
 Check one:
 Liability _____
 PIP _____
 Physical Damage _____
 Total of above three coverages _____
BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

	Col (1) 1988	Col (2) 1987	Col (3) Average
1) Average Direct Loss and Loss Adjustment Expense Reserves (DOI Exhibit Five Part Two, Item 18)	X	X	_____
2) Direct Unpaid Losses All Lines Countrywide (AS, Schedule T, Line 98, Col (7))	_____	_____	_____
3) Direct Unpaid Loss Adjustment Expenses (loss expense reserves that correspond to Item 2)	_____	_____	_____
4) Subtotal (Item 2 plus Item 3)	X	X	_____
5) Ratio Item 1 divided by Item 4	X	X	_____
6) Surplus (DOI Exhibit Nine, Item 6, Col (1) for 1988, Col (2) for 1987)	_____	_____	_____
7) First Surplus (Item 6, Col (3) x Item 5)	X	X	_____
8) Direct Earned Premium (DOI Exhibit Three Part One, Item 3 for 1988)	_____	X	X
9) Direct Earned Premium All Lines Countrywide (AS, Schedule T, Line 98, Col (3))	_____	X	X
10) Ratio Item 8 divided by Item 9	X	X	_____
11) Second Surplus (Item 10 x Item 6, Col (3))	X	X	_____
12) Average (1/2 x (Item 7 + Item 11))	X	X	_____
13) Ratio Item 8 divided by Item 12	X	X	_____

Note: Col (3) is the average of Cols (1) and (2), except for Items 1, 4, 5, 7, 8, 9, 10, 11, 12.

	1987	1988	Total
1) Direct earned premium (DOI Exhibit Seven, Item 2)	_____	_____	_____
2) Total Underwriting and Other (DOI Exhibit Seven, Item 11)	_____	_____	_____
3) Excess Profit Refund (DOI Exhibit Seven, Item 7)	_____	_____	_____
4) Other Dividends (DOI Exhibit Seven, Item 7A)	_____	_____	_____
5) Direct Unpaid Losses (DOI Exhibit Three Part One Item 5)	_____	_____	_____
6) Direct Unpaid Loss Adjustment Expenses (DOI Exhibit Three Part One Item 8)	_____	_____	_____
7) Subtotal (Item 5 plus Item 6)	_____	_____	_____
8) Item 7 times 0.090	_____	_____	_____
9) Subtotal Item 2 plus Item 8	_____	_____	_____
10) Ratio Item 9 divided by Item 1	_____	_____	_____
11) Subtotal Item 2 plus Item 3 plus Item 4	_____	_____	_____
12) Subtotal Item 11 plus Item 8	_____	_____	_____
13) Ratio Item 12 divided by Item 1	_____	_____	_____
14) Item 2 plus Item 4	_____	_____	_____
15) Subtotal Item 14 plus Item 8	_____	_____	_____
16) Ratio Item 15 divided by Item 1	_____	_____	_____

EXHIBIT B

OFFICER CERTIFICATION

I, _____, do hereby certify that I have (please print) reviewed the attached documents and find that they are accurate and complete to the best of my knowledge.

Signature

Title

Date: _____

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION**Notice of Administrative Correction
Standards of Conduct for Insurance Producers and
Limited Insurance Representatives
Reinstatement After Suspension of Insurance
Producer License****N.J.A.C. 11:17D-2.6**

Take notice that the Department of Insurance has discovered an error in the text of N.J.A.C. 11:17D-2.6, the adoption of which was published in the January 2, 1990 New Jersey Register at 22 N.J.R. 30(b). In subsection (c), the clause in parentheses ending the paragraph should have appeared as deleted upon adoption, as indicated in the notice of adoption filed by the Department with the Office of Administrative Law (see R.1990 d.11). This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

11:17D-2.6 Reinstatement after suspension of insurance producer license

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

(c) The applicant shall demonstrate compliance with the professional qualification provisions of N.J.S.A. 17:22A-4(c) and N.J.S.A. 17:22A-4(d) [(which requires persons to have passed the state licensing examination if they have been unlicensed for one year or more)].

HEALTH

(b)

DIVISION OF HEALTH FACILITIES EVALUATION**Hospital Licensing Standards****General Provisions****License Procedure****Administrative and Hospital Wide Services****Obstetrics****Oncology****Pediatrics****Plant Maintenance and Fire and Emergency****Preparedness****Psychiatry****Physical and Occupational Therapy****Renal Dialysis****Respiratory Care****Postanesthesia Care**

Adopted New Rules: N.J.A.C. 8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, and 35

New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-5.4, 5.6, 5.8, 5.10, 5.17; 19.4, 19.6, 19.9, 19.11, 19.28; 22.4, 22.7, 22.11, 22.18, 22.21; 24.5, 24.7, 24.14; 26.4, 26.6, 26.8, 26.10, 26.13; 29.2, 29.4, 29.7, 29.11, 29.13, 29.15, 29.17, 29.21; 30.4, 30.7, 30.10, 30.12; 31.4, 31.6, 31.8, 31.10, 31.13; 35.5 and 35.8

Proposed: September 18, 1989 at 21 N.J.R. 2926(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.95, with substantive and technical changes not requiring public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted but still pending.

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-5.4, 5.6, 5.8, 5.10, 5.17; 19.4, 19.6, 19.9, 19.11, 19.28; 22.4, 22.7, 22.11, 22.18, 22.21; 24.5, 24.7, 24.14; 26.4, 26.6, 26.8, 26.10, 26.13; 29.2, 29.4, 29.7, 29.11, 29.13, 29.15, 29.17, 29.21; 30.4, 30.7, 30.10, 30.12; 31.4, 31.6, 31.8, 31.10, 31.13; 35.5 and 35.8 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department of Health ("Department") afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, and 35, related to licensing standards for the following areas of hospital care:

General Provisions	Plant Maintenance
Licensure Procedure	and Fire and Emergency Preparedness
Administrative and Hospital Wide Services	Renal Dialysis
	Physical and Occupational Therapy
Obstetrics	Renal Dialysis
Pediatrics	Respiratory Care
Psychiatry	Postanesthesia Care

The official comment period ended October 18, 1989. The Department has summarized and responded to comments received up until November 13, 1989 for all of the above subchapters. Announcement of the opportunity to respond to the Department appeared in the New Jersey Register on September 18, 1989.

The Department received 63 comment letters, both addressing generic concerns about the proposed standards as well as specific comments on individual rules. The following section addresses the Department's response to the generic concerns raised in a significant number of letters from industry commenters (NOTE: These responses apply to generic concerns raised by commenters that are applicable to the remaining 21 subchapters of the Hospital Licensing Standards appearing elsewhere in this Register):

The majority of written comments received by the Department from the hospital industry addressed five generic issues with respect to the proposed rules. These included the role of advisory standards, the appropriateness of credentialing requirements for hospital personnel, the economic impact of the rules, the use of defined staffing ratios in setting standards for level of staff, and the need for and structure of quality assurance requirements. The Department has considered these comments, and as many were made as general concerns, the response is made at both a generic and subchapter specific level.

Advisory standards have been proposed by the Department as a complement to the mandatory rules for the purpose of providing hospitals with a guide or benchmarks for attainment of a superior level of care. These have been promulgated by the Department in the Long Term Care Licensing Standards with the support of the nursing home industry. Despite proposing the use of advisory rules in surveying hospitals solely on a voluntary basis, the majority of commenters from the hospital industry expressed opposition to the concept. Commonly-cited concerns included the belief that only hospitals with significant financial resources could afford to comply, and/or that setting advisory standards was not an appropriate role for a state regulatory agency and that this should be left to the various accrediting bodies. In response to these concerns, the Department is re-examining the need or role of advisory standards. As a result, no action is being requested on final adoption of the standards at this time. It is believed, however, that there are many advisory standards that are excellent criteria against which to measure the relative level of quality. The Department intends therefore to assess which of the

advisory standards should be retained as mandatory standards in the event that its analysis leads to a decision to withdraw the advisory concept in full from the rules.

Many commenters, including the New Jersey Hospital Association, expressed generic opposition to the inclusion of mandatory credentialing requirements (that is, education, certification, and/or experience prerequisites) for individuals to be employed by hospitals in key clinical or administrative positions. It was felt by the industry that hospital management was in the best position to set requirements for its own employees. The Department believes, based on the advice of the clinicians and hospital management representatives that participated in the Licensure Reform process, that quality of care can be strongly impacted by the skills and knowledge of the professionals who are directing the delivery of care. In the health care field, the possession of certain credentials is commonly utilized as indicators of whether an individual is minimally qualified to deliver personal health care services affecting the life and safety of patients.

In response to what were viewed as legitimate specific concerns raised by various commenters in relation to individual credentialing requirements, the Department is making changes to permit hospitals greater flexibility throughout the rules. As an example, the Medical Staff subchapter is changed to permit physicians to meet Board Certification requirements where they possess foreign certifications that are deemed equivalent or have reciprocity with the concurrent American Board. Many educational and experience requirements for management personnel are being altered to allow "related" educational degrees and equivalent experience to qualify. Thus, the Department is maintaining credentialing standards as a necessary component of the rules to assure quality care is delivered to consumers, but is responding to commenters by providing more flexibility to hospital management where deemed appropriate.

With respect to the economic impact of the rules, the Department acknowledges that not all hospitals are in current compliance with all requirements contained in the new standards. However, the comments to the Department to date have not indicated a substantial economic impact will result hospital-wide. The Department, by revising the Hospital Licensing Standards, has a strong commitment to providing consumers with quality health care in New Jersey's hospitals. While it must do so balancing the impact on the cost of and access to care, hospitals will have an avenue to appeal their reimbursement rates without penalty for required expenditures resulting from the implementation of these rules. N.J.A.C. 8:31B-3.58 permits Statewide legal and clinical rate appeals to be filed for costs associated with changes in statutes and regulations since the base year under the Accept option. These may be filed by individual hospitals if it documents meeting a materiality standard of \$10,000 per issue. In addition, the Department may present these appeals to the Hospital Rate Setting Commission as generic rate adjustments in the same manner issues such as the costs of implementing CDC-AIDS precautions and medical waste disposal costs were addressed in 1988. Where specific standards are felt to result in costs that outweigh their benefit to improving the quality of health care, the Department will re-examine the need for the requirement.

Staffing ratios are those requirements for provisions of staff within services at a level prescribed by another indicator, such as occupied beds, admissions, or procedure volume. Although utilized in relatively few subchapters, many commenters expressed concern that these were arbitrary and unsupportable. The Department believes these ratios are useful means of assuring sufficient staff member are available to provide needed services, but is limiting their use to areas where outside authority or research supports the standard, such as guidance from the Center for Disease Control. In perhaps the most labor intensive area of hospital services, nursing personnel, the standards stipulate only that one registered professional nurse be assigned to each nursing unit per shift, and that the hospital's own acuity system be used to assign staffing levels above and beyond this minimum.

In relation to Quality Assurance (QA) requirements, many industry commenters felt that hospital QA programs should not be mandatory within the Licensing Standards nor their structure be prescribed. Another concern expressed was that between the various subchapters, the extent to which individual QA programmatic requirements were formulated varied significantly.

The Department believes that there is strong clinical support for establishing both hospital-wide as well as departmental QA programs, as these are critical components of a comprehensive system of monitoring and assuring delivery of high quality health care to consumers. It is acknowl-

edged that the scope of QA requirements resulting from the participatory Licensure Reform process varied between subchapters. In some non-patient care areas there are very specific QA standards, while in other key patient care departments, few standards were proposed. As a result, the Department is deleting specific QA requirements in subchapters with little direct impact on delivery of patient care. The Department intends to develop higher standards for QA activities in critical patient care areas in cooperation with the industry and professional groups at a future date.

The following is a summary of specific comments received, the Department's response, and changes made by the Department upon adoption.

N.J.A.C. 8:43G-1 General Provisions

No comments received.

Two technical corrections have been made in the interest of accuracy. Proposed N.J.A.C. 8:43G-1.1 is revised so as to clearly indicate that N.J.A.C. 8:43G-1.1 states the scope and purpose of the entire chapter. Proposed N.J.A.C. 8:43G-1.4(a) is revised as a result of an organizational change within the Department of Health.

N.J.A.C. 8:43G-2 Licensure Procedure

The Department received nine letters of comment regarding proposed N.J.A.C. 8:43G-2, Licensure Procedure. Eight letters were submitted by hospitals and one by the New Jersey State Department of the Public Advocate, Division of Mental Health Advocacy.

N.J.A.C. 8:43G-2.1 Certificate of Need

N.J.A.C. 8:43G-2.1(a)

COMMENT: St. Joseph's Hospital and Medical Center stated that "health care facility" must be defined and that lack of a definition is a source of confusion in New Jersey.

RESPONSE: "Health care facility" is defined in N.J.S.A. 26:2H-2. The definition lists types of facilities which are included or excluded. The Department applies the definition on a case-by-case basis. A definition, therefore, is not added to N.J.A.C. 8:43G-2.1(a).

N.J.A.C. 8:43G-2.3 Newly constructed or expanded facilities

COMMENT: Hackensack Medical Center recommended that a professional engineer staff position of "Fire Protection level" be established in Health Facilities Construction Service of the Department for the monitoring and approval of all "Health Care class occupancies."

RESPONSE: The recommendation is consistent with the current structure and organization of Health Facilities Construction Service. The rule is not revised in the manner requested.

N.J.A.C. 8:43G-2.3(c)

COMMENT: University Hospital of the University of Medicine and Dentistry of New Jersey stated that a definition of "construction project" is needed.

RESPONSE: The rule is revised so as to refer to any "health care facility which intends to undertake any alteration, renovation, or new construction of the physical plant" rather than to "any health care facility with a construction program."

N.J.A.C. 8:43G-2.4 Surveys and temporary license

N.J.A.C. 8:43G-2.4(d)

COMMENT: Columbus Hospital requested clarification regarding the hospital's role in responding to external disasters or a sudden decline in the availability of beds in the area. In the case of an unforeseeable emergency, hospitals may need to treat a number of patients which exceeds the number of patients for which it is approved and/or licensed.

RESPONSE: N.J.S.A. 26:2H-14 provides for such situations insofar as it calls for penalties if the facility maintains more patients than it is licensed to maintain, "except in cases of an emergency." Moreover, licensed capacity pertains to admissions only—not to treatment in the emergency room. If licensed capacity is exceeded because of a disaster, however, the facility should notify the Licensing and Certification Program of the Department. The rule is retained without change.

N.J.A.C. 8:43G-2.8 Waiver

COMMENT: The New Jersey State Department of the Public Advocate, Division of Mental Health Advocacy, stated that the rule provides for a waiver of any standard upon demonstration of hardship by a hospital, but does not require necessary procedures for the protection of the affected public.

RESPONSE: In addition to requiring demonstration of hardship, N.J.A.C. 8:43G-2.8(c) requires the applicant for a waiver to provide an

alternative proposal which would ensure patient safety. It should also be noted that N.J.A.C. 8:43G-2.8(a) states that the Commissioner or his or her designee may waive standards, in accordance with the general intent and purposes of N.J.S.A. 26:2H-1 et seq. and these rules, "if, in his or her opinion, such waiver would not endanger the life, safety, or health of the patient or public." Consequently, no such revision is necessary.

COMMENT: The New Jersey State Department of the Public Advocate, Division of Mental Health Advocacy, stated that the rule is contrary to the intent of the Administrative Procedure Act because it allows for ad hoc changes in the standards for particular providers without prior public notice. It was recommended that the rule be revised so as to provide for adequate public notice of proposed waivers. Waivers could be published in the New Jersey Register, and advance notice could be given to Statewide health planning and consumer advocacy organizations.

RESPONSE: The Department contends that the rule does not provide for changes in the standards but, rather, allows the Department to waive a standard under certain circumstances, provided that patient health and safety would not be jeopardized. The granting of such waivers does not constitute rulemaking and, therefore, does not require publication as a proposed rule. The provisions of N.J.A.C. 8:43G-2.8, however, do constitute a rule and have been published for public review and comment. Information regarding waivers which have been granted to facilities may be obtained by the public from the Department. The rule is not revised in the manner requested.

N.J.A.C. 8:43G-2.10 Information not to be disclosed

N.J.A.C. 8:43G-2.10(a)

COMMENT: Two commenters requested clarification of the rule. Questions concerned the rationale for the rule, the type and form of the disclosed information, the circumstances under which information would be disclosed, and the manner of disclosure.

RESPONSE: Information obtained through inspection is disclosed to the public because such information may be useful to the public. Such information is not published; the public must request it. As in the case of facilities other than hospitals, a person may pay for and receive a photocopy of the information from the Department or may come to the Department to view the information. The information is disclosed in the form in which it is collected: statement of deficiency, plan of correction, and comments of the hospital. Statements of deficiency are in narrative form and include a considerable amount of information so as not to be misleading to the reader.

COMMENT: Cooper Hospital/University Medical Center suggested that the rule be revised such that, if immediate public disclosure of information is determined to be necessary, the Commissioner or designee would inform the chief executive officer "of the affected hospital or his designee as possible prior to the disclosure."

RESPONSE: The Department maintains that there is no need to add such a provision because, in practice, the hospital receives the statement of deficiency immediately following inspection and it is Departmental policy to inform a facility prior to any action such as immediate public disclosure of information obtained through inspection. The rule is retained without change.

N.J.A.C. 8:43G-2.11 Hospital satellite facilities; mandatory services in hospital

N.J.A.C. 8:43G-2.11(d)

COMMENT: Meadowlands Hospital Medical Center recommended deletion of the term "departments" because, in many cases, it is more cost-effective, efficient, and practical to combine previously distinct departments while retaining the functions and services.

RESPONSE: The Department maintains that no revision is necessary because the rule does not require that these "departments" be separate and distinct. Moreover, the rule refers to "departments, services, facilities and functions."

COMMENT: South Jersey Hospital System requested clarification of the distinction between "medical service" and "medical staff." The commenter further asked why there is a separate listing for "anesthesia department" if one of the aforementioned terms includes "surgical service."

RESPONSE: The items listed in N.J.A.C. 8:43G-2.11(d) are not intended to be mutually exclusive. "Medical staff" refers to persons who provide "medical services." In the interest of clarity, proposed N.J.A.C. 8:43G-2.11(d)15 is revised to read "Medical/Surgical Service." The

anesthesia department is listed separately in order to reflect the manner in which anesthesia services are provided in fact.

In addition to the changes discussed above, the Department has made a number of other changes following further review of the proposed rules. As a result of an organizational change within the Department, the term "Licensing, Certification and Standards Program" has been changed to "Licensing and Certification Program" in N.J.A.C. 8:43G-2.2(a), 2.4(b)1, 2.4(c), 2.7, and 2.8(b). Other technical and editorial changes have been made in N.J.A.C. 8:43G-2.3(a), 2.3(b), 2.5(e), 2.6(a)1, and 2.9(a). Reference to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., has been simplified in N.J.A.C. 8:43G-2.1(a), 2.1(c), 2.4(b), 2.5(a), and 2.8(a).

Reference to on-site inspection of physical plant construction by representatives of the Health Facilities Inspection Program has been deleted from N.J.A.C. 8:43G-2.3(b). Such inspection is performed by representatives of the Health Facilities Construction Service, as stated in the revised rule.

In the interest of accuracy and completeness, the phrase "and by the rules pursuant thereto" has been added to proposed N.J.A.C. 8:43G-2.5(a).

Proposed N.J.A.C. 8:43G-2.11 has been reorganized as N.J.A.C. 8:43G-2.11, Hospital satellite facilities, and N.J.A.C. 8:43G-2.12, Mandatory services in general hospitals. Consequently, proposed N.J.A.C. 8:43G-2.11(e) has been recodified as N.J.A.C. 8:43G-2.11(d), and proposed N.J.A.C. 8:43G-2.11(d) has been recodified as N.J.A.C. 8:43G-2.12(a). In order that adopted N.J.A.C. 8:43G-2.12(a)4 be consistent with N.J.A.C. 8:43G-8, Central Supply, "Central Service" has been changed to "Central Supply." The meaning of "out-patient and preventive services" in adopted N.J.A.C. 8:43G-2.12(a)19 has been clarified by the addition of the phrase "including regularly scheduled clinic services for medically indigent patients."

Proposed N.J.A.C. 8:43G-2.12 required the facility to comply with the child abuse and neglect reporting requirements of N.J.A.C. 8:31-26.4. These requirements had been recodified and, thus, no longer appear at N.J.A.C. 8:31-26.4. Consequently, the entire text of these requirements has been added to proposed N.J.A.C. 8:43G-2.12, now renumbered as N.J.A.C. 8:43G-2.13.

N.J.A.C. 8:43G-5 Administrative and Hospital-Wide

The Department received 36 letters commenting on the proposed standards for administrative and hospital-wide services. Twenty-three letters were submitted by private citizens, 10 by hospitals, and the remainder from the New Jersey Hospital Association, the New Jersey Department of the Public Advocate, and the Commission on Smoking OR Health.

N.J.A.C. 8:43G-5.1(c) Administrative and hospital-wide structural organizations; mandatory

COMMENT: Saint Michael's Medical Center stated that the governing body should establish a "mechanism" for evaluating the chief executive officer.

RESPONSE: Since the rule requires that the chief executive officer's performance be evaluated, the hospital will have to have a mechanism for evaluation. The proposed rule provides the hospital with the flexibility to establish such a mechanism.

N.J.A.C. 8:43G-5.1(h)1-3

COMMENT: Memorial Health Alliance objects to requiring consumer representation on committees which participate in the resolution of patient-specific issues, and expresses concern that patient's families may find consumer representation intrusive. The commenter adds that consumer membership on a bioethics committee which assists in the formulation of hospital policy related to bioethics is advantageous and appropriate.

RESPONSE: The Department acknowledges the commenter's concern related to the sensitive nature of patient-specific bio-ethical issues and, in response, has deleted the requirement for consumer membership as specified in the proposed rule. The Department addresses the involvement and participation of consumers through the addition of N.J.A.C. 8:43G-5.1(i), which requires hospitals to have a mechanism to involve consumer participation in the formulation of hospital policy related to bio-ethical issues. Additionally, the Department re-examined the issue of formal committee membership and revised the rule so as to refer to participation by individuals with the backgrounds specified in the proposed rule.

COMMENT: Saint Michael's Medical Center stated that the "committee should provide consultation and education only."

RESPONSE: The rule does not specify the nature or extent of the committee's participation in the resolution of patient-specific bioethical issues. The facility could limit participation in the manner suggested.

COMMENT: Meadowlands Hospital commented that a prognosis committee is not the same as a bioethics committee and that the rule "serves to address the Bioethics Committee."

RESPONSE: The Department acknowledges the comment, and has clarified the terminology referring to the committee(s). The revised wording refers to a bioethics committee and/or prognosis committee(s), or equivalent(s). It should be noted that the intent of the rule is to require that there be a committee with the specified representation and functions regardless of the committee's title.

N.J.A.C. 8:43G-5.2(a) Administrative and hospital-wide policies and procedures; mandatory

COMMENT: Meadowlands Hospital recommended deletion of the phrase "revised as needed, and implemented."

RESPONSE: This wording, which is generic for all policies and procedures sections throughout the hospital licensing rules is necessary for the rule to be effective. The language is retained.

N.J.A.C. 8:43G-5.2(a)3

COMMENT: Meadowlands Hospital stated that the rule belongs in the subchapter concerning nursing and medical staff.

RESPONSE: The Department disagrees. The rule requires a policy that is in effect for the entire institution and which concerns staff in addition to medical and nursing staff. The rule, thus, is appropriately located in the section entitled "Administrative and hospital-wide policies and procedures."

N.J.A.C. 8:43G-5.2(a)4

COMMENT: Meadowlands Hospital recommended that the rule be relocated to N.J.A.C. 8:43G-5.1(h) because it addresses the functions of the prognosis committee.

RESPONSE: The Department disagrees. N.J.A.C. 8:43G-5.1(h) sets forth the functions of the bioethics committee and/or prognosis committee(s), or equivalent(s), which include participation in the formulation of policy related to bioethical issues, whereas N.J.A.C. 8:43G-5.2(a)4 specifies the hospital's responsibility to ensure that policies addressing specific bioethical issues are established.

N.J.A.C. 8:43G-5.2(b)

COMMENT: The New Jersey State Department of the Public Advocate, Division of Mental Health Advocacy, expressed concern regarding the possibility of inappropriate transfer of certain patients based on the present language of the rule. It was stated that the sentence "The hospital's inability to care for the patient shall be considered a valid medical reason" could be used to rationalize transfers for punitive reasons or administrative convenience. The Public Advocate recommended that the rule be revised so as to ensure "that patients will be transferred only where the receiving facility has an identifiable setting or treatment modality which the sending facility does not have, and which is demonstrably clinically necessary in the individual case." Additionally, it was asked that transfer for punitive or administrative reasons or inability to continue paying for treatment be explicitly prohibited.

RESPONSE: The Department has reconsidered the text of the proposed rule, given the commenter's concern regarding inappropriate transfer. The rule is revised to state that the circumstances enumerated in the rule are the only circumstances under which a patient may be transferred. Since punitive reasons, administrative convenience, and inability to continue paying are not identified, they are not considered valid reasons for transferring a patient. In order to ensure that transfers are appropriate, the rule requires that the sending hospital receive approval from a physician and from the receiving hospital. If the receiving hospital does not have "an identifiable setting or treatment modality which the sending facility does not have," then it may choose not to grant approval for the transfer.

N.J.A.C. 8:43G-5.2(b)1

COMMENT: Meadowlands Hospital requested the addition of the words "when possible."

RESPONSE: The Department has reconsidered the wording of the requirement, and while it is not agreeable to accept the commenter's suggested language, it has revised the rule by adding the phrase "in accordance with state law".

N.J.A.C. 8:43G-5.2(b)1-6

COMMENT: The New Jersey State Department of the Public Advocate, Division of Mental Health Advocacy, commented that the proposed rule fails to require transfer orders to include information needed to ensure safe treatment of transferred patients, including the following: drug and other allergies, and history of serious physical conditions, unrelated to the proposed treatment, which might require special attention to keep the patient safe. The commenter requested the Department to add the items listed to the rule.

RESPONSE: These concerns were also raised by the Public Advocate in regard to N.J.A.C. 8:43G-15, Medical Records. In acknowledgement of the validity of the comment, the Department revised proposed N.J.A.C. 8:43G-15.2(e) in accordance with the Public Advocate's suggestion. In the interest of coherence and consistency, N.J.A.C. 8:43G-5.2(b)5 is expanded to include the appropriate cross-reference to N.J.A.C. 8:43G-15. The rules, taken together, are intended to insure safe treatment of transferred patients.

N.J.A.C. 8:43G-5.2(i)

COMMENT: Two commenters suggested that the types of reportable terminations and other actions be specified. The commenters cited types of actions, such as termination on the basis of poor attendance, to which the rule should not apply, but apparently does.

RESPONSE: The rule is not intended to specify the circumstances under which such actions are reportable. Specifications of these circumstances may be found in state law and in the rules of the various licensing boards. The rule is retained without change.

N.J.A.C. 8:43G-5.2(j)

COMMENT: The New Jersey Hospital Association recommended that the rule be relocated under N.J.A.C. 8:43G-5.2(h), which addresses personnel policies.

RESPONSE: The proposed rule, in contrast to N.J.A.C. 8:43G-5.2(h), does not primarily concern the development and review of policies and procedures. The rule, therefore, is not relocated.

N.J.A.C. 8:43G-5.2(k)

COMMENT: The Commission on Smoking OR Health commented that the wording of the last sentence could be construed as a requirement for hospitals to have a designated smoking area. The commenter suggested changing the wording as follows: "These rules shall include prominently marking areas which at hospitals option have been designated for smoking".

RESPONSE: The Department agrees with the commenter's observation and has revised the rule as suggested.

N.J.A.C. 8:43G-5.2(l)

COMMENT: Cooper Hospital cited a number of objections to this requirement and expressed the belief that institution of a no smoking policy will increase the hospital's cost substantively during the period of implementation due to the need for developing behavior modification programs. The commenter also asserted that there will be a residual cost thereafter by escalating the cost to recruit trained staff, and anticipates that there will be an initial reduction in staff caused by the departure of staff who are unable to make the transition to a nonsmoking environment.

RESPONSE: The rule is intended to protect the health and safety of patients. It does not require the hospital to provide programs to change staff behavior or for detoxification. The rule will apply to all New Jersey hospitals uniformly. The fact that hospitals will be smoke-free may make the hospitals more attractive to some potential employees.

COMMENT: The Department received 22 letters from persons objecting to the rule. Some of these commenters maintained that the issue of smoking in hospitals concerns a question of individual rights as well as health. These commenters stated that the proposed rule is unfair and discriminatory. A number of commenters asserted that the existence of designated smoking areas in hospitals is not necessarily inimical to the protection of patient health. One commenter stated that imposition of an abrupt, temporary cessation of smoking on an already distressed group could be "counterproductive." Some commenters requested to be heard at a public meeting on the issue of smoking in hospitals.

RESPONSE: The Department acknowledges the concerns of the commenters; however, it bases its ruling on increasing evidence of the harmful effects of passive smoking (involuntary exposure to exhaled smoke). The Department is convinced of the need to protect patients in health care facilities, who by definition are in a compromised health status, from

avoidable exposure to the harmful agents in environmental tobacco smoke.

The Department relies on reports and studies in the literature which describe the harmful effects of the involuntary inhalation of environmental tobacco smoke. In *Health Effects of Involuntary Smoking* by Jonathan E. Fielding, M.D., M.P.H. and Kenneth J. Phenow, M.S., M.P.H., *New England Journal of Medicine*, December 1, 1988, the authors wrote:

"In 1986, two landmark reports by the Surgeon General [1] and by the National Academy of Sciences [2] reached similar conclusions about the adverse health effects of involuntary smoking on healthy adults and children. The Surgeon General's report asserted for the first time that the involuntary inhalation of cigarette smoke by nonsmokers causes disease, most notably lung cancer. Although the report cited smaller risks from involuntary smoking than from active smoking, it noted that the number of people injured by involuntary smoking was much larger than the number injured by other environmental agents that are already regulated." The authors also noted "the finding that separating smokers from nonsmokers within the same physical space does not eliminate involuntary smoking."

More recently, an editorial in the *Trenton Times* on November 27, 1989 cited a new study published in the *New England Journal of Medicine* [3] which found that even the small amounts of carbon monoxide in cigarette smoke can cause serious oxygen deficiency so that, for example, people who have coronary artery disease suffer a significant impairment of cardiovascular function if exposed to environmental cigarette smoke. The editorial continued: "The findings demonstrate the inherent wisdom of banning cigarette smoking in . . . public buildings—a wisdom which the New Jersey Legislature has already demonstrated and which Congress has come to recognize in its recent decision to prohibit smoking on airlines."

In response to comments opposing a smoke-free environment and suggesting that the designation in hospitals of specified areas for smoking for patients, staff, and visitors would protect patient health, the Department disagrees. The rule offers flexibility for those patients who, in the opinion of their physicians, would be deleteriously affected by a ban on smoking. In response to comments regarding individual rights, the Department asserts the rights of patients and nonsmokers in public settings to inhale air which is free from the harmful but avoidable agents contained in tobacco smoke (oxides of nitrogen, nicotine, carbon monoxide, and various carcinogens and cocarcinogens). The rights of smokers in private settings and out of doors are not disturbed.

[1] Department of Health and Human Services. *The health consequences of involuntary smoking: a report of the Surgeon General*. Washington, D.C.: Government Printing Office, 1986. Publication No. DHHS (CDC) 87-8398.

[2] National Research Council, Committee on Passive Smoking. *Environmental tobacco smoke: measuring exposures and assessing health effects*. Washington, D.C.: National Academy Press, 1986.

[3] *New England Journal of Medicine*. Carbon monoxide and cardiovascular disease. 1989; 321:1426-32.

COMMENT: The Commission on Smoking OR Health informed the Department that studies demonstrate that it is possible for psychiatric and substance abuse units to become smoke-free also, and accordingly asks for elimination of the exception for these units as currently provided for in the proposed rule. The commenter also asks for consideration of the following language regarding the circumstances under which a patient may smoke: "A patient may smoke only on written orders of the attending physician when the physician has concluded that smoking is in the best interest of the patient and when the nursing service concurs with the order. In concurring with such an order, the nursing service must consider whether the patient's smoking will be detrimental to the maintenance of the good order on the unit and whether it will be harmful for the general welfare of others in the building". The commenter asserted that the alternative wording does not encourage the establishment of a designated smoking area in the way the proposed regulation does. Somerset Medical Center commented that allowing other patients to smoke with written orders of the physician encourages all patients to get smoking orders, which will undermine efforts to establish a smoke-free hospital.

RESPONSE: Based on information provided by the Commission on Smoking OR Health, the Department has deleted specific reference to psychiatric or substance abuse units. The Department agrees that the rule should not encourage the unnecessary establishment of designated smoking areas and that the wording of the rule requires revision accordingly. The definition of "smoke free" is revised as follows: "Smoke-free means a total ban of smoking in the facility by employees, visitors and patients, except that, at institutional option, controlled smoking by patients may

be permitted in a designated area with outside ventilation. Patients may smoke only on written orders of the attending physician when the physician has concluded that smoking is in the best interest of the patient."

N.J.A.C. 8:43G-5.3(a)1, 2, 3 Administrative and hospital-wide staff qualifications; mandatory

COMMENT: St. Joseph's Hospital believes all hospital administrators should be required to have a master's degree, as proposed in advisory N.J.A.C. 8:43G-5.4, and asks for adoption of N.J.A.C. 8:43G-5.4 as a mandatory standard, with a grandfathering provision for those already in the position. South Jersey Hospital believes the proposed qualifications are too prescriptive.

RESPONSE: The Department believes hospitals should have more flexibility in choosing the qualifications for their administrator than is provided in advisory N.J.A.C. 8:43G-5.4. The Department does not believe the proposed mandatory qualifications are too prescriptive in view of the level of responsibility assumed by individuals in this position. The proposed education and/or experience requirements are set forth to ensure at least a minimal level of competence.

N.J.A.C. 8:43G-5.3(b)

COMMENT: West Jersey Health System asks for clarification of the scope of professional credentials requiring verification and of the process of verification.

RESPONSE: In response to the commenter's request, the rule is revised and clarified as follows: "The hospital shall verify through visual examination the professional credentials, required by N.J.A.C. 8:43G, of all new employees." The Department has addressed the verification of the credentials of all employees in adopted N.J.A.C. 8:43G-5.3(c). Additionally, the Department has recodified N.J.A.C. 8:43G-16.6(e) to N.J.A.C. 8:43G-5.3(d).

N.J.A.C. 8:43G-5.5(c)

This subsection has been added as a result of comments on N.J.A.C. 8:43G-12.7(u), which comments recommended the addition of this provision to the Hospital-wide standards.

N.J.A.C. 8:43G-5.5(d)

COMMENT: Meadowlands Hospital asks for specification of the training required by this standard.

RESPONSE: The rule does not refer to specific training requirements. The scope of training is determined by the hospital.

N.J.A.C. 8:43G-5.5(e)

The Department has recodified text to N.J.A.C. 8:43G-5.5(e)1 and 2 from subchapter 16, Medical Staff, as a result of comments on that subchapter.

N.J.A.C. 8:43G-5.5(f)

COMMENT: Memorial Health Alliance asserts that this standard would have significant cost implications relative to control of access to and egress from the hospital, and estimates a need for five additional FTEs to comply with the intent of this standard. St. Elizabeth Hospital objects to the term "rigidly enforced" and believes it will impact the freedom of visitors who are currently allowed free entry for patient visitation.

RESPONSE: The proposed rule does not require placement of security guards at every entrance. Control of access to and egress from the hospital, for example, can be attained by limiting the entry and exit of all non-hospital personnel to designated entrances. The term "rigidly enforced" establishes a minimal standard of care that should be in effect at all hospitals. The rule is not intended to restrict patient visitation in any way. N.J.A.C. 8:43G-5.5(h) has been added as a result of comments to the Same Day Surgery subchapter, published as an adoption elsewhere in this issue of the Register, which indicated that these standards are applicable to all departments.

N.J.A.C. 8:43G-5.7 Administrative and hospital-wide staff education; mandatory

COMMENT: Several hospitals assert that this standard is too encompassing in scope to be required of temporary and contract employees. While the commenters acknowledge the need for orientation of this category of employee, they feel orientation should be limited to the policies and procedures specific to the employee's assigned job and the emergency procedures in effect. St. Elizabeth Hospital comments that it is unrealistic to include identification of individual employee duties in the event of a disaster as part of the hospital-wide orientation program,

and also states that the hospital tour should be a component of the departmental orientation program.

RESPONSE: The Department has reconsidered the scope of the orientation program for temporary staff, nurses retained through an outside agency, and persons providing services by contract, and in response has addressed orientation of temporary staff in a separate subsection, N.J.A.C. 8:43G-5.7(b). This provision, N.J.A.C. 8:43G-5.7(b), requires the formal orientation program to include, at a minimum, a tour of the department to which the individual is assigned, orientation to the hospital's security system, and review of procedures to follow in case of an emergency. The Department has also reconsidered the scope of the requirements in N.J.A.C. 8:43G-5.7(a) for permanent staff, and has relocated the requirement for identification of individual employee duties in the event of a disaster to N.J.A.C. 8:43G-5.9(b) which addresses departmental education programs. The Department, however, has retained a tour of the hospital as part of the hospital-wide orientation program.

COMMENT: The Department of the Public Advocate believes hospital staff in all medical services should be able to respond to cardiopulmonary emergencies within minutes, and requests that training in cardiopulmonary resuscitation and the Heimlich maneuver be made mandatory for all hospital staff, as recommended by the American Heart Association.

RESPONSE: The Department recognizes the merit of the comment, and will consider an amendment to the rules at a later date. For present, the Department has included such a requirement in subchapters addressing several areas of the hospital.

N.J.A.C. 8:43G-5.9 Department education programs; mandatory

COMMENT: Overlook Hospital comments that the location of educational programs should not be specified in licensing regulations, and consequently asks for deletion of the third sentence in N.J.A.C. 8:43G-5.9(a).

RESPONSE: The intent of the rule is not to specify the location of educational programs, but rather to acknowledge that the quality of staff education may be enhanced by providing a diversity of educational opportunities. In accordance with this intent, the Department has replaced the word "and" with "or", in the third sentence, so that the rule will not be interpreted as a rigid specification of the sites where education programs are conducted.

COMMENT: Meadowlands Hospital asks for deletion of this section and asserts that the requirement for hospitals to provide educational programs is previously addressed in N.J.A.C. 8:43G-5.7(b). The commenter also expresses objections to the specificity of this section and believes hospitals should determine the content of their educational programs.

RESPONSE: It should be noted that this section was developed at the request of the New Jersey Hospital Association who preferred a more generic and flexible educational standard applicable to all departments in the hospital as opposed to the Department delineating the requirements of department-specific educational programs. N.J.A.C. 8:43G-5.7(b) addresses the responsibility of the hospital relative to providing, evaluating, and coordinating training and educational programs, but does not speak to the scope of educational programs.

COMMENT: The New Jersey Hospital Association suggests combining N.J.A.C. 8:43G-5.9(b)3 and 4, which would then read "Supervisory judgments about education needs based on assessment of staff performance and individual staff requests."

RESPONSE: The Department believes the suggested revision does not reflect the intent of the proposed rule to ensure that the departmental education program addresses the requests of individual staff members. N.J.A.C. 8:43G-5.9(b)3 and 4 are retained without change.

N.J.A.C. 8:43G-5.12 Occupational health policies and procedures; mandatory

COMMENT: The New Jersey Hospital Association requests this section be revised to incorporate N.J.A.C. 8:43G-5.12(b) and (c) into (d), with the wording of (d) to be as follows: "The hospital should have available the most current version of CDC, NIOSH and OSHA standards and guidelines to use as a basis for policies and procedures that are reviewed annually, revised as needed, and implemented".

RESPONSE: The rule is not revised in the manner suggested. The Department believes the suggested revision of N.J.A.C. 8:43G-5.12(d) does not adequately capture the intent of proposed N.J.A.C. 8:43G-5.12(b) and (c). Consequently, subsections (b) and (c) are retained without change. The Department, however, has revised subsection (d) to

more clearly indicate the identity of the documents to be used to develop written occupational health policies and procedures. Subsection (d) is revised as follows: "The hospital shall use the CDC, NIOSH and OSHA standards and guidelines specified in (b) and (c) above to develop written occupational health policies and procedures that are reviewed annually, revised as needed, and implemented." Paragraphs (d)1 and 2 are retained with no change.

N.J.A.C. 8:43G-5.13 Occupational health staff qualifications; mandatory

COMMENT: Memorial Health Alliance and St. Joseph's Hospital comment that compliance would be difficult and costly. St. Joseph's also questions why this kind of consultation cannot be obtained elsewhere. The New Jersey Hospital Association objects to the specification of staff qualifications, and suggests the Department investigate the availability of occupational health physicians or other health professionals with the proposed length of experience.

RESPONSE: The intent of the rule is to ensure hospitals have access to a health professional with the capability to provide clinical guidance on occupational health and safety issues. The rule does not preclude retaining this individual on a consultation basis. The Department believes the diversity of staff qualifications presented in the rule provides the hospital with latitude and flexibility in achieving compliance. The Department has not received information which indicates an unavailability of individuals possessing the required qualifications, and adds that the rule does not specify an "occupational health physician". The rule is retained without change.

N.J.A.C. 8:43G-5.16(a)7 Disaster planning; mandatory

COMMENT: Somerset Medical Center comments that there is no way to estimate such a number, unless it is assumed to mean all patients.

RESPONSE: The Department suggests use of the hospital's average daily census for the purpose of this standard.

N.J.A.C. 8:43G-5.16(e)

COMMENT: Memorial Health Alliance stated that the rule would be difficult and costly to implement.

RESPONSE: The commenter did not indicate the source of the difficulty or of the cost. The Department has made an editorial addition to the rule by providing the address of the New Jersey State Office of Emergency Management.

N.J.A.C. 8:43G-5.17 Disaster planning; advisory

COMMENT: St. Joseph's Hospital and Medical Center stated that disaster drills should be mandatory, not advisory.

RESPONSE: The Department directs the commenter to N.J.A.C. 8:43G-5.16(g), which requires the hospital to conduct at least one evacuation drill each year.

N.J.A.C. 8:43G-5.18 Blood bank

COMMENT: Memorial Health Alliance asked whether or not the rule is intended to be mandatory.

RESPONSE: The rule is mandatory. Adopted N.J.A.C. 8:43G-2.12(a)3 requires all general hospitals applying for licensure to provide blood bank services.

N.J.A.C. 8:43G-5.19 Clinical and pathological laboratories

COMMENT: Memorial Health Alliance and the New Jersey Hospital Association ask whether the standard is mandatory or advisory.

RESPONSE: The rule is mandatory. The Department has made an editorial change to the rule by the deletion of the word "qualified".

N.J.A.C. 8:43G-5.19(b)

COMMENT: Meadowlands Hospital requests the wording of the standard to be changed to read "under the medical direction of a qualified pathologist".

RESPONSE: The Department contends that the rule as written provides for the level of direction requested by the commenter.

N.J.A.C. 8:43G-5.20 Electrocardiogram laboratory

COMMENT: Memorial Health Alliance asked whether the rule is mandatory or advisory, and requested substitution of the phrase "provide one room" with "provide sufficient space".

RESPONSE: The rule is mandatory. In response to the comment, the Department has revised the wording to require that the hospital provide at least one room designated for electrocardiography. The Department also deleted the phrase "by the physician-in-charge".

N.J.A.C. 8:43G-5.21 Out-patient and preventive services

COMMENT: Memorial Health Alliance asked whether the rule is mandatory or advisory and stated that subsection (a) is unclear as to the meaning of "regular basis."

RESPONSE: The rule is mandatory. In accordance with the revision to proposed N.J.A.C. 8:43G-2.11(d)19, the rule is revised to indicate that out-patient and preventive services include clinic services for medically indigent patients. The phrase "regular and continuing basis" is used to ensure that clinic services are provided on a scheduled basis and are routinely accessible.

As discussed elsewhere within this notice of adoption, comments received in regard to a number of service-specific proposed rules in N.J.A.C. 8:43G have resulted in the addition of rules to N.J.A.C. 8:43G-5. These added and/or relocated rules may be found at adopted N.J.A.C. 8:43G-5.3(d), 5.5(a), 5.5(c), 5.5(e)2, 5.5(e)3, and 5.5(h).

N.J.A.C. 8:43G-19 Obstetrics

The Department received 17 letters commenting on the proposed regulations for obstetric services. Two letters were submitted by the New Jersey Hospital Association and Richard A. Flyer, MD, F.A.A.P.; the remainder of the letters were submitted by hospitals.

N.J.A.C. 8:43G-19.2 Obstetrics structural organization; mandatory

COMMENT: South Jersey Hospital System objects to mandating obstetrical representation on these committees, and comments that providing the obstetrical service with an opportunity to review and comment on the functions and plans of each committee should be sufficient.

RESPONSE: The Department agrees with the comment and deletes the proposed rule.

N.J.A.C. 8:43G-19.3(a)8 Obstetrics policies and procedures; mandatory

COMMENT: Cooper Hospital asserts that a security monitoring system will be an expense.

RESPONSE: The proposed rule requires hospitals to develop a policy which addresses security procedures for monitoring and controlling visitors. It does not set forth a requirement for a security monitoring system. The standard is retained.

N.J.A.C. 8:43G-19.3(e) Obstetrics policies and procedures; mandatory

COMMENT: Mercer Medical Center asks that the phrase "designated to provide" be changed to "able to safely provide".

RESPONSE: The present language is retained as it refers to the regionalized system of maternal and neonatal services presently in effect in New Jersey.

N.J.A.C. 8:43G-19.4(a) Obstetrics staff qualifications; mandatory

COMMENT: The New Jersey Hospital Association and several hospitals object to the Department specifying the qualifications of the physician director. Two hospitals question whether a full-time physician director is required, and if so, comment on the considerable cost that would be added to hospital budgets.

RESPONSE: The Department believes establishing a minimal level of professional competency for individuals in the position of physician director is necessary in order to promote and protect the health and safety of patients. The Department does not prescribe a time requirement for the physician director.

N.J.A.C. 8:43G-19.4(b)

COMMENT: Several hospitals stated generic objections to professional qualification standards.

RESPONSE: The Department has reconsidered the proposed qualifications in view of credentialing modifications made throughout the rules, and reduces the number of required years of experience to three years.

N.J.A.C. 8:43G-19.6(a) Obstetrics patient services; mandatory

COMMENT: Overlook Hospital believes this standard should be deleted from N.J.A.C. 8:43G-19 and moved to N.J.A.C. 8:43G-5, Administrative and Hospital-Wide Services.

RESPONSE: While the Department acknowledges that the hospital is obligated to inform all patients of the hospital policies and procedures, the Department maintains the right to reiterate this requirement in specific clinical areas where it believes patients may have special needs or concerns.

N.J.A.C. 8:43G-19.6(c)

COMMENT: Mercer Medical Center comments that 30 minutes is much too long a time to wait to start an emergency Cesarean section.

RESPONSE: The Department agrees with the comment and would prefer that such surgery begin immediately when possible. The intent of this rule is to ensure that in no case shall a timeframe of 30 minutes be exceeded.

N.J.A.C. 8:43G-19.6(e)

COMMENT: Overlook Hospital comments this is a hospital-wide issue, and should therefore be deleted from N.J.A.C. 8:43G-19 and moved to N.J.A.C. 8:43G-5, Administrative and Hospital-Wide Services.

RESPONSE: While the Department acknowledges the comment, it maintains the right to reiterate this requirement in specific clinical areas where patients may have special needs or concerns.

N.J.A.C. 8:43G-19.6(f)

COMMENT: One commenter asked that a copy of any vital records filed in accord with N.J.S.A. 26 be included as part of the obstetric patient record.

RESPONSE: The standard has been revised to incorporate the suggested addition.

N.J.A.C. 8:43G-19.12(a) Obstetric quality assurance methods; advisory

COMMENT: One commenter asked why it was not mandatory for the obstetrics service to monitor the indicators identified in N.J.A.C. 8:43G-19.12(a) and commented that the monitoring of these indicators is integral to a comprehensive obstetric quality assurance program. One commenter asked for the monitoring of all intra partum fetal deaths and neonatal deaths to be considered as a mandatory requirement for obstetric quality assurance programs. One commenter asked why the quality assurance section for midwifery was much more specific than for obstetrics, and suggested that the sections be revised for consistency.

RESPONSE: As presented in the Department's introductory position statement regarding quality assurance requirements, the Department is committed to developing high quality assurance requirements in critical patient care areas of the hospital. In line with this position, the Department is incorporating the identifiers listed in N.J.A.C. 8:43G-19.12, with the exception of security, into N.J.A.C. 8:43G-19.11. This change serves to strengthen the obstetric quality assurance section and bring it into consistency with the midwifery section. The Department will be further evaluating the area of quality assurance in cooperation with industry and professional groups, and will at that time consider suggested additions to the existing requirements.

N.J.A.C. 8:43G-19.13 Labor and delivery policies and procedures; mandatory

COMMENT: One commenter stated that this section should include a requirement for a physician on-call schedule.

RESPONSE: The rules include a requirement for an on-call schedule of obstetricians and nurse midwives at N.J.A.C. 8:43G-19.26(d). The Department has reconsidered the location of this standard, and believes it is more appropriately incorporated as part of N.J.A.C. 8:43G-19.3(b) rather than remaining as an independent standard within the nurse-midwifery policies and procedures section.

8:43G-19.14 Labor and delivery staff time and availability; mandatory

COMMENT: Memorial Health Alliance objects to the staffing requirements proposed in this section, and comments that they impact management prerogatives at a time when hospitals need to remain as flexible as possible.

RESPONSE: The Department believes this section is integral to ensuring that sufficient staff are available to provide needed services.

N.J.A.C. 8:43G-19.14(a)

COMMENT: One commenter expresses concern that there is no requirement for a registered professional nurse to be present whenever a patient is in the labor area.

RESPONSE: The Department acknowledges the comment and amends the rule to include the requirement that there shall be a registered nurse present in the labor area whenever a patient is in labor.

N.J.A.C. 8:43G-19.14(c)

COMMENT: One commenter asks for clarification of the phrase "during a delivery", and suggests substituting the following language "There shall be at least one professional nurse attending the patient once she reaches full dilation until she enters recovery phase of delivery".

RESPONSE: The Department believes the suggested wording more clearly conveys the Department's intent to ensure that adequate staff

coverage is provided during all phases of the delivery, and has accepted the suggested change as a replacement to the existing language.

N.J.A.C. 8:43G-19.14(d)

COMMENT: One commenter objects to the Department's specification of the procedures to be followed in the administration of oxytocics and points out that N.J.A.C. 8:43G-19.3(a)5 also addresses this issue. The commenter asserts that the Department does not prescribe standards relating to the administration of other drugs throughout the hospital, which may be more difficult to use and with more significant side effects, and thus asks for flexibility in this instance also.

RESPONSE: The Department acknowledges the commenter's observation, and has accordingly revised the standard to allow for more flexibility. The wording of the revised standard is as follows: Oxytocin shall be administered only after obstetrical staff has examined the patient and electronic fetal monitoring initiated.

N.J.A.C. 8:43G-19.14(e)

COMMENT: Richard H. Flyer, M.D., F.A.A.P. comments that this standard is insufficient as proposed, and asks that individuals be required to demonstrate competency in neonatal resuscitation and be periodically recertified. One commenter believes the phrase "available for each delivery" is too vague and may not ensure that the individual is immediately available.

RESPONSE: Information provided to the Department indicates that training in neonatal resuscitation has previously been incorporated as part of the adult basic and advanced life support training programs, and not provided as a separate speciality area with its own certification process. However, a recently developed pediatric advanced life support course has been designed specifically to provide training in resuscitation of children, and includes much more extensive and specialized training in neonatal resuscitation, than has been available in the past. In light of this course, the Department is strengthening this requirement by requiring certification in advanced pediatric life support by January 1, 1992. The Department agrees the phrase "available for each delivery" is too vague and has changed the wording to "available within the obstetric unit for each delivery".

N.J.A.C. 8:43G-19.15 Labor and delivery patient services; mandatory

COMMENT: One commenter objects to prescribing use of a specific log book and asks that the wording be changed to require hospitals to maintain the minimum data specified by the Maternal and Child Care Committee of the New Jersey Medical Society as accepted by the Department.

RESPONSE: The Department acknowledges the comment, and believes the suggested language more clearly reflects the intent of the standard to ensure that hospitals maintain the data identified by the commenter. The rule has been revised accordingly.

N.J.A.C. 8:43G-19.16 Post-partum patient services; mandatory

COMMENT: St. Elizabeth objects to the standard and comments that staffing should be determined by patient acuity, unit size and the institution.

RESPONSE: The Department has changed the wording to clarify that a registered nurse is required to be present whenever a patient is in the post-partum area. As revised, the Department believes this is a minimal standard essential to protecting the health and safety of patients.

COMMENT: One commenter points out that there is no reference to staffing assignments being determined by patient acuity levels as specified in the labor and delivery section.

RESPONSE: The Department appreciates the commenter's observation, and has added a requirement for nurse staffing assignments in post-partum to be determined by patient acuity levels. This change is being made for the purpose of achieving consistency throughout the subchapter, and does not represent a technical change or additional requirement. The requirement for the use of an acuity system for each patient unit is found at 8:43G-17.1(c)2.

N.J.A.C. 8:43G-19.17(a) Post-partum patient services; mandatory

COMMENT: One commenter suggests deletion of the phrase "who share a room". One commenter recommends relocating this standard to the obstetrics staff qualification section.

RESPONSE: The Department has reconsidered the location of this standard, and agrees that it is more appropriately placed at N.J.A.C. 8:43G-19.4. The wording has been revised to require that all nurses assigned to the post partum service are trained in both maternal and infant care.

N.J.A.C. 8:43G-19.18(e) Newborn care policies and procedures; mandatory

COMMENT: Meadowlands Hospital and Medical Center asks for clarification of the definition of an "epidemic" and explains that if normal expectancy is zero, a single occurrence does not necessarily constitute a significant problem requiring the attention of the Department of Health.

RESPONSE: The Department agrees with the need for clarification of the term "epidemic" and has redefined the term as follows: "An epidemic is an occurrence or outbreak of one or more cases of an illness which represents a significant or distinct departure from normal incidence as determined by the infection control practitioner".

N.J.A.C. 8:43G-19.18(g)

COMMENT: Meadowlands Hospital comments that the standard should be deleted as it is previously addressed in N.J.A.C. 8:43G-19.18(f). The Special Child Health Services Program of the Division of Community Health Services, advised the Department that N.J.A.C. 8:43G-19.18(g)2 is inconsistent with N.J.S.A. 26:2-101 et seq. and should be revised to require facilities to send copies of the Newborn Hearing Screening Report Form only for at-risk newborns, and additionally, facilities are required to submit the Form within one week of the infant's discharge.

RESPONSE: The scope of this standard extends beyond that of N.J.A.C. 8:43G-19.18(f) by delineating required hospital policies and procedures, and is thus retained. The Department has revised N.J.A.C. 8:43G-19.18(g)2 as recommended by the Special Child Health Services Program.

N.J.A.C. 8:43G-19.18(h)

COMMENT: Meadowlands Hospital comments that the standard should be deleted as it is previously addressed in N.J.A.C. 8:43G-19.18(f).

RESPONSE: The scope of this standard extends beyond that of N.J.A.C. 8:43G-19.18(f) by delineating required hospital policies and procedures. The standard is retained.

N.J.A.C. 8:43G-19.18(h)4 Newborn care policies and procedures

COMMENT: Underwood Memorial Hospital questions whether nursing staff are required to be involved in this procedure.

RESPONSE: The Department does not specify the qualifications of the staff member.

N.J.A.C. 8:43G-19.18(h)5i(1)

COMMENT: Richard A. Flyer, M.D., F.A.A.P., comments that the newborn's medical record should also include a summary of the mother's relevant medical history and not just history of prior pregnancies.

RESPONSE: The Department agrees and has added the phrase "and relevant medical history".

N.J.A.C. 8:43G-19.18(i)4

COMMENT: One commenter wrote that the newborn medical record should also include a copy of all vital records.

RESPONSE: The Department agrees and has added such a requirement.

N.J.A.C. 8:43G-19.18(i)13

COMMENT: One commenter wrote that the record should also be dated by the physician as well as signed.

RESPONSE: The Department agrees and has revised the rule to include signed and dated by the physician.

N.J.A.C. 19.18(i)14

COMMENT: One commenter wrote that the newborn medical record should also include documentation of performance of inborn error and hearing screenings.

RESPONSE: The Department agrees and has added such a requirement.

N.J.A.C. 8:43G-19.19(a) Newborn care staff qualifications; mandatory

COMMENT: The New Jersey Hospital Association objects to mandatory credentialing requirements.

RESPONSE: The Department believes establishing a minimal level of professional competency for individuals in the position of physician director is necessary in order to promote and protect the health and safety of newborns. The standard is retained.

N.J.A.C. 8:43G-19.19(c)

COMMENT: Several hospitals stated generic objections to professional qualification standards.

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RESPONSE: The Department has reconsidered the proposed qualifications in view of credentialing modifications made throughout the rules, and reduces the number of required years of experience to three years.

N.J.A.C. 8:43G-19.20 Newborn care staff time and availability; mandatory

COMMENT: Memorial Health Alliance objects to the Department specifying physician response times and suggests, as an alternative, that the rule be revised to require the hospital to establish a policy to deal with the availability and response time of attending practitioners. Meadowlands Hospital comments that the standard is too prescriptive.

RESPONSE: The Department believes ensuring the arrival of a pediatrician within 30 minutes of being summoned is integral for the protection of the health and safety of newborns. This rule represents a minimal safety and quality standard which patients can be assured is in effect for all hospitals in New Jersey, and reflects a consistent arrival time requirement for all physician specialists.

COMMENT: One commenter writes that this section does not include nurse staffing requirements as in N.J.A.C. 8:43G-19.14, Labor and delivery, and N.J.A.C. 8:43G-19.16, Post-partum.

RESPONSE: The Department acknowledges the comment and has amended the section to include N.J.A.C. 8:43G-19.20(b), requiring a licensed professional nurse to be present whenever an infant is in the nursery, and assignment of nursing staff based on acuity levels. This standard is consistent with existing rules at N.J.A.C. 8:43G-17.1(d), Nurse staffing, which require a registered nurse to be assigned to each patient care unit on each shift with additional staff to be assigned based on acuity. The Department regards the Newborn Nursery, Post-Partum, and Labor and Delivery areas to be distinct patient care units.

N.J.A.C. 8:43G-19.21(a) Newborn care patient services; mandatory

COMMENT: One commenter expresses concern that there is no requirement for staff in the nursery area to be trained in infant resuscitation, and adds that this standard as proposed is not sufficient to ensure the capability of immediate resuscitation.

RESPONSE: The Department agrees with the commenter's concern, and has added the recommended requirement in N.J.A.C. 8:43G-19.19, Newborn care staff qualifications. This addition ensures that the newborn care area is staffed with a health professional trained in infant resuscitation.

N.J.A.C. 8:43G-19.21(b)

COMMENT: The Parental and Child Health Program, Department of Health, commented that there should be no clinical reason that oxygen monitoring should not be feasible.

RESPONSE: The comment has been reviewed and accepted. The reference to the exception is deleted.

N.J.A.C. 8:43G-19.22(b) Newborn care space and environment; mandatory

COMMENT: Mercer Medical Center asks for deletion of this subsection and comments that the rule could not be for purposes of infection control since newborns are constantly passing down hallways between the nursery and their mother's room.

RESPONSE: The Department acknowledges the comment, and deletes the rule as recommended.

N.J.A.C. 8:43G-19.23(b) Newborn care supplies and equipment; mandatory

COMMENT: South Jersey Hospital System asks if the standard should be interpreted so as to require someone to leave the area to obtain needed equipment each time a baby is born. Saint Michael's Medical Center comments that the standard should not be mandatory as compliance is dependent upon availability of space within an institution.

RESPONSE: The Department has reconsidered the wording of the standard, and inserts the word "routine" so as to preclude storage of bassinets and equipment not in routine use in the nursery or nursery accessory room. The Department does not believe a hospital's space limitations should permit for the nursery to be used as a storage area.

N.J.A.C. 8:43G-19.23(g)

COMMENT: One commenter added that the checks of equipment settings should be documented.

RESPONSE: The Department agrees, and has revised the wording to include documentation as part of the standard.

N.J.A.C. 8:43G-19.23(h)

COMMENT: Underwood Medical Center asks whether this standard is really necessary as a regulation, and if so, believes it should also be applied to the labor and delivery area.

RESPONSE: The Department regards this as a minimal safety standard to ensure that equipment in patient care areas is functioning at all times. The Department agrees that the standard is applicable to the Labor and Delivery area, and will consider proposing this requirement as an amendment to the rules at a future date.

N.J.A.C. 8:43G-19.24 Scope of nurse mid-wifery standards

COMMENT: Mercer Medical Center asks for clarification of this section and asks whether these provisions apply to midwives working at hospitals which do not have a separate designated midwifery service, and also to midwives employed by private obstetricians.

RESPONSE: The intent of this section is to address hospitals which have a separate, designated service or unit for nurse mid-wifery. For clarification, the Department has amended the rule to include a statement specific to the scope of standards applicable to hospitals which do not have a separate designated midwifery service but grant obstetrical privileges to nurse-midwives, as demonstrated in the examples cited by the commenter.

N.J.A.C. 8:43G-19.26(b) Nurse mid-wifery policies and procedures; mandatory

COMMENT: South Jersey Hospital System objects to requiring annual review of nurse midwife privileges, and believes re-appointment of nurse midwives should be done on a bi-annual basis as is the process for members of the medical staff.

RESPONSE: The Department acknowledges the comment, and has revised the standard to require periodic review of nurse midwife privileges and credentials rather than specifying annual review. This change brings the standard into consistency with that required for medical staff, as found at N.J.A.C. 8:43G-16.1(j).

N.J.A.C. 8:43G-19.26(c)

COMMENT: One commenter asked why it was necessary to prescribe the content of the standing orders for nurse-midwifery services, and noted that this degree of detail was not included in standards which addressed standing orders for other practitioners.

RESPONSE: The Department acknowledges the comment, and has amended the rule by specifying only that there shall be standing orders for nurse-midwifery services.

N.J.A.C. 8:43G-19.26(d)

The Department has recodified this subsection to N.J.A.C. 8:43G-19.3(b) (see comment at that location).

N.J.A.C. 8:43G-19.27(b) Nurse-midwifery staff qualifications; mandatory

COMMENT: One commenter notes that the rule addresses certification by a national voluntary organization, the American College of Nurse-Midwives, but omits reference to the New Jersey Board of Medical Examiners, which is the body that formally licenses nurse mid-wives.

RESPONSE: The Department appreciates the commenter's observation, and has revised the rule to address licensure by the Board of Medical Examiners.

N.J.A.C. 8:43G-19.30 Nurse-midwifery quality assurance methods; mandatory

COMMENT: One commenter points out that this section is more specific than N.J.A.C. 8:43G-19.11, Obstetrics quality assurance methods, and requests the Department to revise the section to be consistent with N.J.A.C. 8:43G-19.11.

RESPONSE: The Department directs the commenter to the proposed revision of N.J.A.C. 8:43G-19.11. This change achieves consistency between the two sections, and ensures that there is a comprehensive system of monitoring the delivery of high quality health care throughout the obstetrical services.

N.J.A.C. 8:43G-19.31 Scope of obstetric/nonobstetric mix standards

COMMENT: One commenter asks why the section includes reference to the newborn unit. One commenter asks for clarification as to whether the program is restricted to mixing female patients.

RESPONSE: The section pertains only to the obstetric unit; all references to the newborn unit in related N.J.A.C. 8:43G-19.32 have been deleted. The obstetric/non-obstetric mix program is restricted to female

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patients. The Department has revised the wording of this section to ensure that the program is restricted to female non-obstetric patients.

N.J.A.C. 8:43G-19.32(a) Obstetric/non-obstetric mix structural organization; mandatory

COMMENT: Three hospitals object to requiring a specific committee to oversee the obstetric/nonobstetric mix program.

RESPONSE: The Department believes the nature of the obstetrical/nonobstetric mix program requires the participation and involvement of representatives from specific areas of the hospital. In order to ensure adequate representation, the Department specifies the minimum composition of this committee.

N.J.A.C. 8:43G-19.32(b)

COMMENT: Two hospitals objected to requiring the obstetric/nonobstetric committee to review monthly reports.

RESPONSE: While the Department seeks to ensure that monthly reports are reviewed, it agrees that this responsibility may not fall within the scope of the obstetric/nonobstetric committee. The wording has been changed to require the physician director of the obstetric unit to fulfill this responsibility, who may utilize the obstetric/non-obstetric committee in fulfilling this responsibility.

N.J.A.C. 8:43G-19.32(b)1

COMMENT: South Jersey Hospital System questions need for monthly summaries and believes quarterly summaries should be sufficient.

RESPONSE: The Department retains the requirement for monthly summaries, and believes this practice is important for maintaining quality patient care.

N.J.A.C. 8:43G-19.33(b) Obstetric/non-obstetric mix policies and procedures; mandatory

COMMENT: South Jersey Hospital System commented that policies and procedures should be revised by appropriate hospital staff. Meadowlands Hospital asks for deletion of the words "by the obstetric/nonobstetric committee, revised as needed and implemented".

RESPONSE: The Department believes the members of the obstetric/nonobstetric committee are the appropriate staff to revise the policies and procedures of the program, and are best able to determine that the criteria and protocols established by the program ensure safe patient care practices.

N.J.A.C. 8:43G-19.33(c)

COMMENT: Two hospitals object to specifying that the log book be maintained in the medical records department, and comment that it would be more convenient for some institutions to maintain the non-obstetric log book on the obstetric unit. It was also commented that this requirement would create a need for double documentation.

RESPONSE: The Department acknowledges the comments, and has deleted reference to a specific location.

N.J.A.C. 8:43G-19.33(c)6

COMMENT: South Jersey Hospital System asks the purpose for identifying the exact unit in the hospital to which the non-obstetric patient might be transferred.

RESPONSE: This standard addresses information required for patients who have been transferred from the obstetrics/non-obstetrics unit, and ensures that there is a record of their transfer. The destination of the patient is an integral component of this record.

N.J.A.C. 8:43G-19.34(d)9 Obstetric/non-obstetric mix patient services; mandatory

COMMENT: South Jersey Hospital System asks what time restriction applies to non-obstetrical patients who have had antibiotic therapy prior to admission.

RESPONSE: The Department acknowledges the need for clarification, and responds that the restriction is applicable to the two-week period prior to admission. The rule has been expanded to include this language.

N.J.A.C. 8:43G-19.34(h)

COMMENT: South Jersey Hospital System questions the need to have the same visitors policy apply to both obstetrics and non-obstetrics patients, and explains that an allowance for unlimited visiting by fathers is not a visitation right necessary for non-obstetrical patients.

RESPONSE: While the Department acknowledges the comment, it does not believe that patients residing in the same unit should be subject

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to different visitation privileges. Enforcing stricter visitation policies for one group of patients based on their medical condition is not seen as contributing to the patients' overall well-being and morale. It should be noted that the obstetric and non-obstetric program is voluntary and may not be feasible for all institutions.

N.J.A.C. 8:43G-21 Oncology

The Department received seven letters commenting on the proposed standards for oncology. Six letters were submitted by hospitals and one by the New Jersey Hospital Association.

N.J.A.C. 8:43G-21.2(b) Oncology structural organization; mandatory

COMMENT: Meadowlands Hospital comments that this is a formal communication vehicle, and asks for deletion of the standard.

RESPONSE: The Department retains the standard. Mandating the existence of formal communication mechanisms falls within the Department's obligation to protect the health and safety of patients, and ensure high quality patient care.

N.J.A.C. 8:43G-21.4(a)4 Oncology policies and procedures; mandatory

COMMENT: Memorial Health Alliance comments that this should also be referenced under Housekeeping standards.

RESPONSE: The Department does not agree. The Department believes the responsibility to address the training needs of staff involved in the disposal of chemotherapeutic agents lies with the oncology service, and duplication of this standard would obscure the intent.

N.J.A.C. 8:43G-21.5(a) and (b) Oncology staff qualifications; mandatory

COMMENT: Several commenters state generic objections to the staffing qualifications. The New Jersey Hospital Association asks whether one individual can function as both the clinical coordinator and clinical resource person, and whether the clinical resource person is excluded from being a staff nurse on the oncology unit.

RESPONSE: The Department has modified the qualification for the clinical resource person to allow for the equivalent of two years of clinical experience. The Department does not preclude an individual from functioning as both the clinical coordinator and clinical resource person, nor does the Department exclude the clinical resource person from being a staff nurse on the oncology unit.

N.J.A.C. 8:43G-21.5(c)

COMMENT: The New Jersey Hospital Association comments that the hospital should determine the qualifications of the social worker assigned to the oncology unit.

RESPONSE: The Department agrees and has deleted this standard.

N.J.A.C. 8:43G-21.7(a) Oncology staff time and availability; mandatory

COMMENT: Memorial Health Alliance comments that this standard will be costly to implement and affects management prerogative.

RESPONSE: The standard has been revised to allow for a member of the social work department to be assigned to the unit, rather than specifying that it be a social worker. The Department does not agree that there is significant cost associated with this standard; the extent of the interaction and involvement of the social service staff member will be dependent on the needs of the oncology unit.

N.J.A.C. 8:43G-21.7(b)

COMMENT: Memorial Health Alliance comments that this standard will be costly to implement and affects management prerogative.

RESPONSE: The Department does not agree. The intent of the standard is to ensure that a registered dietitian is available to the unit; the extent of the interaction and involvement of the registered dietitian will be dependent on the needs of the oncology unit. The standard is retained. The phrase "at least part time" was considered unnecessary and has been deleted.

N.J.A.C. 8:43G-21.9(a) Oncology patient services; mandatory

COMMENT: Meadowlands Hospital comments that this standard is redundant of N.J.A.C. 8:43G-21.2(a) and should be deleted.

RESPONSE: The standards are not redundant. N.J.A.C. 8:43G-21.2(a) addresses the responsibilities of the multidisciplinary cancer committee which oversees the operation of the oncology service. The standard is retained.

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N.J.A.C. 8:43G-21.9(b), (c), (d)

COMMENT: Overlook Hospital and Meadowlands Hospital comment that these services are provided to all patients, and should not be singled out in the oncology rules.

RESPONSE: While the Department acknowledges that these services are not unique to oncology patients, it believes the provision and availability of these services should be emphasized on the oncology unit. The standards are retained.

N.J.A.C. 8:43G-21.11 Oncology space and environment; mandatory

COMMENT: Meadowlands Hospital asks that the phrase "and their families" be deleted.

RESPONSE: The standard is unchanged. The intent of the standard is to facilitate visitation among oncology patients and their families.

N.J.A.C. 8:43G-22 Pediatrics

The Department received 16 letters commenting on the proposed standards for pediatrics. Fourteen letters were submitted by hospitals, one by the New Jersey Hospital Association, and one by Richard H. Flyer, M.D., F.A.A.P. of the American Academy of Pediatrics.

N.J.A.C. 8:43G-22.2(a)1 and 2 Pediatrics and pediatric intensive care policies and procedures; mandatory

COMMENT: Meadowlands Hospital comments that these two standards are incorporated in N.J.A.C. 8:43G-22.2(a)3 and should therefore be deleted.

RESPONSE: The Department disagrees. N.J.A.C. 8:43G-22.2(a)3 does not explicitly require that the pediatric service specify the age group which must be served and the age group which may, under certain circumstances, be served by the service. The standards are retained.

N.J.A.C. 8:43G-22.2(a)2

COMMENT: The New Jersey Hospital Association asks if it is necessary to have approval from all three individuals identified, and questions whether the word "and" should be replaced with "or", signifying that approval by any of the three parties is appropriate.

RESPONSE: The original intent of the standard was to require approval from each of the three individuals. Upon reconsideration, the Department has revised the rule to require approval only from the physician director of the service. While the Department believes such decision should be made collaboratively among the three individuals identified, it feels requiring approval from each person is overly burdensome.

N.J.A.C. 8:43G-22.2(a)3

COMMENT: Saint Michael Medical Center asks whether this standard applies only to pediatric intensive care services.

RESPONSE: The requirements set forth in N.J.A.C. 8:43G-22.2 through N.J.A.C. 8:43G-22.8 are applicable to both pediatric and pediatric intensive care services, with the exception of those standards which specifically address the pediatric intensive care unit as in N.J.A.C. 8:43G-22.2(b), (c), and (d).

N.J.A.C. 8:43G-22.2(a)7

COMMENT: Richard A. Flyer, M.D., F.A.A.P., comments that this standard is insufficient as proposed, and asks for the inclusion of a rule requiring all hospitals which admit children to be competent to resuscitate that child at all times.

RESPONSE: The Department shares the commenter's concern for ensuring that hospitals have the capability to adequately respond to pediatric emergencies, and in response has added a requirement within the pediatric intensive care section, N.J.A.C. 8:43G-22.15(g), requiring that there be a health professional trained in resuscitation of children available within the unit at all times. In addition, the Department will be further studying the special needs of pediatric patients, for the purpose of developing more specific pediatric emergency care requirements applicable to all hospitals.

N.J.A.C. 8:43G-22.2(a)8

COMMENT: Hackensack Medical Center comments that there are no formally designated higher level facilities in New Jersey.

RESPONSE: The Department agrees the standard does not reflect the lack of a current designation process for pediatric care in New Jersey and amends the standard to more clearly state the clinical goal of transport to facilities providing needed specialized or intensive pediatric care. The wording of the revised rule is as follows: "An emergency transfer policy which specifies mechanisms for transport of pediatric patients

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requiring specialized or intensive care services to facilities providing such care".

N.J.A.C. 8:43G-22.2(b)

COMMENT: Memorial Health Alliance objects to age level criteria being specified, and believes the determination should be made by the medical staff.

RESPONSE: The Department believes it is essential to ensure that all pediatric patients under 18 years of age receive a pediatric consultation when admitted to an adult intensive care unit. Pediatric patients, because of their size and physiology, require special medical care. The Department believes the severity of the medical condition of pediatric patients who require intensive care services necessitates that physicians who have clinical expertise and experience in treating pediatric patients are involved in determining and assessing the medical needs of these patients. The standard is retained. For purposes of edification, the phrase "to the pediatric intensive care unit" has been deleted since the intent of the standard is to address the medical care of pediatric patients temporarily admitted to an adult intensive care unit.

N.J.A.C. 8:43G-22.2(c)

COMMENT: Richard A. Flyer, M.D., F.A.A.P., comments that all pediatric patients deserve pediatric case management and consultation, and asks for the elimination of the exception clause for patients 14 to 18 years old. Several hospitals object to mandating the transfer of pediatric patients to a pediatric intensive care, and believe that decision should be made based on the best judgement of the admitting attending physician and hospital.

RESPONSE: The Department agrees with Dr. Flyer's comment and has eliminated the exception to the pediatric consultation. This change brings the standard into consistency with N.J.A.C. 8:43G-22.2(b). The nature of the latter comments suggest the need for revision of the rule to clearly reflect the Department's intent to ensure that critically ill pediatric patients receive treatment in the setting most likely staffed and equipped to meet their special health care needs. The Department clarifies the rule by requiring the hospital to establish and implement protocols for the stabilization and transfer of pediatric patients under 18 years of age to a facility with pediatric intensive care.

N.J.A.C. 8:43G-22.2(d)

COMMENT: University Hospital asks for clarification of the types of situations that may require anesthesia intervention for pain management in infants. Richard Flyer, M.D., F.A.A.P., comments that pediatric services should aid in developing anesthesia and pain management policies for all pediatric patients, not just infants.

RESPONSE: The proposed rule was developed in response to the findings from an increasing body of evidence which demonstrate that infants' physiologic responses to surgical procedures are similar to those demonstrated by adults, and that these responses can be lessened with anesthetic agents. The Department has added the phrase "and children" in response to the comment from Richard Flyer, M.D., F.A.A.P.

N.J.A.C. 8:43G-22.3(c) Pediatrics and pediatric intensive care patient services; mandatory

COMMENT: Richard Flyer, M.D., F.A.A.P., asks for the inclusion of physical and occupational therapy. Memorial Health Alliance questions what is considered to be documented evidence, and adds that implementation of the provision would be difficult. South Jersey Hospital System objects to specifying specific committee participation, and believes a requirement for appropriate input should be sufficient.

RESPONSE: The Department has reconsidered the wording of the standard in light of Dr. Flyer's comment. The Department believes hospitals with designated pediatric units should be capable of meeting the special needs of children throughout all units of the hospital. The intent of the rule is to ensure that the special medical and psychosocial needs of pediatric patients are recognized and addressed by all the clinical and patient support departments which may be required to provide services to pediatric patients during their hospitalization. The Department does not believe this intent is addressed by listing only specific areas, and has consequently changed the wording so that the rule is applicable to all clinical and supportive services. The revised wording of this standard is as follows: "There shall be documented evidence of pediatric medical and nursing staff participation in the development of policies and procedures of pediatric patients in any department where pediatric patients may receive treatment. At a minimum, this shall include the areas of dietary, emergency department, laboratory, pharmacy services, radiology, re-

habilitation, and social work." The Department did not specify physical and occupational therapy as requested since these specific services are provided within the area of rehabilitation. It should be noted that the rule does not specify the particular mechanism through which medical and nursing staff participation should be obtained. Documentation of compliance would depend on the particular mechanism the hospital chooses to utilize.

N.J.A.C. 8:43G-22.8(b) Pediatrics and pediatric intensive care quality assurance methods; mandatory

COMMENT: Several hospitals object to this rule, and cited reasons such as it is not reasonable to mandate inter-hospital exchanges of information and case reviews with pediatric specialists in other hospitals, and inter-hospital exchanges of information and case reviews is a peer review confidentiality issue.

RESPONSE: The Department agrees this standard is relevant only to pediatric intensive care units, and has consequently recodified it as N.J.A.C. 8:43G-22.22. The intent of the standard is to facilitate the exchange of clinical knowledge and information among pediatric specialty services. The Department does not specify the type of information to be exchanged and thus does not agree that the rule represents an infringement on peer review confidentiality.

N.J.A.C. 8:43G-22.9 Scope of pediatric standards; mandatory

COMMENT: Richard A. Flyer, M.D., F.A.A.P., comments that the standards should cover all hospitalized children in the State, and expresses concern that the Department does not have rules which cover the care of children in hospitals where there is no designated pediatric unit.

RESPONSE: While the Department acknowledges the commenter's concern, it does not believe the rules contained within this subchapter are appropriate for those hospitals which do not have a designated pediatric service. The Department strongly believes pediatric patients are best served in hospitals with dedicated pediatric services, but it is not feasible or appropriate to restrict all admissions of pediatric patients to only such hospitals. In response to this concern, the Department has added N.J.A.C. 8:43G-5.5(a), which requires all hospitals that provide services to pediatric patients, regardless of whether the hospital has a licensed or dedicated service, to have medical and nursing staff with specialized pediatric training available as well as equipment adaptable to the needs of pediatric patients on-site.

N.J.A.C. 8:43G-22.10(b) and (c) Pediatric staff qualifications; mandatory

COMMENT: Several hospitals stated generic objections to the staff qualifications mandated for the nurse with administrative responsibility for nursing care in pediatrics.

RESPONSE: The Department has reconsidered the proposed qualifications in view of credentialing modifications made throughout the rules, and eliminates N.J.A.C. 8:43G-22.10(c).

N.J.A.C. 8:43G-22.12(a) Pediatrics space and environment; mandatory

COMMENT: Meadowlands Hospital and Medical Center questions the derivation of 10 percent.

RESPONSE: This is a minimal standard recommended by the Pediatric Advisory Reaction Group to ensure that hospitals have the capability to effectively serve children requiring isolation. The standard is retained.

N.J.A.C. 8:43G-22.12(c)

COMMENT: Richard A. Flyer, M.D., F.A.A.P., comments that the rule does not address pediatric psychiatric patients who may need constant supervision at any age.

RESPONSE: The rule is not intended to address the specialized needs of pediatric psychiatric patients. These patients should receive treatment in the pediatric psychiatric units approved on a regional basis through the Certificate of Need process.

COMMENT: Somerset Medical Center asks that parents and/or guardians be permitted to supervise in the playroom when applicable. Hackensack Medical Center comments that the rule will require a locked playroom system, and may prevent, at times, children who are independent and mature enough to be left unsupervised from using the playroom.

RESPONSE: The Department acknowledges the comments and has changed the wording to allow for more flexibility. The phrase "at all times" and the last sentence have been deleted. The Department makes this change because it does intend that the requirement for supervision be so strict as to dictate when the playroom may be open for the use of children.

N.J.A.C. 8:43G-22.15(b) Pediatric intensive care staff qualifications; mandatory

COMMENT: Richard A. Flyer, M.D., F.A.A.P., believes the staff qualifications proposed are insufficient to assure competence in dealing with problems encountered in the pediatric intensive care unit and gave the example of a board certified pediatrician with subspecialty fellowship in developmental pediatrics and 10 years work in that field as a physician who may lack the necessary clinical competence and experience.

RESPONSE: The intent of the rule is to ensure that the pediatric intensive care unit is covered by at least one physician at all times. The physician is required to be present in the hospital or on call. The proposed staffing qualifications represent a minimal standard, and provide the hospital with the flexibility to determine which pediatric subspecialties assure the clinical competence required for delivering care to pediatric intensive care patients.

N.J.A.C. 8:43G-22.15(c) and (d)

COMMENT: Richard A. Flyer, M.D., F.A.A.P., comments that the pediatric intensive care unit should also have physicians with pediatric subspecialties in plastic surgery, genetics, and metabolic diseases on staff or under a formal consultation arrangement.

RESPONSE: While the Department's intent is to ensure that pediatric intensive care services are staffed or have access to highly specialized physicians, information received by the Department indicates that there is not a sufficient supply of physicians with the suggested pediatric subspecialties to enable pediatric intensive care units to comply with such a requirement.

N.J.A.C. 8:43G-22.15(f) and (g)

COMMENT: Several hospitals stated generic objections to the staff qualifications mandated for the nurse with administrative responsibility for nursing care in the pediatric intensive care unit.

RESPONSE: The Department has reconsidered the proposed qualifications in view of credentialing modifications made throughout the rules, and eliminates N.J.A.C. 8:43G-22.15(g) as proposed.

N.J.A.C. 8:43G-22.16(e) Pediatric intensive care staff time and availability; mandatory

COMMENT: Richard Flyer, M.D., F.A.A.P., comments that hospitals should be required to have a transport team staffed by health professionals with special training and certification in the transport of critically ill pediatric patients.

RESPONSE: Information obtained by the Department indicates that there is no formal certification in pediatric transport at the present time. The proposed standard reflects the Department's recognition that members of the transport team should have specialized training. Due to the absence of a formal certification program, the Department provides the hospital with the flexibility to determine the training requirements of the team. The standard remains unchanged.

N.J.A.C. 8:43G-22.17(b) Pediatric intensive care patient services

COMMENT: One hospital comments that this standard is duplicative of N.J.A.C. 8:43G-22.16(e) and should therefore be deleted.

RESPONSE: N.J.A.C. 8:43G-22.16(e) differs from the proposed subsection in that it addresses the staffing qualifications of the members of the transport team. The standard is retained.

N.J.A.C. 8:43G-22.19(c) and (d) Pediatric intensive care space and environment; mandatory

COMMENT: Meadowlands Hospital asks for clarification of the term "nearby", and comments that there could be a significant economic impact if renovations were required.

RESPONSE: The intent of the standard is not to specify the particulars of the physical arrangements, but rather to assure that the physician is physically present when needed, and that the families of patients are easily accessible. The standards remain unchanged.

N.J.A.C. 8:43G-22.20(a) Pediatric intensive care supplies and equipment; mandatory

COMMENT: Cooper Hospital comments that emergency equipment on a pediatric intensive care unit should also include a defibrillator and a pacemaker.

RESPONSE: The Department agrees with the suggestion to include a defibrillator and amends the standard accordingly. However, the Department is not willing to require a pacemaker as mandatory equipment for all pediatric intensive care units. Information provided to the Department indicates that pacemaker insertions are considered to be a highly

specialized procedure which should not be undertaken by all pediatric intensive care units. Based on this information, the Department believes this procedure should only be undertaken by those facilities which have the particular scientific and technical expertise necessary, as a measure to promote positive patient outcomes.

N.J.A.C. 8:43G-22.20(b)

COMMENT: Cooper Hospital asks that the pulse oximeter, intravenous fluid warmer and metabolic scale be relocated to subsection (a), in order to ensure that each is immediately accessible to pediatric intensive care units.

RESPONSE: The Department agrees and has made the requested change.

COMMENT: Two commenters point out that rules applicable to pediatric intermediate care units were not contained within this subchapter.

RESPONSE: Information obtained by the Department indicates that there is not a sufficient number of pediatric patients requiring intermediate care services at the present time to mandate the adoption of discrete licensing rules for this level of care.

N.J.A.C. 8:43G-24 Plant Maintenance and Fire and Emergency

The Department received six letters commenting on the proposed standards for physical plant maintenance and fire and emergency preparedness. Five letters were submitted by hospitals and one by the New Jersey Hospital Association.

N.J.A.C. 8:43G-24.3 Plant maintenance staff qualifications; mandatory

COMMENT: St. Elizabeth Hospital comments that small to medium size hospitals would have difficulty meeting the requirements of N.J.A.C. 8:43G-24.3(a)2 or 3. The New Jersey Hospital Association and Meadowlands Hospital object to the prescriptiveness of the supervisory experience requirements.

RESPONSE: The Department provides hospitals with the flexibility to choose from three staffing qualifications for the supervisor of building maintenance services. The Department does not expect all hospitals to meet the qualifications set forth in paragraphs (a)2 or 3. The Department acknowledges the objections to the supervisory experience requirements, and has accordingly revised the staff qualifications. While the revised rule makes no change to the total years of experience required in each of the three classifications, it no longer requires that all years be fulfilled in a supervisory capacity. The supervisory experience requirement has been reduced to three years in paragraph (a)1 and two years in paragraphs (a)2 and 3.

N.J.A.C. 8:43G-24.3(b)

COMMENT: The New Jersey Hospital Association comments that the prescribed staffing qualifications place hospitals in an unfavorable position when competing with private industry in terms of salary requirements.

RESPONSE: The Department has reconsidered the staffing qualifications and reduced the years of required experience to two years in paragraph (b)1 and four years in paragraph (b)2.

N.J.A.C. 8:43G-24.4 Plant maintenance services; mandatory

COMMENT: The New Jersey Hospital Association comments that the electrical system is included in N.J.A.C. 8:43G-24.4(a), and should not be addressed in a separate standard at N.J.A.C. 8:43G-24.4(b).

RESPONSE: The Department agrees. The Department has modified the language of N.J.A.C. 8:43G-24.4(a) to specify inspections of electrical and mechanical systems and has deleted N.J.A.C. 8:43G-24.4(b). Additionally, in response to a comment on the Nursing Care subchapter, published elsewhere in this issue of the Register, the Department has added a requirement that all life-sustaining equipment be plugged into outlets connected to the emergency power supply.

N.J.A.C. 8:43G-24.13 Fire and emergency preparedness; mandatory

COMMENT: Hackensack Medical Center requests the Department to mandate that all health care facilities provide a properly trained and equipped Emergency Response Team/Fire Brigade Force of personnel on all shifts.

RESPONSE: The Department believes the comment has merit and will consider proposing such a requirement for future addition to N.J.A.C. 8:43G-24. The Department maintains that it would be inappropriate to introduce this rule at this point in the adoption process.

COMMENT: Hackensack Medical Center requests the Department mandate that fire drills be conducted at each facility reviewed in order to evaluate the level of emergency response to facility incidents.

RESPONSE: The Department acknowledges the value of the comment, but does not believe that it would be practical to mandate a fire drill as part of the licensure survey process. N.J.A.C. 8:43G-24 contains numerous requirements intended to ensure that a hospital is capable of effectively responding in the event of a fire or other emergency situation.

N.J.A.C. 8:43G-26 Psychiatry

The Department received 19 letters commenting on the proposed standards for psychiatry. Letters were submitted by the Department of the Public Advocate, New Jersey Psychiatric Association, New Jersey Psychological Association, New Jersey Hospital Association, and R.H. Flyer, M.D., of the New Jersey Chapter of the American Academy of Pediatrics. The balance of the letters were submitted by hospitals.

N.J.A.C. 8:43G-26.1 Scope of psychiatry standards

COMMENT: The Public Advocate commented that the proposed language does not clearly delineate the intended scope; that it covers only hospitals with a "separate designated unit." The Public Advocate's office is concerned that the scope should encompass hospitals offering any level of inpatient psychiatry, otherwise hospitals could exempt themselves by failing to organize such practices into formal units or services.

COMMENT: Dr. Flyer of the New Jersey Chapter of the American Academy of Pediatrics wrote that the scope of psychiatry standards does not mention the special needs of pediatric patients.

RESPONSE: The Department acknowledges the concerns of these commenters, and points out that these are generic standards which define services within a designated unit in a general hospital. The standards are not intended to address hospitals which admit psychiatric patients on a non-routine, emergent basis. The Department does intend, however, to initiate at a later date the development of standards for specialized psychiatric services such as pediatric, adult closed, and intermediate. The proposed standard is not changed.

N.J.A.C. 8:43G-26.2 Psychiatry policies and procedures; mandatory

COMMENT: The Public Advocate's office commented that the proposed rule provides no substantive minimum standards for hospitals to follow, thus implying that any substantive policy will suffice for licensure. Meadowlands requested deletion of "revised as needed and implemented."

RESPONSE: The standard provides a listing of 14 specific areas in which the hospital must develop substantive policies and procedures. Several of the areas, such as patient rights, informed consent, and physical examinations, are addressed in full elsewhere in the rules. Others are modified, with explanations to follow, and still others are governed by reasonable standards of care. This opening paragraph of the standard is retained, including the phrase which Meadowlands requested to have deleted, in order to maintain consistency with analogous standards in other subchapters.

N.J.A.C. 8:43G-26.2(a)1

COMMENT: The Public Advocate stated that the criteria should prohibit policies which allow discriminatory admissions decisions such as "blacklisting," that is, exclusion for punitive purposes or as an administrative response to past behavior on the ward. The sole criterion should be whether clinical services offered by the unit address the patient's clinical needs. The criteria also should prohibit punitive discharge and should allow administrative discharge only to protect the patient or other patients. The standard should require adequate notice and the right to be heard regarding contemplated discharge, and the hospital should be required to discharge voluntary patients on request, or initiate procedures for commitment immediately.

RESPONSE: The Department accepts these comments, and amends the standard to include the concepts that admissions criteria shall be based solely on the patient's needs and the ability of the unit to meet them, and that discharge policies shall preclude punitive discharge. The addition of requirements for general hospitals to hold a hearing prior to discharging a patient are viewed as substantive and will be evaluated for future proposal.

N.J.A.C. 8:43G-26.2(a)3

COMMENT: The Public Advocate commented that the standard fails to require the hospital policy to address the need for treatment of cardiac and pulmonary emergencies and life-threatening side effects of medication.

RESPONSE: The Department believes that the generic requirement is sufficient, and the rule is unchanged.

N.J.A.C. 8:43G-26.2(a)5

COMMENT: The Public Advocate states that this standard would allow psychiatric inpatient units to establish "patient privileges," a term which commonly denotes the practice of restricting a patient's physical liberty and then doling it out as a privilege for good behavior or clinical progress. This should not be permitted unless it is established pursuant to a professionally administered behavior management contract voluntarily agreed to by the patient and subject to his or her cancellation at any time—including procedures for notice and opportunity to be heard.

RESPONSE: The Department acknowledges the Public Advocate's concern, but believes that the scope of the standard is broader than a behavior management program, defined as a specific clinical program which may or may not be used by the clinical staff. Patient privileges denote basic privileges such as visiting the grounds or gift shop, and should not be limited in concept to a structured behavior modification program. There is no change in the standard.

N.J.A.C. 8:43G-26.2(a)6

COMMENT: The Public Advocate recommends referencing subchapter 4 for substantive patient rights.

RESPONSE: The Department accepts the suggestion, and incorporates a cross reference to N.J.A.C. 8:43G-4 into the standard.

N.J.A.C. 8:43G-26.2(a)9

COMMENT: The Public Advocate's office noted that the standard fails to require adequate physical examination and testing to rule out physical causes and to detect serious physical ailments.

RESPONSE: The commenter is referred to N.J.A.C. 8:43G-26.7(b) for physical examination; this standard is not altered.

N.J.A.C. 8:43G-26.2(a)12

COMMENT: The Public Advocate wrote that at a minimum, the standard should require all hospitals to conform to the requirements of *Largey v. Rothman*, in which the New Jersey Supreme Court accorded all patients the right to give or withhold consent to any treatment or procedure after full disclosure of all information which a reasonable patient would deem significant concerning treatment alternatives and their expected risks and benefits.

RESPONSE: The commenter is referred to N.J.A.C. 8:43G-4.1(a)8 for a full discussion of informed consent.

N.J.A.C. 8:43G-26.2(b)

COMMENT: The Public Advocate states that reference to chemical restraint should be deleted—medications should be used only to treat symptoms, such as mood or thought disorders, and not to control behavior. Such use falls below accepted professional standards, according to the American Psychiatric Task Force Report #22 on Restraints and Seclusion, pages 30 and 92-94.

COMMENT: St. Michael's Medical Center recommends omitting the words "chemical restraints" and using more specific terminology such as medication of patient against his or her will in emergency situations such as "dangerousness" and "rapid tranquilization."

RESPONSE: The Department concurs with the Public Advocate and removes the words "chemical and physical" from the standard. The Department declines St. Michael's suggestion for increased specificity.

N.J.A.C. 8:43G-26.2(d)

COMMENT: The Public Advocate's office recommends the incorporation of concepts from the National Institutes of Health Consensus Development Conference Statement on Electroconvulsive Therapy as well as procedural protections for institutionalized persons as indicated in the New Jersey Patient's Bill of Rights.

RESPONSE: The Department agrees to incorporate the criteria from both the NIH Statement and the Bill of Rights. The standard is so amended, as follows: "The psychiatric service shall develop and implement written policies and procedures for use of electroconvulsive therapy (ECT) in accordance with the recommendations of the *National Institutes of Health Consensus Development Conference Statement: Electroconvulsive Therapy* (1985 or later edition, if current), and the New Jersey Patient's Bill of Rights at N.J.S.A. 30:4-24.2(d)(2)." A note reference where to obtain a copy of the ECT document is also added.

N.J.A.C. 8:43G-26.2(e)

COMMENT: St. Michael's Medical Center wrote that this should not be a mandatory standard.

RESPONSE: The Department believes that this standard reflects an important standard for continuity of care and does not change the rule.

N.J.A.C. 8:43G-26.3 Psychiatry staff qualifications: mandatory

N.J.A.C. 8:43G-26.3(b)

COMMENT: The New Jersey Psychiatric Association wrote in support of the proposition that hospital psychiatric units should be supervised by psychiatrists who are board-certified or board-eligible. They noted, however, that the time schedule is too compressed since the rule is to take effect on July 1, 1990, and all directors would have to be board eligible on that date and would have to gain certification by July 1, 1992. The next written examination offered by the American Board will be administered in April 1991, with virtually no time left to apply; oral examinations are scheduled at the convenience of the Board. The Association suggested that the rule be amended so that board certification requirements not take place at least until 1993. The Association also requested that the Department consider carefully a "grandfather" provision for those non-certified unit directors already in place. They may not be good test-takers but may be doing superior jobs in their positions. Finally, the Association commented that some rural hospitals may not have the financial resources to employ a board-certified psychiatrist.

COMMENT: A psychiatrist who is a unit director wrote that the proposed rule does not give adequate notice for the process of becoming board-certified; this doctor repeated the time schedule noted by the Association. He stated that no time is provided for remedial action, and that the proposed rule may be unconstitutional because it could deprive non-certified unit directors of their livelihood and ability to practice their profession without due process. This psychiatrist noted that the provision will have the effect of depleting the population of highly-trained and experienced physicians presently holding directorships, and it would be an onerous requirement in mid-career. The physician recommended the requirement for new appointments and "grandfathering" for others.

COMMENT: The Public Advocate commented that the proposed rule would permit board-eligible physicians to direct units pending examination for at least two years. What if they should fail their certification examinations? Units require thoroughly knowledgeable and experienced leadership, not those who are still learning their craft. The Advocate's office recommended that directors be board certified as a minimum initial qualification.

RESPONSE: The Department has carefully considered the comments from the New Jersey Psychiatric Association, the psychiatrist, and the Public Advocate's office. The Department acknowledges that the provision as proposed may not be sensitive to the various factors discussed by the commenters. Consequently the rule is amended as follows: "Any physician currently holding the position of director shall have completed a residency in psychiatry or neurology and shall be able to demonstrate skills and experience at least equivalent to certification by the American Board of Psychiatry and Neurology. Any newly appointed physician director shall be board certified, or shall meet the training and experience requirements for examination by the Board and shall be examined within two years of eligibility."

N.J.A.C. 8:43G-26.3(c)

COMMENT: Memorial Health Alliance commented that the standard precludes the hiring of graduate nurses (GN's) without bachelors degrees, or registered nurses or licensed practical nurses without psychiatric background. This facility also commented that the rule may limit the ability to provide a nurse manager who is well skilled in management technique and capable of providing an environment in which the clinical nursing staff can care for mentally ill patients. Mercer Medical Center objected to the requirement of a specific number of years of experience.

RESPONSE: The Department does not agree with the suggestion that clinical experience not be required or that there should not be a specific number of years of experience required. However, the rule is amended to remove the requirement for a baccalaureate degree and to reduce the experience requirement to three years in order to be consistent with other subchapters.

COMMENT: The New Jersey Psychological Association wrote to request that psychologists be added to the list of professionals eligible to work in hospitals with psychiatric patients.

RESPONSE: Nothing in the rules precludes psychologists from providing services; in fact, psychological services are required at N.J.A.C. 8:43G-26.7(c)4.

N.J.A.C. 8:43G-26.5 Psychiatry staff time and availability; mandatory

N.J.A.C. 8:43G-26.5(b)

COMMENT: The Public Advocate wrote that the rule fails to require any minimum staff-patient ratio, and that such a ratio should be required because as proposed a fully occupied 30-bed unit could have the same nurse staffing as a small partially occupied 10-bed unit. South Jersey Hospital System commented that the standard should read "shall be assigned to the unit at all times" since a nurse might be at lunch or inservice training but readily available in the hospital.

