NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 21 NUMBER 18

September 18, 1989 Indexed 21 N.J.R. 2843-3042

(Includes adopted rules filed through August 25, 1989)

0100330 000 9
EDUCATION, DEPARTMENT OF
DIV LIBRARY, ARCHIVES, & HISTORY
CN 520
TRENTON NJ 08625 INTER-OFFICE

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 17, 1989
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT AUGUST 21, 1989

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

Interested persons comment deadline 2844

COMMUNITY AFFAIRS
Homelessness Prevention Program ..... 2845(a)
Uniform Fire Code: casino hotel fire safety plan ..... 2845(b)
EDUCATION
Certification of school business administrators ..... 2915(a)
Local district bookkeeping and accounting ..... 2919(a)
ENVIRONMENTAL PROTECTION
Endangered Plant Species Program ..... 2847(a)
Higbee Beach Wildlife Management Area ..... 2849(a)
HEALTH
SHARE hospital reimbursement: labor proxies ..... 2922(a)
Uncompensated Care Trust Fund: debt recovery through tax rebate and refund set-off ..... 2923(a)
End-Stage Renal Disease (ESRD) services: certification of need ..... 2923(b)
Respite care services ..... 2924(a)
Hospital licensing standards ..... 2925(a)
Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care ..... 2926(a)
HUMAN SERVICES
Instructional staff tenure ..... 2849(b)
CORRECTIONS
Medical and health services: guardianship of an adult inmate ..... 2851(a)
Expungement or sealing of inmate records ..... 2852(a)
Adult county correctional facilities ..... 2853(a)
INSURANCE
Motor vehicle self-insurance ..... 2876(a)
Sixty-five-and-older health insurance coverage ..... 2877(a)
Reports to National Automobile Theft Bureau ..... 2901(a)
LAW AND PUBLIC SAFETY
Registration of securities ..... 2903(a)
Violent crimes compensation ..... 2910(a)
Solid and hazardous waste information awards ..... 2911(a)
TRANSPORTATION
Public hearings and route location approval ..... 2913(a)
Zone of rate freedom: 1990 percentage maximums ..... 2914(a)
HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION
District zoning rules: fees, penalties, entry and inspection . 2949(a)
CASINO CONTROL COMMISSION
Transportation expense reimbursement to patrons ..... 2953(a)
Slot machine payoffs by casino check; special slot tokens ..... 2954(a)

RULE ADOPTIONS

BANKING
Check cashing business standards ..... 2956(a)
Proposed interstate acquisition: determination of eligibility ..... 2957(a)
ENVIRONMENTAL PROTECTION
Historic Preservation Grant Program ..... 2958(a)
Redelineation of Bound Brook within South Plainfield and Edison ..... 2962(a)
Leasing of Atlantic Coast bottom for aquaculture ..... 2963(a)
Regulated medical wastes ..... 2967(a)
Sulphur contents standards: administrative correction to N.J.A.C. 7:27-10.2 ..... 2991(a)
HEALTH
Hospital reimbursement: uniform uncompensated care add-on ..... 2991(b)
Uncompensated Care Trust Fund cap ..... 2992(a)
Interchangeable drug products ..... 2996(a), 2996(b), 2997(a)

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **October 18, 1989.** 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.

RULEMAKING IN THIS ISSUE—Continued

HUMAN SERVICES
- New Jersey Care: presumptive eligibility for prenatal medical care ..... 2998(a)
- Medicaid Administration Manual ..... 3000(a)
- Medical Day Care Program ..... 3005(a)
- Independent clinic providers: prior authorization for mental health services ..... 3005(b)
- Public Assistance Manual ..... 3006(a)
- Assistance Standards Handbook; AFDC Program ..... 3014(a)
- Charity Racing Days for Developmentally Disabled: distribution of proceeds ..... 3016(a)

INSURANCE
- Joint insurance funds for local government units ..... 3017(a)

LAW AND PUBLIC SAFETY
- Police Training Commission: instructor certification ..... 3019(a)
- Driver control service; supplemental motor vehicle insurance surcharges ..... 3019(b)
- Advertising of veterinary practice: administrative correction to N.J.A.C. 13:44-2.11 ..... 3019(c)