RESPONSE: The Department declines the suggestion for a ratio or to alter the language to "shall be assigned." Instead, the following clarification is made: "Nurse staffing shall be based on hospital acuity levels, but in no case shall fewer than two nursing staff members, at least one of whom is a registered professional nurse, be on the unit."

N.J.A.C. 8:43G-26.7 Psychiatry patient services; mandatory

N.J.A.C. 8:43G-26.7(a)

COMMENT: The Public Advocate comments that the standard fails to require that the services be provided "promptly," and that this is a vital consideration in case of physical illness, injury, or drug side-effects.

RESPONSE: The Department agrees with the intent of the comment, and alters the rule to read: "Psychiatric patients shall receive, when needed, all medical, surgical, diagnostic, and treatment services as ordered by a physician. If such services . . ."

N.J.A.C. 8:43G-26.7(b)

COMMENT: The Public Advocate has commented that the rule fails to require differential diagnosis and history of physical ailments and side-effects of medications; that this failure has led to the death of psychiatric patients. The history and physical examination should include:

Taking medical history from the detainee, family, and others;
Identification of past adverse and positive reactions to psychotropic medications;
Consideration of physical pathology as cause of detainee's behavior; and
Documentation of results of above items.

RESPONSE: The Department acknowledges the Advocate's concerns, and refers the commenter to N.J.A.C. 8:43G-26.2(a)7 for policies and procedures about family involvement in assessment and treatment, and to N.J.A.C. 8:43G-26.7(f) for documentation and medical history, which is amended to include previous reactions to psychotropic medications.

N.J.A.C. 8:43G-26.7(c)

COMMENT: South Jersey Hospital System commented that it is unclear whether "available" means through consultation via fee for service, or if it implies a constant part of treatment modalities, especially for family therapy and psychological services.

RESPONSE: The rule does not mandate that the service shall be provided by staff on an ongoing basis. Consultative relationships are permitted by the rule.

N.J.A.C. 8:43G-26.11 Psychiatry supplies and equipment; mandatory

N.J.A.C. 8:43G-26.11(a) and (b)

COMMENT: A commenter recommended adding "on the unit" after "available" in subsections (a) and (b).

RESPONSE: The Department agrees that this wording will clarify the intent of the standards, and has added same.

N.J.A.C. 8:43G-26.14 Psychiatry quality assurance methods;
mandatory

N.J.A.C. 8:43G-26.14(b)

COMMENT: The Public Advocate has requested the addition of patient abuse and neglect to the list of incidents requiring quality assurance review and monitoring.

RESPONSE: The Department agrees to include these indicators.

N.J.A.C. 8:43G-29 Physical and Occupational Therapy

The Department received 12 letters commenting on the proposed standards for physical and occupational therapy. Ten letters were submitted by hospitals, one by the New Jersey Hospital Association, and one by the American Academy of Pediatrics, New Jersey Chapter.

COMMENT: A letter from the American Academy of Pediatrics, New Jersey Chapter, indicated that the subchapter does not mention the special needs of pediatric patients.

RESPONSE: The commenter is referred to N.J.A.C. 8:43G-5.5(a), Administrative and hospital-wide patient services; mandatory, which addresses the special needs of pediatric patients throughout the hospital.

N.J.A.C. 8:43G-29.1 Physical therapy policies and procedures;
mandatory

N.J.A.C. 8:43G-29.1(a)

COMMENT: Meadowlands Hospital requested that the phrase "revised as needed and implemented" be deleted from the standard.

RESPONSE: The rule is not changed; the wording is consistent with that used for policies and procedures requirements in all other subchapters of the hospital licensure standards.

N.J.A.C. 8:43G-29.1(b)

COMMENT: Jersey Shore Medical Center wrote that the "second sentence should be changed to 'The assessment shall include a review of the medical history,' since the medical record is not always available for outpatients."

RESPONSE: The Department agrees with the comment and the rule is changed to read as follows: "The assessment shall include review of the medical record or medical history."

N.J.A.C. 8:43G-29.1(c)

COMMENT: Two hospitals pointed out that the rule conflicts with the summary, which states that physical therapy shall be initiated within 24 hours of referral. Two hospitals felt that the rule was "prescriptive," and not always possible because of current shortage of physical therapists in the State.

RESPONSE: The summary reflects an earlier draft; however, the rule is correct. There was consensus among the professionals and administrators who comprised the reaction group that 48 hours represents a reasonable timeframe for the initiation of physical therapy following referral, and that this timeframe is necessary to ensure the quality of care for patients. Therefore, the rule is retained as proposed.

N.J.A.C. 8:43G-29.1(d)

COMMENT: Jersey Shore Medical Center requested that the word "criteria" be changed to "guidelines," since it would be impossible to establish criteria for each of the wide diversity of patients and possible treatments.

RESPONSE: The rule states that criteria must be developed for patient assessment and treatment; development of criteria for individual patients is not specified. Therefore, the wording of the rule is not changed as requested. However, in response to other comments received (refer to comments for N.J.A.C. 8:43G-29.12 below), the rule has been expanded to include criteria which the Department believes are essential for ensuring quality care which were originally proposed as quality assurance indicators.

N.J.A.C. 8:43G-29.1(e)

COMMENT: Underwood-Memorial Hospital questioned, "how we will determine and document why goals are not met in the medical record." The anticipated discharge may not be written into the medical record by the physician, or the chart may be sent to the medical records department prior to discharge so that the final entry cannot be documented.

RESPONSE: The rule clearly states requirements for documentation, in the medical record, of measurable goals with specified timeframes, as well as documentation of reasons in the event that goals are not met. The rule remains as proposed.

N.J.A.C. 8:43G-29.3 Physical therapy staff qualifications; mandatory

COMMENT: Meadowlands Hospital Medical Center stated that the hospital should determine staffing needs and credentials.

RESPONSE: The commenter is referred to introductory statements regarding staffing and credentials. No change is made to the standard.

N.J.A.C. 8:43G-29.3(b)

COMMENT: Memorial Health Alliance commented that the standard is inconsistent with others in that it does not designate the specialty nor board status of a "physician director."

RESPONSE: There is no requirement in the rule for a "physician director." The intent of the rule is to indicate that a medical staff committee or a physician must be responsible for clinical services. The rule is reworded, therefore, to clarify this intent, and now reads as follows: "A medical staff committee or a physician shall be responsible for clinical services in the physical therapy services."

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N.J.A.C. 8:43G-29.3(c)

COMMENT: Four hospitals wrote that the rule is "inconsistent with other staff qualification standards; other staff discipline are not required to conspicuously post their licenses." One hospital indicated that this may be a confidentiality issue, since full names and addresses appear on licenses.

RESPONSE: The rule is in accordance with New Jersey State Board of Physical Therapy requirements, as stated at N.J.A.C. 13:39A-3.1(a)9.

N.J.A.C. 8:43G-29.5 Physical therapy staff time and availability; mandatory

COMMENT: Memorial Health Alliance wrote that the standard would be costly and difficult to implement due to staffing shortages; staffing is a management prerogative.

RESPONSE: The rule, as written, is consistent with the New Jersey State Physical Therapist Licensing Act of 1983, specifically, at N.J.S.A. 45:9-37.20.

N.J.A.C. 8:43G-29.6 Physical therapy patient services; mandatory

N.J.A.C. 8:43G-29.6(e)

COMMENT: Underwood-Memorial Hospital questioned the rule, "since writing and instructing patients in individualized home exercise programs is expensive and time consuming and takes therapists away from their other patient related duties."

RESPONSE: The rule does not specify that therapists must write individualized home exercise programs; the hospital has the flexibility to develop written instructions in accordance with hospital and patient needs. For example, a check-off sheet might be developed which would require only the filling in of blanks which are appropriate for the particular patient.

N.J.A.C. 8:43G-29.8 Physical therapy space and environment; mandatory

N.J.A.C. 8:43G-29.8(a)

COMMENT: Overlook Hospital commented that the "standards represent *basic needs* for staff and patients; issues are too basic to be included in licensure standards." (same comment for (b) and (c).) Memorial Health Alliance requested that the rule be deleted, since "the assignment of space is a management prerogative that should not be legislated."

RESPONSE: The rule is retained as proposed. The intent of the rule is to ensure that there is sufficient space available for professional activities of the physical therapy staff.

N.J.A.C. 8:43G-29.8(b)

COMMENT: Overlook Hospital's comment was the same as that for N.J.A.C. 8:43G-29.8(a) above.

RESPONSE: See response for N.J.A.C. 8:43G-29.8(a).

N.J.A.C. 8:43G-29.8(c)

COMMENT: Overlook Hospital's comment was the same as that for N.J.A.C. 8:43G-29(a) above. South Jersey Hospital System questioned the need for lavatories that are exclusively for patient use.

RESPONSE: The Department concurs with the South Jersey Hospital comment and the phrase "and exclusively for patient use" has been deleted from the rule. See response to N.J.A.C. 8:43G-29.8(a) above for Overlook Hospital's comment.

N.J.A.C. 8:43G-29.9 Physical therapy supplies and equipment; mandatory

N.J.A.C. 8:43G-29.9(b)

COMMENT: The commenter from Underwood-Memorial Hospital indicated that equipment (that is, wheelchairs) may have to be stored in department hallways during non-patient hours, or significant expenses will result from construction of further storage areas.

RESPONSE: The rule is in accordance with requirements of the Life Safety Code, specifically 13.2.3., Life Safety Code Handbook, 1985, regarding obstruction of corridors and including the requirement that corridors shall be no less than 48 inches in width. No change is made in the rule.

N.J.A.C. 8:43G-29.10 Physical therapy staff education; mandatory

COMMENT: Underwood-Memorial Hospital commented that "physical therapists should maintain, at a minimum, a bachelor of science degree from an accredited college or university to practice physical ther-

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apy, and should be licensed by the state of New Jersey; physical therapy assistants should have an associate degree and should also be licensed."

RESPONSE: These are staff qualifications, which are addressed at N.J.A.C. 8:43G-29.3.

N.J.A.C. 8:43G-29.12 Physical therapy quality assurance methods; mandatory

N.J.A.C. 8:43G-29.12(a)

COMMENT: Five hospitals wrote to request that the rule be shortened by the deletion of the five quality assurance indicators delineated, stating that the indicators were too specific, and overburdensome.

RESPONSE: The Department has further reviewed the rule and has determined that the five items in question do not constitute quality assurance indicators. The Department feels, however, that these items are essential criteria for the assurance of quality patient care. The provision, therefore, has been recodified, and the essential items have been moved to N.J.A.C. 8:43G-29.1(d), which states requirements for the physical therapy service to develop specific criteria for patient assessment and patient treatment.

N.J.A.C. 8:43G-29.12 Occupational therapy policies and procedures; mandatory

COMMENT: Three hospitals pointed out that the section is mis-numbered.

RESPONSE: The Department acknowledges these comments. The rules are now correctly modified, as N.J.A.C. 8:43G-29.13 through N.J.A.C. 8:43G-29.23. (Please note: from this point on, all comments and responses are directed toward the recodified standards.)

N.J.A.C. 8:43G-29.13(a)

COMMENT: Underwood Hospital commented that "describing why goals were not met will be very difficult for inpatients" (same reasons given as those in physical therapy comments above). Memorial Health Alliance wrote that "OT policies and procedures (are) a management decision that should not be mandated by legislation; it would be costly to implement." Meadowlands Hospital Medical Center requested that the Department delete "revised as needed and implemented."

RESPONSE: The rule is not changed; the wording is consistent with that used for policies and procedures requirements in all other subchapters of the hospital licensure standards.

N.J.A.C. 8:43G-29.13(b)

COMMENT: A comment from South Jersey Hospital System indicated that "a physician's order is not needed for occupational therapy for Mental Health Unit patients . . . it is expected that a physician's order is not required in a psychiatry unit where occupational therapy is an integral part of therapy."

RESPONSE: The Department agrees that if occupational therapy service is part of routine inpatient psychiatric treatment, then a physician's order is not required.

No changes are made in the rule as proposed, however, since a physician's order is required for occupational therapy services which are provided in other units of the hospital.

N.J.A.C. 8:43G-29.13(d)

COMMENT: Jersey Shore Medical Center recommended that the word "criteria" should be changed to "guidelines," since it would be impossible to establish criteria for the wide diversity of patients and possible treatments.

RESPONSE: See response to N.J.A.C. 8:43G-29.1(d) above.

N.J.A.C. 8:43G-29.15 Occupational therapy staff qualifications; mandatory

N.J.A.C. 8:43G-29.15(a)

COMMENT: Meadowlands Hospital Medical Center wrote that hospitals are most capable of determining staffing needs and credentials.

RESPONSE: As it is not necessary for occupational therapists to be licensed in New Jersey, the Department believes that all occupational therapists should be registered and all certified occupational therapy assistants should be certified by the American Occupational Therapy Association, as specified at N.J.A.C. 8:43G-29.15(c). This requirement will promote a standard level of proficiency and serve to protect the health and safety of patients.

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N.J.A.C. 8:43G-29.15(b)

COMMENT: Memorial Health Alliance stated that the standard is inconsistent with others in that it does not designate the specialty nor board status of a "physician director."

RESPONSE: There is no requirement for a "physician director;" the intent of the rule is to indicate that a medical staff committee or a physician must be responsible for clinical services; the rule is reworded to clarify the intent.

N.J.A.C. 8:43G-29.15(c)

COMMENT: Two hospitals questioned the requirement for conspicuous posting of licenses or certificates, since this is not required of all other professionals.

RESPONSE: The Department concurs and the requirement is deleted.

N.J.A.C. 8:43G-29.17 Occupational therapy patient services; mandatory

N.J.A.C. 8:43G-29.17(c)

COMMENT: Underwood-Memorial Hospital commented that it would require massive construction changes at significant costs to provide auditory privacy for patients. Meadowlands Hospital Medical Center wrote that auditory privacy is not always needed or cost effective.

RESPONSE: The Department does not agree that additional costs should result from implementation of the rule; existing facilities may be used to provide patient privacy. For example, the room used for patient interviews might be used at other times for patient evaluation or treatment.

N.J.A.C. 8:43G-29.17(d)

COMMENT: Underwood-Memorial Hospital stated that writing precise, detailed exercise programs for each inpatient is time consuming and would require additional staffing.

RESPONSE: A precise, detailed exercise program is not needed for each inpatient. The rule states that a home program shall be provided "if clinically indicated" (see response to N.J.A.C. 8:43G-29.6(e)).

N.J.A.C. 8:43G-29.19 Occupational therapy space and environment; mandatory

N.J.A.C. 8:43G-29.19(a), (b), and (c)

COMMENT: Overlook Hospital commented that these issues are too basic to be included in licensing standards. Memorial Health Alliance requested deletion of the rule, since "the assignment of space is a management prerogative and should not be legislated."

RESPONSE: N.J.A.C. 8:43G-29.19(c) is shortened by the deletion of the phrase "exclusively for patient use." Other requirements, in (a) and (b), remain as proposed.

N.J.A.C. 8:43G-29.23 Occupational therapy quality assurance methods; mandatory

N.J.A.C. 8:43G-29.23(a)

COMMENT: Seven hospitals wrote to request that the rule be shortened by the deletion of the five quality assurance indicators delineated, stating that the indicators were too specific, and overburdensome.

RESPONSE: The Department has further reviewed the rule and has determined that the five items in question do not constitute quality assurance indicators. The Department feels, however, that each of these items is essential for the assurance of quality patient care. The provision, therefore, has been recodified, and the essential items have been moved to N.J.A.C. 8:43G-29.13(d), which states requirements for the occupational therapy service to develop specific criteria for patient assessment and patient treatment.

N.J.A.C. 8:43G-29.23(b)

COMMENT: Jersey Shore Medical Center suggested that the standard should be applicable to physical therapy also. Overlook Hospital wrote that "This basic personnel issue relates to all hospital staff and should be addressed in the hospital-wide subchapter."

RESPONSE: The Department has determined that this is not a quality assurance issue and is addressed in N.J.A.C. 8:43G-5, Administrative and Hospital-Wide. Therefore, the rule is deleted from this subchapter.

In addition to the changes which are made as a result of the comments received, editorial changes, which do not alter the intent of the rules, are made by the Department at N.J.A.C. 8:43G-29.6(b) and N.J.A.C.

8:43G-29.17(b). The word "open," in each of these rules, is changed to the words "offer services," in order to clarify the meaning.

N.J.A.C. 8:43G-30 Renal Dialysis

The Department received 9 letters of comment in response to the proposed renal dialysis standards. Seven letters were submitted by hospitals, one from the New Jersey Hospital Association and one from the Department of Health Advisory Committee to the Chronic Renal Disease Program.

N.J.A.C. 8:43G-30.1 Scope of renal dialysis standards

COMMENT: Dr. Richard Flyer, chairman of the Task Force on Emergency Medical Services—Children, NJC-AAP, commented that this section does not mention the special needs of pediatric patients.

RESPONSE: The Department agrees with the essence of the comment and refers the commenter to N.J.A.C. 8:43G-5.5(a), Administrative and hospital-wide services, where the comment is addressed.

N.J.A.C. 8:43G-30.2 Renal dialysis policies and procedures; mandatory

N.J.A.C. 8:43G-30.2(a)

COMMENT: Meadowlands wrote that "revised as needed and implemented" should be deleted.

RESPONSE: This wording is generic for all policies and procedures subsections throughout the hospital licensing regulations. Consequently, the Department is retaining the rule without change.

N.J.A.C. 8:43G-30.3 Renal dialysis staff qualifications; mandatory

N.J.A.C. 8:43G-30.3(a)

COMMENT: Several commenters (St. Michael's, Memorial Health Alliance, Meadowlands, NJHA, South Jersey Hospital System) wrote that credentials for hospital staff should be based on determinations made by the individual institutions.

RESPONSE: The Department believes that quality patient care can be positively impacted by the knowledge and expertise of professionals who are directing the delivery of that care. The rule remains as proposed.

COMMENT: Memorial Health Alliance wrote that this standard may limit the ability to provide a nurse manager who is well skilled in management technique and is capable of providing an environment in which the clinical staff can care for dialysis patients.

RESPONSE: The Department believes the standard allows the hospital the flexibility to select a health care professional qualified to supervise the renal dialysis service by allowing the individual to meet either the academic or experience requirement. There was strong support from clinicians and hospital management personnel directly involved in this area, that the individual responsible for supervision of the renal dialysis service meet one of the aforementioned requirements to help ensure the delivery of quality care to patients undergoing acute or chronic dialysis treatments. The rule remains as proposed.

N.J.A.C. 8:43G-30.3(b)

COMMENT: The Advisory Committee to the Chronic Renal Dialysis Program recommended that the standard be rewritten to "grandfather" in those physician directors who meet the intent of the law, if not the letter of the law. Their concern is that there are those directors, "few in number", who are not board certified, but who have developed their skill and expertise through the experience route and will be then forced to resign. Suggested rewording: Any physician newly hired to serve as director of the renal dialysis unit after January 1, 1991, shall be board certified in nephrology.

RESPONSE: The Department appreciates the comment from the Renal Task Force and has reviewed its position on the issue. The Department is cognizant of the fact that there may be physicians currently serving in the position of director of the renal dialysis unit who would not meet the requirements of the new rule. Consequently, the rule is amended as follows: "Any physician currently holding the position of director of a renal dialysis unit shall have completed a residency in nephrology and shall be able to demonstrate skills and experience at least equivalent to certification by the American Board of Internal Medicine, subspecialty of Nephrology. Any newly appointed physician director shall be board certified in Nephrology, or shall meet the training and experience requirements for examination by the Board and shall be examined within two years of eligibility."

N.J.A.C. 8:43G-30.3(c)

COMMENT: The New Jersey Hospital Association commented that it is a hospital prerogative to determine staff qualifications.

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RESPONSE: The effective dietary management of acute and chronic renal dialysis patients is a critical component in their health care management and impacts long term goals of returning them to the status of productivity within society. The Department acknowledges the comment but believes that the ability to meet minimum credentialing requirements is generally indicative of the ability to provide safe and effective health care and feels no change in the proposed rule is warranted.

N.J.A.C. 8:43G-30.3(d)

COMMENT: The New Jersey Hospital Association wrote that it is a hospital prerogative to determine staff qualifications.

RESPONSE: The Department acknowledges the comment but believes that professional credentials bear a strong positive relationship to quality patient care and retains the standard as proposed.

N.J.A.C. 8:43G-30.5 Renal dialysis staff time and availability; mandatory

N.J.A.C. 8:43G-30.5(a)

COMMENT: Meadowlands commented that staffing needs and assignments should be determined by the individual hospital.

COMMENT: Memorial Health Alliance wrote that this standard is costly and difficult to implement.

RESPONSE: The Department believes that requiring one registered professional nurse on duty at all times in the unit when care is being provided is a minimal standard essential for the protection of the health and safety of patients undergoing dialysis treatment. This position is consistent with the intent of N.J.A.C. 8:43G-17.1(d) and crystallizes industry-wide concerns that at least one registered professional nurse is present on a patient care unit. No change in the rule is needed.

N.J.A.C. 8:43G-30.5(b)

COMMENT: Memorial Health Alliance commented that this standard is costly and difficult to implement. St. Michael's Medical Center wrote that financial constraints and the limited availability of health care personnel prohibits attainment of this ratio.

COMMENT: Cooper Hospital/Medical Center commented that this standard should refer to chronic dialysis. "We would recommend that there be one RN for two acute dialysis patients."

RESPONSE: The Department acknowledges the comments but affirms the position of clinical and administrative experts in the field who participated in the reaction group process and believe the aforementioned standard offers the minimal staffing requirements essential to the provision of safe and effective renal dialysis services for acute or chronic patients.

The Department appreciates the recommendation from Cooper and agrees that acuity levels of illness impact staffing determinations. The Department references N.J.A.C. 8:43G-17.1(a) which requires that nurse staffing assignments be based on patient acuity levels and believes that rule affords the hospital the flexibility to increase the staffing levels based on hospital management determinations of acuity levels. The rule remains as proposed.

N.J.A.C. 8:43G-30.5(c), (d), (e), (f), (g), (h)

COMMENT: Memorial Health Alliance commented that these standards are costly and difficult to implement.

RESPONSE: The Department acknowledges the financial and practical concerns that may be associated with achieving compliance with the above mentioned standards. However, these provisions are based on recommendations which are strongly supported by clinical and administrative experts in the field who believe the provisions are essential to the delivery of quality patient care. The Department supports these standards and believes no change is needed.

N.J.A.C. 8:43G-30.6 Renal dialysis patient services; mandatory

N.J.A.C. 8:43G-30.6(a)

COMMENT: One commenter wrote that the standard should be revised to read simply "a written plan of care shall be developed by a multidisciplinary team."

RESPONSE: The Department appreciates the comment but believes the suggested wording change would weaken the intent of the standard which was developed to assure the delivery of high quality patient care. The standard will be retained as proposed.

N.J.A.C. 8:43G-30.6(b)

COMMENT: Meadowlands Hospital asked where the four week time frame was drawn from?

RESPONSE: The recommended four week time frame for implementation of the plan of care was based on determinations made by clinical and administrative renal dialysis experts who participated in the Licensure Reform Project. These individuals represent renal dialysis services in hospitals throughout New Jersey and believe the four week time frame offers the various disciplines a workable period in which to assess the needs of the dialysis patient, incorporate the individual recommendations and implement the directives of the plan.

COMMENT: Cooper Hospital/Medical Center commented that this appears to refer to chronic dialysis. For acute dialysis, a written plan for care should be initiated within 24 hours of initiation of acute dialysis and revised and updated weekly.

RESPONSE: The Department concurs with the comment and in the interest of clarity has revised the standard to read as follows: "The written plan of care for the chronic renal dialysis patient shall be reviewed with the patient and/or family, implemented within four weeks of admission to the program, reviewed at least every six months, and revised if change has occurred. The written plan of care for the acute dialysis patient shall be implemented within 24 hours of initiation of acute dialysis and revised and updated weekly".

N.J.A.C. 8:43G-30.6(c)

COMMENT: Cooper Hospital/Medical Center wrote that in the case of acute dialysis, the multidisciplinary team should note weekly to reflect the patient's response to the plan of care and recommend changes.

RESPONSE: The Department agrees and has revised the wording to more accurately reflect the intent of the standard. The standard will read as follows: "Notes shall be entered for the chronic dialysis patient by each member of the multidisciplinary team that reflects the patient's response to the plan of care at least two times a year".

N.J.A.C. 8:43G-30.6(d)

COMMENT: Meadowlands Hospital Medical Center wrote that this standard should be deleted since the composition of the multidisciplinary committee is the prerogative of the hospital and the remittance of such a committee is already referenced in subsections (a), (b), and (c).

RESPONSE: The Department believes the nature and complexity of the physical illness of many dialysis patients and their concurrent social problems, warrants the inclusion of this standard but is revising the wording to allow the hospital management team additional flexibility. The revised rule will read as follows: "There shall be a multidisciplinary committee that includes at least representatives from nursing, the medical staff, dietary services, and social work services that schedules meetings periodically to discuss multidisciplinary communication, management and issues about the care of patients treated in the dialysis unit".

N.J.A.C. 8:43G-30.6(e)

COMMENT: The Advisory Committee to the Chronic Renal Dialysis Program wrote that the New Jersey Renal Network Council's name has been recently changed to Trans-Atlantic Renal Council and suggests that the standard be changed to reflect the new name.

RESPONSE: The Department appreciates the comment and has made the change accordingly. The revised standard now reads: "The renal dialysis service shall adhere to the principles set out in the Trans-Atlantic Renal Council's Bill of Rights for renal patients."

N.J.A.C. 8:43G-30.6(f)

COMMENT: The Advisory Committee to the Chronic Renal Dialysis program wrote that the New Jersey Renal Network Council's name has been recently changed to Trans-Atlantic Renal Council and suggests that the standard be changed to reflect the new name.

RESPONSE: The Department appreciates the comment but is acting to delete this proposed rule given the adoption of the Hospital Patient Bill of Rights on August 14, 1989 by Governor Kean. The statute became effective on November 12, 1989. The new statute requires that each current patient and each new admission to a hospital, receive a copy of their rights as enumerated in the statute. In order to avoid any inconsistencies between the above mentioned statute and the patient's rights and responsibilities as developed by the Trans-Atlantic Renal Council, the Department is removing N.J.A.C. 8:43G-30.6(f) from consideration for adoption.

N.J.A.C. 8:43G-30.6(g)

COMMENT: St. Joseph's Hospital and Medical Center commented as to why it was necessary to explain the hospital's policy on dialyzer reuse, anymore than it would be to explain to a patient why it uses one product over another elsewhere in the hospital.

RESPONSE: While the practice of reusing disposable hemodialyzers on the same patient has become common practice in the United States, it remains industry-wide custom to inform the patient of benefits and risks of dialyzer reuse and to obtain the patient's informed consent to this form of dialysis treatment. The Department believes that there is a higher degree of risk to the patient electing to be part of a dialyzer reuse program than when the hospital chooses one brand or another for the patient elsewhere in the hospital. No change is required to the standard.

N.J.A.C. 8:43G-30.6(l)

COMMENT: Meadowlands Hospital and Medical Center commented that hospitals are most capable of determining staffing needs and credentials.

RESPONSE: The Department supports the generally held belief that there is a positive correlation between the delivery of quality medical services and the possession of academic and experience credentials by the provider. To help assure the delivery of safe and effective medical care to health care consumers, the rule remains as proposed.

N.J.A.C. 8:43G-30.9 Renal dialysis staff education and training; mandatory

COMMENT: Meadowlands and Memorial commented by reference to N.J.A.C. 8:43G-5.9.

RESPONSE: The commenters are referred to the Department's responses at N.J.A.C. 8:43G-5.7 and 5.9.

N.J.A.C. 8:43G-30.11 Renal dialysis quality assurance methods; mandatory

COMMENT: The Advisory Committee to the Chronic Renal Dialysis Program wrote that the New Jersey Renal Network Council's name has been recently changed to Trans-Atlantic Renal Council and that the standard be changed to reflect the new name.

RESPONSE: The Department appreciates the comment and has made the change accordingly. The revised standard now reads: "There shall be a program of quality assurance for the renal dialysis service that is integrated into the hospital quality assurance program and that includes regularly collecting and analyzing data to help identify health service problems and their extent, and recommending, implementing and monitoring corrective actions on the basis of these data. The program monitors those indicators required by the Trans-Atlantic Renal Council."

COMMENT: Meadowlands Hospital Medical Center commented that the wording "and include regularly . . . Network," should be deleted.

RESPONSE: The Department believes the proposed wording more accurately reflects the intent of the standard and supports the Department's attempt to ensure a credible quality assurance program for the renal dialysis service. The standard will be revised to reflect the organizational name change noted above but otherwise will remain as proposed.

N.J.A.C. 8:43G-31 Respiratory Care

The Department received 19 letters commenting on the proposed regulations for respiratory services. Seventeen letters were submitted by hospitals, one by the New Jersey Hospital Association and one by the Board of Medical Examiners.

COMMENT: The Board of Medical Examiners, commenting on subchapter 31, wrote that after reviewing that particular subchapter of proposed rules, voted to endorse the proposal as published. The Department appreciates the support of the Board of Medical Examiners for the proposed respiratory rules.

COMMENT: One commenter wrote that additional staffing and capital equipment would be required to meet the proposed standards. All additional costs should be considered appeal items by the Department of Health.

RESPONSE: The commenter is referred to the proposal's introductory statement on staffing determinations and cost implications associated with implementation of the standards.

N.J.A.C. 8:43G-31.1 Respiratory care structural organization; mandatory

COMMENT: One commenter wrote that this subchapter does not mention the special needs of pediatric patients.

RESPONSE: The Department agrees with the essence of the comment and refers the commenter to N.J.A.C. 8:43G-5.5 (a), Administrative and hospital-wide services, patient services; mandatory, where the comment is addressed.

N.J.A.C. 8:43G-31.2 Respiratory care policies and procedures; mandatory

N.J.A.C. 8:43G-31.2(a)

COMMENT: Meadowlands Hospital Medical Center commented that "revised as necessary and implemented" should be deleted.

RESPONSE: This wording is generic for all policies and procedures subchapters throughout the hospital licensing rules. Consequently, the Department is retaining the rule without change.

N.J.A.C. 8:43G-31.2(a)1

COMMENT: Cooper Hospital/University Medical Center commented that these standards do not address the time frame for the duration of respiratory care orders.

RESPONSE: The Department has elected not to mandate the time-frame for the duration of respiratory care orders at this point. The Department believes that the proposed rule allows the hospital management team the latitude to include timeframes for the duration of respiratory care orders in the policy and procedure addressing this issue that the service is required to have. The rule remains unchanged.

N.J.A.C. 8:43G-31.2(a)2 and 3

COMMENT: One commenter wrote that this standard fails to acknowledge the level of education, experience and professional credentials necessary to initiate respiratory care modalities and allow the application of respiratory care modalities in specific care unit.

RESPONSE: The Department believes the standard allows the respiratory care service the flexibility to include professional credentials, level of education and experience requirements when determining ability of individual practitioners to initiate respiratory care modalities within the scope of practice of the particular level of practitioner. This also includes in which special care units they may work. No change in the proposed rule is required.

N.J.A.C. 8:43G-31.2(a)4

COMMENT: A method of subsidizing hospitals for the financial impact of implementing infection control policies and procedures on all respiratory care equipment and employees is not described within this proposed standard. This issue must be addressed prospectively.

RESPONSE: The commenter is referred to the introductory summary statement which addresses the cost implications of the proposed hospital rules. In addition, the Department believes the concerns enumerated in the proposed standard are basic to the functioning of a respiratory care service providing safe and effective patient care. While many hospitals are currently in compliance with the above mentioned issues, the Department feels it is necessary to require a respiratory care service to have a policy which addresses these issues. The Department believes the economic impact is minimal and will retain the rule as proposed.

N.J.A.C. 8:43G-31.2(a)5

COMMENT: St. Elizabeth commented that this is very ambiguous as stated and should be redefined.

RESPONSE: The Department agrees and has revised the standard to promote clarity and to protect the flexibility of the hospital management team decision making process. The revised standard will read as follows: "Protocols that encourage multidisciplinary input into the patient's written plan of care".

COMMENT: Overlook Hospital commented that this standard should be deleted since respiratory therapists follow physician's orders for treatment rather than participate in treatment plan development.

RESPONSE: The Department does not believe it is inappropriate for the respiratory therapist to participate in treatment plan development. The respiratory therapist provides the physician with information gleaned through first hand observation of the patient undergoing respiratory procedures. The physician is often not present during implementation of treatments and gains needed insight from the respiratory therapist's observations. The standard does not imply that respiratory therapists should not follow physician's orders or are able to initiate orders of their own. The standard remains as proposed.

N.J.A.C. 8:43G-31.2(b)

COMMENT: The Memorial Hospital of Salem County wrote that this standard should not be mandatory, but advisory and left up to each institution on how they wish to comply. "This standard may work well for larger institutions where staff is permanently assigned to special units but in smaller hospitals where therapists have to cover various areas this standard would definitely present problems."

RESPONSE: The Department believes this standard should remain as proposed. The standard is important to the expeditious implementation of various respiratory modalities for the patient requiring respiratory care. This is applicable whether that patient be in a small, or large hospital. In addition, the validity of the standard, its replicability characteristic, should be present regardless of the size of the hospital.

COMMENT: Cooper Hospital/Medical Center commented that the standard fails to acknowledge job categories other than RRT/CRTT. The implication of such a standard places all other members of respiratory care practitioners as aides. "There exists an important subset of respiratory care providers such as CRTT eligible, RRT eligible and graduate respiratory therapist/technician which have been excluded from the performance of their responsibilities. The medical and financial impact of such standards could be deleterious to the delivery and cost of respiratory care services."

Cooper also wrote that quality of care may be decreased due to the loss of highly experienced and competent care givers by the enactment of these standards. Additionally, "the state of New Jersey has failed to adopt and enact a state licensure act for respiratory care practitioners. It appears unfair and illogical to use these standards to mandate professional credentials and the associated level of responsibilities for each strata, when entry level criteria for respiratory care has not been acknowledged by the state".

RESPONSE: Firstly, the Department does not believe that adoption of this standard relegates all other classifications of not included respiratory care practitioners to the status of aides. The Department recognizes the existence of these various other categories of respiratory care personnel but strongly believes that only the registered respiratory therapist and the certified respiratory therapy technician should be allowed to accept verbal or telephone orders from the physician and initiate treatment based on those orders.

Secondly, the Department is not attempting to use these standards to mandate professional credentials for associated levels of responsibilities when entry level criteria for respiratory care has not been acknowledged by the State. The Department is aware that New Jersey currently does not license respiratory care practitioners and that any credentialled status for them is a voluntary process achieved through the National Board for Respiratory Care.

The Department does not agree with the commenter's third concern that enactment of these standards will cause a decrease in the quality of care due to a loss of highly experienced and competent care givers. There is no evidence presented to support this contention and the Department feels to the contrary, that enactment of these standards will help to ensure the delivery of quality respiratory care practices by competent practitioners. The rule remains as proposed.

COMMENT: Memorial Health Alliance commented that N.J.A.C. 8:43G-31.2(a) and (b) are unclear. They believe it is appropriate for respiratory therapists and technicians to take and/or record verbal orders and to carry out physician verbal or written patient care orders. However, they believe that a nurse cannot carry out those orders and they ask the Department to please clarify the intent of this standard. Somerset Medical Center also commented that the Nurse Practice Act prohibits nurses from taking orders from Respiratory Therapists.

RESPONSE: The Department agrees with the comments and recognizes that registered professional nurses are permitted to execute medical regimen as prescribed only by a licensed or legally authorized physician or dentist. However, the intent of the standard is not to have the registered professional nurse obligated to follow a verbal order accepted and recorded by the respiratory care practitioner. The intent is to allow respiratory care practitioners to accept physician's verbal and telephone orders for drugs and treatments directly related to the provision of respiratory care services. This rule helps ensure the prompt implementation of orders and the cessation of unneeded ventilator assisted therapies and is consistent with the position of the American Association for Respiratory Care.

COMMENT: St. Elizabeth commented that for subsections (b) and (c), the word "shall" should be eliminated and be replaced with "may". This would allow institutional prerogative.

RESPONSE: The Department acknowledges the comment but is unable to replace the word "shall" with "may". Requirements for language of a regulatory nature necessitates the word "shall" be used. The rule remains as proposed.

N.J.A.C. 8:43G-31.2(c)

COMMENT: Overlook commented that this standard does not resolve the conflict between nurses and respiratory therapists regarding the issue of verbal orders; therefore, the standard should be deleted.

COMMENT: Cooper Hospital wrote that the implication of this standard is that verbal or telephone orders can only be received and initiated by RRT/CRTT care givers, thus excluding all other members of the respiratory care delivery team. "This appears to mandate that all eligible candidates that currently are employed within the respiratory care department are not eligible to receive verbal and telephone orders. These standards are legislating a significant component of the respiratory care practitioner community to unemployment without adopting state licensure and an appropriate method of providing ample opportunity for individuals to receive such credentials". Cooper also asked if an RRT/CRTT can take non-respiratory orders in the absence of a responsible person of another discipline and must this order be countersigned by the ordering physician and the time frame for counter-signature.

RESPONSE: The intent of the standard is to provide for a protocol to assure the orderly and timely transmission of verbal or telephone physician's orders in an area where members of one discipline may be responsible for recording orders that may have to be implemented by members of another discipline.

In response to the comments from Cooper Hospital, the Department does not believe that the rule will affect employment opportunities for respiratory care practitioners, as the standard is intended to assure delivery of a minimal level of quality for respiratory care services. Graduate members in other disciplines often have restrictions on the scope of their practice until additional credentialing requirements are met.

Additionally, the standard does not imply that a RRT/CRTT can take non-respiratory orders in the absence of a member of another discipline. The standard clearly states the respiratory care practitioner may record verbal or telephone orders within the scope of practice of the respiratory practitioner. The Department believes that the rule is necessary to protect the health and safety of patients in New Jersey hospitals and thus retains the standard as proposed.

N.J.A.C. 8:43G-31.3 Respiratory care staff qualifications; mandatory

N.J.A.C. 8:43G-31.3(a)

COMMENT: Two commenters presented generic objections to the Department mandating staffing credentials and limiting management prerogative.

RESPONSE: The Department acknowledges the comments but believes that all respiratory care rendered in the hospital should be directed by a physician director. This position is consistent with recommendations of experts in the field and appears to be the established and accepted norm in practice today. The proposed rule remains unchanged.

COMMENT: Cooper Hospital/Medical Center commented that it is unclear whether the medical and administrative directors are equal/unequal in the organizational chart of the department.

RESPONSE: The Department has proposed two independent standards addressing this issue. N.J.A.C. 8:43G-31.3(a) requires a physician director to be designated who shall be responsible for all respiratory care rendered in the hospital. N.J.A.C. 8:43G-31.3(c) requires an administrative director of respiratory care. According to information obtained from experts in the field of respiratory care, generally, these are two discrete individuals, unequal in the organizational chart of the department. However, the standard does not preclude them either from having equal authority or from being the same individual where the credentials for the two positions are concurrently met.

N.J.A.C. 8:43G-31.3(b)

COMMENT: South Jersey Shore commented that though ideal, a physician who is board certified in pulmonary medicine may not be available. Therefore the language of this standard should be replaced with a "special interest and competency in pulmonary medicine". Overlook commented the standard is too prescriptive and feels board certified in internal medicine is adequate.

COMMENT: The New Jersey Hospital Association commented that credential requirements for hospital staff inappropriately restricts selection of staff and that state regulations should not codify professional credentials that are not established in the legislation licensing professionals.

RESPONSE: The commenters are referred to the Department's introductory summary statement regarding professional credentials. The Department supports the industry-wide belief that the possession of pro-

fessional credentials by the director of the service positively correlates to the delivery of quality patient care. Specifically, for respiratory care services, the Department believes the proposed standard is important to direct the complex respiratory care of a hospital population with progressively more vexing and demanding respiratory diseases. The standard remains as proposed.

COMMENT: Cooper asked if in the event a physician who is board certified or board eligible is not available as medical director for respiratory care, are there other physicians acceptable for this role.

RESPONSE: The need for the delivery of quality respiratory care required by an increasing population of critically and chronically ill patients necessitates the Department answering in the negative.

N.J.A.C. 8:43G-31.3(c)

COMMENT: Bayonne Hospital wrote that the title of the Board is in error and that the phrase should be the National Board for Respiratory Care.

RESPONSE: The Department appreciates the comment and has made the change accordingly.

N.J.A.C. 8:43G-31.3(d)

COMMENT: The New Jersey Society, Inc. of the American Association for Respiratory Therapy commented that certified respiratory care technician is the incorrect title; the correct title is certified respiratory therapy technician. Additionally, Bayonne Hospital commented that the initials (CRCT) should read (CRTT).

RESPONSE: The Department appreciates the comments and has made the appropriate changes.

COMMENT: Bayonne Hospital commented that the sentence that reads: "A registered respiratory therapist (RRT) is an individual who qualified and passed the National Board for Respiratory Care (NBRC) examination or equivalent" should include at the end, "and who is registered by the NBRC".

RESPONSE: The Department agrees with the comment and has made the change accordingly.

COMMENT: One commenter asked whether RRT/CRTT care givers are allowed to provide the same level of therapeutic diagnostic modalities.

RESPONSE: The proposed standard does not preclude the hospital from allowing the RRT and the CRTT to provide the same level of therapeutic diagnostic modalities.

N.J.A.C. 8:43G-31.5 Respiratory care staff time and availability; mandatory

N.J.A.C. 8:43G-31.5(a)

COMMENT: Memorial Health Alliance and Meadowlands Hospital Medical Center said this is a management prerogative and should not be mandated.

RESPONSE: The Department acknowledges the comment but believes that staffing indicators are needed criteria for assuring the delivery of necessary patient care services in critical care areas. The standard remains as proposed.

COMMENT: Somerset Medical Center commented that although this would be ideal, the shortage of Respiratory Care Practitioners makes it almost impossible to have a registered therapist or certified technician in the hospital at all times. On-the-job trained personnel are utilized at times in many hospitals.

COMMENT: Kimball Medical Center asked if critical care unit included progressive care or step-down units and to please define *primarily* assigned.

RESPONSE: Based on recommendations and information from experts in the field of critical care, it is essential that one respiratory care practitioner be assigned primarily to patients in the critical units. The Department affirms this position as being vital to assure the health and safety of patients in critical care units. Additionally, staffing assignments are determined by the acuity level of patient illnesses assessed each shift. Based on the acuity levels, the proposed standard does not preclude progressive care and step-down units from being counted as critical units. The intent of the standard in including the word "primarily" is to identify patients in need of intensive respiratory therapy in the critical care unit as the respiratory care practitioner's principal assignment for the shift but does not preclude the practitioner from providing services to patients outside the critical care unit.

COMMENT: Cooper wrote that the standard fails to state the means of determining the acuity level of a critical unit and fails to recognize logistical/environmental problems associated with placing a therapist

"primary" to critical units. "The proposed standard could severely impact both the quality and cost of health care by mandating ineffective medically inappropriate use of qualified personnel. The reality associated with this proposed standard may raise the cost of human resources significantly, and subsequently the total cost of health care."

RESPONSE: The Department believes the proposed standard is essential to the delivery of minimal levels of patient care and does not believe the standard mandates ineffective medically inappropriate use of qualified personnel. The standard does not state the means of determining the acuity level of a critical care unit but allows the hospital the flexibility to determine its own patient classification system to determine acuity level staffing. The proposed standard also allows the hospital to use the recommendations of the National Board for Respiratory Care and the American Association for Respiratory Care in determining acuity level staffing. The standard remains as proposed.

N.J.A.C. 8:43G-31.5(b)

COMMENT: Kimball commented that in smaller hospitals there may not always be certified techs in the house. South Jersey Shore wrote that requiring two registered respiratory therapists in the hospital at all times is unnecessary and not cost effective.

COMMENT: Cooper asked if all institutions regardless of services were only required to maintain one practitioner for "primarily" the critical care units and one for the remainder of the institution.

RESPONSE: The Department acknowledges the comments and has attempted to more accurately reflect the original intent of the standard while lessening the burden on smaller hospitals to comply with the standard. The revised wording is as follows: "There shall be at least one registered respiratory therapist or certified respiratory therapy technician in the hospital or on call, at all times, in addition to the one who is primarily assigned to patients in the critical care units."

N.J.A.C. 8:43G-31.7 Respiratory care patient services; mandatory

N.J.A.C. 8:43G-31.7(a)

COMMENT: The New Jersey Hospital Association commented that teaching patients self-administration of a short term intervention should be kept to the discretion of the multidisciplinary treatment team and not mandated by regulation. While patient teaching of self care is admirable, it is also labor/time intensive and not always cost effective nor positive in a cost/benefit analysis.

RESPONSE: The Department acknowledges that teaching patients to administer their own therapy when only a few days of therapy are needed on a temporary basis may not be cost effective. The Department nevertheless believes that for the majority of the time, the effects derived from a self-administration program for respiratory patients will prove to be beneficial to the patient and cost effective for the hospital. The standard therefore remains as proposed.

COMMENT: Cooper wrote that the proposed standard is unclear as to medical appropriateness of self-administered programs. They asked if these types of programs are developed on an individual basis and that the institutions that develop medically sound patient administered programs should be provided a financial incentive for the innovative use of resources. Additionally, Cooper asked what acceptable levels of monitoring of self-administered programs is required and who determines the medical guidelines for the development of these standards.

RESPONSE: The Department believes the standard provides for medical appropriateness of a self-administration program that is developed for respiratory patients in general but easily adaptable to meet an individual patient's needs.

It is not the Department's position to mandate acceptable levels of monitoring and to decide who determines the medical guidelines for the development of these standards but to allow the individual institution the flexibility to make such determinations within the scope of the standard. The standard remains as proposed.

N.J.A.C. 8:43G-31.7(b)

COMMENT: St. Elizabeth commented that it would be beyond the capacity of their therapists to comply with the standard, due to current staffing and manpower shortages. The rule would require 3,000 care plans annually for just those patients on mininebulizer therapy, although they agreed all ventilator and respiratory hygiene notes should be part of the medical record.

COMMENT: Cooper Hospital wrote that the proposed standard fails to describe a format for the reporting of "treatment plans". In addition, they commented that the time involved in the development of a com-

prehensive multi-disciplinary care plan program is extremely consuming and the overall efficiency of respiratory practitioners will diminish and thus require the institution to hire more staff.

RESPONSE: The Department believes the proposed standard provides a viable framework from which the respiratory care practitioner can assess respiratory therapies for individual patients. This process itself may prove to be cost effective to the institution if assessment results in a reduction in the number of unnecessary therapies. In addition, non-critical patients may be prevented from progressing to a critical status by effective assessment by the practitioner and implementation of written treatment plans and respiratory therapy goals. The standard remains as proposed.

N.J.A.C. 8:43G-31.9 Respiratory care space and environment; mandatory

N.J.A.C. 8:43G-31.9(a)

COMMENT: Cooper commented that the standard fails to adequately describe the amount and type of space necessary for the volume of care provided.

RESPONSE: The Department believes the standard allows the hospital management team the flexibility to determine the amount and type of space necessary to meet the needs of the individual institution. However, in order to clarify the standard, the Department is revising the wording as follows: "There shall be adequate space to store all equipment not in routine use. No respiratory care equipment shall be stored in hallways".

N.J.A.C. 8:43G-31.9(b)

COMMENT: Cooper wrote that no clear description of "members" is provided.

RESPONSE: The Department believes the rule allows the hospital the flexibility to determine which personnel are covered by the standard and thus retains the standard as proposed.

COMMENT: Bayonne Hospital commented that the sentence should be revised to include the word "adequate" and would read as follows: "there shall be adequate office space dedicated to members of the respiratory care service."

RESPONSE: The Department acknowledges the comment but will retain the standard as proposed. The concept of "adequate" is a subjective determination and generally not included in regulatory language.

N.J.A.C. 8:43G-31.11 Respiratory care supplies and equipment; mandatory

N.J.A.C. 8:43G-31.11(a)

COMMENT: Overlook Hospital asked the Department to define "equipment to evaluate respiratory therapy."

COMMENT: Cooper commented that the sophistication level of equipment regarding preventive maintenance is not described and the standard fails to describe the "evaluate respiratory therapy" statement with regard to personnel, devices, etc.

RESPONSE: The Department believes the intent of the standard is clear and presupposes awareness on the part of clinicians and experts in the field as to the current methods, types of personnel, and choices of equipment necessary to evaluate respiratory therapy. The Department refrains from including exclusive listings of equipment able to meet the requirements of the standard because in areas of rapidly changing technology, the listing may contain equipment obsolete in a short span of time. The standard remains as proposed.

N.J.A.C. 8:43G-31.11(b)

COMMENT: Kimball Medical Center commented that the term "shall be available" is unclear. Does this mean a pulse oximeter and end-tidal CO2 monitor for every patient receiving oxygen or having a few end-tidal CO2 monitors and pulse oximeters in house for intermittent use? Monitors for every patient is cost prohibited. A minimum based on acuity ratios or perhaps a monitor for every 100 beds should be developed.

COMMENT: Bayonne Hospital and St. Elizabeth felt the standard should read: "pulse oximeters and end-tidal CO2 monitors shall be available for patients in the hospital who receive oxygen therapy or who have a medical condition that requires oxygen monitoring." This would alleviate any interpretation that a hospital must have one of these monitors for each patient receiving therapy. Additionally, Mercer Medical Center requested clarification of the standard.

COMMENT: Memorial Hospital of Salem County wrote that end-tidal CO2 monitoring should be changed from mandatory to advisory.

COMMENT: Overlook Hospital and Memorial Health Alliance commented that tremendous costs are involved in making pulse oximeters and end-tidal CO2 monitors available for each patient. The New Jersey Hospital Association commented that availability of pulse oximeters and end-tidal CO2 monitors for all patients will result in cost reimbursement needs.

COMMENT: Cooper Hospital asked what is the medical necessity on which the standard is based and commented that "must be available" is extremely generic terminology. "A much clearer definition of availability for continuous and non-continuous monitoring is needed."

RESPONSE: The Department agrees with the comments and has attempted to clarify the standard while balancing the concerns of the institution with the best interests of the patient. The revised wording is as follows: "Pulse oximeters and end-tidal CO2 monitors shall be available for patients in the hospital who have a medical condition that requires oxygen and carbon dioxide monitoring." The Department is not mandating a pulse oximeter or end-tidal CO2 monitor for every patient nor is it electing to require a minimum inventory of equipment based on a hospital bed ratio. The Department believes each hospital should perform an assessment of its needs and provide sufficient equipment to meet the requirements of the standard and to assure the delivery of quality respiratory care. Specifically regarding the cost implications of the proposed standard, the commenters are referred to the introductory summary statement.

Additionally, the Department believes that the question of whether or not patients require continuous or intermittent monitoring is a clinical decision with many variables. Consequently, the Department has elected not to attempt to provide a definition but leave the determination to the hospital. The standard remains with the above noted changes.

N.J.A.C. 8:43G-31.11(c)

COMMENT: St. Elizabeth computed the total preventive maintenance cost at \$12,572 annually. They also commented that while these are academically and medicolegally recognized as necessary, it would however, require a much more sensitized and responsive hospital administrative approach.

N.J.A.C. 8:43G-31.11(d)

COMMENT: Cooper Hospital commented that the proposed standard fails to describe a comprehensive approach to the completion of periodic checks for all equipment.

RESPONSE: The Department believes the intent of the standard is clear as written and requires no description of a comprehensive approach to the completion of periodic checks for all equipment to be a valid, surveyable standard. The standard will be retained as proposed.

N.J.A.C. 8:43G-31.12 Respiratory care staff education; mandatory

N.J.A.C. 8:43G-31.12(a)

COMMENT: Cooper wrote that appropriate reimbursement to hospitals salary and capital expenditures related to the adoption of this standard must be addressed and integrated into the cost of maintaining a respiratory care department. Memorial Health Alliance commented that this is costly and unreasonable when applied to temporary and contract employees. Such orientation could take three or four days and may far exceed the level of knowledge required for specific and temporary job task. It is agreed that contract employees should be oriented to policies and procedures specific to the assigned job and to emergency procedures.

RESPONSE: The commenter is directed to the Department's response at N.J.A.C. 8:43G-5.7 and 5.9.

N.J.A.C. 8:43G-31.12(b)

COMMENT: South Jersey Hospital System commented that a self-teaching library is ideal but not required to maintain a standard of care. Overlook Hospital commented the standard is too prescriptive and should be deleted.

RESPONSE: The Department has reviewed its position and is deleting this standard.

N.J.A.C. 8:43G-31.14 Quality assurance methods; mandatory

COMMENT: Cooper Hospital commented that appropriate reimbursement to hospitals for salary and capital expenditures must be addressed and integrated into the cost of maintaining a respiratory care department and staffing by a specialized individual whose job title fulfills these standards.

RESPONSE: The commenter is referred to the introductory summary statement regarding quality assurance and economic implications of the

proposed rules. Specifically, the Department does not believe the standard requires the employment of a specialized, full time individual to effect compliance with the standard. However, the Department does recognize that respiratory care is a discrete patient care service, providing essential therapies to the patient population and as such, warrants a credible quality assurance program. The standard remains as proposed.

N.J.A.C. 8:43G-35 Postanesthesia Care

The Department received 18 letters commenting on the proposed standards for postanesthesia care. Sixteen letters were submitted by hospitals, one by the New Jersey Hospital Association, and one by Ervin Moss, M.D.

N.J.A.C. 8:43G-35.1 Postanesthesia care policies and procedure; mandatory

COMMENT: Meadowlands Hospital stated that the phrase "revised as needed and implemented" should be deleted.

RESPONSE: No change is made in the standard, as it is consistent with parallel standards in all other subchapters.

N.J.A.C. 8:43G-35.2 Postanesthesia care staff qualifications; mandatory

N.J.A.C. 8:43G-35.2(a)

COMMENT: Meadowlands Hospital and Memorial Health Alliance raised generic staffing objections, stating that this decision should be left up to the hospital.

RESPONSE: The Department believes that it is important to set minimum standards for staff qualifications to assure competency in clinical areas and to improve the quality of patient care. The commenters are referred to the introductory statement for a fuller explanation.

N.J.A.C. 8:43G-35.2(e)

COMMENT: Overlook Hospital stated that critical care training for nurses in the postanesthesia unit is unnecessary and costly. Hackensack Medical Center wrote that nurses in obstetrical postanesthesia care units should be trained in obstetrical emergency care but not general critical care.

RESPONSE: Based on advice of the professional members of the Reaction Group convened for these standards, the Department believes that the potential benefit of critical care training outweighs the cost (the training may be provided on the job or through specialized course work). The Department is similarly convinced that nurses in the postanesthesia unit must be appropriately trained to meet the emergency or critical care needs of any patient who may be in the unit at any time. The standard is retained.

N.J.A.C. 8:43G-35.3 Postanesthesia care staff time and availability; mandatory

N.J.A.C. 8:43G-35.3

COMMENT: A commenter wrote in support of this standard. Other commenters requested clarification of "two health professionals," and others expressed objections.

In support, a nursing care coordinator of a postanesthesia care unit wrote in agreement that there should be a required support person for the registered nurse; a patient emerging from anesthesia deserves responsible, quality nursing care. The writer referred to standards set by the American Society of Post Anesthesia Nurses, which recommend that two licensed staff nurses, one of whom must be a registered professional nurse, must be present whenever a single patient is recovering from anesthesia.

Opposing commenters stated that the standard is "not practical" (Jersey Shore, Memorial Health Alliance), "unrealistic, especially at night for late ending or emergency cases" (Mercer Medical Center), "increased costs" (West Jersey and South Jersey), "unclear whether standards apply to obstetrical recovery rooms" (West Jersey), and "staffing should be dependent on patient load" (St. Michael's Medical Center).

RESPONSE: The intent of the standard, as strongly advised by resource persons and reaction groups, is to have at least two professional staff members present whenever a patient is in the postanesthesia unit. The condition of patients in this unit is unstable and critical, and emergencies can arise almost without warning. The purpose of having a second professional present is to give immediate assistance to the primary caregiver (the registered nurse) and to summon additional help if necessary. This capability needs to be provided uniformly for all patients, even those who arrive in the unit late at night or on an emergency or unscheduled basis.

The Department emphasizes that staffing is in fact dependent on patient load, that acuity levels prevail, and that N.J.A.C. 8:43G-35.3 mandates a minimum level of staffing by stating "at least." Commenters concerned about cost are referred to the introductory statement where this issue is addressed in full.

The standards apply to all postanesthesia care units, including obstetrical, recognizing that obstetrical patients also have specific needs as they recover from anesthesia. The commenters are referred to N.J.A.C. 8:43G-35.1(a), Postanesthesia care policies and procedures; mandatory, within which a hospital shall develop protocols of care for all patients. The special needs of obstetrical patients may be delineated within these protocols.

To clarify the phrase "two health professionals," the intent of the standard is that whenever there is a patient in the postanesthesia unit there shall be at least two individuals present, at least one of whom is a registered professional nurse. The second professional may be a licensed practical nurse, a registered nurse, or a physician. The possible combinations are two registered nurses, a registered nurse and a licensed practical nurse, or a registered nurse and a physician. The standard is rewritten to clarify this language.

N.J.A.C. 8:43G-35.3(b)

COMMENT: South Jersey commented that a ratio of one registered nurse for every two patients seems excessive. St. Michael's wrote that "financial constraints and limited availability of registered nurses prohibits attainment of ratio." Hackensack Medical Center wrote that the ratio is "not efficient for obstetrical recovery rooms—a ratio of 4:1 is more realistic".

RESPONSE: The Department refers commenters to the previous response regarding the necessity of minimum staffing levels in the postanesthesia care unit and obstetrical considerations. The first comment is not accurate; although N.J.A.C. 8:43G-35.3(a) stipulates the presence of a registered nurse whenever one patient is present, N.J.A.C. 8:43G-35.3(b) mandates a ratio of one registered nurse for every three patients in the unit. Therefore, one to three patients in the unit would require one registered nurse plus an additional health professional (see previous explanation), four to six patients would require two registered nurses, seven to nine patients would require three registered nurses, and so forth. The standard remains unchanged.

N.J.A.C. 8:43G-35.4 Postanesthesia care patient services; mandatory

N.J.A.C. 8:43G-35.4(e)

COMMENT: St. Michael's wrote that the standard should read: "Electrocardiographic monitoring shall be conducted when clinically necessary."

RESPONSE: The commenter is referred to the analogous standard in Anesthesia Care, N.J.A.C. 8:43G-6. This monitoring is considered necessary to provide an adequate level of care for every patient, and is retained as a requirement.

N.J.A.C. 8:43G-35.4(f)

COMMENT: Memorial Health Alliance wrote that the standard is "costly to implement due to equipment requirements. Should monitoring be continuous or intermittent? Intermittent monitoring with pulse oximetry is satisfactory for most patients." New Jersey Hospital Association commented that technology requirements will need to be reimbursed. The University of Medicine and Dentistry of New Jersey wrote that "cost-benefit analysis is needed to determine overall improvements versus conventional methods of vital signs monitoring." St. Michael's repeated their previous suggestion about monitoring "when clinically necessary." Somerset Medical Center wrote that "oximetry is not indicated or appropriate in all cases, i.e., for patients who are restless, cold, or who have impaired circulation. Oximetry has value but should not be a basic monitoring device for all patients."

RESPONSE: The Department disagrees that monitoring should be an intermittent or elective procedure. This monitoring is now a standard of care while a patient is undergoing anesthesia, and is no less necessary during the recovery phase until stabilization has been achieved. The cost of the monitoring devices is relatively low (currently in the \$2,500 to \$3,000 range) and reimbursable as described in the introductory statement. If even one life is saved the benefit is immeasurable. The last commenter is referred to the language of the standard, which states that monitoring shall occur unless "not clinically feasible for the patient." No change is made.

N.J.A.C. 8:43G-35.4(h)

COMMENT: St. Michael's wrote that medical records should include EKGs only when medically indicated. Memorial Health Alliance wrote that this will generate duplication of effort and is onerous for staff; it is sufficient to require that medical records information must be readily available.

RESPONSE: There is no change in the standard, as EKGs are to be performed on each patient, and it is necessary to have the medical record in the unit while the patient is there.

N.J.A.C. 8:43G-35.4(j)

COMMENT: Ervin Moss, M.D., wrote that this is an inadequate standard of care in that it does not specify who is responsible for discharging the patient from the unit or what criteria are to be used. Dr. Moss refers to the American Society of Anesthesia standards for postanesthesia care which specify that a physician is responsible for the discharge of a patient from the postanesthesia unit.

RESPONSE: The Department agrees that the standard as it is written is incomplete and does not fully address all of the necessary elements. The standard is revised as follows:

Patients shall be discharged from the postanesthesia care unit using discharge criteria, including authority to discharge, which have been developed through the postanesthesia policies and procedures specified at N.J.A.C. 8:43G-35.1(a)1."

N.J.A.C. 8:43G-35.6 Postanesthesia care supplies and equipment; mandatory

N.J.A.C. 8:43G-35.6(d)

COMMENT: Overlook Hospital asked for a definition of "immediate access;" must a ventilator be stored in the postanesthesia unit? Hackensack Medical Center stated that a "crash cart" available within the obstetrical suite is sufficient to meet the need of the obstetrical postanesthesia care unit; the specified equipment is not needed. St. Michael's suggested a change in wording to "equipment available to or approximate to the postanesthesia unit shall include at least . . ." Cooper Hospital cited capital equipment costs.

RESPONSE: For reasons of patient safety, the standard requires the specified equipment to be physically located in the postanesthesia unit, with the exception of the ventilator, which may be located in close proximity to the unit and is immediately available. A "crash cart" available within the obstetrical suite does not meet the standard. Capital equipment costs are discussed in the introductory statement. There is no change in the standard.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 43G HOSPITAL LICENSING STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

8:43G-1.1 Scope and purpose

(a) These rules and standards apply to each licensed general or special hospital facility. They are intended for use in State surveys of the hospitals and any ensuing enforcement actions. They are also designed to be useful to consumers and providers as a mechanism for privately assessing the quality of care provided in any acute care hospital.

(b) This *[subchapter]* *chapter* contains rules intended to assure the high quality of care delivered in hospital facilities throughout New Jersey. Components of quality care addressed by these rules and standards include access to care, continuity of care, comprehensiveness of care, coordination of services, humaneness of treatment, conservatism in intervention, safety of environment, professionalism of caregivers, and participation in useful studies.

8:43G-1.2 Definitions

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

"Hospital" means an institution, whether operated for profit or not, whether maintained, supervised or controlled by an agency of the government of the State or any county or municipality or not,

which maintains and operates facilities for the diagnosis, treatment or care of two or more non-related individuals suffering from illness, injury or deformity and where emergency, out-patient, surgical, obstetrical, convalescent or other medical and nursing care is rendered for periods exceeding 24 hours.

"Hospitalization" means the admission and care of any person for a continuous period, longer than 24 hours, for the purpose of diagnosis and/or treatment bearing on the physical or mental health of such persons.

"Licensee" means the corporation, association, partnership or person authorized by the Department of Health to operate an institution and on whom rests the responsibility for maintaining acceptable standards in all areas of operation.

"Patient" means a person who receives a health care service from a provider.

8:43G-1.3 Classification of institutions

(a) Hospitals shall be classified generally as:

1. Private, non-profit, which shall include any hospital owned and operated by a corporation, association, religious or other organization, no part of the net earnings of which is applied, or may lawfully be applied, to the benefit of any private shareholder or person;

2. Private proprietary or profit, which shall include any hospital owned and operated by a person, partnership or corporation, the net proceeds of which are subject to distribution for the benefit of such person, corporation or shareholders; and

3. Public hospital, which shall include any institution maintained, supervised or controlled by an agency of the government of the State or any county or municipality that provides diagnostic and/or treatment services for the care of two or more non-related individuals suffering from illness, injury or deformity.

(b) Hospitals shall be further classified as:

1. General hospital, which shall include any hospital which maintains and operates organized facilities and services for the diagnosis, treatment or care of persons suffering from acute illness, injury or deformity and in which all diagnosis, treatment and care are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State of New Jersey; and

2. Special hospital, which shall include any hospital which assures provision of comprehensive specialized diagnosis, care, treatment and rehabilitation where applicable on an in-patient basis for one or more specific categories of patients.

8:43G-1.4 Information and complaint procedure

(a) Questions regarding hospital licensure may be addressed to the Inspections Program or the Licensing*[,]* *and* Certification *[and Standards]* Program at the following address:

New Jersey State Department of Health
Division of Health Facilities Evaluation
and Licensing
CN-367
Trenton, N.J. 08625-0367
(609) 588-7725

(b) To make a complaint about a New Jersey licensed hospital or nursing home, call:

1-800-792-9770 (toll-free hotline)

SUBCHAPTER 2. LICENSURE PROCEDURE

8:43G-2.1 Certificate of Need

(a) According to *[the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138,]* N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded or licensed to operate except upon application for and receipt of a Certificate of Need issued by the Commissioner of the Department of Health.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and
Resources Development
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625-0360

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with *[the Health Care Facilities Planning Act, P.L. 1971, c.136 and c. 138,]* N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:43G-2.2 Application for licensure

(a) Following receipt of a Certificate of Need as a hospital, any person, organization, or corporation desiring to operate a hospital facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director
Licensing*[,] *and* Certification *[and Standards]*
Division of Health Facilities Evaluation
and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

(b) The Department shall charge a non-refundable fee of \$500.00 for the filing of an application for licensure of a hospital and for the annual renewal of the license, and an additional non-refundable fee of \$150.00 for each of the following services, provided, however, that the total fee for the filing of an application for licensure of a hospital and for the annual renewal of the license shall not exceed \$2,000.

1. Obstetric and newborn services;
2. Psychiatric services;
3. Pediatric services;
4. Long-term care unit;
5. Renal dialysis services;
6. Cardiac diagnostic and/or surgical services;
7. Inpatient alcohol abuse treatment services;
8. Inpatient drug abuse treatment services;
9. Intensive care unit/coronary care unit; and
10. Other services to be designated by the Department.

(c) Any applicant denied a license to operate a facility shall have the right to a fair hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

8:43G-2.3 Newly constructed or expanded facilities

(a) The application for a license pursuant to N.J.A.C. 8:43*G*-2.2 for the operation of a new hospital shall include written approval of final construction of the physical plant by:

Health Facilities Construction Service
Division of Health Facilities Evaluation
and Licensing
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

(b) An on-site inspection of the construction of the physical plant shall be made by representatives of the Health *[Care]* Facilities Construction Service *[and the Health Facilities Inspection Program,]* to verify that the building has been constructed in accordance with the final architectural plans approved by the Department.

(c) Any health care facility *[with a construction program,]* ***which intends to undertake any alteration, renovation, or new construction of the physical plant,*** whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Service of the Department for review and approval prior to the initiation of any work.

8:43G-2.4 Surveys and temporary license

(a) When the written application for licensure pursuant to N.J.A.C. 8:43G-2.2 is approved and the building is ready for occupancy, a

survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility meets the standards set forth in this chapter.

1. The Health Facilities Inspection Program of the Department shall notify the facility in writing of the findings of the survey, including any deficiencies found.

2. The hospital facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more surveys of the facility prior to occupancy.

(b) A temporary license shall be issued to the operator of a facility when the following conditions are met:

1. An office conference for review of the conditions for licensure and operation has taken place between the Licensing*[,] *and* Certification *[and Standards]* Program and representatives of the hospital facility, who have been advised that the purpose of the temporary license is to allow the Department to determine the hospital's compliance with *[the Health Care Facilities Planning Act, P.L. 1971, c.136 and c. 138,]* N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system; and

4. Survey(s) by representatives of the Department indicate that the hospital meets the mandatory standards set forth in this chapter.

(c) No hospital facility shall accept patients until the hospital has a written approval and/or license issued by the Licensing*[,] *and* Certification *[and Standard]* Program of the Department.

(d) The hospital shall accept only that number of patients for which it is approved and/or licensed.

(e) Survey visits may be made to a hospital at any time by authorized staff of the Department. Such visits may include, but are not limited to,* the review of all hospital documents and patient records and conferences with patients.

(f) A temporary license shall be issued to the operator of a hospital facility for a period of six months and shall be renewed as determined by the Department.

1. The temporary license shall be conspicuously posted in the hospital facility.

2. The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:43G-2.5 Full license

(a) A full license shall be issued to the operator on expiration of the temporary license, if the surveys by the Department have determined that the health care facility is operated as required by *[the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138,]* N.J.S.A. 26:2H-1 et seq., and amendments thereto*, **and by the rules pursuant thereto***.

(b) A license shall be granted for a period of one year or less as determined by the Department in accordance with (a) above.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable and shall be immediately void if a hospital ceases to operate or its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the ***original*** licensure date.

1. The facility shall receive a request for renewal fee 30 days prior to expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

2. The license may not be renewed if Departmental rules, regulations and/or requirements are not met.

8:43G-2.6 Revocation or suspension of license

(a) The Department is authorized to suspend or revoke a license issued pursuant to this subchapter, order closure of a service or unit

within the hospital, or impose a money penalty on any of the following grounds:

1. Violation of any provisions of **[the] N.J.S.A. 26:2H-1 et seq. [and] or any rules and regulations issued pursuant thereto;**
2. **Permitting** **[Permitting]**, aiding or **abetting** **[abetting]** the commission of any illegal act in said facility; and/or
3. Conducting practices contrary to accepted procedures and detrimental to the welfare of the patient.

8:43G-2.7 Surrender of license

At least 30 days prior to voluntary surrender of its license where approved by Certificate of Need, or as directed under an order of revocation, refusal to renew, or suspension of license, a facility must directly notify each patient and the patient's physician concerned of the intended closure. The license shall be returned to the Licensing^[,] **and** Certification **[and Standards]** Program of the Department within seven calendar days from voluntary surrender, order of revocation, expiration, or suspension of license, whichever is applicable.

8:43G-2.8 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of **[the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138,] N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the standards in this chapter, waive sections of this chapter if, in his or her opinion, such waiver would not endanger the life, safety, or health of the patient or public.**

(b) A facility seeking a waiver of the standards in this chapter shall apply in writing to the Director of the Licensing^[,] **and** Certification **[and Standards]** Program of the Department.

(c) A written application for waiver shall include the following:

1. The nature of the waiver requested;
2. The specific standards for which a waiver is requested;
3. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon full compliance;
4. An alternative proposal which would ensure patient safety; and
5. Documentation to support the waiver application.

(d) The Department reserves the right to request additional information before processing an application for waiver.

8:43G-2.9 Action against licensee

(a) Violations of this chapter may result in action by the New Jersey State Department of Health to impose a fine, pursuant to N.J.S.A. 26:2H-**[14]1 et seq.**, cease admissions to a facility, order removal of patients from a facility, revoke or suspend a license, and/or impose other lawful remedies.

(b) If the Department determines that operational or safety deficiencies exist, it may require that all admissions to the **[facilities] facility** cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(c) The Commissioner may order the immediate removal of patients from a facility whenever he or she determines there is imminent danger to any person's health or safety.

(d) Any licensee made subject to action by the Department for suspension or revocation of license or who is assessed a fine under terms of this section shall have the right to a fair hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

8:43G-2.10 Information not to be disclosed

(a) Information received by the Department of Health through inspection authorized by N.J.S.A. 26:2H-1 et seq. shall not be disclosed to the public in such a way as to indicate the names of the specific patients or hospital employees to whom the information pertains. The Department shall forward inspection reports to the hospital facility at least 30 days prior to public disclosure. In all cases in which the hospital comments on the inspection report, the hospital comments and the inspection report shall be released simultaneously by the Department. In cases in which the New Jersey State Com-

missioner of Health determines **that** the protection of public health and safety necessitates immediate public disclosure of information, inspection reports may be disclosed immediately.

(b) Nothing contained herein shall be construed to interfere with existing legislation or the established rights and privileges of the public prosecutor and litigants having access to hospital records, nor shall determinations herein be construed to interfere in any way with the orderly legal process of obtaining access to such records.

8:43G-2.11 Hospital satellite facilities^[,] mandatory services in hospital[]]

(a) If the need is demonstrated, any satellite hospital facility may be smaller than 100 rated beds, if the satellite hospital is affiliated with, and operated under the effective supervision of the Board of Trustees of, an existing 200-bed (or larger) hospital.

(b) Any new satellite hospital facility shall be planned and constructed under the supervision of the Board of Trustees of the hospital with which it is affiliated.

(c) If the need is demonstrated, an out-patient clinic service (including emergency services) of an existing hospital may be located in a separate building at a distance from the hospital, but shall be operated under the effective supervision of the Board of Trustees of an existing 200-bed (or larger) hospital.

Individual licenses shall not be required for separate hospital buildings located on the same or adjoining grounds, if these are operated under one management.

8:43G-2.12 Mandatory services in general hospitals*

[(d)](a) All general hospitals applying for licensure shall provide the following professional departments, services, facilities, and functions:

1. Administration;
2. Anesthesia Department;
3. Blood Bank;
4. Central **[Service] Supply**;
5. Clinical and Pathological Laboratories;
6. Dietary Services;
7. Discharge Planning;
8. Emergency Department;
9. Employee and Occupational Health;
10. Electrocardiogram Laboratory;
11. Housekeeping and Laundry Services;
12. Infection Control and Sanitation;
13. Medical Library;
14. Medical Records;
15. Medical^{]/Surgical} Service;
16. Medical Staff;
17. Morgue and Autopsy Facilities;
18. Nursing Service;
19. Out-Patient and Preventive Services^{],} **including regularly scheduled clinic services for medically indigent patients**;
20. Pharmacy Department;
21. Physical and Occupational Therapy;
22. Physical Plant and Maintenance;
23. Post Anesthesia Care Unit;
24. Quality Assurance;
25. Radiology;
26. Respiratory Therapy Services; and
27. Social Work Department.

[(e)] Individual licenses shall not be required for separate hospital buildings located on the same or adjoining grounds, if these are operated under one management.[]]

8:43G-2.^[12]**13** Child abuse and neglect

[The facility shall comply with the child abuse and neglect reporting requirements of N.J.A.C. 8:31-26.4.]

(a) The facility shall establish and implement written policies and procedures, reviewed by the Department and revised as required by the Department, for reporting all diagnosed and/or suspected cases of child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq.

(b) The facility shall have in effect written policies and procedures reviewed by the Department and revised as required by the Department to include, but not be limited to, the following:

1. The designation of a staff member(s) to be responsible for coordinating the reporting of diagnosed and/or suspected cases of child abuse and/or neglect on a 24-hour basis, recording the notification to the Division of Youth and Family Services on the medical record, and serving as a liaison between the facility and the Division of Youth and Family Services;

2. The development of written protocols for the identification and treatment of abused and/or neglected children for the emergency room, clinic, and pediatrics, where such services exist, for admission and/or transfer to another facility and for protective custody through the use of hospital hold in accordance with N.J.S.A. 9:6-8.16; and

3. The provision of education and/or training programs to appropriate persons regarding the identification and reporting of diagnosed and/or suspected cases of child abuse and/or neglect and regarding the facility's policies and procedures on at least an annual basis.

Note: Copies of N.J.S.A. 9:6-1 et seq. can be obtained from the local district office of the Division of Youth and Family Services or from the Office of Program Support, Division of Youth and Family Services, Trenton, New Jersey 08625.*

SUBCHAPTER 5. ADMINISTRATIVE AND HOSPITAL-WIDE

8:43G-5.1 Administrative and hospital-wide structural organization; mandatory

(a) There shall be an organizational chart of the hospital and each service that shows lines of authority, responsibility, and communication between and within services.

(b) The hospital shall have an established and functioning governing body responsible for establishing hospital-wide policy, adopting bylaws, maintaining quality of care, and providing institutional management and planning.

(c) The governing body shall designate an administrator or chief executive officer for the hospital and develop criteria used to evaluate the performance of the administrator or chief executive officer.

(d) The hospital shall advise the New Jersey State Department of Health, Division of Health Facilities Evaluation and Licensing, in writing within 15 days following any change in the designation of the administrator or chief executive officer of the hospital.

(e) The medical staff shall have the right of representation at governing body meetings.

(f) There shall be a formal mechanism for communication among the governing body, administration, and medical staff.

(g) Minutes of governing body meetings shall be recorded, signed, and retained in the hospital as a permanent record.

(h) The hospital shall have a bioethics*[,]* ***committee and/or* prognosis committee*(s)*, or *[its]* equivalent*(s)*, that is multi-disciplinary and *[includes, but is not limited to,]* ***the hospital shall assure participation by individuals with* medical, nursing, legal, social work, *and* clergy*[, and consumer membership]* ***backgrounds***. The committee or committees shall have at least the following functions:****

1. Participation in the formulation of hospital policy related to bio-ethical issues;

2. Participation in the resolution of patient-specific bio-ethical issues; and

3. Providing a forum for patients, families, and staff to discuss and reach decisions on ethical concerns relating to patients.

(i) The hospital shall establish a mechanism for involving consumers in the formulation of hospital policy related to bio-ethical issues.

8:43G-5.2 Administrative and hospital-wide policies and procedures; mandatory

(a) The hospital shall have written policies, procedures and bylaws that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Policies on the admission of patients, transfer of patients to another facility, and discharge of patients.

2. Procedures for obtaining the patient's written informed consent for all medical treatment.

3. Delineation of the responsibilities of the medical staff, nursing, and other staff in contacting the patient's family in the event of death, elopement, or a serious change in condition.

4. Policies addressing bio-ethical issues affecting individual patients, including at least removal of life support systems, discontinuance or refusal of treatment, and designation not to resuscitate.

(b) A patient shall be transferred to another hospital ***only*** for a valid medical reason, in order to comply with other standards and rules, or by clearly expressed and documented patient choice. The hospital's inability to care for the patient shall be considered a valid medical reason. The sending hospital shall receive approval from a physician and the receiving hospital before transferring the patient. Documentation for the transfer shall be sent with the patient, with a copy or summary maintained by the transferring hospital. This documentation shall include, at least:

1. The informed consent of the patient or responsible individual ***, in accordance with State law***;

2. The reason for the transfer;

3. The signature of the physician who ordered the transfer;

4. The condition of the patient upon transfer;

5. Patient information collected by the sending hospital*, **as specified in N.J.A.C. 8:43G-15.2(f)***; and

6. The name of the contact person at the receiving hospital.

(c) The hospital shall not deny admission to patients on the basis of their inability to pay.

(d) Patients shall be discharged only on physician's orders or after signing a waiver that exempts the hospital and the physician from liability as a result of the patient's leaving the hospital against medical advice. Patient refusal to sign such a waiver shall be documented.

(e) The hospital shall have a patient identification system that is used for all patients in the hospital from the time of admission until the time the patient is released from the hospital.

(f) The hospital shall develop and implement a complaint procedure for patients, families, and other visitors. The procedure shall include, at least, a system for receiving complaints, a specified response time, assurance that complaints are referred appropriately for review, development of resolutions, and follow-up action.

(g) The hospital shall develop and implement a grievance procedure for all staff. The procedure shall include, at least, a system for receiving grievances, a specified response time, assurance that grievances are referred appropriately for review, development of resolutions, and follow-up action.

(h) There shall be written policies and procedures for personnel that are viewed annually, revised as needed, and implemented. They shall include at least:

1. A written job description for each category of personnel in the hospital and distribution of a copy to each newly hired employee;

2. Personnel policies in compliance with Federal requirements for Equal Employment Opportunity;

3. A system to ensure that written, job-relevant criteria are used in making evaluation, hiring, and promotion decisions;

4. A system to ensure that employees meet ongoing requirements for credentials; and

5. Written criteria for personnel actions that require disciplinary action.

(i) The hospital shall comply with all requirements of the professional licensing boards for reporting terminations, suspensions, revocation, or reduction of privileges for any health professionals licensed in the State of New Jersey.

(j) Personnel records shall be confidential material, accessible only to authorized personnel who have clearly established their identity.

(k) Smoking rules shall be developed, implemented, and enforced until January 1, 1992, in accordance with N.J.S.A. 26:3D-1 et seq. These rules shall include prominently marking ***areas which, at the option of the hospital, have been*** designated ***for*** smoking ***[areas]*** and at least:

1. No smoking in patient rooms on pediatric patient care units;

2. No smoking in any area where there are flammable liquids or gases; and

3. No smoking by any volunteers or staff in the presence of patients.

(l) The hospital shall develop a program to become smoke-free and shall become smoke-free by January 1, 1992. Smoke-free means a total ban on smoking in the facility by employees, visitors and patients, except that, at institutional option, controlled smoking by patients ***may be permitted*** in a designated area ***[may be permitted in psychiatric or substance abuse units, on written orders of the responsible physician. Other patients]* *with outside ventilation. Patients*** may smoke only on written orders of the attending physician ***[s]* *when the physician has concluded that smoking is in the best interest of the patient***.

(m) The hospital shall develop and implement a method to prevent smoking by patients who have been designated as "not responsible".

8:43G-5.3 Administrative and hospital-wide staff qualifications; mandatory

(a) The administrator or chief executive officer of the hospital shall have at least one of the following qualifications:

1. A master's degree and at least three years of full-time experience in progressively responsible management positions;
2. A baccalaureate degree and at least five years of full-time experience in progressively responsible management positions; or
3. At least 10 years of full-time experience in hospital administration.

(b) The ***hospital shall verify through visual examination the*** professional credentials^{*}, **required by this chapter,** of all new employees ***[shall be verified in writing and the hospital shall verify that professional credentials for licensure, certification, and registration of employees are current]***.

***(c) The hospital shall verify through visual examination that the professional credentials, required by this chapter, of all employees are current.**

(d) **If the hospital performs organ transplants, the director of the medical staff shall ensure that all health professionals serving the patient have sufficient clinical experience in transplantation care, based on predetermined criteria established in hospital policies and procedures or set by the American Society of Transplant Surgeons.***

8:43G-5.4 Administrative and hospital-wide staff qualifications; advisory ***(Reserved)***

8:43G-5.5 Administrative and hospital-wide patient services; mandatory

(a) To meet the needs of pediatric patients, the hospital shall have available medical and nursing staff with specialized pediatric training and shall have equipment adaptable to the needs of pediatric patients on-site.

[a)](b)*** The hospital shall ensure the safe transport of patients within the hospital, according to each patient's medical needs. This system shall include at least interdepartmental reporting of incidents and changes in the patient's condition during transportation and during the period the patient is in another service and providing an accompanying health professional for those patients whose condition warrants it.

(c) The hospital shall maintain a record of hospital employees, medical staff members, and volunteers who can speak languages other than English or know sign language for the hearing impaired and can provide interpretive services to patients. This record shall include the work shifts of hospital employees.

[b)](d)*** The hospital shall have a system to link patients with clergy or spiritual counselors, upon request.

[c)](e)*** The hospital shall develop a system for organ donation in accordance with N.J.S.A. 26:6-57 et seq.

(d)]**1. The hospital shall have the process of organ donation explained to the families of selected critically ill patients by a person who has received training from the hospital in organ donation issues.

***2. The hospital shall provide counseling regarding anatomical gifts for families of those patients suitable for organ donation in which death appears to be imminent.**

3. If the hospital performs organ transplants, the director of the medical staff shall ensure that satisfactory follow-up care and consultation are provided to all transplantation patients, including multidisciplinary conferences held at periodic intervals.*

[e)](f)*** If the hospital provides bone or tissue banking services, the hospital shall meet all guidelines set by the American Association of Tissue Banks for such services. Such guidelines are incorporated herein by reference and are available from the American Association of Tissue Banks, 1350 Beverly Rd, Suite 220A, McLean, VA 22101 (703-827-9582).

[f)](g)*** For patient and staff safety, the hospital shall have a security system which is rigidly enforced and includes at least an identification system for employees, volunteers, and medical staff and control of access to and egress from the hospital.

(h) There shall be a means to summon immediate emergency response for medical emergencies occurring in the hospital.

8:43G-5.6 Administrative and hospital-wide patient services; advisory ***(Reserved)***

8:43G-5.7 Administrative and hospital-wide staff education; mandatory

(a) There shall be a formal orientation program for all new ***permanent*** staff that includes at least a tour of the hospital, orientation to the hospital's security system and disaster plan, ***and*** review of procedures to follow in case of an emergency^{*}, and identification of individual employee duties for receiving and evacuating patients in the event of a disaster^{*}.

***(b)* * [New staff shall include all permanent and]* *There shall be a formal orientation program for all new* temporary staff, nurses retained through an outside agency, and persons providing services by contract *which includes, at a minimum, a tour of the department to which the individual is assigned, orientation of the hospital's security system, and review of procedures to follow in case of an emergency*.**

[b)](c)*** The hospital shall provide, evaluate, and coordinate training and educational programs for all departments in the hospital.

8:43G-5.8 Administrative and hospital-wide staff education; advisory ***(Reserved)***

8:43G-5.9 Department education programs; mandatory

(a) Each department in the hospital shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, ***[and]* *or*** off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the service in which the individual will be employed ***[and]**, including*** a review of the service's equipment, policies^{*}, and procedures ***and identification of individual employee duties for receiving and evacuating patients in the event of a disaster***;

2. Use of new clinical procedures, new equipment, and new technologies, including, where applicable, computers;

3. Individual staff requests for education programs;

4. Supervisor judgements about education needs based on assessment of staff performance;

5. Education on statutory requirements relevant to the specific service; and

6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.

8:43G-5.10 Department education programs; Advisory ***(Reserved)***

8:43G-5.11 Occupational health structural organization; mandatory

(a) There shall be an employee-management occupational health and safety committee that:

1. Meets a minimum of six times a year;

2. Establishes a procedure for receiving and responding to employees' occupational health and safety complaints and concerns;
3. Receives, investigates, and provides written or oral responses to employees' complaints related to occupational health and safety;
4. Provides information to the hospital staff including recommendations or actions taken by the committee;
5. Assists in the development and periodic review of all occupational health and safety policies; and
6. Conducts inspections to assure conformance with those policies and procedures, and to identify problems.

8:43G-5.12 Occupational health policies and procedures; mandatory

(a) The hospital shall develop and implement a written policy to assure that staff have the right to voice occupational health and safety complaints or problems without reprisals.

(b) The hospital shall have available the most current version of standards and guidelines for:

1. Cytotoxic (antineoplastic) drugs: "Work Practice Guidelines for Personnel Dealing with Cytotoxic Drugs," Occupational Safety and Health Administration (OSHA) Instruction PUB 8-1.1, Office of Occupational Medicine, OSHA;
2. Waste anesthetic gases: "Recommended Standard for Occupational Exposure to Waste Anesthetic Gases and Vapors," National Institute of Occupational Safety and Health (NIOSH) Publication No. 77-140;
3. Federal regulations for ethylene oxide, Code of Federal Regulations: 29 CFR 1910.1047;
4. Federal regulations for formaldehyde, Code of Federal Regulations: 29 CFR 1910.1048;
5. Federal regulations for hazard communication, Code of Federal Regulation: 29 CFR 1910.1200 (required for private sector hospitals); and
6. New Jersey Workers and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., and all rules promulgated pursuant to that Act.

Note: Copies of these standards and guidelines can be obtained from:

Occupational Health Services
CN 360
Trenton, NJ 08625-0360

(c) The hospital shall have available and shall comply with the most current version of Centers for Disease Control (CDC) guidelines to protect health care workers who may be exposed to infectious blood-borne diseases, such as AIDS and hepatitis-B, as outlined in "CDC Guideline for Universal Precautions in Hospitals" and "CDC Guideline for Infection Control in Hospital Personnel."

Note: Centers for Disease Control publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161

or:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

(d) The hospital shall use ***the*** CDC, NIOSH, and OSHA standards and guidelines ***specified in (b) and (c) above*** to develop written occupational health policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Protection of employees from cytotoxic drugs, waste anesthetic gases, ethylene oxide, and formaldehyde; and
2. Protection and management of needle-stick injury and blood or body fluid exposures for all employees.

8:43G-5.13 Occupational health staff qualifications; mandatory

The hospital shall designate an individual to provide clinical guidance on occupational health and safety issues who is a physician with occupational medicine background, an industrial hygienist, or a health professional with two years of experience in occupational health.

8:43G-5.14 Occupational health education; mandatory

(a) The hospital shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs of different categories of employees with potential exposure to hazardous substances, including at least cytotoxic drugs, waste anesthetic gases, ethylene oxide, formaldehyde, and/or hazardous blood-borne diseases on all work shifts. The plan shall include education programs conducted in the employees' service, in other areas of the hospital, and off-site.

(b) The plan shall include on-going education programs and an orientation session that address at least the following:

1. Written materials that the employee can use for reference;
2. Information about the risks associated with these hazardous materials and/or blood-borne diseases;
3. Information about employees' responsibilities to use personal protection clothing or equipment;
4. Education and training programs for employees that comply with rules and regulations concerning the establishment and contents of such programs as required by the Hazard Communications Standard (OSHA 29 CFR 1910.1200) or the New Jersey Worker and Community Right to Know Act (N.J.S.A. 34:5A-1 et seq).

Note: Copies of "New Jersey Worker and Community Right to Know Act Educational and Training Program Guide" are available from:

Occupational Health Service
CN 368
Trenton, New Jersey 08625-0368

(c) An orientation session shall occur before the employee is exposed to or begins working with hazardous materials or patients with hazardous blood-borne diseases.

(d) Implementation of the education plan shall include records of attendance for each program and composite records of participation for each staff member.

8:43G-5.15 Occupational health quality assurance methods; mandatory

There shall be a program of quality assurance for occupational health that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify occupational health problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

8:43G-5.16 Disaster planning; mandatory

(a) The hospital shall have a written, comprehensive disaster plan. The disaster plan, and any updates or changes to it, shall be submitted to the Inspection Service Program within the New Jersey State Department of Health and shall include the following:

1. Identification of potential hazards that could necessitate an evacuation, including internal and external disasters such as a natural disaster, labor work stoppage, or industrial or nuclear accidents;
2. Emergency procedures for evacuation of the hospital;
3. Comprehensive measures for receiving and managing care for a large influx of emergency patients. These measures shall include the roles of, at least, the emergency department, surgical suite, and patient care units;
4. Comprehensive plans for receiving patients who are being relocated from another facility due to a disaster. This plan shall include at least an estimate of the number and type of patients the facility would accommodate;
5. Procedures in the case of interruption of utilities services in a way that affects the health and safety of patients;
6. Identification of the facility and an alternate facility to which evacuated patients would be relocated;
7. The estimated number of patients and staff who would require relocation in the event of an evacuation;
8. The system or procedure to ensure that medical charts accompany patients in the event of patient evacuation, and that supplies, equipment, records, and medications would be transported as part of an evacuation; and
9. The roles and responsibilities of staff members in implementing the disaster plan.

(b) The hospital shall assure that patients receive nursing care throughout the period of evacuation and while being returned to the original hospital.

(c) The hospital shall ensure that evacuated patients who are not discharged are returned to the hospital after the emergency is over, unless the patient prefers to remain at the receiving facility or be discharged instead of being returned to the original hospital.

(d) Any staff member who is designated as the acting administrator shall be knowledgeable about, and authorized to implement, the hospital's plans in the event of an emergency.

(e) The hospital administrator shall appoint a disaster planner for the hospital. The disaster planner shall meet with county and municipal emergency management officials at least annually to review and update the written, comprehensive disaster plan. If county or municipal officials are unavailable for this purpose, the hospital shall notify the New Jersey State Office of Emergency Management*, **Division of State Police, Department of Law and Public Safety, P.O. Box 7068, River Road, West Trenton, NJ 08628 (phone: 609-882-2000)***.

(f) Copies of the current plans for receiving and evacuating patients in the event of a disaster shall be sent to municipal and county emergency management officials and to the designated receiving facilities.

(g) The hospital shall conduct at least one evacuation drill each year, either simulated or using selected patients. An actual evacuation shall be considered a drill, if it is documented.

(h) The hospital shall conduct at least one drill each year in which a large influx of emergency patients is simulated. An actual emergency of this type shall be considered a drill, if it is documented.

(i) The hospital shall maintain at least a three-day supply of food and have access to an alternative supply of water in case of an emergency.

(j) The hospital shall take corrective action if the temperature of the hospital is not in compliance with the requirements specified in Chapter 7 of the Guidelines for Construction and Equipment for Hospital and Medical Facilities (published by the American Institutes of Architects Press, 1735 New York Ave NW, Washington, D.C. 20006, publication #ISBN0-913962-96-1) for a continuous period of four hours or longer. The hospital shall notify the New Jersey State Department of Health if the corrective action is not effective.

8:43G-5.17 Disaster planning; advisory ***(Reserved)***

8:43G-5.18 Blood bank

(a) The governing board shall designate the pathologist or other qualified physician as physician-in-charge of the blood service.

(b) The hospital shall maintain an emergency supply of whole blood.

(c) The hospital shall maintain a current list of potential blood donors of all principal blood types and groups who are available in emergencies or it shall establish a stable source of blood supply, either through an integrated blood operation or by arrangement with an outside blood service.

8:43G-5.19 Clinical and pathological laboratories

(a) The laboratories shall be under the direction of a ***[qualified]*** pathologist on a full or part time basis.

(b) A qualified member of the medical staff may be appointed by the governing authority to assume a portion of the responsibilities involved, with a ***[qualified]*** pathologist as a consultant.

8:43G-5.20 Electrocardiogram laboratory

The hospital shall provide ***at least*** one room ***[equipped]* ***designated***** for electrocardiography. Sufficient space shall be provided for the maintenance of essential records and such office space as may be required ***[by the physician-in-charge]***.

8:43G-5.21 ***[Out-Patient and Preventive Services]* ***Out-patient and preventive services*****

(a) All hospitals shall provide, on a regular and continuing basis, out-patient and preventive ***[clinics]* ***services, including clinic services for medically indigent patients,***** in those services provided on an in-patient basis.

(b) In no instance shall a hospital provide less than out-patient services in medicine and surgery.

SUBCHAPTER 19. OBSTETRICS

8:43G-19.1 Scope of obstetrics standards

The standards in this subchapter shall apply only to hospitals that have a separate, designated unit or service for obstetrics.

***[8:43G-19.2 Obstetrics structural organization; mandatory**

The obstetric service shall be represented on hospital committees responsible for infection control, disaster planning, quality assurance and medical records.]*

8:43G-19.***[3]**2*** Obstetrics policies and procedures; mandatory

(a) The obstetric service shall have written policies and procedures that govern and are available in all areas of the obstetric service and are reviewed annually, revised as needed, and implemented. These policies and procedures shall include at least:

1. Criteria for the identification of high-risk obstetric and newborn patients;

2. Guidelines for when to call a physician during labor;

3. Qualifications for nurses who provide maternal and infant care appropriate to the level of care provided;

4. The use of fetal monitors;

5. A protocol for the use of oxytocics for induction and stimulation of labor, including assessment of the patient before the drug's use, monitoring of the patient and fetus during its use, indications for discontinuance of the drug, and educating staff in the use of oxytocin;

6. A system for identifying hospital personnel while they are working in the unit;

7. The attire required to be worn in the labor and delivery areas;

8. A visitors policy that includes who may visit the unit and at what times, security procedures for monitoring and controlling visitors, and infection control instructions;

9. Guidelines for rooming in, if applicable; and

10. A system to provide written and oral discharge instructions from professional staff to patients upon discharge.

(b) A list of physicians and nurse-midwives, ***[and]*** their specific obstetric service privileges, ***and an on-call schedule*** shall be available in the department to professional staff.

(c) If alternative birthing services are provided, there shall be written criteria for admission.

(d) On obstetric units where Cesarean sections are performed, all requirements of surgical standards shall apply.

(e) The hospital shall establish and implement transfer agreements for patients who require a higher level of care than the hospital is designated to provide.

8:43G-19.***[4]**3*** Obstetrics staff qualifications; mandatory

(a) There shall be a physician director of the obstetric service who is responsible for all obstetric care in the hospital and is board certified in obstetrics.

(b) There shall be a full-time nurse with administrative or clinical responsibility for all nursing care on the obstetric service who is a registered professional nurse with the equivalent of ***[four]* ***three***** years of full-time experience in maternal and child nursing. The nurse with administrative or clinical responsibility for the obstetric service may also be responsible for nursing on the newborn care service.

[c) All health professionals assigned to the post-partum service shall be trained in the care of both mothers and infants.

8:43G-19.***[5]**4*** Obstetrics staff qualifications; advisory ***(Reserved)***

8:43G-19.***[6]**5*** Obstetrics patient services; mandatory

(a) Obstetric patients shall be informed upon admission about hospital policies and procedures, including at least policies regarding visitors, and the unit's security procedures.

(b) Prenatal instruction shall be offered and include, at a minimum, information about childbirth, parenting, breast and breast/bottle feeding, prevention of infection and disease in infants, hospital policies and procedures regarding visitors, infection control during the hospital stay and alternative methods of pain management during childbirth.

(c) There shall be the capability of starting a Cesarean section within 30 minutes of the decision to perform such a delivery method.

(d) Anesthesia service shall be available at all times. Anesthesia personnel shall be present in the hospital at all times or available by telephone and able to arrive within 30 minutes of being summoned, under normal transportation conditions.

(e) Criteria shall be developed in consultation with the social work department for identifying patients in need of social work services and/or discharge planning and making referrals as needed.

(f) The medical record for the obstetric patient shall include the prenatal record, documentation of the course of labor, delivery, and the post-partum period ***and a copy of any vital records filed in accord with N.J.S.A. 26***.

8:43G-19.*[7]**6* Obstetrics patient services; advisory
(Reserved)

8:43G-19.*[8]**7* Obstetric space and environment; mandatory
The obstetric service shall be physically separate from any service not concerned with obstetric care.

8:43G-19.*[9]**8* Obstetric staff education and training; mandatory
Requirements for the obstetric education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-19.*[10]**9* Obstetric staff education; advisory
(Reserved)

8:43G-19.*[11]**10* Obstetric quality assurance methods; mandatory
(a) There shall be a quality assurance program for obstetrics that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The quality assurance program for obstetrics should include at least: high-risk screening, review of unattended deliveries, transfers to other facilities and return transfers, appropriateness of Cesarean sections, use of oxytocic drugs, prevention of infections in the nursery, morbidity by birth weight, and mortality by birth weight.