PUBLIC UTILITIES
- Public movers: administrative deletion of N.J.A.C. 14:2 .... 3020(a)

TRANSPORTATION
- Construction control: contractor claims; substantial completion ..... 3020(b)

GARDEN STATE PARKWAY
- Transportation of hazardous materials ..... 3021(a)
- Special permits for oversize vehicles ..... 3021(c)
- Petitions for rules ..... 3021(b)

CASINO CONTROL COMMISSION
- Commission procedures and operations; information and filings; confidential information; professional practice; application processing; hearings on rules ..... 3022(b)

DELAWARE RIVER BASIN COMMISSION
- Correction to Comprehensive Plan and Water Code ..... 3022(a)

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION
- Mercer County water quality management: Hopewell ..... 3029(a)
- Tri-County water quality management: Winslow Township ..... 3029(b)
- Wildlife Check-Off Conservation Grants ..... 3029(c)

HUMAN SERVICES
- Mini Child Care Center Project: grant program funding ... 3029(d)
- Hispanic Outreach Program: extension of grant application deadline ..... 3030(a)

LAW AND PUBLIC SAFETY
- Contract carrier applicants ..... 3030(b)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION
- Petition to rezone sites in North Arlington and Lyndhurst ..... 3030(c)
- Petition to rezone site in Little Ferry ..... 3030(d)
- Petition to rezone site in Carlstadt ..... 3030(e)

INDEX OF RULE PROPOSALS AND ADOPTIONS 3031

Filing Deadlines

October 16 issue:
- **Adoptions ..... September 22**

November 6 issue:
- **Proposals ..... October 6**
- **Adoptions ..... October 16**

November 20 issue:
- **Proposals ..... October 19**
- **Adoptions ..... October 26**

December 4 issue:
- **Proposals ..... October 31**
- **Adoptions ..... November 8**

NEW JERSEY REGISTER

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

Material published in the New Jersey Register is the property of the State of New Jersey. However, it may be copied, reproduced or republished by any person for any purpose whatsoever without permission, providing that no such reproduction or republication shall bear the title "New Jersey Register" or "Official Rules Publication" without the written permission of the Director, Office of Administrative Law.

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $75 ($150 by First Class Mail); back issues when available, $8 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 42-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to four volumes depending on the Department coverage desired.

RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT
Homelessness Prevention Program
Proposed Readoption with Amendments: N.J.A.C. 5:12

Authorized By: Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27C-24, 52:27D-280.
Proposal Number: PRN 1989-474.

Submit written comments by October 18, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), the Homelessness Prevention Program rules, N.J.A.C. 5:12, are scheduled to expire on January 1, 1990. The Department has reviewed these rules and finds that they continue to be necessary for the fair and orderly administration of the Prevention of Homelessness Act (1984), N.J.S.A. 52:27D-280 et seq.

Under the Prevention of Homelessness Act (1984), as implemented by N.J.A.C. 5:12, people who are homeless or in imminent danger of homelessness may receive temporary assistance to enable them to find or retain housing that they will, with the temporary assistance, be able to keep once the period of assistance has passed. Unlike the public welfare system, the program is not designed to assist those who are chronically in need of assistance, and is not so funded that it can provide the help that they require.

Proposed amendments to the rules would, in addition to several minor clarifications, exclude from mortgage loan eligibility any person who has filed for bankruptcy; make it clear that inclusion in a priority category does not confer automatic entitlement to assistance, only priority in consideration; require handicap or disability to be determined by a health professional at the time of application; make clear a preference for households already in sustainable housing; and delete a preference category that the Department has been advised no longer exists—that of families in which children are to be taken and placed elsewhere by a social service agency because of the family's homelessness.

Social Impact

Failure to readopt these rules would have an adverse social impact since it would eliminate the procedures and standards under which homelessness prevention assistance is provided and would thereby contribute to increased homelessness. The amendments are addressed to issues that have arisen in the course of administering the program and should advance the goal of fair and orderly distribution of assistance to those most in need of it and able to use it most efficiently.