8:43G-19.*[12]**11* Obstetric quality assurance methods; advisory
(Reserved)

8:43G-19.*[13]**12* Labor and delivery policies and procedures; mandatory
(a) Restrictions shall be established and posted governing entry into the labor and delivery unit.
(b) Entry into the surgical area shall be restricted to staff and support persons. Scrub attire shall be required.

8:43G-19.*[14]**13* Labor and delivery staff time and availability; mandatory

(a) ***There shall be at least one registered professional nurse present whenever a patient is in the labor area.*** Nurse staffing assignments for patients in active labor shall be determined by patient acuity levels.

(b) All deliveries shall be attended by an obstetrician, a physician with obstetrical privileges, or by a ***[certified]* *licensed*** nurse-midwife.

(c) There shall be at least one registered professional nurse ***[present during a delivery]* *attending the patient once she reaches full dilation until she enters the recovery phase of delivery*.**

(d) ***[An obstetrician shall be present in the hospital and available for immediate assistance when oxytocics are administered.]* *Oxytocics shall be administered only after obstetrical staff has examined the patient and electronic fetal monitoring initiated.***

(e) A health professional trained in neonatal resuscitation shall be available ***within the obstetrics unit*** for each delivery.

(f) Effective January 1, 1992, there shall be a health professional certified in pediatric advanced life support available within the obstetrics unit for each delivery.

(f)**(g) A pediatrician or pediatric resident shall be present in the delivery room for all high-risk deliveries.

8:43G-19.*[15]**14* Labor and delivery patient services; mandatory

A registry of all births or maternity log book shall be maintained in the labor and delivery room***[. Copies of the logbook may be obtained from the New Jersey Medical Society, 2 Princess Road, Lawrenceville, NJ 08648, telephone 609-896-1766.]* *and shall include the minimum data set required by the Maternal and Child Care Committee of the New Jersey Medical Society as accepted by the Department of Health.***

8:43G-19.*[19.16]**19.15* Post-partum staff time and availability; mandatory

(a) At least one registered professional nurse shall be on duty in the post-partum area ***[at all times]* *whenever a patient is present*.**

(b) Nurse staffing assignments for post-partum patients shall be determined by patient acuity levels.

8:43G-19.*[17]**16* Post-partum patient services; mandatory
(a) Nurses providing care to mothers and infants who share a room on the obstetric unit shall be trained in the care of both mothers and infants.]

(b)**(a) The hospital shall provide or arrange for an organized program of post-partum education in self-care and newborn care.

(c)**(b) If a patient is discharged less than 48 hours after delivery, early follow-up care shall be offered to the patient and arranged on request.

(d)**(c) The hospital shall have staff available to advise post-partum patients in order to prevent difficulties with breast feeding during the hospital stay.

8:43G-19.*[18]**17* Newborn care policies and procedures; mandatory

(a) A current roster and on-call schedule of physicians who have pediatric privileges shall be kept in each nursing unit in newborn care.

(b) A physician shall perform a complete physical examination of the newborn within 24 hours of birth.

(c) A physician shall perform an examination of the newborn on discharge.

(d) Isolation practices recommended by the Centers for Disease Control shall be used for isolation patients in the newborn nursery, and are incorporated herein by reference. (See CDC Guidelines for Isolation Precautions in Hospitals, publication number PB85927401, available from National Technical Information Services, 5285 Port Royal Rd., Springfield, VA 22161, telephone 703-487-4600.)

(e) The hospital shall notify the State Department of Health, Division of Epidemiology by telephone immediately in the event of an epidemic in the newborn nursery. An epidemic is an occurrence or outbreak of one or more cases of an illness ***[in excess of normal expectancy for that illness]* *which represents a significant or distinct departure from normal incidence as determined by the infection control practitioner*.**

(f) The hospital shall comply with State laws for screening infants for high risk factors associated with hearing impairment (N.J.S.A. 26:2-101 et seq.), reporting blood group and Rh determination, early detection of biochemical disorders in newborns (N.J.S.A. 26:2-110 through 112), reporting congenital defects (N.J.S.A. 26:8-40.20 et seq.), and completing birth certificates (N.J.S.A. 26:8-28) and death certificates.

(g) Policies and procedures for screening newborns for high risk factors associated with hearing impairment, in accordance with N.J.S.A. 26:2-101 et seq. shall be as follows.

1. A physician or registered professional nurse shall screen the newborn using the Newborn Hearing Screening Report Form of the New Jersey Hearing Evaluation Council and the Special Child Health Services Program of the Department; and

2. The facility shall send copies of the Newborn Hearing Screening Report Form for all ***at risk*** newborns, ***[on a monthly basis,]* *within one week of the infant's discharge*** to the ***[Maternal and]* *Special* Child Health *Services* Program of the Department.**

(h) Policies and procedures for the early detection of biochemical disorders in newborn infants, including at least hypothyroidism, ga-

lactosemia, and phenylketonuria, pursuant to N.J.S.A. 26:2-110 through 112, shall include, but not be limited to, the following:

1. Collection of blood specimens from newborn infants on collection kits provided by the Department;
2. Collection of blood specimens 24 hours after the newborn infant's first feeding or 48 hours after the newborn infant's birth or upon the newborn infant's discharge from the facility, whichever comes first;
3. Development of a system within the facility for the submission of blood specimens to arrive at the Department's laboratory no later than 96 hours after the newborn infant's birth;
4. Designation of a staff member(s) to be responsible for receiving verbal and written positive screening test results and documenting the results in the newborn infant's medical record; and
5. Provision of written information, provided by the Department and/or the facility, to all parents and physicians regarding the testing of biochemical disorders and the possibility of incorrect screening test results if the blood specimen is not collected.

(i) The newborn's medical record shall include at least:

1. A summary of the mother's obstetric ***and relevant medical*** history;
2. Anesthesia, analgesia, and medications given to the mother;
3. Reasons for induction of labor and operative procedures, if performed;
4. Date and time of birth ***and copies of all vital records***;
5. Birth weight and length;
6. Condition of the newborn at birth, including the one- and five-minute Apgar scores, time of sustained respirations, details of any physical abnormalities, and any pathological states observed and treatment given before transfer to the nursery;
7. Any abnormalities of the placenta and cord vessels;
8. Length of gestation;
9. Procedures performed in the delivery room;
10. A record of the newborn assessment, performed by a physician or registered professional nurse upon the newborn's admission to the nursery;
11. A plan of care;
12. A record of the initial physical examination, performed, signed, and dated by a physician;
13. A record of a physical examination on discharge or transfer to another facility, including head circumference, signed*, and dated* by a physician; and
14. Documentation of eye prophylaxis, administration of any other medication or treatment and response ***and performance of inborn error and hearing screenings***.

8:43G-19.*[19]**18* Newborn care staff qualifications; mandatory

(a) There shall be a physician director of newborn care who is board certified in pediatrics and who is responsible for the direction, provision, and quality of medical care provided.

(b) The physician director of newborn care shall designate in writing an alternate physician who is a pediatrician to act in his or her absence.

(c) There shall be a full-time nurse with administrative or clinical responsibility for all nursing care in the newborn nursery who is a registered professional nurse with the equivalent of ***[four]* *three*** years of full-time experience in maternal and child nursing. The nurse with administrative or clinical responsibility for newborn care may also be responsible for nursing on the obstetric service.

***(d) There shall be a health professional trained in infant resuscitation available within the unit at all times.**

(e) Effective January 1, 1992, there shall be a health professional certified in advanced pediatric life support available within the unit at all times.*

8:43G-19.*[20]**19* Newborn care staff time and availability; mandatory

(a) There shall be a pediatrician present in the hospital at all times or available by telephone and able to arrive within 30 minutes of being summoned, under normal transportation conditions.

(b) There shall be a registered professional nurse present whenever an infant is in the newborn nursery. Staffing assignments in the newborn nursery shall be determined by acuity levels of infants.

8:43G-19.*[21]**20* Newborn care patient services; mandatory

(a) The newborn service shall provide for immediate resuscitation of the newborn, including at least:

1. Short-term ventilation with laryngoscope, endotracheal tube, and bag-valve-mask;
2. Oxygen administration;
3. Intravenous therapy;
4. Temperature control; and
5. Infusion equipment.

(b) Oxygen monitoring shall be done on newborns receiving continuous oxygen therapy*, unless such monitoring is not clinically feasible for the newborn)*.

(c) Each bassinet and incubator in the nursery shall bear the identification of the newborn to whom it is assigned. This identification shall include at least the newborn's last name, sex, date, time of birth, feeding method, the mother's first and last names, and the physician's name.

(d) There shall be a system for the identification of each newborn immediately upon delivery and during the hospital stay, and for maintaining the security of the newborn.

(e) There shall be a system for verifying the identity of mothers and infants whenever an infant is removed from, or returned to, the nursery.

(f) The hospital shall assist Medicaid-eligible patients, including newborns, by expediting the verification and documentation of hospital-based services. For example, the hospital may issue a document of birth for infants prior to discharge (including hospital of birth, mother's name, mother's Social Security number, newborn name, date of birth, and sex) to enable infants to receive Medicaid services from county welfare offices that accept such documentation before an official birth certificate is issued.

8:43G-19.*[22]**21* Newborn care space and environment; mandatory

(a) The newborn nursery shall be a closed unit, physically segregated from other areas.

(b) No room used as a nursery shall be connected directly by a door or pass-through window to any other room or rooms used as a nursery.]*

8:43G-19.*[23]**22* Newborn care supplies and equipment; mandatory

(a) Each room used as a nursery or as a nursery accessory room shall be equipped with at least three foot-controlled, covered, and labeled receptacles: one for the disposal of wet or soiled diapers, one for the disposal of trash, and one for the sanitary disposal of linens other than wet or soiled diapers. Disposable liners shall be used in the diaper and trash receptacles.

(b) Bassinets and equipment not in ***routine*** use shall be stored outside the nurseries or nursery accessory rooms.

(c) Individual supplies, linen, and equipment shall be provided for each infant.

(d) If newborns are weighed on a common scale, an impervious cover that completely covers the surface of the scale pan shall be used and changed after each newborn is weighed.

(e) Prepackaged formula shall be used within the time period designated on the package.

(f) Each incubator and bassinet shall be cleaned and disinfected after each time a newborn occupying it is discharged. The detergent and disinfectant used shall be registered by the U.S. Environmental Protection Agency.

(g) ***[Equipment]* *Checks of equipment*** settings in the newborn nursery ***[shall be checked]*** by nursing staff at least once during each shift ***shall be documented***.

(h) Provisions shall be made for the emergency repair and replacement of equipment in the newborn nursery.

8:43G-19.*[24]**23* Scope of nurse-midwifery standards

The standards in N.J.A.C. 8:43G.*[19.25]**19.24* through ***[19.30]* *19.29*** shall apply only to hospitals that have a separate, designated service or unit for nurse-midwifery. ***Hospitals which do not have a separate, designated service or unit for nurse-midwifery but**

grant obstetrical privileges to nurse-midwives shall follow N.J.A.C. 8:43G-19.25(b) and (c).*

8:43G-19.*[25]**24* Nurse-midwifery structural organization; mandatory

Nurse-midwifery services shall be organized as part of the obstetric service. The physician director of obstetrics shall be responsible for assuring that nurse-midwifery services conform with applicable rules and hospital policies and procedures.

8:43G-19.*[26]**25* Nurse-midwifery policies and procedures; mandatory

(a) Nurse-midwifery services shall be based on written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures shall include mechanisms by which medical staff in the obstetric and newborn services consult with and assist nurse-midwives.

(b) The hospital shall delineate and ***fully*** review ***[annually]*** the privileges and credentials of each nurse-midwife ***periodically*** ***[based on the nurse-midwife's training, experience, and demonstrations of clinical competence]***.

(c) There shall be standing orders for nurse-midwifery services ***[that are reviewed annually and include the name of each medication, dosage, quantity, frequency of administration, and indications for use]***.

[(d) An on-call schedule of obstetricians and nurse-midwives shall be available to the obstetric nursing staff at all times.]

8:43G-19.*[27]**26* Nurse-midwifery staff qualifications; mandatory

(a) There shall be a ***[certified]* *licensed*** nurse-midwife who serves as director of nurse-midwifery services, coordinates and is responsible for all nurse-midwifery services provided in the hospital, and monitors the quality of nurse-midwifery care.

(b) All nurse-midwives practicing in the hospital shall ***[have current certification by the American College of Nurse-Midwives, 1522 K St. NW, Suite 1120, Washington, DC 20005]* *be registered professional nurses and currently licensed by the New Jersey Board of Medical Examiners*.**

8:43G-19.*[28]**27* Nurse-midwifery staff education; mandatory

Requirements for the nurse-midwifery education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-19.*[29]**28* Nurse-midwifery staff education; advisory ***(Reserved)***

8:43G-19.*[30]**29* Nurse-midwifery quality assurance methods; mandatory

The quality assurance program for nurse-midwifery services shall include physicians and nurse-midwives and shall monitor at least high-risk screening, transfers and return transfers, and mortality and morbidity by birth weight.

8:43G-19.*[31]**19.30* Scope of obstetric/non-obstetric mix standards

The standards in N.J.A.C. 8:43G-19.31 through 8:43G-19.34 ***19.33*** shall apply to hospitals that place non-obstetric patients on obstetric patient care units. ***The obstetric/non-obstetric mix program is restricted to admission of female non-obstetric patients.***

8:43G-19.*[32]**31* Obstetric/non-obstetric mix structural organization; mandatory

(a) If the hospital mixes obstetric and non-obstetric ***[female]* inpatients on the obstetric ***[and newborn]*** unit, there shall be an established obstetric/non-obstetric mix committee that meets at least once a year and includes at least:**

1. The medical director ***[s]*** of the obstetric ***[and newborn]*** service;
2. The nurse with administrative or clinical responsibility for nursing care on the obstetric service;
3. A medical records representative;
4. The operating suite supervisor or representative;
5. An admissions office representative;

6. The infection control practitioner; and
7. A representative of hospital administration.

(b) The ***[obstetric/non-obstetric mix committee]* *medical director of the obstetric service*** shall ***sign and*** review monthly reports, ***[signed by the medical director of the obstetric service,]*** that include the following:

1. Monthly summaries of the non-obstetric log book and the maternity log book;
2. Review of all non-obstetric patients who were transferred from the obstetric unit, with notes on the reason for transfer, and the results of cultures for those patients transferred for reasons of morbidity or infection;
3. Review of all cases of maternal morbidity and the causes, with notes on the results of cultures; and
4. Review of all cases of infant morbidity and the causes, with notes on the results of cultures.

8:43G-19.*[33]**32* Obstetric/non-obstetric mix policies and procedures; mandatory

(a) If the hospital mixes obstetric and non-obstetric inpatients on the obstetric and newborn unit, it shall have prior written permission from the Department of Health, Division of Health Facilities Evaluation.

(b) There shall be written policies and procedures for the obstetric/non-obstetric mix program that are reviewed annually by the obstetric/non-obstetric mix committee, revised as needed, and implemented. These policies shall include:

1. Criteria and procedures for admission;
2. Criteria for non-admission; and
3. Protocols for cultures of non-obstetric patients, including the type of cultures, when, and under what circumstances they are performed.

(c) A log book of non-obstetric patients admitted to the obstetric service shall be maintained ***[in the medical records department]***. This log book shall include, in addition to patient's name, at least:

1. Patient's age;
2. Dates of hospital admission and discharge;
3. Admission and discharge diagnoses;
4. Date and type of surgery, if performed, including associated procedures, and name of surgeon;
5. Morbidity and cause, if applicable;
6. Destination, date, and reason for transfer to other units of the hospital; and
7. Medical record number.

(d) An admission check sheet and questionnaire, approved by the New Jersey Department of Health, shall be filled out upon admission to the hospital for every non-obstetric patient admitted to the obstetric service, and shall be included in the patient's medical record.

8:43G-19.*[34]**33* Obstetric/non-obstetric mix patient services; mandatory

(a) A non-obstetric patient shall be admitted to the obstetric service only if the number of beds left available on the unit for obstetric patients is greater than the average number of deliveries per day for the hospital, as determined by data from quarterly utilization reports.

(b) No obstetric patient shall be excluded from the obstetric unit if a bed can be made available by the transfer of a non-obstetric patient.

(c) A non-obstetric patient who is admitted to the obstetric service shall not share a room with an obstetric patient.

(d) A non-obstetric patient shall not be admitted to the obstetric service if she has any of the following conditions:

1. An oral temperature of 100.4 degrees Fahrenheit or higher upon admission;
2. Substance abuse or misuse;
3. Mental illness;
4. A case of known or suspected infection, as specified in the obstetric policies and procedures;
5. A history of household contacts with staphylococcal infection or other contagious diseases that have occurred within one month prior to admission;

6. Known malignancy requiring extensive surgery or the use of radium;

7. A surgical procedure that is not on a list approved by the obstetric/non-obstetric mix committee;

8. A hemorrhoidectomy or other bowel surgery, with the exception of the excision of small hemorrhoidal tabs;

9. Has received antibiotics other than prophylactic antibiotics, with the exception of local application of antibiotics such as bladder irrigation or local vaginal preparation ***during the two-week period prior to admission***; or

10. Was admitted to a hospital during the two week period prior to admission.

(e) A non-obstetric patient shall be transferred from the obstetric service if she:

1. Has an oral temperature of 100.4 degrees Fahrenheit or higher on any two successive days, exclusive of the first 24 hours following surgery;

2. Has any sign of infection, including infection discovered at the time of surgery; or

3. Has received perioperative prophylactic antibiotics more than six hours prior to surgery or more than 72 hours following surgery.

(f) All surgical procedures performed on non-obstetric patients on the obstetric service shall be performed in the operating suite.

(g) Oral temperature readings shall be taken at least every 12 hours for all non-obstetric patients on the obstetric service.

(h) The same visitors policy shall apply to both obstetric and non-obstetric patients on the mixed obstetric service.

SUBCHAPTER 21. ONCOLOGY

8:43G-21.1 Scope of oncology standards

The standards in this subchapter shall apply only to hospitals that have a separate, designated patient care unit for oncology.

8:43G-21.2 Oncology structural organization; mandatory

(a) There shall be a multidisciplinary cancer committee, chaired by a physician, that is responsible for at least the development of oncology policies and procedures, tumor review, and tumor registry.

(b) There shall be a formal mechanism for communication between the oncology service and each of the following clinical areas: nursing, dietary, social work, and pharmacy.

8:43G-21.3 Oncology structural organization; advisory ***(Reserved)***

8:43G-21.4 Oncology policies and procedures; mandatory

(a) The unit shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Criteria for admission;

2. Guidelines for mixing chemotherapy, when performed on the unit, that reference Occupational Safety and Health Administration (OSHA) guidelines: "Work Practice Guidelines for Personnel Dealing with Cytotoxic Drugs," OSHA Instruction PUB 8-1.1, PB 89203301 Office of Occupational Medicine;

3. Guidelines for administering chemotherapy that follow national Oncology Nursing Society guidelines; available from the Oncology Nursing Society, 1016 Greentree Road, Pittsburgh, PA 15220-3125, telephone 412-921-7373.

4. Training of nursing and housekeeping staff in the disposal of chemotherapeutic agents;

5. Use, handling, storage, and disposal of specific chemicals, agents, and body wastes;

6. Assuring informed consents to chemotherapy; and

7. Psychological/social and spiritual aspects of patient care.

(b) There shall be written visiting policies for patients that allow for visits by children and 24-hour visitation rights for designated visitors.

8:43G-21.5 Oncology staff qualifications; mandatory

(a) There shall be a clinical coordinator with responsibility to administer the program of care who is a registered professional nurse with the equivalent of two years of full-time experience in oncology.

(b) There shall be a clinical resource person who is a registered professional nurse with ***[at least]* *the equivalent of*** two years of clinical experience in oncology who is available to the unit.

[(c) The social worker assigned to the inpatient oncology unit shall have at least a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education, or a bachelor's degree from an accredited social work program and one year of experience in social work or mental health.]

8:43G-21.6 Oncology staff qualifications; advisory ***(Reserved)***

8:43G-21.7 Oncology staff time and availability; mandatory

(a) ***[A social worker]* *A member of social work services*** shall be assigned to the unit ***[who]* *to*** provide ***[s]*** psychosocial services, assist ***[s]*** with discharge planning, and provide ***[s]*** information regarding financial aspects of care.

(b) A registered dietitian shall be assigned ***[at least part time]*** to the oncology service.

8:43G-21.8 Oncology staff time and availability; advisory ***(Reserved)***

8:43G-21.9 Oncology patient services; mandatory

(a) There shall be multidisciplinary patient care team meetings that take place on a regularly scheduled basis and include at least a physician or physician's appointed designee, a nurse, a social worker, a dietitian, and other disciplines as necessary.

(b) Patient and family teaching shall be provided in any case where the patient and family are in need of and able to receive instruction.

(c) Criteria shall be developed in consultation with the social work department for identifying patients in need of social work services and/or discharge planning and making referrals as needed.

(d) There shall be a system to refer patients, family, and staff to in-house and community support groups and services.

8:43G-21.10 Oncology patient services; advisory ***(Reserved)***

8:43G-21.11 Oncology space and environment; mandatory

(a) There shall be food-warming facilities on the unit for use by patients and their families.

(b) Single bedrooms shall be available as needed to accommodate patients with neutropenia, bone marrow transplants, or radiation implants.

8:43G-21.12 Oncology space and environment; advisory ***(Reserved)***

8:43G-21.13 Oncology supplies and equipment; mandatory

A Class 2 Vertical Laminar Air Flow Hood shall be used during the preparation of all chemotherapy on the unit. Occupational Safety and Health Administration (OSHA) guidelines: "Work Practice Guidelines for Personnel Dealing with Cytotoxic Drugs," OSHA Instruction PUB 8-1.1, Office of Occupational Medicine, shall be used to develop procedures for preparing chemotherapy.

8:43G-21.14 Oncology supplies and equipment; advisory ***(Reserved)***

8:43G-21.15 Oncology staff education; mandatory

Requirements for the oncology education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-21.16 Oncology staff education; advisory ***(Reserved)***

8:43G-21.17 Oncology quality assurance methods; mandatory

There shall be a program for quality assurance for oncology that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

SUBCHAPTER 22. PEDIATRICS

8:43G-22.1 Scope of pediatric and pediatric intensive care standards

The standards in this subchapter shall apply only to hospitals that have a separate, designated unit or service for pediatrics and pediatric intensive care.

8:43G-22.2 Pediatrics and pediatric intensive care policies and procedures; mandatory

(a) The service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. The age below which all patients must be admitted to a pediatric service;

2. The age above which patients are admitted to a pediatric service only at the discretion of the physician director of the service*[, the patient's physician, and the administrative director of nursing for the service]*;

3. Admission and discharge criteria specific to the service;

4. A visitors policy that allows for 24 hour visitation by designated visitors and specifies the number of visitors permitted each patient at any one time;

5. Criteria for those pediatric patients who require a pediatric consultation or case management by a pediatrician;

6. Infection control protocols;

7. Protocols for specific types of patient emergencies; and

8. An emergency transfer policy which specifies mechanisms for transport of pediatric patients ***requiring specialized or intensive care services*** to ***[higher level]*** facilities ***providing such care***.

(b) Every patient under 18 years of age who is admitted ***[to the pediatric intensive care unit or]*** temporarily to the adult intensive care unit shall receive a pediatric consultation.

(c) If the hospital does not have pediatric intensive care services, the hospital must state the conditions under which a pediatric patient may be temporarily admitted to the adult intensive care unit. ***[Every patient under 18 years of age, except for patients 14 to 18 years old needing surgery, trauma, or ob/gyn care, who is admitted to an adult intensive care unit shall receive a pediatric consultation and should be stabilized and transferred to a facility with pediatric intensive care.]*** ***The hospital shall establish and implement protocols for the stabilization and transfer of these patients to a facility providing pediatric intensive care services.***

(d) The pediatric services shall participate in developing anesthesia and pain management policies for infants ***and children***.

8:43G-22.3 Pediatrics and pediatric intensive care patient services; mandatory

(a) The nursing assessment of each pediatric patient shall include assessment of the patient's developmental needs. Nursing care shall be structured around this assessment.

(b) All standard blood studies on pediatric patients shall use at least micro methodology.

(c) There shall be documented evidence of pediatric medical and nursing staff participation in the ***development of policies and procedures of pediatric patients in any department where pediatric patients may receive treatment. At a minimum, this shall include the*** areas of dietary, emergency department, laboratory, pharmacy services, radiology, rehabilitation, and social work.

(d) Criteria shall be developed in consultation with the social work department for identifying patients in need of social work and/or discharge planning and making referrals as needed.

(e) The parents of pediatric patients shall be included in the development of the nursing patient plan of care.

8:43G-22.4 Pediatrics and pediatric intensive care patient services; advisory ***(Reserved)***

8:43G-22.5 Pediatrics and pediatric intensive care supplies and equipment; mandatory

Emergency equipment shall be child-sized or adaptable for children.

8:43G-22.6 Pediatrics and pediatric intensive care staff education; mandatory

Requirements for the pediatrics and pediatric intensive care education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-22.7 Pediatrics and pediatric intensive care staff education; advisory ***(Reserved)***

8:43G-22.8 Pediatrics and pediatric intensive care quality assurance methods; mandatory

[(a)] There shall be a program of quality assurance for each pediatric service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, recommending, implementing, and monitoring corrective actions on the basis of these data.

[(b)] Quality assurance in each pediatric unit shall include inter-hospital exchanges of information and case reviews with pediatric specialists in other hospitals.]*

8:43G-22.9 Scope of pediatrics standards

The standards in N.J.A.C. 8:43G-22.10 through 22.12 shall apply only to hospitals that have a separate, designated unit or service for pediatrics.

8:43G-22.10 Pediatric staff qualifications; mandatory

(a) The physician director of the pediatric service shall be board certified in pediatrics.

(b) The nurse with administrative responsibility for nursing care in pediatrics shall be a registered professional nurse with at least three years of experience in pediatrics.

[(c)] Effective January 1, 1995, the nurse with administrative responsibility for nursing care in pediatrics shall be a registered professional nurse with a baccalaureate degree in nursing science from an accredited college or university and at least three years of experience in pediatrics.]*

8:43G-22.11 Pediatrics staff qualifications; advisory ***(Reserved)***

8:43G-22.12 Pediatrics space and environment; mandatory

(a) A minimum of 10 percent of the beds used for pediatric care shall be capable of functioning as isolation rooms.

(b) Each pediatric unit shall have at least one playroom with recreation equipment and child-size tables and chairs.

(c) There shall be an adult supervising at all times when children under seven years of age are present in the recreation room or playroom. ***[This adult may be a member of the hospital staff or a volunteer.]***

(d) There shall be safety measures in place on the pediatric unit to prevent electrical and bodily injury to patients. Electrical beds shall be used only if they are equipped with manual hydraulic control, a minimum low setting, and a maximum high setting.

8:43G-22.13 Scope of pediatric intensive care standards

The standards in N.J.A.C. 8:43G-22.14 through ***[22.21]*** ***22.22*** shall apply only to hospitals that have a separate, designated unit or service for pediatric intensive care.

8:43G-22.14 Pediatric intensive care structural organization; mandatory

[(a)] There shall be a multidisciplinary pediatric intensive care committee or its equivalent that includes at least representatives of nursing, medical staff, administration, respiratory therapy, and social work. This committee shall meet regularly to discuss unit administration and ways of improving interdisciplinary communication on the pediatric intensive care unit ***[and pediatric intermediate care unit]***.

8:43G-22.15 Pediatric intensive care staff qualifications; mandatory

(a) There shall be a **full-time** physician director of the pediatric intensive care service who is board certified or board eligible in pediatric critical care.

(b) The pediatric intensive care unit shall be covered at all times by at least one physician, present in the hospital or on call, who is board certified or board eligible in pediatrics and has either five years of experience in pediatrics or has completed a fellowship in a pediatric subspecialty.

(c) The pediatric intensive care unit shall have physicians with each of the following pediatric subspecialties on staff: anesthesiology, cardiology, hematology/oncology, infectious diseases, nephrology, neurology, pulmonary, radiology, and surgery.

(d) The pediatric intensive care unit shall have a formal consultative relationship with physicians in the following pediatric

subspecialties: endocrinology, gastroenterology, neurosurgery, otolaryngology, and urology.

(e) Specific privileges for physicians who admit patients to the pediatric intensive care unit shall be delineated by the hospital with participation of the physician director of the pediatric intensive care unit.

(f) The nurse with administrative responsibility for nursing in the pediatric intensive care unit shall be a registered professional nurse with specialized training in pediatric critical care and at least three years of experience in a pediatric intensive care unit.

(g) *Effective January 1, 1995, the nurse with administrative responsibility for nursing care in the pediatric intensive care unit shall be a registered professional nurse with a baccalaureate degree in nursing science from an accredited college or university with specialized training in pediatric critical care and at least three years experience in a pediatric intensive care unit.* ***There shall be a health professional trained in resuscitation of children available within the unit at all times.***

(h) Effective January 1, 1992, there shall be a health professional certified in advanced pediatric life support available within the unit at all times.

8:43G-22.16 Pediatric intensive care staff time and availability; mandatory

(a) There shall be a physician who can handle pediatric emergencies, other than the physician assigned to the emergency department, in the hospital at all times.

(b) There shall be at least one registered professional nurse to every two patients in the pediatric intensive care unit.

(c) There shall be at least one full-time clerical support staff person assigned full or part time to the pediatric intensive care unit.

(d) The services of the following staff with specialized training or experience in pediatrics shall be available to pediatric intensive care unit patients and their families: child-life specialist, social worker, physical therapist, occupational therapist, psychiatrist, and nutritionist.

(e) The hospital shall have available a transport team staffed by health professionals with special training in pediatrics.

8:43G-22.17 Pediatric intensive care patient services; mandatory

(a) The following services shall be available to the pediatric intensive care unit at all times:

1. Blood bank;
2. Dialysis;
3. Hematology;
4. Laboratory;
5. Nuclear medicine;
6. Pharmacy;
7. Radiology;
8. Computer tomography; and
9. Respiratory therapy.

(b) There shall be a system that is available to the pediatric intensive care unit at all times for transporting acutely ill children between hospitals.

8:43G-22.18 Pediatric intensive care patient services; advisory ***(Reserved)***

8:43G-22.19 Pediatric intensive care space and environment; mandatory

(a) There shall be at least one isolation room in the pediatric intensive care unit. There shall be additional isolation rooms based on a ratio of one room to every six pediatric intensive care beds.

(b) The pediatric intensive care unit shall be a closed unit, and no traffic to other departments or units shall pass through it.

(c) There shall be a room nearby the pediatric intensive care unit where the physician can sleep.

(d) There shall be a sitting room or lounge area nearby the pediatric intensive care unit for the families of patients in the unit.

8:43G-22.20 Pediatric intensive care supplies and equipment; mandatory

(a) The pediatric intensive care unit shall have immediate access to equipment that has the capability for continuous monitoring of:

1. Arterial pressure;
2. Central venous pressure;
3. Electrocardiogram;
4. Heart rate;
5. Intracranial pressure;
6. Pulmonary arterial pressure;
7. Respiration;
8. Temperature; ***[and]***
9. Three simultaneous pressure capability***[.]**;**
- *10. Defibrillator;**
- 11. Intravenous fluid warmer;**
- 12. Metabolic bed scale; and**
- 13. Pulse oximeter.***

(b) The pediatric intensive care unit shall have access to the following equipment within the hospital:

1. Bilirubin lights;
2. End tidal carbon dioxide measurement; ***and***
- *[3. Intravenous fluid warmer;]***
- *[4.]**3.* Isolation equipment***[.]**.*****
- *[5. Metabolic bed scale; and**
- 6. Pulse oximeter.]***

(c) Provisions shall be available for emergency repair of biomedical equipment in the pediatric intensive care unit.

8:43G-22.21 Pediatric intensive care supplies and equipment; advisory ***(Reserved)***

***8:43G-22.22 Pediatric intensive care quality assurance methods; mandatory**

The quality assurance program for pediatric intensive care shall include interhospital exchanges of information and case reviews with pediatric specialists in other hospitals.*

SUBCHAPTER 24. PLANT MAINTENANCE AND FIRE AND EMERGENCY PREPAREDNESS

8:43G-24.1 Plant maintenance structural organization; mandatory

(a) There shall be a multidisciplinary safety committee that develops a comprehensive hospital-wide safety program that is reviewed annually, revised as needed, and implemented.

(b) There shall be a mechanism to report all incidents, injuries and safety hazards to the safety committee.

(c) The safety committee shall review all reports and be responsible for ensuring that all reports are referred appropriately and follow-up action is documented.

8:43G-24.2 Plant maintenance policies and procedures; mandatory

(a) The building maintenance service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented.

(b) The building maintenance service shall have a written preventive maintenance program for buildings, equipment and utilities.

8:43G-24.3 Plant maintenance staff qualifications; mandatory

(a) The building maintenance service shall be under the supervision of an employee with at least one of the following qualifications:

1. Five years of ***[supervisory]*** experience in health care plant maintenance*, **three of which shall be in a supervisory capacity***;
2. A baccalaureate degree in engineering from an accredited college or university and three years of ***[supervisory]*** experience in health care plant maintenance*, **two of which shall be in a supervisory capacity***; or
3. A current professional engineer license in New Jersey and three years of ***[supervisory]*** experience in health care plant maintenance*, **two of which shall be in a supervisory capacity***.

(b) There shall be an in-hospital or contracted biomedical electronics equipment maintenance and safety program under the supervision of an individual with at least:

1. A two-year associate's degree in biomedical engineering from an accredited college or university and ***[three]* *two*** years of experience in the field of biomedical engineering; or
2. ***[Six]* *Four*** years of combined experience and/or training from an accredited technical school or military program.

8:43G-24.4 Plant maintenance services; mandatory

(a) Records of preventive maintenance inspections and repairs ***of electrical and mechanical systems*** shall be maintained for at least one year.

[(b) Records of preventive maintenance inspections and repairs of the electrical system shall be maintained for at least one year.]

*[(c)]***(b)* The building maintenance service shall be provided with copies of the written instructions for operating and maintaining departmental and unit equipment. These instructions shall be systematically retained in the departments or units in which the equipment is used.

*** (c) All life-sustaining equipment shall be plugged into outlets connected to the emergency power supply.***

(d) Routine maintenance inspections of elevators shall be conducted in accordance with local ordinances.

(e) The standby emergency generator shall be checked weekly, tested under load monthly, and serviced in accordance with accepted engineering practices.

(f) Floors, ceilings, and walls shall be free of cracks and holes, discoloration, residue build-up, water stains, and other signs of disrepair.

8:43G-24.5 Plant maintenance services; advisory ***(Reserved)***

8:43G-24.6 Plant maintenance staff education; mandatory

Requirements for the plant maintenance education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-24.7 Plant maintenance staff education; advisory ***(Reserved)***

8:43G-24.8 Physical plant general compliance for new construction, alteration or renovation; mandatory

(a) The hospital shall comply with the New Jersey Uniform Construction Code (N.J.A.C. 5:23 under Use Group I-2), standards imposed by the United States Department of Health and Human Services (HHS), the New Jersey Departments of Health and Community Affairs, and the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1987 edition, as published by The American Institute of Architects Press, 1735 New York Ave., NW, Washington, D.C. 20006, Pub. No. ISB N0-913962-96-1). In order to avoid conflict between N.J.A.C. 5:23 and the other standards listed above, Sections 501.3, 610.4.1, 704.0, 705.0, 706.0, 708.0, and 916.5 of the 1987 BOCA Basic Building Code of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities.

(b) The hospital shall submit plans and specifications to the Construction and Monitoring Program, Health Facilities Evaluation, New Jersey Department of Health, CN 367, Trenton, N.J. 08625-0367, for approval prior to construction, alteration, or renovation.

8:43G-24.9 Physical plant general compliance for construction, alteration or renovation completed during the period of July 1, 1971 through May 7, 1981 or May 8, 1981 through October 1, 1987; mandatory

For construction, alteration or renovation completed during the period of July 1, 1971 through May 7, 1981 or May 8, 1981 through October 1, 1987, the hospital shall comply with the New Jersey Uniform Construction Code, standards imposed by the United States Department of Health and Human Services (HHS), the New Jersey Departments of Health and Community Affairs, and the HHS "Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities" (HHS) Publication No. (HRA) 79-14500. In order to avoid conflict, sections 502 (except as it pertains to area limitations), 1702.7, 1716.0, article 7 except sections 712.0, 716.0 and 717.0, and article 8 except sections 818.6 through 818.7.6 of the building subcode of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities. The HHS (HRA) 79-14500 shall serve as the Uniform Code for the matters regulated by these sections.

8:43G-24.10 Physical plant general compliance for construction, alteration or renovation completed during the period of August 1, 1977 through July 1, 1979; mandatory

For construction, alteration or renovation completed during the period of August 1, 1977 through July 1, 1979, the hospital shall comply with the Uniform Construction Code, standards imposed by the United States Department of Health and Human Services (HHS), the New Jersey Departments of Health and Community Affairs, and the HHS "Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities" (HHS) Publication No. (HRA) 74-4000. In order to avoid conflict, sections 302 (except as it pertains to area limitations), 1202.7 and 1216.0, Article 5 except sections 513.0, 519.0, 520.0 and Article 6 except sections 618.7 through 618.9.3 of the building subcode of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities. The HHS (HRA) 74-4000 shall serve as the Uniform Code of the State for the matters regulated by these sections.

8:43G-24.11 Physical plant general compliance for construction, alteration or renovation completed during the period of September, 1974 to August 1, 1977; mandatory

For construction, alteration or renovation completed during the period of September, 1974 to August 1, 1977, the hospital shall comply with the United States Public Health Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities (HRA) 74-4000 and the New Jersey Supplementary Standards to this regulation, adopted by the Health Care Advisory Board and dated June 26, 1968.

8:43G-24.12 Physical plant maintenance general compliance for construction, alteration or renovation completed prior to September, 1974; mandatory

For construction, alteration or renovation completed during the period prior to September, 1974, the hospital shall comply with the United States Public Health Service Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities (930-A-7) and the New Jersey Supplementary Standards to this regulation, adopted by the Health Care Advisory Board and dated June 26, 1968.

8:43G-24.13 Fire and emergency preparedness; mandatory

(a) The hospital shall comply with the 1985 edition of the National Fire Protection Association "Life Safety Code" (N.F.P.A. 101, Chapter 12 for new construction and Chapter 13 for existing construction), available from NFPA, 1 Batterymarch Park, Quincy, MA, 02169, (1-800-344-3555). If the building was constructed prior to 1968, the hospital shall have the option of applying for approval from the State Department of Health under Fire Safety Evaluation System (FSSES) requirements. Such approval shall be obtained prior to the annual licensure inspection survey and shall include prearranged inspection by a State Department of Health surveyor.

(b) All employees, including part-time employees, temporary agency personnel, and private duty nurses shall be trained in procedures to be followed in the event of a fire and instructed in the use of fire-fighting equipment and patient evacuation of hospital buildings as part of their initial orientation and at least annually thereafter.

(c) All employees, including part-time employees, temporary agency personnel, and private-duty nurses, shall receive printed instructions on procedures to be followed in case of emergency, including patient evacuation of the buildings.

(d) A written evacuation diagram specific to the unit that includes evacuation procedure, location of fire exits, alarm boxes, and fire extinguishers shall be posted conspicuously on a wall in each patient care unit.

(e) Exits, stairways, doors, and corridors shall be kept free of obstructions.

(f) Fire drills shall be conducted at least 12 times per year, with at least one drill on each shift and one drill on a weekend.

(g) Fire extinguishers shall be visually inspected at least monthly; fully inspected at least annually, recharged, repaired and hydrotested as required by manufacturer's instructions; and labeled with the date of the last inspection.

(h) Fire detectors and alarm systems shall be inspected and tested at least twice a year by a certified testing agency. Written reports of at least two inspections shall be kept on file.

(i) Fire suppression systems shall be tested at least twice a year by an approved and certified testing agency. Written reports of the last two inspections shall be kept on file.

(j) There shall be a comprehensive, current, written preventive maintenance program for fire detectors, alarm systems, and fire suppression systems that includes regular visual inspection. This program shall be documented.

(k) There shall be a procedure for investigating and reporting fires. All fires that result in a patient or patients being moved shall be reported to the New Jersey State Department of Health immediately by telephone (609) 588-7725 and followed up in writing within 72 hours. In addition, a written report of the investigation shall be forwarded to the Department of Health as soon as it becomes available.

(l) The hospital shall have an alternate emergency power supply. If such emergency power supply is a diesel emergency power generator, there shall be enough stored fuel to maintain power for at least 24 hours.

8:43G-24.14 Fire and emergency preparedness; advisory
(Reserved)

SUBCHAPTER 26. PSYCHIATRY

8:43G-26.1 Scope of psychiatry standards

The standards in this subchapter shall apply only to hospitals that have a separate, designated unit or service for psychiatry.

8:43G-26.2 Psychiatry policies and procedures; mandatory

(a) The psychiatric service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures shall be readily available on the inpatient unit and include at least the following:

1. Criteria for admission to and discharge from each component of the psychiatric unit*. **Admissions criteria shall be based solely on the patient's needs and the ability of the unit to meet these needs, and discharge policies shall preclude punitive discharge***;

2. Safety and security precautions for the prevention of suicide, assault, elopement, and patient injury;

3. Emergency procedures for medical emergencies;

4. Infection control practices for the day/dining room, equipment, and rooms used by more than one patient. If these special practices are included in the hospital-wide infection control policies and procedures manual, which is available on the unit, then additional policies and procedures do not have to be developed by the psychiatric service for infection control;

5. Patient privileges;

6. Patient rights ***as delineated at N.J.A.C. 8:43G-4***;

7. Family interviews for assessment and treatment purposes;

8. A clinical services plan describing the services provided;

9. Content of patient evaluations, including the components of care, time frames for goals, and staff assigned to the patient;

10. Criteria for and process of discharge from the unit;

11. Release of information, in conformance with applicable statutes and the policies of the medical records department;

12. Informed consent, with special policies for patients undergoing electro-convulsive therapy;

13. Patient grievance procedures; and

14. Criteria for use of seclusion rooms.

(b) The psychiatric service shall develop and implement written policies and procedures for use of ***[chemical and physical]*** restraints.

(c) The hospital shall comply with the provisions of N.J.S.A. 30:4-24.2(d)(3), the New Jersey Patients' Bill of Rights of 1965 and all rules and regulations promulgated pursuant to the aforementioned Act, and with all procedures delineated in the American Psychiatric Association Task Force Report No. 22 on Restraint and Seclusion of 1984, available from the American Psychiatric Association, 1400 K Street NW, Washington, D.C. 20005.

(d) The psychiatric service shall develop and implement written policies and procedures for use of electro-convulsive therapy (ECT), ***in accordance with the recommendations of the National Institutes of Health Consensus Development Conference Statement: Electroconvulsive Therapy (1985 or later edition, if current), and the New Jersey Patient's Bill of Rights at N.J.S.A. 30:4-24.2(d)(2) incorporated herein by reference***, including at least:

1. Criteria specifying when ECT may be used;

2. The use of written informed consent;

3. The requirement that an anesthesiologist, a certified registered nurse anesthetist, or a physician granted privileges by the medical staff to administer anesthesia be present at the procedure;

4. Administration in an appropriately equipped area, with emergency equipment available;

5. Full documentation of the administration of ECT in the medical record; and

6. Observation of the patient's recovery immediately after the procedure is performed.

†Note: The National Institutes of Health Consensus Development Conference Statement is available from the U.S. Department of Health and Human Services, National Institutes of Health, Office of Medical Applications of Research, Building 1, Room 20892, Bethesda, Maryland.

(e) There shall be a written affiliation or referral agreement with the community mental health agency or agencies designated within the hospital's service area by the New Jersey Division of Mental Health and Hospitals for referral, case management, and discharge planning.

(f) The hospital shall comply with the provisions of the New Jersey Screening and Commitment Law of 1988, N.J.S.A. 30:4-27.1 et seq., specifically N.J.S.A. 30:4-27.10(f), and all rules promulgated pursuant to the aforementioned Act in regards to the transfer of a patient to a psychiatric facility.

8:43G-26.3 Psychiatry staff qualifications; mandatory

(a) Psychiatric care services shall be clinically supervised by a physician director who is responsible for the direction and quality of care provided by the medical staff.

(b) ***Any physician currently holding the position of director shall have completed a residency in psychiatry or neurology and shall be able to demonstrate skills and experience at least equivalent to certification by the American Board of Psychiatry and Neurology. Any newly appointed* * [The]* physician director shall be board certified * [by the American Board of Psychiatry and Neurology]*, or shall meet the training and experience requirements for examination by the Board and shall be examined within two years of eligibility.**

(c) Nursing on the psychiatric care unit shall be directed by a registered professional nurse with at least ***[a baccalaureate degree in a health-related field from an accredited college or university and two]* *three* years of clinical psychiatric experience*[, or four years of clinical psychiatric experience]*.**

(d) The social worker assigned to the inpatient psychiatric unit shall have at least a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education, or a bachelor's degree from an accredited social work program and one year of experience in social work or mental health.

8:43G-26.4 Psychiatry staff qualifications; advisory ***(Reserved)***

8:43G-26.5 Psychiatry staff time and availability; mandatory

(a) A psychiatrist shall be on-site or on call at all times.

(b) ***[Two nursing staff members, at least one of whom is a registered professional nurse, shall be on the unit at all times.]* *Nurse staffing shall be based on hospital acuity levels, but in no case shall fewer than two nursing staff members, at least one of whom is a registered professional nurse, be on the unit.***

8:43G-26.6 Psychiatry staff time and availability; advisory
(Reserved)

8:43G-26.7 Psychiatry patient services; mandatory

(a) Psychiatric patients shall receive ***[all]**, when* needed*, all*** medical, surgical, diagnostic, and treatment services as ordered by

a physician. If such services are not available within the hospital, qualified consultants and attending physicians shall be available and arrangements established for transferring patients to a facility where the needed services can be provided.

(b) All patients shall receive a complete history and physical examination by a physician within 24 hours of admission to the psychiatric unit.

(c) The following services shall be available as part of the program of the psychiatric care unit:

1. Individual, group, and family therapy;
2. Psychotropic medications;
3. Rehabilitative services;
4. Psychological services, including testing, provided by a psychologist licensed by the State of New Jersey; and
5. Recreational therapy.

(d) A social worker shall complete a psychosocial assessment for each patient which includes at least:

1. Identified problems;
2. Social and family history;
3. Educational and employment history;
4. Financial status; and
5. Present living arrangements.

(e) A written psychiatric evaluation shall be performed of each patient by a psychiatrist within 24 hours of admission to the unit.

(f) The psychiatric evaluation shall be documented in the medical record and shall include at least:

1. The chief complaint;
2. A history of present illness;
3. A family history;
4. A pertinent medical history*, including previous reactions to psychotropic medications*;
5. A mental status; and
6. A diagnostic impression.

(g) An individual, comprehensive, multidisciplinary care plan shall be developed for each patient based on an assessment of the patient's strengths and limitations. The written care plan shall include at least:

1. A psychiatric diagnosis specifying intercurrent diseases;
2. Observable treatment goals;
3. The specific treatment methods to be used; and
4. The responsibilities of each member of the interdisciplinary care team.

(h) The multidisciplinary care plan shall be discussed with the patient and implemented.

(i) Each patient's plan of care shall be formulated in a multidisciplinary conference, which includes members of all disciplines involved in treating the patient.

(j) The multidisciplinary plan of care shall be reassessed at least weekly by all members of the professional team who are involved in the patient's care.

(k) If the patient is admitted to the psychiatric unit through the emergency department and the patient gives consent, the patient's primary-care physician shall be contacted in order to inform the physician about the patient's condition and to obtain information about the patient's medical status.

(l) Written discharge plans shall be developed for each patient by members of a multidisciplinary team, who either meet or make notes individually in the patient's record.

(m) There shall be mechanisms for providing immediate security assistance to staff and patients.

(n) Patients shall be advised of the reasons for, and expected effects of, medications prescribed for them.

(o) There shall be a milieu program that includes patient community meetings and daily activities.

(p) An accurate schedule of activities shall be posted conspicuously in the unit.

8:43G-26.8 Psychiatry patient services; advisory *(Reserved)*

8:43G-26.9 Psychiatry space and environment; mandatory

(a) Interviews between staff and patients shall be conducted in a private setting.

(b) The unit shall have access to at least one acute care/seclusion room.

(c) Acute care/seclusion rooms shall be at least 100 square feet and shall be large enough to provide access to the patient from all sides of the bed or mattress and have room for emergency life-sustaining equipment.

(d) Patients in acute care/seclusion rooms shall be either under direct observation in a room near the nurses station or observed through the use of electronic monitoring equipment.

(e) The unit shall have a day room/dining room that allows for social interaction, dining, and therapy.

(f) There shall be space in each patient room for storage of patients' personal belongings. There shall be a system for securing patients' valuable belongings.

(g) The psychiatric care unit shall comply with the suicide prevention regulations as provided in Federal Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1987 Edition, section 7.6, or later edition, if in effect, which are hereby incorporated by reference, and are available from The American Institute of Architects Press, 1735 New York Ave. NW, Washington, D.C. 20006, Pub. No. ISBN 0-913962-96-1.

(h) Authorized security personnel shall have immediate access to locked units.

(i) There shall be a system for summoning help from other areas of the unit in an emergency.

8:43G-26.10 Psychiatry space and environment; advisory
(Reserved)

8:43G-26.11 Psychiatry supplies and equipment; mandatory

(a) The restraint equipment needed by the unit shall be immediately available *on the unit* and accessible to unit staff.

(b) The recreation and therapy equipment and supplies needed for psychiatric care shall be available *on the unit* and stored in locked storage.

(c) Locked storage areas shall be available for supplies and the safekeeping of the individual, ongoing creative projects of patients.

8:43G-26.12 Psychiatry staff education; mandatory

(a) Requirements for the psychiatry service education program shall be as provided in N.J.A.C. 8:43G-5.9.

(b) The staff of the psychiatric unit shall receive annual training in handling the assaultive patient.

(c) The non-medical and non-nursing professional staff shall receive annual training in drug effects and side effects.

8:43G-26.13 Psychiatry staff education; advisory *(Reserved)*

8:43G-26.14 Psychiatry quality assurance methods; mandatory

(a) There shall be a program of quality assurance for psychiatric services that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The ongoing quality assurance program of the psychiatric service shall include incident review and monitoring of such areas as suicide, attempted suicide, elopement, assaults, slips and falls, *patient abuse and neglect,* use of seclusion, and use of restraints.

(c) The medical staff shall review, on at least an annual basis, use of restraints, discharge planning, and outcomes.

SUBCHAPTER 29. PHYSICAL AND OCCUPATIONAL THERAPY

8:43G-29.1 Physical therapy policies and procedures; mandatory

(a) The physical therapy service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Criteria for patient assessment and treatment plans;
2. Procedures for medical emergencies; and
3. Mechanisms for interdisciplinary communication.

(b) Each patient referred to the physical therapy service by physician's order shall be assessed by a physical therapist. The assessment

shall include review of the medical record ***or medical history***. A written plan of care shall be developed, based on the assessment.

(c) Physical therapy assessment and treatment shall be initiated within 48 hours of referral, excluding weekends and holidays.

(d) The physical therapy service shall develop specific criteria for patient assessment and patient treatment that are used by staff in patient contact, documentation, and for quality assurance. ***Criteria shall include at least the following:**

1. **Appropriateness of referrals;**
2. **Timeliness of the initiation of therapy;**
3. **Implementation of physical therapy orders;**
4. **Follow-up for patients who have not responded to therapy; and**
5. **The adequacy of interdisciplinary communication.***

(e) The patient assessment and plan of care shall include measurable goals with specified time frames and shall be documented in the medical record. If goals are not met, the reasons why the goals are not met shall be specified in the medical record.

(f) Each physical therapy treatment shall be documented in the patient's medical record. A note shall be entered into the medical record at least weekly, or more frequently if there is a significant change in the patient's status or treatment needs.

(g) The physical therapist shall discuss the plan of care with the patient and family, if possible.

8:43G-29.2 Physical therapy policies and procedures; advisory ***(Reserved)***

8:43G-29.3 Physical therapy staff qualifications; mandatory

(a) The physical therapy service shall be under the clinical direction of a physical therapist licensed by the New Jersey State Board of Physical Therapy.

(b) ***A medical staff committee or a physician*** ***[A physician or medical staff committee]*** shall be responsible for clinical services in the physical therapy service.

(c) A copy of each physical therapist's and physical therapist assistant's license shall be conspicuously posted in the physical therapy service.

8:43G-29.4 Physical therapy staff qualifications; advisory ***(Reserved)***

8:43G-29.5 Physical therapy staff time and availability; mandatory

There shall be at least a ratio of one physical therapist to supervise every two physical therapist assistants, or, with a waiver from the New Jersey State Board of Physical Therapy, one physical therapist to supervise every three physical therapist assistants.

8:43G-29.6 Physical therapy patient services; mandatory

(a) Physical therapy services shall be available on-site.

(b) The physical therapy service shall ***[be open]*** ***offer services*** at least five days a week, excluding holidays.

(c) Visual privacy shall be offered and provided to all patients during evaluation and treatment, when clinically indicated.

(d) Provisions for auditory privacy shall be made for all patients during evaluation and treatment, when clinically indicated.

(e) On discharge, patients shall receive written instructions regarding a home program of treatment, if clinically indicated. The instructions and their receipt shall be documented in the medical record.

8:43G-29.7 Physical therapy patient services; advisory ***(Reserved)***

8:43G-29.8 Physical therapy space and environment; mandatory

(a) Staff of the physical therapy service shall be given space for developing documentation and storing reference books and personal items.

(b) Privacy shall be provided for patients and staff when they need to change clothing before or after treatment.

(c) There shall be lavatories with handwashing facilities in an accessible location, handicapped accessible, handicapped adapted, ***and*** well-ventilated^{*}, and exclusively for patient use^{*}.

8:43G-29.9 Physical therapy supplies and equipment; mandatory

(a) All equipment shall be clean and in good repair.

(b) Physical therapy equipment shall be stored in a safe and accessible place. It shall not be stored in public walkways and hallways.

(c) Call bells shall be provided to patients in the physical therapy service who are not under visual supervision.

8:43G-29.10 Physical therapy staff education; mandatory

Requirements for the physical therapy education program should be as provided in N.J.A.C. 8:43G-5.9.

8:43G-29.11 Physical therapy staff education; advisory ***(Reserved)***

8:43G-29.12 Physical therapy quality assurance methods; mandatory

(a) There shall be a program of quality assurance for physical therapy that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. ***[The quality assurance program shall monitor at least the following:**

1. **Appropriateness of referrals;**
2. **Timeliness of the initiation of therapy;**
3. **Implementation of physical therapy orders;**
4. **Follow up for patients who have not responded to therapy; and**
5. **The adequacy of interdisciplinary communication.]***

8:43G-29.^{*}[12]^{**}13^{*} Occupational therapy policies and procedures; mandatory

(a) The occupational therapy service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. **Criteria for patient assessment and treatment plans;**
2. **Emergency procedures for medical emergencies; and**
3. **Mechanisms for interdisciplinary communication.**

(b) Each patient referred to the occupational therapy service by physician's order shall be assessed by an occupational therapist. The assessment shall include review of the medical record. A written plan of care shall be developed, based on the assessment.

(c) Occupational therapy assessment and treatment shall be initiated within 72 hours of referral, excluding weekends and holidays.

(d) The occupational therapy service shall develop specific criteria for patient assessment and patient treatment that are used by staff in patient contact, documentation, and for quality assurance.

***Criteria shall include at least the following:**

1. **Appropriateness of referrals;**
2. **Timeliness of the initiation of therapy;**
3. **Implementation of occupational therapy orders;**
4. **Follow-up for patients who have not responded to therapy; and**
5. **The adequacy of interdisciplinary communication.***

(e) The patient assessment and plan of care shall include measurable goals with specified time frames and shall be documented in the medical record. If goals are not met, the reasons shall be specified in the medical record.

(f) Each occupational therapy treatment shall be documented in the patient's medical record. A note shall be entered into the medical record at least weekly, or more frequently, if there is a significant change in the patient's status or treatment needs.

(g) The occupational therapist should discuss the plan of care with the patient and family, if possible.

8:43G-29.^{*}[13]^{**}14^{*} Occupational therapy policies and procedures; advisory ***(Reserved)***

8:43G-29.^{*}[14]^{**}15^{*} Occupational therapy staff qualifications; mandatory

(a) The occupational therapy service shall be under the clinical direction of an occupational therapist registered by the American Occupational Therapy Association.

(b) ***A medical staff committee or a physician*** ***[A physician or medical staff committee]*** shall be responsible for clinical services in the occupational therapy service.

(c) All occupational therapists shall be registered and all certified occupational therapy assistants shall be certified by the American Occupational Therapy Association. ***[A copy of each employee's registration or certificate shall be conspicuously posted in the occupational therapy department.]***

- 8:43G-29.*[15]**16* Occupational therapy staff qualifications; advisory *(Reserved)*
- 8:43G-29.*[16]**17* Occupational therapy patient services; mandatory
- (a) Occupational therapy services shall be available on-site.
- (b) The occupational therapy service shall *[be open]* ***offer services*** at least five days a week, excluding holidays.
- (c) Provisions for auditory privacy shall be made for all patients during evaluation and treatment, when clinically indicated.
- (d) On discharge, patients shall receive written instructions regarding a home program of treatment, if clinically indicated. The instructions and their receipt shall be documented in the medical record.
- 8:43G-29.*[17]**18* Occupational therapy patient services; advisory *(Reserved)*
- 8:43G-29.*[18]**19* Occupational therapy space and environment; mandatory
- (a) Privacy shall be provided for patients and staff when they need to change clothing before, during, or after treatment.
- (b) Staff of the occupational therapy department shall be given space for developing documentation and storing reference books and personal items.
- (c) There shall be lavatories with handwashing facilities that are in an accessible location, handicapped accessible, handicapped adapted, ***and*** well ventilated*[, and exclusively for patient use]*.
- 8:43G-29.*[19]**20* Occupational therapy supplies and equipment; mandatory
- (a) All equipment shall be clean and in good repair.
- (b) Occupational therapy equipment shall be stored in a safe and accessible place. It shall not be stored and used in public walkways and hallways.
- (c) Call bells shall be provided to patients in the occupational therapy department who are not under visual supervision.
- 8:43G-29.*[20]**21* Occupational therapy staff education; mandatory
- Requirements for the occupational therapy education program shall be as provided in N.J.A.C. 8:43G-5.9.
- 8:43G-29.*[21]**22* Occupational therapy staff education; advisory *(Reserved)*
- 8:43G-29.*[22]**23* Occupational therapy quality assurance methods; mandatory
- (a) There shall be a program of quality assurance for occupational therapy that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. ***[The quality assurance program shall monitor at least:**
1. Appropriateness of referrals;
 2. Timeliness of the initiation of therapy;
 3. Implementation of occupational therapy orders;
 4. Follow up for patients who have not responded to therapy; and
 5. The adequacy of interdisciplinary communication.]*

[(b) Each member of the occupational therapy staff shall be evaluated by the department director at least annually.]

SUBCHAPTER 30. RENAL DIALYSIS

8:43G-30.1 Scope of renal dialysis standards

The standards in this subchapter shall apply only to hospitals that have a separate, designated unit or service for renal dialysis. If a hospital has a renal dialysis unit or service, the standards shall apply to both hemodialysis and peritoneal dialysis units, and to both chronic and acute treatment.

8:43G-30.2 Renal dialysis policies and procedures; mandatory

(a) The renal dialysis service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Criteria for acceptance of patients into the chronic dialysis service, including assurance that patients who have communicable or transmittable diseases will be accepted;
2. Handling the abusive or disruptive patient;
3. Orientation of new patients to the unit;
4. Medical and non-medical emergency procedures involving situations that occur during hours of operation and at other times, including, for example, equipment failure, medical emergency, and codes;
5. Instructing patients and medical staff about the medical and non-medical emergency procedures; and
6. The circumstances under which patients may bring food into the unit.

(b) The renal dialysis service shall have written infection control policies and procedures specific to the renal dialysis unit that includes universal precautions and meets at least the criteria of the hospital-wide infection control program.

(c) All staff members of the renal dialysis service shall be screened for hepatitis in accordance with the current edition of the Centers for Disease Control publication "Hepatitis Surveillance", Centers for Disease Control Report Number 50, published March 1986, available from the Centers for Disease Control, Atlanta, Georgia 30333.

(d) The hospital shall provide an immunization program against hepatitis for all renal staff.

(e) The renal dialysis service shall maintain a written transfer agreement with an organ transplantation center for referral of patients.

8:43G-30.3 Renal dialysis staff qualifications; mandatory

(a) Renal dialysis services shall be under the supervision of a health care professional with at least one of the following qualifications:

1. A baccalaureate degree in a health care discipline from an accredited college or university and the equivalent of at least two years of full-time experience in renal dialysis; or
2. Five years full-time experience in renal dialysis experience and documentation of progressive supervisory experience for at least one year.

(b) ***[Effective January 1, 1991, the physician director of the renal dialysis unit shall be board-certified in nephrology.]*** ***Any physician currently holding the position of director of a renal dialysis unit shall have completed a residency in nephrology and shall be able to demonstrate skills and experience at least equivalent to certification by the American Board of Internal Medicine, subspecialty in Nephrology. Any newly appointed physician director shall be board certified in Nephrology, or shall meet the training and experience requirements for examination by the Board and shall be examined within two years of eligibility.***

(c) A registered dietitian with at least one year of clinical experience as a registered dietitian shall be assigned to the renal dialysis unit.

(d) The social worker assigned to the renal dialysis unit shall have at least:

1. A master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or
2. A bachelor's degree from an accredited social work program and one year of experience in social work.

8:43G-30.4 Renal dialysis staff qualifications; advisory *(Reserved)*

8:43G-30.5 Renal dialysis staff time and availability; mandatory

(a) There shall be at least one registered professional nurse (RN) on duty at all times in the unit while care is being provided.

(b) There shall be at least one RN, licensed practical nurse, or trained technician on duty in the unit for every three patients receiving care.

(c) Two of the nurses on duty in the unit shall be RNs whenever care is being provided to more than six patients.

(d) Nurses on the renal dialysis staff shall receive formal training before they are permitted to work unsupervised with patients.

(e) The medical director or designated nephrologist shall be on site or on call at all times when the unit is in operation.

(f) The medical director or designated nephrologist and a registered professional nurse shall be on call when the unit is not in operation.

(g) A registered dietician shall be assigned either part time or full time to the renal dialysis unit.

(h) A social worker shall be assigned either part time or full time to the renal dialysis unit.

8:43G-30.6 Renal dialysis patient services; mandatory

(a) A written plan of care for each patient shall be developed by a multidisciplinary team consisting of, at least, a nephrologist, a registered professional nurse, a registered dietitian, and a social worker and shall include goals and expected outcomes.

(b) The written plan of care ***for the chronic renal dialysis patient*** shall be reviewed with the patient and/or family, implemented within four weeks of admission to the program, reviewed at least every six months, and revised if change has occurred. ***The written plan of care for the acute dialysis patient shall be implemented within 24 hours of initiation of acute dialysis and revised and updated weekly.***

(c) Notes shall be entered ***for the chronic dialysis patient*** by each member of the multidisciplinary team that reflects the patient's response to the plan of care and makes recommendations for changes in the plan of care at least two times a year.

(d) There shall be a multidisciplinary committee that includes at least representatives from nursing, the medical staff, dietary services, and social work services that ***[holds scheduled meetings]* *schedules meetings periodically*** to discuss multidisciplinary communication, management, and issues about the care of patients treated in the dialysis unit.

(e) The renal dialysis service shall adhere to the principles set out in the ***[New Jersey Renal Network Council's Bill of Rights]* *Trans-Atlantic Renal Council's Bill of Rights*** for renal patients.

[(f)] A copy of patient's rights and responsibilities, as developed by the New Jersey Renal Network Council, shall be given and explained to each patient.]*

[(g)](f)*** The hospital's policy on dialyzer reuse shall be explained to all renal dialysis patients. Patients who consent to reuse shall sign an informed consent form. If the patient declines reuse, arrangements shall be made for the patient to receive single-use treatment.

[(h)](g)*** If patients are permitted to bring food into the renal dialysis unit, they shall not be permitted to share it and must use only personal utensils, wrappers, and containers.

[(i)](h)*** All patients shall be screened for hepatitis and in accordance with the current edition of the Centers for Disease Control publication "Hepatitis Surveillance."

[(j)](i)*** Renal dialysis patients with communicable or transmittable diseases shall be treated in accordance with Centers for Disease Control guidelines.

Note: Centers for Disease Control publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161

or:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

[(k)](j)*** If a renal dialysis patient is referred by, or is from, another health care facility, the renal dialysis service shall provide that facility with copies of summaries of the patient's progress, including dietary care, and results of laboratory tests upon discharge from the renal program or upon request from the facility.

[(l)](k)*** If a hospital provides home care training in renal dialysis, the training shall be directed by a registered professional nurse (RN). There shall be at least one RN or licensed practical nurse assigned to every two patients undergoing training on-site.

8:43G-30.7 Renal dialysis patient services; advisory ***(Reserved)***

8:43G-30.8 Renal dialysis supplies and equipment; mandatory

(a) Patients shall be dialyzed in chairs that can be inclined so that the patient's head is lower than his or her feet, except when the patient is dialyzed in a hospital bed.

(b) Any reuse of a dialyzer shall conform with guidelines in the Association for the Advancement of Medical Instrumentation (AAMI) publication, "Recommended Practice for Reuse of Hemodialyzers," incorporated herein by reference.

(c) When formaldehyde is used as the germicide for reuse of dialyzers and/or for disinfection of the dialysate system, the guidelines in the AAMI publication "Recommended Practice for Reuse of Hemodialyzers" shall be followed.

(d) Water analysis shall conform with AAMI requirements. Water shall be microbiologically analyzed monthly and analyzed for trace elements every six months. Analysis shall be performed by a laboratory certified by the New Jersey State Department of Environmental Protection or licensed by the New Jersey State Department of Health. Written records shall be maintained of analysis procedures and results.

Note: AAMI publications can be obtained from:

Association for the Advancement of
Medical Instrumentation
Suite 602
1901 North Fort Myer Drive
Arlington, VA 22209

*[or:

Environmental Health Services
New Jersey State Department of Health
CN 364
Trenton, NJ 08625]*

8:43G-30.9 Renal dialysis staff education and training; mandatory

Requirements for the renal dialysis education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-30.10 Staff education; advisory ***(Reserved)***

8:43G-30.11 Renal dialysis quality assurance methods; mandatory

There shall be a program of quality assurance for the renal dialysis service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. The program monitors those indicators required by the ***[New Jersey Renal Network]* *Trans-Atlantic Renal Council***.

8:43G-30.12 Renal dialysis quality assurance methods; advisory ***(Reserved)***

SUBCHAPTER 31. RESPIRATORY CARE

8:43G-31.1 Respiratory care structural organization; mandatory

The respiratory care service shall be represented on hospital committees responsible for critical care, patient care, and infection control.

8:43G-31.2 Respiratory care policies and procedures; mandatory

(a) The respiratory care service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. A system for the reissuing and discontinuing of all respiratory therapy orders;

2. The duties and responsibilities of respiratory care practitioners;

3. The education, training, and experience requirements of respiratory care practitioners qualified to initiate and maintain therapies and in which special care units they may work;

4. Procedures for control of infection, the spread of infection, and electrical, explosive, and mechanical hazards; and

5. Protocols that ***[address]* *encourage*** multidisciplinary ***[team member]*** input into the patient's written plan of care.

(b) Verbal or telephone respiratory care orders within the scope of practice of the respiratory care practitioner shall be accepted and recorded by a registered respiratory therapist or certified respiratory therapy technician.

(c) There shall be a protocol whereby the nurse is informed of any verbal or telephone order that is taken by the registered respiratory therapist or certified respiratory therapy technician.

8:43G-31.3 Respiratory care staff qualifications; mandatory

(a) There shall be a physician director of respiratory care or pulmonary medicine who is responsible for all respiratory care rendered in the hospital.

(b) The physician director of respiratory care shall be board certified or board eligible in pulmonary medicine.

(c) There shall be an administrative director of respiratory care who is registered or certified by the National Board ***[of]* *for*** Respiratory Care.

(d) A registered respiratory therapist or certified respiratory therapy technician shall supervise non-credentialed respiratory care aides. A registered respiratory therapist (RRT) is an individual who qualified and passed the National Board of Respiratory Care (NBRC) examination or equivalent ***and who is registered by the NBRC***. This individual functions at a higher level than a certified respiratory ***[care]* *therapy*** technician ***[(CRCT).]* *CRTT.*** A certified respiratory ***[care]* *therapy*** technician is an individual who qualified and passed the NBRC technician's examination or equivalent and who is certified by the NBRC. This individual functions at a higher level than a respiratory care aide***[s]***.

8:43G-31.4 Respiratory care staff qualifications; advisory
(Reserved)

8:43G-31.5 Respiratory care staff time and availability; mandatory

(a) There shall be at least one registered respiratory therapist or certified respiratory therapy technician assigned primarily to patients in critical units. Assignments shall be based on the acuity level of patient illness assessed each shift.

(b) There shall be ***[a]* *at least one*** registered respiratory therapist or certified respiratory therapy technician in the hospital at all times, in addition to the one who is primarily assigned to patients in the critical care unit.

8:43G-31.6 Respiratory care staff time and availability; advisory
(Reserved)

8:43G-31.7 Respiratory care patient services; mandatory

(a) There shall be an organized program for teaching patients to administer their own therapy, with adequate supervision and documentation, in any case where it is appropriate for the patient and where the patient is able to receive and follow therapy instructions.

(b) Written treatment plans, respiratory therapy goals, and patient progress notes shall be written by the respiratory care practitioner. The written treatment plans shall supplement the respiratory care orders written by physicians and become part of the medical record.

8:43G-31.8 Respiratory care patient services; advisory ***(Reserved)***

8:43G-31.9 Respiratory care space and environment; mandatory

(a) There shall be adequate space available to store all equipment not in ***routine*** use. No respiratory care equipment shall be stored in hallways.

(b) There shall be office space dedicated to members of the respiratory care service.

8:43G-31.10 Respiratory care space and environment; advisory
(Reserved)

8:43G-31.11 Respiratory care supplies and equipment; mandatory

(a) The respiratory care service shall have equipment available to evaluate respiratory therapy.

(b) Pulse oximeters and end-tidal CO₂ monitors shall be available for ***[each patient]* *patients*** in the hospital who ***[receives oxygen therapy or who has a medical condition that requires oxygen monitoring]* *have a medical condition that requires oxygen and carbon dioxide monitoring***.

(c) There shall be a documented system for preventive maintenance of all respiratory therapy equipment.

(d) All mechanical and electrical equipment shall be tested before using for the first time or after repairs.

8:43G-31.12 Respiratory care staff education; mandatory

[(a)] Requirements for the respiratory care education program shall be as provided in N.J.A.C. 8:43G-5.9.

[(b)] A self-teaching library with visual and audio aids shall be available for respiratory care practitioners.**]***

8:43G-31.13 Respiratory care staff education; advisory
(Reserved)

8:43G-31.14 Quality assurance methods; mandatory

There shall be a program of quality assurance for respiratory care that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

SUBCHAPTER 35. POSTANESTHESIA CARE

8:43G-35.1 Postanesthesia care policies and procedures; mandatory

(a) The postanesthesia care unit shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Criteria for admission to and discharge from the unit;
2. Delineation of the primary medical responsibility for postanesthesia and postsurgical care of the patient in the unit;
3. Monitoring of patients in the postanesthesia care unit, including availability of monitoring equipment;
4. Protocol of care for all patients;
5. Protocol for patient emergencies;
6. Orders for intravenous administration of medications; and
7. Requirements for documentation of patient status.

8:43G-35.2 Postanesthesia care staff qualifications; mandatory

(a) There shall be a physician director with overall responsibility for postanesthesia care. The physician director may also be the director of anesthesia services.

(b) There shall be a registered professional nurse with administrative responsibility for nursing care in the postanesthesia care unit.

(c) All registered professional nurses assigned to the postanesthesia care unit shall be trained in postanesthesia care, including at least:

1. Airway management and respiratory equipment;
2. Monitoring of cardiac function, arrhythmia recognition, and treatment of life-threatening emergencies;
3. Management of the patient during altered states of consciousness;
4. Management of monitoring and respiratory equipment;
5. Management of fluid lines, tubes, drains, and catheters;
6. Cardiopulmonary resuscitation;
7. Administration of drugs and identification of drug-related problems; and
8. Recognition of the actions and interactions of anesthetic techniques.

(d) All registered professional nurses in the postanesthesia care unit shall have training in basic cardiac life support.

(e) All registered professional nurses in the postanesthesia care unit shall have training in critical care.

8:43G-35.3 Postanesthesia care staff time and availability; mandatory

(a) There shall be at least two health ***[professionals]* *care personnel***, one of whom is a registered professional nurse ***and the other of whom is either a licensed practical nurse or a physician***, present whenever a patient is in the postanesthesia care unit.

(b) There shall be a ratio of at least one registered professional nurse for every three patients in the postanesthesia care unit.

8:43G-35.4 Postanesthesia care patient services; mandatory

(a) The patient shall be accompanied to the postanesthesia care unit by two individuals, one of whom, stationed at the patient's head, shall be a member of the anesthesia team.

(b) An oral report on the patient's condition shall be given to postanesthesia care unit nursing staff by a member of the anesthesia team when the patient is admitted to the postanesthesia care unit.

(c) A member of the anesthesia team shall stay with the patient in the postanesthesia care unit at least until the patient's vital signs, including blood pressure, pulse, and respiration, are recorded.

(d) The postanesthesia care unit shall continually evaluate the condition of each patient and maintain an accurate written report of his or her vital signs, with an objective scoring system used to track the patient's recovery from anesthesia from the time of admission to the unit until discharge.

(e) Electrocardiographic monitoring shall be conducted for each patient, unless such monitoring is not clinically feasible for the patient.

(f) Each patient shall be monitored by pulse oximetry, unless such monitoring is not clinically feasible for the patient.

(g) The postanesthesia care unit shall have immediate access to end-tidal carbon dioxide monitoring.

(h) The medical record maintained for each patient in the postanesthesia care unit shall include at least such preoperative data as: allergies, physical and mental impairments, prostheses, electrocardiogram, vital signs, radiologic findings, laboratory values, drug use, and mobility limitations.

(i) The medical record maintained for each patient in the postanesthesia care unit shall include at least such postoperative data as: the patient's general condition, respiration, consciousness, circulation, special problems or precautions, summary of fluids received during surgery, and oxygen saturation.

(j) Patients shall be discharged from the postanesthesia care unit *only after their vital signs are stable, unless they are transferred to a critical care unit* **using discharge criteria, including authority to discharge, which have been developed through the postanesthesia policies and procedures specified at N.J.A.C. 8:43G-35.1(a)1*.**

8:43G-35.5 Postanesthesia care patient services; advisory
(Reserved)

8:43G-35.6 Postanesthesia care supplies and equipment; mandatory
(a) Postanesthesia care units shall be adjacent to or within the operating suite and the obstetrics suite.

(b) The postanesthesia care unit shall be maintained as a closed unit. Access to the restricted zone of the postanesthesia care unit shall be through or past a control center.

(c) All staff in the postanesthesia care unit shall be attired in scrub attire. Individuals who are permitted limited access may wear cover gowns or jumpsuits as substitutes.

(d) Equipment available in the postanesthesia care unit shall include at least: emergency equipment and drugs, pulse oximetry, equipment necessary for extubation, respirometer, various means of oxygen delivery, constant and intermittent suction, blood pressure monitoring, adjustable lighting, immediate access to ventilator, and equipment which ensures protection of the patient's privacy.

8:43G-35.7 Postanesthesia care staff education and training;
mandatory

Requirements for the postanesthesia education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-35.8 Postanesthesia care staff education; advisory
(Reserved)

8:43G-35.9 Postanesthesia care quality assurance methods;
mandatory

(a) There shall be a program of quality assurance for the postanesthesia care unit that is integrated into the hospital quality program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) Quality assurance activities shall include at least monitoring outcomes of patients receiving anesthetic agents.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Patient Rights

Adopted New Rules: N.J.A.C. 8:43G-4

New Rule Not Adopted But Still Pending: N.J.A.C. 8:43G-4.2

Proposed: August 7, 1989 at 21 N.J.R. 2160(b).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R. 1990 d.98, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted but still pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-4.2 has not been adopted and is still pending. The pending rule is an advisory standard which was proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 23 letters of comment regarding proposed N.J.A.C. 8:43G-4, Patient Rights. Twenty letters were submitted by hospitals, one by the New Jersey Hospital Association, one by the State Department of the Public Advocate, and one by an individual.

N.J.A.C. 8:43G-4.1 Patient rights; mandatory

COMMENT: Two hospitals objected to all the patient rights standards. The Valley Hospital stated that "these standards are overwhelmingly inclusive of any possible neglect of patients in an institution specifically designed to provide health care. They exceed legislative requirements for public safety and avoidance of discrimination. They suggest the potential for patient abuse, and are therefore offensive and demeaning."

RESPONSE: The Department maintains that there is a need for specific standards to implement patient rights in hospitals. As revised, these standards comply with and expand the patient rights legislation enacted on August 14, 1989, P L. 1989, c. 170.

COMMENT: The Public Advocate recommended that 14 additional rights be added, including private access to visitors, participation in treatment planning, and freedom to wear one's own clothes.

RESPONSE: The Department concurs that many of the suggestions from the Public Advocate warrant consideration, and will explore them as future amendments to this section of hospital standards. Adding them at this time would require republication of the entire section and additional public notice for comments, which would delay implementation of the original set of standards proposed on August 7, 1989. The Department prefers to move those original standards forward before contemplating additional ones.

N.J.A.C. 8:43G-4.1(a)1

COMMENT: Two hospitals and the Public Advocate described this standard as too vague, guaranteeing nothing but the absolute minimum. One hospital questioned whether this standard would prohibit hospitals from referring critical care patients elsewhere if their unit were full.

RESPONSE: The Department believes that the issue of quality of care is addressed in sufficient depth in other sections of the proposed rules. This standard would not preclude a hospital from referring a prospective patient to another facility if a specific unit is full. Therefore, the requested change has not been made. However, additional text has been added to clarify the responsibilities of the hospitals.

N.J.A.C. 8:43G-4.1(a)2

COMMENT: Three hospitals commented on different aspects of this standard. One said it is unnecessary because anti-discrimination is a

matter of law. Two others questioned whether hospitals that require advance payment from patients who elect to have medically unnecessary cosmetic surgery would be cited for discrimination based on ability to pay. Underwood-Memorial Hospital objected to including "sexual preferences" in the list: "This could lead to major Quality Assurance Component. Research already indicates that when HIV Positive (AIDS) patients are in the hospital, the response time to emergencies and the effectiveness of resuscitation is diminished."

RESPONSE: The Department maintains that this standard is necessary and acceptable in its current form. The hospital's pre-payment policies on elective, medically unnecessary procedures such as cosmetic surgery are not prohibited by this standard.

N.J.A.C. 8:43G-4.1(a)3

COMMENT: Two hospitals recommended that this standard be clarified: one said it is unnecessary because it is a "matter of law."

RESPONSE: The Department believes the proposed standard is acceptable and necessary to inform consumers that their lawful civil and constitutional rights are not impaired by virtue of hospitalization. As no specific suggestions were made for clarification, the rule is not modified.

N.J.A.C. 8:43G-4.1(a)4

COMMENT: Two hospitals and the Hospital Association objected to the portion of the standard that requires health care professionals to identify themselves by introduction or by wearing a name tag. They cited concerns about security if name tags are required.

RESPONSE: The Department notes that the introduction can be verbal. Name tags are an option, not a requirement. The standard is retained.

N.J.A.C. 8:43G-4.1(a)5

COMMENT: One hospital stated that translators are not always available and charge for their services. The most frequent application for this standard, according to the hospital, is in instances when the patient is hearing-impaired. The Public Advocate objected to the phrase "whenever possible" on the grounds that this "appears to limit hospitals' duty to provide interpreters for patients who are deaf or seriously hearing-impaired, or whose primary language is not English." According to the Public Advocate, State and Federal laws guarantee patients the right to an interpreter "wherever reasonably necessary" and "as soon as possible" when the patient suffers from a speech or hearing impairment.

RESPONSE: The standard does not mandate that hospitals retain interpreters on an on-call basis which may result in additional costs. The Department concurs with the Public Advocate and changes the phrase "whenever possible" to "as soon as possible."

N.J.A.C. 8:43G-4.1(a)6

COMMENT: Four hospitals expressed concern about the "surveyability" of this standard, and questioned how the surveyor can determine if a patient understands the physician's explanation.

RESPONSE: The Department believes the standard can be surveyed through the physician's documentation of informed consent, patient interviews, and other methods. Informing patients of the rights afforded to them will in itself increase the standard's enforceability through informal and formal complaint mechanisms. No change is made.

COMMENT: The Public Advocate cited recent court decisions in asking that the risks and alternatives to recommended treatment be cited in the standard. The Public Advocate also argued that there are no circumstances "in which the giving of basic medical information per se could be harmful to a patient's health." In addition, the Advocate suggested that the issue of a patient's competence is a legal determination, not one made by the hospital.

RESPONSE: The Department agrees with the Public Advocate that the risks and alternatives to treatment should be included in the standard. The first sentence is revised to read: "To receive from the patient's physician(s)—in terms that the patient understands—an explanation of his or her complete medical condition, recommended treatment, risk(s) of the treatment, expected results, and reasonable medical alternatives." However, the Department does believe that a physician may have valid medical reasons for withholding certain information from a patient and does not want to remove that option altogether. The explanation of competency requested by the Public Advocate for this standard and several others will be included in a separate part of the hospital licensing rules when they are completed.

N.J.A.C. 8:43G-4.1(a)7

COMMENT: The Hospital Association and 10 hospitals questioned whether all patients need to be informed of these policies. They also stated

that the hospital doesn't always know each physician's professional position. In addition, they said that the unsolicited communication of this information to all patients might cause undue anxiety in patients who aren't facing any life-threatening situation during their hospitalization. And, finally, they didn't think the patient would benefit from information about the hospital's prognosis and ethics committees.

RESPONSE: The Department generally concurs with these views. As a result, the standard will be restated as follows: "To be informed, upon request, of the hospital's policies and procedures regarding life-saving methods and the use or withdrawal of life-support mechanisms." To be clear about the minimum requirement for communicating the hospital's position, a sentence is added to state: "Such policies and procedures shall be made available promptly in written format to the patient, his or her family or guardian, or to a member of the public upon request."

N.J.A.C. 8:43G-4.1(a)8

COMMENT: Three hospitals questioned the "surveyability" of this standard, especially if the consent form is signed in a physician's office, rather than in the hospital. The Public Advocate objected to the provision permitting hospitals to specify procedures requiring informed consent as inconsistent with recent Supreme Court holdings.

RESPONSE: The Department believes the surveyors can determine through inspection of patient medical records, patient interviews, and other methods whether this standard has been violated. N.J.A.C. 8:43G-15.2(d)1 requires that the medical records of all patients include written, informed consents. The Department agrees with the Public Advocate's concerns and has, therefore, deleted the following sentence: "The procedures requiring informed, written consent shall be specified in the hospital's policies and procedures."

COMMENT: The Public Advocate objected to the term "reasonable" in qualifying the delineation of alternatives.

RESPONSE: The Department's interpretation of recent New Jersey Supreme Court rulings is that the word "reasonable" refers to what information a reasonable patient would require in assessing all risks that are material to making an informed decision about a treatment choice. The Court no longer uses a "professional standard" for consent, that is, the information a "reasonable physician" would disclose to a patient in order to make an informed decision. Thus, where the language at N.J.A.C. 8:43G-4.1(a)8 states "... and any reasonable medical alternative", this is not intended to alter the informed consent standard currently applied by the New Jersey Supreme Court. This language is intended to distinguish between placing a duty on physicians to disclose all reasonable medical alternatives versus a duty to provide an exhaustive explanation of non-medical alternatives or medical treatment options that are not currently accepted by the profession as a reasonable treatment alternative.

N.J.A.C. 8:43G-4.1(a)9

COMMENT: Three hospitals and the Public Advocate raised questions about the definition of an emergency situation and the hospital's ability to discharge patients who refuse treatment.

RESPONSE: The Department suggests changing the second part of the standard to the following: "except in life-threatening situations and instances when medication or treatment is required by law."

N.J.A.C. 8:43G-4.1(a)10

COMMENT: The Public Advocate notes that the law covering institutionalized persons guarantees them the "right to consultation with counsel or interested party of the patient's choice," and suggests this be added to the standard here. In addition, the Advocate expresses concerns about the legal protections afforded incompetent patients.

RESPONSE: The Department believes these concerns are adequately covered by the phrase "in accordance with law and regulation," which appears in the standard. In addition, N.J.A.C. 8:43G-4.1(a)3 specifies that patients retain all the "legal rights to which (they) are entitled by law."

N.J.A.C. 8:43G-4.1(a)11

COMMENT: One hospital said this process will be too time-consuming, and questioned whose responsibility it would be to provide this information—the hospital or the affiliate.

RESPONSE: The Department believes that patients who request information on the hospital's policies regarding withdrawal of life-saving support mechanisms should be afforded the time necessary to explain all policies and procedures. This is the responsibility of hospital personnel; but may be handled by the physician or other affiliated personnel.

N.J.A.C. 8:43G-4.1(a)12

COMMENT: St. Clare's Riverside Medical Center suggested that the standard should be reworded for clarity. In addition, the recently enacted patient rights legislation includes a requirement that the patient be assisted by the hospital in arranging for post-discharge care.

RESPONSE: The Department concurs and adds this additional sentence: "The patient shall also have the right to receive assistance from the physician and appropriate hospital staff in arranging for required follow-up care after discharge."

N.J.A.C. 8:43G-4.1(a)13

COMMENT: Six hospitals asked for a definition of "sufficient notice," and suggested this conflicts with Utilization Review policies.

RESPONSE: The Department clarifies the standard by changing the wording to: "To receive sufficient time before discharge to have arrangements made . . ." There was no conflict with Utilization Review discernable that indicates the standard needs to be revised.

N.J.A.C. 8:43G-4.1(a)15

COMMENT: Two hospitals raised questions about transfers during disaster situations.

RESPONSE: The standard covers this situation in the wording "the transferring hospital is unable to provide the type or level of medical care appropriate for the patient's needs."

N.J.A.C. 8:43G-4.1(a)16

COMMENT: One hospital stated this is "too prescriptive" and difficult to accomplish in emergency situations.

RESPONSE: The Department believes the standard provides patients with necessary information that is needed to assure that a transfer will occur in a safe and timely manner, and that in emergency situations, the patient should have the right to this information and sufficient time should be available between the time of evaluation and the decision to transport to safely accomplish this information transfer to the patient or his family or guardian. However, the Department agrees that in certain life-threatening situations where immediate transfer is necessary, exceptions may be made. Therefore, the Department has changed the standard accordingly.

N.J.A.C. 8:43G-4.1(a)18

COMMENT: Three hospitals objected to this standard as either too ambiguous, similar to the previous standard, or insulting to hospitals.

RESPONSE: While the Department believes that an instance of physical or mental abuse would rarely, if ever, occur in a hospital, it is necessary to state this basic right in the event an abuse ever occurs, and as a measure to prevent one from ever being contemplated.

N.J.A.C. 8:43G-4.1(a)19

COMMENT: One hospital asked where in these standards the policy on restraints is spelled out.

RESPONSE: The rules pertaining to the use of restraints are cited in Medical Staff standard N.J.A.C. 8:43G-16.2(b) and Psychiatry standard N.J.A.C. 8:43G-26.2(c).

COMMENT: The Public Advocate objected to the use of chemicals as restraints and cited documentation from the American Psychiatric Association which states that the use of chemical restraints is inappropriate.

RESPONSE: After reviewing this question, the Department agrees with the Public Advocate that the use of the word "chemical" is inappropriate in describing restraints. The phrase "chemical and physical" will be deleted in describing restraints.

N.J.A.C. 8:43G-4.1(a)21

COMMENT: Two hospitals raised questions about fourth-party reviewers and media access to matters of public record.

RESPONSE: The Department believes both situations are adequately addressed by the standard.

N.J.A.C. 8:45G-4.1(a)22

COMMENT: One hospital stated that the person or organization paying the bill has the right to appeal the charges, but should do so to the State Department of Health, not the hospital.

RESPONSE: The investigation of whether a patient's bill is correct or fair should be initiated with the hospital. It should then be referred to the Department of Health or other appropriate agency, when not resolved at the hospital level. However, the standard is amended to clarify that the patient or responsible party has a right to appeal the bill and

that the hospital must provide an explanation of the appropriate procedures to be followed.

N.J.A.C. 8:43G-4.1(a)23

COMMENT: One hospital termed this standard as "unnecessary."

RESPONSE: The Department believes that distribution of a written statement of hospital rules regarding visitor and patient conduct is an important measure. This standard was supported by several commenters during the development phase of the rules. No change is made.

N.J.A.C. 8:43G-4.1(a)24

COMMENT: Three hospitals and the Public Advocate raised questions, and their views were conflicting. The hospitals suggested that patients should not have access to their records during hospitalization. The Public Advocate argued that the patient should not have to experience any delay in obtaining access to hospital records. In addition, the Public Advocate objected to the word "welfare" as being a "non-medical exception so broad, indefinite and subjective that it swallows the rule."

RESPONSE: In the view of the Department, patients should have a right to review their charts during hospitalization, and thus the word "prompt" is added before "access." In addition, the phrase "or welfare" is deleted, as it may have too broad an interpretation.

N.J.A.C. 8:43G-4.1(a)25

COMMENT: Three hospitals questioned what fee is "reasonable" and asked if incomplete records must be made available within 30 days.

RESPONSE: As adopted, the standard in the Medical Records section that specifies the fees that may be charged for copies of medical records—N.J.A.C. 8:43G-15.3(d)—states that "the fees shall be based on actual costs, and in no case exceed \$1.00 per page or \$100.00 per record, whichever is less." However, the Department believes that the term "reasonable" is more appropriate than an actual amount in the Patient Rights section of the standards, because the printed copies of Patient Rights will not have to be changed in future years if the allowable fees cited in N.J.A.C. 8:43G-15.3(d) are amended.

Regarding the question about availability of incomplete records, the patient has the right to copies of the records within 30 days, even if they are incomplete. No change is made to the standard.

N.J.A.C. 8:43G-4.1(a)26

COMMENT: Three hospitals suggested that limits and controls be established in regards to storage space for patients. Safeguarding patient possessions is difficult, one hospital stated.

RESPONSE: This standard does not preclude hospitals from establishing appropriate policies regarding patient storage space. No change is made.

N.J.A.C. 8:43G-4.1(a)27

COMMENT: Five hospitals objected to the cost and time involved in preparing statements to hand out and post. One of these hospitals stated that this "infers that patients may not be respected." Another recommended that the Department prepare a prototype summary for the hospitals to use.

RESPONSE: The Department is amending the rule to ensure that hospitals are not burdened with unnecessary costs in preparing and posting copies of the rights. The Department is rewording this standard to conform with the requirements of the newly passed patient rights legislation, P.L. 1989, c.170. The revised standard states: "To be given a summary of these patient rights, as approved by the New Jersey State Department of Health, and any additional policies . . . and responsibilities. This summary shall also include the name . . . In addition, a complete statement of these patient rights shall be posted conspicuously in the patient's room and in public places through the hospital. Complete copies shall also be distributed to hospital staff members."

N.J.A.C. 8:43G-4.1(a)28

COMMENT: Four hospitals raised objections. One stated that hospitals should not be required to provide any information to patients about government agencies. Another said that this standard will cost time and money and does not guarantee better care for the patient. Another hospital asked how many copies must be posted.

RESPONSE: The Department is amending the standard to delete the requirement that names and addresses of the persons to whom complaints may be directed be provided to the patient's next of kin, which it agrees may be burdensome to hospitals and accomplished through posting of rights or through notification of patients in writing. The Department

believes that no other requirements of the rule are unduly time-consuming or difficult to accomplish. The posting frequency would depend on the size of the hospital and the number of public places appropriate for this type of notice.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 4. PATIENT RIGHTS

8:43G-4.1 Patient rights; mandatory

(a) Every New Jersey hospital patient shall have the following rights, none of which shall be abridged by the hospital or any of its staff. The hospital administrator shall be responsible for developing and implementing policies to protect patient rights and to respond to questions and grievances pertaining to patient rights. These rights shall include at least the following:

1. To receive the care and health services that the hospital is required to provide ***under N.J.S.A. 26:1-1 et seq. and rules adopted by the Department of Health to implement this law***;

2. To treatment and medical services without discrimination based on race, age, religion, national origin, sex, sexual preferences, handicap, diagnosis, ability to pay, or source of payment;

3. To retain and exercise to the fullest extent possible all the constitutional, civil, and legal rights to which the patient is entitled by law;

4. To be informed of the names and functions of all physicians and other health care professionals who are providing direct care to the patient. These people shall identify themselves by introduction or by wearing a name tag;

5. To receive, ***[whenever]* *as soon as*** possible, the services of a translator or interpreter to facilitate communication between the patient and the hospital's health care personnel;

6. To ***[have]* *receive from*** the patient's physician(s) ***[explain to the patient]***—in terms that the patient understands—***an explanation of*** his or her complete medical condition, recommended treatment, ***[and]* *risk(s) of the treatment,*** expected results ***[of the treatment]* *and reasonable medical alternatives***. If this information would be detrimental to the patient's health, or if the patient is not capable of understanding the information, the explanation shall be provided to his or her next of kin or guardian and documented in the patient's medical record;

[7. To be informed of the physician's professional position and of the hospital's policies and procedures regarding life saving procedures, use and withdrawal of life support mechanisms, and composition and functions of the hospital's prognosis and ethics committees or their equivalents;]

[8.]**7. To give informed, written consent prior to the start of specified nonemergency procedures or treatments **only after a physician has explained**—in terms that the patient understands—specific details about the recommended procedure or treatment, the risks involved, the possible duration of incapacitation, and any reasonable medical alternatives for care and treatment. The procedures requiring informed, written consent shall be specified in the hospital's policies and procedures. If the patient is incapable of giving informed, written consent, consent shall be sought from the patient's next of kin or guardian or through an advance directive, to the extent authorized by law. If the patient does not give written consent, a physician shall enter an explanation in the patient's medical record;

[9.]**8. To refuse medication and treatment after possible consequences of this decision have been explained in language the patient understands, except ***[under emergency conditions, according to the hospital's policies and procedures, except]* *in life-threatening situations and instances*** when medication or treatment is required by law;

[10.]**9. To be included in experimental research only when he or she gives informed, written consent to such participation, or when a guardian provides such consent for an incompetent patient in accordance with law and regulation. The patient may refuse to participate in experimental research, including the investigations of new drugs and medical devices;

[11.]**10. To be informed if the hospital has authorized other health care and educational institutions to participate in the patient's treatment. The patient also shall have a right to know the identity and function of these institutions, and may refuse to allow their participation in the patient's treatment;

11. To be informed of the hospital's policies and procedures regarding life-saving methods and the use or withdrawal of life-support mechanisms. Such policies and procedures shall be made available promptly in written format to the patient, his or her family or guardian, and to the public, upon request;

12. To be informed by the attending physician and other providers of health care services about any continuing health care requirements after the patient's discharge from the hospital*. **The patient shall also have the right to receive assistance from the physician and appropriate hospital staff in arranging for required follow-up care after discharge*;**

13. To ***[have]* *receive*** sufficient ***[notice]* *time*** before discharge to ***[arrange]* *have arrangements made*** for health care needs after hospitalization;

14. To be informed by the hospital about any discharge appeal process to which the patient is entitled by law;

15. To be transferred to another facility only for one of the following reasons, with the reason recorded in the patient's medical record:

i. The transferring hospital is unable to provide the type or level of medical care appropriate for the patient's needs. The hospital shall make an immediate effort to notify the patient's primary care physician and the next of kin, and document that the notifications were received; or

ii. The transfer is requested by the patient, or by the patient's next of kin or guardian when the patient is mentally incapacitated or incompetent;

16. To receive from a physician an explanation of the reasons for transferring the patient to another facility, information about alternatives to the transfer, verification of acceptance from the receiving facility, and assurance that the movement associated with the transfer will not subject the patient to substantial, unnecessary risk of deterioration of his or her medical condition. This explanation of the transfer shall be given in advance to the patient, and/or to the patient's next of kin or guardian ***except in a life-threatening situation where immediate transfer is necessary***;

17. To be treated with courtesy, consideration, and respect for the patient's dignity and individuality;

18. To freedom from physical and mental abuse;

19. To freedom from ***[chemical and physical]*** restraints, unless they are authorized by a physician for a limited period of time to protect the patient or others from injury;

20. To have physical privacy during medical treatment and personal hygiene functions, such as bathing and using the toilet, unless the patient needs assistance for his or her own safety. The patient's privacy shall also be respected during other health care procedures and when hospital personnel are discussing the patient;

21. To confidential treatment of information about the patient. Information in the patient's records shall not be released to anyone outside the hospital without the patient's approval, unless another health care facility to which the patient was transferred requires the information, or unless the release of the information is required and permitted by law, a third-party payment contract, a medical peer review, or the New Jersey State Department of Health. The hospital may release data about the patient for studies containing aggregated statistics when the patient's identity is masked;

22. To receive a copy of the hospital ***[charges]* *payment rates***, regardless of source of payment. Upon request, the patient ***or responsible party*** shall be provided with an itemized bill and an explanation of the charges if ***[the patient has]* *there are*** further questions. The ***[person responsible for paying the patient's bill also]* *patient or responsible party*** has a right to appeal the charges ***[to the]**.*** ***The* hospital *shall provide the patient or responsible party with an explanation of procedures to follow in making such an appeal*;**

23. To be advised in writing of the hospital rules and regulations that apply to the conduct of patients and visitors;

24. To have ***prompt*** access to the information contained in the patient's medical record, unless a physician prohibits such access as detrimental to the patient's health ***[or welfare]***, and explains the reason in the medical record. In that instance, the patient's next of kin or guardian shall have a right to see the record. This right continues after the patient is discharged from the hospital for as long as the hospital has a copy of the record;

25. To obtain a copy of the patient's medical record, at a reasonable fee, within 30 days of a written request to the hospital. If access by the patient is medically contraindicated (as documented by a physician in the patient's medical record), the medical record shall be made available to a legally authorized representative of the patient or the patient's physician;

26. To have access to individual storage space in the patient's room for the patient's private use. If the patient is unable to assume responsibility for his or her personal items, there shall be a system in place to safeguard the patient's personal property until the patient or next of kin is able to assume responsibility for these items;

27. To be given a ***[complete, written statement of all patient rights]*** ***summary of these patient rights, as approved by the New Jersey State Department of Health,*** and any additional policies and procedures established by the hospital involving patient rights and responsibilities***[, including]**. This summary shall also include*** the name and phone number of the hospital staff member to whom patients can complain about possible patient rights violations. In addition, ***[an abridged version]*** ***a complete statement*** of these patient rights***[, approved by the Department of Health,]*** shall be posted conspicuously in ***the patient's room and in*** public places throughout the hospital. Complete copies shall also be distributed to hospital staff members;

28. To present his or her grievances to the hospital staff member designated by the hospital to respond to questions or grievances about patient rights and to receive an answer to those grievances within a reasonable period of time. The hospital is required to provide each patient ***[and his or her next of kin]*** or guardian with the names, addresses, and telephone numbers of the government agencies to which the patient can complain and ask questions, including the New Jersey Department of Health Complaint Hotline at 1-800-792-9770. This information shall also be posted conspicuously in public places throughout the hospital; and

29. To be assisted in obtaining public assistance and the private health care benefits to which the patient may be entitled. This includes being advised that they are indigent or lack the ability to pay and that they may be eligible for coverage, and receiving the information and other assistance needed to qualify and file for benefits or reimbursement.