Economic Impact

In Fiscal Year 1989, the Program spent approximately $7,950,000 to assist 11,772 people in avoiding homelessness. In Fiscal Year 1988, $3,150,000 was spent to assist 8,280 people.

By removing persons in bankruptcy from eligibility for mortgage loan assistance, the Program will avoid the loss of the loan money through bankruptcy and will have the prospect of repayment. If the money is repaid, it can be made available by the Legislature for assistance to others.

Regulatory Flexibility Statement

These rules affect persons homeless or imminently threatened by homelessness. They do not affect small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:12.

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

[2.]**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" [for existing housing] **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 [over] **at least** 62 years of age;

3. [Households victimized by] **Victims of** domestic violence (A referral from the Division of Youth and Family Services, emergency shelter agency, county welfare agency, or other social agency [will] **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 will be required.);]

Renumber 5.-7. as **4.-6.** (No change in text.)

(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 [804] **802,** Trenton, New Jersey 08625.

(b)

DIVISION OF HOUSING AND DEVELOPMENT
Uniform Fire Code
Fire Safety Plans; Casino Hotels
Proposed Amendment: N.J.A.C. 5:18-3.2

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-198.
Proposal Number: PRN 1989-475.

Submit written comments by October 18, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

The State Fire Prevention Code is amended to require that a copy of the fire safety plan be available at all times within any building for which such a plan is required and that, in casino hotels, the plan be located in the required fire command center. Casino hotels are required to have

fire safety units with properly trained personnel, and the duties of such units are enumerated, as are the recordkeeping requirements for the fire command center.

Social Impact

The establishment of requirements and standards for the training and performance of casino hotel employees responsible for fire protection will enable the casino hotels to better protect their patrons and employees against possible death or injury in the event of fire.

Economic Impact

The establishment of an on-site supervised fire command center is currently required under the State Uniform Construction Code. The 11 operating casino hotels, and the one casino hotel now under construction, already have such command centers. Therefore, it is not anticipated that this proposed amendment will require any physical modification expenses. However, the preparation and implementation of the required employee training program may result in additional costs to the casino hotels, as may the additional supervisory responsibilities created. Overall, however, there will be a considerable economic benefit both to the casino hotels and to their patrons as a result of the decreased risk to life and property because of the increased protection provided pursuant to this proposed amendment.

Regulatory Flexibility Analysis

To the extent that this amended rule applies to all buildings required to have a fire safety and evacuation plan, it may affect some owners that are deemed to be "small businesses." However, the only obligation imposed by this rule on such owners would be to have a copy of the fire safety plan available at all times within the building. This should not impose any discernible cost on anyone. Otherwise, the rule imposes obligations only on casino hotels, none of which, to the best of the Department's knowledge and belief, is owned by a "small business."

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

5:18-3.2 Modifications

(a) The following articles or sections of the State Fire Prevention Code are modified as follows:

1.-2. (No change.)

3. Article 3 ("General Precautions Against Fire") is amended as follows:

i.-vi. (No change.)

vii. The following new sections F-315.0, F-315.1, F-315.1.1, F-315.1.2, F-315.1.3, **F-315.1.4, F-315.1.5,** F-315.2, **F-315.2.1,** F-315.3 [and], F-315.4, **and F-315.5** are added:

F-315-0 Fire Safety and Evacuation Plan

F-315.1 General: A fire safety and evacuation plan shall be prepared as set forth in this section where required by Section F-315.1.**1** through F-315.1.[3]**5**.

F-315.1.1 Use Group R-1: All Use Group R-1 buildings.

F-315.1.2 Use Group I: All Use Group I buildings.

F-315.1.3 High rise buildings: All high rise buildings as defined in [the building code] **this Code**.

F-315.1.4 (Reserved)

F-315.1.5 Casino: All buildings licensed as hotel casinos by the New Jersey Casino Control Commission pursuant to N.J.S.A. 5:12-1 et seq. (see also Section F-319.0).