8:43G-4.2 Patient rights; advisory ***(Reserved)***

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Adopted Repeal: N.J.A.C. 8:43B-1 through 17

Adopted Recodification: N.J.A.C. 8:43B-18 to 8:43G-6

Proposed: September 18, 1989 at 21 N.J.R. 2925(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.77, **without change.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted recodification may be found at N.J.A.C. 8:43B-18, pending recodification as N.J.A.C. 8:43G-6.

(b)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards Cardiac

Adopted New Rules: N.J.A.C. 8:43G-7

New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-7.4, 7.6, 7.11, 7.13, 7.27 and 7.36

Proposed: August 7, 1989 at 21 N.J.R. 2162(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health, with approval of the Health Care Administration Board.

Filed: January 10, 1990 as R.1990 d.97, **with substantive and technical changes not requiring public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted but still pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-7.4, 7.6, 7.11, 7.13, 7.27 and 7.36 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 11 comment letters in response to the proposed rules for cardiac services. In addition, comments were received from the New Jersey Hospital Association (NJHA). A summary of comments and responses follows:

N.J.A.C. 8:43G-7.2 Cardiac surgery policies and procedures;
mandatory

N.J.A.C. 8:43G-7.2(a)

COMMENT: St. Joseph's commented that 250 procedures is too low and allows for too much capacity unused and/or created new.

RESPONSE: The Department does not agree. In 1987, after eight months of intensive inquiry and analysis, the New Jersey Cardiac Services Task Force presented recommendations to the Department of Health for the provision of invasive cardiac diagnostic and surgical services. Proposed standard N.J.A.C. 8:43G-7.2(a) is consistent with those recommendations which were subsequently adopted by the Health Care Administration Board. At this time, the Department reaffirms its position that the performance of a minimum of 250 open-heart procedures per operating room per year is necessary to ensure the competency of the surgical team and to provide for an efficient and economical operation. There is no data at this time to support the position that the performance of 250 procedures is too low or reflects underutilization of existing or new services. However, to demonstrate consistency with Cardiac Services Health Planning regulations referenced at N.J.A.C. 8:33E-2.3(a)1, the standard has been revised to reflect the permitted three-year start-up period to achieve minimum utilization levels. Additionally, 8:43G-7.30(a), pediatric cardiac surgery policies and procedures, has been revised to allow for a three-year start-up period referenced at N.J.A.C. 8:33E-2.3(b)1.

N.J.A.C. 8:43G-7.2(b)

COMMENT: Two commenters asked to have "priority" lab services defined.

COMMENT: The NJHA wrote that priority lab services should be determined by the hospital based on the full range of services.

RESPONSE: The Department believes that the acuteness and severity of illness of the cardiovascular surgical patient warrants priority laboratory services at various times during the hospital stay. However, in the

interests of clarification and in an attempt to allow the hospital management team additional flexibility, the wording has been changed to read as follows: "The hospital shall have in effect policies and procedures which ensure that priority lab services will be available to cardiovascular patients if medically indicated".

N.J.A.C. 8:43G-7.3 Cardiac surgery staff qualifications; mandatory

N.J.A.C. 8:43G-7.3(a), (b), (c)

COMMENT: The NJHA commented that the physician's qualifications and credentials should be determined by the hospital's medical staff.

RESPONSE: The Department acknowledges the position of the NJHA but believes board certification for those physicians performing invasive diagnostic cardiovascular procedures is a necessary component to help assure that health care of the highest caliber is delivered to patients in need of cardiac services in New Jersey hospitals. The rule remains as proposed.

N.J.A.C. 8:43G-7.3(d)

COMMENT: The NJHA wrote that employment of a physician director dedicated to cardiac surgery will result in a cost factor for the director's salary.

RESPONSE: The Department feels the interests of patients who have undergone cardiovascular diagnostic or surgical procedures are best protected if there is a designated physician director of the cardiovascular intensive care service. The standard allows the hospital the flexibility to designate the director of cardiac surgery to serve in this capacity or to allow the director of the cardiovascular intensive care service to serve in a part-time capacity. No change in this section is needed.

N.J.A.C. 8:43G-7.3(e)

COMMENT: Cooper Hospital and Cooper School of Cardiovascular Perfusion of UMDNJ both objected to the segment of the proposed standard that would permit the cardiovascular perfusionist to meet eligibility requirements by performing at least 75 cardiac perfusions during each of the past two years.

RESPONSE: This standard is consistent with the recommendations of the Commissioner's Cardiac Services Committee, the original recommendations made by the New Jersey Cardiac Services Task Force in January, 1987 and Health Planning regulations adopted by the Health Care Administration Board in February, 1989. While the Department fully supports the certification process as an effective approach to improve the training and educational requirements of any health care professional, it is the Department's belief that appropriately trained and experienced perfusionists, who currently comprise the majority of perfusionists in the nation, are qualified to operate the perfusion pump. The Department is unaware of any definitive studies which prove that improved cardiac surgery outcomes are a result of a "certified perfusionist", rather than a "trained and qualified perfusionist", operating the perfusion pump. No change in this standard is needed.

N.J.A.C. 8:43G-7.5 Cardiac surgery staff time and availability; mandatory

N.J.A.C. 8:43G-7.5(a) and (b)

COMMENT: St. Joseph's commented that the State should not specify number of registered professional nurses nor number of staff. This is a hospital decision.

RESPONSE: Because of the intensity of care to be provided to patients during the first 24 hours following cardiovascular surgery, the Department believes the proposed standard is critical to help ensure a successful patient outcome. Additionally, the proposed standard is consistent with rules adopted by the Health Care Administration Board (HCAB) in 1987 requiring patient coverage during the first 24 hours following surgery to be on a one nurse to one patient basis.

However, in the interests of clarity and practicality, the wording has been changed to read as follows: "There shall be at least a ratio of one registered professional nurse to one patient during the first 24 hours of the patient's stay in the cardiovascular surgical intensive care service or recovery room".

N.J.A.C. 8:43G-7.5(c)

COMMENT: St. Michael's requested that board eligible be included in addition to board certified.

RESPONSE: Health Planning rule 8:33E-2.4(a)Iii, adopted by the Health Care Administration Board in 1987, requires that a board certified

anesthesiologist shall be responsible for the anesthetic management of cardiac surgery patients. The Department acknowledges the comment but in an effort to maintain consistent rules through the various divisions of the Health Department, and to protect the health and safety of patients, the standard will remain as proposed.

N.J.A.C. 8:43G-7.5(g)

COMMENT: The NJHA commented that physician qualifications and credentials should be determined by the hospital's medical staff committee.

RESPONSE: The Department believes that quality of care is positively impacted by the education and experience credentials of the caregiver and is maintaining the standard as proposed to help assure the delivery of quality care to cardiovascular patients. In addition, the hospital is allowed latitude concerning the standard since a designated physician shall also be allowed to meet this requirement. The standard remains as proposed.

N.J.A.C. 8:43G-7.5(i)

COMMENT: St. Michael's requested that the proposed standard be modified to allow the second perfusionist to be off site and readily summoned if needed, in emergency cases.

RESPONSE: N.J.A.C. 8:33E-2.4(a)Iv, adopted by the Health Care Administration Board based on recommendations of the Cardiac Task Force calls for the second perfusionist to be available if the need arises. In order to achieve consistency with the above cited rule and to allow the hospital the flexibility to meet shortages of currently qualified personnel, the Department is rewording N.J.A.C. 8:43G-7.5(i) to reflect the intent of the Task Force recommendations which would not preclude the second perfusionist from being off site in emergency situations.

COMMENT: One commenter requested clarification as to the number of back-up perfusionists required.

COMMENT: Jersey Shore wrote asking to delete the requirement of having a second perfusionist available in the operating room.

RESPONSE: The standard requires a second perfusionist to be available in the surgical suite to assist. This would allow there to be one back-up perfusionist if there are two or three dedicated cardiac operating rooms in the surgical suite.

N.J.A.C. 8:43G-7.5(j)

COMMENT: The NJHA commented that credentials of social workers for cardiac surgery patients should be consistent with the rest of the hospital. Credentials for specific patient populations should be determined by the hospital and based on matching need with professional expertise.

RESPONSE: The Department agrees with the essence of the comment and has changed the wording to better reflect patient outcomes. The standard will now read as follows: "Counseling by trained and experienced professionals shall be available to assist pre/post-operative cardiac patients/families to cope with the crisis of illness, adjustment to hospitalization, plans for patient's care post-discharge, or bereavement and loss". Additionally, the standard is being moved to a more appropriate location at N.J.A.C. 8:43G-7.7, cardiac surgery patient services.

N.J.A.C. 8:43G-7.7 Cardiac surgery patient services; mandatory

N.J.A.C. 8:43G-7.7(a)

COMMENT: One commenter asked the Department to delete "if possible", but not later than 48 hours after completion of the procedure.

RESPONSE: The intent of the standard is clarified through the following revision: "Reports of diagnostic and operative procedures performed by cardiac services shall be dictated for inclusion in the medical record not later than 48 hours after completion of the procedure".

N.J.A.C. 8:43G-7.7(b)

COMMENT: One commenter asked the Department to clarify who is responsible for the required note in the patient's medical record.

RESPONSE: The Department has clarified the proposed standard through the following revision: "A note by the physician performing the procedure shall be included in the patient's medical record immediately after completion of the cardiac procedure".

N.J.A.C. 8:43G-7.10 Cardiac surgery staff education; mandatory

COMMENT: Several commenters stated generic objections to the inappropriateness of the cardiac staff education standards.

RESPONSE: The staff education and training standards are being deleted from the individual subchapters and included in the hospital-wide subchapter at N.J.A.C. 8:43G-5.9 as generic rather than specific rules.

HEALTH

The language of the generic requirement was developed at the request of the New Jersey Hospital Association who preferred a more generic and flexible standard in contrast to the Department delineating an education program for each hospital department.

N.J.A.C. 8:43G-7.12 Cardiac surgery quality assurance; mandatory

COMMENT: The NJHA commented that the individual hospital is best able to determine and design quality indicators and monitors.

RESPONSE: The Department supports the use of appropriate quality assurance indicators in critical patient care areas to assure the delivery of optimal health care. No change in this standard is warranted.

N.J.A.C. 8:43G-7.14 Cardiac catheterization, policies and procedures; mandatory

N.J.A.C. 8:43G-7.14(b)

COMMENT: The NJHA wrote that 500 catheterizations over a three-year period would be more achievable and acceptable.

COMMENT: St. Joseph's and Jersey Shore commented that the Department should be more concerned about the number of procedures performed by the physician and not the laboratory in general.

RESPONSE: The Department supports N.J.A.C. 8:33E-2.3(c)1 which requires the cath laboratory to perform 500 adult cardiac catheterization procedures per year in order to maintain the efficiency and the skills of the catheterization team. However, in the interests of maintaining consistency with the Health Planning rules for Cardiac Services referenced at N.J.A.C. 8:33E-1.2(b) the standard has been revised to reflect that new services are allowed three years from initiation of operation to attain the minimum utilization levels. Additionally, N.J.A.C. 8:43G-7.37(c), pediatric cardiac catheterization procedures, has been revised to demonstrate consistency with N.J.A.C. 8:33E-2.3(b)3, allowing the pediatric surgical center to achieve this minimal level of utilization in its invasive pediatric cardiac diagnostic laboratory within three years from the initiation of service.

N.J.A.C. 8:43G-7.14(c) and (d)

COMMENT: One commenter suggested combining (c) and (d) into one standard.

RESPONSE: The Department appreciates the suggestion and has made the following revision: "The cardiac catheterization laboratory shall have written policies and procedures that are reviewed annually, revised as needed and implemented. They shall include at least policies and procedures that assure aseptic practices and radiologic safety."

N.J.A.C. 8:43G-7.14(e)

COMMENT: The NJHA requested that "transport summary" be defined.

RESPONSE: The Department has decided to delete transport summary from the documents to be included in the patient's medical record. The remaining documentation offers a comprehensive view of the patient and is sufficient to assure continuity of care.

N.J.A.C. 8:43G-7.15 Cardiac catheterization staff qualifications; mandatory

N.J.A.C. 8:43G-7.15(b)

COMMENT: St. Clare's Riverside and Jersey Shore both commented that board certified should be changed to "board eligible or board certified" in cardiology.

RESPONSE: The Department supports the recommendations of the Cardiac Task Force which are codified at N.J.A.C. 8:33E-2.4(c)2i and ii and believes that the advanced education and experience required in the certification process positively impacts the delivery of optimal care for cardiovascular patients. The section remains unchanged.

N.J.A.C. 8:43G-7.16 Cardiac catheterization staff time and availability; mandatory

COMMENT: The NJHA and Cooper Hospital commented that the standard fails to take into account emergency situations where it would be very restrictive and costly to require three professional staff be available for each procedure.

COMMENT: St. Michael's requested deleting the requirement of the scrub nurse since the position is costly and not needed.

RESPONSE: The Department has reviewed its position and while it continues to believe the health and safety of cardiac patients are best served when there are at least three professional staff present for each

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procedure, has revised the standard to allow the hospital management team staffing flexibility during emergency situations. The revised standard follows:

(a) "The cardiac catheterization laboratory shall be staffed for each procedure by at least:

1. One registered nurse, trained and experienced in assisting in cardiac catheterization procedures, who acts as the circulating nurse;

2. A scrub nurse, who is either a registered professional nurse, a licensed practical nurse or a scrub technician who has been trained in assisting in cardiac catheterization procedures; and

3. A technician, trained in cardiac catheterization procedures.

(b) For emergency procedures, the cardiac catheterization laboratory shall be staffed by at least:

1. One registered professional nurse, trained and experienced in assisting in cardiac catheterization procedures, who acts as the circulating nurse; and

2. One technician, trained and experienced in cardiac catheterization procedures".

COMMENT: One commenter wrote that there was no mention regarding the presence of a registered radiologic technologist who possesses the expertise to assure that the patient is not being overexposed.

RESPONSE: The Department allows the hospital the latitude to determine the qualifications and type of technician required for cardiac catheterizations as long as it can be determined that the technician is trained and experienced in catheterizations. The standard remains unchanged.

N.J.A.C. 8:43G-7.18 Cardiac catheterization space and environment; mandatory

N.J.A.C. 8:43G-7.18(a)

COMMENT: St. Joseph's asked if there is documentation of real need for O.R. environment.

RESPONSE: The Department agrees with the recommendations of clinical practitioners in the field who participated in the Licensure Reform Process and who support this standard. To ensure the protection of cardiac patients, invasive diagnostic and therapeutic cardiac procedures are best performed where sterile conditions are maintained. No change is needed.

N.J.A.C. 8:43G-7.18(e)

COMMENT: NJHA asked that the Department change this standard to read "there shall be provisions made for the patient holding and recovery" to allow greater flexibility than the standard reads, requiring a dedicated specific room.

RESPONSE: The Department believes that the interests of patient safety are best advanced where patients are under visual observation before and after invasive cardiac procedures. For the purposes of clarification, however, the Department is revising the standard to read as follows: "There shall be a patient holding area or recovery room where patients are under visual observation before and after the procedure".

N.J.A.C. 8:43G-7.18(j)

COMMENT: One commenter suggested changing the word "encourage" to "ensure".

RESPONSE: The Department has changed the wording to more accurately reflect the intent of the standard. The revised wording follows: "The change area for the cardiac catheterization laboratory staff shall be arranged to ensure a one-way traffic pattern so that personnel entering from outside the cardiac catheterization suite, can enter, change their clothing, and move directly into the catheterization laboratory".

N.J.A.C. 8:43G-7.19 Cardiac catheterization supplies and equipment; mandatory

N.J.A.C. 8:43G-7.19(a)

COMMENT: One commenter suggested the word "facilities" be changed to "services".

RESPONSE: The Department agrees and has made the change accordingly.

N.J.A.C. 8:43G-7.20 Cardiac catheterization staff education and training; mandatory

COMMENT: One commenter asked the Department to delete this standard.

RESPONSE: Standards for the staff education and training program are deleted from the individual subchapters and included in the hospital-

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wide subchapter at N.J.A.C. 8:43G-5.9 as generic rather than specific rules.

N.J.A.C. 8:43G-7.22 Percutaneous transluminal coronary angioplasty policies and procedures; mandatory

COMMENT: Cooper Hospital commented that hospitals should be given a two-year period to meet this standard.

RESPONSE: The Department acknowledges the comment but refers to N.J.A.C. 8:33E-2.3(d)1 which mandates that an applicant for a certificate of need as a regional adult cardiac surgery center that also seeks to provide PTCA services in its invasive cardiac diagnostic laboratory must provide written documentation that the center will perform a minimum of 200 PTCA procedures per year by the third year of operation. In the interests of accuracy and consistency, N.J.A.C. 8:43G-7.22(b) will be revised to reflect this requirement.

COMMENT: Jersey Shore asked the Department to delete this standard since standards should require each physician or hospital staff member to perform a minimum number of PTCA procedures annually and not the laboratory in general. Additionally, "board certified" should be changed to "board eligible".

RESPONSE: The standard is consistent with N.J.A.C. 8:33E-2.3(d)2 which was adopted in 1987 by the Health Care Administration Board, based on recommendations by the New Jersey Cardiac Services Task Force and reflects industry-wide consensus as to the minimum number of procedures a laboratory should perform to both assure patient safety and operative cost effectively. The Department has elected to retain "board certified," as this level of credentialing promotes the delivery of quality care.

N.J.A.C. 8:43G-7.23 PTCA staff qualifications; mandatory

COMMENT: Cooper Hospital asked that the State recommend a minimum number of PTCA's to be performed annually by each cardiologist in order to maintain privileges, probably 50 per year. Additionally, Cooper felt there should be a minimum performed per cardiologist at any given hospital to maintain privileges, perhaps also 50 per year.

RESPONSE: At this time, the Department elects not to mandate annual performance requirements for the physician performing PTCA procedures. This therapeutic treatment of choice in selected situations is currently enjoying industry-wide support. However, since cardiac services is a discipline where new technologies and medications are often on the horizon, this status may quickly change. The Department is allowing the hospital the flexibility to develop its own policies as to minimum number of procedures performed and offers the guidelines of the New Jersey Cardiac Services Task Force which recommends a minimum of 75 procedures performed a year by the physician with 50 as the primary operator.

N.J.A.C. 8:43G-7.24 PTCA staff time and availability; mandatory

N.J.A.C. 8:43G-7.24(a)1

COMMENT: One commenter asked the Department to insert "experienced" before cardiac cath.

RESPONSE: The standard has been revised to more accurately reflect the intent and now reads as follows: "A registered professional nurse certified in basic cardiac life support, and trained and experienced in cardiac catheterization and PCTA; and,".

N.J.A.C. 8:43G-7.24(a)2

COMMENT: One commenter requested "technician" be defined.

RESPONSE: The Department adheres to N.J.A.C. 8:33E-2.4(c)1v, vi and vii, which provides definitional guidelines for the various categories of "technician" that can be utilized for a PTCA procedure. More than one function may be executed by a single individual appropriately cross-trained to perform the required functions. The standard allows the hospital the flexibility to utilize technicians trained and experienced in assisting with cardiac catheterization and PTCA in order to effect compliance with the standard.

N.J.A.C. 8:43G-7.25 PTCA space and environment; mandatory

COMMENT: One commenter asked that the word "cardiac" be inserted before operating room.

RESPONSE: The word "cardiac" is not required in this case. The use of a non-dedicated operating room is permitted as a back-up where PTCA procedures are performed if the operating room meets the minimal physical requirements of the U.S. Department of Health and Human Services

Guidelines for Construction and Equipment for Hospital and Medical Facilities, which are incorporated in N.J.A.C. 5:23-3.2(b). The standard has been changed to reflect the aforementioned citation.

N.J.A.C. 8:43G-7.26 Electrophysiology studies staff qualifications; mandatory

N.J.A.C. 8:43G-7.26(c)

COMMENT: Jersey Shore Medical Center and Cooper Hospital wrote that this standard should be eliminated as it is burdensome, costly, unreasonable and unnecessary.

RESPONSE: The proposed standard reflects high quality patient care practices and is consistent with recommendations of the Cardiac Task Force. The standard remains unchanged.

N.J.A.C. 8:43G-7.30 Pediatric cardiac surgery policies and procedures; mandatory

N.J.A.C. 8:43G-7.30(b)

COMMENT: The NJHA wrote that the hospital should determine the laboratory priority system.

RESPONSE: The Department believes that the acuteness and severity of illness of the pediatric cardiovascular surgical patient warrants priority laboratory services at various times during the hospital stay. However, in the interests of clarification and in an attempt to allow the hospital management team additional flexibility, the wording has been changed to read as follows: "The hospital shall have in effect policies and procedures which ensure that priority lab services will be available to pediatric cardiovascular patients if medically indicated".

N.J.A.C. 8:43G-7.31 Pediatric cardiac surgery staff qualifications; mandatory

N.J.A.C. 8:43G-7.31(a), (b), (c)

COMMENT: The NJHA commented that the hospital's medical staff should determine its staff's credentialing requirements.

RESPONSE: The Department acknowledges the position of the NJHA but believes board certification for those physicians performing invasive diagnostic cardiovascular procedures is a necessary component to help assure that health care of the highest caliber is delivered to pediatric patients in need of cardiac services in New Jersey hospitals. The rule remains as proposed.

N.J.A.C. 8:43G-7.32 Pediatric cardiac surgery staff time and availability; mandatory

N.J.A.C. 8:43G-7.32(f)

COMMENT: The NJHA commented that the credentials of the social worker should be consistent with that of other departments.

RESPONSE: The Department agrees with the essence of the comment and has changed the wording to better reflect patient outcomes. The standard will now read as follows: "Counseling by trained and experienced professionals shall be available to assist pre/post-operative pediatric cardiac patients/families to cope with the crisis of illness, adjustment to hospitalization, plans for patient's care post-discharge, or bereavement and loss".

N.J.A.C. 8:43G-7.33 Pediatric cardiac surgery patient services; mandatory

COMMENT: The NJHA questioned why this standard appears to be unique to this service area and noted that this is a requirement in all patient care areas.

RESPONSE: The Department agrees and the standard has been deleted from this area and can be referenced at N.J.A.C. 8:43G-7.7(b).

N.J.A.C. 8:43G-7.35 Pediatric cardiac surgery supplies and equipment; mandatory

N.J.A.C. 8:43G-7.35(a)1

COMMENT: One commenter suggested adding rhythms detection and treatment equipment and equipment for intra-aortic balloon-assisted circulation. In addition, the suggestion was made to delete the use of the nitrogen freezer.

RESPONSE: The Department concurs with the suggestions and, in the interest of providing quality patient care, has made the appropriate changes to the standard.

N.J.A.C. 8:43G-7.36 Pediatric cardiac surgery quality assurance; mandatory

COMMENT: The NJHA commented that individual hospitals are best able to determine their specific quality assurance monitors and indicators.

RESPONSE: See Department's response at N.J.A.C. 8:43G-7.12.

N.J.A.C. 8:43G-7.38 Pediatric cardiac catheterization policies and procedures; mandatory

N.J.A.C. 8:43G-7.38(b)1

COMMENT: Robert Wood Johnson University Hospital commented that this requirement is extremely costly, represents a duplication of equipment and staff and does not insure or improve the quality of patient care. They maintain that if the catheterization laboratory is appropriately equipped and staffed for pediatric cases, there is no need for a separate physical facility for children.

RESPONSE: The Department agrees with the recommendations of clinical experts in this area who believe a cardiac catheterization laboratory dedicated to pediatrics is an essential element in the delivery of optimal care to pediatric cardiac patients. No change in this section is warranted.

N.J.A.C. 8:43G-7.40 Pediatric cardiac catheterization quality assurance methods; mandatory

COMMENT: The NJHA commented that individual hospitals are best able to determine their specific quality assurance monitors and indicators.

RESPONSE: See Department's response at N.J.A.C. 8:43G-7.12.

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

SUBCHAPTER 7. CARDIAC

8:43G-7.1 Scope

The standards set forth in this subchapter shall apply only to separate, designated units or services for cardiac surgery and cardiac catheterization.

8:43G-7.2 Cardiac surgery policies and procedures; mandatory

(a) At least 250 open-heart operations shall be performed in each dedicated cardiac operating room per year ***excluding the first three years following initiation of services as referenced at N.J.A.C. 8:33E-2.3(a)1, 2***.

(b) ***[The cardiovascular surgical intensive care service or recovery room shall receive priority laboratory services.]*** ***The hospital shall have in effect policies and procedures which ensure that priority laboratory services will be available to cardiovascular patients if medically indicated.***

8:43G-7.3 Cardiac surgery staff qualifications; mandatory

(a) There shall be a director of the cardiac surgery service who is board certified in thoracic surgery.

(b) Effective July 1, 1991, the surgeon in charge of a cardiac operation shall be board certified in thoracic surgery, or shall meet current requirements to be examined and shall be examined within two years of eligibility.

(c) The surgeon in charge of a cardiac operation shall be assisted by a physician board certified in thoracic surgery, a thoracic surgery resident or a physician with privileges to assist in the specific procedure and with prior approval from the physician director of the cardiac surgery service.

(d) The cardiovascular surgical intensive care service or recovery room shall have a physician director, who may be the director of cardiac surgery.

(e) The cardiac perfusionist for each cardiac surgical procedure shall have graduated from an educational program for perfusionists accredited by the Council on Allied Health Education Administration (CAHEA) and be certified by the American Board of Cardiovascular Perfusion or shall meet current requirements to be examined and shall be examined within two years of eligibility; or during each of the past two years shall have performed at least 75 cardiac perfusions.

8:43G-7.4 Cardiac surgery staff qualifications; advisory
(Reserved)

8:43G-7.5 Cardiac surgery staff time and availability; mandatory

(a) There shall be at least a ratio of one registered professional nurse to one patient ***[at all times]*** during the first 24 hours of the patient's stay in the cardiovascular surgical intensive care service or recovery room.

(b) For patients who remain in the cardiovascular surgical intensive care service or recovery room after 24 hours, there shall be at least a ratio of one registered professional nurse to two such patients.

(c) An anesthesiologist who is board certified in anesthesiology, with additional training or experience in cardiac surgery and with hospital privileges for providing anesthesia care during cardiac surgery, shall be responsible for anesthetic management of each cardiac surgical procedure.

(d) An anesthesiologist or certified registered nurse anesthetist experienced in cardiac surgery and with hospital privileges for providing anesthesia care during cardiac surgery shall be available in the surgical suite to assist the anesthesiologist for each cardiac surgical procedure.

(e) There shall be a physician in the hospital at all times who is able to manage cardiac emergencies in the surgical intensive care service or recovery room.

(f) During the entire period of the patient's stay in the cardiovascular surgical intensive care service or recovery room, the operating surgeon or a designated alternate shall arrive at the hospital within 30 minutes of being summoned for an emergency.

(g) A physician who is board certified in internal medicine, in the subspecialty of cardiovascular disease, or other designated physician shall be in the hospital and available for assistance whenever cardiac surgery is being performed.

(h) One registered professional nurse who is certified in basic cardiac life support and trained and experienced in assisting cardiac surgery shall be in each operating room when cardiac surgery is performed. There shall be an additional assistant in each operating room who is a registered professional nurse, licensed practical nurse, or technician.

(i) A perfusionist who is certified by the American Board of Cardiovascular Perfusion or meets the experience requirements shall be available to operate the perfusion pump for each cardiac surgical procedure. A second perfusionist meeting the same requirements shall be available in the surgical suite to assist. ***In emergency cases, a second perfusionist may be off-site and readily summoned if needed.***

[(j) A professional social worker who holds a masters degree in social work shall be available to assist pre/post operative cardiac patients/families to cope with the crisis of illness, adjustment to hospitalization, plans for patient's care post-discharge, or bereavement and loss.]

8:43G-7.6 Cardiac surgery staff time and availability; advisory
(Reserved)

8:43G-7.7 Cardiac surgery patient services; mandatory

(a) Reports of diagnostic and operative procedures performed by cardiac services shall be dictated for inclusion in the medical record ***[within 24 hours, if possible, but]*** not later than 48 hours after completion of the procedure.

(b) A note by the physician ***performing the procedure*** shall be included in the patient's medical record immediately after ***[all diagnostic and operative procedures performed by cardiac services]*** ***completion of the cardiac procedure***.

[(c) Counseling by trained and experienced professionals shall be available to assist pre/post operative cardiac patients/families to cope with the crisis of illness, adjustment to hospitalization, plans for patient's care post-discharge, or bereavement and loss.]

8:43G-7.8 Cardiac surgery space and environment; mandatory

There shall be a cardiac surgical intensive care service or recovery room dedicated specifically to patients from the cardiac surgical service.

8:43G-7.9 Cardiac surgery supplies and equipment; mandatory

(a) The cardiac surgical intensive care service or recovery room shall have equipment and staff for the following:

1. Hemodynamic and electrocardiogram monitoring;
2. Pacemaker usage;
3. Cardiopulmonary resuscitation;
4. Arrhythmia detection and treatment; and
5. Intra-aortic balloon-assisted circulation.

8:43G-7.10 Staff education; mandatory

*[(a) The cardiac services shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;
2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;
3. Individual staff requests for education programs;
4. Supervisor judgements about education needs based on assessment of staff performance;
5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and
6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.]*

Requirements for the cardiac service staff education program shall be as provided at N.J.A.C. 8:43G-5.9.

8:43G-7.11 Staff education; advisory ***(Reserved)***

8:43G-7.12 Cardiac surgery quality assurance methods; mandatory

(a) There shall be a program of quality assurance for all cardiac services that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The quality assurance program for cardiac surgery, percutaneous transluminal coronary angioplasty (PTCA), and electrophysiology studies (EPS) shall include at least:

1. Monitoring the volume of each service provided;
2. Infection and complication rates;
3. The incidence of mortality, morbidity, and other adverse occurrences in each service;
4. Patient factors that affect risk of complications in each service; and
5. Retrospective evaluation of emergency procedures in each service.

8:43G-7.13 Cardiac surgery quality assurance methods; advisory ***(Reserved)***

8:43G-7.14 Cardiac catheterization policies and procedures; mandatory

(a) Cardiac catheterization services shall be promptly accessible in a hospital setting, either on-site or by immediate transfer, in which case there shall be a written transfer agreement.

(b) The cardiac catheterization laboratory shall perform a minimum of 500 catheterizations per year ***excluding the first three years following initiation of services as referenced at N.J.A.C. 8:33E-1.2(b)***.

*[(c) The cardiac catheterization laboratory shall develop, review annually, and enforce policies and procedures that ensure aseptic practices.

(d) The cardiac catheterization laboratory suite shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least radiological safety.]*

[(c) The cardiac catheterization laboratory shall have written policies and procedures that are reviewed annually, revised as needed and implemented. They shall include at least policies and procedures that assure aseptic practices and radiologic safety.

*[(e)]**[(d)]* For all procedures in the cardiac catheterization laboratory a postcatheterization report shall be entered in the patient's medical record immediately after the procedure. This report shall include at least:

1. A description of the procedure, by the physician;
 2. Preliminary presentation of the results, by the physician;
 3. The patient's condition upon discharge from the laboratory by the physician;
 4. Postcatheterization orders, by the physician;
 5. Complications, if applicable, by the physician;
- *[6. A transport summary;]*
 *[7.]**6.* Medications and anesthesia given;
 *[8.]**7.* The patient's condition upon discharge; and
 *[9.]**8.* Palpation of pulses.

8:43G-7.15 Cardiac catheterization staff qualifications; mandatory

(a) There shall be a director of cardiac catheterization who is board certified in internal medicine, in the subspecialty of cardiovascular disease, and who has completed at least one year of additional training or experience in cardiac catheterization.

(b) Any physician performing cardiac catheterization in the cardiac catheterization laboratory shall be board certified in internal medicine, in the subspecialty of cardiovascular disease, who has completed at least one year additional training or experience in cardiac catheterization.

(c) Each physician performing diagnostic cardiac catheterization and angiography without supervision shall have performed at least 200 cardiac catheterizations or angiography studies as the primary operator. The hospital shall determine policy requiring the minimum number of annual procedures that a physician must perform.

(d) The circulating nurse in the cardiac catheterization laboratory shall be certified in basic cardiac life support.

8:43G-7.16 Cardiac catheterization staff time and availability; mandatory

(a) The cardiac catheterization laboratory shall be staffed for each procedure by at least:

1. One registered professional nurse, trained and experienced in assisting in cardiac catheterization procedures, who acts as the circulating nurse;
2. A scrub nurse, who is either *[a licensed practical nurse or]* a registered professional nurse, ***a licensed practical nurse*** or a scrub technician who has been trained in assisting in cardiac catheterization procedures; and
3. One technician, trained ***and experienced*** in cardiac catheterization procedures.

***(b) For emergency procedures, the cardiac catheterization laboratory shall be staffed by at least:**

1. **One registered professional nurse, trained and experienced in assisting in cardiac catheterization procedures, who acts as the circulating nurse; and**
2. **One technician, trained and experienced in cardiac catheterization procedures.***

8:43G-7.17 Cardiac catheterization patient services; mandatory

Handwashing between contacts with patients shall be performed using an antimicrobial agent by all personnel involved in patient care in the cardiac catheterization laboratory.

8:43G-7.18 Cardiac catheterization space and environment; mandatory

(a) All persons entering the cardiac catheterization laboratory shall be attired in scrub suits. Limited access people may wear cover gowns or jumpsuits as substitutes.

(b) The procedure room in the cardiac catheterization laboratory shall have a minimum clear area of 400 square feet exclusive of fixed

and movable cabinets and shelves, with a minimum dimension of 20 feet.

(c) There shall be a control room in the cardiac catheterization laboratory that is at least 50 square feet and is large enough to contain and provide for the efficient functioning of the x-ray equipment and image recording equipment.

(d) The cardiac catheterization laboratory shall have an equipment room or enclosure large enough to contain the x-ray transformers, power modules, associated electronics, and electrical gear. This room or enclosure shall be at least 100 square feet and shall be positioned in the laboratory to ensure short high-voltage cables. There shall be ready access to the equipment for servicing.

(e) There shall be a patient holding area ***[and]* *or*** recovery room where patients are under visual observation before and after the procedure.

(f) Scrub facilities shall be located adjacent to the entrance to the procedure room, and shall be arranged to minimize incidental splatter on nearby personnel, medical equipment, or supply carts.

(g) There shall be an enclosed soiled workroom within the cardiac catheterization suite. The workroom shall contain at least:

1. A clinical sink or equivalent flushing-type fixture;
2. A sink equipped for handwashing;
3. A work counter;
4. A waste receptacle; and
5. A linen receptacle.

(h) There shall be a clean holding room or workroom for the storage of clean and sterile supplies. This room shall have a sink equipped for handwashing.

(i) There shall be a system in the cardiac catheterization laboratory that ensures the removal and processing of soiled instruments and the immediate availability of sterile supplies.

(j) ***[There shall be a change area for the cardiac catheterization laboratory staff that is arranged to encourage a one-way traffic pattern so that personnel entering from outside the cardiac catheterization suite can enter, change their clothing, and move directly into the catheterization laboratory.]* *The change area for the cardiac catheterization laboratory staff shall be arranged to ensure a one-way traffic pattern so that personnel entering from outside the cardiac catheterization suite can enter, change their clothing, and move directly into the catheterization laboratory.***

(k) There shall be a housekeeping closet containing a floor receptor or service sink and storage for housekeeping supplies provided for the exclusive use of the cardiac catheterization suite.

(l) During scheduled hours of operation, personnel who have received special training in cleaning the cardiac catheterization suite shall be assigned to the suite for cleaning and related duties.

(m) Space with x-ray and cine equipment shall be available to the cardiac catheterization suite for the development of films.

(n) The following shall be readily available for use by the cardiac catheterization suite:

1. A viewing room;
2. A film file room;
3. A conference room;
4. A library and study room; and
5. Teaching aids and files.

(o) There shall be an emergency call system in the cardiac catheterization procedure and recovery room.

8:43G-7.19 Cardiac catheterization supplies and equipment; mandatory

(a) All cardiac catheterization laboratory linens and apparel shall be laundered in the laundry ***[facilities]* *services*** provided by the hospital.

(b) The cardiac catheterization laboratory shall be equipped with radiological equipment strong enough to produce an image and in accordance with N.J.S.A. 26:2D-1 et seq.

(c) Fluoroscopic radiological equipment shall be installed in such a way that either it can be easily moved around the patient or the patient table can be adjusted mechanically in order to get the desired views.

8:43G-7.20 Cardiac catheterization staff education and training; mandatory

[In addition to the staff education program for cardiac surgery, all new staff, including physicians, shall receive orientation to the physical layout of the cardiac catheterization suite, its rules, policies, routine procedures, and safe practices.]

Requirements for the cardiac catheterization staff education program shall be as provided at N.J.A.C. 8:43G-5.9.

8:43G-7.21 Cardiac catheterization quality assurance methods; mandatory

(a) The quality assurance program for cardiac catheterization shall include at least:

1. Monitoring the volume of procedures;
2. Infection and complication rates;
3. The incidence of mortality, morbidity, and other adverse occurrences;
4. Patient factors that affect risk of complications in each service; and
5. Retrospective evaluation of emergency procedures.

(b) There shall be a peer review committee for the cardiac catheterization service that includes at least the chief of the cardiac catheterization laboratory, the chief of cardiology, a catheterizing cardiologist, and a non-catheterizing cardiologist. The committee shall review all mortalities, serious complications, and selected procedures done in the cardiac catheterization suite to identify trends and problems in the service. Minutes of these meetings shall be maintained.

8:43G-7.22 Percutaneous transluminal coronary angioplasty policies and procedures; mandatory

(a) Percutaneous transluminal coronary angioplasty (PTCA) shall be performed on an elective basis only in cardiac surgical centers approved by the New Jersey State Department of Health.

(b) There shall be at least 200 PTCA procedures performed in the hospital per year ***excluding the first three years following initiation of services as referenced N.J.A.C. 8:33E-2.3(d)1*.**

8:43G-7.23 PTCA staff qualifications; mandatory

(a) Any physician performing PTCA shall be board certified in internal medicine, in the subspecialty of cardiovascular disease, who fulfills the criteria of being a catheterizing physician and has one year of training in interventional catheterization in an accredited program, during which the physician performed more than 100 PTCAs under supervision, or has performed more than 50 PTCAs per year as the primary operator for each of the past two years.

(b) Any physician assisting in performing PTCA procedures shall have completed an approved fellowship training program in cardiology, or shall be currently undergoing training in an approved fellowship training program in cardiology.

(c) The hospital shall determine policy requiring the minimum number of annual procedures that a physician must perform.

8:43G-7.24 PTCA staff time and availability; mandatory

(a) The following staff shall be present for all PTCA procedures:

1. A registered professional nurse certified in basic cardiac life support, ***and trained and experienced in*** cardiac catheterization, and PTCA; and
2. A technician trained and experienced in assisting with cardiac catheterization and PTCA.

8:43G-7.25 PTCA space and environment; mandatory

There shall be an operating room available for immediate use on-site that complies with criteria established in the hospital's surgery policies and procedures ***and meets the minimal physical requirements of N.J.A.C. 5:23-3.2(b),*** any time a PTCA procedure is performed on an elective basis.

8:43G-7.26 Electrophysiology studies staff qualifications; mandatory

(a) The physician performing electrophysiology studies (EPS) shall be board certified in internal medicine, in the subspecialty of cardiovascular disease, who has an additional year of training in an

accredited program or who has performed EPS as a primary operator for more than five years.

(b) The physician performing EPS shall have training and experience in cardiac catheterization and one of the following:

1. At least one additional year of specialized training in EPS and cardiac arrhythmia; or

2. At least five years of experience performing invasive cardiac electrophysiologic studies.

(c) The physician performing EPS shall be assisted by another physician who has successfully completed or is currently undergoing training in an approved fellowship training program in cardiology.

8:43G-7.27 EPS staff qualifications; advisory ***(Reserved)***

8:43G-7.28 EPS staff time and availability; mandatory

(a) The following staff shall be present during all EPS procedures:

1. A registered professional nurse certified in basic cardiac life support, cardiac catheterization, and EPS; and

2. A technician trained and experienced in assisting with cardiac catheterization and EPS.

8:43G-7.29 Pediatric cardiac services standards; scope

In addition to the standards in N.J.A.C. 8:43G-7.1 through 7.28 for adult cardiac services, the following standards in N.J.A.C. 8:43G-7.30 through 7.40 shall apply to separate, designated units or services for pediatric cardiac diagnostic services and pediatric surgical centers.

8:43G-7.30 Pediatric cardiac surgery policies and procedures; mandatory

(a) At least 150 open and closed heart operations shall be performed in the hospital per year with at least 75 open heart operations performed per year*, **excluding the first three years following initiation of services as referenced at N.J.A.C. 8:33E-2.3(b)1***.

(b) ***[The pediatric surgical intensive care service shall receive priority laboratory services.]* *The hospital shall have in effect policies and procedures which ensure that priority lab services will be available to pediatric cardiovascular patients if medically indicated.***

(c) All medical and nursing staff who provide services to pediatric cardiac patients shall have training and experience in pediatrics.

8:43G-7.31 Pediatric cardiac surgery staff qualifications; mandatory

(a) There shall be a director of the pediatric cardiac surgery service who is board certified in thoracic surgery and has five years prior experience in pediatric cardiac surgery.

(b) Effective July 1, 1990, the surgeon in charge of a pediatric cardiac operation shall be board certified in thoracic surgery, or shall meet current requirements to be examined and shall be examined within two years of eligibility.

(c) The cardiac perfusionist for each pediatric cardiac surgical procedure shall have graduated from an educational program for perfusionists accredited by the Council on Allied Health Education Administration (CAHEA) and be certified by the American Board of Cardiovascular Perfusion; or during each of the past two years, shall have performed at least 30 perfusions as primary operator.

8:43G-7.32 Pediatric cardiac surgery staff time and availability; mandatory

(a) There shall be at least a ratio of one registered nurse to one patient at all times during the first 24 hours of the patient's stay in the pediatric cardiovascular surgical intensive care service.

(b) For patients who remain in the pediatric cardiovascular surgical intensive care service after 24 hours, there shall be at least a ratio of one registered professional nurse to two such patients with capability to adjust staff levels based on acuity level of patient illness.

(c) An anesthesiologist who is board certified in anesthesia, with additional training in pediatric anesthesiology and experience in pediatric cardiac surgery, shall be responsible for anesthetic management of each pediatric cardiac surgical procedure.

(d) A pediatric cardiologist shall be available in the hospital whenever pediatric cardiovascular surgery is scheduled.

(e) There shall be a physician in the hospital at all times who is able to manage pediatric cardiac emergencies. This physician shall not be assigned to the emergency department at the same time.

(f) ***[A professional social worker who holds a masters degree in social work or a registered professional nurse who is a masters prepared clinical specialist, shall be available to assist pre/post operative cardiac patients/families to cope with the crisis of illness, adjustment to hospitalization, plans for patient's care post-discharge, or bereavement and loss.]* *Counseling by trained and experienced professionals shall be available to assist pre/post operative pediatric cardiac patients/families to cope with the crisis of illness, adjustment to hospitalization, plans for patient's care post-discharge, or bereavement and loss.***

***[8:43G-7.33 Pediatric cardiac surgery patient services; mandatory**

A note by a physician shall be included in the patient's medical record immediately after all diagnostic and operative procedures performed by the pediatric cardiac services.]**

8:43G-7.*[34]**33* Pediatric cardiac surgery space and environment; mandatory

There shall be a pediatric cardiac surgical intensive care service specifically dedicated to patients from the pediatric cardiac surgical service.

8:43G-7.*[35]**34* Pediatric cardiac surgery supplies and equipment; mandatory

(a) The pediatric cardiac surgical intensive care service shall have equipment and staff for at least the following:

1. Hemodynamic and electrocardiogram monitoring;

2. Pacemaker usage;

3. Cardiopulmonary resuscitation; ***[and]***

[4. A nitrogen freezer.]

***4. Arrhythmia detection and treatment; and**

5. Intra-aortic balloon-assisted circulation.*

8:43G-7.*[36]**35* Pediatric cardiac surgery quality assurance methods; mandatory

(a) There shall be a program of quality assurance for all pediatric cardiac services that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The quality assurance program for pediatric cardiac surgery shall include at least:

1. Monitoring the volume of each service provided;

2. Infection and complication rates;

3. The incidence of mortality, morbidity, and other adverse occurrences in each service;

4. Patient factors that affect risk of complications in each service; and

5. Retrospective evaluation of emergency procedures in each service.

8:43G-7.*[37]**36* Pediatric cardiac surgery quality assurance methods; advisory ***(Reserved)***

8:43G-7.*[38]**37* Pediatric cardiac catheterization policies and procedures; mandatory

(a) Pediatric invasive cardiac diagnostic procedures shall be performed only at pediatric cardiac surgery centers.

(b) There shall be a cardiac catheterization laboratory dedicated to pediatrics.

(c) The pediatric cardiac catheterization laboratory shall perform a minimum of 150 pediatric cardiac catheterizations per year*, **excluding the first three years following initiation of services as referenced at N.J.A.C. 8:33E-1.11(d)*.**

8:43G-7.*[39]**38* Pediatric cardiac catheterization staff qualifications; mandatory

(a) There shall be a director of the pediatric cardiac catheterization service who is board certified in pediatrics, in the subspecialty of pediatric cardiology, and who has completed at least one year of

additional training in an accredited program for interventional pediatric cardiac procedures.

(b) Any physician performing pediatric cardiac catheterization in the pediatric cardiac catheterization laboratory shall be board certified in the subspecialty of pediatric cardiology, or shall meet ***current*** requirements to be examined and shall be examined within two years of eligibility.

(c) Each physician performing diagnostic cardiac catheterization without supervision shall have performed at least 50 pediatric cardiac catheterizations as the primary operator. The hospital shall determine policy requiring the minimum number of annual procedures that a physician must perform.

8:43G-7.*[40]**39* Pediatric cardiac catheterization quality assurance methods; mandatory

There shall be a peer review committee for the pediatric cardiac catheterization service that includes at least the director of the pediatric catheterization laboratory, the director of pediatric cardiology, a pediatric catheterization cardiologist, and a non-catheterizing cardiologist. The committee shall review all mortalities, serious complications, and selected procedures done in the pediatric catheterization suite to identify trends and problems in the service. Minutes of these meetings shall be maintained.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Central Supply

Adopted New Rules: N.J.A.C. 8:43G-8

New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-8.3, 8.5, and 8.8

Proposed: June 19, 1989 at 21 N.J.R. 1609(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.96, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted but still pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-8.3, 8.5, and 8.8 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 27 letters commenting on the proposed standards for central supply. Twenty-five letters were submitted by hospitals, one by the New Jersey Hospital Association, and one by the Journal of healthcare materiel management (sic).

COMMENT: Dan Mayworm, publisher of the Journal of healthcare materiel management (sic), writes: "We speak as someone who has taught, lectured and written on the subject of hospital sterilization practices for over twenty years and currently consults and publishes in this field.

As a state licensing standard, this new rule could very well serve as a model for other states to follow. . . . You should be complimented for putting together a committee that is obviously knowledgeable about the current state of the art."

RESPONSE: The Department appreciates this comment.

N.J.A.C. 8:43G-8.1 Central supply policies and procedures

N.J.A.C. 8:43G-8.1(a)

COMMENT: The New Jersey Hospital Association requested that the phrase "and followed" be deleted to be consistent with other subchapters in the hospital licensing standards.

RESPONSE: The phrase is deleted.

COMMENT: The Chief of Environmental Services in the New Jersey Department of Health commented that policies and procedures should be reviewed every two years to be consistent with Joint Committee on Accreditation of Health Care Organizations (JCAHO) guidelines.

RESPONSE: The Department acknowledges the comment; however, the standard remains unchanged in order to be consistent with other subchapters in the hospital licensing standards. Standards in many instances exceed JCAHO guidelines.

N.J.A.C. 8:43G-8.1(d)

COMMENT: Hunterdon Medical Center commented that manufacturers' recommendations should be kept where the equipment is cleaned. The New Jersey Hospital Association commented that manufacturers' recommendations should be available to, not in, areas where equipment is used.

RESPONSE: The requirement remains. Copies of manufacturers' recommendations shall be available for ready reference both in a central location (central supply services) and in locations where the equipment is used.

N.J.A.C. 8:43G-8.4 Central supply patient services

N.J.A.C. 8:43G-8.4(e)

COMMENT: The Journal of healthcare materiel management (sic) writes that "the idea of expiration dates is an outmoded concept that has been shown to add cost and no value." The Journal suggests deleting this standard and substituting a standard which reflects current practice as recommended by the Association for the Advancement of Medical Instrumentation.

RESPONSE: The standard is deleted. A replacement standard shall require policies and procedures for determining and marking the shelf life of packaged sterile items consistent with current practice as recommended by the Association for the Advancement of Medical Instrumentation (AAMI).

N.J.A.C. 8:43G-8.4(f)

COMMENT: South Jersey Hospital System writes that definition of "scientific validation" is needed and that the exception is appropriate since some manufacturers may recommend single-use to promote sales.

RESPONSE: "Scientific validation" refers to independent testing performed according to generally accepted scientific models and available in printed form to at least the scientific and health care professions.

N.J.A.C. 8:43G-8.6 Central supply space and environment

N.J.A.C. 8:43G-8.6(c)

COMMENT: Freehold Area Hospital agrees with the standard, but does not have storage space for clean equipment.

RESPONSE: The standard remains unchanged.

N.J.A.C. 8:43G-8.9 Central supply staff education and training

COMMENT: Several commenters objected to the specificity of staff education and training requirements.

RESPONSE: The Department deletes most references to specific staff education and training requirements, and instead has included a generic staff education requirement at N.J.A.C. 8:43G-5.9.

N.J.A.C. 8:43G-8.10 Central supply quality assurance methods

COMMENT: Several hospitals objected to the specificity of quality assurance indicators.

RESPONSE: The Department agrees with the concept of a generic quality assurance program with latitude for the development of specific indicators by each hospital. A technical change is made in the rule to more accurately locate N.J.A.C. 8:43G-8.10(b) and (c) at N.J.A.C. 8:43G-8.7(c) and (d).

N.J.A.C. 8:43G-8.11 Sterilizer patient services

N.J.A.C. 8:43G-8.11(f)

COMMENT: The Journal of healthcare materiel management (sic) writes that the wrong Association for the Advancement of Medical Instrumentation (AAMI) document is referenced. The correct document is "Good Hospital Practice: Steam Sterilization and Sterility Assurance."

RESPONSE: The error is corrected.

COMMENT: Hunterdon Medical Center writes that the use of reference materials over which the Department of Health or the hospital has no control is inappropriate because the external organizations may

change their standards and hospitals would have to comply without an opportunity for public review.

RESPONSE: The Department acknowledges the concern. However, the intent of the standard is to provide an objective, generally accepted, industry-wide standard of practice for purposes of guiding and measuring hospital performance. To avoid the problem of obsolescence, the following phrase is added: "or revised for later editions, if in effect."

N.J.A.C. 8:43G-8.11(g)

COMMENT: The Journal of healthcare materiel management (sic) writes that aeration times given may be too long for some items and not long enough for others and that the AAMI guidelines suggesting use of manufacturer's recommendations are a better approach.

RESPONSE: The standard is revised to require that manufacturers' recommendations be followed, or, if these are not available, to follow the generic AAMI guidelines given in the rule.

N.J.A.C. 8:43G-8.14 Sterilizer quality assurance methods

N.J.A.C. 8:43G-8.14(b)

COMMENT: The Chief of Environmental Services writes that the indicator used to monitor sterilized packages is called a "chemical indicator or integrator," and that it is not necessary to place chemical indicators in peel packaging that has an indicator on the paper portion.

RESPONSE: The standard is revised as recommended by the commenter.

N.J.A.C. 8:43G-8.14(c)3.

COMMENT: Several commenters indicated that the requirement to test daily is too stringent according to standards of the Joint Committee on Accreditation of Health Care Organizations, the Association of Operating Room Nurses, and others. The Chief of Environmental Services and hospital surveyors additionally commented on the need for including implantable or intravascular devices in the items to be monitored.

RESPONSE: The standard is revised to require weekly biological monitoring and the addition of biological monitoring of sterilization of implantable or intravascular devices.

COMMENT: Several commenters objected to the specificity of quality assurance indicators.

RESPONSE: The Department agrees with the concept of a generic quality assurance program with latitude for the development of specific indicators by each hospital. A technical change is made in the rule to delete the heading "sterilizer quality assurance methods" and to more accurately locate these standards under "sterilizer supplies and equipment."

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

SUBCHAPTER 8. CENTRAL SUPPLY

8:43G-8.1 Central supply policies and procedures; mandatory

(a) The hospital's central supply service shall have written policies and procedures that are reviewed annually, revised as needed, ***and*** implemented^[, and followed]. These policies and procedures shall be approved by the hospital's infection control committee.

(b) Policies and procedures for central supply shall include at least decontamination and sterile activities, including receiving, decontamination, storage, cleaning, packaging, disinfection, sterilization, and distribution of reusable items.

(c) All equipment and instruments in the hospital shall be processed according to central supply cleaning and sterilization policies and procedures.

(d) Manufacturers' recommendations for equipment use, testing, and cleaning shall be readily available in central supply services and in the department where the equipment is used.

8:43G-8.2 Central supply staff qualifications; mandatory

(a) There shall be a full-time director or supervisor of central supply services.

(b) By January 1, 1991, the director or supervisor of central supply shall have received a certificate for completing a central service training course recognized by the Department of Health.

8:43G-8.3 Central supply staff qualifications; advisory ***(Reserved)***

8:43G-8.4 Central supply patient services; mandatory

(a) Entrance to the central supply processing and decontamination area shall be restricted to persons attired in hospital-laundried or protective attire, in relation to the purpose and scope of their duties.

(b) All reusable patient care items shall be reprocessed according to manufacturers' recommendations.

(c) There shall be a preventive maintenance program for all patient care equipment processed by central supply that includes performance verification records. Preventive maintenance shall be documented.

(d) All patient care equipment shall be cleaned, disinfected, or sterilized, according to the use of the item.

***[(e) Sterile supplies shall bear expiration dates as follows:**

1. Double-wrapped muslin/paper wrappers not to exceed one month;

2. Heat-sealed paper/plastic wrappers or plastic dust-cover wrappers not to exceed one year;

3. Self-sealed packaging not to exceed manufacturers' recommendations for expiration dates; and

4. Rigid sterilization containers not to exceed manufacturers' recommendations for expiration dates.]*

*** (e) Shelf life of packaged sterile items shall be determined and indicated on the items according to central supply sterilization policies and procedures which follow guidelines recommended by the Association for the Advancement of Medical Instrumentation (AAMI).**

Note: AAMI requirements can be obtained from:

**The Association for the Advancement
of Medical Instrumentation
Suite 602**

**1901 North Fort Myer Drive
Arlington, VA 22209***

(f) Single-use items shall be reused or reprocessed only if the manufacturer recommends reuse or reprocessing, or if the hospital has scientific validation of the safety of reprocessing and reuse of the item. Procedures for reprocessing and reuse shall conform with these recommendations or validation studies.

8:43G-8.5 ***Central supply patient services; advisory *(Reserved)***

8:43G-8.6 Central supply space and environment; mandatory

(a) Sterile supplies shall be processed, packaged, rotated, distributed, stored, and dated in such a way as to ensure the integrity and sterility of the sterile item.

(b) Exterior shipment cartons shall not be brought into sterile supply storage or processing areas.

(c) Soiled or contaminated supplies shall be physically separated from those that are clean or sterile.

(d) All work surfaces in central supply shall be cleaned with germicidal disinfectant at the end of each work shift.

(e) An area shall be designated for central supply employees to change their clothing and store personal items.

8:43G-8.7 Central supply supplies and equipment; mandatory

(a) An illuminated worktable shall be provided to examine linen used for wrapping sterile supplies for tears, pinholes, and other defects.

(b) Laparoscopes, arthroscopes, and other scopes that enter normally sterile areas of the body, and their accessories, shall be sterilized or given high-level disinfection after each use according to manufacturers' recommendations or according to policy established by the hospital's infection control committee.

*** (c) The efficacy of chemicals used for high-level disinfection shall be verified by the use of a test method specific to the chemical if a valid and reliable test method is available and feasible for use in a hospital setting.***

*** (d) There shall be a system for monitoring the processing of all equipment and instruments in the hospital for adherence to central supply policies and procedures.***

8:43G-8.8 *Central supply supplies and equipment; advisory
(Reserved)

8:43G-8.9 Central supply staff education and training; mandatory
(a) Requirements for the central supply education program shall be as provided in N.J.A.C. 8:43G-5.9.

*[(a)]***(b)* All new central supply service employees shall receive on-the-job training on practices and equipment unique to the hospital.

[(b) All central supply service employees shall participate in training sessions or educational programs that are held at least every three months and are relevant to central supply. Staff participation shall be documented.]

8:43G-8.10 Central supply quality assurance methods; mandatory

[(a)] There shall be a program of quality assurance for central supply that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, recommending, implementing, and monitoring corrective actions on the basis of these data.

*[(b) The efficacy of chemicals used for high-level disinfection shall be verified by the use of a test method specific to the chemical if a valid and reliable test method is available and feasible for use in a hospital setting.

(c) There shall be a system for monitoring the processing of all equipment and instruments in the hospital for adherence to central supply policies and procedures.]*

8:43G-8.11 Sterilizer patient services; mandatory

(a) All hinged instruments shall be sterilizer processed in an open position.

(b) Before they are sterilizer processed, all instruments and equipment shall be visually inspected for cracks, pitting, rust, or any condition that would impede cleaning.

(c) Sterilizers in use shall be kept clean.

(d) Sterilizer drains shall be flushed at least weekly, unless otherwise specified by the manufacturer.

(e) Sterilizer door gaskets shall provide effective sealing.

(f) Methods for processing reusable medical devices shall conform with both the following *or revised or later editions, if in effect*:

1. The current edition of the Centers for Disease Control "Methods for Assuring Adequate Processing and Safe Use of Medical Devices"; and

2. The Association for the Advancement of Medical Instrumentation, (AAMI) requirements, "Good Hospital Practice: Steam Sterilization *[Using the Unwrapped Method (Flash Sterilization)]* *and Sterility Assurance*."

*[Note: AAMI requirements can be obtained from:

The Association for the Advancement of Medical Instrumentation
Suite 602
1901 North Fort Myer Drive
Arlington, VA 22209]*

(g) Instruments and medical devices sterilized by ethylene oxide shall be aerated in a mechanical aerator *according to manufacturer's recommendations, or if these recommendations are not available, they shall be aerated* at 140 degrees Fahrenheit for a minimum of eight hours or at 122 degrees Fahrenheit for a minimum of 12 hours*[, unless otherwise recommended by the manufacturer]*.

8:43G-8.12 Sterilizer space and environment; mandatory

Each sterilizer processing area shall have exhaust ventilation to remove heat, moisture, and odors without recirculating the exhaust to other areas of the hospital.

8:43G-8.13 Sterilizer supplies and equipment; mandatory

(a) All sterilizers shall be operated and maintained in accordance with the manufacturers' instructions.

(b) An indicating thermometer, accurate to three degrees Fahrenheit, shall be located in all ethylene oxide aeration equipment.

[8:43G-8.14 Sterilizer quality assurance methods; mandatory]

*[(a)]***(c)* At the completion of each sterilization load, the time, temperature, and pressure readings shall be checked and verified.

*[(b) An]***(d) Double wrapped muslin/paper wrappers shall use an* internal and external chemical indicator *[shall be used]* to monitor every package sterilized. *Peel packaging shall have an internal indicator.*

*[(c)]***(e)* The following equipment tests and monitoring shall be performed as specified and records, including load number, contents of the load, and expiration date, shall be maintained for at least one full year:

1. A prevacuum air removal test shall be performed daily on each prevacuum sterilizer and following repair or breakdown of the prevacuum sterilizer;

2. Biological monitoring with live spores shall be performed at least daily on each ethylene oxide sterilizer and following repair or breakdown of the ethylene oxide sterilizer; *[and]*

3. For steam sterilizers used to sterilize instruments, biological monitoring with live spores shall be performed *[daily]* *weekly* for each steam autoclave and following repair or breakdown of the steam sterilizer *[*]. If a sterilizer is not in use daily, daily testing shall be required only on the days it is in operation.]***; and*

4. A biological monitor shall be used with each load containing implantable or intravascular items. Implantables shall not be used until the negative biological test is received.

*[(d)]***(f)* In the event of positive biological test results on a sterilizer, effective corrective action shall be taken, including retesting and recall if indicated.

*[(e)]***(g)* There shall be an established recall system in effect.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards Critical and Intermediate Care

Adopted New Rules: N.J.A.C. 8:43G-9

New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-9.3, 9.6, 9.8, 9.10, 9.12, 9.15, 9.17 and 9.22

Proposed: August 7, 1989 at 21 N.J.R. 2167(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health, with approval of the Health Care Administration Board.

Filed: January 10, 1990 as R.1990 d.94, with substantive and technical changes not requiring public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted but still pending.

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-9.3, 9.6, 9.8, 9.10, 9.12, 9.15, 9.17 and 9.22 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 26 letters commenting on the proposed standards for critical and intermediate care services. Twenty-five letters were submitted by hospitals and one by the New Jersey Hospital Association.

The following is a summary of the comments and recommendations received by the Department and the corresponding Departmental responses.

N.J.A.C. 8:43G-9.1 Scope

The Department is revising the wording of the scope of critical care standards to achieve consistency with Department of Health planning regulations. The revised wording is as follows: "The standards set forth in this chapter apply to licensed critical and intensive care beds inclusive of medical surgical, coronary, pulmonary, cardiovascular, and neurological critical care, but not pediatric or neonatal intensive care".

N.J.A.C. 8:43G-9.2 Critical care structural organization; mandatory**N.J.A.C. 8:43G-9.2(b)**

COMMENT: Meadowlands Hospital commented that the word "each" before critical care unit, should be deleted. St. Joseph's Hospital wrote that a central committee and common approach regarding policies, admissions, etc., is very effective and to mandate individual committees may prove to be counterproductive, especially in the smaller hospital.

RESPONSE: The Department agrees with the commenters and has made the requested change. The revised standard now reads as follows: "There shall be a multidisciplinary critical care committee or its equivalent for critical care units that includes representatives of at least the medical and nursing staff. The committee shall discuss issues related to the administration of the critical care practice that will enhance patient care".

N.J.A.C. 8:43G-9.4 Critical care policies and procedures; mandatory**N.J.A.C. 8:43G-9.4(a)2**

COMMENT: Underwood commented that this is a very important standard. "At this time, residents perform invasive procedures upon request from attending physicians. The quality of their performance varies greatly. Attached to this standard should be minimum requirements before a resident can independently perform invasive procedures that require monitoring."

RESPONSE: The Department appreciates the comment and shares the concern of the commenter regarding this quality of care issue. However, at this point the Department has elected not to mandate minimum requirements for residents but believes the issue is best handled by allowing the medical staff service the management prerogative to require minimum performance criteria.

COMMENT: Mercer Medical Center asked if "physician residents" are the same as resident physicians, that is, doctors in training, or are "physician residents" any physician paid to be available within the hospital during set periods of time.

RESPONSE: In the interest of clarity, the Department is revising the standard as follows: "A list of procedures that resident physicians, graduates of an accredited medical school participating in an approved training program in a hospital setting, may and may not perform;"

N.J.A.C. 8:43G-9.4(a)4

COMMENT: Princeton Medical Center commented that hospitals have general transport policies and that this is not and should not be specifically for the critical and intermediate care units.

RESPONSE: While the Department acknowledges that general transport policies are important throughout the hospital, it nevertheless believes it is important for the critical and intermediate care services to have specific policies addressing this issue in their policy and procedure manual maintained on the unit. The high level of movement for the critically ill patient, into and out of the critical care unit for admission, transfer, or diagnostic and therapeutic procedures, warrants specific transport policies for critical care services. The standard remains as proposed.

N.J.A.C. 8:43G-9.4(a)5

COMMENT: Mercer Medical Center objected to having a policy that is subject to the discretion of the patient's nurse. If a policy provision is to be waived, such waiver should be given by the patient's physician or physician in collaboration with the nurse.

RESPONSE: The Department believes the standard reflects a realistic and practical approach to the issue of visitation policy on critical care units. The registered nurse is in attendance 24 hours a day and is in the

best position to evaluate the situation and make appropriate allowances in visitation policy for a specific patient if the need arises. However, in recognition of the importance of physician input into the process, the standard is revised to read as follows: "A visitors policy that specifies visiting hours and number of visitors permitted each patient at any one time, subject to the discretion of the patient's physician or primary care nurse".

N.J.A.C. 8:43G-9.4(a)7

COMMENT: Mercer Medical Center objected to a policy that limits the ability of the attending physician to decide that other physicians should be involved in a patient's care. In addition, they objected to specifying a numerical response time since it is arbitrary and meaningless but they requested a definition of response time.

RESPONSE: The Department believes it is important to the delivery of quality patient care to require a policy that defines which physicians should be called for patient emergencies. Critically ill patients in emergent situations are very often effected with multi-system failures. A clearly defined protocol facilitates immediate response of needed personnel and institution of needed therapeutic and diagnostic procedures. Additionally, mandating a policy that includes a response time for physicians to respond to patient emergencies is consistent with rules in other subchapters requiring essential personnel be able to arrive at the hospital within a specified amount of time of being called. The rule remains as proposed.

N.J.A.C. 8:43G-9.4(a)9

COMMENT: West Jersey Health Systems requested a definition of "case management" privileges. Mercer Medical Center commented that the term "case management" should be deleted. Mercer also wrote that privileges granted to physicians are hospital-wide. It is superfluous and unnecessary to have different privileges.

RESPONSE: The Department has reviewed its position and is deleting this standard from the subchapter.

N.J.A.C. 8:43G-9.4(a)10

COMMENT: St. Elizabeth commented that the standard is too prescriptive. Mercer Medical Center wrote that this is a medical staff determination and therefore should be eliminated. The New Jersey Hospital Association commented that "case management" should be omitted. The phrase has meaning specific to a variety of different disciplines with a variation of the definition from discipline to discipline.

RESPONSE: The Department addresses the frequency of physician visits in N.J.A.C. 8:43G-16.6(i), Medical Staff, and thus has deleted the requirement from this subchapter.

N.J.A.C. 8:43G-9.4(a)11

COMMENT: The New Jersey Hospital Association commented that this need not be a formal policy. The need for such a policy is best left to the individual hospital.

RESPONSE: The Department believes that there is a need for a formal policy on involving and communicating with families of patients during the first 24 hours after admission and throughout the patient's stay. Often, in dynamic and high intensity situations, the routine act may be overlooked. Keeping families of seriously ill patients informed of what is happening to their loved one creates an atmosphere of trust and awareness among the parties involved and facilitates medical decision making and implementation of treatment for the patient with minimal disruption. The rule remains as proposed.

COMMENT: Underwood commented that it may be more advisable to have a standard for what the patient has a right to know, versus need to know, as well as from whom.

RESPONSE: The Department agrees with the commenter and feels this issue is appropriately addressed in hospital licensing standards for patient rights located at N.J.A.C. 8:43G-4.1(a)6, which reads as follows: "These rights shall include at least: to receive from the patient's physician(s) in terms the patient understands, an explanation of his or her complete medical condition, recommended treatment, risk(s) of the treatment, expected results and reasonable medical alternatives." The proposed standard remains unchanged.

N.J.A.C. 8:43G-9.4(a)12

COMMENT: Two commenters wrote that this is a patient care practice issue and that the need for a policy regarding these issues is a hospital management decision.

RESPONSE: The Department has reviewed its position and is deleting this standard from the critical care chapter.

N.J.A.C. 8:43G-9.5 Critical care staff qualifications; mandatory

N.J.A.C. 8:43G-9.5(a)

COMMENT: Three commenters presented generic objections to the Department determining staffing and credentialing. Additionally, the New Jersey Hospital Association commented that the appointment of a physician director will incur additional costs.

RESPONSE: The Department believes that professional credentials bear a strong positive relationship to the quality of patient care delivered. Additionally, the commenters are referred to the introductory summary statement in regard to the issue of economic impact of implementation of the standard. The Department will retain the rule as proposed.

COMMENT: Mercer Medical Center asked if the standard meant that the director is in charge of quality assurance or does it mean that "the director can initiate orders for any patient, discharge the patient from the unit, unilaterally modify an attending physician's care of a patient; etc."

RESPONSE: The Department acknowledges the comment but believes the standard reflects industry-wide practice for critical services. No mention is made in the standard requiring the director of the service to be in charge of quality assurance. In addition, the proposed rule is consistent with other hospital licensing subchapters requiring physician directors for the various services.

N.J.A.C. 8:43G-9.5(b)

COMMENT: One commenter wrote that this is not necessary.

RESPONSE: The Department believes the standard is necessary as proposed to ensure an efficiently and effectively functioning critical care service providing optimal patient care. The rule remains as proposed.

N.J.A.C. 8:43G-9.5(c)

COMMENT: There were several comments generically opposing the Department determining staffing credentials.

RESPONSE: The Department acknowledges the comments but believes that the possession of professional credentials by the director of a service positively impacts the delivery of quality patient care. However, the rule is being recodified as subsection (b). This change is made to improve the structural organization of the subchapter. The text of the proposed rule will remain unchanged.

COMMENT: South Jersey Hospital System wrote that reference to the fellowship program should be eliminated.

RESPONSE: The Department will retain reference to the fellowship program in the proposed standard. The Department is allowing the hospital management team the flexibility of an alternate credentialing requirement in order to effect compliance with the standard.

N.J.A.C. 8:43G-9.5(d)

COMMENT: Several hospitals wrote that this standard impacted management prerogative to determine staffing credentials and denied management the prerogative of selecting the best qualified person for the position.

RESPONSE: St. Michael's Hospital commented that AACN certification is costly to obtain and maintain and limits the pool of available personnel for the position. Memorial Health Alliance commented that staffing shortages makes it impossible to comply 100 percent of the time.

COMMENT: Monmouth Medical Center commented that recruitment of R.N.'s is already a severe problem for them and to impose the above only exacerbates the problem. Additionally, clinical competence does not necessarily ensure competency in management skills.

RESPONSE: The Department has reviewed its position and has elected to delete this standard from the subchapter.

N.J.A.C. 8:43G-9.5(e)

COMMENT: The New Jersey Hospital Association commented that hospital management should determine qualifications and credential equivalencies for its staff.

RESPONSE: The Department addresses this issue in N.J.A.C. 8:43G-5.9 and is consequently deleting it from this subchapter.

N.J.A.C. 8:43G-9.5(f)

COMMENT: St. Joseph's Hospital commented that the State should not be specifying type of nursing care nor the complexion of the staffing as this is up to the judgement of each hospital. Helene Fuld commented that this would be very costly to implement.

RESPONSE: The Department acknowledges the first comment but firmly believes that in clinical areas such as critical care, a successful patient outcome is strongly impacted by the skills and knowledge of those professionals delivering the care and comes within the Department's

mandate of providing for the health and safety of health care consumers. Regarding the second comment, the Department believes the cost is minimal for a basic cardiac life support program and more importantly, believes the benefits strongly outweigh the cost factor. However, in the interests of clarity and accuracy, the Department is revising the standard to reflect the original intent whereby each licensed nurse in the critical care service shall be required to have training in basic cardiac life support.

To improve the structural organization of this subchapter, the standard is being recodified as subsection (e).

N.J.A.C. 8:43G-9.5(g)

COMMENT: Several hospitals commented that this was a management decision. Englewood Hospital commented that the cost-factor and availability of qualified nurses make it difficult to comply with this standard.

RESPONSE: The critically ill patient and the chronically critically ill patient are two segments of a growing population of seriously ill patients hospitalized in critical care units. These patients have tremendous, complex, multi-system illnesses, generating complex health care needs. While physician determinations direct the course of the patient's care, the patient's major continuing health care problems primarily require nursing intervention. The licensed nurse must be equipped to assess and implement crucial patient care practices and to coordinate members of the multi-disciplinary team. While the Department acknowledges that additional academic achievements do not automatically guarantee competency in performance, the Department does believe that the certification process is a vital component to help assure the delivery of quality patient care in critical care services. The certification examination for critical care nurses is administered two times a year at a cost of \$125.00.

The Department believes access to the certification process is not overburdensome and at a minimal cost. However, the Department does recognize the infancy stages of this nursing specialty and the limited availability of qualified nurses and is thus revising the standard to reflect these concerns. The revised standard will read as follows: "Effective January 1, 1992, the nursing manager of each unit within the critical care service shall be certified in critical care nursing by the American Association of Critical Care Nurses or have three years experience in critical care nursing".

N.J.A.C. 8:43G-9.7 Critical care staff time and availability; mandatory

N.J.A.C. 8:43G-9.7(a)

COMMENT: Memorial Health Alliance and the Meadowlands commented that this standard was costly and impacts management prerogative. Staffing shortages at this time make 100 percent compliance impossible.

RESPONSE: While the Department recognizes the concerns of the commenter, the proposed rule is consistent with N.J.A.C. 8:43G-17.1(a) which states that nurse staffing assignments shall be based on patient acuity levels, determined through patient classification systems which address the needs of the nursing unit. The rule remains as proposed.

N.J.A.C. 8:43G-9.7(b)

COMMENT: The New Jersey Hospital Association commented that (a) and (b) contradicted each other. Several hospitals commented that this was a hospital management team determination and should not be mandated by the State.

RESPONSE: While the Department recognizes the apparent inconsistency in mandating ratio of nurses to patients when hospital wide staffing is acuity level determined, it nevertheless believes a higher standard is called for in certain patient care units. Other subchapters in the hospital licensing standards reflect this position of the Department that even when acuity level staffing is in place, certain minimum levels may be required. The standard will remain as proposed. In response to the commenters who believe staffing determinations should be hospital management decisions, the Department refers them to the introductory summary statement.

N.J.A.C. 8:43G-9.7(c)

COMMENT: The New Jersey Hospital Association and Princeton Medical Center wrote that this standard should be under dietary and is really applicable to all areas of the hospital.

RESPONSE: While the Department acknowledges that these services are not unique to critical care patients, it believes the provision and availability of these services should be emphasized on the critical care unit. However, the wording is being revised to reflect outcome orientation and will read as follows: "There shall be a mechanism in place for the

critical care service to have access to nutritional support services for advice on both enteral and parenteral nutritional techniques”.

N.J.A.C. 8:43G-9.7(d)

COMMENT: There were four comments, (The New Jersey Hospital Association, Princeton Medical Center, Memorial Health Alliance and South Jersey Shore Hospital), that this is a hospital management team decision and should not be mandated by the State. West Jersey Health System commented that this standard would require increased staffing and costs.

COMMENT: St. Clare's-Riverside wrote that the mandatory requirement of a full time clerical support person 16 hours a day may be unnecessary for hospitals with small units and respectfully requests that the standard be modified to allow some flexibility.

RESPONSE: The Department has reviewed its position and is deleting this standard from the critical care subchapter.

N.J.A.C. 8:43G-9.7(e)

COMMENT: Several commenters wrote that functions and levels of staff should be hospital determined.

RESPONSE: The Department has reviewed its position and is deleting this standard from the subchapter.

N.J.A.C. 8:43G-9.7(f)

COMMENT: South Jersey Hospital System commented that this should not be regulated by State standards. Underwood Hospital commented that student nurses are often assigned to critical care units and it is not necessary for their instructors to be present at all times in the unit, but the instructor should be readily available.

COMMENT: Englewood Hospital said that the following wording should be added: “or some type of qualified supervision of student agreed upon between the school and management.” Somerset asked if the State was suggesting that the instructor has full critical care credentials equal to or greater than the staff who work in the critical care unit.

RESPONSE: The Department agrees with the commenters and has revised the standard to allow for qualified supervision if the nursing student as arranged between the school and the hospital. The revised standard reads as follows: “Nursing students shall render care to patients in the critical care service when qualified supervision is available in the unit”.

COMMENT: There were two comments that perhaps the word “tender” should be changed to render.

RESPONSE: The Department agrees with the suggestion and has made the change accordingly.

N.J.A.C. 8:43G-9.9 Critical care patient service; mandatory

N.J.A.C. 8:43G-9.9(a)

COMMENT: Pascack Valley commented that the standard has implications on staffing as well as electronic support either via the computer, fax or telautograph machines with terminals in each patient care unit.

RESPONSE: The Department refers the commenter to the introductory summary statement on cost implications of the hospital licensing standards. Additionally, the Department is not mandating that any hospital purchase this equipment. Compliance with the rule is achievable without the electronic equipment noted above.

COMMENT: The New Jersey Hospital Association and Princeton Medical Center commented that the standard should be deleted since it is an obvious practice issue and difficult to survey for. One commenter wrote that documentation should be added to the standard.

RESPONSE: The wording of the proposed standard will be revised to allow for documentation in the patient's record. The standard will then be consistent with standards in other subchapters and facilitate surveyability. The Department believes even the most obvious of practices may need to be codified. It is the Department's obligation to assure that standard protocol is followed. The revised standard will read as follows: “information and explanation shall be provided to the patient and the patient's family and documented in the patient's record regarding the patient's condition, equipment, and specific procedures”.

N.J.A.C. 8:43G-9.9(b)

COMMENT: The New Jersey Hospital Association and Mercer Medical Center commented that the hospital should determine the acceptable timeframe for receipt of blood results. St. Clares-Riverside commented that the standard implies that the results of all stat laboratory work must be available within 45 minutes depending on how difficult it is to get the blood and they suggested that the standard be loosened.

RESPONSE: The Department has reviewed its position and has revised the standard to address the concerns of the commenters. The standard will now read as follows: “The hospital shall have in effect policies and procedures which ensure that priority lab services will be available to critical care patients if medically indicated.” In addition, for organizational purposes, the standard is being relocated to N.J.A.C. 8:43G-9.4, Critical care policies and procedures; mandatory.

N.J.A.C. 8:43G-9.9(c)

COMMENT: Princeton Medical Center commented that delineating specific examples is not appropriate for the State.

RESPONSE: The Department believes it is appropriate to delineate specific examples of procedures for patient care units that require a higher standard of care. The Department will retain the standard as proposed.

N.J.A.C. 8:43G-9.9(d)

COMMENT: The New Jersey Hospital Association and Princeton Medical Center commented that this is a professional practice issue that should be determined by the hospital. St. Clares-Riverside said it was the physician's prerogative as to whether or not to include nurses in discussions concerning resuscitation and they also mentioned that the standard should allow for flexibility. South Jersey Hospital System commented that this should be a decision based on the individual case.

RESPONSE: The Department appreciates the comments and has reconsidered its position on this issue. N.J.A.C. 8:43G-9.9(d) will be recodified to N.J.A.C. 8:43G-9.4. The revised standard will allow for greater flexibility on the part of the hospital management team and will read as follows: “Policies on including the registered professional nurse in discussions and decisions among physicians and families about the use of resuscitation technology on patients in the critical care unit”.

N.J.A.C. 8:43G-9.11 Critical care space and environment; mandatory

N.J.A.C. 8:43G-9.11

COMMENT: The New Jersey Hospital Association, Meadowlands, and Princeton Medical Center commented that this is an infection control issue. St. Joseph's said this should be a physical plant standard.

RESPONSE: The Department believes that while this standard may appear to be more appropriately placed in the infection control or physical plant subchapters, its placement in this subchapter is by design and intended to support the Department's position that critical care services require special space and equipment considerations for effective staff functions. This standard will remain in this subchapter with no change in the text.

N.J.A.C. 8:43G-9.13 Critical care supplies and equipment; mandatory

N.J.A.C. 8:43G-9.13(b)

COMMENT: One commenter felt that this was redundant to (a) above.

RESPONSE: The Department believes the intent of this standard is to assure that certain emergency supplies are available at the patient's bedside and includes supplies not listed in (a) above. However, the Department is revising the test of the standard to reflect the Department's position that this should be a policy decision of the critical care unit and not simply an ad hoc decision made by a staff member which the standard may seem to allow. The revised standard reads as follows:

“Emergency supplies, as defined by the policies and procedures of the critical care unit, shall be available at the bedside for all patients”.

N.J.A.C. 8:43G-9.13(d)

COMMENT: The New Jersey Hospital Association suggested changing the wording to allow for replacement or repair of emergency equipment.

RESPONSE: The Department agrees with the suggested wording and has made the change accordingly.

N.J.A.C. 8:43G-9.14 Critical care staff education

In order to insure uniformity in the staff education and training requirements in this chapter, the Department is replacing the text of N.J.A.C. 8:43G-9.14 and 9.23 with a reference to the general education rule, N.J.A.C. 8:43G-5.9.

N.J.A.C. 8:43G-9.16 Critical care quality assurance methods; mandatory

N.J.A.C. 8:43G-9.16(b)

COMMENT: Many commenters felt this standard was too specific and overburdensome. In addition, Helene Fuld, Mercer Medical Center and

St. Clare's felt that reference to severity of illness indicators and specific severity illness of programs should be deleted.

RESPONSE: The Department has reviewed its position and will delete the second sentence of the proposed standard.

N.J.A.C. 8:43G-9.16(c)

COMMENT: Meadowlands Hospital commented that this standard should be deleted.

RESPONSE: The Department believes the proposed rule is important to the delivery of quality care in this highly specialized service and will retain the rule as proposed. However, for the purpose of improving the organization of the subchapter, the subsection is recodified at N.J.A.C. 8:43G-9.2, Critical care structural organization; mandatory.

N.J.A.C. 8:43G-9.19 Intermediate care structural organization;
mandatory

N.J.A.C. 8:43G-9.19(a)

COMMENT: The Department received comments from six hospitals and the New Jersey Hospital Association opposing the standard. The New Jersey Hospital Association, South Jersey Hospital System, St. Clare's, South Jersey Shore and Mercer Medical Center all commented on the economic impact involved and all said this is a cost reimbursement issue. The NJHA said personnel costs, in addition to the start up costs, would be incurred.

RESPONSE: The Department acknowledges the comments but supports the findings of studies that show admitting the low-risk patient to an intermediate care unit specifically designed for monitoring low-risk patients, may reduce overall mortality of critically ill patients through improved allocation of the finite resources available to the critical care services. As is often the case, a patient requiring vital sign monitoring and observation, but not intensive therapy, is admitted to the critical care service. This limits access for the critically ill patient so that a rationing and triaging of services must occur.

The standard provides for a start-up time for hospitals currently without intermediate care services. Staffing needs would be met by restructuring staffing assignments from available personnel. N.J.A.C. 8:43G-9.20(a)6 provides for staffing based on acuity levels with a minimum average ratio of one nurse to every six patients. This in fact is more cost efficient than N.J.A.C. 8:43G-9.7(b) which mandates one registered nurse for every three patients in the critical care unit when in fact these three patients may be low-risk patients not requiring intensive care. Additional expenses for physical modifications and equipment generated by the introduction of the intermediate care service will be offset by funds saved by a more efficient use of existing critical care services and personnel resulting in the delivery of improved patient care. The rule remains as proposed.

N.J.A.C. 8:43G-9.19(b)

COMMENT: St. Clare's commented that this standard implies that non-intermediate patients cannot be mixed in the same area as intermediate patients. They also felt that structural requirements seem unnecessary and not cost effective for some small hospitals.

RESPONSE: The Department believes the presence of a separate physical area devoted to nursing management for the intermediate patient is important to the delivery of quality care. A discrete area as a nursing unit is recognized as necessary to the efficient operation of all patient units and provides a central point around which medical care is directed. The Department believes the cost for the physical separate nursing management area for intermediate care is minimal and is not mandating extensive modifications or renovations to the existing structure; nor is the standard mandating a full nurse's station. Compliance with the rule can be achieved through maintenance of a separate desk area, phone, and chart area. However, to attempt to clarify more accurately the intent of the standard, the wording will be revised as follows: "If the intermediate care unit is part of another patient care unit or service, there shall be a separate physical area devoted to nursing management for the care of the intermediate patient. This separate area may be designated within an existing nursing station located on the intermediate nursing care unit."

N.J.A.C. 8:43G-9.20 Intermediate care policies and procedures;
mandatory

N.J.A.C. 8:43G-9.20(a)6

COMMENT: The Department received comments from seven hospitals and the New Jersey Hospital Association objecting to the State

determining staffing levels and imposing staffing ratios when there is an acuity system mandated for the nursing department in general.

RESPONSE: While the Department recognizes the apparent inconsistency in mandating staffing ratios of nurses to patients when hospital-wide staffing is acuity level determined, it nevertheless believes a higher standard is called for in certain patient care units. Other subchapters in the hospital licensing standards reflect this position of the Department that even when acuity level staffing is in place, certain minimum levels may be required. The standard will remain as proposed.

N.J.A.C. 8:43G-9.21 Intermediate care staff qualifications; mandatory

N.J.A.C. 8:43G-9.21(a)

COMMENT: The New Jersey Hospital Association, Princeton Medical Center and Meadowlands Hospital stated generic objections to State mandated credentialing of hospital personnel.

COMMENT: South Jersey Hospital System commented that reference to fellowship program should be eliminated.

RESPONSE: The Department refers the commenters to the introductory summary statement regarding the issue of credentialing. The Department is convinced that in clinical areas such as critical and intermediate care the quality of care can be strongly impacted by the skills and knowledge of those professionals delivering care. Attention is directed to the fact that this standard allows for acceptable alternatives which would each meet the credentialing requirement and thus allows the hospital management team the flexibility to achieve compliance. The standard remains as proposed.

N.J.A.C. 8:43G-9.21(b)

COMMENT: The New Jersey Hospital Association and Princeton Medical Center commented that management should determine necessary staff qualifications and credentials and that these two stated qualifications are not equivalent and interchangeable.

RESPONSE: The Department has reviewed its position and is deleting this standard from the subchapter.

N.J.A.C. 8:43G-9.21(c)

COMMENT: Six hospitals and the New Jersey Hospital Association commented that this should be determined by nursing administration and hospital management.

RESPONSE: The Department has reviewed its position and is deleting this standard from the subchapter.

N.J.A.C. 8:43G-9.22 Intermediate care staff time and availability;
mandatory

N.J.A.C. 8:43G-9.22(a) and (b)

COMMENT: South Jersey Hospital System commented on (a) and (b) above that specifying members of care team whose services should be available can be counterproductive. They suggested a wording change to "... services of staff necessary to support care needs of the patient population."

COMMENT: Memorial Health Alliance commented that the standard should be revised to reflect if the services listed should be available on an on call as needed basis.

COMMENT: The New Jersey Hospital Association commented that hospitals can best determine the most cost effective and productive use of staffing resources.

RESPONSE: The Department has reviewed its position and is deleting N.J.A.C. 8:43G-9.22 (a) and (b) from the subchapter.

N.J.A.C. 8:43G-9.25 Intermediate care quality assurance methods;
mandatory

N.J.A.C. 8:43G-9.25(a)

COMMENT: Four commenters wrote that hospitals should determine their own system for performing quality assurance (QA) studies.

RESPONSE: The commenters are referred to the introductory summary statement addressing quality assurance. The Department believes that there is strong clinical support for establishing a valid quality assurance program as this is a critical component of a comprehensive system of monitoring and assuring delivery of high quality health care and a mechanism to locate and identify potential problems. The rule will remain as proposed.

N.J.A.C. 8:43G-9.25(b)

COMMENT: Mercer Medical Center, St. Clares, Memorial Health Alliance, St. Elizabeth and Raritan Bay Medical Center repeated their

concerns about the Department mandating a severity of illness system such as APACHE II.

RESPONSE: The Department has reviewed its position and as in critical care quality assurance, is deleting the second sentence from the standard.

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

SUBCHAPTER 9. CRITICAL AND INTERMEDIATE CARE

8:43G-9.1 Scope

The standards set forth in this chapter ***shall*** apply to ***licensed critical and intensive care beds inclusive of*** medical, surgical, coronary, pulmonary, cardiovascular, and neurological critical care, but not pediatric or neonatal intensive care.

8:43G-9.2 Critical care structural organizations; mandatory

(a) There shall be an organizational chart, or alternative documentation, that delineates the lines of authority, responsibility, and accountability of staff in the critical care service.

(b) There shall be a multidisciplinary critical care committee or its equivalent for ***[each]*** critical care ***[unit]*** ***units*** that includes representatives of at least the medical and nursing staff. The committee shall discuss issues related to the administration of the critical care practice that will enhance patient care.

(c) Meetings with representatives of critical care medical and nursing personnel, at management and staff levels, shall be scheduled at least four times a year to improve interdisciplinary communication.

8:43G-9.3 Critical care structural organization; advisory ***(Reserved)***

8:43G-9.4 Critical care policies and procedures; mandatory

(a) The critical care service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Criteria for admission to and discharge and transfer from the unit;

2. A list of procedures that ***[physician residents]*** ***resident physicians, who are graduates of an accredited medical school participating in an approved training program in a hospital setting,*** may and may not perform;

3. Infection control protocols;

4. Protocols for transfer and transport of patients within the hospital or from the hospital to another facility including who shall accompany the patient being transferred or transported;

5. A visitors policy that specifies visiting hours and number of visitors permitted each patient at any one time, subject to the discretion of the patient's ***physician or*** primary care nurse;

6. A policy on the removal of a patient's life support system;

7. A policy defining the physician, specialist and consulting physician to be called for patient emergencies, including a response time for physicians to respond to patient emergencies;

8. Standing orders for patient emergencies;

***[9. A list of physicians who have case management privileges in the critical care service;**

10. A policy stating the frequency, which is at least once a day, that the physician with case management responsibility for the patient must visit the patient;]

[11.]**9.*** Policies on involving and communicating with families of patients during the first 24 hours after admission and throughout the patient's stay; ***[and]***

[12. A mechanism for daily rounds, conferences, and/or lines of communication between nurses and physicians addressing patient and family needs.]

10. The hospital shall have in effect policies and procedures which ensure that priority lab services will be available to critical care patients if medically indicated; and

11. Policies on including the registered professional nurse in discussions and decisions among physicians and families about the use of resuscitation technology on patients in the critical care unit.

8:43G-9.5 Critical care staff qualifications; mandatory

(a) There shall be a physician director who has clinical responsibility for the care rendered in each critical care unit or combination of critical care units.

***[(b) There shall be a registered professional nurse with administrative responsibility for the critical care unit or combination of units who is accountable for all critical care nursing rendered in the unit or units.**

(c) The physician director of the critical care unit or combination of units shall be board certified in medicine, anesthesia, or surgery, and/or have completed a formal fellowship program in critical care approved by the specialty board in the individual's primary specialty. In the case of a critical care unit that provides one specialty area of critical care, such as coronary care, the physician director of the unit shall be board certified in that particular specialty or subspecialty.

(d) The nurse with administrative responsibility for nursing in the critical care service shall be certified in critical care nursing by the American Association of Critical Care Nurses or have five years of experience in progressive management responsibility in critical care services.

(e) The hospital shall provide to all new critical care service staff a formal orientation program.]

***(b) The physician director of the critical care unit or combination of units shall be board certified in medicine, anesthesia, or surgery, and/or have completed a formal fellowship program in critical care approved by the specialty board in the individual's primary specialty. In the case of a critical care unit that provides one specialty area of critical care, such as coronary care, the physician director of the unit shall be board certified in that particular specialty or subspecialty.**

(c) There shall be a registered professional nurse with administrative responsibility for the critical care unit or combination of units who is accountable for all critical care nursing rendered in the unit or units.*

[(g)]*(d) Effective January 1, 1992, the nursing manager of each unit within the critical care service shall be certified in critical care nursing by the American Association of Critical Care Nurses or have three years of experience in critical care nursing*.

[(f)]*(e) Each ***licensed*** nurse in the critical care service shall have training in basic cardiac life support.

8:43G-9.6 Critical care staff qualifications; advisory ***(Reserved)***

8:43G-9.7 Critical care staff time and availability; mandatory

(a) Nurse staffing shall be determined by the acuity of illness of the patients on the critical care unit.

(b) There shall always be at least one registered professional nurse for every three patients. There shall be the capability to increase nurse staffing to one nurse for every two patients or one nurse per patient based on acuity levels.

(c) ***[The critical care service shall]*** ***There shall be a mechanism in place for the critical care service to*** have access to nutritional support services for advice on both enteral and parenteral nutritional techniques.

***[(d) There shall be the equivalent of at least one full-time clerical support staff person on duty in the critical care unit 16 hours a day.**

(e) There shall be trained support staff other than the clerical support staff who are designated specifically to do non-nursing duties in the critical care units, including at least maintenance of supplies, errands, and housekeeping.]

[(f)]*(d) Nursing students shall ***[not tender]*** ***render*** care to patients in the critical care service ***[without an instructor present]*** ***when qualified supervision is available*** in the unit.

8:43G-9.8 Critical care staff time and availability; advisory ***(Reserved)***

8:43G-9.9 Critical care patient service; mandatory

(a) Information and explanation shall be provided to the patient and the patient's family ***and documented in the patient's record,*** regarding the patient's condition, equipment, and specific procedures.

***[(b) Results of stat laboratory work including arterial blood gas analysis, electrolyte determinations, including blood sugar, and**

hemoglobin-hematocrit studies, including white blood counts, shall be available within 45 minutes from the time of the order.]*

*[(c)]***(b)* The critical care service shall have access to comprehensive laboratory services, including at least:

1. Measurement of cardiac enzymes;
2. Renal function studies;
3. Microbiological studies;
4. Blood bank services;
5. Blood type and cross-match; and
6. Fluoroscopy and other radiologic studies.

[(d)] Nurses shall be included in discussions and decisions among physicians and families about the use of resuscitation technology on patients in the critical care unit.]

8:43G-9.10 Critical care patient services; advisory ***(Reserved)***

8:43G-9.11 Critical care space and environment; mandatory

There shall be a handwashing sink that is easily accessible to each patient's bedside.

8:43G-9.12 Critical care space and environment; advisory ***(Reserved)***

8:43G-9.13 Critical care supplies and equipment; mandatory

(a) Each critical care unit shall be equipped to provide at least:

1. Cardiopulmonary resuscitation, including a defibrillator/monitor and emergency drugs;
2. Airway management, including endotracheal and assisted ventilation;
3. Oxygen delivery systems;
4. Continual electrocardiogram monitoring, including 12-lead electrocardiogram;
5. Emergency temporary cardiac pacing;
6. Titrated therapeutic interventions with infusion pumps;
7. Hemodynamic monitoring capabilities, pulse oximetry and end-tidal carbon dioxide monitoring; and
8. Portable life-support equipment for use in patient transport, both within the hospital and for transfer.

(b) Emergency supplies, as defined by the *[unit staff]* ***policies and procedures of the critical care unit***, shall be available at the bedside for all patients.

(c) All ventilators in use shall be equipped with an integral minimum ventilation pressure (disconnect) alarm.

(d) There shall be a system for obtaining immediate emergency ***replacement or*** repair of equipment in the critical care service.

8:43G-9.14 Critical care staff education; mandatory

*[(a)] The critical care service shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;
2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;
3. Individual staff requests for education programs;
4. Supervisor judgements about education needs based on assessment of staff performance;
5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and
6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.]*

Requirements for the critical and intermediate care staff education and training program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-9.15 Critical care staff education; advisory ***(Reserved)***

8:43G-9.16 Critical care quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the critical care service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The quality assurance activities of the critical care service shall include maintaining data on mortality rates, complications, and patients readmitted to the hospital and critical care unit with the same diagnosis during a specified interval of time. ***[For the purposes of this data collection, critical care patients shall be stratified by diagnosis and some indicators of severity of illness, such as patient acuity levels or APACHE II (Acute Physiology And Chronic Health Evaluation).]***

[(c)] Meetings with representatives of critical care medical and nursing personnel, at management and staff levels, shall be scheduled at least four times a year to improve interdisciplinary communication.]

[(d)](c)* Quality assurance for the critical care service shall include review of ***cases involving*** ***[issues relating to]*** removal of life support.* ***[such as retrospective review of cases, the effectiveness and appropriateness of decisions, the impact on staff, and the involvement of the patient's family.]*****

8:43G-9.17 Critical care quality assurance methods; advisory ***(Reserved)***

8:43G-9.18 Intermediate care standards; scope

The standards set forth in N.J.A.C. 8:43G-9.19 through 9.25 ***shall*** apply to ***designated*** medical, surgical, coronary, pulmonary, cardiovascular, and neurological ***beds providing*** intermediate care, but not pediatric or neonatal intermediate care.

8:43G-9.19 Intermediate care structural organization; mandatory

(a) Effective January 1, 1992, intermediate care services shall be provided in all hospitals that provide critical care services.