F-315.2 Fire safety plan: The fire safety plan shall be approved by the fire official and shall be distributed by the owner to all tenants and employees. The plan shall contain the following:

(1) The location of the nearest exits and fire alarms;

(2) The procedures to be followed when a smoke or fire alarm sounds; and

(3) The procedures to be followed in the event of fire or smoke.

F-315.2.1. Availability of plan: A copy of the fire safety plan shall be readily available at all times within the building. In hotel-casinos the plan shall be located in the Fire Command Center.

F-315.3 Evacuation plan: The evacuation plan shall be conspicuously posted on every floor for the occupants' use.

Exception: In R-1 Use Groups the evacuation plan shall be posted on the inside of each guest room door other than a door opening directly to the outside at grade level.

F-315.4 Maintenance: The fire safety and evacuation plan shall be maintained to reflect changes in the use and physical arrangement of the building.

F-315.5 Training: All employees shall be periodically instructed and kept informed in respect to their duties and responsibilities under the plan. Such training shall include the proper use of portable fire extinguishers and other manual fire suppression equipment. With respect to new staff members, such training shall be provided within 30 days of entrance to duty. With respect to existing staff, refresher training shall be provided at least annually and whenever a reassignment significantly alters an employee's duties and responsibilities under the plan.

viii.-x. (No change.)

xi. The following new sections F-319.0, F-319.1, F-319.2 and F-319.3 are added:

Section F-319.0 Casino Fire Safety Programs

F-319.1 General: Every establishment licensed as a hotel-casino by the New Jersey Casino Control Commission shall establish a Fire Safety Unit consisting of trained personnel who will be under the direct supervision of a manager or equivalent Director, whose sole responsibility shall be the operation of the Unit and the Fire Command Center. The manager or equivalent shall report directly to the Director of the Department under which the Fire Safety Unit is organized.

F-319.2 Responsibilities: The responsibilities of the Fire Safety Unit shall include the following:

(1) Ensure continual manning of the Fire Command Center with certified hotel-casino personnel;

(2) Develop and implement a comprehensive fire safety and evacuation plan;

(3) Provide specialized training for all employees to assure compliance with the fire safety plan;

(4) Familiarize all employees of the hotel-casino with the Fire Safety Plan and with the built-in fire detection and suppression systems in the casino and hotel;

(5) Familiarize management and security employees with local fire department operations and procedures for various emergencies in the hotel-casino;

(6) Provide training for employees on specific support functions to be performed to assist fire department personnel in an emergency;

(7) Provide training for employees in early detection and proper evaluation of a fire emergency and the proper use of first aid, fire-fighting equipment and techniques;

(8) Provide training annually for all security personnel and Fire Safety Unit staff in cardiopulmonary resuscitation; and

(9) Ensure the maintenance of the building and its fire protection features in compliance with the Uniform Construction Code and the Uniform Fire Code.

F-319.3 Fire Command Center: The Fire Command Center shall maintain a comprehensive log which shall include the following:

(1) The name and signature of each employee on duty in the Fire Command Center along with the date and time of arrival and departure; and

(2) A description of each incident occurring within the casino or hotel including the date, time, location and action taken. An incident shall include, but not be limited to, fire, alarm activation, trouble signal, fire protection equipment malfunction, and any unrecorded communication pertaining to fire or life safety which are made to or from the Fire Command Center.

4.-33. (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

Endangered Plant Species Program

Proposed New Rules: N.J.A.C. 7:5C

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

Authority: N.J.S.A. 13:1B-1 et seq., particularly 13:1B-15.146 through 13:1B-15.150 and P.L. 1989, c. 56 (to be codified at N.J.S.A. 13:1B-15.151 through 13:1B-15.158); and 13:1D-9.

DEP Docket Number: 038-89-08.

Proposal Number: PRN 1989-492.

Submit comments by November 17, 1989 to:

Judeth A. Piccinini, 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 (Department) proposes to promulgate a new chapter at N.J.A.C. 7:5C in order to implement the Endangered Plant Species List Act (Act), P.L. 1989, c. 56, to be codified at N.J.S.A. 13:1B-15.151 through 13:1B-15.158. The proposed new rules contain the procedures and practices that the Department will follow in carrying out its responsibilities under the Act. Within the next nine months, the Department will propose an official list of endangered plant species native to the State as subchapter 5 of this chapter.