(b) If the intermediate care unit is part of another patient care unit or service, there shall be a separate physical area devoted to nursing management for the care of the intermediate patient. ***This separate area may be designated within an existing nursing station located on the intermediate nursing care unit.***

8:43G-9.20 Intermediate care policies and procedures; mandatory

(a) The intermediate care service shall have written policies and procedures that are reviewed annually, revised as necessary, and implemented. They shall include at least:

1. Criteria for admission to the service;
2. Criteria for discharge and transfer from the service to other patient care units in the hospital;
3. Criteria for discharge from the service to other health care facilities;
4. The number or percentage of beds on the service that provide continuous electrocardiogram monitoring;
5. The frequency with which physicians must visit their patients on the unit; and
6. Acuity assignments made on a daily basis for patients in each intermediate care unit with the minimum average ratio of one nurse to every six patients.

(b) There shall be a clearly defined protocol for medical administration of the service to ensure the monitoring and enforcement of the service's criteria for admission, transfer, and discharge.

(c) The intermediate care nursing staff shall be represented on the critical care committee or its equivalent, and, if pediatric or coronary patients are cared for by the intermediate care service, intermediate care nursing staff shall be represented on the committees responsible for developing policies and procedures for pediatric care and coronary care.

8:43G-9.21 Intermediate care staff qualifications; mandatory

[(a)] There shall be a physician director of the intermediate care service who is board certified in internal medicine, anesthesiology, or surgery, and/or has completed a formal fellowship program in critical care approved by the specialty board in the individual's primary specialty. In the case of a unit that provides one specialty area of intermediate care, such as coronary care, the physician director of the unit shall be board certified in that particular specialty or subspecialty. The physician director of the intermediate care service may also be the physician director of another service.

[(b)] There shall be a registered professional nurse administratively responsible for nursing care in the intermediate care service who has at least experience in the management of a patient care unit or clinical experience in critical or intermediate care.

(c) The nurse manager responsible for nursing care in the intermediate care service shall report to the nurse administrator in charge of the critical care service.]*

*8:43G-9.22 Intermediate care staff time and availability; mandatory

(a) Intermediate care shall include services of at least a respiratory therapist, biomedical engineer, and dietitian.

(b) There shall be the equivalent of at least one full-time clerical staff person assigned to intermediate care.]*

8:43G-9.*[23]**22* Intermediate care staff time and availability; advisory *(Reserved)*

8:43G-9.*[24]**9.23* Intermediate care staff education and training; mandatory

[In addition to the critical care staff education program, nursing personnel assigned to the intermediate care service shall receive a formal orientation program that includes orientation to the service's specific policies and procedures.] ***Requirements for the intermediate care services staff education and training program shall be as provided at N.J.A.C. 8:43G-5.9.***

8:43G-9.*[25]**24* Intermediate care quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the intermediate care service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing and monitoring corrective actions on the basis of these data.

(b) The quality assurance activities of the intermediate care service shall include collecting and maintaining data on patient acuity and patient mix. *[(For the purposes of this data collection, intermediate care patients are stratified by diagnosis and some indicators of severity of illness, such as patient acuity levels or APACHE II.)]*

(a)

DIVISION OF HEALTH FACILITIES EVALUATION**Hospital Licensing Standards****Dietary****Adopted New Rules: N.J.A.C. 8:43G-10****New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-10.2, 10.5, 10.7, and 10.9**

Proposed: June 19, 1989 at 21 N.J.R. 1611(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.78, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted but still pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-10.2, 10.5, 10.7, and 10.9 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for obtaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 32 letters commenting on the proposed standards for dietary departments. Thirty letters were submitted by hospitals, one by the New Jersey Hospital Association, and one by the New Jersey Dietetic Association.

N.J.A.C. 8:43G-10.1(b) Dietary policies and procedures; mandatory

COMMENT: The New Jersey Hospital Association and several hospitals state that this standard should be deleted from Dietary because nursing bears the responsibility for this function.

RESPONSE: The Department agrees with the comments and deletes this standard from Dietary. The Department believes N.J.A.C. 8:43G-18.5(1) more directly assures that patients who require assistance in feeding are identified and assisted.

N.J.A.C. 8:43G-10.1(c)

COMMENT: South Jersey Hospital System states that nutrient analyses of menus are labor intensive and costly, and estimates that a nutrient analysis for a 14 menu cycle with many special diets could exceed \$20,000 including software and time.

RESPONSE: The Department believes a nutrient analysis of the menus prepared in a hospital is essential to assure that patients are provided with meals that meet their dietary needs and are nutritionally balanced. Although the Department acknowledges that there may be costs associated with this standard for some hospitals, the costs are not prohibitive. The Department retains the standard.

N.J.A.C. 8:43G-10.3 Dietary staff qualifications; mandatory

COMMENT: Several commenters stated generic objections to professional credentialing standards. Two commenters object to the Department's specification of the number of years of experience. Freehold Area Hospital questions whether the Food Service Director needs both the Food Management Certification and Dietetic Assistant programs, in addition to the four years experience.

RESPONSE: The Department has reconsidered the qualifications of the food service director and has broadened the education and experience prerequisites. A baccalaureate degree in an area related to food, nutrition, or food service management is accepted, as is food services management experience in health care facilities other than hospitals. The standard is reworded accordingly. The Food Service Director with four years of experience must complete both the Food Management Certification (FMC) and the Dietetic Assistant Program or their equivalents.

N.J.A.C. 8:43G-10.3(b)

COMMENT: Three hospitals commented that there is a shortage of registered dietitians, and that it may be difficult for small hospitals to recruit a full-time registered dietitian.

RESPONSE: The Department believes a full-time dietitian is essential in a hospital dietary service. The dietary service must have the clinical capability to identify and respond to the nutritional needs of patients. The Department retains the standard.

N.J.A.C. 8:43G-10.4(a) Dietary staff time and availability

COMMENT: The New Jersey Hospital Association and several hospitals commented that the standard should be expanded to allow for the presence of a trained designee such as a Diet Technician.

RESPONSE: The Department disagrees. Diet technicians serve in a support position, and do not possess the clinical knowledge or expertise of a dietitian. The intent of the standard is to assure that the dietary service has the clinical capability to effectively respond to situations which arise during holiday and weekend periods. The standard is retained with no change to the wording.

N.J.A.C. 8:43G-10.6(a) Dietary patient services; mandatory

COMMENT: Cooper Hospital states that this rule should not be the responsibility of the Dietary Department. South Jersey Hospital System recommends that the wording be changed to require that new admissions be listed prior to the first meal time following admission.

RESPONSE: Although the Department acknowledges that compliance with this standard requires the involvement of other disciplines within the hospital, it is nonetheless the responsibility of the dietary service to assure that it receives a list of all new admissions so that meal orders can be put into effect. The Department has reconsidered the wording of the standard, and has replaced the term "upon admission" with "by the first pre-meal deadline following admission, as specified in the dietary service's policies and procedures."

N.J.A.C. 8:43G-10.6(b)

COMMENT: Cooper Hospital commented that this standard should be deleted from the Dietary rules and added to Medical Staff.

RESPONSE: The standard is retained in Dietary. The Department acknowledges that it is the physician's responsibility to write a dietary order for each patient; however, it is the responsibility of the dietary service to assure that the dietary order is received and that the patient's specific nutritional needs are properly met.

N.J.A.C. 8:43G-10.6(c)

COMMENT: Memorial Health Alliance and Englewood Hospital stated that the Department should not specify a timeframe for completing nutritional assessments. West Jersey Hospital System commented that screening and assessing maternity patients could not be accomplished without increased staffing, because of maternity patients' rapid admission and discharge. Cooper Hospital stated that compliance would require collection of anthropomorphic and laboratory data currently not available on a screening basis.

RESPONSE: It is the Department's responsibility to protect the health and safety of patients. In order to do so, the Department requires that patients receive the services and treatments which they have been identified as needing. Because the length of patient stays have been declining, hospitals must be capable of identifying and responding to the needs of patients more rapidly than in prior years. The Department considers the 72-hour timeframe for completing nutritional assessments of patients who are at nutritional risk to be a minimum assurance of safe, clinically responsive, and effective care. While the Department acknowledges that the rapid admission and discharge of maternity patients may make compliance with this standard difficult in some instances, the Department requires the standard to be in effect for the protection of all patients. The Department does not require hospitals to consider anthropomorphic and laboratory data for purposes of screening.

N.J.A.C. 8:43G-10.6(k)

COMMENT: Two hospitals commented it is not practical nor necessary for the dietary service to regularly participate in meetings of multidisciplinary health care teams.

RESPONSE: The Department acknowledges the comment, and has changed the wording to require that hospitals have a policy to promote the participation of the dietary service in multidisciplinary health care teams. The standard has been deleted from this section and moved into the policies and procedures section.

N.J.A.C. 8:43G-10.6(l)

COMMENT: Cooper Hospital said this standard should be deleted from Dietary and addressed in Pharmacy.

RESPONSE: The Department disagrees. The standard is retained, and the term "to identify" has been replaced with "regarding".

N.J.A.C. 8:43G-10.6(m)

COMMENT: Cooper Hospital said compliance with this standard would be difficult and that it is actually a Nursing Department issue. West Jersey commented that increased involvement in this area would mean decreased patient contact or increased labor need. Englewood Hospital commented that N.J.A.C. 8:43G-10.6(k) would be sufficient.

RESPONSE: The Department believes that it is essential for the dietary department to be capable of evaluating whether patients are being adequately nourished. The Department does not prescribe the manner in which to do this, but rather provides the dietary department with the latitude to develop a mechanism which will enable the dietary department to receive the necessary information. N.J.A.C. 8:43G-10.6(k) does not address this requirement. The standard is retained.

N.J.A.C. 8:43G-10.6(n)

COMMENT: Cooper Hospital stated that accountability for this lies totally with the Nursing Department, and requested that the standard be deleted from Dietary and added to the Nursing Regulations. Englewood Hospital commented that the hospital should determine the procedure.

RESPONSE: The Department believes that it is essential for the dietary department to receive information related to problems with meal delivery and the ability of patients to consume the meals that have been prepared for them. The Department acknowledges that obtaining the information necessitates communication from nursing services, and in response, has changed the wording to require the dietary service to establish a mechanism to facilitate such communication.

N.J.A.C. 8:43G-10.6(o)

COMMENT: West Jersey Hospital commented that this would require distribution of a printed pamphlet, and estimated the costs associated with the publishing of the pamphlet to approximately \$2,800 per year. Englewood Hospital commented that the first part of the statement is sufficient and that it is not necessary to provide examples.

RESPONSE: The Department does not specify the mechanism to be used for patients and their families to interact with the dietary service. Examples are provided to demonstrate the flexibility available for compliance with the standard.

N.J.A.C. 8:43G-10.6(p)

COMMENT: Cooper Hospital estimated that it would require eight additional dietitian FTE's at a total cost of \$264,320, if the standard required that instruction must be given by a dietitian.

RESPONSE: The Department requires that patients with special dietary needs receive instruction from dietary services during their hospitalization. The Department does not specify who should provide the instruction. The standard is retained.

N.J.A.C. 8:43G-10.8 Dietary staff education and training

COMMENT: Several hospitals objected to the specificity of staff education and training requirements.

RESPONSE: The Department deletes most references to specific staff education and training requirements and substitutes generic staff education requirements in N.J.A.C. 8:43G-5.9.

N.J.A.C. 8:43G-10.10(c)1. through 7. Dietary quality assurance methods

COMMENT: The New Jersey Hospital Association and numerous hospitals stated that the indicators identified in this section do not provide substantive information for an effective quality assurance program and address areas related to quality control rather than quality assurance.

RESPONSE: While the Department is committed to the importance of a quality assurance program for the dietary service, the Department acknowledges that these specific indicators may not accurately represent the type of health-service problems of most concern to the dietary service. The standards are deleted in (c)1. through 7.

N.J.A.C. 8:43G-10.10(f)

COMMENT: The New Jersey Dietetic Association and University Hospital commented that it is inappropriate for the dietary service to monitor the administration of enteral and parenteral feedings.

RESPONSE: The Department agrees and has deleted the standard.

N.J.A.C. 8:43G-10.10(g)

COMMENT: Memorial Health Alliance stated that meal production standards are not part of quality assurance.

RESPONSE: The Department agrees, and has deleted this standard.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 10. DIETARY

8:43G-10.1 Dietary policies and procedures; mandatory

(a) The dietary service shall have written policies and procedures for all dietary services that are reviewed annually, revised as needed, and implemented.

[(b) There shall be a policy that clearly assigns responsibility for assuring that patients requiring assistance during feeding are identified and that assistance is provided.]

*[(c)]**(b)* A diet manual detailing nutritional and therapeutic standards for meals and snacks, including nutrient analysis of menus, shall be annually reviewed. An up-to-date manual shall be available at each nurses station, the dietary department, administration, and the medical library, if the hospital maintains one.

[(c)] **There shall be a policy to promote the participation of the dietary service in meetings of multidisciplinary health care teams to assess patients.***

8:43G-10.2 Dietary policies and procedures; advisory ***(Reserved)***

8:43G-10.3 Dietary staff qualifications; mandatory

(a) There shall be a food service director who has a baccalaureate degree from an accredited college or university in food, nutrition, ***[or]* food services management*, or a related area,*** or has at least four years of experience in ***[hospital]* food services management *in a health care facility*** and successful completion of Food Management Certification (FMC) and Dietetic Assistant programs or their equivalents.

(b) A registered dietitian shall have full-time responsibility for the clinical aspect of the dietary service.

8:43G-10.4 Dietary staff time and availability; mandatory

(a) A dietitian shall be on duty in the hospital for a specified period, as determined by the hospital, during every 48-hour weekend or holiday period.

(b) Trained dietary service staff members shall be responsible for checking menus, supervising food production, and performing clerical tasks.

8:43G-10.5 Dietary staff time and availability; advisory ***(Reserved)***

8:43G-10.6 Dietary patient services; mandatory

(a) All new admissions shall be listed with the dietary service ***[upon admission]* *by the first pre-meal deadline following admission, as specified in the dietary service's policies and procedures*.*** ***[Each patient's diet shall be documented on the medical record.]***

(b) Each patient's diet shall be documented in the medical record.

(b)]**(c) A physician shall write a specific dietary order for each patient.

(c)]**(d) Patients shall be screened for nutritional assessments based on specific criteria. Nutritional assessments for patients determined to be at nutritional risk shall be completed within 72 hours of admission.

(d)]**(e) The dietary service shall set guidelines for subsequent nutritional assessments of patients determined to be at nutritional risk.

(e)]**(f) Patients' nutritional needs for food and food supplements shall be met, in accordance with physician orders.

(f)]**(g) All diets shall conform to the hospital's diet manual.

(g)]**(h) At least three meals shall be served daily, and no more than 15 hours shall elapse between dinner and breakfast.

(h)]**(i) Nourishment shall be available between meals and at night.

(i)]**(j) Food production shall be sufficient in quantity to meet nutritional needs and shall be coordinated with dietary orders.

(j)]**(k) Physician orders and changes in physician orders for diets shall be effected by the next mealtime, if they are received by the dietary services by the pre-meal deadline specified in the dietary service's policies and procedures.

(k) The dietary service shall regularly participate in meetings of multidisciplinary health care teams to assess patients.]*

(l) The dietary service shall follow the policies and procedures developed by the pharmacy and therapeutics committee ***[to identify]* *regarding* possible food/drug interactions.**

(m) There shall be a mechanism for evaluating patients on each nursing unit to ensure they are being adequately nourished. This may involve rounds, review of charts, plate waste measurement, or multidisciplinary team conferences.

(n) ***There shall be a mechanism for the dietary service to be informed* *If]* *if* the patient does not receive the diet that has been**

ordered, or is unable to consume the diet*[, the nursing staff shall inform the dietary service]*.

(o) There shall be a mechanism for patients and their families to interact with the dietary service, such as a written comment sheet, patient rounds, or distribution of the dietary service's phone number.

(p) Patients with special dietary needs, based on criteria established by the hospital, shall receive dietary instruction from ***[dietary services]* *a dietician or authorized designee*** during hospitalization.

(q) The dietary service shall comply with the requirements of Chapter XII of the New Jersey State Sanitary Code, "Sanitation in Retail Food Establishments and Food and Beverage Vending Machines" (N.J.A.C. 8:24).

8:43G-10.7 Dietary patient services; advisory ***(Reserved)***

8:43G-10.8 Dietary staff education and training; mandatory

[All dietary personnel shall attend at least 10 training or educational programs, within or outside the facility, per year.]* *Requirements for the dietary education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-10.9 Dietary staff education and training; advisory ***(Reserved)***

8:43G-10.10 Dietary quality assurance methods; mandatory

(a) There shall be a program of quality assurance for dietary services that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective action based on these data.

(b) Patient satisfaction shall be monitored on an ongoing basis, and a survey mechanism shall be in place that produces quarterly summaries.

(c) Quality assurance activities for the dietary service shall address the following areas:

1. Quality, appropriateness, timeliness, and completeness of dietitian notes and assessments entered in the medical record;
2. Patient and/or family understanding of the diet;
3. Prescribed nourishments delivered to the patient;
4. Meeting special needs of high-risk patients;
5. Availability of between-meal provisions;
6. Accuracy and timeliness of the tray delivery process; and
7. Timeliness of registration of new admissions with the dietary service.]*

(d)]**(c) As part of its quality assurance activities, the dietary service shall maintain a log detailing problem identification, action, and follow-up.

(e)]**(d) There shall be a system in place to ensure the accuracy of dietary orders that are transmitted to the dietary service. This system shall be monitored as part of the quality assurance program.

(f) There shall be a mechanism to monitor the administration of and the appropriateness of enteral and parenteral feeding.

(g) The hospital shall have meal production standards in place to ensure efficiency.]*

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Discharge Planning

Adopted New Rules: N.J.A.C. 8:43G-11

New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-11.2

Proposed: June 19, 1989 at 21 N.J.R. 1612(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.93, with substantive and technical changes not requiring public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted but still pending.

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-11.2 has not been adopted and is still pending. The pending rule is an advisory standard, which was proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 34 letters commenting on the proposed standards for discharge planning. Thirty-two letters were submitted by hospitals, one by the New Jersey Hospitals Association, and one by the Community Health Law Project.

N.J.A.C. 8:43G-11.1 Discharge planning structural organization

COMMENT: Ten commenters wrote to express concern that the standard implied the need for an extensive interviewing or screening process, which they considered unnecessary and costly.

RESPONSE: The Department appreciates the concern of the commenters. The intent of the standard is to require the development of criteria which indicate whether further assessment is needed. The standard is revised to indicate that there will be a formal mechanism in place which will include criteria by which every patient will be screened for post-discharge planning.

N.J.A.C. 8:43G-11.3 Discharge planning policies and procedures

N.J.A.C. 8:43G-11.3(b)

COMMENT: Several commenters objected to departmental input into transfer agreements, stating that this was an administrative responsibility. One commenter stated that this standard does not translate into improved patient care.

RESPONSE: The Department has reconsidered the requirement that members of the discharge planning program participate in the development and review of transfer agreements with other health care facilities and agencies, believing that that function more appropriately should be carried out by the social work department. The involvement of this department is considered essential because of its direct knowledge of the quality and types of care provided by these outside facilities. The standard is deleted at N.J.A.C. 8:43G-11.3(b) and recodified at N.J.A.C. 8:43G-33.2(d) (see adoption elsewhere in this issue of the New Jersey Register.)

N.J.A.C. 8:43G-11.4 Discharge planning staff qualifications

N.J.A.C. 8:43G-11.4(a)

COMMENT: Several hospitals wrote with concerns about the need to hire additional staff and concomitant costs, and St. Elizabeth's suggested that the use of a primary care nurse could eliminate the need to hire a discharge planning nurse.

RESPONSE: The Department does not specify the hiring of additional staff. The intent of the standard is to provide an interdisciplinary approach to discharge planning to meet the essential needs of each patient identified as requiring discharge planning, including health and psychosocial needs. The primary care nurse could be a team member. The standard remains unchanged.

N.J.A.C. 8:43G-11.4(b)

COMMENT: St. Peter's Medical Center and Montclair Hospital wrote that social workers and nurses receive discharge planning education as part of their basic education. St. Elizabeth's commented that it is difficult to find staff with formal discharge planning education. Freehold Area Hospital and Memorial Health Alliance ask for a definition of education and training.

RESPONSE: The Department notes that discharge planning is included in some but not all nursing curricula, and that, in addition, nurses who were trained ten or twenty years ago may not have had specific education in discharge planning. Education and training can be provided

through continuing professional educational courses, seminars, conferences, and readings. The standard requires no further clarification.

N.J.A.C. 8:43G-11.5 Discharge planning patient services

N.J.A.C. 8:54G-11.5(a)

COMMENT: The Community Health Law Project wrote that patients have a right to be given information regarding the availability of Medicare benefits, specifically asking for a reference to the "LAMP" program.

RESPONSE: The Department agrees with the intent, and adds the following phrase to the listing of needed resources at N.J.A.C. 8:43G-11.5(a)5: "Information regarding availability of Medicare or Medicaid benefits." As there are a number of resources for this information in addition to the LAMP program, no singular program will be cited.

N.J.A.C. 8:43G-11.5(b)

COMMENT: Two commenters raised similar questions about the requirement to attempt to find and effect appropriate placement for patients in need of further care and the documentation required for these attempts.

RESPONSE: The Department recognizes that there will be situations in which a patient or family will refuse placement, or a patient leaves the hospital against medical advice, or an appropriate placement cannot be found even after multiple, diligent efforts. In these instances, documentation of the hospital's efforts to find placement and the results of these efforts is considered sufficient.

N.J.A.C. 8:43G-11.5(c)

COMMENT: Two opposing comments were received. South Jersey Hospital System said that the standard was "prescriptive." Hunterdon Medical Center wrote that it was "vague."

RESPONSE: The Department clarifies the language by replacing the phrase "specific patients' needs for continuity of care" with the phrase "planning for patients needing continuity of care." No further change in this standard is warranted.

N.J.A.C. 8:43G-11.5(f)

COMMENT: Several commenters seemed unclear about this standard, asking whether a physician telephone number was sufficient for post-discharge contact, or stating that the requirement for post-discharge contact would seriously impact staffing needs.

RESPONSE: The Department believes that there is sufficient latitude in the rule both to permit hospitals to meet the standard and to give patients access to needed information or reassurance. The standard remains unchanged.

N.J.A.C. 8:43G-11.5(g)

COMMENT: Several commenters were concerned about duplication of summaries and about who is responsible for including the summary in the medical record.

RESPONSE: The intent of the standard is to have a summary or summaries of the discharge plan prepared for the medical record in a timely fashion by a team member who has participated in the discharge planning process for that patient. The Department believes that the rule offers enough flexibility for preparation and entry of the discharge planning summary that no change is needed.

N.J.A.C. 8:43G-11.6 Discharge planning quality assurance methods

N.J.A.C. 8:43G-11.6(b)

COMMENT: This standard received 13 comments, all concerned about staffing requirements for "evaluating the effectiveness of the discharge plan after discharge."

RESPONSE: The intent of the standard is clarified through the following revision. "There shall be a mechanism in place for monitoring the effectiveness of the discharge planning process on a periodic basis."

Following are additional comments which were received by the Department from the Community Health Law Project of East Orange, New Jersey, an agency that delivers legal and advocacy services to indigent mentally ill and developmentally disabled persons. The Community Health Law Project (CHLP) wrote that its main concern regarding the proposed discharge planning rules was that they "merely establish a structural and procedural framework for discharge planning, but do little to define a hospital's concrete obligations." Although CHLP did not identify specific standards within the subchapter, it addressed general concerns with the comments that follow.

COMMENT: CHLP noted that there is no reference to a time frame in which a discharge plan must be accomplished, and cited Federal

regulations which currently mandate for Medicare beneficiaries the initiation of discharge planning at an early stage of hospitalization.

RESPONSE: The Department is in agreement with the concept that discharge planning should be initiated early in the course of hospitalization. N.J.A.C. 8:43G-11.5(e) is amended to reflect this change.

COMMENT: CHLP stated that each patient or representative and family member should receive, as early as possible, a written copy and an oral explanation of the proposed discharge plan. The plan should include a signature line to acknowledge participation and receipt of a copy, and a copy of the signed discharge plan should be retained in the patient's record.

RESPONSE: The Department agrees that patients and family members should be involved in the development of discharge plans whenever possible. N.J.A.C. 8:43G-11.5(d) addresses this issue. There are many times, however, when obtaining a signature would be impractical or infeasible. The Department believes it would be burdensome for hospitals, if obtaining signatures on proposed discharge plans were required, and so does not add this requirement to the rule.

COMMENT: CHLP would like the discharge plan to include the following information: (1) identification of post-hospital services needed by the patient; (2) the services that have been arranged for the patient; (3) the names, addresses, and telephone numbers of service providers; (4) the service schedule as requested by the hospital; (5) medications prescribed and instructions for their use or verification that such information was provided separately; and (6) scheduled follow-up medical appointments or verification that such information was provided separately.

RESPONSE: The Department believes that although these elements may represent good discharge planning, they do not generally apply to all patients requiring discharge planning, nor does each element necessarily apply to each patient in need of discharge planning. Some elements are covered in N.J.A.C. 8:43G-11.5(f), and others are believed to be part of the physician's responsibility in terms of orders for follow-up care. The delineation of these elements is considered too prescriptive, and would in addition constitute a substantive change in the standard requiring republication. A technical change is made in N.J.A.C. 8:43G-11.5(f) to replace the term "home care" to "follow-up care," but no other change is made.

COMMENT: CHLP suggests that, upon admission, each patient or representative be given a written notice of what a discharge plan is, of the patient's right to have a discharge plan, and of a complaint process. CHLP also believes that the hospital should develop a formal process for review upon the filing of a complaint.

RESPONSE: Although it is in agreement with the basic tenets of patient's rights, the Department believes that this suggestion is overly prescriptive and unnecessary for the majority of patients admitted to hospitals. The Department refers the commenter to the proposed licensing standards for Patient Rights, N.J.A.C. 8:43G-4.1(a)12 to 16 regarding discharge planning issues, and N.J.A.C. 8:43G-4.1(a)27 to 28 regarding written notification and complaint procedures. No additional codification of patient's rights is required.

COMMENT: CHLP wrote of their concern that hospitals are discharging patients who need significant amount of post-discharge care to environments in which the hospital staff knows the patient will be inadequately cared for and at great risk. It suggests language which covers three situations: (1) patient in need of post-discharge services, competent, but refusing services; (2) patient willing to accept services which are, however, unobtainable; and (3) patient refusing services, not mentally competent to assure own safety. CHLP states that in the first situation, the hospital may discharge the patient; in the second, the hospital must retain the patient until the necessary services are procured; and in the third, the hospital shall retain the patient until a competency determination has been made by a court of law.

RESPONSE: The Department is sympathetic to the need to advocate for the disadvantaged patient. However, the issues raised reflect broad societal problems over which the hospital has little control. The hospital cannot be responsible in a specific way for the suitability of an environment once the patient has left the hospital, although there are several regulatory safeguards. Proposed licensing standards at N.J.A.C. 8:43G-33.2(d) as adopted require social work departments to participate in the review and development of transfer agreements and by implication to have some input into which facilities are used. In addition, any licensed facility is inspected and licensed either by the Department or by another State agency. The commenter is also referred to N.J.A.C. 8:43G-33.7(e),

Social work patient services, adopted elsewhere in this issue of the New Jersey Register, regarding issues of guardianship in discharge planning.

The Department believes that it cannot be more specific in the licensing standards than to say that "the hospital shall make every attempt to find and effect an appropriate placement." (N.J.A.C. 8:43G-11.5(b)). Any further regulation would be too prescriptive and place inappropriate responsibility on the hospital.

In addition, the changes proposed by the CHLP would be substantive and would involve significant costs and legal implications. Therefore no changes are made in the standards.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 11. DISCHARGE PLANNING

8:43G-11.1 Discharge planning structural organization; mandatory

(a) Each hospital shall have a discharge planning program with formal mechanisms in place ***[to ensure that]*** ***which include criteria by which*** every patient is screened for post-discharge needs.

(b) The hospital shall maintain an organizational chart or alternative documentation that clearly delineates the responsibilities, authority, and accountability of the discharge planning program staff.

8:43G-11.2 Discharge planning structural organization; advisory ***(Reserved)***

8:43G-11.3 Discharge planning policies and procedures; mandatory

[(a)] Hospital staff working in the discharge planning program shall have open access to relevant patient records.

[(b)] Members of the discharge planning program shall participate in the development and review of transfer agreements with other health care facilities and agencies.*

8:43G-11.4 Discharge planning staff qualifications; mandatory

(a) A team that includes at least a social worker and a registered professional nurse shall have responsibility for and guide multi-disciplinary discharge planning for patients who, upon screening, are determined to require coordinated discharge planning. This team shall receive input from, and communicate with, the patient's attending physician, staff nurse or nurses, and other health professionals.

(b) The social worker and registered nurse who are members of the discharge planning team shall have received education or training in hospital discharge planning.

8:43G-11.5 Discharge planning patient services; mandatory

(a) Patients who require post-discharge continuity of care shall be linked to needed resources, such as:

1. Placement in a nursing home;
2. Enrollment with a home care program;
3. Transfer to another health care facility; ***[or]***
4. Referral to community resources***[.]****; **or***

5. Information regarding availability of Medicare or Medicaid benefits.

(b) The hospital shall make every attempt to find and effect an appropriate placement for any patient ready for discharge but requiring further care.

(c) Patient care conferences or discharge planning rounds shall be held to discuss ***[specific patients' needs for]*** ***planning for patients needing*** continuity of care.

(d) The patient shall participate in the development of the discharge plan, where possible. The family or significant other shall participate in the development of the plan, where possible, and when the patient is able to agree, and does agree, to their involvement.

(e) ***Discharge planning shall be initiated at an early stage of the patient's hospitalization.*** If a patient's needs for post-discharge care change after a discharge plan is developed, the plan shall be modified to meet the patient's needs.

(f) The hospital shall have a mechanism to ensure that each patient receives, upon discharge, written instructions about ***[home]*** ***follow-up*** care and medications, if relevant, and the telephone number of a contact person to call in case he or she has questions after discharge.

(g) For all patients who receive discharge planning, a summary or summaries of the patient's discharge plan prepared by a member of the discharge planning team shall be included in the medical record during the hospital stay or within 30 days of discharge.

8:43G-11.6 Discharge planning quality assurance methods; mandatory

(a) There shall be a program of quality assurance for discharge planning that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. The program shall monitor at least:

1. That communication occurs among members of the multi-disciplinary team, and the patient and family;
2. Appropriateness of referrals; and
3. Implementation of the discharge plan.

(b) There shall be a mechanism in place for *[evaluating]* ***monitoring*** the effectiveness of the discharge ***[plan after discharge]*** ***planning process on a periodic basis***.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Emergency Department

Adopted New Rules: N.J.A.C. 8:43G-12

New Rules Not Adopted But Still Pending: N.J.A.C.

8:43G-12.4, 12.6 and 12.8

Proposed: June 19, 1989 at 21 N.J.R. 1613(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.92, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted but still pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-12.4, 12.6, and 12.8 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 46 letters commenting on the proposed standards for emergency departments. Letters were submitted by the New Jersey Hospital Association, the State Board of Nursing, the New Jersey State Nurses Association, the Community Health Law Project, and the following physicians: Peter Sawchuk, M.D., Joseph T. Imbesi, D.O., F.A.C.E.P., Mark J. Meredith, M.D., F.A.C.E.P., James E. George, M.D., J.D., F.A.C.E.P., and Mary Willard, M.D. The remaining letters were submitted by hospitals.

COMMENT: Joseph T. Imbesi, D.O., F.A.C.E.P., wrote: "All of us present [at the Reaction Groups] were not successful in instituting all the changes we wished; however, we all secured some changes for the betterment of all the emergency departments throughout the state."

COMMENT: Mark J. Meredith, M.D., F.A.C.E.P., wrote: "I would like to wholeheartedly support the revised standards and feel that these changes will help improve the quality of care that's given in emergency departments throughout the State of New Jersey."

RESPONSE: The Department appreciates these comments.

N.J.A.C. 8:43G-12.1 Emergency department structural organization

COMMENT: A commenter suggested that the exemption from providing emergency services should be extended to all special hospitals. The New Jersey Hospital Association (NJHA) recommended deleting the last sentence regarding exemptions.

RESPONSE: The Department agrees to broaden the exemption to include all licensed special hospitals, not just psychiatric and rehabilitative hospitals. A special hospital is prohibited from offering emergency services to the general public, but may have a written plan to provide emergency or unscheduled medical care to serve its particular target population. For example, such services might be provided by the hospital in a crisis intervention center or an outpatient clinic. The standard is rewritten to reflect these clarifications.

N.J.A.C. 8:43G-12.2 Emergency department policies and procedures

N.J.A.C. 8:43G-12.2(d)

COMMENT: St. Peter's Medical Center and the NJHA requested the addition of the phrase "as clinically appropriate." Newark Beth Israel Medical Center requested definition of "patients unable to communicate."

RESPONSE: Clinical appropriateness may be addressed in the protocol developed by the emergency department. The definition of "unable to communicate" includes, but is not limited to, conditions related to age, language, disabilities, and levels of consciousness. Minor changes are made in the standard to clarify the intent.

N.J.A.C. 8:43G-12.2(e)

COMMENT: St. Joseph's Hospital and Medical Center commented that the Department should mandate investigating the transfer of patients by physicians who do not wish to care for indigent patients but who use the guise of unavailability of subspecialty services to justify transfer.

RESPONSE: The Department acknowledges the concern; however, the problem described appears to be beyond the scope of hospital licensing standards. The Department recommends that normal medical staff review procedures pertain. The standard remains unchanged.

N.J.A.C. 8:43G-12.4 Emergency department staff qualifications

N.J.A.C. 8:43G-12.4(a)

COMMENT: Thirteen comments on this standard were received. The comments clustered around the following issues: opposition to mandatory credentialing requirements, economic impact, inadequate supply of physicians who are board certified in emergency medicine, use of credentialled physicians to supervise non-credentialled staff, and a favorable view of the use of moonlighting residents.

RESPONSE: The Department refers commenters to the introductory summary in regards to the issues of credentialing and economic impact. With specific reference to credentialing, the Department is convinced that in clinical areas such as emergency medicine the quality of care can be strongly impacted by the skills and knowledge of those professionals delivering the care. Attention is directed to the fact that in this standard, several acceptable alternatives are presented for meeting the credentialing requirement: 1) board certification or eligibility in emergency medicine; 2) successful completion of an approved residency program in one of the four major specialty areas of primary care; or 3) one year of full-time experience (a modification from the proposed three year requirement) in emergency medicine during the past five years. Furthermore, the requirement for board certification in emergency medicine is broadened to include equivalent or reciprocal certification. This is in addition to an exemption for several classes of physicians who practice in emergency departments: residents in the hospital's resident training program, consulting, and attending physicians.

Although board certification in emergency medicine is only one of the available options for meeting credentialing requirements, several commenters expressed concern about the supply of physicians holding this credential. According to the official publication of the American College of Emergency Medicine, in July, 1989, there were 7,500 board-certified emergency physicians nationwide, 1,400 residents in training, and, on average, 450 new graduates annually. By extrapolation, the Department can project that the number of board-certified emergency physicians will have increased to approximately 9,000 nationwide by July 1, 1992, the implementation date of this section. Figures from the New Jersey Chapter of the American College of Emergency Physicians indicate that currently practicing in New Jersey are 150 board-certified emergency physicians as well as between 150 and 300 physicians who are board-eligible in emergency medicine. In addition, New Jersey's geographic situation in

the metropolitan area would appear to give the State's hospitals a strong advantage in attracting and retaining a significant share of the nationwide supply of these qualified professionals.

In response to the final two comments, supervision of non-credentialed staff by a credentialed physician would require the presence of at least two physicians in the emergency department, thereby increasing costs, particularly for smaller hospitals. A current estimate is that approximately 80 percent of New Jersey hospitals staff their emergency departments with one physician per shift. In addition, it is not clear what qualifications would be held by staff supervised under this arrangement, since virtually all medical graduates undergo a residency training program, thereby meeting the requirement of N.J.A.C. 8:43G-12.4(a)2. Finally, "moonlighting" by residents is considered detrimental to quality of care for patients. In a "moonlighting" situation, care is being provided by staff who are both underqualified and also, by definition, working at more than one job under conditions of mental and physical exhaustion.

The standard is amended to require one year instead of three years of full-time experience in emergency medicine, and to broaden the board certification requirement to include equivalent or reciprocal certification.

N.J.A.C. 8:43G-12.4(c) and (d)

COMMENT: NJHA, St. Peter's Medical Center, and the Medical Center at Princeton commented that board certification in emergency medicine does not guarantee proficiency in Advanced Cardiac Life Support (ACLS) and Advanced Trauma Life Support (ATLS).

RESPONSE: Standards set by the American College of Emergency Physicians for certification and recertification in ACLS and ATLS exceed those of external certifying bodies.

COMMENT: Pascack Valley Hospital commented that these standards are very discriminatory, as there are illustrious physicians who have physical limitations or disabilities and are unable to be certified in ACLS or ATLS but could offer expert medical advice as consultants.

RESPONSE: The standards exempt consulting physicians from the requirement.

COMMENT: South Jersey Hospital System suggested adding the phrase "within twelve months of initial assignment."

RESPONSE: The Department accepts the suggestion to extend the period in which to obtain certification, and the standard is so amended.

COMMENT: St. Michael's Medical Center wrote that these standards will limit the number of available physicians that could work in the emergency department and that training will result in additional costs.

RESPONSE: Extending the period in which to obtain certification (see above) will enable physicians to become certified after being assigned to the emergency department. The cost of \$125.00 to \$250.00 per course is believed to be reasonable.

N.J.A.C. 8:43G-12.6 Emergency department staff time and availability

N.J.A.C. 8:43G-12.6(a) and (b)

COMMENT: A number of commenters wrote about the discrepancy in arrival times required of radiologists and other physician specialists. Peter Sawchuk, M.D., of Emergency Medical Associates, wrote that the radiologist is the most important diagnostic specialist required and that the proposed longer response time would delay patient care to the patient's detriment. St. Peter's Medical Center commented that response time should be the same for all critical cases, and Hunterdon Medical Center commented that the radiologist may be needed before the next appropriate specialist can be determined.

RESPONSE: The Department agrees, and the standards are revised to reflect a consistent arrival time requirement for all physician specialists.

N.J.A.C. 8:43G-12.8 Emergency department patient services

N.J.A.C. 8:43G-12.8(a)

COMMENT: NJHA and the State Board of Nursing commented that the designated nurse must be a registered professional nurse as the function of assigning clinical priority is beyond the scope of practice of a licensed practical nurse.

RESPONSE: The standard is revised to reflect this change.

COMMENT: Several commenters requested changes in the wording of the standard to, for example, "A process shall be in place to clinically prioritize treatment" (NJHA).

RESPONSE: The Department believes specificity is needed and retains the proposed language.

N.J.A.C. 8:43G-12.8(c)

COMMENT: The New Jersey State Nurses Association and NJHA commented that primary care nurses should be allowed to evaluate and discharge non-emergency patients; that nurses are qualified to do so and are more cost-effective. Mercer Medical Center would like to triage non-urgent patients out of the emergency department without first being evaluated by a physician.

RESPONSE: The Department believes that each patient who has been admitted to the emergency department must be evaluated by a physician before being discharged to home or another facility. The word "evaluated" is added but the intent of the standard remains.

N.J.A.C. 8:43G-12.8(d)

COMMENT: Five commenters (NJHA, St. Peter's Medical Center, John F. Kennedy, Robert Wood Johnson University Hospital, and St. Elizabeth's) objected to timeframes as being too prescriptive, unrealistic, and unenforceable.

RESPONSE: The intent of the standard is to ensure that no patient has to endure a lengthy waiting time before being seen by a physician. Even four hours is an extremely long time for a patient to wait with a problem that is an emergency. However, the standard is amended to refer only to patients who have been admitted to the emergency department, and it requires only initial evaluation within the four hour period.

N.J.A.C. 8:43G-12.8(e)

COMMENT: St. Peter's Medical Center and St. Elizabeth's again commented that the standard is too prescriptive and unrealistic.

RESPONSE: The standard requires the hospital to have a protocol but does not specify what the protocol should be. The Department, however, broadens the scope of the standard by adding the phrase "or transfer" after "inpatient beds" in the final sentence.

N.J.A.C. 8:43G-12.8(f)

COMMENT: One commenter wrote that the standard should be more specific and require transfer either to the in-patient service of the hospital or to a more appropriate facility, and Hunterdon Medical Center felt that the standard should address what happens to the patient after the 12-hour limit has been reached.

RESPONSE: The Department agrees that clarification is needed, and revises the standard to specify the acceptable dispositions of emergency department patients as well as permitted exceptions to the 12-hour limit.

COMMENT: South Jersey Hospital felt that the standard should include exceptions, such as situations in which no beds are available or the patient is not stable enough.

RESPONSE: The standard identifies those exceptions that are allowable. The Department believes that patients should be admitted to the in-patient service from the emergency department within the required timeframe since emergency departments are not equipped or staffed to provide intensive care or in-patient services. If the requirement cannot be met due to unavailability of in-patient beds, the hospital should document the reasons and go on divert or take other measures such as curtailing voluntary admissions. A high frequency of diverting will be indicative of planning issues that require Department involvement.

COMMENT: St. Joseph's wrote that the standard is ideal but not practical in its geographic area. St. Peter's Medical Center and St. Elizabeth's repeated their previous comments.

RESPONSE: The Department believes the standard is necessary to ensure an adequate level of patient care. The emergency department is not an appropriate setting in which to retain patients after emergency treatment and/or stabilization.

COMMENT: NJHA stated that the standard appeared to conflict with N.J.A.C. 8:43G-12.8(e).

RESPONSE: N.J.A.C. 8:43G-12.8(e) refers to the need for a written protocol for the care and disposition of patients who are awaiting, for example, transfer to the inpatient service. It does not conflict with N.J.A.C. 8:43G-12.8(f) but rather supplements it by delineating what must occur during the period of no more than 12 hours during which the patient remains in the emergency department following initial treatment.

N.J.A.C. 8:43G-12.8(g)

COMMENT: Several commenters noted that this standard seems to conflict with N.J.A.C. 8:43G-12.8(d).

RESPONSE: The Department agrees, and revises the standard to be consistent with the four hour waiting period specified in the referenced

standard. This rule is recodified as subsection (e) to follow directly after N.J.A.C. 8:43G-12.8(d).

N.J.A.C. 8:43G-12.8(h)

COMMENT: Hunterdon Medical Center wrote that this standard is not compatible with N.J.A.C. 8:43G-12.8(f).

RESPONSE: N.J.A.C. 8:43G-12.8(h) refers to an admitted patient under clinical observation awaiting an inpatient bed. N.J.A.C. 8:43G-12.8(f) refers to a patient under clinical observation who may not be admitted to the hospital. No change is made in the standard.

N.J.A.C. 8:43G-12.8(i)

COMMENT: NJHA suggested replacing "medical diagnosis" with "chief complaint," as the medical diagnosis is not always complete at the time of discharge from the emergency department.

RESPONSE: The Department accepts the suggestion to include "chief complaint" in the registry list.

N.J.A.C. 8:43G-12.8(j)

COMMENT: NJHA suggested adding "documentation of instructions will be placed in patient record" to the second sentence.

RESPONSE: The Department accepts the suggestion and adds the phrase.

N.J.A.C. 8:43G-12.8(l)

COMMENT: South Jersey Hospital System commented that informed consent seems to be unnecessary paperwork.

RESPONSE: Informed consent is a basic patient right and is a protection which has been upheld by the New Jersey Supreme Court (*Largey v. Rothman*, 110 N.J. 204, 540 A.2d 504 (1988)).

COMMENT: NJHA wanted an explanation of who the contact person was, and why that person's name should appear on the transfer documentation.

RESPONSE: The contact person ordinarily is the person who authorizes acceptance of the patient at the receiving hospital. Documentation of that person's name fixes responsibility for the authorization. The standard remains unchanged.

N.J.A.C. 8:43G-12.8(o)

COMMENT: NJHA commented that this standard does not require codification, and NJHA, St. Peter's Medical Center, and Hunterdon Medical Center all questioned how it would be surveyed.

RESPONSE: This standard addresses a basic patient's right. It is surveyed visually. The standard remains as proposed.

N.J.A.C. 8:43G-12.8(q)

COMMENT: NJHA commented that this standard was covered in N.J.A.C. 8:43G-12.6.

RESPONSE: N.J.A.C. 8:43G-12.6 does not address communication with emergency medical services. The standard remains.

N.J.A.C. 8:43G-12.8(u)

COMMENT: NJHA and St. Peter's Medical Center commented that this standard should be addressed in administrative and hospital wide services.

RESPONSE: The Department concurs and will cross reference this standard to one in the subchapter in administrative and hospital wide services.

N.J.A.C. 8:43G-12.8(w)

COMMENT: A commenter wrote that this standard is redundant with N.J.A.C. 8:43G-12.8(k), and the Community Health Law Project wrote that patients requiring assistance should be referred to the social work department.

RESPONSE: The Department concurs, and N.J.A.C. 8:43G-12.8(w) is deleted. N.J.A.C. 8:43G-12.8(k) is revised as follows: "Patients requiring post-discharge care shall be referred after physician evaluation to needed health care or health-related resources. The hospital shall provide assistance, such as referral to the social work department, to a patient requiring assistance in obtaining needed services."

N.J.A.C. 8:43G-12.11 Emergency department staff education and training

COMMENT: Several commenters wrote that the education and training requirements were too prescriptive; the commenters felt that the frequency of the training should not be mandated.

RESPONSE: The Department acknowledges the comment and refers the commenters to N.J.A.C. 8:43G-5.9, which is the generic staff educa-

tion standard. In addition, N.J.A.C. 8:43G-12.11 is revised to delete the frequency of specific training in emergency care.

N.J.A.C. 8:43G-12.12 Emergency department quality assurance methods

COMMENT: Several commenters wrote that the quality assurance standards were too prescriptive.

RESPONSE: The Department believes that quality assurance is a critical component of patient care, especially in clinical areas such as the emergency department. The standard remains unchanged.

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

SUBCHAPTER 12. EMERGENCY DEPARTMENT

8:43G-12.1 Emergency department structural organization; mandatory

The hospital shall provide emergency services on a 24 hour basis, unless it is a *[psychiatric facility or is designated by the Commissioner of Health as primarily rehabilitative in mission. Psychiatric and rehabilitative]* ***licensed special hospital. Special*** hospitals shall have a written plan and a system to meet medical emergencies based on the types of patients and cases that are typically treated in the hospital. Those hospitals exempted *[from offering emergency medical services]* ***under this section*** shall not offer *[nonscheduled]* ***emergency*** medical services to the general public.

8:43G-12.2 Emergency department policies and procedures; mandatory

(a) The emergency department shall have written policies and procedures that are reviewed annually, revised as needed, and implemented.

(b) There shall be a transfer protocol that governs interhospital transfers of patients in need of specialized care not provided in the hospital.

(c) The emergency department shall have a written protocol that governs the management of psychiatric patients who require special services not available in the hospital. This protocol addresses the roles and involvement of hospital health professionals, social work services, law enforcement officials, and mental health services, when indicated.

(d) The emergency department shall have a written protocol that ***[governs provision for]* *addresses the ability of*** family members and significant others to remain with patients during treatment*[, with special attention to]**. **The protocol shall also address the special needs of*** patients ***who are*** unable to communicate.

(e) The emergency department shall have a written protocol that governs referrals if a clinical speciality service is not available.

8:43G-12.*[4]**3* Emergency department staff qualifications; mandatory

(a) Effective July 1, 1992, each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's graduate residency training program, consulting physicians, and private physicians who are attending to their patients in the emergency department, shall meet at least one of the following qualifications:

1. ***[A diplomate of the American Board of Emergency Medicine or meets current requirements to be examined;]* *Board certification or current eligibility to be certified in emergency medicine;***

2. Successful completion of an approved residency program in family medicine, general internal medicine, general surgery, or general pediatrics; or

3. Within the past five years has ***[the equivalent of]* at least *[three years]* *one year*** of full-time clinical experience in emergency medicine.

(b) At all times at least one licensed physician who meets at least one of the qualifications in (a) above shall be present in the emergency department to attend to all emergencies.

(c) Each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's graduate residency training program, consulting physicians, and pri-

vate physicians who are attending to their patients in the emergency department, shall be certified in Advanced Cardiac Life Support ***within 12 months of initial assignment***. Physicians who are ***[currently diplomates of the American Board of Emergency Medicine]* *board certified or currently eligible to be certified in emergency medicine*** shall be exempt from this requirement.

(d) Each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's graduate residency training program, consulting physicians, and private physicians who are attending to their patients in the emergency department, shall be certified in Advanced Trauma Life Support ***within 12 months of initial assignment***. Physicians who are ***[currently diplomates of the American Board of Emergency Medicine]* *board certified or currently eligible to be certified in emergency medicine*** shall be exempt from this requirement.

(e) The emergency department shall be staffed at all times by at least one professional registered nurse who is certified in Advanced Cardiac Life Support.

8:43G-12.*[5]**4* Emergency department staff qualifications; advisory ***(Reserved)***

8:43G-12.*[6]**5* Emergency department staff time and availability; mandatory

[(a)] A radiologist who has completed a residency training program in radiology shall be able to arrive and shall arrive at the hospital within 60 minutes of being summoned, under normal transportation conditions.*

[(b)](a)*** There shall be a physician specialist on call to the emergency department for each major clinical service provided by the hospital. On-call physicians*, except radiologists,* shall be able to arrive and shall arrive within 30 minutes after being summoned for a critical case, under normal transportation conditions.

[(c)](b)*** The emergency department shall be staffed at all times by a minimum of one registered professional nurse. The hospital shall have in place a protocol to increase nurse staffing based on volume and acuity.

8:43G-12.*[7]**6* Emergency department staff time and availability; advisory ***(Reserved)***

8:43G-12.*[8]**7* Emergency department patient services; mandatory

(a) All patients shall initially be assigned clinical priority for treatment by a ***[licensed]* *registered professional* nurse or physician** upon arrival in the emergency department.

(b) Treatment for life-threatening emergencies shall be initiated immediately.

(c) No patient, after being admitted to the emergency department, shall be discharged to home or another facility without being seen ***and evaluated*** by an attending or emergency department physician.

(d) ***[There shall be no more than a four hour wait between a patient's arrival in the emergency department and the time when the patient is initially evaluated by the emergency or attending physician.]* *All patients who have been admitted to the emergency department shall receive at least initial evaluation by an emergency or attending physician within four hours of arrival in the emergency department.***

[(e)] The hospital shall implement a protocol for meeting the needs of patients in a timely manner, such as augmenting staff and notifying or diverting ambulances when a specified volume of patients in the emergency department is reached, or patient waiting time before initial evaluation by a physician exceeds four hours.*

[(e)](f)*** The emergency department shall have a written protocol for the care and disposition of patients who stay in the department for protracted periods of time, for example, in awaiting inpatient beds. This protocol shall address areas such as patient monitoring, patient privacy, provision for family members or significant others, and the active seeking of inpatient beds ***or transfer*** by emergency department staff.

[(f)](g)*** A patient shall ***[not be retained in]* *be transferred from*** the emergency department ***to the in-patient service of the hospital, to a facility that provides care unavailable at the hospital, or discharged to home no*** more than 12 hours after the patient is initially

treated on an emergency basis or is stabilized*, except****. Exceptions to the 12 hour requirement shall pertain*** when: ***[test results are pending and will be used to determine discharge action, or when the patient is under clinical observation or is waiting after transport has been summoned.]***

***1. Test results are pending and will be used to determine discharge action;**

2. The patient is under clinical observation; or

3. The patient is waiting after transport has been summoned.

(h) The hospital shall maintain documentation in all cases in which patients are retained for more than 12 hours in the emergency department.*

[(g)] When a specified volume of patients in the emergency department is reached, or patient waiting time before initial evaluation by a physician exceeds two hours, the hospital shall implement a protocol for meeting the needs of patients in a timely manner, such as augmenting staff and notifying or diverting ambulances.*

[(h)](i)*** No admitted patient shall be held under clinical observation in the emergency department for more than eight hours if a bed is available in an inpatient unit that has the correct monitoring equipment or can meet the needs of the patient.

[(i)](j)*** A registry of emergency department admissions shall be maintained that includes the patient name and at least:

1. Medical record number;

2. Date and time arrived;

3. Time discharged;

4. Name of treating physician;

5. ***Chief complaint and/or medical*** ***[Medical]*** diagnosis; and

6. Disposition of the patient.

[(j)](k)*** Upon discharge home from the emergency department, the patient or his or her representative shall be given written instructions and an oral explanation of those instructions. ***[The]* *Documentation of instructions, the* name of the physician who ordered the instructions, the name of the person who gave the oral explanation, and the name of the person receiving the instructions shall be entered legibly in the medical record.**

[(k)](l)*** Patients requiring post-discharge care shall be referred ***after clinical evaluation*** to needed health care or health-related resources. ***The hospital shall provide assistance, such as referral to the social work department, to a patient requiring assistance in obtaining needed services.***

[(l)](m)*** A patient shall be transferred to another hospital only for a valid medical reason or by patient choice. The sending emergency department shall receive approval from a physician and the receiving hospital before transferring the patient. Documentation for the transfer shall be sent with the patient, with a copy or summary maintained by the transferring hospital. This documentation shall include at least:

1. Informed consent of the patient or responsible individual, if possible;

2. Reason for transfer;

3. Signature of the physician who ordered the transfer;

4. Condition of the patient upon transfer;

5. Patient information collected by the sending emergency department, including x-ray films or written interpretation by a radiologist; and

6. Name of the contact person at the receiving hospital.

[(m)](n)*** Documentation of a patient's transfer sent by the transferring hospital shall be a permanent part of the patient's medical record at the receiving hospital.

[(n)](o)*** A medical record shall be established and maintained for each patient treated in the emergency department and include at least:

1. Mode, date and time of arrival;

2. Allergies;

3. Medications used before admission to the emergency department;

4. Immunizations when relevant;

5. Timed vital signs;

6. Chief complaint;

7. Physician assessment;

8. Nursing assessment;
9. Treatment rendered, signed by the person who rendered the treatment;

10. Medications prescribed and administered while in the emergency department signed by the person who prescribed and the person who administered the medications;

11. Discharge instructions; and

12. Last menstrual period, if relevant.

*[(o)]***(p)* Deceased patients shall be removed from rooms occupied by other patients, when possible, or shall be curtained off. The deceased shall be transported in the hospital and removed from the hospital in a dignified manner.

*[(p)]***(q)* The emergency department staff shall conform with hospital protocols for complying with applicable statutes to report child, sexual, and elder abuse, specified communicable diseases, rabies, poisonings, and unattended or suspicious deaths.

*[(q)]***(r)* The emergency department shall be prepared to communicate and shall communicate with emergency medical services regarding patients about to arrive by emergency vehicles. The department shall be prepared to receive such patients when they arrive.

*[(r)]***(s)* The phone number of the designated regional or State-wide New Jersey Poison Information and Education System (1-800-962-1253) shall be posted in the emergency department.

*[(s)]***(t)* Radiology services for emergency needs shall be available to the emergency department 24 hours a day.

*[(t)]***(u)* Clinical laboratory services for emergency needs shall be available to the emergency department 24 hours a day.

*[(u)]***(v)* The emergency department shall have access to and utilize a record of hospital employees, medical staff members, and volunteers who can *[speak languages other than English or know sign language for the hearing impaired and can]* provide interpretive services to patients*[*]. This record shall include the work shifts of hospital employees*[*] **as required at N.J.A.C. 8:43G-5.5(c)*.**

*[(v)]***(w)* Security personnel shall be available to the emergency department when needed.

[(w) The hospital shall provide assistance in referring to other settings of care those patients whom the emergency department identifies as requiring such assistance after physician evaluation.]*

8:43G-12.*[9]**8* Emergency department patient services; advisory ***(Reserved)***

8:43G-12.*[6]**9* Emergency department space and environment; mandatory

(a) The emergency department shall meet criteria established by the Federal Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1987 Edition, section 7.9, or later edition, if in effect, which are hereby incorporated by reference.

(b) The emergency department shall have the necessary equipment to meet the medical needs of patients of all ages.

(c) The emergency department shall be equipped to stabilize all patients.

(d) The emergency department shall be equipped with, at least, patient monitoring equipment and resuscitation equipment.

(e) The emergency department shall have a functional two-way communications system for communicating with ambulance services about arriving patients.

8:43G-12.*[12.11]**12.10* Emergency department staff education and training; mandatory

(a) *[The hospital shall provide, and regularly assigned emergency department staff shall attend, at least annual training or educational programs that relate specifically to emergency care.]* ***Requirements for the emergency department education program shall be as provided in N.J.A.C. 8:43G-5.9.***

(b) Regularly assigned emergency department staff shall attend ***[at least annual]* training or educational programs** ***[which relate to the following areas:]* ***in*****

[1.] Child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq.; ***sexual abuse; and abuse of the elderly.***

*[2. Abuse of the elderly; and

3. Rape.]*

8:43G-12.*[12]**11* Emergency department quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the emergency department that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The quality assurance program shall include periodic collection of emergency department data in at least the following areas:

1. Waiting time;

2. Appropriateness of transfers;

3. Provision of written instructions;

4. Timeliness of diagnostic studies;

5. Appropriateness of treatment rendered;

6. Mortality; and

7. Care of patients who are retained in the emergency department for long periods of time.

(c) Quality assurance shall include review of selected medical charts.

(d) The quality assurance program shall assess whether physicians, including residents, are on duty for periods of time that have an adverse effect on patient care.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Housekeeping and Laundry

Adopted New Rules: N.J.A.C. 8:43G-13

New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-13.3 and 13.6.

Proposed: June 19, 1989 at 21 N.J.R. 1616(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.91, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted but still pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-13.3 and 13.6 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 21 letters commenting on the proposed standards for housekeeping and laundry. Twenty letters were submitted by hospitals and one was submitted by the New Jersey Hospital Association.

N.J.A.C. 8:43G-13.1 Housekeeping policies and procedures

N.J.A.C. 8:43G-13.1(a)

COMMENT: Delete the phrase "and laundry" as there is a separate requirement for laundry service policies and procedures.

RESPONSE: The phrase has been deleted.

COMMENT: Policies and procedures should be reviewed every two years to be consistent with Joint Committee on Accreditation of Health Organizations (JCAHO) guidelines.

RESPONSE: The Department appreciates the comment; however, the standard remains unchanged in order to be consistent with other subchapters in the hospital licensing standards. Standards in many instances exceed JCAHO guidelines.

N.J.A.C. 8:43G-13.1(b)

COMMENT: Muhlenberg Regional Medical Center, Inc. wrote to inquire whether "written schedule" included frequency, procedures, and staffing.

RESPONSE: The term "written schedule" as stated refers to frequency of cleaning and maintaining cleanliness.

COMMENT: Helene Fuld Medical Center commented that equipment such as x-ray units, patient monitors, lasers, anesthesia equipment and other specialized equipment with delicate instrumentation and calibration requires knowledgeable personnel to maintain them in proper order. It felt that most housekeeping personnel are not qualified to accept responsibility for cleaning this equipment.

RESPONSE: The Department acknowledges the comment, and revises the standard to reflect that the housekeeping service shall have written schedules to determine frequency of cleaning and maintaining cleanliness for equipment, structures, areas, and systems within its scope of responsibility. To maintain consistency, the Department has added the phrase "scope of responsibility" at N.J.A.C. 8:43G-13.1(a), Housekeeping policies and procedures.

N.J.A.C. 8:43G-13.2 Housekeeping staff qualifications

COMMENT: Several commenters stated general objections to credentialing standards. Englewood Hospital commented that two years of management experience in housekeeping is not necessary.

RESPONSE: The Department acknowledges the comments, and has revised the standard to provide more flexibility in the requirements for the director's position.

N.J.A.C. 8:43G-13.4 Housekeeping patient services

COMMENT: St. Peter's Medical Center wrote to ask whether it was the Department's intention to administer a "white glove test." The New Jersey Hospital Association would prefer the standard "shall be kept clean" for most items in this section. Several commenters indicated that it is not possible to survey whether hand-cleanser dispensers have been refilled and recommended the deletion of this item. An additional commenter requested the addition of the phrase "odor-free" at N.J.A.C. 8:43G-13.4(f), and the addition of periodic inspections by the director of housekeeping or a designee.

RESPONSE: This section remains as proposed, with the exception of the deletion of the item concerning refilling hand-cleanser dispensers at N.J.A.C. 8:43G-13.4(c), and the addition of the phrases "odor-free" at N.J.A.C. 8:43G-13.4(f) and "and inspected periodically by the director of housekeeping or a designee" at N.J.A.C. 8:43G-13.4(p).

8:43G-13.5 Housekeeping supplies and equipment

8:43G-13.5(c)

COMMENT: Freehold Area Hospital commented that these services are presently maintained by the user department and that there would be additional staffing costs if the housekeeping department were to assume responsibility.

RESPONSE: The Department refers the commenter to revised N.J.A.C. 8:43G-13.1(a), in which the scope of responsibility of the housekeeping service is determined by its policies and procedures.

8:43G-13.7 Housekeeping staff education and training

COMMENT: Several commenters objected to the specificity of staff education and training requirements.

RESPONSE: The Department has deleted most references to specific staff education and training requirements and has substituted generic staff education requirements at N.J.A.C. 8:43G-5.9.

8:43G-13.8 Housekeeping quality assurance methods

COMMENT: Several commenters objected to the specificity of quality assurance indicators.

RESPONSE: The Department agrees with the concept of a generic quality assurance program requirement with latitude for the development of specific indicators by each hospital. N.J.A.C. 8:43G-13.8 (b), (c) and (e) have been deleted.

8:43G-13.10 Laundry staff qualifications

COMMENT: St. Peter's Medical Center objected that this standard precludes upward mobility of internal candidates. Columbus Hospital commented that a full-time director of laundry is not necessary for hospitals which utilize an external laundry service.

RESPONSE: The Department acknowledges these comments. The standard has been revised as follows: "There shall be a designated director

or supervisor of laundry service with experience or training in institutional laundry service."

8:43G-13.12 Laundry space and environment

8:43G-13.12(a)

COMMENT: A commenter recommended that a standard addressing the containment and collection of soiled laundry be added.

RESPONSE: A standard has been added addressing these issues.

8:43G-13.12(h)

COMMENT: The New Jersey Hospital Association requested the deletion of the second sentence in this standard as unnecessary.

RESPONSE: The standard has been revised to incorporate the intent of both sentences.

8:43G-13.13 Laundry supplies and equipment

8:43G-13.13(a)

COMMENT: Englewood Hospital recommends a linen supply at least six times the number of occupied beds. St Michael's Medical Center commented that a three day supply of linen is excessive and recommends a day and a half supply. Columbus Hospital comments that the standard does not specify whether the supply must be in the hospital or whether arrangements to obtain additional linens are satisfactory if there is a shortage of storage space.

RESPONSE: The larger linen supply is commendable but not required; the smaller supply is insufficient. The standard has been clarified to specify an on-site linen supply.

8:43G-13.14 Laundry staff education and training

COMMENT: Several commenters objected to the specificity of the staff education and training requirements.

RESPONSE: See the response to N.J.A.C. 13.7, Housekeeping staff education and training.

8:43G-13.15 Laundry quality assurance methods

COMMENT: Several commenters objected to the specificity of the quality assurance indicators.

RESPONSE: The Department agrees with the concept of a generic quality assurance program with latitude for the development of specific indicators by each hospital. A recodification has been made to more accurately locate N.J.A.C. 8:43G-13.15(c) and (d) at N.J.A.C. 8:43G-13.13(c) and (d).

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 13. HOUSEKEEPING AND LAUNDRY

8:43G-13.1 Housekeeping policies and procedures; mandatory

(a) The housekeeping and ***[laundry]*** service^[s] shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They include, at least, ***scope of responsibility*** assignment by designated unit, and responsibility for all cleaning tasks.

(b) The ***[hospital]*** ***housekeeping service*** shall have a written schedule that determines the frequency of cleaning and maintaining cleanliness for all equipment, structures, areas, and systems ***within its scope of responsibility***.

(c) There shall be a list available at all times of all cleaning and disinfecting agents used in the hospital together with a list of their antidotes.

(d) Records of all pesticides and herbicides used at the hospital shall be maintained on-site, together with a description of their antidotes.

(e) All cleaning and disinfecting agents shall be correctly labeled with the name of the product and its use, including agents that have been repackaged from a bulk source.

8:43G-13.2 Housekeeping staff qualifications; mandatory

There shall be a housekeeping or environmental service with a ***[full-time]*** ***designated*** director who has at least two years of ***[management]*** experience in ***institutional*** housekeeping or environmental services.

8:43G-13.3 Housekeeping staff time and availability; advisory
 (Reserved)

8:43G-13.4 Housekeeping patient services; mandatory

(a) All areas, including areas with limited access such as cabinets, drawers, locked medication rooms, and storage areas, shall be kept clean to sight and touch.

(b) All toilets and bathrooms shall be kept clean to sight and touch, in good repair, and free of odors that reflect poor housekeeping practices.

(c) Reusable hand-cleanser dispensers shall be clean inside and out. *[Such dispensers shall not be refilled until they are completely empty and shall not be "topped off".]* Disposable dispensers shall be discarded.

(d) Floors shall be kept clean.

(e) Hard surfaced floors shall be coated with a slip-resistant floor finish.

(f) Carpeting shall be kept clean ***and odor free*** and shall not be frayed, worn, torn, or buckled.

(g) Window and partitioning curtains and drapes shall be kept clean to sight and touch and odor-free.

(h) Walls, ceilings, and vents shall be kept clean to sight and touch and odor-free.

(i) Windows and screens shall be kept clean to sight and touch, and in good repair.

(j) Mattresses, mattress pads and coverings, pillows, bedsprings, and other furnishings shall be properly maintained and kept clean. They shall be thoroughly cleaned and disinfected upon discharge of each patient.

(k) All equipment and environmental surfaces shall be kept clean to sight and touch.

(l) When areas of the hospital are undergoing renovation or new construction, protective measures shall be taken to contain dust and redirect traffic in patient care areas.

(m) Housekeeping and cleaning supplies shall be selected, measured, and used correctly and according to manufacturers' instructions.

(n) Effective and safe controls shall be used to minimize or eliminate the presence of rodents, flies, roaches, and other vermin in the hospital. The premises shall be kept in such condition as to prevent the breeding, harboring, or feeding of vermin. All openings to the outer air shall be effectively protected against the entrance of insects.

(o) Fly strips shall not be located over food preparation and service areas.

(p) Buildings and grounds shall be ***inspected periodically by the director of housekeeping or a designee and*** maintained in a clean and safe condition.

8:43G-13.5 Housekeeping supplies and equipment; mandatory

(a) Toilet tissue and proper waste receptacles shall be provided in all toilet areas.

(b) Hand cleanser, sanitary towels, and waste receptacles or hand-drying machines shall be provided at each handwashing unit. Hand cleanser and hand-drying machines shall be approved by the infection control committee.

(c) All portable equipment, such as carts, stretchers, intravenous poles, and wheelchairs, shall be kept clean and maintained in good repair.

(d) When not in use, cleaning and disinfecting agents shall be stored separate from other supplies and in enclosed areas.

(e) Cleaning agents used in the hospital shall be approved by the housekeeping service and the infection control committee.

8:43G-13.6 Housekeeping supplies and equipment; advisory
 (Reserved)

8:43G-13.7 Housekeeping staff education and training; mandatory

(a) Requirements for the housekeeping education program shall be as provided in N.J.A.C. 8:43G-5.9.

[(a)]*(b) Orientation for new housekeeping employees shall include training in cleaning and infection control techniques.

[(b) Housekeeping staff shall attend at least four training or educational programs per year.]

(c) For specialty units, including at least the newborn nursery, surgical suite, emergency department, pediatrics, critical care, renal dialysis, post mortem, and central services sterile preparation, housekeeping staff shall be specifically trained jointly by housekeeping and the unit staff to clean the unit to which they are assigned.

8:43G-13.8 Housekeeping quality assurance methods; mandatory

(a) There shall be a program of quality assurance for housekeeping that is coordinated with the hospital quality assurance program and includes regularly collecting and analyzing data to help identify problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

***[(b) Quality assurance activities for the housekeeping service shall include scheduled inspections or housekeeping rounds.**

(c) Quality assurance activities shall include monitoring of compliance with the schedule for cleaning and maintenance tasks.]*

[(d)]*(b) Hospitals that contract with a commercial housekeeping service shall use quality assurance measures to ensure that the same standards are met as apply to an in-house housekeeping service.

[(e) Quality assurance activities for housekeeping services shall include monitoring the effectiveness of cleaning agents, for instance, through ensuring that agents are used according to instructions.]

8:43G-13.9 Laundry policies and procedures; mandatory

(a) The laundry service shall have written policies and procedures, which are reviewed annually, revised as needed, implemented, and followed, and which include at least a policy that identifies special handling practices for soiled laundry.

(b) Contaminated laundry shall be specially handled according to the hospital's written protocol, which is approved by the infection control committee and the director of the laundry service.

8:43G-13.10 Laundry staff qualifications; mandatory

There shall be a ***[full-time]* *designated*** director or supervisor of laundry with specialized training or education in ***institutional*** laundry service ***[and at least two years of experience in institutional laundry service management]***.

8:43G-13.11 Laundry patient services; mandatory

(a) All soiled laundry from patient rooms and other service areas shall be transported in such a way that no leakage occurs.

(b) Laundry carts shall be in good repair, kept clean, and identified for use with either clean linen or soiled laundry.

(c) Clean linen shall be transported in covered carts and stored in a covered or enclosed area.

(d) Bedding (sheets, pillowcases, drawsheets, and blankets) and clothing provided to staff and patients shall be clean.

8:43G-13.12 Laundry space and environment; mandatory

(a) Soiled laundry shall be stored ***in containers provided for it*** in a ***clean,*** ventilated, vermin-proof and vermin-free area, separate from other supplies. ***[, and]* *It shall be collected from the storage area regularly so that it does not overflow or accumulate beyond the capacity of the storage containers.**

(b) **Soiled laundry*** shall be stored, sorted, rinsed, and laundered only in areas specifically designated for those purposes.

[(b)]*(c) If a laundry chute is used, it shall be kept locked.

[(c)]*(d) If a laundry chute is used, it shall be maintained in good repair and cleaned, and there shall be no build-up of visible soil.

[(d)]*(e) Laundry chutes shall empty into an enclosed room.

[(e)]*(f) If the hospital has an in-house laundry for the bulk of the hospital's linens, it shall provide a receiving, holding, and sorting area with hand washing facilities. The walls, floor, and ceiling of the area shall be kept clean and in good repair.

[(f)]*(g) If the hospital has a limited-use, home-style laundry (for example, for the use of the psychiatric unit or for laundering items such as cubicle curtains), the walls, floor, and ceiling of the area shall be kept clean and in good repair.

*[(g)]***(h)* If the hospital contracts with a commercial laundry service, the hospital shall have areas for sorting and receiving laundry. These areas shall be kept clean and in good repair.

*[(h)]***(i)* *[(There shall be a)]* *A* written schedule ***shall be developed and implemented*** for removing lint from laundry areas on a routine basis. *[(This schedule shall be followed.)]*

*[(i)]***(j)* If the hospital has an in-house laundry, the flow of ventilating air shall be from clean to soiled areas, and ventilation shall be adequate to prevent odor build-up. Soiled laundry and clean linen shall be kept separate.

8:43G-13.13 Laundry supplies and equipment; mandatory

(a) The hospital shall have ***on-site*** a supply of sheets, pillowcases, drawsheets, blankets, towels, and washcloths that is at least three times the number of occupied beds.

(b) If the hospital has an in-house laundry, an established protocol shall be followed to reduce the number of bacteria in the fabrics. Equipment and surfaces that come into contact with soiled laundry and clean linen shall be sanitized.

***(c) The laundry service shall monitor at least the following:**

1. pH and bacterial monitoring;
2. Unsafe objects found;
3. Linen supply; and
4. Stained linens.

(d) **A random sample of all laundry batches from all sources shall be sour tested to ensure neutralization of alkaline residues from built detergents. Sour testing is a test performed to indicate the degree of acidity or alkalinity of linens. Built detergents is a mixture of one or more alkaline detergents that contains not less than 50 percent anhydrous soap (pure soap, free from water). Fabric pH shall be maintained at 7.0 or below after souring when built detergents are used.***

8:43G-13.14 Laundry staff education and training; mandatory

(a) Requirements for the laundry staff education program shall be as provided in N.J.A.C. 8:43G-5.9.

*[(a)]***(b)* Orientation for new laundry employees shall include protocols for handling and receiving soiled laundry and clean linen.

[(b) All laundry staff shall attend at least four educational or training programs annually, which include handling and receiving protocols for soiled laundry and clean linen.]

8:43G-13.15 Laundry quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the laundry service that is coordinated with the hospital quality assurance program and includes regularly collecting and analyzing data to help identify problems and their extent, recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) Hospitals that contract with a commercial laundry service shall use quality assurance measures to ensure that the standards of N.J.A.C. 8:43G-13.9 through this section are met.

*[(c) The quality assurance program shall assess at least the following:

1. pH and bacterial monitoring;
2. Unsafe objects found;
3. Linen supply; and
4. Stained linens.

(d) **A random sample of all laundry batches from all sources shall be sour tested to ensure neutralization of alkaline residues from built detergents. Sour testing is a test performed to indicate the degree of acidity or alkalinity of linens. Built detergents is a mixture of one or more alkaline detergents that contains not less than 50 percent anhydrous soap (pure soap, free from water). Fabric pH shall be maintained at 7.0 below after souring when built detergents are used.]***

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards Infection Control and Sanitation

Adopted New Rules: N.J.A.C. 8:43G-14

New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-14.2 and 14.4

Proposed: June 19, 1989 at 21 N.J.R. 1618(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.90, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted but still pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-14.2 and 14.4 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 24 letters commenting on the proposed standards for infection control and sanitation. One letter was submitted by the New Jersey Hospital Association and by the Department of Environmental Protection, the remaining letters were submitted by hospitals.

N.J.A.C. 8:43G-14.1 Infection control structural organization

N.J.A.C. 8:43-14.1(a)

COMMENT: Several commenters objected to the identification of the structure of the infection control committee. One commenter noted that the phrase "including pathology, central supply, and respiratory therapy" is redundant, since the rule states "all other services."

RESPONSE: The Department acknowledges the first comment, but believes that it is important to ensure hospital-wide participation in the infection control committee by at least the named services. The Department concurs with the second comment and the phrase is deleted.

N.J.A.C. 8:43G-14.1(b)

COMMENT: Hunterdon Medical Center wrote that including reference documents does not provide an opportunity for review or input by the Department or by hospitals. St. Clare's Riverside commented that some provision should be made for future deletion, amendment or addition of documents in this category.

RESPONSE: The Department acknowledges the concern. However, the intent of the standard is to provide objective, generally accepted, industry-wide standards of practice for purposes of guiding and measuring hospital performance. To address the problem of obsolescence, the following phrase is added: "or revised or later editions, if in effect."

COMMENT: St. Clare's Riverside commented that N.J.A.C. 8:43G-14.1(b)3 could be consolidated with N.J.A.C. 8:43G-14.12 and 14.13.

RESPONSE: This standard refers to the decontamination, disinfection, sterilization, and handling of regulated and other medical waste within the hospital, while N.J.A.C. 8:43G-14.12 and 14.13 refer to the preparation for disposal of waste outside of the hospital. As these are distinct activities, no change is made in the standard.

COMMENT: Several commenters wrote that policies and procedures should be reviewed biannually to be consistent with Joint Committee on Accreditation of Healthcare Organizations (JCAHO) guidelines.

RESPONSE: The Department recognizes the comment; however, the standard remains unchanged in order to be consistent with other subchapters in the hospital licensing standards. Standards in many instances exceed JCAHO guidelines.

N.J.A.C. 8:43G-14.3 Infection control staff qualifications

COMMENT: The New Jersey Hospital Association wrote that hospital experience is not necessarily relevant to ability to perform in the role of infection control practitioner and that appropriate education could be substituted.

RESPONSE: While the Department generally favors a hospital-related experience requirement, it agrees that other backgrounds may be relevant to infection control services. Consequently, the experience requirement is deleted.

N.J.A.C. 8:43G-14.5 Infection control staff time and availability

COMMENT: A number of commenters objected to the ratio of one infection control practitioner to 250 licensed beds, stating that a ratio is not necessarily indicative of need and that it will increase costs.

RESPONSE: The issues of staffing ratios and cost reimbursement are addressed generally in the summary of comments and responses included in the adoption of N.J.A.C. 8:43G-1, published elsewhere in this issue of the New Jersey Register. More specifically, an independent study by Haley et al. (SENIC Project, Centers for Disease Control) demonstrates that maintaining the given ratio is cost-effective, as it dramatically reduces rates of nosocomial infections.

(Haley, Robert W. and others: "The Efficacy of Infection Surveillance and Control Programs in Preventing Nosocomial Infections in U.S. Hospitals"; American Journal of Epidemiology, Vol. 121, pp. 182-205, 1985)

The standard, however, is clarified to refer to occupied beds, as determined by the average daily census, rather than to licensed beds. The staffing ratio shall be a ratio of 1:250 occupied beds, but in no case less than one half FTE.

N.J.A.C. 8:43G-14.9 Sanitation patient services

N.J.A.C. 8:43G-14.9(a)

COMMENT: The New Jersey Hospital Association commented that this standard is placed on the city water company if the hospital is supplied by city water.

RESPONSE: The Department acknowledges the comment, and notes that the intent of the standard is to apply to private as well as to municipal water supplies. If the hospital uses a municipal water supply, it may document compliance through cross reference to municipal compliance with the rule. No change in the standard is required.

N.J.A.C. 8:43G-14.9(b)

COMMENT: Columbus Hospital and Rahway Hospital wrote that water temperature should be 120 degrees Fahrenheit rather than 110 degrees Fahrenheit as the latter temperature is not considered "warm" enough by most patients.

RESPONSE: The hospital must meet the criteria for hot water use established by the Federal Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1987 Edition, section 7.31, Table 4. These criteria state that hot water temperature shall be 110 degrees Fahrenheit in clinical areas of the hospital. The standard remains unchanged.

N.J.A.C. 8:43G-14.10 Sanitation space and environment

N.J.A.C. 8:43G-14.10(e)

COMMENT: The New Jersey Hospital Association requested a definition of "properly."

RESPONSE: The standard is amended to read "shall be drained to a sanitary connection in a way that avoids splatter or overflow."

N.J.A.C. 8:43G-14.11 Sanitation quality assurance methods

COMMENT: Freehold Area Hospital commented that water sampling is not done in city supplied water but is carried out by the municipal water company.

RESPONSE: The requirements of the Department of Environmental Protection are applicable to all water supplies. If the hospital uses a municipal water supply, it may document compliance through cross reference to documentation of the water sampling system. The standard is retained.

N.J.A.C. 8:43G-14.12 Regulated medical waste policies and procedures

N.J.A.C. 8:43G-14.12(a)

COMMENT: Cooper Hospital, Hunterdon Medical Center, and the New Jersey Hospital Association commented that the hospital should have the right to determine who develops these policies, and that the infection control committee should review, approve, and audit them.

RESPONSE: The Department concurs and the standard is amended to incorporate these suggestions.

N.J.A.C. 8:43G-14.13 Solid waste policies and procedures

COMMENT: Cooper Hospital, Hunterdon Medical Center, and the New Jersey Hospital Association commented that the hospital should have the right to determine who develops these policies, and that the infection control committee should review, approve, and audit them.

RESPONSE: The Department concurs and the standard is amended to incorporate these suggestions.

N.J.A.C. 8:43G-14.15 Solid waste space and environment

N.J.A.C. 8:43G-14.15(a)

COMMENT: The New Jersey Hospital Association requested the addition of the phrase "or an equally effective mechanism" to the requirement that the drain for a garbage compactor shall be connected to the sanitary sewage disposal system.

RESPONSE: Sanitary waste sewage disposal systems and storm drains are the only drainage systems that exist. Storm drains are unacceptable as untreated matter eventually enters streams and rivers. Drainage must be to a sanitary sewage disposal system, a category which includes septic systems. No change is made in the standard.

N.J.A.C. 8:43G-14.16 Solid waste supplies and equipment

N.J.A.C. 8:43G-14.16(b)

COMMENT: Freehold Area Hospital commented that outdoor storage containers for recyclables should not have to be covered.

RESPONSE: The Department agrees and the phrase "or recyclables" is added to the existing exceptions for corrugated cardboard and construction materials.

The Department has added to the proposed text of N.J.A.C. 8:43G-14.7, Infection control staff education and training; mandatory, a reference to the chapter education standard at N.J.A.C. 8:43G-5.9.

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

SUBCHAPTER 14. INFECTION CONTROL AND SANITATION

8:43G-14.1 Infection control structural organization; mandatory

(a) There shall be a hospital infection control committee that includes representatives from at least: infection control, medical staff, nursing service, administration, clinical laboratory, surgery, and the employee health service. The committee shall receive formal advice from all other services upon its request*[, including pathology, central supply, and respiratory therapy]*.

(b) The infection control committee shall direct and assure compliance with the infection control program, including at least the following:

1. Formulating a system for identifying and monitoring nosocomial infections that is at least equivalent to the Centers for Disease Control "Outline for Surveillance and Control of Nosocomial Infections;"

2. Developing and implementing a system of infection control and isolation procedures, including Universal Precautions, using at least criteria which meet or exceed the criteria established by the Centers for Disease Control and Occupational Safety and Health Administration publication, "Enforcement Procedures for Occupational Exposure to Hepatitis B Virus (HVB) and Human Immunodeficiency Virus (HIV)", OSHA Instruction CPL 2-2.44A, August 15, 1988 *or revised or later editions, if in effect*;

3. Reviewing and approving written policies and procedures for decontamination, disinfection, sterilization, and handling of regulated medical waste and all other solid waste;

4. Instituting control measures or studies when an infection control problem is identified;

5. Reviewing, on at least an annual basis, the hospital's policies and procedures related to isolation, aseptic technique, employee health, staff training, antibiotic susceptibility and trends, the prevention of infection, and general improvement of patient care; and

6. Identifying and reporting communicable diseases throughout the hospital, with the cooperation of the clinical laboratory, medical

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records, and the medical staff, as specified in N.J.A.C. 8:57-1 of "Communicable Diseases", also known as Chapter II of the State Sanitary Code.

NOTE: Centers for Disease Control publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161

or:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

(c) The infection control committee shall share information, including problems, data, and relevant recommendations, with at least the quality assurance program, nursing service, administration, and the medical staff, and shall ensure that corrective actions are taken.

(d) The infection control committee shall meet at least once every two months.

(e) The infection control practitioner shall participate in the development of all hospital policies and procedures related to infection control.

8:43G-14.2 Infection control structural organization; advisory
(Reserved)

8:43G-14.3 Infection control staff qualifications; mandatory
The infection control practitioner shall have education or training in surveillance, prevention, and control of nosocomial infections*, and at least two years of clinical hospital experience*.

8:43G-14.4 Infection control staff qualifications; advisory
(Reserved)

8:43G-14.5 Infection control staff time and availability; mandatory
(a) There shall be an infection control practitioner who is responsible for coordination of the infection control program.

(b) There shall be a ratio of the equivalent of at least one full-time infection control practitioner to every 250 *[licensed]* ***occupied*** beds, ***but in no case less than one half full-time equivalent,*** as recommended by the Centers for Disease Control, ***in*** "The Efficacy of Infection Surveillance and Control Programs in Preventing Nosocomial Infection in U.S. Hospitals."

8:43G-14.6 Infection control patient services; mandatory
(a) The hospital shall comply with all Category I measures of the following Centers for Disease Control current publications, incorporated herein by reference, unless the infection control committee makes a documented exception for a specific guideline:

1. Guidelines for Prevention of Catheter-Associated Urinary Tract Infections;
2. Guidelines for Prevention of Intravascular Infections;
3. Guidelines for Prevention of Surgical Wound Infections;
4. Guidelines for Prevention and Control of Nosocomial Pneumonia; and
5. Guidelines for Handwashing and Hospital Environmental Control.

8:43G-14.7 Infection control staff education and training; mandatory
(a) Requirements for the infection control staff education program shall be as provided in N.J.A.C. 8:43G-5.9.

(a)**(b) The infection control practitioner shall coordinate educational programs to address specific problems, as recommended by the Centers for Disease Control, or at least annually for staff in all patient care areas and services.

(b)**(c) Orientation for all new employees shall include infection control practices for the employee's specific area of service and the rationale for the practices.

8:43G-14.8 Infection control quality assurance methods; mandatory
The infection control practitioner shall develop and implement a program of quality assurance that is integrated into the hospital

quality assurance program and includes regularly collecting and analyzing data to help determine the effectiveness of infection control practices. When corrective actions need to be taken based on data collected, the infection control committee shall recommend, implement, and monitor those actions. The infection control committee shall supervise these quality assurance activities.

8:43G-14.9 Sanitation patient services; mandatory
(a) The water supply shall be adequate in quantity, of a safe sanitary quality, and from a water system that is constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and N.J.A.C. 7:10 and other applicable laws, ordinances, and regulations.

NOTE: The Safe Drinking Water Act and rules can be obtained from:

The Department of Environmental Protection
Bureau of Potable Water
CN 209
Trenton, NJ 08625

(b) Hot running water (between 90 and 110 degrees Fahrenheit) and cold running water shall be provided.

8:43G-14.10 Sanitation space and environment; mandatory
(a) Water piping carrying non-potable water shall be clearly labeled as such.

(b) The sewage disposal system shall be maintained in good repair and operated in compliance with State and local laws, ordinances, and regulations.

(c) There shall be no direct physical connections between city and well water supplies. Any physical connection between a public community water supply and an unapproved water supply, such as a well used by a hospital for emergency purposes, must be approved by the Department of Environmental Protection and the owner of the public community water supply and must conform with N.J.A.C. 7:10-10.

(d) There shall be no back siphonage conditions present.
(e) Equipment requiring water drainage, such as ice machines, shall be ***[properly]* drained to a sanitary connection *in a way that avoids splatter or overflow*.**

8:43G-14.11 Sanitation quality assurance methods; mandatory
The hospital shall adhere to the water sampling schedule and the chemical and biological monitoring requirements of the water supply system set by the Department of Environmental Protection. Records of the sampling and monitoring shall be maintained.

8:43G-14.12 Regulated medical waste policies and procedures; mandatory
(a) The ***[infection control committee]* *hospital*** shall develop and implement ***and the infection control committee shall review, approve, and audit*** written policies and procedures for collection, storage, handling, and disposal of medical waste, in conformance with applicable Federal and State laws and regulations.

(b) The hospital shall comply with the provisions of 42 U.S.C. 6903, the Medical Waste Tracking Act of 1988, and N.J.S.A. 13:1E-48 et seq., the Comprehensive Regulated Medical Waste Management Act and all rules and regulations promulgated pursuant to the aforementioned Acts.

8:43G-14.13 Solid waste policies and procedures; mandatory
The ***[infection control committee]* *hospital*** shall develop and implement ***and the infection control committee shall review, approve, and audit*** written policies and procedures for collection, storage, handling, and disposal of all solid waste that is not regulated medical waste.

8:43G-14.14 Solid waste patient services; mandatory
All solid waste that is not regulated medical waste shall be disposed of in a manner approved by the Department of Environmental Protection. Disposal shall be as frequent as necessary to avoid creating a nuisance.

8:43G-14.15 Solid waste space and environment; mandatory
(a) Solid waste shall be stored within the containers provided for it in an area that is kept clean. Waste shall be collected from the storage area regularly to prevent nuisances such as odors, flies, other

vermin, or rodents, and so that waste does not overflow or accumulate beyond the capacity of the storage containers.

(b) Garbage compactors shall be located on an impervious pad that is graded to a drain. The drain shall be kept clean and shall be connected to the sanitary sewage disposal system.

8:43G-14.16 Solid waste supplies and equipment; mandatory

(a) Plastic bags shall be used for solid waste removal from patient care units and supporting departments. Bags shall be of sufficient strength to safely contain waste from point of origin to point of disposal and shall be effectively closed prior to disposal.

(b) Outside storage containers for solid waste shall be kept covered, except those used for corrugated cardboard*, recyclables*, or construction materials.

(c) Indoor storage containers for solid waste shall be kept covered when necessary to control odors or other nuisances.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Medical Records

Adopted New Rules: N.J.A.C. 8:43G-15

New Rule Not Adopted But Still Pending: N.J.A.C. 8:43G-15.6

Proposed: August 7, 1989 at 21 N.J.R. 2171(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.88, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted but still pending.

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-15.6 has not been adopted and is still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 18 letters commenting on the proposed standards for medical records. Sixteen letters were submitted by hospitals, one by the New Jersey Hospital Association, and one by the Department of the Public Advocate, Division of Mental Health Advocacy.

COMMENT: The Public Advocate, Mental Health Advocacy, commenting on subchapter 15 generally, wrote that "The rule would have serious impact on New Jersey citizens who are diagnosed or regarded as mentally or emotionally ill who are admitted to community hospitals. The rule fails to include certain requirements necessary to insure the rights and safety of patients." The Public Advocate urged the Department to add two provisions to the rules, including enforcement mechanisms to prevent alteration of records, and records of "checks" made on patients in restraint.

RESPONSE: The Department acknowledges the concerns of the Public Advocate. Therefore, a new standard, N.J.A.C. 8:43G-15.2(c), is added, which requires that the medical record department develop and implement procedures for the protection of medical record information against loss, tampering, alteration, destruction, or unauthorized use.

All clinical services which are provided to the patient, including checks on patients in restraint, must be documented in the patient's medical record in accordance with proposed N.J.A.C. 8:43G-15.5(a) and (b). Additionally, specific requirements for documentation of checks made on patients in restraint are incorporated by reference in proposed N.J.A.C.

8:43G-26.2(c), which states that the hospital must comply with all procedures delineated in the American Psychiatric Association Task Force Report No. 22 on Restraint and Seclusion of 1984. Therefore, subchapter 15, is not revised to include this information.

N.J.A.C. 8:43G-15.1 Medical records structural organization; mandatory

N.J.A.C. 8:43G-15.1(a)

COMMENT: Meadowlands Hospital, St. Clare's Riverside Medical Center, and the New Jersey Hospital Association requested a change from "inpatients" to "patients," so as to include both inpatients and outpatients. According to the letters of comment, outpatients are a growing percentage of the hospital's total volume, and the standard, as written, limits future innovations such as the maintenance of outpatient records.

RESPONSE: The recommended change is not made, since the intent of the standard is to establish that, as stated, the primary responsibility of the medical record department is the maintenance of medical records for inpatients. However, proposed N.J.A.C. 8:43G-15.2 is expanded at subsection (l) to more clearly indicate that all medical records, including outpatient medical records, must be organized in a uniform format within each clinical service.

N.J.A.C. 8:43G-15.1(c)

COMMENT: The Medical Center at Princeton and the New Jersey Hospital Association suggested that the standard be relocated to the administration subchapter.

RESPONSE: The standard is retained in the medical records subchapter, since it addresses medical records storage and notification of the Department, in the event that the hospital ceases to operate.

N.J.A.C. 8:43G-15.1(e)

COMMENT: Meadowlands Hospital and St. Clare's Medical Center recommended that the standard be combined with N.J.A.C. 8:43G-15.1(b) and clarified, since N.J.A.C. 8:43G-15.1(a) refers to inpatients while the intent seems to include medical records for all patients.

RESPONSE: The standards are not combined. The intent of N.J.A.C. 8:43G-15.1(a) is to require that the hospital establish a system of identification of medical records to facilitate their retrieval, whereas N.J.A.C. 8:43G-15.1(e) requires the hospital to establish a system for access (retrieval) of medical records.

N.J.A.C. 8:43G-15.2 Medical records policies and procedures; mandatory

N.J.A.C. 8:43G-15.2(a)

COMMENT: Meadowlands Hospital suggested that the first sentence end after the word "implemented."

RESPONSE: The standard is revised in accordance with the recommendation.

N.J.A.C. 8:43G-15.2(c)

COMMENT: Meadowlands Hospital requested a clarification of the standard.

RESPONSE: The intent of the standard is to indicate that each clinical service must determine and establish an appropriate uniform format for the organization of its medical records, based upon the individual needs of the service.

N.J.A.C. 8:43G-15.2(d)1

COMMENT: St. Clare's Medical Center requested a change from "written informed consent" to "written verification of informed consent."

RESPONSE: The Department appreciates the comment and recognizes the importance of complying with the rules for informed consent in all cases. However, the intent of this rule is to ensure proper documentation of written informed consent in the inpatient medical record. The commenter's concerns are more appropriately addressed in N.J.A.C. 8:43G-4.1(a)8 which states the patient's rights regarding written informed consent in a multiplicity of situations. The rule remains as proposed.

N.J.A.C. 8:43G-15.2(d)2

COMMENT: St. Clare's Medical Center requested a change in the timeframe for history and physical, since pre-admission certification must be obtained from Peer Review Organization of New Jersey for certain patients. Certification may require five days or longer. It may be necessary, therefore, for the physician to complete the history and physical more than seven days prior to admission. A change was also requested, to "allow the prenatal record as the basic history and physical, with an

updated physical examination at the time of admission, irrespective of whether surgery or general anesthesia is being used." Memorial Health Alliance requested a clarification to indicate whether "surgical procedure" includes vaginal and/or caesarean deliveries. If the definition includes caesarean deliveries, the standard should be modified to exclude emergency caesarean deliveries where there may not be time to complete a history and physical.

RESPONSE: The standard is revised to indicate that the medical record must include a complete history and physical examination, in accordance with medical staff policies and procedures.

N.J.A.C. 8:43G-15.2(d)4 through 6

COMMENT: Memorial Health Alliance wrote that "The standard does not address surgical patients with local analgesia administered by the surgeon, without anesthesia involvement," and requested that each standard be revised to read "for surgical patients with anesthesia rendered by a member of the Anesthesia Department."

RESPONSE: The standards remain unchanged. The commenter is referred to N.J.A.C. 8:43B-18.2(c) of the Hospital Licensing Standards, which includes a description of intravenous conscious sedation, and addresses qualifications for administering anesthetic agents, including intravenous conscious sedation, in accordance with medical staff policies and procedures.

N.J.A.C. 8:43G-15.2(d)6

COMMENT: St. Clare's Medical Center commented that a post-anesthesia note is impractical for same-day surgery patients, and requested that the standard be changed to require at least one post-anesthesia visit by an anesthesiologist, and also requested the deletion of the requirement that a visit be made after release from the recovery room.

RESPONSE: The standard remains unchanged. The requirements for documentation in medical records for post-anesthesia services to same-day surgery patients are delineated in proposed N.J.A.C. 8:43G-35.4(i), Post-Anesthesia Care Services.

N.J.A.C. 8:43G-15.2(d)12

COMMENT: St. Clare's Medical Center requested the deletion of "pharmacy and therapeutic committee, or its equivalent," since policies and procedures are generally those of the hospital rather than any committee.

RESPONSE: No change is made in the standard. The pharmacy and therapeutic committee, or its equivalent, must develop policies and procedures for drug administration, in accordance with proposed N.J.A.C. 8:43G-23.2.

N.J.A.C. 8:43G-15.2(d)14

COMMENT: Memorial Health Alliance recommended that the discharge destination, instructions to the patient, follow-up plans, and medications on discharge be documented in the medical record, but not in the discharge summary. The commenter also wrote that "The Department of Health requires a summary even on patients transferred out within 48 hours." This is frequently unreasonable, as transfers which occur that quickly involve critical patients, and there is "continuous, detailed documentation by the physician at such times, and a summary would be redundant." A request was made to eliminate the requirement for the discharge note to include the following: medications on discharge, and discharge instructions.

RESPONSE: The requirements for discharge destination, instructions to patient, and follow-up plans have been deleted from the standard regarding discharge summary, as requested. If the patient is discharged alive within 48 hours of admission, a discharge note may be substituted for the discharge summary.

N.J.A.C. 8:43G-15.2(d)15

COMMENT: Meadowlands Hospital asked that the standard be changed to read "A report of an autopsy, if performed by the hospital . . ."

RESPONSE: The Department agrees with the suggested changes, as they more accurately reflect the intent of the standard, and has made the change accordingly.

N.J.A.C. 8:43G-15.2(e)

COMMENT: Public Advocate, Division of Mental Health Advocacy commented that the proposed rule fails to require transfer orders to include information needed to insure safe treatment of transferred patients, including the following: drug and other allergies, and history of

serious physical conditions unrelated to proposed treatment which might require special attention to keep patient safe. The commenter requested the Department to revise and add the items listed. (The public advocate investigated at least two deaths in which failure to convey crucial medical history in hospital transfer orders was a substantial contributing factor. Documentation of these cases was included in the letter of comment.)

RESPONSE: The Department acknowledges the concerns of the Public Advocate, and the standards are revised to include the information needed to insure safe treatment of transferred patients, as recommended.

N.J.A.C. 8:43G-15.2(i)

COMMENT: Several hospitals wrote that the requirement for "clear, legible, nontechnical language" is too subjective to be surveyed and should be deleted.

RESPONSE: The Department acknowledges the comment but believes subjective interpretation of the standard is minimal. Language written in clear, nontechnical, legible form is easily recognized when present. The Department believes this standard offers the patient protection and security when important medical decisions have to be made and consequently is retaining the standard.

COMMENT: One hospital commented that "the language suggests that a printed "individualized" consent form is needed for each procedure." The commenter believes that standardized consent forms for each procedure should be allowed.

RESPONSE: The standard permits any variety of consent form; and "individualized" consent form is not specified. However, in order to clarify the intent, the standard is revised as follows: "Any consent form for medical treatment that the patient signs shall be printed in an understandable format and the text written in clear, legible, nontechnical language."

COMMENT: There was a recommendation to move the standard to the nursing section, since the nursing department is responsible for having the patient or representative sign the consent form.

RESPONSE: The standard addresses the requirements and format for medical records. The standard, therefore, is retained in the medical records subchapter.

COMMENT: The Public Advocate pointed out that only the patient, or a court appointed guardian or authorized agent, has the authority to authorize the release of medical information, and requested that the standard be revised to make it clear that it is not meant to enlarge the circumstances under which the law permits a person other than the patient to authorize release of that patient's confidential medical information.

RESPONSE: The standard is not revised as suggested. The Department does not intend to enlarge the circumstances under which the law permits medical information to be released. The standard does not specify who can release medical information, rather, it addresses the contents of the transfer record. The hospital must address the release of medical information in hospital policies and procedures, in accordance with proposed N.J.A.C. 8:43G-4, Patient Rights.

N.J.A.C. 8:43G-15.2(k)

COMMENT: South Jersey Hospital System writes "When errors are made at the time of entry showing it was immediately recognized, we do not believe date and signatures/initials should be required . . ."

RESPONSE: The Department disagrees. Any correction of an error in the medical record must be signed and dated. The standard, therefore, remains unchanged.

N.J.A.C. 8:43G-15.3 Medical record patient services; mandatory

N.J.A.C. 8:43G-15.3(c)

COMMENT: Meadowlands Hospital suggested that the section which requires that the medical record accompany the patient when he or she leaves the patient care unit be moved to the nursing services section. St. Clare's Medical Center asked for the deletion of the phrase "on a computerized system."

RESPONSE: The standard remains as written. Nursing responsibility is not specified by the standard.

N.J.A.C. 8:43G-15.3(d)

COMMENT: Meadowlands Hospital, St. Elizabeth Hospital, and West Jersey Hospital wrote that the word "reasonable" should be defined or deleted, as it is too subjective; the word "customary" could be substituted. The standard should address fee for third party requests.

RESPONSE: The Department agrees that the term is not measurable. Following review of customary fee schedules, and in response to a number of patient complaints about "unreasonable charges", the standard is

amended to add "the fees shall be based on actual costs, and in no case shall exceed \$1.00 per page or \$100.00 per record, whichever is less."

COMMENT: South Jersey Hospital System comments that there is an inconsistency between the summary and the standard, as "the summary states that the standard would require a copy of the medical record to be furnished to the patient "within 30 days of discharge," while the standard states that a copy of the medical record shall be furnished "within 30 days of request," and recommends that the standard be changed to "within 30 days of the chart being completed, since the patient could request the record prior to discharge, which would not allow time for completion of the chart."

RESPONSE: The standard does not specify that the fully completed record must be issued upon request. However, in order to clarify the standard, and to assist hospitals and surveyors in defining the term "reasonable," it is revised as follows: "If a patient requests a copy of his or her medical record, the request shall be in writing and shall be furnished, at a fee based on actual costs, and in no case shall exceed \$1.00 per page or \$100.00 per record, whichever is less, to the patient within 30 days of request following discharge." The Department has evaluated the fees charged by New Jersey hospitals and has found that the prevailing rates are equal to or lower than the levels set by these standards. The Department has consulted with the New Jersey Hospital Association and the Health Care Advisory Board regarding this change.

COMMENT: The Public Advocate, Mental Health Advocacy notes that this section would allow the physician to forbid the release of medical records when "medically contraindicated." The Public Advocate recommends the addition of "additional protections to the patient which are set forth in N.J.A.C. 10:37-6.79(a)4, the Department of Human Services' regulation concerning the rights of clients served by publicly funded community mental health agencies. These rights include a clearer standard for the decision to withhold access to records, including the requirement that the physician explain this decision, and limits on the kinds of records which may be withheld."

RESPONSE: The Department acknowledges the concerns of the Public Advocate and the standard is revised to reflect the additional protections to the patient which were recommended. Two additions are made to the standards, indicating that a denial of access to the medical record shall be limited only to the extent necessary to protect the patient, and that the denial shall be accompanied by a verbal explanation to the patient.

N.J.A.C. 8:43G-15.3(e)

COMMENT: St. Clare's Medical Center and Meadowlands Hospital recommended that the standard be deleted, since, "This is not a patient rights issue; the medical chart is a hospital record designed to record facts regarding the patient's care," and the standard is "impractical; potentially confusing; if an entry were made on a copy which had been given to a patient and then changed and returned to the hospital, there would be no way of verifying who had made the entry." Underwood Hospital stated that the standard would require increased clerical staff time to process patients' requests.

RESPONSE: The standard is revised, and now states that "the patient shall have the right to attach a brief comment or statement to his or her medical record after completion of the medical record."

N.J.A.C. 8:43G-15.4 Medical records staff qualifications; mandatory

COMMENT: Princeton Medical Center, Meadowlands Hospital and the New Jersey Hospital Association stated that medical records staff qualifications and credentials should be determined by the hospital. Memorial Health Alliance wrote that the correct organizational title is "American Medical Record Association."

RESPONSE: Specified qualifications are consistent with those required by licensure standards developed by the Department for other health care facilities. The standard remains as proposed. The organizational title is corrected.

N.J.A.C. 8:43G-15.5 Staff education; mandatory

COMMENT: Eight hospitals objected to the specificity of staff education and training requirements, and the associated costs.

RESPONSE: The staff education and training standards are deleted from the individual subchapters and included in the hospital-wide subchapter as generic rather than specific rules.

N.J.A.C. 8:43G-15.7 Medical record quality assurance; mandatory

N.J.A.C. 8:43G-15.7(a)

COMMENT: One hospital commented that implementation of the standard will require additional full-time employees.

RESPONSE: The Department believes a comprehensive quality assurance program, both hospital-wide and departmentalized, is of paramount importance in assuring the delivery of quality patient care. The Department is allowing the hospital management team the latitude of developing and implementing the program and is not requiring the use of additional full time employees. The standard remains as proposed.

N.J.A.C. 8:43G-15.7(b)

COMMENT: One commenter recommended that the standard be eliminated, as it is too prescriptive.

RESPONSE: The standard remains. Only minimum indicators are specified.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 15. MEDICAL RECORDS

8:43G-15.1 Medical records structural organization; mandatory

(a) There shall be a medical record department with the primary responsibility of maintaining medical records for all inpatients treated at the hospital.

(b) There shall be a system for identifying medical records to facilitate their retrieval by patient identifier.

(c) If the hospital ceases to operate, at least 14 days before cessation of operation the State Department of Health shall be notified in writing about how and where medical records will be stored.

(d) The hospital shall maintain a written organizational chart for the medical record department that delineates lines of authority and responsibility in the department.

(e) There shall be a system of access to the medical records of all patients, including outpatients.

8:43G-15.2 Medical records policies and procedures; mandatory

(a) The medical record department shall have written policies and procedures that are reviewed annually, revised as needed*[,]* ***and*** implemented*[,]* and followed]*. They shall include at least:

1. Procedures for record completion, including chart analysis; *{and}*

2. Conditions, procedures, and fees for releasing medical information*[,]**; **and***

3. Procedures for the protection of medical record information against the loss, tampering, alteration, destruction, or unauthorized use.

(b) All entries in the patient's medical record shall be written legibly in ink, dated, and signed by the recording person or, if a computerized medical records system is used, authenticated.

(c) Medical records shall be organized in a uniform format within each clinical service.

(d) The inpatient's complete medical record shall include at least:

1. Written informed consents, if indicated;

2. A complete history and physical examination, *{including a provisional diagnosis made no earlier than seven days prior to admission or within 24 hours of admission,}* in accordance with medical staff policies ***and procedures*** *{on the components and timeliness of the history and physical. For obstetrics patients who are not undergoing a surgical procedure with anesthesia, a legible copy of the prenatal record, updated at the time of admission, may substitute for the history and physical examination}*;

3. Clinical/progress notes;

4. For surgical patients, a preanesthesia note made by the anesthesiologist before administration of anesthesia;

5. For surgical patients, an anesthesia record by the anesthesiologist or certified registered nurse anesthetist;

6. For surgical patients, a postanesthesia note made early in the postoperative period and after release from the recovery room by the anesthesiologist. In cases of strictly regional anesthetic where no anesthesiologist is assigned to the case, no preanesthesia, anesthesia or postanesthesia notes by an anesthesiologist are required;

7. For surgical patients, an operative report;

8. A postanesthesia care unit record, if applicable;
9. Consultation reports, where applicable;
10. Physician orders for treatment and medication;
11. Medication record reflecting the drug given, date, time, dosage, route of administration, and signature and status of the person administering the drug. Initials may be used after the person's full signature appears at least once on each page of the medication record. Allergies shall be listed on the medication record;
12. A record of self-administered medications, if the patient self-administers, in accordance with the policies and procedures of the hospital's pharmacy and therapeutic committee, or its equivalent;
13. Reports of laboratory, radiological, and diagnostic services;
14. A discharge summary, which includes the reason for admission, findings, treatment, condition on discharge, *[discharge destination, instructions to the patient, follow-up plans,]* medication on discharge, final diagnosis, and, in the case of death, the events leading to death and the cause of death. For cases where the patient is discharged alive within 48 hours of admission and is not transferred to another facility, for normal newborns, and for uncomplicated deliveries, a discharge note may be substituted for the discharge summary. The discharge note includes at least the patient's condition on discharge, medications on discharge, and discharge instructions; and
15. A report of autopsy, if performed ***by the hospital***, with provisional anatomic diagnoses recorded in the medical record within three days. The complete protocol is included in the medical record within the time specified in hospital policies and procedures.

(e) If the patient is transferred to another health care facility (including a home health agency) on a nonemergency basis, the hospital shall maintain a transfer record reflecting the patient's immediate needs and send a copy of this record to the receiving facility at the time of transfer. The transfer record shall contain at least the following information:

1. Diagnoses, ***including history of any serious physical conditions unrelated to the proposed treatment which might require special attention to keep the patient safe***;
2. Physician orders in effect at the time of discharge and the last time each medication was administered;
3. The patient's nursing needs; ***[and]***
4. Hazardous behavioral problems***[.]**; and***
- *5. Drug and other allergies.***

(f) Medical records shall be completed within 30 days of discharge.

(g) Medical records shall be retained and preserved in accordance with N.J.S.A. 26:8-5 et seq.

(h) Original medical records of components of medical records shall not leave hospital premises unless they are under court order or subpoena or in order to safeguard the record in case of a physical plant emergency or natural disaster.

(i) Any consent form ***for medical treatment*** that the patient signs shall be printed in an understandable format and the text written in clear, legible, nontechnical language. In the case where someone other than the patient signs the forms, the reason for the patient's not signing it shall be indicated on the face of the form, along with the relationship of the signer to the patient.

(j) The patient's death shall be documented in the patient's medical record upon death.

(k) Recording errors in the medical record shall be corrected by drawing a single line through the incorrect entry. The date of correction and legible signature or initials of the person correcting the error shall be included.

(l) All medical records, including outpatient medical records, shall be organized in a uniform format within each clinical service.

8:43G-15.3 Medical record patient services; mandatory

(a) Health care practitioners who provide clinical services to the patient shall enter clinical/progress notes in the patient's medical record, when the services are rendered.

(b) Notes that provide a full and accurate description of the care provided to the patient shall be made in the medical record at the time clinical services are provided. Notes that provide a description and an evaluation of the patient's response to treatment shall be made in the medical record.

(c) The medical record shall either accompany the patient when he or she leaves the patient care unit for clinical services in other departments of the hospital or shall be retrievable by authorized personnel on a computerized system with a restricted access and entry system.

(d) If a patient requests a copy of his or her medical record, the request shall be in writing and shall be furnished ***[, at a reasonable fee,]* *at a fee based on actual costs, and in no case shall exceed \$1.00 per page or \$100.00 per record, whichever is less,*** to the patient within 30 days of request ***following discharge***. In the event that direct access to a copy by the patient is medically contraindicated (as documented by a physician in the patient's medical record), the medical record shall be made available to a legally authorized representative of the patient or the patient's physician.

(e) A denial of access to the medical record shall be limited only to the extent necessary to protect the patient. A verbal explanation for the denial shall be given to the patient or legal guardian by the physician and there shall be documentation of this in the medical record.

[(e)](f)*** The patient shall have the right to attach a brief comment or ***[explanation concerning a correction or amendment]* *statement*** to his or her medical record after completion of the medical record.

[(f)](g)*** Incidents, including patient injuries and mishaps, shall be fully documented in the patient's record.

8:43G-15.4 Medical records staff qualifications; mandatory

There shall be a full-time medical record director who is an accredited record technician or a registered record administrator under a certification program approved by the American Medical Record*[s]* Association.

8:43G-15.5 Staff education; mandatory

[(a)] The medical records service shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, and persons providing services by contract;
2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;
3. Individual staff requests for education programs;
4. Supervisor judgements about education needs based on assessment of staff performance;
5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and
6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.]*

Requirements for the medical record staff education and training program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-15.6 Staff education; advisory ***(Reserved)***

8:43G-15.7 Medical record quality assurance methods; mandatory

(a) There shall be a quality assurance program for medical records that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) Quality assurance activities for the medical record department shall include monitoring medical records for accuracy, completeness, legibility, and accessibility.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION**Hospital Licensing Standards
Medical Staff Standard****Adopted New Rules: N.J.A.C. 8:43G-16****New Rules Not Adopted But Still Pending: N.J.A.C.
8:43G-16.4**

Proposed: June 19, 1989 at 21 N.J.R. 1621(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting
Commissioner, Department of Health, with approval of the
Health Care Administration Board.Filed: January 10, 1990 as R.1990 d.89, **with substantive and
technical changes** not requiring public notice and comment (see
N.J.A.C. 1:30-4.3) **and with portions not adopted but still
pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-16.4 has not been adopted and is still pending. The pending rule is an advisory standard, which was proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

The Department of Health ("Department") afforded all interested parties an opportunity to comment on proposed new rules, N.J.A.C. 8:43G-16, related to licensing standards for medical staff services in hospitals. The official comment period ended September 6, 1989. Announcement of the opportunity to respond to the Department appeared in the New Jersey Register on June 19, 1989 at 21 N.J.R. 1621(a).

The Department received 39 letters on the Medical Staff section, including comments from the New Jersey Hospital Association, New Jersey Department of the Public Advocate, and 37 hospitals.

Summary of Public Comments and Agency Responses:

N.J.A.C. 8:43G-16.1 Medical staff structural organization; mandatory

N.J.A.C. 8:43G-16.1(a)

COMMENT: There were six commenters who made specific reference to the requirements for obtaining information about applicants for membership to the Medical Staff through contacting either the Board of Medical Examiners or the Federal Clearinghouse about information on disciplinary actions. The commenters felt that the reporting systems were still under legislative consideration and that the standard thus would become obsolete prior to its next revision. It was suggested to revise the standard to read "obtaining information in compliance with current applicable state and federal laws".

RESPONSE: A hospital should be held responsible for assuring its patients that each practitioner permitted to practice on its staff has not been subject to disciplinary action by the New Jersey Board of Medical Examiners or by another state's regulatory structure for physicians. The standard is necessary to assure this goal. However, it is recognized that the Federal Clearinghouse system has not been implemented to date and the New Jersey Professional Medical Conduct Reform Act has not been enacted to date. To recognize that these information sources may not be implemented, the words "available from" will be substituted for "by" in 8:43G-16.1(b).

COMMENT: The New Jersey Hospital Association, Mercer Medical Center, St. Clare's-Riverside Medical Center, West Jersey Hospital System, and Jersey Shore Medical Center suggested it would be more accurate to use the term "clinical privileges" instead of "privileges".

RESPONSE: The Department concurs that the term "clinical privileges" is preferable and is making this change throughout the subchapter where relevant.

N.J.A.C. 8:43G-16.1(c)

COMMENT: The New Jersey Hospital Association, Memorial Health Alliance, West Jersey Hospital System, and Jersey Shore Medical Center

commented that the standard was based upon proposed legislation, needs to be reorganized, and should not include mention of disciplinary and reporting actions.

RESPONSE: The Department believes that the new rule is appropriate public policy as a means to promote delivery of safe and effective medical care and that it is consistent with current legislative actions. No change is made.

COMMENT: Five commenters felt the use of the term "physician" is too restrictive, and should be changed to "practitioner", as the standard would then allow inclusion of dentists and podiatrists. Two other commenters felt the standard should refer to individuals by specialty.

RESPONSE: The standard is revised to read "practitioner" which will limit its scope to physicians, dentists, and podiatrists, while avoiding the necessity of listing all medical specialties.

N.J.A.C. 8:43G-16.1(d)

COMMENT: The New Jersey Hospital Association, St. Clare's, West Jersey, Jersey Shore, and Hunterdon Medical Centers requested that the requirement for using a committee process for medical staff appointments be revised to language permitting a "mechanism", as in some hospitals, the process may only be handled by the department chairperson. It was felt that the manner in which appointments and re-appointments are made should be at a hospital's discretion.

RESPONSE: Although the use of a committee process is believed to be a fairer and more equitable process, the Department recognizes that in many smaller clinical departments, the use of the chairperson alone may be appropriate as the hospital's system to address this responsibility. The standard is revised to include "or mechanism".

N.J.A.C. 8:43G-16.1(e)

COMMENT: Mercer Medical Center pointed out that the standard should address a "practitioners" training and experience rather than a "physician's".

RESPONSE: The Department agrees and is substituting "practitioner's".

N.J.A.C. 8:43G-16.1(f)

COMMENT: The New Jersey Hospital Association, St. Clare's, Jersey Shore, and West Jersey hospitals commented that the section needs to be reorganized, as each process listed varies considerably and should be addressed separately. Additionally, disciplinary actions and reporting requirements should be addressed elsewhere.

RESPONSE: The Department has reviewed the format of this standard and agrees that it would be clearer if it were reorganized. The standards are recodified to N.J.A.C. 8:43G-16.1(i) and (k).

COMMENT: Valley Hospital expressed objection to these rules, stating they exceed authority of N.J.A.C. 8:31-26.6 and the Federal Health Care Quality Improvement Act. This standard would discourage voluntary actions by impaired physicians and inhibit negotiations that might be conducted with them.

RESPONSE: The Department believes it to be appropriate public policy to promote the protection of the quality of medical care to patients through this mechanism. The new rule will serve to implement this policy by requiring that hospitals have a system to assure that physicians requesting privileges have not been the subject of disciplinary action at other institutions. This is consistent with the intent of existing Federal legislation and with the intent of legislation under consideration in New Jersey that had been approved by the Assembly in June, 1989.

COMMENT: Underwood Memorial, Mercer Medical Center, St. Clare's, and Morristown Memorial Hospitals commented that the requirement for a "formal mechanism" for identification of "impaired physicians" should be deleted, as impairment is often detected through an "informal" manner such as word of mouth, personal observation, or conversation. Jersey Shore, West Jersey, and Cooper Medical Center suggested that the second and third sentences be deleted.

The New Jersey Hospital Association and St. Clare's Medical Center recommended the following replacement language: "There shall be a mechanism outlining the actions to be taken when a practitioner with clinical privileges is suspected or is known to be impaired. For physicians who continue to treat patients during evaluation of impairment, or continue to treat patients after rehabilitation, there should be a mechanism to monitor the quality of patient care and the status of practitioner impairment."

Muhlenberg Hospital expressed concern about lumping impairment with incompetence and misconduct, stating that individuals may be impaired without being incompetent or guilty of misconduct. They commented also that the confidentiality of physicians will be severely damaged as a result of reporting requirements, and asked why only physicians were addressed in the rule, and not individuals in other occupations.

RESPONSE: The identification, treatment, and monitoring of impaired physicians is a critical activity for hospitals to engage in as a vital means to protect the quality of care provided in their institutions to health care consumers. The intent of the standard is not to require that hospitals establish formal, structured screening programs for all physicians such as periodic drug testing. However, once a practitioner is known to be impaired, the intent of the rule is to require the hospital to have an established program or mechanism to monitor the individual's performance, to limit the clinical privileges as appropriate, and to encourage impaired physicians to enter formal treatment services.

Thus, the standard is amended to clarify the language to accomplish these goals. The reference to a formal mechanism for identification of impaired physicians is altered to state that the hospital must have a formal program addressing the needs of impaired physicians, including a mechanism and policies encouraging voluntary or informal reporting of impaired physicians; a mechanism to monitor impaired physician performance and to limit clinical privileges as appropriate, and policies and procedures for the referral of impaired physicians to appropriate treatment. Specific reference to a single treatment program for impaired physicians is deleted.

N.J.A.C. 8:43G-16.1(g)

COMMENT: The New Jersey Hospital Association, West Jersey Hospital System, Jersey Shore Medical Center, and St. Clare's Hospital commented that disciplinary actions and reporting requirements are not a part of the application process and therefore these requirements should not be contained in this standard. Memorial Health Alliance stated this requirement is based on proposed legislation, while Cooper Medical Center suggested that the standard be amended to only report involuntary reduction or restriction of clinical privileges.

RESPONSE: These standards are authorized by existing law at N.J.S.A. 26:H-12.2, and thus are not modified in substance. The standard addresses the periodic review of clinical privileges of all individuals and thus there is a rational basis for the reporting of any actions taken in regard to these privileges to be codified. For clarity, the Department has recodified subsection (g) as (j).

N.J.A.C. 8:43G-16.1(h)

COMMENT: Cooper Medical Center asked that the Department's chairman or director be responsible for "clinical" administration rather than "administration".

RESPONSE: Administration of the clinical department incorporates the responsibility of clinical administration. Non-clinical management functions are also necessary and should be the responsibility of the director or chair but may be delegated. The responsibility to take or recommend actions involving staff who fail to meet the department's quality of care standards is specifically assigned to the director or chair. No change is made to the standard.

N.J.A.C. 8:43G-16.1(i)

COMMENT: Princeton Medical Center commented that the number of meetings of the clinical department should not be prescribed.

RESPONSE: Although the Department believes that the intent of the standard, to assure regular meetings of clinical departments, will result in improved care to patients, it is agreed that the numeric requirement is overly prescriptive and the rule is deleted.

N.J.A.C. 8:43G-16.1(j)

COMMENT: St. Peter's Medical Center suggested that the functions and responsibilities of Executive Committee should be identified in medical staff by-laws and not in licensing standards.

RESPONSE: The medical staff, in order to effectively address hospital-wide patient care issues, must organize itself in an Executive Committee structure. It is felt that the identified responsibilities of addressing patient care policies and procedures and issues are basic to effective clinical management of a hospital, and thus, no change is made.

N.J.A.C. 8:43G-16.1(k)

COMMENT: Six commenters suggested that the standard be ended after the word "annually", as the medical staff should be allowed to

determine who is invited to meetings. It was noted as an example that they may wish to restrict attendance to active staff, rather than including courtesy staff, allied health professionals, and others.

RESPONSE: The medical staff should at a minimum hold a meeting for all active staff on an annual basis to offer a forum to discuss hospital-wide issues addressed routinely only by the Executive Committee. As this meeting should essentially be open to all staff involved in the ongoing delivery of care, deleting the requirement for "all staff" to attend provides no measurability or guarantee that this will occur. The exclusion of courtesy staff and allied health professionals, however, is felt to be a reasonable exception and the Department agrees to add the word "active" to permit this limitation.

N.J.A.C. 8:43G-16.1(l)

COMMENT: Ten commenters expressed general concerns about standards in subsections (l) and/or (l), (m), (n) and (o), such as the standard is based on proposed law, the reporting procedure outlined is a procedure, not a standard, and confidentiality is not sufficiently addressed. It was also suggested that peer review activities will be adversely affected by the reporting requirement, especially in the area of voluntary reduction of privileges. This will increase rather than decrease the number of marginal practitioners. It was stated that depriving medical staff of voluntary restrictions will lead to a greater number of marginal practitioners exercising clinical privileges rather than desired fewer numbers.

J.F.K. Medical Center suggested that "or a medical practitioner review panel" be deleted. It also stated that multiple reporting to the Department of Health and the Board of Medical Examiners raises concerns about breach of confidentiality. It recommended that the Board of Medical Examiners retain sole responsibility for monitoring physician conduct and performance. Wm. B. Kessler Hospital commented that the standard goes beyond the Health Care Quality Improvement Act and will inhibit peer review.

RESPONSE: The requirements for notification to the New Jersey State Board of Medical Examiners for physicians falling into the categories identified at paragraphs (l) 1 through 6 are those contained in the "Professional Medical Conduct Reform Act of 1989", approved by the New Jersey Assembly in June 1989, and currently under consideration by the New Jersey Senate. (Item 7 has been removed from the legislation and the Department is acting to delete this from the rule). The Department believes that these requirements are appropriate public policy, consistent with the intent of the legislature, and are necessary to promote the delivery of safe and effective medical care in New Jersey hospitals.

The reporting of actions taken against practitioners with privileges to the Board of Medical Examiners or the Department of Health does not imply or mandate that any further action will be taken against the individual and the information is retained confidentially to the extent permitted by New Jersey law.

N.J.A.C. 8:43G-16.1(l)

COMMENT: St. Elizabeth's commented that reporting voluntary resignations or relinquishing partial privileges before the facts have been established appears to be punitive and unfair. Robert Wood Johnson Medical Center commented that the rule could have the effect of having physicians reported merely on hearsay evidence that they expressed an intention to resign. Reporting should be based only on formal written resignation.

RESPONSE: The reporting of a practitioner's voluntary resignation or intention to voluntarily resign only applies when the hospital has initiated a review of his or her conduct or patient care. This notification to the State Board of Medical Examiners or the Department would not imply or mandate any action be taken by the state agency, other than to keep this on file and advise other licensed health care facilities that request this information of the action. If the practitioner has been reinstated and cleared of any allegations of impairment or misconduct, then this action should also be reported to state agencies to clear the record at that level. The standard is amended at N.J.A.C. 8:43G-16.1(l)7 to indicate that reinstatement actions at the conclusion of the review must be reported to clear the record.

N.J.A.C. 8:43G-16.1(l)2

COMMENT: Muhlenberg, Robert Wood Johnson, and St. Elizabeth's Medical Centers commented that the inappropriate use of informal or hearsay information has the potential for serious legal consequences if there is any error or misunderstanding of facts.

RESPONSE: The Department again believes that this notification is appropriate and will serve to protect the consumer's interest in the delivery of safe and effective medical care.

N.J.A.C. 8:43G-16.1(l)3

COMMENT: Cooper Medical Center stated that any temporary action against a physician by a hospital should not be reported to the Board of Medical Examiners. Muhlenberg Medical Center expressed serious concern about grouping the actions against physicians for impairment with incompetence and misconduct. An individual may be impaired without being incompetent or guilty of misconduct.

RESPONSE: The notification requirement at N.J.A.C. 8:43G-16.1(l)7 is amended to reflect that reinstatements shall be reported to the state agencies as well. It is believed that temporary actions may be the result of potentially serious violations of patient care delivery practices. This information should be promptly available to other health care providers in the event the practitioner attempts to relocate his or her practice at another institution in the interim while the review is being conducted. Action against a practitioner's privileges for either incompetency, misconduct, or impairment are of sufficient import to delivery of care to patients that this information should be available to the State Board of Medical Examiners and to other potentially affected health care providers.

N.J.A.C. 8:43G-16.1(l)4

COMMENT: Columbus Hospital commented that reporting should be confined to those instances where results of such review indicate incompetency, misconduct, or impairment. Muhlenberg Medical Center indicated its physicians expressed concern that this places serious and damaging limitations on the effectiveness of Quality Assurance activities and monitoring. Practitioners will become even more threatened and may practice medicine in a manner that speaks more to self-defense than quality care. St. Elizabeth's felt that reporting such actions will deter facilities from taking such actions and therefore inhibit facilities' ability to improve patient care.

RESPONSE: The Department again believes these notification requirements are appropriate public policy and are consistent with pending legislation approved by the New Jersey Assembly. If all facilities are required to take these actions then the quality of patient care will be enhanced Statewide.

N.J.A.C. 8:43G-16.1(l)5

COMMENT: Muhlenberg Medical Center commented that the indications of when a physician takes a leave of absence are very questionable, since many practitioners with medical problems do not of necessity request a leave. The significance of this requirement and its interpretation of impairment would discourage most physicians from even considering a leave of absence. Cooper Medical Center asked that it be deleted.

RESPONSE: The conditions under which a leave of absence must be reported are limited to those which impair the ability of the practitioner to practice with reasonable skill and safety. In addition, the notification of a leave of absence taken by a physician in these circumstances will preclude this mechanism from being utilized to become exempt from reporting requirements.

N.J.A.C. 8:43G-16.1(o)

COMMENT: Wm. B. Kessler Hospital commented that the information reported to the Board of Medical Examiners should be of no immediate concern to the Office of the Assistant Commissioner, Department of Health, as the Board of Medical Examiners is the properly designated body to receive and act upon this information.

RESPONSE: The Department believes that information being provided to the State Board of Medical Examiners in relation to actions taken by a licensed New Jersey hospital against privileges granted to a clinical practitioner is an indicator of potential problems with the quality of care rendered to consumers at the institution. No penalty or licensure deficiency is mandated by the rule against the hospital or physician for the investigation, limitation on privileges, suspension, or other action. The Department recognizes the proper role and authority of the Board of Medical Examiners in evaluating and/or acting on the information it receives from hospitals. The intent is to alert the Division of Health Facilities Evaluation of these actions to assure that the hospital is properly monitoring the care being delivered by the practitioner, where appropriate, in order to protect the quality of care.

N.J.A.C. 8:43G-16.2

COMMENT: The Department of the Public Advocate commented that New Jersey law states that no medical procedure may be performed without a patient's informed consent. The Public Advocate believes this standard implies that there are instances in which a patient's consent is not necessary, and thus should be revised.

RESPONSE: The Department agrees that the current Supreme Court holdings place an affirmative burden on each physician to obtain informed consent for all medical procedures. The Manual of Standards for Hospitals addresses the hospital's responsibilities in organizing its Medical Staff in a manner that will assure high quality health care is delivered to patients. Although the standards are not the appropriate forum to delineate all informed consent requirements that pertain to a physician-patient relationship, they should not be construed in a manner that would limit any of the physician's legal responsibilities. Therefore, the standard is revised to clarify the hospital's responsibilities in establishing policies and procedures that promote physician compliance with current law in this area.

N.J.A.C. 8:43G-16.2(a)2 and 3

COMMENT: Six comments were received indicating that the term "minimum contents" as it pertains to the medical record is unclear and should be deleted.

RESPONSE: The Department believes the hospital should have a policy addressing the minimum contents of the medical record. To clarify the language, the standard is amended to "... and timing of the patient history and physical examination, including a listing of the minimum contents to be included in the medical record."

N.J.A.C. 8:43G-16.2(b)

COMMENT: The Department of the Public Advocate expressed a strong concern regarding the appropriate use of restraints and feels this standard needs to address the accepted minimum standards of practice for the use of restraints.

RESPONSE: The Department concurs that the orders for use of restraints should be in compliance with accepted standards of practice and amends the rule to adopt by reference the standards for use of restraints contained in State law at N.J.S.A. 30:4-24.2d(3).

These specify the conditions under which emergency restraints may be used without order, physician evaluation and monitoring requirements, and maximum effectiveness of a written order (24 hours).

N.J.A.C. 8:43G-16.2(c)

COMMENT: The Public Advocate commented that the rule should clearly state that hospitals have no authority to declare their patients incompetent by medical fiat, and that medical staff may not involuntarily impose services upon presumed incompetent patients, unless they first apply for appointments of a special medical guardian.

In addition, nine hospitals commented that they were being put in the position of establishing a "means" to assess a patient's competence. Several stated that the determination of competency is a legal issue, not medical. One commenter referred to the Board of Medical Examiners' position that an adult is presumed competent unless significant information to the contrary comes to the attention of the physician. The New Jersey Hospital Association suggested the following language: "There should be a mechanism for dealing with treatment decisions for patients who are unable to make medical decisions for themselves."

RESPONSE: The Department concurs with the commenters that the determination of incompetence is a legal procedure and the rule will clarify this intent and cross-reference the appropriate mechanism for appointment of a special medical guardian, which are the Civil Practice Rules at 4:83-12.

N.J.A.C. 8:43G-16.2(d)

COMMENT: Six commenters do not feel this standard addressing pediatric blood sampling belongs in medical staff as it is a hospital policy, and further questioned why this needs to be in the regulations.

RESPONSE: The standard is addressed in N.J.A.C. 8:43G-22, Pediatrics, at N.J.A.C. 8:43G-22.3(b) and, therefore, is deleted from this subchapter. The Department believes this is a blood sampling methodology that is appropriate for all pediatric patients.

N.J.A.C. 8:43G-16.2(e)

COMMENT: Six commenters questioned why the physician must make a note each visit, stating the medical record should contain only pertinent information. It was suggested that this standard be incorporated

into N.J.A.C. 8:43G-16.6(i) which requires that every acute care patient receive a physician visit every day. Princeton Medical Center suggested that the second sentence be deleted.

RESPONSE: Without a written notation of the fact of a physician visit, the other primary caregivers will have no indication of whether the patient has been seen by the practitioner. In addition, this practice provides a consumer protection that a record is kept of all inpatient hospital visits provided by physicians that may result in a charge to the patient on the medical services bill. No change is made.

N.J.A.C. 8:43G-16.2(f)

COMMENT: Five hospitals commented that all facilities are aware that they must comply with all applicable laws and regulations, and felt the rule cross-referencing compliance with State Board of Medical Examiner requirements is unnecessary.

RESPONSE: The Department believes that incorporating the requirement in the standard allows a basis for licensure action should a hospital be out of compliance with the law. This is necessary should the non-compliance be the cause of a significant patient care problem, and there would be no remedy available to the Department to correct the problem.

N.J.A.C. 8:43G-16.2(g)

COMMENT: Four commenters suggested that the standard be changed to read that "Medical staff" shall require first year resident prescriptions to be counter-signed, instead of the "hospital". This standard should be reflected in medical staff by-laws.

RESPONSE: The hospital is the entity which is responsible for the quality of care offered in the institution and will be the entity against which the Department will take action for any violations of standards. The manner in which this standard is complied with will be the responsibility of the hospital. Thus, no change is made.

N.J.A.C. 8:43G-16.3 Medical staff qualifications; mandatory

COMMENT: Five commenters suggested that the standard be amended to state "all physicians with clinical privileges" rather than "with privileges". It was also suggested that the standard be moved into N.J.A.C. 8:43G-16.1.

RESPONSE: The Department concurs with the addition of "clinical" but retains its codification under mandatory medical staff qualifications. In addition, new subsection (b) is added to reflect the Department's response to generic comments in opposition to credentialing requirements, permitting exceptions to particular Board certification standards throughout the rules.

N.J.A.C. 8:43G-16.5 Medical staff time and availability; mandatory

N.J.A.C. 8:43G-16.5(a)

COMMENT: There were a total of 18 commenters on this section, most of whom objected to the last sentence. The majority feeling was that each hospital should be allowed to determine whether or not one physician is able to cover the emergency room and the rest of the hospital. It was stated that the economic impact statement, noting that there were no substantial additional expenditures expected, was misleading.

A number of commenters felt that certification in basic life support is very elementary and does not equip a physician with any particular skills/training, and the requirement only serves to force hospitals to keep track of which physicians are certified. If an emergency did occur, a highly trained emergency code team would respond and there would not be reliance on a basic cardiac life support (BLS)-certified physician.

RESPONSE: The Department concurs with the commenters that the requirement for a separate BLS-certified physician in-house would not serve to significantly improve the ability of a hospital to respond to life-threatening emergencies requiring administration of basic life support services. Thus, the standard is deleted.

N.J.A.C. 8:43G-16.5(b)

COMMENT: Valley Hospital commented that absolute response times are difficult to enforce, and may subject hospitals to unreasonable liability for minor infractions.

RESPONSE: The standard is intended to facilitate the development of reasonable expectations for arrival of medical staff in emergencies in a hospital's policies and procedures. Absolute time limits are not mandated by this rule, but have been addressed in particular subchapters such as Emergency services where it is felt critical for patient safety to set finite limits. It is anticipated that these policies would provide hospital personnel and medical staff working guidelines on expectations of the hospital, thus better preparing the hospital to meet patient care needs in an emerg-

ency. As policies and procedures, the medical staff will have an opportunity to participate in their development to promote the reasonableness of the timeframes. The liability for non-compliance would appear to be shifted to a significant extent to the staff by virtue of the establishment of the response time policies.

N.J.A.C. 8:43G-16.5(c)

COMMENT: Princeton Medical Center suggested that the list of on-call specialists should be available to personnel, but it was not necessary to specify "on all patient units".

RESPONSE: The availability of the on-call specialist list to all patient care units is intended to promote more timely access to specialized medical care in an emergency and to facilitate the attending physician's ability to coordinate ordering of consultations and specialized care during the patient's stay. The precise manner in which this list is distributed to personnel is to be decided by the hospital.

N.J.A.C. 8:43G-16.6 Medical staff patient services; mandatory

N.J.A.C. 8:43G-16.6(b)

COMMENT: Jersey Shore Medical Center commented that in teaching hospitals, residents do the patient medical history and physical which are then signed off by attending physician. It felt the standard should be amended to allow for this.

RESPONSE: The rule would not preclude this system from being utilized as long as the licensed physician signed the history and physical that is contained in the medical record.

COMMENT: The New Jersey Hospital Association, West Jersey Hospital, and St. Clare's Medical Center commented that there were no valid medical reasons to restrict history and physical to having been performed within seven days and suggested the standard be modified. Hunterdon Medical Center commented that as the standard notes that subsequent changes should be recorded at the time of admission, then it is not necessary to restrict the physical to seven days before admission.

RESPONSE: The Department concurs that there may be a valid physical exam performed prior to seven days and the standard is amended to state "within 14 days prior to admission or within 24 hours after admission".

N.J.A.C. 8:43G-16.6(c)

COMMENT: The New Jersey Hospital Association, St. Clare's, and Mercer Medical Center commented that the term "assessment mechanism" is unclear and needs to be defined further. It was suggested that the consultant should be required to "document the findings and opinions" instead of "to issue a report".

RESPONSE: The term assessment mechanism refers to the procedure or diagnostic method utilized in evaluating the patient during the consultation and it is believed a more extensive explanation in the rule is unnecessary. The language change suggested is not made as the term "issue a report" is synonymous to documenting findings.

N.J.A.C. 8:43G-16.6(d)

COMMENT: The New Jersey Hospital Association, Jersey Shore Medical Center, and West Jersey Hospital suggested that the last sentence be ended after "him or her". St. Clare's commented that the rule should be changed to reflect that clinical privileges are granted by the governing body of the hospital and not by the medical staff. Mercer Medical Center questioned whether the term "clinical consultation" would cover x-ray readings by a radiologist, which are considered by radiologists to be clinical consultations.

RESPONSE: The standard is amended to delete "medical staff" and thus the consultations will be in accordance with the privileges accorded him or her by the hospital. The hospital shall determine under its policies and procedures or Medical Staff by-laws whether it wishes to consider x-ray readings by a radiologist as a clinical consultation.

N.J.A.C. 8:43G-16.6(e), (f), and (g)

COMMENT: Seven commenters suggested that these standards addressing organ transplant services do not belong in the medical staff subchapter.

RESPONSE: The Department concurs and has recodified these standards to the Administrative and Hospital-Wide subchapter, N.J.A.C. 8:43G-1.

N.J.A.C. 8:43G-16.6(h)

COMMENT: The New Jersey Hospital Association, Jersey Shore, West Jersey, and St. Clare's Hospitals felt this role assuring that medical

care will be offered to all patients regardless of their ability to pay belongs in an administrative policy section. A wording change was also suggested: "There shall be a mechanism in place to assure that all patients who present to the hospital for treatment are assigned a physician." Princeton Center commented that this should not be standard since hospitals accept uncompensated care and have arrangements with medical staff to provide inpatient hospital care.

RESPONSE: The assurance that medical care will be offered to all patients regardless of the ability to pay is a cornerstone of public policy in New Jersey's health care system. It has been addressed in the medical staff section of the Licensing Standards as this subchapter addresses the provision of health care services by the medical staff. As the language clearly states the intent of the rule, and it is properly cited in this section, no change is made.

N.J.A.C. 8:43G-16.6(i)

COMMENT: Two commenters felt that the meaning of "acute care patient" needs to be clarified, in order to establish whether patients at a SNF or ICF level of care are covered by the rule. New language was suggested, to state: "In general, patients in a hospital should be seen daily by a practitioner, except in cases where they are awaiting placement in a long-term care or rehab facility, are mental health or alcoholic patients. In all cases, every patient should receive a visit by a practitioner with clinical privileges at least every other day."

Mercer Medical Center asked whether a visit by a physician surrogate would be considered acceptable, that is, a nurse-midwife visit to a postpartum patient, while St. Joseph's asked whether the standard is applicable to a short-term psychiatric unit. Princeton Medical Center commented that there are valid cases where hospital patients need not be visited every day.

RESPONSE: The Department agrees with commenters that there may be valid exceptions to the general rule that an acute care patient must receive a visit by a practitioner on a daily basis during a hospital inpatient stay. To address these exceptions, and to retain the essence of the standard, the following addition is made to the standard: "... unless there is a clinical basis to justify the patient not receiving such a visit that is documented in the medical record. In all cases a patient shall receive a visit by a practitioner at least once every two days." In addition, the term "physician visit" is revised to "a visit by a clinical practitioner".

N.J.A.C. 8:43G-16.9

COMMENT: Several commenters in generic comments expressed concern about the specific staff education requirements for medical staff.

RESPONSE: The Department is consolidating all staff education requirements under N.J.A.C. 8:43G-5.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 16. MEDICAL STAFF

8:43G-16.1 Medical staff structural organization; mandatory

(a) There shall be an organized medical staff that is responsible to the governing body of the hospital. Bylaws governing all medical staff members shall be implemented.

(b) Applications for membership, privileges, or initial appointment to the medical staff shall be processed under a system that includes, at least, the verification of applicants' credentials, periodic review of privileges, and obtaining information about any disciplinary action against the applicant ***[by]* *available from*** the New Jersey Board of Medical Examiners or the Federal Clearinghouse established pursuant to the Health Care Quality Improvement Act, P.L. 99-660; 100 STAT 3743.

(c) Applications for medical staff membership, ***clinical*** privileges, or initial appointment submitted by health professionals who are not ***[physicians]* *practitioners***, shall be reviewed according to the same established criteria and procedures that govern physicians' applications, including obtaining information about any disciplinary action by New Jersey professional licensing boards.

(d) A committee ***or mechanism*** shall be ***[designated]* *established*** to be responsible for examining applications for appointment and reappointment to all categories of the medical staff. This committee shall recommend the conferring or withholding of all staff positions. It shall assure that all credentials are documented and verified.

(e) Medical staff privileges shall be specifically delineated and based on the ***[physician's]* *practitioner's*** training, experience and demonstrations of clinical competence.

***[(f)]** When identified, impaired physicians shall be closely monitored and/or limited in their privileges. The hospital and medical staff shall have a formal mechanism for identifying and referring impaired physicians to a program established to treat impaired physicians such as the Physicians Health Program of the Medical Society of New Jersey. Such reporting does not relieve a hospital of any obligations under (l), (m), (n), or (o) below.

(g) The clinical privileges of all individuals shall be fully reviewed periodically. Actions which result in reduction or restriction of staff privileges shall be reported to the New Jersey Board of Medical Examiners in accordance with N.J.S.A. 26:2H-12.2.]*

[(h)](f)*** The medical staff shall be divided into clinical departments. Each department shall be directed by a director, physician director, chairman or chief who is responsible for its administration and for taking or recommending action in those instances in which staff members fail to meet the department's standards of quality of care.

***[(i)]** Each clinical department shall conduct meetings at least 10 times a year to discuss patient care.]*

[(j)](g)*** There shall be an executive committee for the medical staff which performs supervisory functions, including reviewing patient care policies and procedures and serving as a forum for discussing patient care issues identified by the clinical departments.

[(k)](h)*** A medical staff meeting shall be held at least annually for all ***active*** staff members.

***[(i)]** The hospital and medical staff shall have a formal program addressing impaired practitioners. This program shall include the following components:

i. Policies and a mechanism which encourage the voluntary or informal identification or reporting of practitioner impairment to the hospital;

ii. A mechanism for monitoring physician performance and for the limitation of clinical privileges if appropriate; and

iii. A procedure for the referral of impaired practitioners to appropriate treatment.*

***[(j)]** The clinical privileges of all individuals shall be fully reviewed periodically. Actions which result in reduction or restriction of staff privileges based on this review shall be reported to the New Jersey Board of Medical Examiners in accordance with N.J.S.A. 26:2H-12.2.*

[(l)](k)*** The hospital shall notify the New Jersey State Board of Medical Examiners, or a medical practitioner review panel created by legislation and subordinate to the Board, if a physician who is employed by, under contract to render professional services to, or has privileges at the hospital:

1. Voluntarily resigns from the staff while the facility is reviewing the physician's conduct or patient care or has through any member of the medical or administrative staff expressed an intention to do so;

2. Voluntarily relinquishes any partial privileges to perform a specific procedure while the hospital is reviewing the physician's conduct or patient care or has, through any member of the medical or administrative staff, expressed an intention to do so;

3. Has full or partial privileges summarily or temporarily revoked or suspended, permanently reduced, suspended or revoked, has been discharged from the staff or has had a contract to render professional services terminated or rescinded for reasons relating to the physician's incompetency misconduct, or impairment;

4. Agrees to the placement of conditions or limitations on the exercise of clinical privileges or practice within the health care facility including, but not limited to: second opinion requirements, non-routine concurrent or retrospective review of admissions or care, non-routine supervision by one or more members of the staff, or the completion of remedial education or training;

5. Is granted a leave of absence pursuant to which he or she may not exercise clinical privileges or practice within the hospital if the reasons provided in support of the leave relate to any physical, mental, or emotional condition or drug or alcohol use, which might impair the physician's ability to practice with reasonable skill and safety;

6. Is a party to a medical malpractice liability suit in which the hospital is also a party, in which there is a settlement, judgement, or arbitration award; or

[7. In any other way, voluntarily or involuntarily has a temporary or permanent reduction or suspension of privileges, resigns, is terminated, or takes a leave of absence from the medical staff, or through other means has a reduction in professional responsibilities related to issues of misconduct, impairment, or incompetence; or becomes the subject of a complaint or disciplinary proceeding or action based on information which reasonably indicates that the physician engaged in any conduct, used any drugs or alcohol, or suffered from any mental or physical condition which may have improperly jeopardized or risked the health, safety, or life of a patient. This paragraph does not require a facility to notify any board, panel, or department of any leave of absence or reduction in professional responsibilities which is wholly unrelated to issues of misconduct, impairment, or incompetence of the physician.]

*7. **Has privileges, conditions or limitations reinstated or a leave of absence concluded where the results of the investigation clear the practitioner from all allegations of misconduct, impairment, or incompetence.***

[(m)](l)* Notifications required by *[(1)]* *(k)* above shall be provided within 30 days of the reported event and shall be submitted on forms provided by the Department of Health for that purpose.

[(n)](m)* The hospital shall provide to the State Board of Medical Examiners, or to a practitioner review panel created by legislation and reporting to the board, such additional information on individual instances of loss or change of physician privileges, possible impairments, and medical malpractice liability as the board or panel requests in accordance with law.

[(o)](n)* The hospital shall provide to the following:

Office of the Assistant Commissioner
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, N.J. 08625-0367

copies of all reports regarding physician hospital privileges sent to the New Jersey State Board of Medical Examiners, or to the practitioner review panel created by legislation and reporting to the board. All records regarding such copies shall be made available to the Department of Health personnel for official purposes and, for each report, to the specific facility mentioned in the report.

8:43G-16.2 Medical staff policies and procedures; mandatory

(a) The medical staff shall have written policies, procedures, and by-laws that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. ***[A list of those]* *Policies and* procedures *[and treatments that require a patient's]* *addressing the requirements for obtaining* written informed consent *from patients*;**

2. Requirements for the completeness and timing of the ***patient*** history and physical examination, including ***a listing of*** the minimum contents to be included in the medical record;

3. The minimum content of physician orders; and

4. Specifications for verbal orders, including who may give verbal orders, who may receive them, and how soon they must be verified or countersigned in writing.

(b) All physician orders for medication, treatment, and restraints shall be in writing. ***All orders for restraints shall be made in accordance with requirements at N.J.S.A. 30:4-24.2(d)(3)*.**

(c) The medical staff shall have a means to assess individual patient's competence to consent to treatment ***in conformance with current law***. Measurement of patient competence may include such skills as ability to understand their medical condition and the consequences of procedures and treatments, and to communicate a choice. ***The hospital and physician shall follow the procedures for appointment of a special medical guardian where required in accordance with the Civil Practice Rules at 4:83-12.***

[(d) The hospital shall have a policy that identifies the diagnostic procedures that use micromethodology techniques of analyzing blood in order to reduce the quantities of blood drawn from patients, especially young children.]

[(e)](d)* Each time the attending physician visits the patient, the physician shall enter a note into the medical record describing the findings about the patient's condition. If issues have been raised in the record by other disciplines, this note shall respond to them.

[(f)](e)* The hospital shall comply with the New Jersey State Board of Medical Examiners rules concerning the registration and permit requirements for graduate medical education programs and practice, N.J.A.C. 13:35-1.5.

[(g)](f)* The hospital shall require that all prescriptions and orders issued by registered first-year residents in the inpatient setting be countersigned by a licensed physician or permit holder (a person authorized in the State of New Jersey to engage in the practice of medicine in the second year of a graduate medical education program or beyond).

8:43G-16.3 Medical staff qualifications; mandatory

[(a)] All physicians with ***clinical*** privileges shall be licensed or authorized to practice medicine by the New Jersey Board of Medical Examiners. All non-physicians with privileges shall be licensed or authorized to practice in the State of New Jersey, as required by law.

*[(b) In any subchapter of these rules requiring a practitioner to be Board-certified within his or her medical specialty, it shall be deemed acceptable to possess:

i. Board certification from one of the recognized boards of osteopathic medicine; or

ii. Board certification from a foreign Board within the specified medical specialty where the American Board offers reciprocity with or officially recognizes the foreign board certification credential.*

8:43G-16.4 Medical staff qualifications; advisory ***(Reserved)***

8:43G-16.5 Medical staff time and availability; mandatory

[(a) A physician who is certified in basic cardiac life support shall be in the hospital at all times. This physician shall not be assigned to the emergency room at the same time.]

[(b)](a)* The hospital shall establish policies and procedures for response times for emergencies.

[(c)](b)* There shall be an on-call list of medical and surgical specialists that is available to personnel in all patient care units.

8:43G-16.6 Medical staff patient services; mandatory

(a) Each patient shall have an attending physician who has overall responsibility for the patient's care in the hospital.

(b) Each patient admitted to the hospital shall have a complete medical history and physical examination that includes a provisional diagnosis performed by a physician within ***[seven]* *14*** days prior to admission or within 24 hours after admission. If the history and physical were performed within ***[seven]* *14*** days prior to admission, the patient's history and physical examination record completed by the attending physician shall be included in the medical record, with any subsequent changes recorded at the time of admission.

(c) When there is a clinical consultant, he or she shall issue a report that states at least the assessment mechanisms used, findings, and opinion. This report shall be included in the medical record.

(d) The reason or reasons for requesting a clinical consultation shall be specified in the patient's medical record by the attending physician. The consultant shall provide consultation in accordance with the privileges accorded him or her by the hospital ***[medical staff]***.

*[(e) If the hospital performs organ transplants, the director of the medical staff shall ensure that all health professionals serving the patient have sufficient clinical experience in transplantation care, based on predetermined criteria established in hospital policies and procedures or set by the American Society of Transplant Surgeons.

(f) If the hospital performs organ transplants, the director of the medical staff shall ensure that satisfactory follow-up care and consultation are provided to all transplantation patients, including multidisciplinary conferences held at periodic intervals.

(g) The hospital shall provide counseling regarding anatomical gifts for families of those patients suitable for organ donation in which death appears to be imminent.]*

*[(h)]**(e)* Medical care shall be provided to all patients, regardless of their ability to pay.

*[(i)]**(f)* Every acute care patient shall receive a *[physician]* visit ***by a clinical practitioner*** every day ***unless there is a clinical basis to justify the patient not receiving such a visit that is documented in the medical record by the practitioner. In all cases a patient shall receive a visit by a practitioner at least once every two days***.

8:43G-16.7 Medical staff education; mandatory

[All medical staff members shall participate in organized education sessions relevant to their practice, as specified by the medical staff.]

Requirements for the medical staff education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-16.8 Medical staff quality assurance methods; mandatory

There shall be a medical staff mechanism by which the quality of medical care is monitored, problems identified, solutions recommended and implemented, and follow-up conducted. Summary reports of these activities and problems in the quality of care shall be reviewed by the medical executive committee, or its equivalent.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Nursing Staffing

Adopted New Rules: N.J.A.C. 8:43G-17

New Rule Not Adopted But Still Pending: N.J.A.C. 8:43G-17.2

Proposed: June 19, 1989 at 21 N.J.R. 1623(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.87, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted but still pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-17.2 has not been adopted and is still pending. The pending rule is an advisory standard, which was proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department of Health received 28 comment letters in response to the proposed nurse staffing regulations. In addition, comments were received from the New Jersey Hospital Association and the Board of Nursing. A summary of comments and responses follows:

N.J.A.C. 8:43G-17.1(a) Nurse staffing; mandatory

COMMENT: Two commenters question the need and cost of implementing a patient classification system and note that these systems are not sufficiently developed to be reliable indicators.

RESPONSE: The Department believes nurse staffing assignments should be accomplished through the evaluation of the acuity of illness of the patient and the skill level of available personnel. Acuity systems have proven to be a practical and efficient mechanism for assigning necessary staffing levels and these systems are currently in effect in most New Jersey hospitals.

COMMENT: The New Jersey Hospital Association noted that some patient care areas (for example, operating room and emergency room) do not easily lend themselves to inclusion in an acuity system.

RESPONSE: While the Department recognizes staffing determinations of individual units in the hospital might not easily lend themselves to inclusion in an acuity system, the Department believes this provisions allows the hospital the flexibility to implement the system appropriate to the needs of the particular unit. In determining staffing for specialized units, a retrospective analysis of patient acuity levels and staffing needs can be employed.

COMMENT: One commenter feels the system used to meet this standard should be determined by the hospital.

RESPONSE: The Department agrees and is allowing the hospital the latitude to utilize a system of its own choosing.

N.J.A.C. 8:43G-17.1(b) Nurse staffing; mandatory

COMMENT: The Board of Nursing and other commenters suggest clarifying the standard by adding the "registered" before nurse manager.

RESPONSE: The Department agrees with the comments as this more accurately reflects the intent of the standard and makes the change accordingly.

COMMENT: Two commenters, while both agreeing with the intent of the standard, believe that wording should be added which allows the hospital to define what constitutes a "unit".

RESPONSE: The Department feels this standard allows for hospital flexibility as to the identification of a unit as defined in the hospital organizational plan or policies and procedures and that the above standard does not preclude the institution combining units under one registered nurse manager. The standard remains with the clarification noted above.

N.J.A.C. 8:43G-17.1(c)1 Nurse staffing; mandatory

COMMENT: The Department received two comments objecting to the requirement that hospitals must use an objective factor patient classification system, thus precluding the use of a prototype system.

RESPONSE: The Department has reconsidered its position and is amending the standard to permit the use of an objective patient classification system of either a factor evaluation or prototype evaluation type system.

N.J.A.C. 8:43G-17.1(c)2 Nurse staffing; mandatory

COMMENT: The Department received two comments concerning the frequency with which acuity assessments are performed for patients in each care unit.

RESPONSE: The Department's position remains unchanged. The Department's advisory groups, comprised of experts from nursing and administration, felt a daily acuity system was both necessary and feasible.

N.J.A.C. 8:43G-17.1(c)5 Nurse staffing; mandatory

COMMENT: One commenter maintains that this standard appears wasteful since nurses are the most costly element of the health care delivery system.

COMMENT: One commenter feels this is too prescriptive based on the availability of nurses.

COMMENT: St. Elizabeth's believes that each institution should define the percentage of staff regarded as minimum for meeting patient care needs.

COMMENT: St. Peter's feels that due to the wide range of acuity classifications systems in place at this time, 65 percent of the hours indicated may or may not be adequate.

COMMENT: Hunterdon Medical Center questions the need for the standard or the value of the acuity system if the variance from the acuity system may be as great as 35 percent.

COMMENT: Cooper Hospital feels that actual hours of direct patient care worked being 65 percent of the hours indicated by a valid patient classification system constitute unsafe patient care. "Only after the implementation of a valid Patient Classification System can a percentage standard for safe care according to patient acuity be defined."

RESPONSE: The Department believes that the standard permits hospitals the flexibility of determining its own acuity system while requiring that they demonstrate implementation of nurse staffing patterns which assure an adequate level of direct patient care provided. While it is acknowledged that 65 percent may represent a level that is too low in certain facilities, it does constitute a minimally acceptable level for all general hospitals.

COMMENT: The New Jersey Hospital Association (NJHA), the Organization of Nurse Executives and East Orange General Hospital requests explanation of the word "nurse" as used in the standard.

RESPONSE: The Department agrees that more accurate wording is required to avoid any uncertainty regarding the intent of the standard. The standard now reads as follows: "Licensed nurses shall provide at least 65 percent of the direct patient care hours indicated as needed on inpatient units by the hospital's acuity system to patients on a hospital wide average."

COMMENT: The NJHA opposes the prescriptiveness of this standard.

RESPONSE: The Department believes this standard is essential to assure the delivery of effective and safe quality health care. The proposed rule is based on recommendations from industry-wide clinical experts who have been participants in the standards development process. The standard sets attainable levels and is reflective of current practices and consequently remains unchanged.

N.J.A.C. 8:43G-17.1(d) Nurse staffing; mandatory

COMMENT: Two commenters state generic objections to the need for regulation in this area.

RESPONSE: The Department believes the proposed standard is essential to assure the protection of hospital patients. Additionally, the standard is consistent with N.J.A.C. 8:43B-5.3(d), the Department's current licensing standard which provides minimum requirements for nurse staffing.

N.J.A.C. 8:43G-17.1(f) Nurse staffing; mandatory

COMMENT: Four commenters state generic objections to the need for regulation in this area of hospital practice.

RESPONSE: The Department believes the standard is representative of the Department's responsibility to establish and enforce standards for the operation and licensure of hospitals with the ultimate goal of providing quality health care. The standard is reflective of good health care management and many hospitals have in effect contingency plans to assure adequate nurse staffing. The standard remains unchanged.

COMMENT: Cooper Hospital suggested adding the words, "except in an emergency situation" to the standard.

RESPONSE: The Department recognizes Cooper Hospital's concern about staffing in emergency situations. This is the exact problem the standard is attempting to address and the Department believes enough latitude is provided to the hospital since the standard merely calls for the hospital to have in effect a contingency plan and thus retains the standard unchanged.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 17. NURSE STAFFING

8:43G-17.1 Nurse staffing; mandatory

(a) Nurse staffing assignments shall be based on patient acuity levels, determined through patient classification systems which address the needs of the nursing unit.

(b) There shall be a ***registered*** nurse manager for each patient care unit and for surgery, emergency department, and other units, as specified in the hospital organizational plan or policies and procedures.

(c) The hospital shall have in place an acuity system that has at least the following characteristics:

1. Patients are classified through ***[an objective factor]* *a factor evaluation or prototype evaluation*** system, based on clinical assessments of the comprehensive nursing needs of each patient;

2. Acuity assessments are made on a daily basis for patients in each care unit;

3. Acuity assessments are made by registered professional nurses; however, licensed practical nurses may participate in a patient classification system within their scope of practice;

4. The hospital makes staffing decisions based on the daily acuity data, as well as the qualifications of personnel needed to meet the nursing care needs;

5. ***[Actual hours of direct patient care worked by nurses are at least 65 percent of the hours indicated by the acuity system on each day as a hospital-wide average;]* *Licensed nurses shall provide at least 65 percent of the direct patient care hours indicated as needed on inpatient units by the hospital's acuity system to patients on a hospital wide average;*** and

6. The hospital conducts regular monitoring and review studies of its own acuity system, including indicators of reliability.

(d) There shall be at least one registered professional nurse in charge and assigned exclusively to each patient care unit on each shift. Additional staff shall be assigned by the hospital as required by the acuity levels.

(e) Patient care assignments shall be made on an individual basis by a registered professional nurse and reflect staff competence, skill, and aptitude and patient needs.

(f) The hospital shall have in effect a contingency plan for assuring adequate nurse staffing at all times. The plan shall detail policies and procedures to regulate closure of available beds, if actual staffing levels fall below specified levels.

8:43G-17.2 Nurse staffing; advisory ***(Reserved)***

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Nursing Care

Adopted New Rules: N.J.A.C. 8:43G-18

New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-18.4, 18.6 and 18.9

Proposed: June 19, 1989 at 21 N.J.R. 1624(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board)

Filed: January 10, 1990 as R.1990 d.86, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted but still pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-18.4, 18.6 and 18.9 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department of Health received 25 comment letters in response to the proposed nursing care regulations. In addition, comments were received from the New Jersey Hospital Association, the New Jersey Board of Nursing and the Public Advocate.

A summary of comments and responses follows:

N.J.A.C. 8:43G-18.1(b) Nursing care structural organization; mandatory

COMMENT: Several commenters stated generic objections to the need for regulation in this area.

RESPONSE: The Department has reviewed its position and this standard is deleted to become part of the advisory standards, if and when same are adopted.

N.J.A.C. 8:43G-18.1(d) Nursing care structural organization; mandatory

COMMENT: Englewood Hospital commented that the Department should not mandate the hospital's organizational structure.

RESPONSE: The Department has evaluated its position on this matter and this standard is deleted to become part of the advisory standards, if and when same are adopted.

N.J.A.C. 8:43G-18.1(e) Nursing care structural organization; mandatory

COMMENT: Several commenters state generic objections to the need for regulation in this area.

COMMENT: St. Joseph's Hospital feels this standard is inappropriate since the administration is represented by the CEO and/or COO. The commenter suggests that if nursing is represented in any exceptional way,

then all other groups of employees are entitled to be represented by their senior administrative person.

RESPONSE: The Department has reconsidered its position and this standard is deleted and moved to the advisory standards, if and when same are adopted.

N.J.A.C. 8:43G-18.1(f) Nursing care structural organization; mandatory

COMMENT: Several commenters state generic objections to the need for regulation in this area.

COMMENT: St. Joseph's Hospital repeats their objection to this standard in as much as the administration is already represented by the CEO and COO. If nursing is to be represented, then all other groups of employees are entitled to be represented by their senior administrative person.

RESPONSE: The Department has reviewed its position and deletes the proposed standard.

N.J.A.C. 8:43G-18.2(a) Nursing care policies and procedures; mandatory

COMMENT: The State Board of Nursing suggests including additional citation to this standard to identify that there are regulations in the New Jersey Administrative Code that impact on nursing practice.

RESPONSE: The Department believes this comment has merit and has made the appropriate additions. The standard will now read as follows: "The hospital shall have written policies and procedures for the nursing care service that guide nursing practices in the Hospital. These policies shall be reviewed annually, revised as needed, and implemented. These policies and procedures shall conform with the Nurse Practice Act, N.J.S.A. 45:11-23 and N.J.A.C. 13:37-1.4, 6.1, 6.2, 13.1 and 13.2.

N.J.A.C. 8:43G-18.3(a)1 and 2 Nursing care staff qualifications; mandatory

COMMENT: Four commenters strongly object to the need for the state to set mandatory requirements for professional credentials and experience when this function belongs with in the purview of hospital management.

COMMENT: The New Jersey Hospital Association (NJHA) comments that professional degrees and experience requirements as it relates to credentials held by the chief nursing executive is dependent upon the hospital setting, size and environment and that a clinical baccalaureate education in nursing is not necessarily the best preparation for an executive administrative role.

COMMENT: South Jersey Hospital System states that a baccalaureate degree in nursing or an R.N. with a B.S. or M.S. in a related field is more realistic.

COMMENT: The Board of Nursing requests changing the educational requirements for the chief nursing executive to require that the individual be a registered professional nurse with a master's degree in nursing, administration, public health, management or a related field from an accredited college or university.

RESPONSE: The Department has reviewed its position and has modified the proposed standard to recognize the diverse educational paths available to the registered professional nurse who is employed in nursing administration and responsible for executive functions. The Department acknowledges that a registered professional nurse who has completed the educational requirements necessary to obtain a degree in a related health field and has completed the experience requirement can be determined to be well suited to assume the duties and responsibilities of a nursing administrator.

COMMENT: Montclair Community Hospital suggests those chief nursing executives who are graduates of diploma schools, hold licensure as registered nurses and are in the process of obtaining a baccalaureate degree in nursing science should be considered in compliance with this regulation until January 1, 1995. A second commenter suggests rewording the standard to provide an exception for those persons already holding the position of chief nursing executive.

RESPONSE: The Department has reviewed its position and subsection (b) has been changed to the following: "Any individual holding the title of chief nursing executive upon the effective date of these rules shall be exempt from the qualifications in (a) above."

N.J.A.C. 8:43G-18.3(b)1 and 2 Nursing care staff qualification; mandatory

COMMENT: The Board of Nursing comments that the chief nursing executive, effective January 1, 1995 be a registered professional nurse with a master's degree in nursing, administration, public health, or management.

RESPONSE: The Department appreciates the comments of the Board of Nursing and agrees that the chief nursing executive is accountable for the delivery of care on a 24 hour basis. However, the Department believes that various avenues of educational preparation are available and would not want to preclude a hospital's selection of a qualified candidate to fulfill the role of chief nursing executive by eliminating potentially qualified candidates who may not have the educational requirements.

COMMENT: Underwood Memorial Hospital objects to a mandate that restricts the selection process by not looking at the total qualifications necessary to the position.

RESPONSE: The Department agrees with the commenter and has changed the subsection accordingly.

COMMENT: Six commenters strongly object to the need for the state to set mandatory requirements for professional credentials and experience when this function belongs within the purview of hospital management.

RESPONSE: The Department believes that professional credentials bear a strong positive relationship to quality patient care and while amending the standard to allow for greater flexibility and management discretion on the part of the hospital, the changed provision will provide minimal credentialing requirements.

COMMENT: The NJHA repeats its concern that a clinical baccalaureate education is not necessarily the best preparation for an executive administrative role.

RESPONSE: The Department agrees and has changed the subsection.

N.J.A.C. 8:43G-18.3(c) Nursing staff qualifications; mandatory

COMMENT: The Board of Nursing suggests clarifying the term "verify" in the standard.

RESPONSE: The Department agrees with the comment and has changed the wording to, "Before newly hired nurses provide patient care services, the hospital shall verify licensure or permission to work letters by visually examining the current pocket license or original permission to work letter".

N.J.A.C. 8:43G-18.3(d) Nursing care staff qualifications; mandatory

COMMENT: Cooper Hospital suggests replacing the word "nurses" with "nursing personnel."

RESPONSE: The Department acknowledges the comment but believes the intent of the standard to apply to licensed nurses is better realized if the wording remains unchanged.

N.J.A.C. 8:43G-18.3(f) and (g) Nursing care staff qualifications; mandatory

COMMENT: St. Joseph's suggests that rather than having multiple evaluation systems for agency nurses, the Department should create a state performance criteria.

RESPONSE: While the suggestion has merit, at this time the Department is unable to direct its efforts towards creating a state performance criteria system to evaluate supplemental nursing personnel. Shortages of nurses and various other health care personnel have forced health care institutions to employ temporary personnel from nursing agencies at an increasing rate and has led to the proliferation of temporary nursing agencies. The hospital employs these individuals and the hospital must be prepared to evaluate, and be responsible for, the performance of supplemental nursing personnel. The standard remains unchanged.

COMMENT: Cooper states that while there must be a system for evaluating all supplemental staff, including agency nurses, the responsibility must first be with the agency/private duty agency or registry for providing assurance of compliance with institutional requirements.

RESPONSE: The Department feels that the hospital must bear responsibility for evaluating all supplemental staff and that it remains with the hospital to assure that the agency/private duty agency or registry complies with the hospital's requirements or the hospital may elect to cease employing nursing personnel from that agency. The hospital is responsible for the level of competence of all personnel it allows to deliver patient care whether employed by the hospital on a permanent basis or contracted through a temporary agency. The standard prevails.

COMMENT: One commenter suggests combining subsections (f) and (g).

RESPONSE: The Department believes the scope and intent of each of the standards will be better maintained if they remain as independent standards.

N.J.A.C. 8:43G-18.5(d) Nursing care patient services; mandatory

COMMENT: One commenter states generic objections to the need for regulation in this area.

RESPONSE: The Department must assure the delivery of quality health care to consumers and believes this standard will positively impact on the hospital patient.

COMMENT: Newcomb Medical Center recommends that, due to the nursing shortage, the rule be changed to include acceptance of an interim note upon admission and a completed assessment within 48 hours.

RESPONSE: The Department believes it is essential for the registered nurse to perform an initial assessment of the patient in order to address patient problems and initiate appropriate care. With the average length of hospital stay at six to seven days, an assessment note that identifies the nursing diagnoses should be completed within 24 hours of the patient's admission and assessment to assure the delivery of timely, quality care for the patient. No change in this subsection is warranted.

N.J.A.C. 8:43G-18.5(e) Nursing care patient services; mandatory

COMMENT: St. Peter's Medical Center questions whether the Department is mandating that the plan of care become a permanent part of the medical record or is on going documentation of nursing care adequate to fulfill this standard?

RESPONSE: The Department allows the hospital to determine the documentation of the plan of care to the extent this is required by the hospital's own policies.

N.J.A.C. 8:43G-18.5(g)1 through 7 Nursing care patient services; mandatory

COMMENT: The Organization of Nurse Executives (ONE) writes that "the identified practices are part of professional responsibility" and that while many of the stated practices are routinely documented, there are those that are not necessary to document and questions the method the Department will use to ensure that these mandatory practices are fulfilled. ONE also asks if it is necessary to include all of the practices in this regulation. Morristown Memorial Hospital writes that they believe the required documentation regarding patient education to demonstrate compliance is unreasonable given reimbursement limits in New Jersey. St. Elizabeth Hospital comments that these standards are too prescriptive and should be deleted; "educational needs of the patient should include those aspects of areas of care identified by the registered professional nurse for the patient's care."

RESPONSE: The Department does agree with the essence of the comments. The intent of the subsection is to assure that the educational needs of the patient are met and does not specifically address documentation. However, the Department acknowledges the effectiveness of documentation as a means of verifying compliance and believes these practices are necessary for patient health and safety. The Department believes that the implementation of these practices is integral to the delivery of quality nursing care. Since education of the patient has always been one of the goals of nursing care, many of these practices have become routine. The prevalence of these practices does not preclude their inclusion in the regulations to ensure their continuance where appropriate and their implementation where necessary.

N.J.A.C. 8:43G-18.5(f)3 Nursing care patient services; mandatory

COMMENT: The NJHA asks for clarification of this standard and how it will be monitored.

COMMENT: South Jersey Hospital System comments that this standard requires additional orientation of patient/family as the patient's status changes. The degree of change requiring additional orientation is nonspecific and open to surveyor interpretation.

RESPONSE: The Department recognizes the concerns of the commenters and after reviewing issues of surveyor validity and reliability, deletes this proposed standard.

N.J.A.C. 8:43G-18.6(f)5 Nursing care patient services; mandatory

COMMENT: The NJHA asks to which "professional" does the term professional expectations refer. Is the intent that the staff will inform the patient of the activity he/she should perform?

RESPONSE: The term "professional" refers to the individual responsible for managing the particular aspect of the patient's medical care that is in question. Hospital policy will dictate who informs the patient of the activity he or she should perform.

N.J.A.C. 8:43G-18.5(f)7 Nursing care patient services; mandatory

COMMENT: The NJHA recommends deleting the term "self-care" as it is confusing and can refer to a variety of concepts and represents professional "jargon".

COMMENT: Newcomb Medical Center comments the rule is unclear; if it encourages self-care for patients during the hospitalization, it is premature. "Patients are generally not ready to accept this basis of health care delivery. Public education is needed before the standard is in place."

RESPONSE: The Department believes one of the important elements of returning a healthy, productive individual to society is to implement, where practical, a program of self-care during the hospital stay and after discharge. The term "self-care" is generally accepted to refer to consumer performance by the patient and for the patient of activities traditionally performed by professional health care providers. The Department believes that this is a concept that can be encouraged at any level of care determined by the hospital. The wording has been changed to clarify the standard.

N.J.A.C. 8:43G-18.5(i) Nursing care patient services; mandatory

COMMENT: The NJHA states that the last sentence of the standard is not clear and suggests rewording to "these policies shall include at least documentation requirements regarding observation of physically restrained patients."

COMMENT: Cooper Hospital requests that specific concerns related to other patient care concerns relevant to restraints be included.

RESPONSE: The Department recognizes the concerns of the commenters and has amended the subsection to assure the hospital's compliance with the provisions of N.J.S.A. 30:4-24.2(d)(3), the New Jersey Patient's Bill of Rights of 1965, and all rules and regulations promulgated pursuant to the aforementioned Act. Additionally, the subsection has been amended to incorporate the suggested wording from the NJHA.

COMMENT: The Public Advocate urges the Department to set forth minimal standards addressing the content of each hospital's policies and procedures for the nursing staff regarding the use of restraints and requests the Department require clinical and legal compliance with N.J.S.A. 30:4-24.2(d)(3) (1965) and the American Psychiatric Association *Task Force Report No. 22 on Restraint and Seclusion* (1984).

RESPONSE: The Department agrees with the essence of the comment from the Public Advocate. Suggested changes have been considered and where appropriate, have been incorporated into the standard with the wording as follows: "The hospital shall have in place policies and procedures regarding management of patients under physical restraint. These policies shall be consistent with the provisions of N.J.S.A. 30:4-24.2(d)(3) of the New Jersey Patients' Bill of Rights of 1965 and all rules and regulations promulgated pursuant to the aforementioned Act and shall include at least documentation requirements regarding observation of physically restrained patients and the role of nursing staff in initiating restraints and notifying the physician." As noted above, the standard mandates compliance with N.J.S.A. 30:4-24.2(d)(3) and some additional suggestions offered by the Public Advocate are reflected in the statute. The Department believes this level of compliance is essential to assure patient safety and quality of care and feels confident that the interest of patients in acute care hospitals have been safeguarded with standards that reflect attainable and realistic levels of compliance.

N.J.A.C. 8:43G-18.7 Nursing care patient services; mandatory

COMMENT: St. Elizabeth writes that this is covered under the Life Safety Code.

RESPONSE: This is not part of the Life Safety Code and requires attention. However, the Department is removing this standard from this subchapter and placing it in N.J.A.C. 8:43G-24, Physical Plant.

COMMENT: South Jersey Hospital System comments that the standard should include alternative of being battery operated or able to be provided through alternative means and feels, that as it now stands, N.J.A.C. 8:43G-18.7 could have a great financial impact on some hospitals.

RESPONSE: As noted above, the standard is being placed in N.J.A.C. 8:43G-24 and the comment will be addressed there.

N.J.A.C. 8:43G-18.8 Nursing care staff education and training; mandatory

COMMENT: Two commenters state generic objections to the need for regulations in this area.

RESPONSE: The staff education and training standards are deleted from the individual subchapters and included in the hospital-wide subchapter as generic rather than specific rules.

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

SUBCHAPTER 18. NURSING CARE

8:43G-18.1 Nursing care structural organization; mandatory

(a) A written organizational chart and written plan that delineates lines of authority, accountability, and communication shall be available to all nursing personnel in the hospital at all times.

(b) The chief nursing executive shall report directly to the hospital's chief executive officer (CEO) or, if the CEO is not responsible for day-to-day operations, to the hospital's chief operating officer.]

*[(c)]***(b)* At all times a registered professional nurse with supervisory responsibility shall be designated and authorized to act in the absence of the chief nursing executive.

*(d) Diverse multidisciplinary committees at a hospital-wide and unit level shall include registered professional nurses from different supervisory and non-supervisory levels.

(e) The chief nursing executive or designee shall routinely represent nursing on the committee with overall responsibility for medical affairs.

(f) Nursing shall be represented by the chief nursing executive at meetings of the governing board.]*

8:43G-18.2 Nursing care policies and procedures; mandatory

(a) The hospital shall have written policies and procedures for the nursing care service that guide nursing practices in the hospital. These policies shall be reviewed annually, revised as needed, and implemented. These policies and procedures shall conform with the Nurse Practice Act, N.J.S.A. 45:11-23 ***and N.J.A.C. 13:37-1.4, 6.1, 6.2, 13.1 and 13.2***.

(b) The hospital's current clinical and administrative nursing policies and procedures shall be available to all nursing personnel on each patient care unit at all times.

8:43G-18.3 Nursing care staff qualifications; mandatory

(a) The nursing care service shall be directed on a full-time basis by a chief nursing executive who has at least ***one of*** the following qualifications:

1. Is a registered professional nurse with a baccalaureate degree from an accredited college or university*[*]**,* and ***five years combined clinical and progressive management experience in nursing;***

[2. Five years combined clinical and progressive management experience in nursing.]

***2. Is a registered professional nurse with a baccalaureate degree in nursing science and three years combined clinical and progressive management experience in nursing; or**

3. Is a registered professional nurse with a baccalaureate degree from an accredited college or university and a master's degree in nursing or a health related field from an accredited college or university and three years combined clinical and progressive management experience in nursing.*

*(b) Effective January 1, 1995, the nursing care service shall be directed on a full-time basis by a chief nursing executive who has at least the following qualifications:

1. Is a registered professional nurse with a baccalaureate degree in nursing science from an accredited college or university; and

2. Five years combined clinical and progressive management experience in nursing.]*

(b) Any individual holding the title of chief nursing executive upon the effective date of these rules shall be exempt from the qualifications in (a) above.

(c) Before newly hired nurses provide patient care services, the hospital shall verify ***[nursing licenses or work permits]* *licensure or permission to work letters by visually examining the current pocket license or original permission to work letter*.**

(d) Before newly hired nurses provide patient care services, they shall receive orientation that takes into account each individual's competency and skills and includes at least:

1. The policies and procedures of the nursing service;
2. How to find a written copy of the policies and procedures of the service to which he or she will be assigned;
3. Available resources; and
4. Channels of communication, emergency and otherwise.

(e) The hospital shall develop and implement a criteria-based system for evaluating at least annually the performance of each nursing service employee.

(f) The hospital shall have a system for evaluating all supplemental nursing staff, including agency and hospital registry nurses, and excluding from use those who do not receive favorable evaluations.

(g) There shall be a system for defining and evaluating the practices of private duty nursing personnel.

8:43G-18.4 Nursing care staff qualifications; advisory ***(Reserved)***

8:43G-18.5 Nursing care patient services; mandatory

(a) Registered professional nurses and licensed practical nurses shall provide patient care commensurate with their scope of practice, as delineated in the Nurse Practice Act.

(b) All patients shall be under the supervised care of a registered professional nurse at all times.

(c) The nursing plan of care shall be consistent with the medical plan of care and implemented in accordance with the Nurse Practice Act.

(d) A registered professional nurse shall perform an initial assessment of the patient and identify patient problems for each patient upon admission. A completed assessment note, which addresses patient problems or identifies nursing diagnoses, shall be prepared by a registered professional nurse within 24 hours of admission.

(e) Each patient shall receive nursing care that is organized around ongoing, patient-specific care planning and is consistent with medical care planning. The planning shall include setting measurable goals with the patient and family to the extent possible. This planning, nursing interventions, and patient responses shall be documented in the medical record as defined by hospital policy.

(f) The patient's or family's educational needs shall be met throughout the hospital stay, unless they are not capable of receiving education, and shall include at least:

1. Orientation to the patient's environment;

2. How and when to communicate with the staff;

[3. Additional orientation as the patient's status changes;]

*[4.]**3.* Information about the patient's medications and their administration;

*[5.]**4.* The patient's activity limitations and professional expectations of his or her activity level;

*[6.]**5.* The patient diet; and

[7. Self care during the stay and after discharge.]

6. Information about the extent of self-care that can be rendered during the hospital stay and after discharge.

(g) There shall be a system for receiving, evaluating, and addressing patient and family concerns related to nursing care.

(h) All nursing staff shall wear easily readable name tags that include their name and status, such as RN, LPN, unit clerk, or nurse assistant. The hospital shall have a policy to identify nursing unit exceptions to this procedure where necessary.

(i) The hospital shall have in place policies and procedures regarding management of patients under physical restraint. These policies shall ***be consistent with the provisions of N.J.S.A. 30:4-24.2(d)(3), of the New Jersey Patients' Bill of Rights of 1965 and all rules and regulations promulgated pursuant to the aforementioned Act and shall*** include at least documentation of ***[patient checks]* *requirements regarding observation of physically restrained patients and the role of nursing staff in initiating restraints and notifying the physician*.**

(j) Patient discharge instructions shall be documented in the patient's medical record at the time of discharge.

(k) Allergies shall be listed on the front cover of the patient's chart or, in a ***[complicated]* *computerized*** system, highlighted on the screen.

(l) Patients who require assistance in feeding shall be identified, and there shall be a mechanism in place to assure that assistance is provided.

8:43G-18.6 Nursing care patient services; advisory ***(Reserved)***

*[8:43G-18.7 Nursing care supplies and equipment; mandatory

All life-sustaining equipment shall be plugged into outlets connected to the emergency power supply.]*

8:43G-18.*[8]**7* Nursing care staff education and training; mandatory

*(a) The nursing service shall have a planned system of education for nursing staff that is identified by the hospital and includes at least:

1. Educational programs on new equipment and procedures;
2. Staff development or continuing education programs based on broad issues and hospital-specific needs, as determined by quality assurance and the goals and objectives of the hospital and the department of nursing; and
3. Management development programs.]*

Requirements for the nursing care education program shall be provided in N.J.A.C. 8:43G-5.9.

8:43G-18.*[9]**8* Nursing care staff education and training; advisory *(Reserved)*

8:43G-18.*[10]**9* Nursing care quality assurance methods; mandatory

There shall be a program of quality assurance for nursing care that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. Issues shall be identified through, at least, incident reports, infection control activities, and patient and staff comments.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Employee Health

Adopted New Rules: N.J.A.C. 8:43G-20

New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-20.3 and 20.5

Proposed: August 7, 1989 at 21 N.J.R. 2173(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.85, with substantive and technical changes not requiring public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted but still pending.

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-20.3 and 20.5 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for obtaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 25 letters commenting on the proposed standards for employee health. Twenty-four letters were submitted by hospitals and one by the New Jersey Hospital Association.

N.J.A.C. 8:43G-20.1(a)4 Employee health policies and procedures; mandatory

COMMENT: Cooper Hospital states that it is assumed that every employee who has been exposed to a communicable disease is unable to continue to work, and recommends a change in the wording to allow for more flexibility.

RESPONSE: The standard is applicable only if an employee has been absent from work due to a communicable disease. The intent of the standard is to provide the hospital with the flexibility to determine when the employee would be required to obtain a physician's note before

returning to work. The wording of the standard has been changed for purposes of clarification.

N.J.A.C. 8:43G-20.2(a) Employee health services; mandatory

COMMENT: Valley Hospital and Our Lady of Lourdes Medical Center commented that it has been sufficient to have registered professional nurses conducting assessments and screenings of new employees, and objects to requiring new employees to receive a physical examination performed by a physician.

RESPONSE: While the Department acknowledges the capability of registered professional nurses to conduct health evaluations and screenings, and has incorporated wording to allow for the involvement of professional nurses in these areas, the Department believes requiring new employees to receive a physical examination performed by a physician should be standard practice in hospitals.

N.J.A.C. 8:43G-2.2(c)1

COMMENT: Our Lady of Lourdes Medical Center questions whether the hospital is required to have seronegative medical staff and employees inoculated. Valley Hospital states that inoculation of all employees, including staff with no patient contact, will incur an unnecessary expense.

RESPONSE: The Department is not requiring inoculation of medical staff members and employees with seronegative test results. The intent of the standard is to assure that the hospital is informed of the results from each employee's rubella test, regardless of whether the results are seropositive or seronegative. The Department has deleted this specification to avoid confusion. The Department believes, however, that a list of each employee who is seronegative and unvaccinated should be maintained and has incorporated such a requirement into the standards.

N.J.A.C. 8:43G-20.2(d)

COMMENT: Our Lady of Lourdes Medical Center asked that the requirement for the two-step Mantoux test be deleted, and questioned whether new employees exempted from the Mantoux test requirement included individuals with documented negative Mantoux skin test results from a single Mantoux test.

RESPONSE: The requirement for the two-step Mantoux test is retained. The exception allowed for new employees with documented negative Mantoux skin test results within the last year, is applicable to those employees who are able to document results from the two-step Mantoux test. However, new employees who are able to document results from a single test within the last year would only be required to receive a follow-up test.

N.J.A.C. 8:43G-20.2(d) and (e)

COMMENT: Several hospitals stated that it should not be the responsibility of the Employee Health department to assure that all members of the medical staff are given a Mantoux tuberculin skin test and a rubella screening test. The Hospitals' reasons for objecting to the standard include cost, administrative problems, and difficulty in obtaining compliance on the part of the medical staff. Memorial Health Alliance and Kimball Hospital commented that the standard was unclear, and asked whether the Department was referring to employed members of the medical staff or was including all physicians with clinical privileges, regardless of employment status.

RESPONSE: The Department agrees that the term "members of the medical staff" is unclear and has changed the wording to "members of the medical staff employed by the hospital." While the Department believes that it is equally important these requirements are in effect for physicians with clinical privileges who are not employees of the hospital, the Department acknowledges that assuring compliance would go beyond the scope of the employee health department. The Department has addressed requirements for physicians who are not employed by the hospital in the policy and procedures section of the medical staff standards.

N.J.A.C. 8:43G-20.2(h)

COMMENT: Pascack Valley Hospital objected to requiring that employees be examined and certified by the Employee Health Physician before being permitted to return to work.

RESPONSE: Examination and certification by either the employee health physician or the individual's personal physician is acceptable for compliance with this standard. The Department notes that the standard may be misinterpreted, and has eliminated the phrase "designated for this purpose" to provide for more flexibility.

N.J.A.C. 8:43G-20.2(i)

COMMENT: Pascack Valley Hospital states that the standard appears to require drug screening of employees, and is concerned about the cost and implementation of a drug screening program. Muhlenberg Hospital believes the wording should be changed to require hospitals to have a substance abuse policy. Meadowlands Hospital asks for clarification of the term "formal mechanism."

RESPONSE: The Department is not requiring hospitals to implement drug screening programs. The Department has intentionally chosen not to prescribe the mechanisms to be used to identify impaired employees. The Department provides each hospital with the flexibility to develop an effective program that is sensitive to the individual needs of the institution. The Department has changed the wording to eliminate the term "formal mechanism" but has not accepted the suggestion of requiring hospitals to have a substance abuse policy.

N.J.A.C. 8:43G-20.4 Employee health education; mandatory

COMMENT: Several hospitals objected to the specificity of staff education and training requirements.

RESPONSE: The Department acknowledges the comments and has developed a generic staff education requirement applicable to all hospital departments at N.J.A.C. 8:43G-5.9. The language of the generic requirement was developed at the request of the New Jersey Hospital Association who preferred a more generic and flexible standard in contrast to the Department delineating an educational program for each department. All employees of the hospital are required to participate in educational programs which are designed by the hospital.

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

SUBCHAPTER 20. EMPLOYEE HEALTH

8:43G-20.1 Employee health policies and procedures; mandatory

(a) Employee health service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures shall be readily available for employees to review and include at least the following:

1. The content and frequency of employee health examinations by a physician;
2. Timeframes for subsequent Mantoux tuberculin skin tests after the initial employment test;
3. Precautionary measures to prevent the transmission of communicable diseases from employees to patients; and
4. *[Timeframes specifying the length of absence due to a communicable disease that requires a physician note approving the employee's return to work.]* ***Requirements for a physician note approving an employee's return to work after an absence due to a communicable disease.***

8:43G-20.2 Employee health services; mandatory

(a) Each new employee shall receive an initial health evaluation, which includes at least a documented history*, **which may be performed by a registered professional nurse or physician,*** and ***a* physical examination *performed by a physician*.**

(b) Employee health records shall be maintained for each employee. Employee health records shall be confidential, and kept in the employee health office separate from personnel records.

(c) The employee health record shall include documentation of all ***medical screening* tests performed *and the results.*** *[and at least the following:

1. Documentation of seropositivity from a rubella test or inoculation with rubella vaccine; and
2. Documentation of Mantoux tuberculin skin test results, including transverse diameter of induration in millimeters, and follow-up test results and treatments, if any.]*

(d) Each new employee, including members of the medical staff ***employed by the hospital*,** upon employment*,* shall receive a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions are employees with documented negative Mantoux skin test results (zero to nine millimeters of induration) within the last year, employees with documented positive Mantoux skin test results (10 or more millimeters of induration), em-

ployees who received appropriate medical treatment for tuberculosis, or when medically contraindicated. Results of the Mantoux tuberculin skin tests administered to new employees shall be acted upon as follows:

1. If the Mantoux tuberculin skin test is not significant (between five and nine millimeters of induration) the test shall be repeated one to three weeks later.

2. If the Mantoux test is significant (10 millimeters or more of induration), a chest x-ray is performed and, if necessary, followed by chemoprophylaxis or therapy.

(e) Each employee, including members of the medical staff ***employed by the hospital*,** shall be given a rubella screening test using the rubella hemagglutination inhibition test or other rubella screening test within six months of the effective date of this subchapter. The only exceptions are employees who can document seropositivity from a previous rubella screening test or who can document inoculation with rubella vaccine, or when medically contraindicated.

(f) The hospital shall maintain a list identifying the name of each employee who is seronegative and unvaccinated.

[(f)](g)*** The hospital shall comply with the testing and reporting requirements of the Department of Health's Division of Epidemiology for tuberculin and rubella tests and results, pursuant to N.J.A.C. 8:57. Information regarding testing and reporting can be obtained from:

New Jersey State Department of Health
Communicable Disease Control Services
CN 369

Trenton, NJ 08625-0369

[(g)](h)*** The hospital shall provide initial health care for employees who become ill or are injured while at work.

[(h)](i)*** Personnel who are absent from work because of any reportable communicable disease, infection, or exposure to infection, as defined in N.J.A.C. 8:57, shall be excluded from working in the hospital until they have been examined by a physician ***[designated for this purpose]*** and certified by the physician as no longer endangering the health of patients or employees.

[(i)](j)*** The hospital shall have a ***[formal mechanism to identify and refer impaired employees to rehabilitation programs]*** ***program addressing the needs of impaired employees, which at a minimum, shall include methods or mechanisms to identify and refer impaired employees to rehabilitation programs*.**

8:43G-20.3 Employee health services; advisory ***(Reserved)***

8:43G-20.4 Employee health education; mandatory

***(a)** The employee health service shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to employee health, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;
2. Use of new clinical procedures, new equipment, and new technology, including use of computers;
3. Individual staff requests for staff education programs;
4. Supervisor judgements about education needs based on assessment of staff performance;
5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and
6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.]*

Requirements for the employee health education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-20.5 Employee health education; advisory *(Reserved)*

8:43G-20.6 Employee health quality assurance methods; mandatory
There is a program of quality assurance for employee health that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify employee health problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards Pharmacy

Adopted New Rules: N.J.A.C. 8:43G-23

New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-23.5, 23.7, and 23.11.

Proposed: June 19, 1989 at 21 N.J.R. 1626(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990, as R.1990 d.84, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3 and with portions not adopted but still pending.

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-23.5, 23.7, and 23.11 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time, as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 24 letters of comment regarding proposed N.J.A.C. 8:43G-23, Pharmacy. Twenty-one letters were submitted by hospitals, one by the New Jersey State Board of Nursing, one by the New Jersey Society of Hospital Pharmacists, and one by the New Jersey Hospital Association.

N.J.A.C. 8:43G-23 Pharmacy

COMMENT: Several commenters discussed the flexibility which the proposed rules allow. Underwood-Memorial Hospital stated that regulatory non-specificity could lead to multiple interpretations of rules and that there should be an arbitration mechanism to settle any consequent disputes which may arise between hospitals and Departmental surveyors. Newark Beth Israel Medical Center expressed hope that actual surveys will permit the flexibility which the rules allow. Another commenter stated that if a hospital has a new or different way of dispensing or recording which is as effective as that required, then the hospital should be allowed to continue the practice.

RESPONSE: The Department intends to permit flexibility to the extent allowed by N.J.A.C. 8:43G-23 and by proposed N.J.A.C. 8:43G-2.8 (see 21 N.J.R. 2926(a)) and to interpret and enforce the rules in a consistent manner. Proposed N.J.A.C. 8:43G-2.9(d) addresses resolution of disagreements (see 21 N.J.R. 2926(a)).

COMMENT: The New Jersey Society of Hospital Pharmacists recommended that the phrase "supportive personnel" be added in appropriate places so as to render the rules consistent with N.J.A.C. 13:39 of the New Jersey State Board of Pharmacy.

RESPONSE: As discussed below, terminology recognizing the use of supportive personnel is added to N.J.A.C. 8:43G-23.3(b), 23.6(d), and 23.6(e).

N.J.A.C. 8:43G-23.1 Pharmacy structural organization; mandatory

COMMENT: St. Joseph's Hospital and Medical Center recommended that N.J.A.C. 8:39-29.4(j) of the Manual of Standards for Licensure of

Long-Term Care Facilities be added so as to allow purchase of prescription and non-prescription drugs and items from suppliers outside of New Jersey.

RESPONSE: The Department acknowledges the value of competitive purchasing. As stated in the proposal notice for N.J.A.C. 8:39-29.4(j) (see 21 N.J.R. 1607(a)), "there is no current rule prohibiting the nursing home's in-State pharmacy from purchasing the [over-the-counter] products from an out-of-State supplier." It is not the purpose of N.J.A.C. 8:43G-23.1 to address or to place restrictions upon the purchase of drugs by pharmacies licensed by the New Jersey State Board of Pharmacy. Since the rule requires that each hospital have a licensed pharmacy, hospitals in New Jersey are free to purchase drugs in accordance with other applicable laws and rules. N.J.A.C. 8:39-29.4(j), therefore, is not added.

N.J.A.C. 8:43G-23.1(b)

COMMENT: Whereas a number of commenters stated that the pharmacy and therapeutics committee is a medical staff function and that the rule should be relocated accordingly, the New Jersey Society of Hospital Pharmacists suggested that the rule refer to a "multidisciplinary Pharmacy and Therapeutics Committee of the Medical Staff, or an equivalent multidisciplinary committee(s) which includes Pharmacy representation."

RESPONSE: The rule does not require that the pharmacy and therapeutics committee be a committee of the medical staff. Moreover, the Department does not wish to prescribe the structure of the committee. Given the duties of the pharmacy and therapeutics committee, the Department maintains that it is appropriate to address the committee in N.J.A.C. 8:43G-23. The rule, therefore, is not moved. The rule is revised so as to refer to a "multidisciplinary pharmacy and therapeutics committee, or an equivalent multidisciplinary body which includes a pharmacy representative," and subsequent references to the committee are revised so as to be compatible with this phrase.

N.J.A.C. 8:43G-23.2 Pharmacy policies and procedures; mandatory

N.J.A.C. 8:43G-23.2(a)

COMMENT: Several commenters noted that the pharmacy and therapeutics committee does not actually "implement" policies and procedures.

RESPONSE: The Department agrees and is changing "committee . . . shall . . . implement" to "committee . . . shall . . . ensure implementation of . . ."

COMMENT: The New Jersey Hospital Association observed that, according to N.J.A.C. 13:39, some of the areas addressed by the rule fall within the purview of the pharmacist and the pharmacy and therapeutics committee, others within the purview of the pharmacy. The rules should be consistent.

RESPONSE: As a result of the revision to N.J.A.C. 8:43G-23.2(a) described above, the pharmacy and therapeutics committee may assign the implementation of particular policies and procedures to the pharmacy service.

COMMENT: A number of commenters requested that some of the items in N.J.A.C. 8:43G-23.2(a)1 through 12 be duplicated in other subchapters.

RESPONSE: The Department agrees that there is a need for communication among the various hospital services. For the purpose of facilitating such interdepartmental communication, the rule requires that the pharmacy and therapeutics committee be multidisciplinary in nature. The Department contends that duplication of the rules is unnecessary.

N.J.A.C. 8:43G-23.2(a)4

COMMENT: Underwood-Memorial Hospital stated that there should be quality control of the intravenous admixtures as well as of the means of preparation.

RESPONSE: The Department maintains that such quality control is implicit in the rule as written. Consequently, the rule is not revised.

N.J.A.C. 8:43G-23.2(a)10

COMMENT: Two commenters recommended that "drug samples" be changed to "drugs marked sample."

RESPONSE: The rule is revised as requested. The revised phrase agrees with that in N.J.A.C. 13:39-7.13 of the New Jersey State Board of Pharmacy.

N.J.A.C. 8:43G-23.3(b)

COMMENT: Several commenters stated that the rule as proposed is unduly restrictive, insofar as it does not seem to allow for the use of the

supportive personnel to which the New Jersey State Board of Pharmacy rules, N.J.A.C. 13:39, refer.

RESPONSE: The Department agrees, and the phrase "including direct supervision of supportive personnel, as defined at N.J.A.C. 13:39-1.2" is added.

N.J.A.C. 8:43G-23.4 Pharmacy staff time and availability; mandatory

N.J.A.C. 8:43G-23.4(a)

COMMENT: Three hospitals called attention to possible costs associated with the rule. One such comment concerned the possible need to pay pharmacists who are listed on an on-call schedule. It was also claimed that the cost of complying with the rule could exceed the benefit in small hospitals, since the need for services during off-hours is generally less. One hospital stated that scheduling a pharmacist on duty 24 hours per day would increase costs by \$100,000. It was suggested that maintenance of a list of home phone numbers of all staff pharmacists would satisfy the rule. If an electronic paging device is required, it should be clearly stated in the rule.

RESPONSE: The rule does not require that a pharmacist be on duty 24 hours per day. In the interest of cost-effectiveness, the Department is not prescribing use of a particular on-call system. More specifically, an electronic paging device is not required. It is the intent of the rule, however, that a pharmacist be available to physically come to the hospital when needed. Although the need for services may be less during off-hours, the need for on-call services still exists, and the rule is retained.

COMMENT: The New Jersey State Board of Nursing stated that nurses should only remove drugs from the night cabinet, not from the pharmacy.

RESPONSE: On the basis of this comment and N.J.A.C. 13:39-9.9(b) of the New Jersey State Board of Pharmacy rules, the part of the rule in question is recodified as N.J.A.C. 8:43G-23.4(b) and is revised to read as follows: "When, in the pharmacist's absence from the hospital, a registered professional nurse removes a drug from the designated pharmacy stock or night cabinet for use in an emergency, this action shall be recorded by the nurse and checked by a pharmacist on a daily basis." Proposed N.J.A.C. 8:43G-23.4(b) is recodified as (c).

N.J.A.C. 8:43G-23.6 Pharmacy patient services; mandatory

N.J.A.C. 8:43G-23.6(a)

COMMENT: Commenters questioned the meaning and intent of the rule as it pertains to the availability of services during disasters and major disruptions to the physical plant.

RESPONSE: The intent of the rule is to ensure the availability of pharmaceutical services at all times. The phrase "including during disasters and major disruptions to the physical plant" is deleted.

N.J.A.C. 8:43G-23.6(b)

COMMENT: A number of commenters expressed questions and made recommendations with respect to the requirement for a unit dose drug distribution system. It was remarked that the proposed requirement for 85 percent coverage is arbitrary and that it should vary with type of institution and should relate to drugs rather than to beds because some drugs cannot be packaged as single units. If the requirement does not allow the exclusion of areas such as the emergency service and the same-day surgery unit, additional staffing could be required. One commenter stated that the ability of a hospital to comply would depend on surveyor judgement about what constitutes a unit dose drug distribution system. It was claimed that particular aspects of a unit dose drug distribution system would increase costs and would cause confusion when the pharmacy is closed and that the benefits to patient care would not be sufficiently large to compensate for this confusion.

RESPONSE: The Department agrees that the 85 percent figure is somewhat arbitrary and that some drugs cannot be packaged as single units. This latter concern is addressed by N.J.A.C. 8:43G-23.6(c). The Department is eliminating the specified percentage and is requiring, rather, that a unit dose drug distribution system be in effect in each of four types of units. Proposed N.J.A.C. 8:43G-23.6(b) is revised so as to require that the unit dose drug distribution system cover at least medical/surgical, obstetric, pediatric, and psychiatric units. This revision satisfies the intent of the proposed rule. (The specified units include approximately 90 percent of the licensed beds in New Jersey.) Although surveyors must determine whether or not a system constitutes a unit dose drug distribution system, these determinations can be mutually consistent. The Department contends that the rule will not result in an increase in costs because hospitals are currently required to fully utilize a unit dose drug distribu-

tion system. In addition, the Department does not agree that a unit dose drug distribution system causes confusion capable of offsetting the many patient care benefits which it produces.

COMMENT: Whereas one commenter recommended that the provision allowing for an alternative method to the unit dose drug distribution system be similarly applied to all of the rules, another requested deletion of the provision. Another commenter stated that hospitals which now have an indefinite waiver for the unit dose drug distribution system should not have to demonstrate equivalent clinical effectiveness again. Moreover, the type of demonstration required should be specified. One respondent asked how and by whom "equivalent clinical effectiveness" is determined.

RESPONSE: The Department maintains that the sentence permitting use of an alternative method to the unit dose drug distribution system provides an appropriate degree of flexibility, while protecting patient safety; therefore, the sentence is not deleted. A similar provision, however, is not added to each of the rules. Proposed N.J.A.C. 8:43G-2.8 describes the procedure for applying for a waiver (see 21 N.J.R. 2926(a)).

With regard to current waivers of the requirement for a unit dose drug distribution system, it should be noted that waivers are rule-specific. Since the proposed rule differs from the current rule, any facility which wishes to obtain a waiver of the new unit dose requirement will need to specifically request a new waiver of N.J.A.C. 8:43G-23.6(b). "Equivalent clinical effectiveness" will be determined by the Department on a case-by-case basis. It would not be feasible for the rule to attempt to exhaustively list all factors relevant to this determination.

N.J.A.C. 8:43G-23.6(c)

COMMENT: Comments submitted reflected confusion concerning the term "dispensing." One commenter noted that there have been problems regarding "packaging of fractional and/or multiple doses," and another recommended that "dispensing" be changed to "packaging." West Jersey Health System stated that the dispensing of fractional doses should be a facility decision.

RESPONSE: The intent of the rule is to allow flexibility in the way certain types of medications are distributed by permitting the dispensing of fractional and multiple doses at the discretion of the pharmacy and therapeutics committee; the rule does not require unit dose packaging of these medications.

N.J.A.C. 8:43G-23.6(d)

COMMENT: The New Jersey Society of Hospital Pharmacists recommended that "develop and implement a system of control for legend drug doses" be changed to "develop policies and procedures for a system to control the safe and effective use of all legend drug doses by appropriate professional individuals authorized to prescribe, dispense and administer medications" and that "someone" be changed to "supportive personnel."

RESPONSE: The Department agrees with the latter recommendation, and "supportive personnel, as defined at N.J.A.C. 13:39-1.2" is added. The former recommendation, however, would render the rule less outcome-oriented and would limit the system of control to the "use" of drugs and to "individuals authorized to prescribe . . ." Since such limitations are incompatible with the broader intent of the rule, the rule is not revised as recommended. Finally, an editorial change has been made in the second sentence of the rule.

N.J.A.C. 8:43G-23.6(e)

COMMENT: Commenters expressed concern that applicability of the requirement for a pharmacy-based intravenous infusion admixture program to all areas of the hospital and to the preparation of large volume parenterals would involve significant financial costs. It was suggested that a required percentage of coverage be specified. The New Jersey Society of Hospital Pharmacists recommended that "those areas or situations that have been excluded" be changed to "limited number of areas or situations that have been defined." One commenter noted that the rule may not be applicable to specialty hospitals which do not treat acutely ill patients and that such facilities should be able to apply for an exemption.

RESPONSE: The rule does allow the pharmacy and therapeutics committee to exclude certain areas and situations from the requirement for a pharmacy-based intravenous infusion admixture program. As in the case of the requirement for a unit dose drug distribution system, however, the Department does not wish to specify an arbitrary minimum percentage of coverage. Notwithstanding the capacity of the pharmacy and therapeutics committee to specify exceptions to the rule, it is intended

that the admixture program will include services related to large volume products.

The Department maintains that the phrase "limited number of areas or situations that have been defined" would not enhance the enforceability of the rule, and the rule is not revised in the manner requested.

Specialty hospitals which do not treat acutely ill patients may apply for an exemption to the rule (see proposed N.J.A.C. 8:43G-2.8 at 21 N.J.R. 2926(a)).

COMMENT: The New Jersey Association of Hospital Pharmacists made several specific terminological suggestions. It was recommended that "hyperalimentation, chemotherapy" be changed to "preparation of total parenteral nutrition; antineoplastic," that "volumes" be changed to "volume products," and that "a pharmacist licensed to practice pharmacy in New Jersey, or a designee acting under pharmacy guidelines" be changed to "a New Jersey licensed pharmacist or supportive personnel acting under Pharmacist supervision."

RESPONSE: The Department accepts the appropriateness of the recommended changes, and the rule is revised so as to include language similar to that suggested.

N.J.A.C. 8:43G-23.6(g)

COMMENT: Two commenters stated that the rule should be moved to, or duplicated in, the subchapter addressing medical staff. It was remarked that the pharmacy has no control over specificity of medication orders, which are the responsibility of physicians.

RESPONSE: The Department contends that, since the pharmacy does control the filling of medication orders, the rule is appropriate to subchapter 23. The rule is retained without change.

N.J.A.C. 8:43G-23.6(i)

COMMENT: Whereas Newark Beth Israel Medical Center stated that the term "drugs in opened containers" is too broad and Meadowlands Hospital Medical Center requested clarification of the term, the New Jersey Society of Hospital Pharmacists recommended that "opened containers" be changed to "opened, single dose/use containers."

RESPONSE: In the interest of clarity, the phrase "drugs in opened containers, in containers with broken seals" is replaced by "drugs in single dose or single use containers which are open or which have broken seals."

N.J.A.C. 8:43G-23.6(k)

COMMENT: Two commenters suggested alternatives to the term "drug distribution site." The alternatives included "defined areas of the hospital" and "patient care unit."

RESPONSE: The Department agrees that reference to the patient care unit would not conflict with the intent of the rule. The rule is revised so as to refer to "each patient care unit or area."

N.J.A.C. 8:43G-23.6(m)

COMMENT: Two commenters noted that drug product defects are not reported to the American Society of Hospital Pharmacists. The New Jersey Society of Hospital Pharmacists recommended that drug product defects "be reported through the established systems in accordance with the Drug Product Problem Reporting System, to the Food and Drug Administration, United States Pharmacopoeia and to the manufacturer."

RESPONSE: The rule is revised so as to recognize the existence of the two systems of reporting drug product defects. Reference to the American Society of Hospital Pharmacists is deleted. The rule does not preclude the reporting of drug product defects directly to the manufacturer.

N.J.A.C. 8:43G-23.8 Pharmacy space and environment; mandatory

COMMENT: Newark Beth Israel Medical Center requested clarification of the scope of the rule, while the New Jersey Society of Hospital Pharmacists recommended that the catchline be changed to "Storage and Security of Pharmaceuticals."

RESPONSE: The scope of the rule extends beyond the pharmacy area to other areas of the hospital. The catchline of the section is similar to those of corresponding sections in other subchapters of N.J.A.C. 8:43G and is retained without change.

N.J.A.C. 8:43G-23.8(a)

COMMENT: Meadowlands Hospital Medical Center stated that the term "proper conditions" is vague and subjective.

RESPONSE: The Department maintains that the part of the rule which follows "proper conditions" removes any vagueness or subjectivity. The rule is retained without change.

N.J.A.C. 8:43G-23.8(b)

COMMENT: Newark Beth Israel Medical Center questioned whether or not the rule would allow the pharmacy and therapeutics committee to exempt intravenous solutions from the locked storage requirement. Recommendations from other commenters included recommendations that the pharmacy room or area be "spelled out" as a locked storage area, that only Schedule II drugs be required to be stored in a locked cabinet area, preferably a safe in the pharmacy, and that the term "needles and syringes" be deleted.

RESPONSE: The pharmacy and therapeutics committee may exempt intravenous solutions, since the rule allows for the exemption of specified drugs. The Department contends that whether or not an area is a "locked storage area" is a matter of fact, rather than a matter of definition. The Department further contends that there is a need to require that needles and syringes be kept in a locked storage area. The rule, therefore, is not revised in the manner requested.

N.J.A.C. 8:43G-23.9 Pharmacy staff education and training; mandatory

COMMENT: Respondents questioned the meaning of the rule, noted that pharmacists are required to receive continuing education as a condition for licensure, and recommended that the rule be broadened.

RESPONSE: In the interest of consistency, the text of proposed N.J.A.C. 8:43G-23.9 is deleted and replaced with a cross reference to the more general N.J.A.C. 8:43G-5.9.

N.J.A.C. 8:43G-23.10 Pharmacy quality assurance methods; mandatory

COMMENT: Two commenters stated that the required quality assurance activities would necessitate labor-intensive manual data collection, computerization, and/or the hiring of additional personnel. Another commenter recommended that "methods" be deleted from the section heading.

RESPONSE: The Department maintains that N.J.A.C. 8:43G-23.10, as revised (see below), allows sufficient flexibility for the cost-effective implementation of a pharmacy service quality assurance program. The section heading, as proposed, is consistent with those of similar rules throughout N.J.A.C. 8:43G and is retained without change.

N.J.A.C. 8:43G-23.10(a)

COMMENT: One commenter recommended that "health-service problems" be changed to "patient care problems."

RESPONSE: The term "health-service problems" is used consistently in similar rules, such as proposed N.J.A.C. 8:43G-7.12(a), 18.10, and 33.11. The rule, therefore, is retained without change.

N.J.A.C. 8:43G-23.10(b)

COMMENT: The New Jersey Society of Hospital Pharmacists recommended that "hospital" be changed to "pharmacy service."

RESPONSE: N.J.A.C. 13:39-9.7(b) of the New Jersey State Board of Pharmacy states that the "institutional pharmacy shall maintain a patient profile record for each patient. . . ." Consequently, the rule is revised as recommended. In order to preserve the intent of the proposed rule, the rule is revised so as to indicate that the system shall be used "by the hospital."

N.J.A.C. 8:43G-23.10(c)

COMMENT: Jersey Shore Medical Center stated that the frequency of inspections should "correlate" to requirements of the Joint Commission on Accreditation of Healthcare Organizations. Two respondents questioned the meaning of "all patient care areas." The New Jersey Hospital Association stated that the last sentence of the rule is redundant of N.J.A.C. 8:43G-23.10(a) and should be deleted.

RESPONSE: It is neither unusual nor improper for standards for licensure to differ from recommendations of the Joint Commission. Although the last sentence of the rule is similar in intent to N.J.A.C. 8:43G-23.10(a), it does help to convey the intent of N.J.A.C. 8:43G-23.10(c) and, therefore, is retained. "All patient care areas" refers to any area of the hospital in which patient care is provided.

N.J.A.C. 8:43G-23.10(d)

COMMENT: Whereas one commenter requested clarification of the rule as it relates to the structure of the quality assurance program, another made specific recommendations regarding the wording of the rule. It was suggested that "errors" be changed to "medication errors" in the first sentence and to "related problems" in the second sentence. It was also recommended that the rule be revised so as to indicate that the quality assurance program is the agent which identifies medication-related prob-

lems. One commenter noted that monitoring of medication errors takes place at the point of administration in the patient care unit.

RESPONSE: In light of the comments received and the Department's intention to permit the hospital to determine the composition of its quality assurance program, the rule is revised to read as follows: "A quality assurance program of the pharmacy service shall monitor, at a minimum, the use of drugs, including medication errors and use of antibiotics. Serious or consistent patterns of medication error shall be reported to the pharmacy and therapeutics committee or its equivalent." The Department maintains that the monitoring of medication errors can occur at more than one level.

N.J.A.C. 8:43G-23.10(e)

COMMENT: It was recommended that "the hospital shall monitor the use" be changed to "the pharmacy shall assist the hospital in monitoring the safe and effective use" and that the rule be clarified and relocated as appropriate.

RESPONSE: The intent of the proposed rule is incorporated into N.J.A.C. 8:43G-23.10(d) as revised (see above). N.J.A.C. 8:43G-23.10(e), therefore, is deleted.

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

SUBCHAPTER 23. PHARMACY

8:43G-23.1 Pharmacy structural organization; mandatory

(a) A hospital shall have a pharmacy that is licensed by the New Jersey State Board of Pharmacy, with a current Drug Enforcement Administration registration and a controlled dangerous substance registration from the State Department of Health.

(b) A multidisciplinary pharmacy and therapeutics committee, or an equivalent multidisciplinary body ***which includes a pharmacy representative,*** shall meet at least four times a year, and document its activities, findings, and recommendations.

8:43G-23.2 Pharmacy policies and procedures; mandatory

(a) The pharmacy and therapeutics committee, or its equivalent, shall review, approve, and ***[implement]* *ensure implementation of*** policies and procedures addressing at least the following areas:

1. Outpatient pharmacy services;
2. Administration of drugs;
3. Use of patients' previously acquired drugs, including requirement for physician orders and pharmacy identification of the drugs before use;
4. Admixture of intravenous solutions, including quality control and safety procedures for laminar airflow hoods and labeling;
5. Storage and distribution of drugs, including at least dispensing devices (if used in the hospital), emergency drugs and kits, and control and accountability of controlled substances in accordance with applicable laws and regulations;
6. Stop orders and discontinue orders, including the length of time all orders stay in effect, stoppage of drugs on the day a patient undergoes surgery in conformance with the prescriber's specifications, and notification of the prescriber of the expiration of a drug order;
7. Identification, reporting, reviewing, and monitoring of adverse drug reactions and medication errors;
8. Identification of food/drug interactions and responsibility of pharmacy, nursing, and dietary services;
9. Reference materials kept at drug distribution stations and in the pharmacy, and made available to medical and nursing staff;
10. Control and limitation of use of ***[drug samples]* *drugs marked "sample"***;
11. Approval and maintenance of a formulary; and
12. Pharmacists' clarifications of physician orders.

8:43G-23.3 Pharmacy staff qualifications; mandatory

(a) Pharmaceutical services shall be directed by a registered pharmacist licensed to practice pharmacy in New Jersey.

(b) A pharmacist licensed to practice pharmacy in New ***[Jersey]* *Jersey*** shall be responsible for compounding, preparing, labeling, transferring between containers, and dispensing drugs*, **including**

direct supervision of supportive personnel, as defined at N.J.A.C. 13:39-1.2*.

8:43G-23.4 Pharmacy staff time and availability; mandatory

(a) A pharmacist licensed to practice pharmacy in New Jersey shall be on duty or on call at all times. ***[Whenever a nurse]***

***[b) When, in the pharmacist's absence from the hospital, a registered professional nurse* removes a drug from the *designated* pharmacy *stock* or night cabinet *for use in an emergency*, this action shall be recorded by the nurse and checked by a pharmacist on a daily basis.**

[(b)]**[c) If the hospital operates a decentralized pharmaceutical service, there shall be a pharmacist licensed to practice pharmacy in New Jersey assigned to each satellite pharmacy during the satellite pharmacy's hours of operation.

8:43G-23.5 Pharmacy staff time and availability; advisory

(Reserved)

8:43G-23.6 Pharmacy patient services; mandatory

(a) Pharmaceutical services shall be available to patients at all times*[, including during disasters and major disruptions to the physical plant]*.

(b) The hospital shall have in effect a unit dose drug distribution system with individual cassettes or containers which bear the patient's identification. The system shall cover at least ***[85 percent of occupied licensed inpatient beds]* *the medical/surgical, obstetric, pediatric, and psychiatric units*** and include scheduled cart exchanges at least every 24 hours, including weekends and holidays.

1. An alternative method of distributing drugs approved by the Department of Health may be substituted for the unit dose drug distribution system if the method has been demonstrated to the Department to have at least equivalent clinical effectiveness.

(c) The dispensing of fractional and multiple dosages shall be at the discretion of the pharmacy and therapeutics committee ***or its equivalent***, provided cautionary instructions and ancillary information about these dosages are communicated to the personnel responsible for administering them.

(d) The pharmacy service shall develop and implement a system of control for legend drug doses. ***[The system includes the checking by a pharmacist of]* *A pharmacist licensed to practice pharmacy in New Jersey shall check*** each cassette or container of drugs prepared by ***[someone other than a licensed pharmacist]* *supportive personnel, as defined at N.J.A.C. 13:39-1.2,*** before it is delivered to a patient care unit.

(e) The hospital shall have a pharmacy-based intravenous infusion admixture program, which includes services related to ***[hyperalimentation, chemotherapy]* *preparation of total parenteral nutrition, anti-neoplastic agents***, and large and small, continuous or intermittent ***[volumes]* *volume products*** for infusion. A pharmacist licensed to practice pharmacy in New Jersey, or ***[a designee acting under pharmacy guidelines]* *supportive personnel, as defined at N.J.A.C. 13:39-1.2***, shall prepare, sterilize if necessary, and label parenteral medications and solutions, except in those areas or situations that have been excluded by the pharmacy and therapeutics committee or its equivalent.

(f) Cautionary instructions and ancillary information about medications shall be communicated to the personnel responsible for administering medications.

(g) All medication orders shall specify the name of the drug, dose, frequency, and route of administration, and shall be dated and signed (or approved by authorization code if ordered through computer entry) by the prescriber.

(h) Allergies shall be documented in the patient's pharmacy profile.

(i) Drugs in ***[opened]* *single dose or single use*** containers*[, in containers with]* ***which are open or which have* broken seals, *drugs* in containers missing drug source and exact identification (such as lot number), and outdated medications shall be returned to the pharmacy for disposal.**

(j) Initials or identifying codes shall be used by pharmacy personnel, and a list of these initials or codes and the corresponding printed

or typed names and signatures shall be kept for at least five years after termination of pharmacy service employment.

(k) Current antidote information shall be provided in the pharmacy. The telephone number of the designated Statewide or regional New Jersey Poison Information and Education System (1-800-962-1253) shall be provided in the pharmacy and *[at each drug distribution site]* ***in each patient care unit or area***.

(l) Current Federal and State drug law information shall be available to the pharmacy service.

(m) Drug product defects shall be reported in accordance with the *[Drug Product Problem Reporting System]* ***drug product problem reporting system*** of the *[American Society of Hospital Pharmacists, the]* **United States Pharmacopoeia***, and]* ***or of*** the Food and Drug Administration.

8:43G-23.7 Pharmacy patient services; advisory ***(Reserved)***

8:43G-23.8 Pharmacy space and environment; mandatory

(a) The pharmacy shall maintain drugs under proper conditions, as indicated in the United States Pharmacopoeia, product labeling, and/or package inserts.

(b) All drugs, needles, and syringes*[,]* shall be kept in locked storage areas except those drugs exempted by the pharmacy and therapeutics committee ***or its equivalent*** under specified conditions.

8:43G-23.9 Pharmacy staff education and training; mandatory

[Pharmacy staff shall attend training or educational programs on drug-related topics.] ***Requirements for the pharmacy education program shall be as provided in N.J.A.C. 8:43G-5.9.***

8:43G-23.10 Pharmacy quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the pharmacy service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The *[hospital]* ***pharmacy service*** shall have in effect a patient profile system for monitoring drug therapy. This system shall be used ***by the hospital*** to identify inappropriate prescribing practices.

(c) The pharmacy service shall inspect at least once every two months all patient care areas in the hospital, and at least once every three months all other areas of the hospital where drugs intended for administration to patients are dispensed, administered, or stored. The pharmacy service shall maintain a record of the inspections. Identified problems shall be addressed.

(d) A quality assurance program ***of the pharmacy service*** shall ***[be in place that]* monitor*[s]**, at a minimum,*** the use of drugs, including ***medication*** errors*[, and reports aggregate findings to the pharmacy and therapeutics committee or another multidisciplinary committee that includes a pharmacy representative. When serious]* ***and use of antibiotics. Serious*** or consistent ***patterns of*** medication ***[errors are found, the hospital, through its quality assurance program, shall develop, implement, and monitor recommendations for change]* *error shall be reported to the pharmacy and therapeutics committee or its equivalent*.**

[(e) The hospital shall monitor use of antibiotic drugs, and other drugs specified by the hospital, and shall keep physicians informed about inappropriate drug utilization.]

8:43G-23.11 Pharmacy quality assurance methods; advisory ***(Reserved)***

(a)

DIVISION OF HEALTH FACILITIES EVALUATION Hospital Licensing Standards Post Mortem Standard

Adopted New Rules: N.J.A.C. 8:43G-25

Proposed: June 19, 1989 at 21 N.J.R. 1628(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.83, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

The Department of Health ("Department") afforded all interested parties an opportunity to comment on the proposed new rules N.J.A.C. 8:43G-25, related to licensing standards for post mortem services in hospitals. The official comment period ended July 19, 1989; however, the Department has summarized and responded to comments received after that date as well as within the official comment period. Announcement of the opportunity to respond to the Department appeared in the New Jersey Register on June 19, 1989 at 21 N.J.R. 1628(a).

The Department received 15 written comment letters on the proposed standards, 13 from hospitals, one from the New Jersey Hospital Association, and one from the New Jersey Society of Pathologists.

Summary of Public Comments and Agency Responses:

N.J.A.C. 43G-25.1(a) Policies and procedures; mandatory

COMMENT: St. Joseph's Hospital suggested that the word "injury" in paragraph (a)2 be revised to "damage", which would be more appropriate language in referring to safe and proper handling of corpses.

RESPONSE: The Department agrees and the standard is revised as suggested.

N.J.A.C. 8:43G-25.1(a)6 Policies and procedures; mandatory

COMMENT: St. Joseph's Hospital commented that consideration should be given to eliminating duplicate marking requirements for infectious bodies which are necessitated by Centers for Disease Control (CDC) guidelines and for funeral directors.

RESPONSE: The requirements set by State law at N.J.S.A. 26:6-8 for marking and identification of infectious bodies will prevail as the higher standard, where a conflict exists between these and CDC guidelines.

N.J.A.C. 8:43G-25.1(a)10 Policies and procedures; mandatory

COMMENT: The Department should specify the time frames for availability of autopsy reports.

RESPONSE: This is an area that the Department believes is appropriate for hospital management to determine within its own policies and procedures.

8:43G-25.2 Post mortem staff qualifications; mandatory

COMMENT: The New Jersey Society of Pathologists indicated that the proper label for the credential of the physician who performs or supervises the performance of autopsies is "Board Certified in Anatomic Pathology by the American Board of Pathology" rather than a "diplomat of the American Board of Pathology". The Society also recommended that certain equivalent foreign certifications and the American Board of Osteopathic Pathology should be acceptable.

RESPONSE: The Department agrees with the comment. The standard is changed in this section to read "Board Certified in Pathology" while the Medical Staff standards, N.J.A.C. 8:43G-16, have been changed to reflect a generic policy that all recognized American Boards, including Osteopathic Boards and foreign boards with equivalency to or reciprocity with the American Board, are acceptable substitutes.

COMMENT: Five commenters felt that the Board Certification requirement was too high or that the credentialing requirements should be left to management prerogative.

RESPONSE: The standard requires that the physician performing the autopsy is either Board Certified or supervised by the Board Certified pathologist. The Department believes that the standard as written provides adequate flexibility to hospitals in determining the qualifications of physicians performing the procedure yet offers sufficient assurance that all autopsies will be under the supervision of a highly-qualified professional. No change is made.

8:43G-25.3(a) Post mortem patient services; mandatory

COMMENT: St Joseph's Hospital commented that the standard should permit the practice of storing body parts other than limbs in formalin.

RESPONSE: The Department agrees with the comment and the standard is revised to permit storage in either refrigerator or in chemical fixation in a non-putrescent state.

8:43G-25.3(b) Post mortem patient services; mandatory

COMMENT: The New Jersey Hospital Association and Underwood Hospital commented that the need for autopsies is a clinical issue and should be left to medical staff judgement. The standard would increase costs at Underwood by \$300.00 per autopsy and may also increase the need for pathologists at a cost of \$80,000 per F.T.E.

RESPONSE: The Department agrees with the commenters that this is overbroad and will alter the standard to limit the scope of the requirement to cases of unusual deaths, deaths from unknown causes, and medicolegal and educational interest.

8:43G-25.3(c) Post mortem patient services; mandatory

COMMENT: The New Jersey Society of Pathologists recommended that the rule cross-reference consent requirements contained in existing statute.

RESPONSE: The Department agrees and modifies the rule to reference N.J.S.A. 26:6-50.

8:43G-25.3(d) Post mortem patient services; mandatory

COMMENT: St. Joseph's Hospital stated that the statute which is cited in relation to notification requirements for the medical examiner also mandates notification of the prosecutor's office.

RESPONSE: The reference to the prosecutor's office is added.

COMMENT: The New Jersey Hospital Association and St. Peter's Medical Center asked what the basis of the two hour time-frame was for notification of the medical examiner or prosecutor.

RESPONSE: The two-hour time frame was suggested as a reasonable notification period through the advisory process. However, the statute at N.J.S.A. 52:17B-87 requires immediate notification of the Medical Examiner. As it is the responsibility of the Medical Examiner to determine whether a party has complied with the term "immediate" under the circumstances, the Department is substituting the word "immediate" for "within two hours".

8:43G-25.4 Post mortem space and environment; mandatory

COMMENT: The New Jersey Hospital Association and St. Peter's Medical Center asked what the basis was of the ratio of one morgue refrigerator space to every 100 beds over the initial 100.

RESPONSE: The ratio was developed in consultation with the advisory committee and found acceptable through the survey validation process. The Department feels the standard is reasonable and less onerous than the two space requirement for the first 100 beds. No change is made.

8:43G-25.5 Post mortem supplies and equipment; mandatory

COMMENT: A total of 10 commenters raised concern about the need and cost of requiring an automatic alarm system to monitor temperatures in the morgue refrigerator. Several felt that a manual check system was sufficient. Cost estimates ranged from \$250.00 to \$750.00 per refrigerator, with a need for about four to six weeks to have installation completed.

RESPONSE: Based on the minimal cost per system and the protection and safeguard it provides, the Department is not changing the standard.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER *[26]**25*. POST MORTEM

8:43G-25.1 Policies and procedures; mandatory

(a) The morgue shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These poli-

cies shall delineate the responsibilities of the medical staff, nursing, and morgue staff, and shall include procedures for at least the following functions:

1. Identifying the body;
2. Safe and proper handling to prevent *[injury]* ***damage*** to the body;
3. Safeguarding personal effects of the deceased and release of personal effects to the appropriate individual;
4. Handling of toxic chemicals by morgue and housekeeping staff;
5. Infection control policies, including disinfection of equipment;
6. Practices for handling infectious bodies, in accordance with Centers for Disease Control guidelines;
7. Criteria for high-risk or potentially high-risk cases, such as AIDS or hepatitis B;
8. Release of the body to the county morgue or funeral director;
9. Autopsy requests;
10. Availability of microscopic autopsy reports within specified time frames; and
11. Completion of autopsy, including microscopic and other procedures, within specified time frames.

8:43G-25.2 Post mortem staff qualifications; mandatory

The physician who routinely performs or supervises the performance of autopsies shall be *[a Diplomate of the American Board of Anatomic Pathology]* ***Board Certified in Pathology***.

8:43G-25.3 Post mortem patient services; mandatory

(a) Bodies and body parts in the morgue shall be kept refrigerated *or in chemical fixation in a non-putrescent state*.

(b) The medical staff shall attempt to secure autopsies*[, particularly]* in cases of unusual deaths*, **deaths from unknown causes**,* and cases of medicolegal and educational interest, unless otherwise provided for by law.

(c) Autopsies shall be performed only with the consent of the patient's family or guardian *in accordance with N.J.S.A. 26:6-50*. Consent shall not be required for medical examiner cases.

(d) The hospital shall notify the county medical examiner *[within two hours of]* *or prosecutor immediately upon* a patient's death when the circumstances of the death fall within the criteria specified in N.J.S.A. 52:17B-86 of the State Medical Examiners Act, N.J.S.A. 52:17B-78 et seq.

8:43G-25.4 Post mortem space and environment; mandatory

The morgue shall be equipped with refrigerated space to store at least two bodies. Hospitals with more than 100 beds shall provide additional space using a ratio of one space to every additional 100 beds.

8:43G-25.5 Post mortem supplies and equipment; mandatory

Refrigerated spaces in the morgue shall be maintained at temperatures between 32 and 45 degrees Fahrenheit (0 and 7.2 degrees Celsius) and shall have an automatic alarm system that monitors the temperature.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Quality Assurance Standard

Adopted New Rules: N.J.A.C. 8:43G-27

New Rule Not Adopted But Still Pending: N.J.A.C. 8:43G-27.4 and 27.6.

Proposed: June 19, 1989 at 21 N.J.R. 1630(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.82, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted but still pending**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically N.J.A.C. 26:2H-5.

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-27.4 and 27.6 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Response:

The Department received 24 comment letters, 22 from hospitals, one from the New Jersey Hospital Association, and one from the State Board of Nursing.

N.J.A.C. 8:43G-27.1(c) Quality assurance structural organization; mandatory

COMMENT: Columbus Medical Center commented that the Quality Assurance (QA) program should be developed by each individual department. JFK Medical Center commented that the requirement for each clinical department to develop its own QA program should be deleted. In addition, a number of hospitals commented that they support the hospital-wide QA requirement, as well as individual departmental QA activities, but objected to the rules prescribing specific departmental QA indicators.

RESPONSE: The Department is strongly committed to Quality Assurance programs in hospitals being utilized as one of the primary mechanisms in alerting practitioners and hospitals of actual and potentially serious problems in the delivery of patient care. To accomplish this, there is a need for both a central, hospital-wide Quality Assurance program and plan as well as specific Departmental QA plans and activities. These must be coordinated with the hospital-wide program.

The Department agrees with several commenters who expressed concern about inconsistencies between specific QA indicators contained in the various subchapters and has revised or deleted these in the affected sub-chapters. However, the Department believes that no change is needed in the Quality Assurance subchapter. The Department also concurs that specific QA indicators will not be necessary in some non-patient care areas, and has deleted these, but has retained indicators in areas strongly related to patient care.

N.J.A.C. 8:43G-27.1(d)

COMMENT: Nine letters were received expressing concern that the rule should not mandate that the chair of the committee be a physician. Several of the commenters felt that the composition of the committee should be left to the hospital's discretion.

RESPONSE: The Department, while emphasizing again the importance of a strong hospital QA program, acknowledges that the QA committee may function effectively whether or not a physician holds the position of chair. Therefore, this requirement has been deleted. However, it is believed that the QA committee cannot function effectively without at least representatives from administration, medical staff, and nursing and this standard remains unchanged.

N.J.A.C. 8:43G-27.1(e)

COMMENT: Three hospitals commented that the rule should be clarified to indicate that risk management and QA should have "operational linkages", and that the term "reported to" means only that the risk management information flows to the QA committee, and not necessarily through it to the Governing Board. It was also asked whether this requires that risk management functionally report to QA.

RESPONSE: The rule is not intended to require that risk management functions be the responsibility of the QA department within a hospital's organizational structure. To clarify this, the rule has been amended to indicate that information and reports generated by the risk management function are to be provided to the QA committee.

N.J.A.C. 8:43G-27.2(c) Quality assurance policies and procedures

COMMENT: Princeton Medical Center suggested that the word "plan" be amended to "program." Pascack Valley Hospital commented that the standards do not describe the role of the Medical Executive Committee.

RESPONSE: The intent of the section is to have hospitals devise a plan for quality assurance activities that addresses the requirements cited

at N.J.A.C. 8:43G-27.2 (a)-(d). The plan is the proper mechanism to spell out the procedures to be used by the hospital, while N.J.A.C. 8:43G-27.1(b) requires that it be implemented. If a hospital chooses to utilize its Medical Executive Committee in devising, reviewing, or evaluating the plan and/or the program, this would be delineated in the plan itself. No change has been made to the standard.

N.J.A.C. 8:43G-27.5 Quality assurance patient services; mandatory

COMMENT: Englewood Hospital commented that (a) through (f) should be deleted and determined by the hospital.

RESPONSE: The Department believes that there is both a strong need for these standards and that they have been broadly supported as a whole. No change has been made.

N.J.A.C. 8:43G-27.5(a)

COMMENT: St. Clare's Hospital felt that the standard was too explicit and more flexibility was needed.

RESPONSE: The Department believes that the QA program should be an ongoing process of patient care evaluation that is criteria-based, triggering certain review actions when certain events or outcomes are reported. The standard does not specify the hospital's own mechanisms and therefore no change has been made.

N.J.A.C. 8:43G-27.5(b)

COMMENT: Princeton Medical Center commented that the QA coordinator need not participate in the coordination of the development of individual departmental QA indicators.

RESPONSE: While it is believed that the input of the QA coordinator will improve the development of the individual departmental QA programs, the standard has been amended to limit the requirement to being available to provide consultation to the departments in this process.

N.J.A.C. 8:43G-27.5(d)

COMMENT: The State Board of Nursing requested that "nursing" be added as paragraph 7 to subsection (d). South Jersey Hospital System suggested that the QA indicators from paragraphs (d)1 to 6 be deleted.

RESPONSE: The Department does not have sufficient information at this time to add "nursing" and will take the change into consideration at a future date. The specific hospital-wide indicators are essential core elements of a QA program and deletion may significantly weaken the effectiveness of the programs. No change has been made.

N.J.A.C. 8:43G-27.5(e) and (f)

COMMENT: Community Medical Center, Hunterdon, and South Jersey Hospital System commented that the appropriate role of the quality assurance program is to generate information that is included in the evaluation of the clinical competence of clinical practitioners, while it is the Governing Board's responsibility to evaluate these personnel.

RESPONSE: The Department concurs that the QA program should be mandated only to provide information that can be utilized in this clinical evaluation process, although it may participate in this process. The standard in subsection (e) is revised to reflect this change, and subsection (f) is deleted.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 27. QUALITY ASSURANCE

8:43G-27.1 Quality assurance structural organization; mandatory

(a) The governing authority of the hospital (such as the board of trustees) shall have ultimate responsibility for the quality assurance program.

(b) The hospital shall have a hospital-wide quality assurance program based on a written quality assurance plan that is implemented and that monitors the quality of patient care.

(c) Each clinical department shall have quality assurance activities that are part of the overall hospital-wide plan, a multi-department plan, or an internally generated plan.

(d) There shall be a multidisciplinary committee responsible for the direction of the quality assurance program. The committee shall include at least representation from the medical staff, nursing, and administration*[], and shall be chaired by a physician]*. The committee shall establish a mechanism to include participation of all dis-

ciplines in identifying areas of review that affect patient care throughout the hospital.

(e) The hospital shall perform risk management functions *[which are reported]**. **Reports generated by risk management activities shall be routinely provided*** to the multidisciplinary committee responsible for coordinating the quality assurance program.

8:43G-27.2 Quality assurance policies and procedures; mandatory

(a) The quality assurance plan shall be reviewed at least annually and revised as necessary. Responsibility for reviewing and revising the plan shall be designated in the plan itself.

(b) The quality assurance plan shall delineate lines of communication between the quality assurance program and the medical staff, chief executive officer or administrator, and governing authority.

(c) The hospital-wide quality assurance plan shall specify procedures for the development, implementation, and coordination of quality reviews. The plan shall also establish a mechanism for the evaluation of the quality assurance program.

(d) The program shall disseminate its findings and the results of quality assurance activities, as defined in the quality assurance plan.

8:43G-27.3 Quality assurance staff qualifications; mandatory

There shall be an individual responsible for coordinating all aspects of the quality assurance program.

8:43G-27.4 Quality assurance staff qualifications; advisory

(Reserved)

8:43G-27.5 Quality assurance patient services; mandatory

(a) There shall be an ongoing process of monitoring patient care. Evaluation of patient care throughout the hospital is criteria-based, so that certain review actions are taken or triggered when specific quantified, predetermined levels of outcomes or potential problems are identified.

(b) The quality assurance coordinator shall be available to provide ***ongoing*** consultation to each department *[and shall coordinate]* ***including assistance with*** the development of specific indicators used to evaluate service outcomes in each department.

(c) The program shall follow up on its findings to assure that effective corrective actions have been taken, including at least policy revisions, procedural changes, educational activities, and follow-up on recommendations, or that additional actions are no longer indicated or needed.

(d) The quality assurance program shall identify and establish indicators of quality care specific to the hospital that are monitored and evaluated and encompass at least:

1. Surgical case review;
2. Drug usage;
3. Medical record review;
4. Blood usage;
5. Pharmacy and therapeutics function; and
6. Appropriateness of specific diagnostic and therapeutic procedures, as selected by the quality assurance program.

(e) The quality assurance program shall *[ensure that]* ***provide information that is utilized in the evaluation of the*** clinical competence of all clinical practitioners *[is evaluated]*.

(f) The quality assurance program shall participate in the ongoing assessment of competence of all clinical practitioners.]

8:43G-27.6 Quality assurance supplies and equipment; advisory

(Reserved)

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Radiology

Adopted New Rules: N.J.A.C. 8:43G-28

New Rules Not Adopted But Still Pending: N.J.A.C.

8:43G-28.3, 28.4, 28.6, 28.9, 28.11, 28.16, 28.18, and 28.22

Proposed: August 7, 1989 at 21 N.J.R. 2174(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.81, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted but still pending.**

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-28.3, 28.4, 28.6, 28.9, 28.11, 28.16, 28.18, and 28.22 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

N.J.A.C. 8:43G-28 Radiology

The Department received 24 letters commenting on the proposed standards for radiology. Comments were submitted by the New Jersey Hospital Association; the New Jersey Department of Environmental Protection; counsel to the Radiological Society of New Jersey (Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer, and Gladstone); Radiation Oncologists of Northwest New Jersey, P.A.; and Mid-State Radiation Oncology Associates. The remaining comments were submitted by hospitals.

N.J.A.C. 8:43G-28.1 Radiology structural organization; mandatory

COMMENT: A commenter questioned the exemption of rehabilitation hospitals, stating that all hospitals should have the capability of providing at least emergency radiological services on-site.

COMMENT: The Medical Center at Princeton and Meadowlands Hospital stated that MRI services do not have to be on-site.

COMMENT: St. Clare's Riverside wrote that where an institution has several campuses within reasonable proximity, the standard should permit radiologic services to be provided in one campus with patients transported there.

RESPONSE: The Department agrees with the first commenter and removes the exemption. MRI services have been designated as regional services and as such do not have to be provided at each hospital. The Department disagrees that patients should be transported to other locations for basic or emergency radiological services. The hospital should be able to provide these services on-site; this requirement could be met through the use of portable equipment. The standard is amended as follows: "Radiological services shall be provided on-site, except for specialized services that have been designated through the public planning process to be provided on a regional basis."

N.J.A.C. 8:43G-28.2 Radiology policies and procedures; mandatory

N.J.A.C. 8:43G-28.2(a)

COMMENT: St. Elizabeth wrote that the term "reactions" is non-specific. South Jersey Hospital System asked for identification of the scope of services within the radiology department; for example, are Echocardiology and Nuclear Medicine under the radiology department for supervision and interpretation?

RESPONSE: The standard is amended to add the term "adverse" to "reactions." The Department believes that the hospital should specify supervisory responsibility for designated services.

ADOPTIONS

N.J.A.C. 8:43G-28.2(c)

COMMENT: The New Jersey Hospital Association (NJHA) commented that "familiarity" cannot be measured.

RESPONSE: The words "instructed in" replace "familiar with."

N.J.A.C. 8:43G-28.8 Diagnostic services staff time and availability; mandatory

N.J.A.C. 8:43G-28.8(a)

COMMENT: Several commenters stated that it is inappropriate to mandate timeframes. Memorial Health Alliance wrote that the standard should be revised to require that the hospital establish a policy to deal with availability and response time of practitioners.

RESPONSE: The Department believes that specificity of timeframes is needed in order to be clear and consistent as well as to ensure quality of care for patients. The issue of the arrival time of radiologists has already been addressed in the rules for Emergency Department at N.J.A.C. 8:43G-12.6(a) and (b). Commenters noted that the necessity for the early arrival of radiologists, as their diagnostic procedures and skills are often required before treatment can commence. The standard is changed to require radiologists to arrive at the hospital within 30 minutes of being summoned. This now conforms with N.J.A.C. 8:43G-12.6(a) to reflect a consistent arrival time requirement for all physician specialists.

N.J.A.C. 8:43G-28.8(b)

COMMENT: NJHA commented that special radiologic diagnostic procedures do not require the presence of a registered professional nurse. The Hospital Association cited cost factors, as did the Medical Center at Princeton, and the nursing shortage, as did West Jersey Health System. Underwood-Memorial Hospital, however, commented that the quality of patient care will be significantly improved due to:

1. Close patient monitoring, such as vital signs, during procedures;
2. Medications administered quickly and accurately;
3. Timely nurse management of emergency situations; and
4. Nurse acting as resource person for other radiology staff.

RESPONSE: The standard requires a nurse to be available to be present at special diagnostic procedures; assignment of additional duties is not precluded. Generic cost issues and nursing shortage issues are addressed elsewhere in the licensing regulations. The Department concurs with Underwood-Memorial Hospital's description of the ways in which the quality of care will be improved by a nurse's presence. The standard remains unchanged.

N.J.A.C. 8:43G-28.10 Diagnostic services patient services; mandatory

N.J.A.C. 8:43G-28.10(a)

COMMENT: The Medical Center at Princeton commented that other medical specialists are trained in radiologic procedures; for example, obstetricians do ultrasonography. NJHA adds that requiring supervision by a radiologist of an obstetrician doing ultrasound is unnecessary and would result in additional patient fees but no additional quality.

RESPONSE: The Department acknowledges the concern. The standard is amended as follows: "Radiologists shall supervise and interpret all radiologic procedures, unless performed by clinical practitioners in specialty areas who are trained and experienced in these procedures."

N.J.A.C. 8:43G-28.10(b)

COMMENT: NJHA commented that timeframes are prescriptive.

RESPONSE: No change is made as the requirement is seen as important for quality of patient care.

N.J.A.C. 8:43G-28.10(c), (d), (e), and (f)

COMMENT: These comments cover subsections (c), (d), (e), and (f). St. Clare's Riverside commented that this is a laudable goal but not always attainable in the real world, such as after hours when the CT machine would have to be warmed up and a team of trained staff would have to be summoned. Meadowlands stated that the medical necessity and cost of having diagnostic services available within one hour must be addressed. NJHA and Princeton wrote that timeframes are prescriptive. South Jersey Hospital System wrote that one hour availability is not always feasible given the critical shortage of specialty technologists.

RESPONSE: Prompt diagnostic capability is essential to good patient care in general and of critical importance in emergency situations. The Department believes that a one hour response time is both ample and feasible (warming up a CT machine, for example, is accomplished in a matter of minutes); one hour may, in fact, far exceed the medical require-

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ment for immediate information as in the case of neurological accident or fetal distress. The standards are retained as written.

N.J.A.C. 8:43G-28.10(g)

COMMENT: St. Clare's Riverside suggested changing the standard to state that all efforts shall be made to make the patient comfortable, recognizing that many patients will continue to be uncomfortable despite all reasonable efforts.

RESPONSE: The Department concurs, and the standard is changed accordingly.

N.J.A.C. 8:43G-28.12 Diagnostic services, supplies and equipment; mandatory

N.J.A.C. 8:43G-28.12(a)

COMMENT: Several commenters wrote that CPR should be available to all patients at all times in all areas of the hospital, and that the exceptions should be deleted. St. Elizabeth and Mercer Medical Center requested definition of "patient monitor" and "means of maintaining respiration." Columbus Hospital asked whether "available" meant that a monitor and defibrillator must be in proximity to but not necessarily in the radiology department.

RESPONSE: The Department agrees with the first commenters and removes the exceptions. "Patient monitor" refers to any equipment normally used to monitor a patient during cardiopulmonary resuscitation, and "means of maintaining respiration" refers to a means of manually maintaining respiration such as an Ambu bag. "Available" refers to immediate availability of equipment, which could include close proximity. The standard is amended to read "immediately available."

8:43G-28.13 Diagnostic services quality assurance methods; mandatory

COMMENT: The Medical Center at Princeton wrote that the standard is too specific, Mercer Medical Center that it is too trivial, and South Jersey Hospital System that it is prescriptive. Monmouth Medical Center wrote that it is not necessarily a quality assurance (QA) issue since the real measure is how fast the concerned physician is notified of the results. Other commenters noted that the standard is inconsistent with other QA requirements, and Meadowlands recommended deleting it since there is a QA standard for the radiology department at N.J.A.C. 8:43G-28.5.

RESPONSE: The Department agrees to delete the standard.

8:43G-28.14 Radiotherapy services staff qualifications; mandatory

8:43G-28.14(a)

COMMENT: South Jersey Hospital System and Robert Stanton, Ph.D., of the Department of Radiation Oncology, Cooper Hospital/University Medical Center, wrote that many physicians were trained in general radiology programs before the division of radiology into two tracks of diagnostic and therapeutic radiology. South Jersey also noted that the term "radiotherapy" is not standard terminology and that residency training programs in "radiotherapy" do not exist. South Jersey suggested alternate language to comply with N.J.A.C. 8:331-1.4(a)ii, the planning provision for radiation oncology units.

RESPONSE: The Department accepts the correction, and alters the rule as follows: "All physicians performing radiation therapy services in the hospital shall have successfully completed an approved residency training program in radiology or radiation therapy." In addition, the term "radiation therapy" replaces "radiotherapy" wherever it appears in this subchapter.

8:43G-28.14(b)

COMMENT: South Jersey Hospital System and the Department of Environmental Protection, Bureau of Radiological Health, wrote that the State of New Jersey licenses "radiation therapy technologists, not radiotherapy technologists" under the Radiologic Technology Act, N.J.S.A. 26:2D.

RESPONSE: The terminology is corrected as noted in the previous response.

8:43G-28.15 Radiotherapy services staff time and availability; mandatory

8:43G-28.15(a)

COMMENT: Several commenters, including South Jersey Hospital System, Medical Center at Princeton, Memorial Health Alliance, and Brach, Eichler et al. for the Radiology Society of New Jersey, all questioned the need for on-site response within one hour for radiation oncologists, citing the unlikelihood of radiation oncology emergencies. Suggestions

were on-site response within four hours by a radiation oncologist or, alternately, by a radiation therapy technologist. Additional suggestions were to have the physician available "on-site or on-call" (Medical Center at Princeton) or to require the hospital to establish a policy regarding availability and response time (Memorial Health Alliance).

RESPONSE: The Department agrees to make this requirement more flexible by stipulating that a radiation oncologist shall be available on-site or on-call; if the physician is on-call, he or she shall be able to arrive and shall arrive at the hospital within four hours of being summoned.

COMMENT: Brach, Eichler et al. for the Society wrote that a physician engaged in the practice of radiotherapy is called a "radiation oncologist."

RESPONSE: The terminology is corrected.

8:43G-28.15(b)

COMMENT: Brach, Eichler et al. request clarification of term "assigned." They comment that just being assigned does not equate to appropriate patient treatment or supervision, and suggest "shall be present to operate."

RESPONSE: The suggested language meets the intent of the standard; the change is made.

8:43G-28.15(c)

COMMENT: Rahway Hospital commented that this standard would serve only to increase patient through-put and not assure quality of care, and noted that perhaps the concept should be contingent upon patient volume rather than amount of equipment. South Jersey Hospital System agreed with the concept that routine staffing should be with two technologists, but felt that there are times when it is reasonable and safe to temporarily operate with one tech (for example, when patient load is light, lunch hour, emergency call situations, etc.) South Jersey suggested 2.0 FTE technologists per unit. Meadowlands and Memorial Health Alliance cited staffing shortages and cost. Brach, Eichler et al. repeated their comment about the term "assigned."

RESPONSE: Planning regulations stipulate both staffing requirements and amount of equipment based on patient volume; consequently, the staffing ratio is already a requirement for those hospitals that have or plan a radiation therapy service. South Jersey's suggestion of 2.0 FTE technologists appears to be identical with the standard as it is written. The standard is amended to reflect the correct nomenclature of staff and the concept of "present to operate" the equipment but is otherwise unchanged.

8:43G-28.15(e)

COMMENT: Several commenters made generic staffing and cost implication comments. Rahway Hospital wrote that it is not reasonable to require the presence of a nurse, since radiotherapy is a non-invasive procedure with no potentially harmful agents; the procedure is often performed on an out-patient basis where patients may be seriously ill but stable.

RESPONSE: The Department believes that the presence of a nurse significantly improves the quality of patient care for these "seriously ill" patients. As in N.J.A.C. 8:43G-28.8(b), the nurse will provide close patient monitoring, management of emergency situations, timely and accurate administration of medications, and information and guidance to other radiation therapy staff. The standard is retained, but changed to indicate that the nurse will be available (rather than "assigned") to the radiation therapy unit when clinically necessary.

8:43G-28.15(f)

COMMENT: Several commenters made generic staffing and economic impact comments.

RESPONSE: The Department believes that the services of a social worker are important to the quality of patient care, as a social worker is trained to provide coordinated and continuous services to patients and families whose care is often fragmented and discontinuous. In addition, the social worker is equipped with assessment and interventional skills to provide therapy, advocacy, case management, and program development in a systems approach to the patient's illness. The standard provides staffing flexibility to the hospital but is amended to read "A professional staff member of the social work department shall be available . . ."

8:43G-28.17 Radiotherapy services patient services; mandatory

8:43G-28.17(b)

COMMENT: South Jersey Hospital System asked whether microfilm copies of patient records are allowable. Another commenter asked whether these records are part of the patient's medical records.

RESPONSE: Individual patient records of radiation therapy treatments are to be maintained separately from the hospital records as the retention requirements are different. A copy of the record of radiation therapy treatments should be included in the patient's medical record, if applicable, and the standard is changed to reflect this. It is also changed to delete the requirement that these records be maintained by the radiology service itself, permitting more flexibility as to where the records are maintained. Since photographic reproduction, or microfilm, is permitted by the statute addressing retention of medical records (N.J.S.A. 26:8-5 et seq.), it is also permitted here.

8:43G-28.17(c)

COMMENT: One commenter, Meadowlands Hospital, stated that this standard goes beyond the definition of mandatory, which is a minimum and essential requirement of care, and asked whether reimbursement had been allocated.

RESPONSE: The Department believes that this standard reflects state-of-the-art practice and is generally accepted. The commenter is referred to the introductory statement concerning cost reimbursement. The standard remains unchanged.

8:43G-28.19 Radiotherapy services supplies and equipment; mandatory

8:43G-28.19(a)

COMMENT: Four commenters (Princeton, Meadowlands, Memorial Health Alliance, and St. Joseph's Hospital and Medical Center) cited cost. Princeton, Meadowlands, and NJHA wrote that the standard attempts to supersede Certificate of Need regulations. Dr. Stanton of Cooper Hospital noted that the standard should state "department" instead of "unit."

RESPONSE: The Department has upgraded Certificate of Need regulations in this area to more closely conform to licensing regulations. It is to be noted that the proposed licensing regulations may reflect the appropriate and current standard of care, while the certificate of need standards reflect the standard of care at the time of their adoption. The major purpose of this provision is to provide a high quality of patient care through timely and efficient treatment. Commenters are asked to note that only five to eight percent of New Jersey hospitals do not already have this equipment, and several of these do not require simulators since they use cobalt machines rather than linear accelerators. Commenters are also referred to the introductory statement regarding cost reimbursement. The standard is altered to change the word "unit" to "department" for clarity but is otherwise retained.

8:43G-28.20 Radiotherapy services quality assurance methods; mandatory

COMMENT: Rahway Hospital wrote that quality assurance programs conducted by radiation therapy staff are a universally accepted standard essential to patient treatment; the hospital stated that periodic verification films while the patient is in treatment (every three weeks) are consistent with quality patient care. They noted, however, that Medicare reimburses for only one verification film per course of treatment.

Another commenter noted that this standard does not appear to be a true quality assurance program, and that QA should be consistent throughout the hospital.

RESPONSE: The Department agrees with these comments. The standards as proposed at subsections (a) and (b) are recodified to radiation therapy patient services, N.J.A.C. 8:43G-28.17, and the generic quality assurance standard is inserted here.

The Department has deleted the radiology specific education requirements at N.J.A.C. 8:43G-28.21 and replaced them with a reference to the general education rule for the chapter, N.J.A.C. 8:43G-5.9. This conforms the educational requirements to those in other hospital licensure subchapters and allows training and education requirements to be set by the hospital.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 28. RADIOLOGY

8:43G-28.1 Radiology structural organization; mandatory

Radiological services shall be provided on-site, *[unless the hospital has been designated by the Commissioner of Health as primarily rehabilitative in mission]* ***except for specialized services that have been designated through the public planning process to be provided on a regional basis***.

8:43G-28.2 Radiology policies and procedures; mandatory

(a) The radiology service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures include at least:

1. Safety practices;
2. Emergencies;
3. ***Adverse* *[Reactions]* *reactions***;
4. Management of the critically ill patient; and
5. Infection control, including patients in isolation.

(b) The radiology service's policies and procedures manual shall be available to staff in the radiology unit.

(c) There shall be a written protocol for managing medical emergencies in the radiological suite. All radiological staff shall be *[familiar with]* ***instructed in*** this protocol and know their roles in the case of such an emergency.

8:43G-28.3 Radiology staff qualifications; advisory ***(Reserved)***8:43G-28.4 Radiology patient services; advisory ***(Reserved)***

8:43G-28.5 Radiology quality assurance methods; mandatory

There shall be a program of quality assurance for the radiology service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

8:43G-28.6 Radiology quality assurance methods; advisory ***(Reserved)***

8:43G-28.7 Diagnostic services staff qualifications; mandatory

All radiologists performing diagnostic radiology services in the hospital shall have successfully completed an approved graduate medical education residency training program in radiology.

8:43G-28.8 Diagnostic services staff time and availability; mandatory

(a) A radiologist who has completed a residency training program in radiology shall be able to arrive, and shall arrive, at the hospital within ***[60]* *30*** minutes of being summoned, under normal transportation conditions.

(b) A registered professional nurse shall be available in the radiology service to be present at special radiologic diagnostic procedures when needed, in the physician's judgment, to administer medications and perform other tasks.

8:43G-28.9 Diagnostic services staff time and availability; advisory ***(Reserved)***

8:43G-28.10 Diagnostic services patient services; mandatory

(a) Radiologists shall supervise and interpret all radiologic procedures, **unless performed by clinical practitioners in specialty areas who are trained and experienced in these procedures***.

(b) All radiologic tests shall be interpreted, on a preliminary basis, within 24 hours of the time that test results are available for interpretation.

(c) If provided by the hospital, computer tomography shall be available within one hour at all times, when deemed appropriate in the judgement of the radiologist, unless the machinery is temporarily disabled or in use.

(d) If provided by the hospital in obstetrics, ultrasound shall be available within one hour at all times, unless the machinery is temporarily disabled or in use.

(e) If provided by the hospital, nuclear medicine shall be available within one hour at all times, unless the machinery is temporarily

disabled or in use, or unless the needed pharmaceutical product is unavailable.

(f) If provided by the hospital, special procedures such as angiography and interventional procedures shall be available within one hour at all times, when deemed appropriate in the judgement of the radiologist, unless the machinery is temporarily disabled or in use.

(g) The radiology staff shall ***make every effort to*** ensure that patients waiting for radiology services or transport from radiology are comfortable while waiting and that the service responsible for transporting the patient back to the unit is notified when the patient is ready to be returned.

(h) Fluoroscopy with image intensification and a general radiographic room, and a mobile x-ray unit, shall be available.

8:43G-28.11 Diagnostic services patient services; advisory ***(Reserved)***

8:43G-28.12 Diagnostic services supplies and equipment; mandatory

(a) Cardiopulmonary resuscitation technology shall be ***immediately*** available to radiology services on all shifts*[, except in facilities not using intravenous contrast agents or other invasive procedures]*. This technology shall include at least:

1. A patient monitor and defibrillator;
2. Emergency drugs; and
3. Means of maintaining respiration.

*[8:43G-28.13 Diagnostic services quality assurance methods; mandatory

Quality assurance for the radiology service shall include monitoring of the time it takes for test results to be entered into the patient's medical record.]*

8:43G-*[28.14 Radiotherapy]* ***28.13 Radiation therapy*** services staff qualifications; mandatory

(a) All physicians performing *[radiotherapy]* ***radiation therapy*** services in the hospital shall have successfully completed an approved residency training program in *[radiotherapy]* ***radiology or radiation therapy***.

(b) All *[radiotherapy]* ***radiation therapy*** technologists in the *[radiotherapy]* ***radiation therapy*** service shall be licensed.

8:43G-*[28.15 Radiotherapy]* ***28.14 Radiation therapy*** services staff time and availability; mandatory

(a) A *[radiotherapist]* ***radiation oncologist shall be available on-site or on-call; if on-call, he or she*** shall be able to arrive and shall arrive at the hospital within ***[60 minutes]* *four hours*** of being summoned ***[under normal transportation circumstances]***.

(b) There shall be at least one licensed *[radiotherapy]* ***radiation therapy*** technologist or *[radiotherapist]* ***radiation oncologist*** ***[assigned to]* *present to operate*** each cobalt machine when it is in use.

(c) There shall be at least two *[radiologic]* ***radiation therapy*** technologists ***[assigned to]* *present to operate*** each linear accelerator when it is in use. A *[radiotherapist]* ***radiation oncologist*** may act as a substitute for one of the two *[radiologic]* technologists.

(d) A radiation physicist shall be available to the *[radiotherapy]* ***radiation therapy*** service on a full- or part-time basis.

(e) A registered professional nurse shall be ***[assigned]* *available*** on a full- or part-time basis to the *[radiotherapy]* ***radiation therapy*** unit.

(f) A ***[social worker who holds a bachelors or masters degree in social work]* *professional member of the social work department*** shall be available on a full- or part-time basis to the *[radiotherapy]* ***radiation therapy*** unit to meet the psychosocial needs of ***[radiotherapy]* *radiation therapy*** patients and families.

8:43G-*[28.16 Radiotherapy]* ***28.15 Radiation therapy*** services staff time and availability; advisory ***(Reserved)***8:43G-*[28.17 Radiotherapy]* ***28.16 Radiation therapy*** services patient services; mandatory

(a) A written plan or care shall be developed upon initiation of treatment for each *[radiotherapy]* ***radiation therapy*** patient.

(b) Individual patient records of ***[radiotherapy]* *radiation therapy*** treatments shall be maintained ***[by the radiology service]*** for at least two years after the death of the patient. If no date of death is known, records shall be maintained at least until the patient would have attained the age of 90 years, or for five years, whichever is later. ***A copy of the record of radiation therapy treatments shall be included in the patient's medical record, if applicable.***

(c) Computerized treatment planning for ***[radiotherapy]* *radiation therapy*** shall be available either on-site or by arrangement with another provider of services.

***(d) Each patient's record shall be reviewed at least once each week according to a plan developed by a radiation physicist. The review shall be conducted by a physicist, chief technologist, or dosimetrist.**

(e) **A periodic review of all cases under treatment shall be conducted and at least one verification film shall be made every three weeks for each patient under treatment.***

8:43G-*[28.18 Radiotherapy]* ***28.17 Radiation therapy*** services patient services; advisory ***(Reserved)***

8:43G-*[28.19 Radiotherapy]* ***28.18 Radiation therapy*** services supplies and equipment; mandatory

(a) Each ***[radiotherapy unit]* *radiation therapy department*** that has a linear accelerator shall have at least one simulator.

(b) Emergency drugs shall be immediately available to the ***[radiotherapy]* *radiation therapy*** service.

8:43G-*[28.20 Radiotherapy]* ***28.19 Radiation therapy*** services quality assurance methods; mandatory

***(a) A quality assurance program shall be developed in which each patient's record is reviewed at least once each week according to a plan developed by a radiation physicist. The review shall be conducted by a physicist, chief technologist, or dosimetrist.**

(b) The quality assurance program for radiotherapy shall include periodic review of all cases under treatment and at least one verification film every three weeks for each patient under treatment. The program shall include follow-up review of all cases.]*

There shall be a program of quality assurance for radiation therapy services that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, recommending, implementing, and monitoring corrective actions on the basis of these data.

8:43G-*[28.21]**28.20* Staff education; mandatory

***(a) The radiology service shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.**

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;

2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;

3. Individual staff requests for education programs;

4. Supervisor judgements about education needs based on assessment of staff performance;

5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and

6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.]*

Requirements for the radiology staff education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-*[28.22]**28.21* Staff education; advisory ***(Reserved)***

(a)

DIVISION OF HEALTH FACILITIES EVALUATION**Hospital Licensing Standards****Same Day Stay; Surgery****Adopted New Rules: N.J.A.C. 8:43G-32 and 34****New Rules Not Adopted But Still Pending: N.J.A.C.**

8:43G-32.6, 32.8, 32.15, 32.17, 32.19, 34.2, 34.10, and 34.12

Proposed: August 7, 1989 at 21 N.J.R. 2177(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health, with approval of the Health Care Administration Board.

Filed: January 10, 1990 as R.1990 d.80, with substantive and technical changes not requiring public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted but still pending.

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: N.J.A.C. 8:43G-32.6, 32.8, 32.15, 32.17, 32.19, 34.2, 34.10, and 34.12 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for obtaining a superior level of care. The Department has not requested adoption of advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department of Health received 19 comment letters in response to the proposed same-day service rules. Eighteen letters were submitted by hospitals and one by the New Jersey Hospital Association.

N.J.A.C. 8:43G-32.2(b) Same-day surgery services structural organization; mandatory

COMMENT: The New Jersey Hospital Association and Princeton Medical Center object to the specificity of the standard, and ask that hospitals be allowed to establish their own mechanism for evaluating and reviewing the activities of the same-day surgery services. Muhlenberg Regional Medical Center comments that an Operating Room Committee should be capable of serving as the multidisciplinary committee.

RESPONSE: The Department agrees with the comment on the specificity of the standard, and has changed the wording accordingly so as to allow for more flexibility. The rule, as revised, omits reference to a multidisciplinary committee.

N.J.A.C. 8:43G-32.3(a) Same-day surgery services policies and procedures; mandatory

COMMENT: St. Elizabeth Hospital comments that the standard should be deleted because it is a duplication of N.J.A.C. 8:43G-34.5(a). The commenter further notes that a registered nurse is required to be in attendance as a circulating nurse for all surgical procedures thereby eliminating the need for specification of surgical procedures.

RESPONSE: The standard has been retained in same-day stay with deletion of paragraph (a)4 and recodification as subsection (c) in acknowledgment of the commenter's point that it is unnecessary to specify the surgical procedures which require a registered nurse to be in attendance as a circulating nurse. N.J.A.C. 8:43G-34.5 is not applicable to the same-day surgery service, and thus does not represent a duplicative standard.

N.J.A.C. 8:43G-32.4(a) Same-day surgery services staff qualifications; mandatory

COMMENT: Mercer Medical Center comments that a definition of "clinical responsibility" is needed.

RESPONSE: The Department believes that each hospital should have the prerogative to define and determine the scope of the clinical responsibilities of the physician director.

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N.J.A.C. 8:43G-32.4(b)

COMMENT: St. Elizabeth comments that each institution should define the percentage of staff needed.

RESPONSE: The Department is obligated to protect the health and safety of patients, and believes that the requirement for a registered professional nurse to be present whenever a patient is in the post-anesthesia care unit or the postoperative unit dedicated to same-day surgery patients represents a minimum safe standard. The Department provides the hospital with the flexibility to assign additional nursing staff based on the volume and case mix of patients in the unit. The standard is retained.

N.J.A.C. 8:43G-32.4(c)

COMMENT: St. Elizabeth Hospital comments that the training credentials of the staff working in the Post-Anesthesia Care Unit or Postoperative Unit should be defined by the institution. Columbus Hospital questions whether in-house CPR review will comply with the standard or is certification by the American Heart Association or Red Cross required.

RESPONSE: The Department believes requiring registered professional nurses in the postanesthesia care unit or postoperative unit to be trained in basic cardiac life support is a minimum standard essential for the protection of the health and safety of patients and does not infringe on the hospital's prerogative to establish training credentials for its staff. The Department does not specify that training in basic cardiac life support needs to be provided by an external organization. The standard is retained.

N.J.A.C. 8:43G-32.5(a) Same-day surgery services patient services; mandatory

COMMENT: The New Jersey Hospital Association and several hospitals comment that the standard is no longer relevant in light of recent legislation which permits oral surgeons to perform histories and physicals as determined by the hospital. Two hospitals comment that all patients should have a history and physical examination, regardless of whether the procedure is performed by a dentist or a podiatrist.

RESPONSE: The proposed legislation regarding the scope of practice of oral surgeons is still pending. No change can be made to the standard with respect to the ability of oral surgeons to perform comprehensive history and physical examinations until the legislation is enacted. The Department notes that the purpose of this standard is to ensure that all same-day surgery patients receive a physical examination performed by a physician. In view of the comments from the two hospitals, the Department has changed the language of the standard to address the requirement more directly, and relocated the standard to N.J.A.C. 8:43G-32.5(g)4.

N.J.A.C. 8:43G-32.5(b)

COMMENT: Mercer Medical Center comments that this standard is in conflict with N.J.A.C. 8:43B-18, Anesthesia, and questions whether intravenous conscious sedation is considered anesthesia. St. Clare's Hospital requests the standard be modified to permit participation of Certified Registered Nurse Anesthetists in performing preoperative anesthesia assessments.

RESPONSE: The Department acknowledges the comments and deletes this standard from the same-day stay subchapter to avoid conflict with N.J.A.C. 8:43B-18. The anesthesia rules found at N.J.A.C. 8:43B-18 shall prevail when anesthesia other than local is to be used in the same-day stay service. Intravenous conscious sedation is considered anesthesia.

N.J.A.C. 8:43G-32.5(c)

COMMENT: The New Jersey Hospital Association objects to the inclusion of this standard and states that perioperative patient education prior to surgery is usually conducted in the doctor's office.

RESPONSE: The standard is retained. The Department believes that all patients in same-day surgery units should be assured of receiving perioperative patient education.

N.J.A.C. 8:43G-32.5(d)

COMMENT: The New Jersey Hospital Association comments that the standard should be deleted because it is standard protocol to check the preoperative record before surgery.

RESPONSE: The standard is retained to ensure that standard protocol is followed.

N.J.A.C. 8:43G-32.5(e)

COMMENT: The New Jersey Hospital Association and Princeton Medical Center comment that this is hospital-wide practice and should therefore be deleted.

RESPONSE: The standard is retained. Hospital licensure regulations reflect hospital-wide practices which should be uniformly in place at all hospitals.

N.J.A.C. 8:43G-32.5(f)

COMMENT: Muhlenberg Regional Medical Center suggests the last sentence be revised for clarification. The New Jersey Hospital Association states that the last sentence should be deleted.

RESPONSE: The Department acknowledges the comments and has changed the wording in such a way as to clarify the provision while preserving its intent.

N.J.A.C. 8:43G-32.5(g)

COMMENT: One commenter points out that the medical record for same-day surgery patients should also include "Preadmission testing results."

RESPONSE: The Department agrees and has made this addition.

N.J.A.C. 8:43G-32.5(g)7

COMMENT: The New Jersey Hospital Association and Princeton Medical Center suggest ending the sentence after the word "procedure" as the surgeon's postoperative note customarily includes any notable occurrence.

RESPONSE: The Department agrees and has changed the standard accordingly.

N.J.A.C. 8:43G-32.5(g)8

COMMENT: The New Jersey Hospital Association comments that it is unnecessary and redundant to state the contents of the discharge note. St. Clare's Hospital comments that flexibility should be permitted to allow for the surgeon to dictate a note shortly after discharge.

RESPONSE: The Department does not prescribe the contents of the surgeon's discharge note. The Department believes it is in the interest of quality patient care to assure that the surgeon's discharge note is written prior to the patient's discharge from the hospital. The surgeon's discharge note, which includes a record of the surgeon's discharge instructions for the patient, should be accessible in the event the patient has questions or needs clarification before leaving the hospital.

N.J.A.C. 8:43G-32.5(h)

COMMENT: The New Jersey Hospital Association and Princeton Medical Center comment that this is standard practice and should be therefore deleted.

RESPONSE: The standard is being retained and recodified to N.J.A.C. 8:43G-32.3(d), to ensure that standard practice is followed.

N.J.A.C. 8:43G-32.5(i)

COMMENT: The New Jersey Hospital Association comments that this requirement is covered under N.J.A.C. 8:43G-32.3(a)8. Princeton Medical Center comments that this standard represents a cost issue.

RESPONSE: This standard is not addressed in N.J.A.C. 8:43G-32.3(a)8. The Department does not believe this standard will have a significant financial impact on hospitals, as provision of transportation is not required. The intent of the standard is to protect the safety of same-day surgery patients, by attempting to ensure that those patients who receive anesthesia do not drive themselves home after discharge. The Department is not requiring hospitals to provide transportation services for same-day surgery patients, and also realizes that there will be instances when patients refuse to comply with the hospital policy. The standard has been recodified to N.J.A.C. 8:43G-32.3(a)8, with a minor modification of the language for purposes of clarification.

N.J.A.C. 8:43G-32.7(a) Same-day surgery services space and environment; mandatory

COMMENT: The New Jersey Hospital Association comments that this requirement is covered under the policies and procedures section of Infection Control, N.J.A.C. 8:43G-14, and should therefore be deleted.

RESPONSE: This requirement is not explicitly set forth in N.J.A.C. 8:43G-14. The Department believes the rule is appropriately placed in N.J.A.C. 8:43G-32.

HEALTH

N.J.A.C. 8:43G-32.7(b)

COMMENT: The New Jersey Hospital Association and Princeton Medical Center comment that this requirement is routine protocol and should therefore be deleted. The commenters further point out that this standard is applicable to all departments within the hospital.

RESPONSE: The Department agrees that this standard is applicable to all departments, and as a consequence, has deleted this standard from same-day surgery and addressed the issue of emergency response in N.J.A.C. 8:43G-5, Administrative and Hospital-Wide Services.

N.J.A.C. 8:43G-32.7(c)

COMMENT: The New Jersey Hospital Association points out that this requirement is addressed in Patient Rights.

RESPONSE: The Department agrees. Since N.J.A.C. 8:43G-4.1(a)20 assures patients of their right to visual privacy, this standard is deleted from Same-Day Stay.

N.J.A.C. 8:43G-32.9(a)1-9 Same-day surgery service quality assurance methods; mandatory

COMMENT: Several hospitals objected to the specificity of the Quality Assurance (QA) indicators.

RESPONSE: The Department believes there is strong clinical support for establishing departmental quality assurance programs in critical patient care areas such as same-day surgery. The Department, in cooperation with the New Jersey Hospital Association, will be actively examining quality assurance programs and developing standards for QA activities which will assure delivery of high quality health care to consumers. The new standards will be proposed as amendments to the Manual at a future time. The indicators identified in (a)1 to (a)9 will be retained in the interim.

N.J.A.C. 8:43G-32.9(b)

COMMENT: The New Jersey Hospital Association comments that this is covered in N.J.A.C. 8:43G-14, Infection Control.

RESPONSE: The Department agrees and has deleted this standard from same-day stay.

N.J.A.C. 8:43G-32.9(c)

COMMENT: The New Jersey Hospital Association comments that this is not a Quality Assurance standard.

RESPONSE: The Department agrees and has deleted this standard.

N.J.A.C. 8:43G-32.10 Same-day medical services; scope

COMMENT: The New Jersey Hospital Association and West Jersey Health System request a definition of same-day medical services.

RESPONSE: The Department acknowledges the request and has included a definition of same-day medical services in the rule. The Department defines same day medical services as elective treatments, diagnostic and nonsurgical procedures as defined in the ICD-9-CM codes, with the patient being discharged in a routine status before midnight of the day of admission or treatment. There would be no operating room charge (for definition of operating costs and revenues see N.J.A.C. 8:31B-4.96) associated with the provision of these services.

COMMENT: West Jersey Health System comments that there is a requirement for a physician director for same-day surgical services but not for same day medical services.

RESPONSE: The commenter is correct. The Department does not specify requirements for a physician director of same-day medical service.

N.J.A.C. 8:43G-32.12(a) Same-day medical services policies and procedures; mandatory

COMMENT: Princeton Medical Center comments that items (a)1 through 6 are too prescriptive and should be deleted.

RESPONSE: The Department disagrees. Each hospital is provided with the flexibility and latitude to develop policies and procedures which meet the individual needs of the institution. The standard is retained.

N.J.A.C. 8:43G-32.13 Same-day medical services staff time and availability; mandatory

COMMENT: The New Jersey Hospital Association and Princeton Medical Center comment that it is unnecessary to codify this basic concept. Memorial Health Alliance comments that delineation of staff time and availability should remain as a management prerogative.

RESPONSE: The Department has an obligation to ensure that patients are provided with an adequate level of direct patient care. The Department believes acuity systems provide hospitals with flexibility and latitude in determining nurse staffing patterns. The standard is retained.

ADOPTIONS

N.J.A.C. 8:43G-32.14(a) Same-day medical services patient services; mandatory

COMMENT: One commenter suggested including "results of tests".
RESPONSE: The Department agrees and has made the addition.

N.J.A.C. 8:43G-32.14(b)

COMMENT: The New Jersey Hospital Association comments that this is standard protocol and should therefore be deleted.

RESPONSE: The standard is retained to ensure that standard protocol is followed.

N.J.A.C. 8:43G-32.16(a) Same-day medical services space and environment; mandatory

COMMENT: The New Jersey Hospital Association and Princeton Medical Center comment that this standard is routine protocol for all departments and should therefore be deleted.

RESPONSE: The Department has deleted this standard and addressed the issue of emergency response in N.J.A.C. 8:43G-5, Administrative and Hospital-Wide Services.

N.J.A.C. 8:43G-32.16(b)

COMMENT: The New Jersey Hospital Association points out that this requirement is addressed in Patient Rights.

RESPONSE: The Department agrees and has deleted this standard.

N.J.A.C. 8:43G-32.18 Same-day services education; mandatory

COMMENT: The New Jersey Hospital Association and several hospitals objected to the specificity of staff education and training requirements.

RESPONSE: The Department acknowledges the comments and has developed a generic staff education requirement applicable to all hospital departments at N.J.A.C. 8:43G-5.9. The language of the generic requirement was developed at the request of the New Jersey Hospital Association who preferred a more generic and flexible standard in contrast to the Department delineating an educational program for each department.

N.J.A.C. 8:43G-32.20(c) Same-day medical services quality assurance methods; mandatory

COMMENT: The New Jersey Hospital Association comments that this is not a quality assurance activity.

RESPONSE: The Department agrees and has deleted the standard.

N.J.A.C. 8:43G-34 Surgery

The Department of Health received 15 comment letters in response to the proposed surgery rules. In addition, comments were received from the New Jersey Hospital Association (NJHA). A summary of comments and responses follows:

N.J.A.C. 8:43G-34.3 Surgery policies and procedures

N.J.A.C. 8:43G-34.3(a)

COMMENT: One commenter requested deleting this standard.

RESPONSE: The Department believes it is important for the surgery service to have policies and procedures that address processing, packaging, and sterilization of materials in the suite to enable the delivery of safe patient care. The standard remains unchanged.

N.J.A.C. 8:43G-34.3(b)

COMMENT: One commenter requested that the Department delete the words "where applicable" from the beginning of the second sentence.

RESPONSE: The Department believes the intent of the standard is best maintained if the wording remains as proposed.

N.J.A.C. 8:43G-34.3(d)

COMMENT: Two commenters suggested ending the sentence after "handling of soiled laundry".

RESPONSE: The Department feels that in order to help ensure the integrity of a safe environment for surgical patients, the inclusion of a written procedure for the bagging and covering of soiled laundry at the site of use before transport to the soiled holding area and the removing of soiled laundry from each operating room following every procedure is required. No change in this section is warranted.

N.J.A.C. 8:43G-34.4 Surgery staff qualifications; mandatory

N.J.A.C. 8:43G-34.4(a)

COMMENT: The NJHA, St. Clare's-Riverside, Englewood and the Meadowlands presented generic objections to professional credentialing standards.

ADOPTIONS

HEALTH

RESPONSE: The Department believes that professional credentials bear a strong positive relationship to quality of patient care. The standard remains unchanged.

N.J.A.C. 8:43G-34.4(e)

COMMENT: Several commenters wrote that this standard is confusing as proposed and question why only the pediatric medical service was required to provide annual input to the surgery service.

COMMENT: St. Clare's-Riverside noted that an ongoing, free flow of information and liaison between various departments via the committee structure is more effective and better protects the health needs of the patient.

RESPONSE: The Department has reviewed its position and agrees with the arguments presented by the commenters. The standard is deleted.

N.J.A.C. 8:43G-34.5 Surgery staff time and availability; mandatory

N.J.A.C. 8:43G-34.5(a)

COMMENT: St. Joseph's commented that R.N. duties should not be mandated and that hospitals should be permitted to abide by legal constraints as well as their professional judgement as to the uses of registered professional nurses.

RESPONSE: The Department will retain this standard unchanged. The Department concurs with the Joint Committee and Accreditation of Hospitals and the Association of Operating Room Nurses that a registered nurse should be assigned to circulating nurse duties for the operating room. In addition, the proposed standard is consistent with a similar standard in surgery same-day stay. The safety of the patient is best protected when a registered nurse is required to perform circulating duties.

N.J.A.C. 8:43G-34.5(b)

COMMENT: St. Elizabeth commented that this standard should be eliminated since staff training and/or credentials should be determined by the institution.

RESPONSE: The Department believes this standard meets the minimum requirements for all registered nurses in the surgery unit, has a positive impact on successful patient outcomes and is consistent with standards in other areas where the Department mandates minimum requirements to protect the health care interests of the patient. As a result, no change in this section is needed.

N.J.A.C. 8:43G-34.5(c)

COMMENT: St. Elizabeth stated that this standard should be eliminated and the institution should define the system.

RESPONSE: The Department feels this standard reflects quality health care practices and does not believe the institution's ability to define the system has been precluded. The standard remains unchanged.

N.J.A.C. 8:43G-34.6 Surgery patient services; mandatory

N.J.A.C. 8:43G-34.6(d)

COMMENT: Two commenters wrote that this standard is unmeasurable.

COMMENT: Princeton noted that this is a patient's right standard.

RESPONSE: The Department agrees and is deleting this standard from this subsection.

N.J.A.C. 8:43G-34.6(e)1

COMMENT: St. Elizabeth and Valley commented that the standard should be changed to include a written informed consent signed by the patient or a guardian to accommodate for the incompetent or minor patient.

RESPONSE: The Department agrees and has changed the wording to include a written informed consent signed by the patient or legal guardian.

N.J.A.C. 8:43G-34.6(e)4

COMMENT: St. Clare's-Riverside requested that the standard be broadened to allow the participation of a certified registered nurse anesthetist in addition to the anesthesiologist.

RESPONSE: The Department has reviewed its position and believes the standard is more appropriately referenced at N.J.A.C. 8:43B-18, Anesthesia. Consequently, the standard has been deleted from this subsection and comments will be addressed in N.J.A.C. 8:43B-18.

N.J.A.C. 8:43G-34.6(f)

COMMENT: Englewood Hospital commented that this should be at the discretion of nursing and medical records and not mandated.

RESPONSE: The Department disagrees. This provision recognizes the importance of documentation to ensure continuity of patient care and believe the standard protects the best interests of the patient by providing the documentation necessary to implement effective nursing care practices. No change in this section is needed.

N.J.A.C. 8:43G-34.6(j)

COMMENT: St. Clare's-Riverside suggested deleting the words "conducted prior to elective surgery" since some of the education will occur after surgery.

RESPONSE: The Department agrees and has made the change accordingly.

N.J.A.C. 8:43G-34.7 Surgery space and environment; mandatory

N.J.A.C. 8:43G-34.7(b)

COMMENT: Mercer Medical Center commented that the term "limited access" needs to be clearly and definitively defined and that it would seem to be preferable to mandate scrub attire for all persons entering the surgical suite even if for a limited time.

RESPONSE: The Department appreciates the comment but feels the needs of both patients and staff are best served if the hospital retains the flexibility to define limited access to meet the individual needs of the hospital's surgery service. Practical considerations would mandate that those entering the surgical suite for limited periods of time and for specific purposes, be allowed to wear a cover gown over their clothes. This practice would not compromise the integrity of the protective environment of the patient but would allow expedient implementation of patient services.

N.J.A.C. 8:43G-34.8 Surgery supplies and equipment; mandatory

N.J.A.C. 8:43G-34.8(a)

COMMENT: Mercer Medical Center commented that the list of emergency equipment should read "and endotracheal tubes".

RESPONSE: The Department agrees and has made the appropriate change to the standard.

N.J.A.C. 8:43G-34.9 Surgery staff education; mandatory

COMMENT: Several commenters noted that the staff education standards were too prescriptive and should be defined by the hospital.

RESPONSE: The staff education and training standards are deleted from the individual subchapters and will be included in the hospital-wide subchapter N.J.A.C. 8:43G-5.9, as generic rather than specific rules.

N.J.A.C. 8:43G-34.11 Surgery quality assurance methods; mandatory

N.J.A.C. 8:43G-34.11(b)

COMMENT: The NJHA commented that it is unnecessary to codify the basic function of a quality assurance program and the standard should end after the words "... integrated into the hospital quality assurance program".

RESPONSE: The Department believes that an effective quality assurance program is of paramount importance to the delivery of quality patient care. The codification of basic functions of a QA program, while seemingly unnecessary, facilitates implementation of a structured plan in essential patient care areas. The standard remains unchanged.

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

SUBCHAPTER 32. SAME-DAY STAY

8:43G-32.1 Scope

The standards set forth in this subchapter apply only to hospitals that have a separate, designated unit or service for same-day stay.

8:43G-32.2 Same-day surgery services structural organization; mandatory

(a) There shall be an organizational chart or alternative documentation clearly delineating the lines of responsibility, authority, and communication for the same-day surgery service and, if the same-day medical service is a separate entity, the lines of communication between the two services.

(b) *[The same-day surgery service shall be represented on a multi-disciplinary committee responsible]* ***There shall be a mechanism***

for approving policies and procedures and evaluating and reviewing the activities of the same-day surgery service.

8:43G-32.3 Same-day surgery services policies and procedures; mandatory

(a) The same-day surgery service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Infection control practices;
2. Criteria for the types of patients who may be admitted for same-day surgery;
3. Categories of surgical procedures that may be performed on a same-day basis;

[4. Specification of surgical procedures that require a registered professional nurse in attendance as a circulating nurse;]

*[5.]*4.* When, where, and by whom preadmission testing may be performed;

*[6.]*5.* Minimum requirements for preadmission testing for all types of anesthesia;

*[7.]*6.* A system for securing the belongings and valuables of the patient; *[and]*

*[8.]*7.* Criteria and procedures for discharging a patient, which includes nursing assessments of self-care capability and who is responsible for discharging the patient*[*]; and*

8. A requirement that patients who receive anesthesia not drive themselves home after discharge and are accompanied home by another person. If the patient fails to comply with the requirement, the circumstances shall be documented in the patient's medical record.

(b) The policies and procedures for the postanesthesia care unit shall apply to same-day surgery service.

(c) A registered professional nurse shall be assigned to circulating nurse duties in each room where same-day surgery is being performed.

(d) When a same-day surgery patient is admitted to the hospital as an in-patient, a statement shall be made in his or her same-day medical record giving the reason for admission.

8:43G-32.4 Same-day surgery services staff qualifications; mandatory

(a) There shall be a physician director who has clinical responsibility for the same-day surgery service who is board certified. Certification shall be by a board of the American Board of Medical Specialists. This may be the same person who is the physician director of the surgical service.

(b) If there is a postanesthesia care unit, or postoperative unit dedicated to same-day surgery patients, there shall be a registered professional nurse present whenever a patient is in the unit. Additional nursing staff shall be assigned based on the volume and case mix of patients in the unit.

(c) All registered professional nurses in the postanesthesia care unit or postoperative unit dedicated to same-day surgery patients shall have training in basic cardiac life support.

8:43G-32.5 Same-day surgery services patient services; mandatory

*[(a) A physician shall perform a comprehensive history and physical examination on the patient if the procedure is to be performed by a dentist or podiatrist.

(b) When anesthesia other than local is to be used, the anesthesiologist shall perform a preoperative anesthesia assessment and develop an anesthesia plan that he or she discusses with the patient. Documentation of the plan shall be included in the patient's medical record.]*

*[(c)]***(a)* There shall be documentation of perioperative patient education.

*[(d)]***(b)* There shall be a system to ensure checking of each patient's preoperative record for completeness before the procedure begins.

*[(e)]***(c)* Physician orders, specific for each patient, shall govern the postoperative care of each patient.

*[(f)]***(d)* After the surgical procedure and before discharge, the patient and/or significant other shall receive written ***and oral*** instructions on self-care, follow-up, signs and symptoms to be reported to the surgeon, and how to report signs and symptoms. ***[These instructions shall be orally explained.]***

*[(g)]***(e)* The medical record for same-day surgery patients shall include at least:

1. The patient's written informed consent;
2. A preoperative note by the physician, dentist, or podiatrist, which includes the surgical plan;

3. A preoperative anesthesia note by the anesthesiologist, if applicable;

4. Documentation of the history and physical examination ***performed by a physician*;**

***5. Preadmission testing results*;**

*[5.]*6.* A preoperative nursing assessment;

*[6.]*7.* Any physician orders;

*[7.]*8.* The surgeon's postoperative note on the procedure*[, including any occurrence during the procedure that was out of the ordinary]*;

*[8.]*9.* The surgeon's discharge note, written prior to discharge from the hospital, which describes the disposition of the patient and discharge instructions; and

*[9.]*10.* Nurses' notes that describe the patient's postoperative progress.

*[(h) When a same-day surgery patient is admitted to the hospital as an in-patient, a statement shall be made in his or her same-day medical record giving the reason for admission.

(i) The same-day surgery service shall have a policy that patients who receive anesthesia do not drive themselves home after discharge and that the patient is accompanied home by another person. If this is not the case, the circumstances shall be documented in the patient's medical record.]*

8:43G-32.6 Same-day surgery services patient services; advisory
(Reserved)

8:43G-32.7 Same-day surgery services space and environment; mandatory

(a) If same-day surgery is performed in a suite dedicated to same-day patients, the suite shall be maintained as a closed unit. Access to the restricted zone of the surgical suite shall be through or past a control center.

*[(b) There shall be a means to summon immediate emergency response for medical emergencies in the same-day surgery suite.

(c) Patients shall be afforded visual privacy while in the same-day surgery suite.]*

*[(d)]***(b)* There shall be a waiting area for families and significant others of patients undergoing same-day surgery.

8:43G-32.8 Same-day surgery services space and environment; advisory ***(Reserved)***

8:43G-32.9 Same-day surgery service quality assurance methods; mandatory

(a) There shall be a program of quality assurance for same-day surgery that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. Quality assurance shall include monitoring at least:

1. Complications;
2. Inpatient admissions from the same-day surgery service;
3. Related admissions subsequent to discharge from same-day surgery;

4. Incidents; and

5. Medical emergencies.

*[(b) The infection control program shall monitor infection control practices for same-day surgery patients.

(c) The same-day surgery service shall maintain a daily record of the surgical procedures performed.]*

8:43G-32.10 Same-day medical services standards; scope

[(a) The standards set forth in N.J.A.C. 8:43G-32.11 through 32.20 apply only to hospitals that have a separate, designated unit or service for medical same-day stay.

***[(b) Same-day medical services are defined as elective treatments, diagnostic and non-surgical procedures as defined in the ICD-9-CM**

codes, with the patient being discharged in a routine status before midnight of the day of admission or treatment.*

8:43G-32.11 Same-day medical services structural organization; mandatory

There shall be an organizational chart or alternative documentation clearly delineating the lines of responsibility, authority, and communication for the same-day medical service and, if the same-day surgery service is a separate entity, the lines of communication between the two services.

8:43G-32.12 Same-day medical services policies and procedures; mandatory

(a) The same-day medical service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Infection control practices;
2. Criteria for the types of patients who may be admitted for same-day medical services;
3. Categories of procedures and treatments that may be performed on a same-day basis;
4. A system for handling medical and non-medical emergencies;
5. A system for securing the belongings and valuables of patients; and
6. Criteria and procedures for discharging a patient.

(b) When a same-day medical patient is admitted to the hospital as an inpatient, a statement shall be made in his or her medical day care record giving the reason for admission.

8:43G-32.13 Same-day medical services staff time and availability; mandatory

Same-day medical patients shall receive nursing care based on their acuity.

8:43G-32.14 Same-day medical services patient services; mandatory

(a) There shall be a medical record for each patient admitted for same-day medical care. This record shall include, at least, documentation of a history and physical examination, ***results of tests,*** all treatments and the patient's response to treatments rendered.

(b) There shall be physician orders, specific for each patient, that govern the care of each same-day medical service patient.

8:43G-32.15 Same-day medical services patient services; advisory ***(Reserved)***

8:43G-32.16 Same-day medical services space and environment; mandatory

***[(a)** There shall be a means to summon immediate emergency response for medical emergencies in the same-day medical suite.

(b) Patients shall be afforded visual privacy while in the same-day medical suite.]*

[(c)] There shall be waiting areas for families and significant others of patients undergoing same-day medical procedures.

8:43G-32.17 Same-day medical services space and environment; advisory ***(Reserved)***

8:43G-32.18 Same-day services education; mandatory

***[(a)** The surgery and medical services shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff, including orientation to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;
2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;

3. Individual staff requests for education programs;

4. Supervisor judgements about education needs based on assessment of staff performance;

5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and

6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.]*

Requirements for the same-day services education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-32.19 Same-day services staff education; advisory ***(Reserved)***

8:43G-32.20 Same-day medical services quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the same-day medical service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The infection control program shall monitor infection control practices and outcomes for same-day medical patients. If same-day medical patients are treated on inpatient units, the infection control program for those units shall fulfill this requirement.

***[(c)** The same-day medical service shall maintain a daily record of the treatments or procedures performed for each patient.]*

SUBCHAPTER 34. SURGERY

8:43G-34.1 Surgery structural organization; mandatory

There shall be an organizational chart, or alternative documentation that delineates the lines of authority, responsibility, and accountability of staff in surgery services.

8:43G-34.2 Surgery structural organization; advisory ***(Reserved)***

8:43G-34.3 Surgery policies and procedures; mandatory

(a) Surgery services shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Aseptic practices;
2. Infection control policies for the surgical suite, including attire;
3. Processing, packaging, and sterilization of materials in the suite; and
4. Special procedures for handling of trash from the surgical suite.

(b) The postanesthesia care unit shall maintain its own specific policies and procedures. Where applicable, these policies and procedures shall be integrated with the policies and procedures of the surgical suite.

(c) A policies and procedures manual governing the overall functions and responsibilities of the surgical suite shall be available to surgical suite staff whenever the suite is open.

(d) There shall be a written procedure established for the handling of soiled laundry, which includes bagging and covering soiled laundry at the site of use before transport to the soiled holding area and removing soiled laundry from each operating room following every procedure.

8:43G-34.4 Surgery staff qualifications; mandatory

(a) There shall be a physician director who has clinical responsibility for the surgical service who is board certified. Certification shall be by a board of the American Board of Medical Specialists.

(b) There shall be a person with administrative responsibility for the surgical service.

(c) Each surgical suite shall have available a roster of physicians with delineation of current surgical privileges, including those with temporary privileges.

(d) The hospital shall maintain a list of surgical procedures that require the presence of a physician to act as first assistant.

(e) There shall be documented evidence of pediatric medical staff input and advice to the surgery service on an annual basis.]

8:43G-34.5 Surgery staff time and availability; mandatory

(a) A registered professional nurse shall be assigned to circulating nurse duties in each room where surgery is being performed.

(b) All registered professional nurses in the unit shall have training in basic cardiac life support.

(c) During scheduled hours of operation, personnel who have received special training in cleaning the surgical suite shall be assigned to the surgical suite for cleaning and related duties.

8:43G-34.6 Surgery patient services; mandatory

(a) There shall be a system to verify patient identification prior to any surgical procedure.

(b) There shall be a system to ensure that surgical patients' personal effects are secured during surgery.

(c) The surgery services staff shall take precautions to prevent patient falls and injuries during transportation, transfer, and positioning through the use of side rails or restraint straps, and control devices on stretchers and operating tables.

(d) The patient's privacy shall be respected at all times.]

*(e)**(d)* Each surgical patient shall have a medical record in accordance with the medical records policies of the hospital. The medical record shall be available to surgical suite personnel prior to surgery and shall include at least:

1. A written informed consent signed by the patient *or legal guardian* that includes identification of the physician(s) performing the procedure prior to all procedures *[that are identified in the hospital policy as]* requiring informed consent;

2. A completed preoperative checklist; *and*

3. A medical history and the results of a physical examination*]; and]**.*

[4. A preanesthesia note reflecting evaluation of the patient and review of the patient record prior to administration of anesthesia by the anesthesiologist, except in cases of strictly regional anesthetic where no anesthesiologist is assigned to the case.]

*(f)**(e)* The surgical suite nursing staff shall make a preoperative note or notes for each surgical patient, which is part of the medical record and follows the patient to the patient care unit. The note shall describe nursing care and patient reactions while in the operating suite.

*(g)**(f)* Operative reports shall be dictated or written in the medical record immediately after surgery.

*(h)**(g)* The completed operative report shall be reviewed for accuracy, signed and dated by the surgeon and filed in the medical record as soon as possible after surgery.

*(i)**(h)* There shall be a system in place for obtaining frozen section results on a timely basis.

*(j)**(i)* There shall be documentation of perioperative patient education *[conducted prior to elective surgery]*.

8:43G-34.7 Surgery space and environment; mandatory

(a) The surgical suite shall be maintained as a closed unit. Access to the restricted zone of the surgical suite shall be through or past a control center.

(b) All staff in the surgical suite shall be attired in scrub attire. Individuals permitted limited access may wear cover gowns or jump-suits as substitutes.

(c) Trash shall be collected in closed containers in each operating room before transport to the soiled holding area. All trash shall be removed from each operating room after each patient is discharged from the operating room.

8:43G-34.8 Surgery supplies and equipment; mandatory

(a) The emergency equipment in the surgical suite shall include at least an emergency communication system that connects each operating room and postanesthesia care unit with the control center of the suite, a cardiac monitor, a resuscitator, an ambu bag, a defibrillator, a suction set, a thoracotomy set *[and]**, *a tracheostomy set *[or]* *and* endotracheal tubes. This equipment shall be available in sizes adaptable to newborns, infants, and children. There shall be a mech-

anism for testing the emergency equipment on a regular basis and documenting that it is in working condition.

(b) There shall be a system to ensure that sterile supplies are immediately available. This system shall include rotation and inventory of packaged items; evaluation of the integrity of drapes, gowns, and sterile supplies; and periodic review of policies and procedures for processing, packaging, and sterilization of materials.

(c) All used surgical suite linens and apparel shall be laundered daily by the hospital laundry service. Employees shall not take these materials home to wash them.

(d) All surgical suite equipment and supplies shall be maintained in a clean condition, without tears or tape.

(e) Staff who have been handling soiled linens or supplies shall wash their hands properly before handling clean linen and supplies.

(f) Clean linen shall be stored separately from soiled laundry in the surgical suite.

8:43G-34.9 Surgery staff education; mandatory

*(a) The surgery service shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff, including surgeons, to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;

2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;

3. Individual staff requests for education programs;

4. Supervisor judgements about education needs based on assessment of staff performance and;

5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and

6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.]*

Requirements for the surgery staff education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-34.10 Surgery staff education; advisory *(Reserved)*

8:43G-34.11 Surgery quality assurance methods; mandatory

(a) There shall be a complete and current record of all surgical procedures.

(b) There shall be a program of quality assurance for the surgical suite that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

8:43G-34.12 Surgery quality assurance methods; advisory *(Reserved)*

(a)

DIVISION OF HEALTH FACILITIES EVALUATION**Hospital Licensing Standards****Social Work****Adopted New Rules: N.J.A.C. 8:43G-33****New Rules Not Adopted But Still Pending: N.J.A.C. 8:43G-33.5, 33.6 and 33.8**

Proposed: June 19, 1989 at 21 N.J.R. 1631(a).

Adopted: January 10, 1990 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1990 as R.1990 d.79, with substantive and technical changes not requiring public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted but still pending.

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

Effective Date: February 5, 1990.

Operative Date: July 1, 1990.

Expiration Date: February 5, 1995.

Agency Note: Proposed N.J.A.C. 8:43G-33.5, 33.6 and 33.8 have not been adopted and are still pending. The pending rules are advisory standards, which were proposed by the Department to complement the mandatory hospital licensing rules by providing guidelines to the hospitals for attaining a superior level of care. The Department has not adopted advisory standards at this time as their intended role within the regulatory process is being re-examined.

Summary of Public Comments and Agency Responses:

The Department received 21 letters commenting on the proposed standards for social work. Nineteen letters were submitted by hospitals, one by the New Jersey Hospital Association, and one by the Community Health Law Project.

N.J.A.C. 8:43G-33.1 Social work structural organization

COMMENT: The New Jersey Hospital Association and St. Peter's Hospital objected to organizational models being prescribed rather than emphasizing function.

RESPONSE: The Department acknowledges the comment, but retains the standard. It is no longer possible, given an aging and more seriously ill patient population, to provide social services on an informal or ad hoc basis. The Department is convinced of the need for a formal department of social work within each hospital to provide services in an organized, consistent way.

N.J.A.C. 8:43G-33.2 Social work policies and procedures**N.J.A.C. 8:43G-33.2(a)**

COMMENT: The New Jersey Hospital Association stated that it is unnecessary to codify the basic elements of social work services and suggested that the second sentence be deleted.

RESPONSE: The Department believes that social work is an area of professional practice with which many health care professionals are unfamiliar. Therefore, delineating the scope of services so that all elements are recognized is considered necessary. The second sentence has been retained.

COMMENT: Jersey Shore Medical Center requested a definition of "community liaison."

RESPONSE: "Community liaison" refers to linkages between the hospital social work department and resources in the community.

COMMENT: The Community Health Law project proposed that a member of the social work staff be required to make a home assessment visit for each patient who is in need of post-discharge home care assistance, or that there should be documentation of the reason(s) for the omission.

RESPONSE: The Department appreciates the patient advocacy underlying this proposal, but the proposed requirement is beyond the scope of services delineated in social work policies and procedures (N.J.A.C. 8:43G-33.2(a)). It would involve a substantive change in the rules, which would require an approval and re-publication process. This requirement has not been added to the standards.

N.J.A.C. 8:43G-33.2(b)

COMMENT: Hunterdon Medical Center commented that the standard should reflect the fact the patients may not want social work services even if the hospital sees the need, or the fact that the patient may request service and the hospital disagrees or does not have the service available. Another commenter suggested the addition of the words "if appropriate."

RESPONSE: The standard has been revised to state that social work services shall be offered to all patients who need or request them.

N.J.A.C. 8:43G-33.3 Social work policies and procedures; advisory

COMMENT: The New Jersey Hospital Association and St. Peter's Medical Center noted that this standard is mandatory at N.J.A.C. 8:43G-11.3(b), Discharge Planning. Englewood Hospital commented that this rule should be mandatory. Hunterdon Medical Center commented that this should be the hospital's prerogative.

RESPONSE: The Department agrees that these provisions should be mandatory. Participation by the social work department in the development and review of transfer agreements with other health care facilities and agencies is essential because of the working knowledge that the social work department has of these outside facilities, especially in regards to quality of care. In order to avoid duplication in the standards, this provision has been deleted at N.J.A.C. 8:43G-11.3(b) (see adoption of N.J.A.C. 8:43G-11, published elsewhere in this issue of the New Jersey Register) and recodified at N.J.A.C. 8:43G-33.2(d). The phrase "or psychosocial agencies" has been deleted, since agreements with such agencies usually reflect referral or linkage services rather than actual transfer of patients.

N.J.A.C. 8:43G-33.4 Social work staff qualifications

COMMENT: Several commenters stated general objections to professional credentialing standards.

RESPONSE: The Department believes that professional credentials bear a strong positive relationship to quality of patient care. The master's degree in social work is the recognized credential for the professional practice of social work. The standard remains unchanged.

N.J.A.C. 8:43G-33.7 Social work patient services**N.J.A.C. 8:43G-33.7(a)**

COMMENT: Hunterdon Medical Center wrote that it is not appropriate for all disciplines to refer patients directly to the social work department and that this must be done through the attending physician.

RESPONSE: The Department believes that it is not appropriate to limit patient access to needed services, but recognizes that referrals will most appropriately be made by clinical staff. The standard has been amended to reflect this change.

N.J.A.C. 8:43G-33.7(c)

COMMENT: South Jersey Hospital System believes that the requirement that the social work department respond to telephone communications from patients after discharge places an unrealistic burden on acute care staff.

RESPONSE: The standard falls within the scope of services delineated in N.J.A.C. 8:43G-5.2 (see adoption elsewhere in this issue of the New Jersey Register) and has been retained.

N.J.A.C. 8:43G-33.7(e)

COMMENT: Hunterdon Medical Center wrote that it is not appropriate to regulate that a social work department assist patients in implementing guardianship as part of discharge planning. It felt that this is an intensive, involved, and costly endeavor that should not be a requirement of the hospital.

RESPONSE: The Department acknowledges the concern. However, there are situations in which it is necessary for the hospital to assist in the process of obtaining guardianship as part of discharge planning. For example, there may be no family members or significant others to assist, or the patient may be lacking in resources. Since it is common practice for hospitals to be involved in pursuing guardianship, the standard has been retained.

N.J.A.C. 8:43G-33.7(g)

COMMENT: Hunterdon Medical Center and South Jersey Hospital System wrote that the social service department may not be involved in all transfers and linkages.

RESPONSE: The standard has been revised to indicate that social work services documentation or information will be provided, if available.

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N.J.A.C. 8:43G-33.9 Social work patient services

N.J.A.C. 8:43G-33.9(a)

COMMENT: St. Clare's Riverside Medical Center commented that it is not always possible to provide for strict privacy for patient interviews, for example, if a patient is restricted to bed in a semi-private room.

RESPONSE: The Department acknowledges the comment. The standard has been revised to permit more latitude in providing for privacy for patients and social workers.

N.J.A.C. 8:43G-33.10 Social work staff education and training

COMMENT: Two commenters noted that staff education and training standards were too prescriptive.

RESPONSE: The staff education and training standards have been deleted and replaced by a reference to the generic chapter education rule at N.J.A.C. 8:43G-5.9.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 33. SOCIAL WORK

8:43G-33.1 Social work structural organization; mandatory

Each hospital shall have an organized department of social work services that is directed by a social worker.

8:43G-33.2 Social work policies and procedures; mandatory

(a) The social work department shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. The policies and procedures concerning the scope of social work services shall address the following areas: counseling, discharge management and planning, social work assessment, consultation and referral, patient advocacy, community liaison, and education.

(b) The social work department shall have a protocol to ensure that *[all patients receive social work services if they need or request it]* ***social work services are offered to all patients who need or request them***.

(c) The social work department shall have criteria for identifying high-risk patients in need of psychosocial intervention and/or discharge planning.

(d) The social work department shall participate in the development and review of the hospital's agreements with extended and long-term care facilities.

***[8:43G-33.3 Social work policies and procedures; advisory**

The social work department should participate in the development and review of the hospital's transfer agreements with extended and long-term care facilities and psychosocial agencies.]*

8:43G-*[33.4]**33.3* Social work staff qualifications; mandatory

The director of the social work department shall hold a master's degree in social work from a college or university program accredited by the Council on Social Work Education.

8:43G-*[33.5]**33.4* Social work staff qualifications; advisory
(Reserved)

8:43G-*[33.6]**33.5* Social work staff time and availability;
advisory ***(Reserved)***

8:43G-*[33.7]**33.6* Social work patient services; mandatory

(a) There shall be a system for *[all disciplines]* ***clinical staff*** to refer patients directly to the social work department.

ADOPTIONS

(b) The social worker shall consult with members of other disciplines in providing patient care services.

(c) Each patient who has received social work intervention shall be informed that he or she may call the social work department with questions after discharge.

(d) Families shall be included in services provided by the social work department, where indicated.

(e) The social work department shall assist patients directly or indirectly in identifying the need for, implementing, and verifying guardianship as part of discharge planning.

(f) The social work department shall coordinate child-abuse reporting and follow-up services with appropriate follow-up agencies. The department shall participate in reporting and follow-up services for other victims of abuse.

(g) When a patient is transferred to another health care facility or linked to another health care agency after discharge, the social work department shall assure that relevant social work services documentation or information*, **if available***, is provided to that agency or facility in order to assure continuity of care.

(h) When social work intervention is provided, the social work department shall enter into the medical record:

1. The reason for intervention;
 2. The name or names of social workers involved and dates of intervention;
 3. A social work assessment;
 4. A treatment plan and referrals; and
 5. Notes reflecting interventions before discharge.
- (i) Social work staff shall be included in multidisciplinary patient care conferences or rounds.

8:43G-*[33.8]**33.7* Social work patient services; advisory
(Reserved)

8:43G-*[33.9]**33.8* Social work space and environment;
mandatory

(a) ***[There shall be space provided for private]* ***All reasonable efforts shall be made for privacy in*** patient and family interviews and ***in the handling of*** confidential phone calls by social workers.**

(b) Social work department files on patients shall be kept physically secure and confidential.

8:43G-*[33.10]**33.9* Social work staff education and training;
mandatory

***[(a) The social work department shall provide staff with opportunities for education or training.**

(b) Orientation of social work staff shall include introduction to the hospital and its services and to resources outside the hospital.]*

Requirements for the social work staff education program shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-*[33.11]**33.10* Social work quality assurance methods;
mandatory

There shall be a program of quality assurance for social work that is integrated into the hospital quality assurance program and pertains to the scope of social work services provided. This program shall include regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

PUBLIC ADVOCATE**(a)****THE PUBLIC ADVOCATE****Organization of the Department****Adopted New Rule: N.J.A.C. 15A:2-1.1**

Adopted: December, 1989, by Alfred A. Slocum, Public Advocate.

Filed: December 27, 1989 as R.1990 d.56.

Authority: N.J.S.A. 52:27E-4c and 52:14B-4(b).

Effective Date: December 27, 1989.

Expiration Date: December 27, 1994.

Take notice that Alfred A. Slocum, Public Advocate, has adopted an administrative rule reflecting the organization of the Department of the Public Advocate. Pursuant to N.J.S.A. 52:14B-4(b), this organization rule need not be proposed and is effective upon filing with the Office of Administrative Law.

Full text of the adopted rule follows.

CHAPTER 2
ORGANIZATIONAL RULES

SUBCHAPTER 1. ORGANIZATION OF THE DEPARTMENT

15A:2-1.1 Organization of the Department

(a) The Department of the Public Advocate is responsible for providing counsel for mentally ill and for developmentally disabled persons, for investigating complaints from citizens about State government, for representing the public in rate proceedings and for representing the public interest as prescribed in N.J.S.A. 52:27E-1 et seq. The following five Divisions carry out the Department's statutory mandates:

1. The Division of Mental Health Advocacy is responsible for providing individual and class action representation for former, present and potential indigent psychiatric hospital admittees on issues affecting their commitment to, release from and conditions of confinement in psychiatric hospitals, as well as issues affecting quality of psychiatric treatment and related rights issues in non-institutional settings.

i. Representation of individuals at involuntary commitment hearings held pursuant to N.J.S.A. 30:4-27.12 is limited to individuals committed from the Counties of Atlantic, Bergen, Camden, Cape May, Cumberland, Essex, Gloucester, Hunterdon, Mercer, Monmouth, Ocean and Salem.

ii. Representation in class action litigation, as defined in N.J.S.A. 52:27e-25, is not subject to the limitation in (a)ii above.

iii. The Division operates five regional field offices in Camden, Trenton, Farmingdale, Somerville and Verona.

iv. Ready access to information regarding all Division activities, except as provided in (b) below, is provided to the public. Questions concerning general policies should be directed to the Division's Trenton Office, CN 850, Trenton, NJ 08625.

2. The Division of Advocacy for the Developmentally Disabled is responsible for protecting and advocating for the legal, civil and human rights of people with disabilities through the provision of information and referral services; technical assistance and training for consumers, advocates and public and private service providers and agencies; and outreach services.

i. Ready access to information regarding all Division activities, except as provided in (b) below, is provided to the public. Questions concerning general policies should be directed to the Division's Trenton Office, CN 850, Trenton, NJ 08625.

3. The Division of Public Interest Advocacy is responsible for the representation of the public interest in such administrative and court proceedings which the Public Advocate determines will best serve the public interest of the citizens of New Jersey.

i. Ready access to information regarding all Division activities, except as provided in (b) below, is provided to the public. Questions

concerning general policies should be directed to the Division's Trenton Office, CN 850, Trenton, NJ 08625.

4. The Division of Citizen Complaints and Dispute Settlement is responsible for receiving and investigating complaints from citizens about the actions or inactions of State executive agencies with the goal of improving the responsiveness of State government to citizens.

i. Ready access to information regarding all Division activities, except as provided in (b) below, is provided to the public. Questions concerning general policies should be directed to the Division's Trenton Office, CN 850, Trenton, NJ 08625.

5. The Division of Rate Counsel is representing New Jersey consumer interests before State agencies charged with the regulation or control of any business, authority or agency in order to assure that utility services, health care delivery, and insurance are made widely available, in a non-discriminatory fashion, at a level of cost which is no higher than necessary and at relative levels of cost which are non-discriminatory.

i. Ready access to information regarding all Division activities, except as provided in (b) below, is provided to the public. Questions concerning general policies should be directed to the Division's Newark Office, 744 Broad Street, Newark, NJ 07102.

(b) The following information will not be released to the public:

1. Matters falling within the attorney-client privilege or the work-product privilege;

2. Matters falling within the confidentiality requirement of Rules of Professional Conduct or any other rule of court, statute, resolution of either or both houses of Legislature, or executive order of the Governor; and

3. Matters relating to an individual client, complainant or other individual contacting the Department about matters relating to its statutory mandate except when the aforementioned consents to the release of the requested information.

OTHER AGENCIES**(b)****HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION****District Zoning Regulations****Fees; Penalties; Entry and Inspections**

Adopted Amendments: N.J.A.C. 19:3-1.1, 1.2, 1.4, 1.6; 19:4-6.24 and 6.25

Adopted Repeal and New Rule: N.J.A.C. 19:3-1.3

Proposed: September 18, 1989 at 21 N.J.R. 2949(a).

Adopted: January 3, 1990 by the Hackensack Meadowlands Development Commission, Vincent P. Fox, Deputy Executive Director.

Filed: January 4, 1990 as R.1990 d.70, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Effective Date: February 5, 1990.

Expiration Date: May 26, 1993.

Summary of Public Comments and Agency Responses:

Two parties appeared at the public hearing. Margaret Schak, Executive Director of the Hackensack Mayors Municipal Committee, stated that at the time of the public hearing, the Committee was researching and discussing the proposed changes. Councilman Anthony Just of Secaucus appeared at the public hearing. Councilman Just requested that the Commission furnish the municipalities with the cost of construction and/or market value. He added that this figure could then be used for tax purposes.

The Hackensack Meadowlands Development Commission received three comment letters in addition to comments made at a public hearing concerning the proposal. A letter was received from the Hackensack Mayors Municipal Committee (HMMC), endorsing the rules as proposed

subject to minor changes. A letter was received from Hartz Mountain Industries objecting to all of the proposed fee increases. A letter was received from Edward Frey, Jr., Construction Official of Carlstadt, suggesting changes be made to the way fees for Plan Review are calculated.

The summary of these comments and the responses of the Hackensack Meadowlands Development Commission follows:

COMMENT: 1. HMMC's recommendations:

(a) N.J.A.C. 19:3-1.3(b)—Surcharge be changed from 30 percent to 25 percent and the language in this section be clarified;

(b) The minimum fine that may be imposed by the Commission be changed from \$500.00 to \$200.00; and

(c) Written instructions be forwarded to the construction officials of the 14 constituent municipalities in order to implement the new fee schedule and procedures.

RESPONSE: The HMMC felt that the total fee for plan review should not exceed 25 percent of the construction fee schedule. The basic fee for plan review is 20 percent of the fee schedule. A surcharge of 30 percent (of the 20 percent) would yield a total fee of 26 percent. By reducing the surcharge fee to 25 percent, then the total fee (20 percent plus 25 percent of 20 percent) is 25 percent of the construction fee schedule. The HMDC believes that the HMMC's recommendation meets the intent of the laws regulating plan review fees and has therefore changed N.J.A.C. 19:3-1.3(b) upon adoption. The language in this section has also been changed for purposes of clarification.

The legislative change which authorized an increase in the Commission's fines states that fines of up to \$5,000 may be imposed. During the time that the legislative change was being processed, the HMMC had recommended a minimum fine of \$200.00. The HMDC had originally proposed in the amendments a minimum fine of \$500.00. Once the amended rules were proposed, the HMMC made the same request to the HMDC. In response, the minimum fine has been reduced.

HMMC's final recommendation was that written instructions be forwarded to the construction officials of the 14 constituent municipalities in order to implement the new fee schedule and procedures. This is a valid recommendation which would make the transition to the new fee schedule and new procedures easier. The HMDC will forward the requested information.

COMMENT AND RESPONSE: Regarding Councilman Just's request for the Commission to provide municipalities with the cost of construction and/or market value, furnishing the cost of construction and market value is the responsibility of the municipal construction officials and tax assessors.

COMMENT: Hartz Mountain Industries: "The proposed changes are not reflective of actual staff time spent on application review. It would appear from a cursory review of current project listings that total development in the Meadowlands is far less than the 1970's and the early 1980's when HMDC development was strong. At the same time, however, the staff of the HMDC has grown. Perhaps the solution to HMDC's financial problems is a reduction in staff and not an increase in fees."

RESPONSE: First, the assertion that the proposed changes do not reflect the actual staff time spent on applications is correct. If the fee schedule were being modified to recoup all of the staff costs, the proposed fees would be 40 to 50 percent higher. The total number of applications processed by the HMDC for the period from 1976 to 1983 varied between a low of 315 in 1979 to a high of 414 in 1981. Since 1986, the total number of applications processed by the HMDC exceeded 600 with the 1988 total reaching 685. Not only have the number of applications dramatically increased, but more importantly, the quality and type of reviews performed are more comprehensive and detailed than in previous years. In addition to the new applications, the staff expends a considerable amount of time enforcing approved site or construction plans and resolving violations. One violation file can take several staff members' time, for lengthy periods, before it is resolved.

COMMENT: Hartz Mountain Industries: "Inequities exist in the calculation of HMDC fees. Minor subdivisions are a clear example. Why is the fee \$3,000.00 for 5 acres and the fee for 5.1 acres \$4,000.00? The argument that the fee is based on actual staff time is ludicrous."

RESPONSE: The proposed fee schedule does not cover the actual staff time expended enforcing and administering the HMDC regulations. However, in reaching this conclusion, the Commission compares the total revenue received in a given year versus the actual costs. The Commission does not try to predict the actual manhours to be spent on each type of application since for example no two minor subdivisions are alike. Instead, the Commission establishes ranges based on the *average* number of manhours expended on subdivisions within that range. For example,

the \$3,000 fee for the five acre subdivision is probably too low since it is at the maximum of the range while the \$4,000 fee for the 5.1 acre subdivision is probably a little high since it is at the minimum fee representative of the staff time expended in reviewing two subdivisions of approximately five acres each. The answer is unequivocally, yes. Fees for this type of review should be based on ranges and obviously all ranges have cut-off points.

COMMENT: Hartz Mountain Industries: "The majority of towns in the HMDC district have already significantly raised their permit fee of which 20 percent is distributed to the HMDC. Furthermore, in 1980 the state training fee was increased substantially from \$.0006 per cubic foot to \$.00140 per cubic foot. It is evident that the HMDC has already benefited from municipal fee increases."

RESPONSE: As noted in N.J.A.C. 5:23-4.18, the HMDC has absolutely nothing to do with the collection or expenditure of the State training fees. Therefore, while it is true that this fee has increased, the HMDC still received nothing. Likewise, the HMDC has no control over the 14 municipal fee schedules in the District or the value of our 20 percent share for plan review. The same building could conceivably generate 14 different plan review fee amounts to the HMDC for essentially the same amount of work. Obviously, these fees are in no way related to the actual manhours expended since they are formulated by the municipalities without input from the HMDC. The current proposal will bring the Commission into compliance with the Uniform Construction Code (U.C.C.) and eliminate the fee inequities which now exist. In the future, as required by the U.C.C., the developer will pay the municipality 80 percent of its fee schedule for services unrelated to plan review. The remaining 20 percent of the municipal fee will be waived by the municipality and the developer will be required to pay twenty percent of the HMDC's fee schedule to the HMDC for services related to plan review.

COMMENT: Hartz Mountain Industries: "The proposed fee increases would not be necessary if options available to the HMDC were in fact utilized. Public hearings are a prime example. Although the HMDC has the authority to waive public hearings on minor issues, that option is rarely, if ever, utilized. It is not unusual to find an applicant presenting testimony on a bulk variance to three staff members and a court reporter without a single member of the public present. The time utilized in such a hearing would be much better spent reviewing other applications. Written public comment could be reviewed to evaluate the extent of public interest."

RESPONSE: The Commission's decision not to waive most variance public hearings is not burdensome when one considers that in almost all other New Jersey jurisdictions, public hearings are standard practice for *all* site plan approvals regardless of the need for a variance. It should also be noted that the HMDC can only waive public hearings for bulk or area variances. The Commission does not have the authority to waive public hearings for "minor issues" unless they fall into the aforementioned categories.

The Commission does not waive many public hearings concerning bulk or area variances for several important reasons. First, since applicants must meet HMDC's variance criteria regardless of whether a public hearing is held, the Commission has determined that it saves a lot of staff time if it holds a public hearing. During these hearings, a dialogue develops between the applicant and his or her consultants and the staff. All of the facts and reasons behind the variance request are explored and questions can be immediately answered. Finally, the Commission believes that all variances are important since they represent deviations from HMDC zoning regulations and any "conversations" between staff and applicant should be held in a public forum. This procedure insures that interested parties can participate to the extent they feel necessary.

It is also HMDC policy that if a hearing is waived and the Commission subsequently receive comments from the public, the matter is noticed and a full public hearing is scheduled. This can easily add four to six weeks to the review process. Since most developers are concerned about time, the decision to hold the public hearing usually results in a savings in both time and money for the developer.

COMMENT: Mr. Frey suggested that the municipalities collect 100 percent of the building permit fee and the HMDC collect 20 percent of the HMDC fee schedule.

RESPONSE: As per N.J.A.C. 5:23-2.26, any municipality which does not do plan review, must waive 20 percent of its fee schedule.

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

ADOPTIONS

OTHER AGENCIES

19:3-1.1 Subdivision

(a) The following fees are charged for a minor subdivision:

1. \$5.00 per 100 square feet of lot area up to and including one acre.
2. \$3,000 for lot area over one acre up to and including five acres.
3. \$4,000 for lot area over five acres up to and including 40 acres.
4. \$7,000 for lot area over 40 acres.

(b) \$100.00 is charged for a sketch plat review of a major subdivision.

(c) Fee for preliminary plat review is charged for a major subdivision equal to:

1. \$750.00 per acre of subdivided property for the first 10 acres.
2. \$300.00 per acre of subdivided property for the next 40 acres.
3. \$150.00 per acre of subdivided property in excess of 50 acres.
4. Plus, a fee of two percent of the value of public improvements as determined by a certified estimate prepared by a New Jersey professional engineer is charged to cover the cost of inspections.

(d) A fee of \$750.00 is charged for final plat approval of any major subdivisions.

(e) A fee of \$1,500 is charged for each specific waiver request.

19:3-1.2 Zoning

(a) Zoning fees are as follows:

1. A fee of \$7.50 per 100 square feet of floor area or a minimum fee of \$500.00 is charged for a zoning certificate for a new building and a minimum fee of \$100.00 for additions;

2. A fee of \$100.00 plus \$2.00 per square foot of sign area is charged for sign reviews;

3. A fee of \$300.00 is charged for tank reviews;

4. A fee of \$200.00 is charged for review of fences;

5. A fee of \$300.00 is charged for retail/warehouse sales reviews;

6. A fee of \$750.00 is charged for the review of site improvements;

7. A fee of \$1,500 is charged per special exception, \$3,000 for each use variance request, and \$2,000 for each other variance;

8. A fee of \$5,000 is charged for the review of rezoning requests;

9. A fee of \$500.00 is charged for permit extension;

10. A fee of \$25.00 is charged for FEMA/National Flood Insurance Program Elevation Certificates;

11. A fee of \$300.00 is charged for review of satellite dishes;

12. A fee of \$500.00 (each) is charged for review of radio towers;

13. A fee of \$500.00 is charged for interior alterations involving a changing use and/or requiring a zoning certificate.

(b) Specially planned areas fees are as follows:

1. Initial General plan: \$100,000; each revised general plan: \$25,000;

2. Initial Development plan: \$50,000; each revised development plan: \$25,000;

3. Initial Implementation plan or each revised or individual implementation plan: \$5.00 per 100 square feet of floor area or a minimum fee of \$10,000;

4. \$5,000 per variation request or variance application.

19:3-1.3 Construction permits

(a) General construction permit fee requirements are as follows:

1. The fee for plan review, computed as a percentage of the fee for a construction permit, shall be paid at the time of application for a permit. The amount of this fee shall then be deducted from the amount of the fee due for a construction permit, when the permit is issued. Plan review fees are not refundable.

2. The fee to be charged for a construction permit will be the sum of the basic construction fee plus all applicable special fees, such as elevator or sign fees. This fee shall be paid before a permit is issued.

3. The fee to be charged for a certificate of occupancy shall be paid before a certificate is issued. This fee shall be in addition to the construction permit fee.

4. The Office of the Chief Engineer, pursuant to N.J.A.C. 19:6-3.2, is designated as the building subcode official with the HMD and has the responsibility for reviewing and approving or disapproving all construction engineering plans and all building, plumbing, electrical and fire protection plans, specifications and details. Therefore, pursuant to N.J.A.C. 19:6-3.4, the fees in this section shall pertain.

5. Builders of newly constructed residential units that are to be legally restricted to occupancy by households of low or moderate income shall have the right to request a waiver from the fees set forth in (b) and (c) below and otherwise payable to the Office of the Chief Engineer.

(b) The *Office of the Chief Engineer plan review (C.E.P.R.)* fees listed in (c) below shall be in addition to an Office of the Chief Engineer plan review surcharge in the amount of *[30]* *25* percent of each *C.E.P.R.* listed fee. Where the Office of the Chief Engineer performs plan review only, the plan review fee shall be in the amount of 20 percent of the new construction permit fee which would be charged by the Office of the Chief Engineer pursuant to these rules. The minimum fee shall be \$33.00.

(c) Construction permit fees are as follows:

1. Plan review fee: The fee for plan review shall be 20 percent of the amount to be charged for a new construction permit as defined below.

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees. The minimum fee for a basic construction permit covering any or all building, plumbing, electrical or fire protection work shall be \$33.00.

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of \$0.019 per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in article 3 of the BOCA National Building Code 1987, including all subsequent revisions and amendments thereto (see N.J.A.C. 5:23-3.14(a)1), except that the fee shall be \$0.011 per cubic foot of volume for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2, and the fee shall be \$0.0005 per cubic foot for structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), used exclusively for the storage of food or grain, or the sheltering of livestock, with the maximum fee for such structures on farms not to exceed \$815.00.

(2) Fees for renovations, alterations and repairs shall be based upon the estimated cost of work. The fee shall be in the amount of \$17.00 per \$1,000. From \$50,001 to and including \$100,000, the additional fee shall be in the amount of \$13.00 per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of \$11.00 per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the Office of the Chief Engineer such cost data as may be available, produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The Office of the Chief Engineer shall make the final decision regarding estimated cost based on recognized standards such as B.O.C.A. magazine, Building Valuation Data Reports, etc.

(3) Fees for additions shall be computed on the same basis as for new construction for the added portion.

(4) Fees for combination renovations and additions shall be computed as the sum of the fees computed separately in accordance with (c)2i (2) and (3) above.

ii. The fees for plumbing fixtures and equipment are as follows:

(1) The fee shall be \$7.00 per fixture connected to the plumbing system for all fixtures and appliances except as listed in (c)2ii (2) below.

(2) The fee shall be \$46.00 per special device for the following: grease traps, oil separators, water-cooled air conditioning units, refrigeration units, utility service connections, back flow preventors, steam boilers, hot water boilers (excluding those for domestic water heating), gas piping, gas service entrances, active solar systems, sewer pumps, interceptors and fuel oil piping.

iii. The fees for electrical fixtures and devices are as follows:

(1) For from one to 50 receptacles or fixtures, the fee shall be in the amount of \$25.00; for each additional 25 receptacles or fixtures,

the fee shall be in the amount of \$4.00; for the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacle or similar fixture, and motors or devices of less than one horsepower or one kilowatt.

(2) For each motor or electrical device greater than 1 horsepower (hp) and less than or equal to 10 hp, and for transformers and generators greater than 1 kilowatt (kw) and less than or equal to 10 kw, the fees shall be \$7.00.

(3) For each motor or electrical device greater than 10 hp and less than or equal to 50 hp; for each service panel, service entrance or sub panel less than or equal to 200 amperes; and for all transformers and generators greater than 10 kw and less than or equal to 45 kw, the fee shall be \$33.00.

(4) For each motor or electrical device greater than 50 hp or less than or equal to 100 hp; for each service panel, service entrance or sub panel greater than 200 amperes and less than or equal to 1,000 amperes; and for transformers and generators greater than 45 kw and less than or equal to 112.5 kw, the fee shall be \$65.00.

(5) For each motor or electrical device greater than 100 hp; for each service panel, service entrance or sub panel greater than 1,000 amperes; and for each transformer or generator greater than 112.5 kw, the fee shall be \$325.00.

(6) For the purpose of computing these fees, all motors except those in plug-in appliances shall be counted, including control equipment, generators, transformers and all heating, cooking or other devices consuming or generating electrical current.

iv. The fees for fire protection and other hazardous equipment: sprinklers, standpipes, detectors (smoke and heat), pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums, are as follows:

(1) The fee for 20 or fewer heads or detectors shall be \$46.00; for 21 to and including 100 heads or detectors the fee shall be \$85.00; for 101 to and including 200 heads or detectors the fee shall be \$163.00; for 201 to and including 400 heads or detectors the fee shall be \$423.00; for 401 to and including 1,000 heads or detectors the fee shall be \$585.00; for over 1,000 heads or detectors the fee shall be \$748.00. In computing fees for heads and detectors, the number of each shall be counted separately and two fees, one for heads and one for detectors, shall be charged.

(2) The fee for each standpipe shall be \$163.00.

(3) The fee for each independent pre-engineered system shall be \$65.00.

(4) The fee for each gas or oil fired appliance which is not connected to the plumbing system shall be \$33.00.

(5) The fee for each kitchen exhaust system shall be \$33.00.

(6) The fee for each incinerator shall be \$260.00.

(7) The fee for each crematorium shall be \$260.00.

3. Elevators: The fee for a permit to install an elevator shall be \$260.00.

4. The fees for certificates and other permits are as follows:

i. The fee for a demolition or removal permit shall be \$46.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building subcode), and structures on farms including commercial farm buildings under N.J.A.C. 5:23-3.2(d) used exclusively for storage of food or grain, or sheltering of livestock, and \$85.00 for all other use groups.

ii. The fee for a permit to construct a sign shall be in the amount of \$0.85 per square foot of surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be \$33.00.

iii. The fee for plan review of a building for compliance under the alternate systems and non-depletable energy source provisions of the energy subcode shall be \$195.00 for one and two-family homes, and for light commercial structures having the indoor temperature controlled from a single point, and \$975.00 for all other structures.

iv. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be \$423.00 for class I structures and \$85.00 for class II and class III structures. The fee for resubmission of an

application for a variation shall be \$163.00 for class I structures and \$46.00 for class II and class III structures.

5. Periodic inspections: The fees for periodic departmental reinspection of equipment and facilities granted a certificate of approval for a specified duration in accordance with N.J.A.C. 5:23-2.23 shall be as follows:

i. For elevators, escalators and moving walks requiring reinspection every six months, the fee shall be \$65.00, except for each five-year inspection and witnessing of tests on elevators, for which the fee shall be \$208.00.

ii. For dumbwaiters requiring reinspection every 12 months the fee shall be \$26.00.

iii. For cross connections and backflow preventers that are subject to testing, requiring reinspection every three months, the fee shall be \$33.00 for each device when they are tested (thrice annually) and \$85.00 for each device when they are broken down and tested (once annually).

19:3-1.4 Occupancy

(a) (No change.)

(b) The fee for a Certificate of Occupancy or Occupancy Certification is \$500.00.

(c) The fee for Zoning Certificate or Occupancy Certification for trailers and/or guardhouses is \$500.00.

19:3-1.6 General provisions

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

(f) N.J.A.C. 19:4-1.2 shall not be applicable to applications for one and two family detached homes in the Low Density Residential Zone. Such applications shall be reviewed in accordance with the Fee Schedule adopted January 25, 1983.

(g) Fees for HMDC plan review referred to in N.J.A.C. 19:6-3.4 are outlined in N.J.A.C. 19:3-1.3.

19:4-6.24 Fees, penalties, enforcement and inspections

(a) (No change.)

(b) When the Executive Director and/or the Chief Engineer becomes aware that a person may be in violation of any of the provisions of these regulations, he or she shall cause the staff of the Commission to undertake an investigation to determine whether such violation does exist. If the Executive Director and/or the Chief Engineer shall determine that a person is in violation of any of the provisions of these regulations, he or she shall notify the violator of the existence of the violation in writing and request that the violation be abated. If the violation is not abated, the Executive Director and/or the Chief Engineer shall have the authority to take any or all actions as are outlined in (c) below to insure compliance with the provisions of these regulations.

(c) A person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of these rules shall be subject to a civil penalty of not less than ***[five hundred dollars (\$500.00)] *two hundred dollars (\$200.00)*** or more than five thousand dollars (\$5,000). Each day such violation or failure to comply is permitted to exist subsequent to the original notification to the violator thereof shall constitute a separate offense.

(d) The Executive Director and/or the Chief Engineer may in the case of a violation of any provision of these rules institute a civil action:

1. For injunctive relief:

i. To prevent unlawful sale, enlargement, moving, rental, construction, reconstruction, alterations, repair, conversion, maintenance, use, filling, or occupancy;

ii. To restrain, correct, or abate any violation;

iii. To prevent the occupancy of any dwelling structure or land;

iv. To prevent any illegal act, conduct, business or use in or about any premises; or

v. To collect such civil penalties as have been assessed against any violator and which civil penalties said violator has refused to pay.

(e) Whenever, in the opinion of the Chief Engineer, there is a reasonable probability that any use or occupancy violates any environmental performance standard, he or she is hereby empowered to employ a qualified technician or technicians to perform investigations, measurements and analyses to determine whether or not said

standards are in fact being violated. In the event that a violation is found to exist, the violator shall be liable for the reasonable fees of the technicians employed to perform such investigations, measurements, and analyses. Such fees may be recovered as a penalty in the same manner as, and in addition to, the penalties specified in (c) above.

(f) If a complaint is received regarding an alleged violation of any of the environmental performance standards, and the Chief Engineer does not believe that there is a reasonable probability that such a violation actually exists, the Chief Engineer may, as a condition precedent to further investigation, require that the complainant post an escrow deposit in the amount of \$1,000 to defray the cost of employing a qualified technician or technicians to perform such investigations, measurements, and analyses as may be necessary to determine whether or not such violation exists. In the event that the complaint is substantiated, the escrow deposit shall be refunded to the depositor, and the reasonable fees incurred in retaining the qualified technician or technicians shall be recovered in the manner provided in (e) above. In the event that the complaint proves unfounded, such fees shall be paid from the complainant's escrow deposit. Any remainder of such deposit shall be refunded to the complainant upon completion of an investigation.

(g) The HMDC's rights of entry and inspection are as follows:

1. Any individual who has applied for a permit with the HMDC shall be deemed to have consented to inspections, investigations, examinations, surveys, soundings or test borings, by the HMDC or a staff member of the HMDC, of the entire premises and of any and all construction being performed on the premises until a permit has been issued.

2. The Hackensack Meadowlands Development Commission or a staff member of the HMDC, pursuant to N.J.S.A. 13:17-6(f), has the right to enter upon any property in order to conduct inspections necessary to carry out the purposes of the Hackensack Meadowlands Reclamation and Development Act (Act) and to ensure compliance with the HMDC rules.

3. All inspections, investigations, examinations, surveys, soundings or test borings conducted pursuant to the Act and rules shall be between the hours of 9:00 A.M. and 5:00 P.M. on business days; provided, however, that inspections may be conducted at other times if the enforcing agency has reasonable cause to believe that an immediate danger to life, limb or property exists, or if permission is given by an owner, owner's agent or tenant.

4. All inspections, investigations, examinations, surveys, soundings or test borings shall be memorialized by a written report which shall include the name of the HMDC representative who entered the premises, the address, including the lot and block number(s), of the premises entered and a description of the premises, including a description of any and all violations.

5. Other than a visit to the premises made pursuant to (g)1 and 2 above, the owner, owner's agent or tenant shall be notified of the HMDC's intention to enter upon any building or property in order to conduct investigations, examinations, surveys, soundings or test borings necessary to carry out the purposes of the Act. The HMDC or a staff member of the HMDC shall not enter the premises until at least two days following the receipt of such notice.

6. Where access to any premises has been refused, then such refusal shall be reported to the Office of the Attorney General and a search warrant shall be obtained or other appropriate legal proceedings initiated.

19:4-6.25 Appeals

(a) An appeal from an adverse decision of the Office of the Chief Engineer and/or the Executive Director, including a decision that a party has violated the provisions of these regulations pursuant to N.J.A.C. 19:4-6.24(b), may be taken to the Commission by any party, or, in the discretion of the Commission, by anyone adversely affected by such decision.

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

(a)

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY

General Regulations

Adopted New Rules: N.J.A.C. 19:20-2

Proposed: April 3, 1989 at 21 N.J.R. 887(b).

Adopted: December 19, 1989 by the New Jersey Sports and Exposition Authority, Robert E. Mulcahy, III, President.
Filed: January 2, 1990 as R.1990 d.67, **without change**.

Authority: N.J.S.A. 5:10-5(1).

Effective Date: February 5, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of adoption follows.

SUBCHAPTER 2. GENERAL REGULATIONS

19:20-2.1 Definitions

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

"Alcoholic beverage" means any fluid or solid capable of being converted into a fluid, suitable for human consumption, and having an alcohol content of more than one-half of one per centum (½ of 1%) by volume, including alcohol, beer, lager beer, ale, porter, naturally fermented wine, treated wine, blended wine, fortified wine, sparkling wine, distilled liquors, blended distilled liquors and any brewed, fermented or distilled liquors fit for use for beverage purposes or any mixture of the same, and fruit juices.

"Firearm" means any hand gun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectile ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any device which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

"Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation.

"Illegal substances" means any drug or substance identified or listed in N.J.S.A. 24:21-1 et seq., the New Jersey Controlled Dangerous Substances Act, the possession or use of which is prohibited by or is violative of any applicable law, including, but not limited to, the provisions of N.J.S.A. 2C:1-1 et seq., the New Jersey Code of Criminal Justice, and, specifically, the provisions of N.J.S.A. 2C:35-1 et seq., the Comprehensive Drug Reform Act of 1987.

19:20-2.2 Firearms prohibited

The possession, use, display or discharge of any firearms, other weapons or fireworks of any type, except by persons authorized by the New Jersey Sports and Exposition Authority or required by law, is prohibited on any property owned or maintained by the Authority (including, but not limited to, parking areas and all facilities of the Authority open to the public).

19:20-2.3 Possession of alcoholic beverages and illegal substances prohibited

(a) No person shall be admitted to any property maintained by the Authority (including, but not limited to, parking areas and all facilities of the Authority open to the public) with any of the following in his or her possession:

OTHER AGENCIES

1. Alcoholic beverages of any kind, unless expressly authorized by the Authority;
2. Food or beverages of any kind, whether or not contained in any package, can, bottle, cooler, box, flask, thermos bottle, bag or container of any description, unless expressly authorized by the Authority;
3. Any substance, the possession or use of which is illegal or prohibited by applicable law, including, but not limited to, applicable statutes and regulations of the State of New Jersey and of the United States;
4. Unless expressly authorized by the Authority, all cameras, audio and visual equipment and recording devices; or
5. Any object which is inherently dangerous to either person or property or which may be used as a projectile or in any other manner dangerous to either person or property.

19:20-2.4 Visual inspections by Authority personnel

(a) To effectuate compliance with N.J.A.C. 19:20-2.2 and 2.3 above, the Authority, through its employees and agents, shall have the right, with the consent of any person who is seeking admission to any property owned or maintained by the Authority (including, but not limited to, parking areas and all facilities of the Authority open to the public), to request permission to conduct a visual inspection of any person, as well as all packages, cans, bottles, coolers, boxes, flasks, thermos bottles, bags or containers of any description in the possession of any person. Any person shall have the right to refuse any such requested inspection, provided, however, that such refusal shall be grounds to prohibit the admission of the person to any property owned or maintained by the Authority (including, but not limited to, parking areas and all facilities of the Authority open to the public).

(b) To effectuate compliance with N.J.A.C. 19:20-2.2 and 2.3 above, the Authority, through its employees and agents, shall have the right, with the consent of any person who has gained admission to any property owned or maintained by the Authority (including, but not limited to, parking areas and all facilities of the Authority open to the public), to request permission to conduct a visual inspection of any person, as well as all packages, cans, bottles, coolers, boxes, flasks, thermos bottles, bags or containers of any description in the possession of any person. Any person shall have the right to refuse any such requested inspection, provided, however, that such refusal, and the existence of a clear and articulable basis upon which to believe that the person possesses anything prohibited by N.J.A.C. 19:20-2.2 and 2.3, shall be grounds to remove and exclude the person from any property owned or maintained by the Authority (including, but not limited to, parking areas and all facilities of the Authority open to the public).

(c) All persons who are seeking admission to any property owned or maintained by the Authority (including, but not limited to, parking areas and all facilities of the Authority open to the public) or who have gained admission to any such property shall be subject to all of the provisions of (a) and (b) above.

19:20-2.5 Trespassing, solicitation or distribution

No person shall be admitted to any property maintained by the Authority including, but not limited to, parking areas and all facilities of the Authority open to the public except for patrons of scheduled events, Authority employees and any other individual authorized by the Authority. Loitering, soliciting, selling of goods or merchandise

ADOPTIONS

and the distribution of pamphlets, literature or other items is prohibited unless expressly authorized by the Authority.

19:20-2.6 Notice

To effectuate compliance with N.J.A.C. 19:20-2.2 through 2.5 above, the Authority shall give appropriate notice of the terms and conditions of N.J.A.C. 19:20-2.2 through 2.5. Said notice shall include, but not be limited to, the prominent display of signs appropriately placed at all entrances to, as well as throughout, the property owned or maintained by the Authority, which notices shall contain an appropriate summary of the terms and conditions of N.J.A.C. 19:20-2.2 through 2.5. In addition to the foregoing form of notice, the Authority shall give notice of the terms and conditions of N.J.A.C. 19:20-2.2 through 2.5 on all admission tickets as well as by appropriate public address system announcements.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Baccarat and Minibaccarat Tables: Physical Characteristics

Adopted Amendment: N.J.A.C. 19:46-1.12

Proposed: November 6, 1989 at 21 N.J.R. 3446(b).

Adopted: January 1, 1990 by the Casino Control Commission, Valerie H. Armstrong, Acting Chair.

Filed: January 11, 1990 as R.1990 d.101, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69(c) and 70(f).

Effective Date: February 5, 1990.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Roberto Rivera-Soto, Vice President and Corporate Counsel of the Sands Hotel and Casino, supports the proposed amendment to N.J.A.C. 19:46-1.12.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement supports the proposed amendment to N.J.A.C. 19:46-1.12.

RESPONSE: Accepted.

Full text of the adoption follows.

19:46-1.12 Baccarat and minibaccarat tables; physical characteristics

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

(c) Minibaccarat shall be played at a table having on one side places for the participants, and on the opposite side a place for the dealer.

1. The cloth covering the minibaccarat table shall have imprinted thereon the name of the casino.

2. Unless authorized by the Commission, the minibaccarat layout shall have rectangular, circular, or oval betting areas for the wagers on the "Banker's Hand" and "Player's Hand". Such areas shall not exceed seven in number.

Recodify existing 2.-4. as 3.-5. (No change in text.)

PUBLIC NOTICES

EDUCATION

(a)

BUREAU OF GRANTS AND CONTRACTS

Directory of Federal and State Programs

Take notice that the New Jersey Department of Education has available for the general public the 1989 edition of the Directory of Federal and State Programs which gives information regarding the availability of Federal and State grant funds pursuant to Chapter 7, laws of 1987, supplementing Title 52 of the Revised Statutes. A copy of this directory has been given to each local education agency and county office of education. Copies may be obtained by writing to:

Bureau of Grants and Contracts
N.J. State Department of Education
CN 500
Trenton, New Jersey 08625-0500

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Notice of Availability of Grant Funds

Sewage Infrastructure Improvement Act Grants

Take notice that in accordance with the Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq. and the rules for the Sewage Infrastructure Improvement Act Grants, N.J.A.C. 7:22A (effective February 5, 1990 and published elsewhere in this issue of New Jersey Register), the Department of Environmental Protection announces the following availability of funds:

A. Grants for the Preliminary Mapping and Inventory of Stormwater Sewer Systems.

The Department is accepting grant applications from affected municipalities, as defined in N.J.A.C. 7:22A-1.4, for the preliminary mapping and inventory of stormwater sewer systems. The Department has allocated \$1,045,400 to be distributed for the preliminary mapping and inventory. The application deadline has been extended in N.J.A.C. 7:22A-3.5(a) from October 6, 1989 to February 19, 1990. The application procedures for these grants are set forth in N.J.A.C. 7:22A.

B. Grants for the Planning and Design of Combined Sewer Overflow Abatement Facilities.

The Department is accepting grant applications from any public entity or local government unit authorized to control or operate a combined sewer system. The Department has allocated \$17,395,000 to be distributed for the planning and design of combined sewer overflow abatement facilities which target the elimination of dry weather overflows and the reduction of solids/floatables at combined sewer overflow points. The application deadline has been extended in N.J.A.C. 7:22A-6.8(a) from October 6, 1989 to April 6, 1990. The application procedures for these grants are set forth in N.J.A.C. 7:22A.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would approve the Shamong Township Wastewater Management Plan (WMP) in Burlington County. The Shamong WMP proposes an advanced secondary treatment plant with subsurface disposal for the proposed Shamong Upper Elementary School.

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 the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality 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. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would expand the Harrison Township sewer service area to include a portion of the proposed Willowbrook (Phase II) Subdivision, which is located in Harrison Township, Block 55, Lots 3 and 10. The remainder of the project site (Phase I) is already located in the Harrison Township sewer service area.

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 the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality 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. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(e)

STATE COUNCIL ON THE ARTS

Notice of Availability of Grant Funds

New Jersey Cultural Centers Bond Issue Program

Take notice that funds are available under a program administered by the New Jersey State Council on the Arts and authorized under the "Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L. 1987, c.265 ("the Act").

The name of the program is the New Jersey Cultural Centers Bond Issue Program, the purpose of which is to provide financial assistance in the form of competitive matching grants to applicants proposing to implement capital projects for the improvement of existing New Jersey-based cultural centers which would present arts programs of sufficient State or regional significance, or proposals to construct new centers,

which would present arts programs of sufficient State or regional significance.

The Act authorizes the New Jersey State Council on the Arts ("NJSCA") to develop and administer the program.

Those interested in applying for grants under the program must contact the NJSCA, 4 North Broad Street, CN 306, Trenton, New Jersey 08625, (609) 292-6130, and request an application. The application is due at the NJSCA on April 12, 1990 by 5:00 PM. The NJSCA will compile a list of prospective grant recipients to be submitted to the State Legislature for its approval and appropriation of funds by July 31, 1990.

HUMAN SERVICES

(a)

OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Notice of Available Grant Funds Advanced Research Fellowship Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6 (P.L. 1987, c.7, which supplements Title 52 of the Revised Statutes and P.L. 1987, c.5), the Department of Human Services announces the following availability of funds.

A. **Name of the grant program that has funds available:** Advanced Research Fellowship Program.

B. **Purpose for which the grant program funds shall be used:** Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities (OPMRDD) anticipates the availability of funds to use to encourage and stimulate cooperative programs of research among state governmental departments and agencies, universities and private agencies. The purpose of the Advanced Research Fellowship Program is to attract and retain in New Jersey talented scientists who wish to pursue a career in research related to the prevention of mental retardation and other developmental disabilities. Fields of possible research include, but are not limited to, genetics, embryology, biochemistry, immunology, endocrinology, teratology, epidemiology, morphology, environmental, or other areas related to the causes of developmental disabilities.

C. **Amount of money in the grant program:** A maximum of four fellowships in the amount of \$25,000 per fellowship will be awarded. These funds can be used for stipend support only. Research costs for experimentation, data collection, fieldwork, computer searches and analyses, and equipment cannot be supported by these fellowships. Candidates must be prepared to begin their research in September, 1990.

D. **Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program:** Candidates must be residents of New Jersey and must be prepared to conduct their research in New Jersey-based institutions of higher learning or other non-profit or public research entities.

E. **Qualifications needed by an applicant to be considered for the grant program:** Candidates must have been awarded their doctorate or medical degree. Candidates must demonstrate established institutional relationships and support for the proposed research within the application process.

F. **Procedure for eligible entities to apply for fellowships:** Proposal packages may be requested from:

Deborah E. Cohen, Director
Department of Human Services
Office for Prevention of Mental Retardation
and Developmental Disabilities
222 South Warren Street, 4th floor
CN 700
Trenton, New Jersey 08625
609-984-3351

G. **Address of division, office or official receiving applications:** Same as above.

H. **Deadline by which applications must be submitted to the office:** Proposals must be submitted by February 15, 1990.

I. **Date by which applicants shall be notified whether they will receive funds under the grant program:** Applicants shall receive notice of approval or disapproval by May 1, 1990.

(b)

OFFICE OF THE COMMISSIONER Keys Amendment Certification

Take notice that the Keys Amendment to the Federal Social Security Act requires an annual certification by states that there are standards in facilities where significant numbers of Supplemental Security Income (SSI) recipients reside. The publication of a summary of these standards is also required.

Three State departments have licensing and enforcement authority for facilities housing significant numbers of SSI residents in New Jersey. Each department maintains standards and enforces its own regulations.

Within the Department of Human Services, three divisions license or otherwise regulate facilities housing significant number of SSI recipients. The Division of Developmental Disabilities licenses group homes, family care homes, skill development homes and supervised apartment programs for persons with developmental disabilities. Comprehensive standards for each program have been developed and codified. Full text of the standards can be found in N.J.A.C. 10:44A and B, or by contacting the following office:

Division of Developmental Disabilities, Bureau of Operations
New Jersey Department of Human Services
222 South Warren Street
CN 700
Trenton, New Jersey 08625

The Division of Youth and Family Services maintains standards for both large residential and smaller community based facilities for clients under its jurisdiction. Specific programs include: foster care homes, residential child care facilities, group homes for children and victims of domestic violence, and teaching family homes. Full text of the standards can be found in N.J.A.C. 10:127 and 10:128, or by contacting the following office:

Division of Youth and Family Services,
Bureau of Licensing and Inspections
New Jersey Department of Human Services
CN 717
Trenton, New Jersey 08625

The Division of Mental Health and Hospitals licenses residential services which include group homes, family care homes, and supervised apartment programs for mentally ill adults and children. Comprehensive standards have been developed and codified as N.J.A.C. 10:39. A copy of the standards may be obtained by contacting the following office:

Division of Mental Health and Hospitals,
Bureau of Standards and Inspections
New Jersey Department of Human Services
Capital Center
298 East State St.
CN 727
Trenton, NJ 08625

In all three Divisions, standards are enforced through site visits conducted at least annually, time-limited corrective-action plans, and facility closure in the event of non-compliance.

The Department of Community Affairs licenses Rooming Houses (Class A) and Class B, C, and D Boarding Homes. The Bureau of Rooming and Boarding House Standards has a legislative mandate to annually evaluate the physical and social conditions of all rooming and boarding houses as defined under N.J.S.A. 55:13B-1-16, the Rooming and Boarding House Act of 1979. Full text of the standards can be found in N.J.A.C. 5:27, or by contacting:

New Jersey Department of Community Affairs, Bureau of
Rooming and Boarding House Standards
South Broad and Front Sts.
CN 800
Trenton, NJ 08625

The Department of Health licenses Residential Health Care Facilities and enforces standards through annual inspections. Full text of the standards can be found in N.J.A.C. 8:43. The rules govern the physical plant and operation of such facilities. Full text of the standards can be obtained by contacting:

New Jersey Department of Health, Division of
Health Facilities Evaluation
John Fitch Way
CN 360
Trenton, NJ 08625

PUBLIC NOTICES

OTHER AGENCIES

Both the Department of Health and the Department of Community Affairs enforce their standards by curtailment of admissions, fining, or closure. In addition to these annual inspections, county welfare agency social workers of the Department of Human Services make, at a minimum, visits to these facilities every six months to offer services. These social workers are required to investigate and report any abuse, neglect, and exploitation of residents, as well as other violations, to the licensing and enforcement authority. Facilities which do not meet standards, after the development of time-limited corrective action plans, will be closed.

Requests for additional information may be directed to the following office:

New Jersey Department of Human Services,
Office of Policy Development
222 South Warren Street
CN 700
Trenton, New Jersey 08625

S218	Sculpture—Slate Slab Motor Vehicle Inspection Station Hamilton Twp., NJ	Livio Saganic	\$27,000 Artist Services
S208	Sculpture—Metal Panels Motor Vehicle Inspection Facility Southampton Twp., NJ	Dan George	\$26,750 Artist Services
M1030	Water Tank Repairs Marlboro Psychiatric Hospital Marlboro, NJ	Robert L. Merithew	\$64,000
S228	Metal Sculpture Regional Services Center Motor Vehicle Services Eatontown, NJ	Michael Malpass	\$20,000 Artist Services
C387	New Dairy Processing Plant Albert C. Wagner Youth Correctional Facility Bordentown, NJ	Henry Horowitz & Assoc.	\$2,500,000

TREASURY-GENERAL

(a)

STATE PLANNING COMMISSION

Notice of Action in Response to Petition for Rulemaking and Intention to Initiate Rulemaking Proceedings

Amendments to State Planning Rules, N.J.A.C. 17:32.

Petitioner: Susan R. Kaplan, Esq., on behalf of the New Jersey Builders Association.

Take notice that, pursuant to N.J.S.A. 52:14B-4(e) and N.J.S.A. 52:18A-203, the New Jersey State Planning Commission in the Department of the Treasury has determined to initiate rulemaking proceedings for the purpose of amending the Commission's existing rules with regard to the preparation and adoption of the preliminary and final State Development and Redevelopment Plan. This notice of intention to initiate rulemaking proceedings is being made in response to a petition for rulemaking filed with the Commission on November 20, 1989 by Susan R. Kaplan, Esq., on behalf of the New Jersey Builders Association. Notice of receipt of this petition for rulemaking by the State Planning Commission was published on January 16, 1990 at 22 N.J.R. 259(b).

The proposed amendments to the Commission's existing regulations will pertain to the administration of the various phases of the cross-acceptance process to be conducted pursuant to the State Planning Act and, in particular, the negotiation phase of this process. The Commission's proposed amendments will also pertain to the procedure for taking formal Commission action and the decisionmaking authority of the Commission's subcommittees. The Commission's proposed amendments were approved for publication at the Commission's meeting on January 5, 1990 and will be published in the New Jersey Register on February 20, 1990 for public review and comment.

(b)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments—Month of December 1989

Solicitation 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 December 12, 1989.

The following assignments have been made:

DBC NO.	PROJECT	A/E	CCE
A610	Engineering Services Capitol Complex Trenton, NJ	Ronald R. Thomas P.E.	\$86,600 Services

COMPETITIVE PROPOSALS

Henry Horowitz & Assoc.	\$ 79,900 Lump Sum
The Ives Group	\$133,490 Lump Sum
GSGSB	\$135,750 Lump Sum
The Design Collaborative	\$169,800 Lump Sum

TREASURY-TAXATION

(c)

DIVISION OF TAXATION

Notice of Average Wholesale Price of Cigarettes Cigarette Surtax Rate

Take notice that, for the purpose of complying with the requirements of Chapter 40, P.L. 1982, sec. 4 (N.J.S.A. 54:40A-8.2), John R. Baldwin, Director of the Division of Taxation, hereby gives notice that, based upon the best available current data, the average wholesale price of cigarettes in this State during the succeeding six months commencing January 1, 1990 is \$0.6311 for each 10 cigarettes or fraction thereof.

Therefore, the cigarette surtax due for such six months, pursuant to sec. 302, P.L. 1948, c. 65 (N.J.S.A. 54:40A-8), as amended, shall be \$0.04 for each 10 cigarettes or fraction thereof.

OTHER AGENCIES

(d)

CASINO CONTROL COMMISSION

Notice of Petition for Rulemaking Procedures for Accepting, Verifying and Accounting for Wire Transfers

N.J.A.C. 19:45-1.24A

Petitioner: Boardwalk Regency Corporation.

Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

Take notice that on December 15, 1989, petitioner filed a petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:45-1.24A, concerning procedures for accepting, verifying and accounting for wire transfers.

Specifically, the petitioner requests an amendment to the present requirement that the casino licensee's bank provide notice of the receipt and deposit of a wire transfer by transmitting specified information to the casino licensee which includes the name of the patron for whose benefit the funds are transferred. The petitioner wishes to amend N.J.A.C. 19:45-1.24A(c)5 to permit the casino licensee to accept a transfer which specifies either the patron's name or the patron's casino identification number.

The petitioner states that this amendment would avoid "the delays and possibility of error" resulting from non-acceptance of wire transfers where the bank originating the transfer refers only to the patron's casino identification number.

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).

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1		N.J.A.C.	Expiration Date
N.J.A.C.	Expiration Date		
1:1	5/4/92	3:18	1/19/93
1:5	10/20/91	3:19	3/17/91
1:6	5/4/92	3:21	2/2/92
1:6A	5/4/92	3:22	5/12/94
1:7	5/4/92	3:23	7/6/92
1:10	5/4/92	3:24	8/18/94
1:10A	5/4/92	3:25	8/17/92
1:10B	10/6/91	3:26	12/31/90
1:11	5/4/92	3:27	9/16/90
1:13	5/4/92	3:28	12/12/94
1:13A	4/3/94	3:32	10/3/93
1:20	5/4/92	3:33	9/18/94
1:21	5/4/92	3:38	10/5/92
1:30	2/14/91	3:41	10/16/90
1:31	6/17/92	3:42	4/4/93

AGRICULTURE—TITLE 2		PERSONNEL (CIVIL SERVICE)—TITLE 4/4A	
N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
2:1	9/3/90	4:1	1/28/90
2:2	1/17/94	4:2	1/28/90
2:3	8/21/94	4:3	6/20/94
2:5	8/21/94	4:6	5/5/91
2:6	9/3/90	4A:1	10/5/92
2:9	7/7/91	4A:2	10/5/92
2:16	5/7/90	4A:3	9/6/93
2:22	7/6/92	4A:4	6/6/93
2:23	7/18/93	4A:5	10/5/92
2:24	2/11/90	4A:6	1/4/93
2:32	6/1/92	4A:7	10/5/92
2:33	3/6/94	4A:8	1/16/95
2:34	1/2/95	4A:9	10/5/92
2:48	11/27/90	4A:10	11/2/92
2:50	5/1/92		
2:52	6/7/90		
2:53	3/3/91		
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)		
2:68	11/7/93		
2:69	11/7/93		
2:70	5/7/90		
2:71	7/8/93		
2:72	7/8/93		
2:73	7/8/93		
2:74	7/8/93		
2:76	7/31/94		
2:90	6/24/90		

BANKING—TITLE 3		COMMUNITY AFFAIRS—TITLE 5	
N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
3:1	1/6/91	5:1	2/5/95
3:2	4/15/90	5:2	4/10/94
3:3	1/11/95	5:3	9/1/93
3:6	3/3/91	5:4	10/5/92
3:7	9/16/90	5:10	11/17/93
3:11	5/1/94	5:11	3/10/94
3:13	11/17/91	5:12	12/27/94
3:17	6/18/91	5:13	12/24/92
		5:14	12/1/90
		5:15	5/1/94
		5:18	1/4/95
		5:18A	1/4/95
		5:18B	1/4/95
		5:18C	2/5/95
		5:19	2/1/93
		5:22	2/5/95
		5:23	3/1/93
		5:24	9/1/90
		5:25	3/1/91
		5:26	3/1/91
		5:27	6/1/90
		5:28	12/20/90
		5:29	6/18/91
		5:30	6/29/93

N.J.A.C.	Expiration Date
5:31	12/1/94
5:37	11/18/90
5:38	10/27/93
5:51	9/1/93
5:52	1/2/95
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/5/94

N.J.A.C.	Expiration Date
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/16/93
7:22	1/5/92
7:22A	2/5/95
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/90
7:45	2/6/94

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:7	1/2/95
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	11/22/94
6:22	9/30/90
6:22A	12/19/93
6:24	4/2/91
6:28	4/10/94
6:29	3/25/90
6:30	7/5/93
6:31	11/16/94
6:39	8/14/94
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	10/17/94
6:78	11/7/93
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	9/29/94
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:4A	9/18/94
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:18	11/6/94
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/13/94
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	1/16/95
8:31A	3/18/90
8:31B	10/15/90
8:31C	1/20/92
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	7/17/91
8:33E	6/23/92
8:33F	11/16/94
8:33G	7/17/94
8:33H	7/19/90
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90

N.J.A.C.	Expiration Date
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	2/5/95
8:43H	8/21/94
8:43I	3/21/93
8:44	11/2/93
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	9/29/94
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	8/19/93
8:71	2/17/94

N.J.A.C.	Expiration Date
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/28/94
10:64	3/3/91
10:65	8/25/94
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	5/19/94
10:81	8/24/94
10:82	8/24/94
10:83	1/19/94
10:85	12/20/94
10:87	1/27/94
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	5/15/94
10:99	2/19/90
10:109	3/17/91
10:120	8/21/91
10:121	3/13/89
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:122B	9/10/89
10:123	7/29/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	5/20/90
9:15	8/21/94

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:11	1/16/95
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	2/21/94
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	8/21/94
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:2	2/5/95
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:19	8/21/94
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	5/2/94
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90

N.J.A.C.	Expiration Date
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:15	10/26/94
11:16	2/3/91
11:17	4/18/93
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
13:13	6/17/90
13:18	4/1/90
13:19	8/18/94
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	5/26/94
13:24	9/27/94
13:25	3/18/90
13:26	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	2/11/90
13:38	10/7/90
13:39	6/19/94
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:45A	12/16/90
13:45B	4/17/94
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	8/14/94
12:35	8/5/90
12:40	2/5/95
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/15/94
12:100	9/22/94
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:10-6	9/5/91
14:11	1/27/92
14:17	4/24/94
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	1/16/95
14A:7	9/16/90
14A:8	1/16/95
14A:11	1/16/95
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:1A	6/16/94
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:13	5/7/89
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	11/20/94
16:22	2/3/91
16:24	2/5/95
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:49	3/18/90
16:51	4/6/92
16:53	7/17/94
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92

N.J.A.C.

16:75	5/13/93
16:76	2/6/94
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

Expiration Date**TREASURY-GENERAL—TITLE 17**

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	11/8/94
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
19:4A	6/20/93	19:44	9/29/93
19:8	7/5/93	19:45	3/24/93
19:9	10/17/93	19:46	4/28/93
19:10	9/5/94	19:47	4/28/93
19:12	8/7/91	19:48	10/13/93
19:16	8/7/91	19:49	3/24/93
19:17	6/8/93	19:50	5/12/93
19:20	2/5/95	19:51	8/14/91
19:25	1/9/91	19:52	9/25/91
19:30	10/7/90	19:53	4/28/93
19:40	8/24/94	19:54	3/24/93
19:41	5/12/93	19:54	7/7/91
19:42	5/12/93	19:65	7/7/91
19:43	4/27/94	19:75	1/13/94

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 December 4, 1989 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(c).

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.1990 d.1 means the first rule adopted in 1990.

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 series number and supplement 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: SUPPLEMENT NOVEMBER 20, 1989

NEXT UPDATE: SUPPLEMENT DECEMBER 18, 1989

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
21 N.J.R. 225 and 364	February 6, 1989	21 N.J.R. 2427 and 2690	August 21, 1989
21 N.J.R. 365 and 588	February 21, 1989	21 N.J.R. 2691 and 2842	September 5, 1989
21 N.J.R. 589 and 658	March 6, 1989	21 N.J.R. 2843 and 3042	September 18, 1989
21 N.J.R. 659 and 810	March 20, 1989	21 N.J.R. 3043 and 3204	October 2, 1989
21 N.J.R. 811 and 954	April 3, 1989	21 N.J.R. 3205 and 3330	October 16, 1989
21 N.J.R. 955 and 1036	April 17, 1989	21 N.J.R. 3331 and 3584	November 6, 1989
21 N.J.R. 1037 and 1178	May 1, 1989	21 N.J.R. 3585 and 3688	November 20, 1989
21 N.J.R. 1179 and 1474	May 15, 1989	21 N.J.R. 3689 and 3812	December 4, 1989
21 N.J.R. 1475 and 1598	June 5, 1989	21 N.J.R. 3813 and 3986	December 18, 1989
21 N.J.R. 1599 and 1762	June 19, 1989	22 N.J.R. 1 and 88	January 2, 1990
21 N.J.R. 1763 and 1934	July 3, 1989	22 N.J.R. 89 and 272	January 16, 1990
21 N.J.R. 1935 and 2148	July 17, 1989	22 N.J.R. 273 and 584	February 5, 1990
21 N.J.R. 2149 and 2426	August 7, 1989		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)	
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3	Return of transmitted cases	21 N.J.R. 3207(a)	R.1989 d.605	21 N.J.R. 3914(a)
1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)		
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)		
1:1-14.11	Transcripts of OAL hearings	21 N.J.R. 3587(a)	R.1990 d.68	22 N.J.R. 334(a)
1:1-19.2	Withdrawal of request for hearing or defense raised	21 N.J.R. 3589(a)	R.1990 d.71	22 N.J.R. 334(b)
1:6A	Special education hearings	21 N.J.R. 2693(a)		
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		
1:13-1.1, 14.4	DMV cases involving excessive points, surcharges, and certain failures to appear	22 N.J.R. 91(a)		

Most recent update to Title 1: TRANSMITTAL 1989-5 (supplement August 21, 1989)

AGRICULTURE—TITLE 2				
2:2-3.3	Tuberculin testing of cattle	21 N.J.R. 3333(a)		
2:24	Registration and transportation of bees	21 N.J.R. 3045(b)		
2:32-2.22	Sire Stakes qualifying times at pari-mutuel tracks	22 N.J.R. 3(b)		
2:34-2	Equine Advisory Board rules	21 N.J.R. 2151(a)	R.1990 d.15	22 N.J.R. 25(a)

Most recent update to Title 2: TRANSMITTAL 1989-8 (supplement October 16, 1989)

BANKING—TITLE 3				
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:3-1.1	Department organization	Exempt	R.1990 d.103	22 N.J.R. 335(a)
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:28	Bookkeeping and accounting by savings and loan associations	21 N.J.R. 3336(a)	R.1990 d.18	22 N.J.R. 164(a)
3:42-2.2, 7	Pinelands Development Credit Bank: resale of bank-owned credits	21 N.J.R. 3691(a)		

Most recent update to Title 3: TRANSMITTAL 1989-6 (supplement October 16, 1989)

CIVIL SERVICE—TITLE 4				
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)	R.1990 d.49	22 N.J.R. 169(a)
4:2-7.7(c)	Repeal (see 4A:3-4.11)	21 N.J.R. 1184(a)	R.1990 d.45	22 N.J.R. 166(a)
4:2-16.1, 16.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)	R.1990 d.49	22 N.J.R. 169(a)
4:3-16.1, 16.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)	R.1990 d.49	22 N.J.R. 169(a)

Most recent update to Title 4: TRANSMITTAL 1989-2 (supplement November 20, 1989)

PERSONNEL—TITLE 4A				
4A:2-1.7	Specific appeals: administrative correction			22 N.J.R. 165(a)
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)	R.1990 d.45	22 N.J.R. 166(a)
4A:3-38	Intermittent employees in State service: leave entitlements	21 N.J.R. 3337(a)	R.1990 d.48	22 N.J.R. 166(b)
4A:4-1.11	Vacancy Review Board: State service	21 N.J.R. 3337(a)	R.1990 d.48	22 N.J.R. 166(b)
4A:6-1.2, 1.3, 1.9, 2.4	Intermittent employees in State service: leaves and holiday pay	21 N.J.R. 3337(a)	R.1990 d.48	22 N.J.R. 166(b)
4A:8	Layoffs	21 N.J.R. 3340(a)	R.1990 d.49	22 N.J.R. 169(a)

Most recent update to Title 4A: TRANSMITTAL 1989-4 (supplement November 20, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:1-1.1, 2.1, 6, 7.4	Standards of conduct	21 N.J.R. 3693(a)	R.1990 d.99	22 N.J.R. 335(b)
5:2-1.1	Department organization	Exempt	R.1989 d.589	21 N.J.R. 3740(a)
5:2-1.1	Department organization: administrative correction			21 N.J.R. 3914(b)
5:11-1.2, 6.2	Relocation assistance: definitions; relocation plans	21 N.J.R. 3694(a)	R.1990 d.113	22 N.J.R. 336(a)
5:12	Homelessness Prevention Program	21 N.J.R. 2845(a)	R.1990 d.68	22 N.J.R. 336(b)
5:14-4	Neighborhood Preservation Balanced Housing Program: affordability controls	21 N.J.R. 2153(a)	R.1989 d.588	21 N.J.R. 3740(b)
5:14-4.1	Neighborhood Preservation Balanced Housing Program: administration of affordability controls	21 N.J.R. 3695(a)	R.1990 d.100	22 N.J.R. 337(a)
5:18	Uniform Fire Code	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18-3.2	Uniform Fire Code: casino hotel fire safety plan	21 N.J.R. 2845(b)	R.1989 d.593	21 N.J.R. 3746(a)
5:18A	Fire Code Enforcement	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)	R.1990 d.114	22 N.J.R. 337(c)
5:18B	High Level Alarms	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)	R.1990 d.114	22 N.J.R. 337(c)
5:22	Exemptions from local property taxation	21 N.J.R. 3345(a)	R.1990 d.60	22 N.J.R. 350(a)
5:23-1.1, 3.4, 4.5, 10	Uniform Construction Code: Radon Mitigation Subcode	21 N.J.R. 3696(a)		
5:23-1.4	Uniform Construction Code: underground storage tank compliance	21 N.J.R. 3345(b)	R.1990 d.57	22 N.J.R. 350(b)
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.15	UCC: plumbing subcode	21 N.J.R. 3346(a)	R.1990 d.58	22 N.J.R. 351(a)
5:23-4.5, 4.19, 4.20	UCC enforcing agencies: standardized forms; remittance of training fees	21 N.J.R. 3346(b)	R.1990 d.61	22 N.J.R. 351(b)
5:23-4.17	Dedication of fee revenue for UCC enforcement	21 N.J.R. 3348(a)	R.1990 d.115	22 N.J.R. 352(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2-7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55-7.57, 7.61, 7.67, 7.68, 7.71-7.73, 7.75, 7.76, 7.80-7.82, 7.87, 7.94-7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-8.8	Asbestos hazard abatement subcode: administrative correction			21 N.J.R. 3747(a)
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:27	Rooming and boarding houses	21 N.J.R. 3871(a)		
5:29-1, 2.2	Landlord registration form for one and two-unit rental dwellings	21 N.J.R. 3349(a)	R.1990 d.59	22 N.J.R. 354(a)
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:31	Local authorities	21 N.J.R. 3046(a)	R.1990 d.4	22 N.J.R. 26(a)
5:33	Urbanaid program	21 N.J.R. 3046(b)	R.1990 d.16	22 N.J.R. 26(b)
5:35	State aid for planning local effectiveness program	21 N.J.R. 3046(b)	R.1990 d.16	22 N.J.R. 26(b)
5:52-1	Volunteer coaches' safety orientation and training skills programs: minimum standards	21 N.J.R. 2159(a)	R.1990 d.12	22 N.J.R. 26(c)
5:80-9.13	Housing and Mortgage Finance Agency: notice of rent increases	21 N.J.R. 2160(a)	R.1989 d.591	21 N.J.R. 3748(a)
5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)		
5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

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MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

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EDUCATION—TITLE 6

6:3-1.18	Certification of school business administrators	21 N.J.R. 2915(a)	R.1990 d.47	22 N.J.R. 174(a)
6:7	Evaluation of building principals in State-operated districts	21 N.J.R. 3352(a)	R.1990 d.13	22 N.J.R. 28(a)
6:8-9	Elementary and secondary school summer sessions	21 N.J.R. 2441(c)	R.1989 d.601	21 N.J.R. 3933(a)
6:11-4.3, 8.2, 8.4, 8.5	Certification of bilingual and ESL teachers	21 N.J.R. 2721(a)	R.1989 d.615	21 N.J.R. 3937(a)
6:11-5.1-5.7, 7.2	Provisional certification of first-year teachers	21 N.J.R. 2717(a)	R.1989 d.614	21 N.J.R. 3934(a)
6:11-6.1, 6.2	Certification of nursery teachers	21 N.J.R. 3209(a)		
6:11-10.4, 10.10, 10.11, 10.14	Certification of school business administrators	21 N.J.R. 2915(a)	R.1990 d.47	22 N.J.R. 174(a)
6:20-2	Local district bookkeeping and accounting	21 N.J.R. 2919(a)	R.1990 d.21	22 N.J.R. 176(a)
6:20-2A	Double entry bookkeeping and GAAP accounting	21 N.J.R. 2919(a)	R.1990 d.21	22 N.J.R. 176(a)
6:21	Pupil transportation	21 N.J.R. 2724(a)	R.1989 d.610	21 N.J.R. 3939(a)
6:21-7.6	Pupil transportation: administrative correction			22 N.J.R. 366(b)
6:22-1.1, 1.3, 1.4, 1.7, 1.8	Private school and State facilities for handicapped pupils	21 N.J.R. 3210(a)	R.1990 d.110	22 N.J.R. 366(a)
6:26	Repeal (see 6:8-9)	21 N.J.R. 2441(c)	R.1989 d.601	21 N.J.R. 3933(a)
6:27	Repeal (see 6:8-9)	21 N.J.R. 2441(c)	R.1989 d.601	21 N.J.R. 3933(a)
6:29	Health, safety and physical education	21 N.J.R. 3815(b)		
6:31	Bilingual education	21 N.J.R. 2443(a)	R.1989 d.600	21 N.J.R. 3948(a)
6:39-1.2	Levels of pupil proficiency: administrative correction			22 N.J.R. 366(b)
6:46-1.1, 4.6, 4.10, 4.12	Private vocational schools: instructional hours	21 N.J.R. 3700(a)		
6:46-4.5, 4.12, 4.16	Vocational schools and education	22 N.J.R. 91(b)		
6:68	State Library Assistance Programs	21 N.J.R. 3822(a)		

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ENVIRONMENTAL PROTECTION—TITLE 7

7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)		
7:5C	Endangered Plant Species Program	21 N.J.R. 2847(a)	R.1990 d.22	22 N.J.R. 179(a)
7:5C-5.1	Endangered plant species	22 N.J.R. 94(a)		
7:7A-8.2	Freshwater wetlands protection: administrative correction			21 N.J.R. 3748(b)
7:11-2.1, 2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: schedule of rates	21 N.J.R. 3836(a)		
7:11-4	Manasquan Reservoir Water Supply System: rate schedule	21 N.J.R. 3838(a)		
7:11-4	Manasquan Reservoir Water Supply System rate schedule: change of public hearing location	22 N.J.R. 4(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:13-7.1	Redelineation of Rowe Brook in Tewksbury Township, Hunterdon County	21 N.J.R. 3843(a)		
7:13-7.1	Redelineation of Pond Run in Hamilton Township, Mercer County	21 N.J.R. 3843(b)		
7:14A-1.8	NJPDES fee schedule for permittees and applicants	21 N.J.R. 3590(a)		
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-6.15	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:19	Water supply allocation permits	21 N.J.R. 3594(a)		
7:19A	Emergency water supply allocation	22 N.J.R. 102(a)		
7:19B	Water emergency surcharge schedule	22 N.J.R. 106(a)		
7:22A-1, 2, 3, 6	Sewage Infrastructure Improvement Act grants	21 N.J.R. 1948(a)	R.1990 d.69	22 N.J.R. 368(a)
7:25-2.20	Higbee Beach Wildlife Management Area: withdrawal of proposal	22 N.J.R. 108(a)		
7:25-12	Surf clam management	21 N.J.R. 3214(a)	R.1990 d.46	22 N.J.R. 183(a)

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7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:26-1.4, 7.4, 8.2	Hazardous waste management: testing facility exemptions for treatability studies	21 N.J.R. 3705(a)		
7:26-1.13, 8.15	Hazardous waste management: exclusion or exemption from rules; discarded commercial chemicals	21 N.J.R. 3219(a)	R.1990 d.65	22 N.J.R. 382(a)
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-2A.8	Sanitary landfill requirements: administrative correction	_____	_____	22 N.J.R. 382(b)
7:26-5	Hazardous and solid waste management: civil administrative penalties and adjudicatory hearings	21 N.J.R. 2734(a)	R.1990 d.50	22 N.J.R. 187(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-8.2, 12.3	Radioactive mixed wastes	21 N.J.R. 1053(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-8.21, 12.2	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)	R.1989 d.609	21 N.J.R. 3914(c)
7:26-9, App. A	Requirements for hazardous waste facilities: administrative correction	_____	_____	22 N.J.R. 383(a)
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)	R.1989 d.608	21 N.J.R. 3917(a)
7:27-16.3	Vapor control during marine transfer operations	21 N.J.R. 1960(a)	R.1989 d.595	21 N.J.R. 3748(c)
7:27-23.2-23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)	R.1989 d.596	21 N.J.R. 3751(a)
7:27A-3	Air pollution control: operative date of civil administrative penalties and adjudicatory hearing rules	_____	_____	22 N.J.R. 29(a)
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)	R.1990 d.106	22 N.J.R. 383(b)
7:50-2.11, 4.2, 4.3, 4.5, 4.53, 4.62, 4.66, 5.2, 5.13, 5.23, 5.24, 5.28, 5.43, 5.44, 5.47, 6.65, 6.154, 6.156	Pinelands Comprehensive Management Plan	21 N.J.R. 3381(a)		

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HEALTH—TITLE 8

8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:19-2	Newborn biochemical screening	21 N.J.R. 3633(b)		
8:19-2	Newborn biochemical screening: public hearing	21 N.J.R. 3708(a)		
8:20	Birth defects registry	21 N.J.R. 3636(a)		
8:23	Veterinary public health	21 N.J.R. 3274(a)	R.1990 d.20	22 N.J.R. 204(a)
8:31-30	Health care facility construction: plan review fee (recodify as 8:31-31)	21 N.J.R. 2447(a)	R.1990 d.39	22 N.J.R. 205(a)
8:31A	Standard Hospital Accounting and Rate Evaluation (SHARE)	21 N.J.R. 3872(a)		
8:31A-9.1	SHARE hospital reimbursement: labor proxies	21 N.J.R. 2922(a)	R.1989 d.603	21 N.J.R. 3951(a)
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.22	Hospital reimbursement: standard costs per case	21 N.J.R. 3275(a)	R.1990 d.36	22 N.J.R. 205(b)
8:31B-3.23	Hospital reimbursement: emergency room patients	21 N.J.R. 3275(b)	R.1990 d.38	22 N.J.R. 206(a)
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-3.27	Hospital reimbursement: capital facilities formula allowance	21 N.J.R. 3278(a)	R.1990 d.40	22 N.J.R. 211(a)
8:31B-3.51	Hospital reimbursement: Schedule of Rates notification appeal and review	21 N.J.R. 3278(b)	R.1990 d.41	22 N.J.R. 212(a)
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on	21 N.J.R. 2448(a)	R.1989 d.619	21 N.J.R. 3951(a)
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on: extension of comment period	21 N.J.R. 3279(a)		
8:31B-4.38-4.40	Hospital reimbursement: uncompensated care	21 N.J.R. 2449(a)	R.1989 d.620	21 N.J.R. 3953(a)
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		

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8:31B-4.62	Hospital reimbursement: MICU services	21 N.J.R. 2453(a)	R.1989 d.604	21 N.J.R. 3970(a)
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups classification	21 N.J.R. 3873(b)		
8:31B-7.10	Uncompensated Care Trust Fund: debt recovery through tax rebate and refund set-off	21 N.J.R. 2923(a)	R.1989 d.618	21 N.J.R. 3971(a)
8:33A	Surgical facilities: certificate of need	21 N.J.R. 3888(a)		
8:33F	End-Stage Renal Disease (ESRD) services: certification of need	21 N.J.R. 2923(b)	R.1989 d.602	21 N.J.R. 3973(a)
8:33I-1.2, 1.3, 1.5	Megavoltage radiation oncology units: need review	21 N.J.R. 3640(a)		
8:33P	Designation of trauma centers: certificate of need	21 N.J.R. 3889(a)		
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)		
8:39-44	Respite care services	21 N.J.R. 2924(a)		
8:43B-1-17	Hospital licensing standards (repeal)	21 N.J.R. 2925(a)	R.1990 d.77	22 N.J.R. 488(a)
8:43B-18	Anesthesia (recodify to 8:43G-6)	21 N.J.R. 2925(a)	R.1990 d.77	22 N.J.R. 488(a)
8:43F	Adult day health care facilities: standards for licensure	21 N.J.R. 3385(a)		
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, 35	Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care	21 N.J.R. 2926(a)	R.1990 d.95	22 N.J.R. 441(b)
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		
8:43G-4	Hospital licensure: patient rights	21 N.J.R. 2160(b)	R.1990 d.98	22 N.J.R. 484(a)
8:43G-6	Hospital licensure: anesthesia	21 N.J.R. 2925(a)	R.1990 d.77	22 N.J.R. 488(a)
8:43G-7	Hospital licensure: cardiac services	21 N.J.R. 2162(a)	R.1990 d.97	22 N.J.R. 488(b)
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)	R.1990 d.96	22 N.J.R. 496(a)
8:43G-9	Hospital licensure: critical and intermediate care	21 N.J.R. 2167(a)	R.1990 d.94	22 N.J.R. 498(a)
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)	R.1990 d.78	22 N.J.R. 505(a)
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)	R.1990 d.93	22 N.J.R. 507(a)
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)	R.1990 d.92	22 N.J.R. 510(a)
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)	R.1990 d.91	22 N.J.R. 514(a)
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)	R.1990 d.90	22 N.J.R. 517(a)
8:43G-15	Hospital licensure: medical records	21 N.J.R. 2171(a)	R.1990 d.88	22 N.J.R. 520(a)
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)	R.1990 d.89	22 N.J.R. 524(a)
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)	R.1990 d.87	22 N.J.R. 530(a)
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)	R.1990 d.86	22 N.J.R. 531(a)
8:43G-19.35-19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)		
8:43G-20	Hospital licensure: employee health	21 N.J.R. 2173(a)	R.1990 d.85	22 N.J.R. 535(a)
8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)	R.1990 d.84	22 N.J.R. 537(a)
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)	R.1990 d.83	22 N.J.R. 541(a)
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)	R.1990 d.82	22 N.J.R. 542(a)
8:43G-28	Hospital licensure: radiology	21 N.J.R. 2174(a)	R.1990 d.81	22 N.J.R. 544(a)
8:43G-30.13-30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)		
8:43G-32, 34	Hospital licensure: same-day stay; surgery	21 N.J.R. 2177(a)	R.1990 d.80	22 N.J.R. 548(a)
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)	R.1990 d.79	22 N.J.R. 555(a)
8:45	Clinical laboratory services: licensure and charges	21 N.J.R. 3708(b)		
8:52-6.3, 6.4	Local boards of health: cardiovascular disease services; health services for older adults	21 N.J.R. 3282(a)	R.1990 d.19	22 N.J.R. 214(a)
8:57	Reportable communicable diseases and immunization requirements	21 N.J.R. 3897(a)		
8:57-2	Reporting of AIDS and HIV infection	21 N.J.R. 3905(a)		
8:57-3.1, 3.2	Reportable occupational and environmental diseases and poisonings	21 N.J.R. 3907(a)		
8:57-6	Cancer Registry (recodify to 8:57A)	21 N.J.R. 3909(a)		
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:66	Intoxicated Driving Program/Intoxicated Driver Resource Center	21 N.J.R. 3283(a)		
8:71	Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b))	20 N.J.R. 3078(a)	R.1989 d.379	21 N.J.R. 2108(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a), 3664(a))	21 N.J.R. 1790(a)	R.1990 d.37	22 N.J.R. 214(b)
8:71	Interchangeable drug products	21 N.J.R. 3292(a)	R.1990 d.43	22 N.J.R. 214(c)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)		
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		

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HIGHER EDUCATION—TITLE 9				
9:2-14	Student immunization requirements	21 N.J.R. 3605(a)		
9:4-1.3, 1.9, 1.10, 2.1-2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:7-4.2	Garden State Scholarships: academic requirements	21 N.J.R. 3408(a)	R.1990 d.14	22 N.J.R. 29(b)
9:11-1.8	Educational Opportunity Fund: duration of student eligibility	21 N.J.R. 1963(a)	R.1990 d.1	22 N.J.R. 29(c)
9:14	Independent College and University Assistance Act rules	22 N.J.R. 116(a)		

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10:11-1	Instructional staff tenure	21 N.J.R. 2849(b)	R.1990 d.25	22 N.J.R. 215(a)
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)		
10:49-1.10	Medicaid/Medicare claims processing	22 N.J.R. 117(a)		
10:52	Manual for Hospital Services	21 N.J.R. 3911(a)		
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)	R.1990 d.26	22 N.J.R. 217(a)
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)	R.1990 d.26	22 N.J.R. 217(a)
10:55	Prosthetic and Orthotic Services Manual	22 N.J.R. 4(b)		
10:63	Long Term Care Services Manual	21 N.J.R. 2752(a)	R.1989 d.622	21 N.J.R. 3918(a)
10:63-1.2-1.8, 1.14, 1.16, 3.3, 3.8, 3.9	Long-term care (nursing) facilities: patient care and reimbursement	22 N.J.R. 118(a)		
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)	R.1990 d.26	22 N.J.R. 217(a)
10:63-1.15	Long-term care facilities: Medicaid Program requirements and sanctions	22 N.J.R. 5(a)		
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:69A-1.2, 6.2	Pharmaceutical Assistance to Aged and Disabled: income standards	21 N.J.R. 3047(a)		
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:71-4.5-4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only eligibility computation amounts	Emergency (expires 2-24-90)	R.1990 d.55	22 N.J.R. 251(a)
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:80-83, 87, 89, 90, 109	Division of Economic Assistance: administrative change	_____	_____	21 N.J.R. 3777(a)
10:81-14.18	REACH program: post-AFDC child care	22 N.J.R. 136(a)		
10:83-1.11	Supplemental Security Income payment levels	Emergency (expires 2-13-90)	R.1990 d.23	22 N.J.R. 64(a)
10:85	General Assistance Manual	21 N.J.R. 3221(b)	R.1990 d.33	22 N.J.R. 218(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:85-4.6	Emergency shelter assistance for individuals with AIDS/HIV positive with symptoms and for terminally ill	21 N.J.R. 3790(a)	R.1990 d.117	22 N.J.R. 355(a)
10:87-2.2, 2.3, 2.14, 2.17, 2.19, 2.20, 2.21, 2.23, 2.28, 2.29, 2.31, 2.34-2.38, 3.1, 3.6-3.8, 3.11, 4.3, 4.5, 4.8, 4.12, 5.1, 5.2, 5.4, 5.6, 5.9, 5.10, 6.3, 6.19, 7.6, 7.16, 7.18, 9.5, 10.7, 10.12, 11.31	Food Stamp Program administration	22 N.J.R. 139(a)		
10:87-12.1, 12.2, 12.3, 12.4, and 12.7	Food Stamp Program: Tables I, II, III, IV, and VII	21 N.J.R. 3316(a)	R.1989 d.606	21 N.J.R. 3918(b)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:121	Adoption of children	21 N.J.R. 3047(b)		
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		

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10:123-3.2	Residential health care facilities and boarding homes: personal needs allowance for GPA and SSI recipients	21 N.J.R. 3912(a)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:126A	Family day care standards	22 N.J.R. 13(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		

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10A:2-10	Grants procedure	22 N.J.R. 14(a)		
10A:4-6, 6.3, 6.4	Inmate discipline: chronic violator procedure	21 N.J.R. 3240(a)	R.1990 d.34	22 N.J.R. 232(a)
10A:5-3.1, 3.2	Administrative segregation	21 N.J.R. 3409(a)		
10A:9-4	Reduced custody consideration	21 N.J.R. 3050(a)		
10A:16-2.9	Infirmity care: withdrawal of proposal	22 N.J.R. 15(a)		
10A:16-5.2, 5.6	Medical and health services: guardianship of an adult inmate	21 N.J.R. 2851(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:18-6.4	Employee visits with incarcerated relatives	21 N.J.R. 3410(a)		
10A:22-2.6	Release of confidential inmate or parolee records	21 N.J.R. 3411(a)		
10A:22-4.1	Expungement or inmate records: administrative correction	_____	_____	22 N.J.R. 29(d)
10A:31	Adult county correctional facilities	21 N.J.R. 2853(a)		
10A:31	Adult county correctional facilities: public hearing	21 N.J.R. 3411(b)		
10A:71	Parole Board rules	21 N.J.R. 3411(c)		
10A:71-3.4	Parole release hearings: administrative correction	_____	_____	22 N.J.R. 356(a)
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11:1-3, 7, 8, 13	Repeal (see 11:17A, 17B, 17C, 17D)	21 N.J.R. 1317(a)	R.1990 d.11	22 N.J.R. 30(b)
11:1-5.2	Cancellation and nonrenewal of fire and casualty coverage	21 N.J.R. 3240(b)	R.1990 d.107	22 N.J.R. 391(a)
11:1-10.7	Foreign and alien property and casualty insurers: appeals regarding admission denials	21 N.J.R. 3418(a)	R.1990 d.17	22 N.J.R. 30(a)
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-20.2	Cancellation and nonrenewal of commercial policies: administrative correction	_____	_____	21 N.J.R. 3919(a)
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
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11:2-3.1, 3.12	Credit life and credit accident and health insurance premium rates	21 N.J.R. 3052(a)	R.1990 d.44	22 N.J.R. 233(a)
11:2-3.1, 3.12	Credit life insurance and credit accident and health insurance: clarification of public comments	_____	_____	22 N.J.R. 392(a)
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11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		
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11:3-16A	Automobile coverage: flex rate percentage calculations	21 N.J.R. 3719(a)		
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11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)		
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
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11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, App., 23, App.	Sixty five-and-older health insurance coverage	21 N.J.R. 2877(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-34.6	Long-term care insurance: administrative correction	_____	_____	21 N.J.R. 3777(c)
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11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:13-7	Commercial lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
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11:17D-2.6	Reinstatement of insurance producer license: administrative correction	_____	_____	22 N.J.R. 441(a)
11:18-1	Medical Malpractice Reinsurance Recovery Fund surcharge	21 N.J.R. 2698(a)	R.1989 d.613	21 N.J.R. 3927(a)

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12A:55	Solar energy systems criteria for sales and use tax exemptions: extension of comment period	21 N.J.R. 1969(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		

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13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:22	Repeal (see 13:62)	21 N.J.R. 3646(a)		
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13:30	Board of Dentistry rules	22 N.J.R. 149(b)		
13:30-8.2, 8.11	Parenteral conscious sedation in dental practice	21 N.J.R. 3060(a)		
13:30-8.3	Use of general anesthesia in dental practice	21 N.J.R. 3062(a)		
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	22 N.J.R. 153(a)		
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13:34-1.1	Marriage counselor examination fee	21 N.J.R. 3854(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.5	Standards for patient records in medical practice	21 N.J.R. 3253(a)		
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)		
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:37	Board of Nursing rules	21 N.J.R. 3854(b)		
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13:39A-5.1	Licensure of foreign-trained physical therapists	21 N.J.R. 3855(a)		
13:39A-5.7	Licensure as physical therapist: language comprehension requirement	21 N.J.R. 3856(a)		
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:44-4.1	Board of Veterinary Medical Examiners fee schedule	22 N.J.R. 18(b)		
13:44C-4	Provisional licensure as audiologist or speech-language pathologist (repeal)	21 N.J.R. 3433(a)	R.1990 d.111	22 N.J.R. 358(a)
13:44C-7.2	Audiology and speech language pathology: practice exemptions	21 N.J.R. 2702(a)		
13:45A-16.2	Home improvement contracts: written requirement	21 N.J.R. 3433(b)		

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13:47A-10	Registration of securities	21 N.J.R. 2903(a)		
13:61	State Police: boat safety course	21 N.J.R. 3434(a)		
13:61	State Police boat safety course: extension of comment period	22 N.J.R. 149(a)		
13:62	Motor vehicle race tracks	21 N.J.R. 3646(a)		
13:62	Motor vehicle race tracks: extension of comment period	22 N.J.R. 149(a)		
13:70	Thoroughbred racing	21 N.J.R. 3856(b)		
13:70-29.19	Thoroughbred racing: elimination from place and show wagering	21 N.J.R. 3254(a)		
13:71	Harness racing	21 N.J.R. 3861(a)		
13:71-27.18	Harness racing: elimination from place and show wagering	21 N.J.R. 3255(a)		
13:75-1.6	Violent crimes compensation	21 N.J.R. 2910(a)	R.1989 d.599	21 N.J.R. 3929(a)
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		

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14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
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14:3-4.5, 4.10	Billing disputes and meter test options	21 N.J.R. 1650(b)		
14:3-4.7	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
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14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	21 N.J.R. 2702(b)	R.1990 d.6	22 N.J.R. 47(a)
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		
14:9-3.3	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
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14A:6-2	Business Energy Improvement Program	21 N.J.R. 2005(a)	R.1990 d.28	22 N.J.R. 240(a)
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14A:11	Reporting by energy industries of energy information	21 N.J.R. 2009(b)	R.1990 d.30	22 N.J.R. 244(b)
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16:23	Public hearings and route location approval	21 N.J.R. 2913(a)	R.1990 d.112	22 N.J.R. 358(c)
16:24-1	Public utility rearrangement agreements	21 N.J.R. 3435(a)	R.1990 d.52	22 N.J.R. 358(d)
16:25-1.1, 1.7, 2.2, 7A, 13	Installation of fiber optic cable along limited access highways	21 N.J.R. 2234(b)	R.1990 d.53	22 N.J.R. 359(a)
16:27-1.1, 1.2, 2.1-2.4, 4.1-4.3, 4.5-4.7, 5.1	Traffic engineering and safety programs	21 N.J.R. 3866(a)		
16:28-1.12	School zone speed limit along Route 168 in Gloucester Township	21 N.J.R. 3868(a)		
16:28-1.14, 1.57, 1.66, 1.76, 1.103, 1.116, 1.118	Speed limit zones along Route 33, U.S. 30, Routes 175, 15, 91, 53, and 50	21 N.J.R. 3717(a)		

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16:30-3.6	Cars-only shoulder lanes along U.S. 1 in West Windsor	21 N.J.R. 3317(a)	R.1990 d.8	22 N.J.R. 59(a)
16:30-10.10	Mid-block crosswalk on Route 15 in Lafayette Township	21 N.J.R. 3258(a)	R.1990 d.9	22 N.J.R. 59(b)
16:31-1.3	Left turns on U.S. 46 in Mount Olive	21 N.J.R. 3437(a)	R.1990 d.63	22 N.J.R. 362(a)
16:32	Designated routes for double trailer-truck combinations and 102-inch standard trucks	22 N.J.R. 19(a)		
16:40	Snow and ice control (repeal)	22 N.J.R. 20(a)		
16:41-2.2, 2.3, 2.4, 7.1, 7.2, 7.3	Highway access driveways and intersections: permit and application fees	21 N.J.R. 3063(a)	R.1989 d.594	21 N.J.R. 3778(a)
16:41-2.4	Driveway permit fees: administrative correction			22 N.J.R. 59(c)
16:41-2.4	Highway access by low and moderate income housing units: permit fees	22 N.J.R. 20(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: preproposal	22 N.J.R. 157(b)		
16:41A	Outdoor Advertising Tax Act rules	21 N.J.R. 3868(b)		
16:41A	Outdoor Advertising Tax Act rules: preproposal	22 N.J.R. 157(b)		
16:44-5.1	Construction services: receipt of bids	21 N.J.R. 3437(b)	R.1990 d.31	22 N.J.R. 245(b)
16:49	Transportation of hazardous materials	22 N.J.R. 21(a)		
16:50	Railroad transportation hearings	21 N.J.R. 3258(b)	R.1989 d.607	21 N.J.R. 3929(b)
16:52	Provision of transportation services to elderly and handicapped	21 N.J.R. 3258(b)	R.1989 d.607	21 N.J.R. 3929(b)
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16:53A	Bus Operating Assistance Program (repeal)	21 N.J.R. 3633(a)	R.1990 d.54	22 N.J.R. 362(b)
16:53D-1.1	Zone of rate freedom: 1990 percentage maximums	21 N.J.R. 2914(a)	R.1990 d.66	22 N.J.R. 245(a)
16:62	Air safety and hazardous zoning	22 N.J.R. 158(a)		
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17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
17:16-17.3	Common Pension Fund A: individual stock holdings	22 N.J.R. 21(b)		
17:16-46, 47, 48, 49	State Investment Council: Common Pension Fund D; international diversification; currency exchange contracts	21 N.J.R. 3262(a)	R.1990 d.7	22 N.J.R. 60(b)
17:16-46.1, 46.5	Common Pension Fund D: administrative correction and extension of comment period	21 N.J.R. 3438(a)		
17:19-1.2	Classification of bidders on State projects	21 N.J.R. 3265(a)	R.1989 d.616	21 N.J.R. 3929(c)
17:19-3.2	Debarment from State public works contracting	21 N.J.R. 3272(a)	R.1989 d.617	21 N.J.R. 3930(a)
17:19-3.2	Debarment from State public works contracting: extension of comment period	21 N.J.R. 3439(a)		
17:19-10	Consultant selection procedures for State project assignments	21 N.J.R. 3074(a)	R.1990 d.51	22 N.J.R. 246(a)
17:19-10	Consultant selection procedures for State project assignments: extension of comment period	21 N.J.R. 3438(b)		
17:19-10	Consultant selection procedures for State project assignments: extension of comment period	21 N.J.R. 3739(a)		
17:27-2.1, 5.2, 7.3	Affirmative action in public contracts	21 N.J.R. 3439(b)		
17:27-2.1, 5.2, 7.3	Affirmative action in public contracts: extension of comment period	21 N.J.R. 3869(a)		

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