The primary purpose of the Act is to establish an official list of plant species native to New Jersey which are endangered as a result of habitat destruction, over-collection, pollution or other factors, natural or man-made. The Legislature has directed the Department to adopt the official list (the Endangered Plant Species List, or List) in order to eliminate the confusion that various existing conflicting and inconsistent unofficial lists have produced. Adoption of the List is expected to increase the effectiveness and efficiency of protecting and preserving endangered plant species as an element of existing and future government planning functions. The Act directs the Department's Division of Parks and Forestry to develop and adopt the List by April 14, 1990.

As a precondition to adopting the List, the Act requires the Department to propose rules governing the formulation and future revision of the Endangered Plant Species List. The Act also directs the Commissioner of Environmental Protection to direct, within the limits of available funds, research and investigations on the biology and ecology of plant species and their habitats in order to determine the eligibility of plant species for placement on the List. The Commissioner may accept money from a variety of sources, public and private, to carry out the purposes of the Act, and may establish a separate fund for this purpose. The proposed new rules anticipate that the Department will use the results of this research activity as the basis for determining if a plant qualifies as endangered under the proposed criteria.

The Department will also be developing, within the limits of available funds, educational or informational programs to inform the public as to the status and significance of endangered flora. Over an extended period following adoption of the proposed new rules and promulgation of the Endangered Plant Species List, the Department will provide materials indicating the importance and status of the State's endangered flora to the general public and, in particular, those involved in making land use planning and management decisions. Through such efforts, the Department hopes to increase public awareness and concern over the plight of the State's endangered plant species. Eventually, the Department hopes to incorporate consideration of endangered plant species early in the land use planning process at both the State and local level.

Because endangered plant species occupy habitats throughout the State, primarily in undeveloped rural and suburban areas, the proposed endangered plant species program will have Statewide effect. The proposed new rules, based on the Act and other statutory authority of the Department, are designed to promote research, education and informed planning and management decisions. The proposed program does not contain any prohibitions or enforcement mechanisms.

Social Impact

The proposed new rules are expected to have a positive social impact by increasing awareness of and concern by the general public and land use planners and managers for the status of the State's floral diversity. Adoption of the proposed new rules will have positive consequences for that segment of the population involved in conservation, land management and planning decisions by focusing their attention and efforts on a single publicly endorsed official list of endangered plant species.

Economic Impact

Because the Act did not appropriate funds for the endangered plant species program, all administrative duties under the proposed new rules will be performed by existing Departmental staff. The Natural Heritage Program within the Department's Division of Parks and Forestry currently possesses an extensive database of information on extant and historic populations of endangered plant species. Information documented by this program will be used to draft the proposed endangered plant species list. It is possible that through eligibility for Federal matching funds, the proposed new rules may help the Department obtain increased revenues for research and investigations on endangered plant species. Depending on future staffing conditions, coordination of the research, educational, informational and monetary provisions of the Act may require hiring an additional part-time or full-time staff person.

The proposed new rules do not contain direct regulatory requirements or impose fees and, therefore, will not have any direct economic impact on citizens of the State. Adoption of the Endangered Plant Species List may have a positive economic impact on local and State government planning functions by increasing the efficiency by which endangered plant species are considered in the planning process.

Environmental Impact

The endangered plant species program and adoption of the Endangered Plant Species List will have a long term positive environmental impact because research, investigations, and public education conducted under the program will enhance public knowledge and public awareness of the need for preservation of endangered flora. This increased public awareness should facilitate the Department's efforts to maintain the State's floral diversity, thereby contributing to the stability and viability of ecosystems. Because many endangered plant species occupy specialized and often harsh habitats, such as sand dunes, rock faces, bogs, and mountain tops, their preservation will aid in soil development, in preventing wind and water erosion, and in promoting water retention. In addition, maintaining a diverse flora within the State is essential to the conservation of wildlife. All of these factors will result in an overall enhancement of the environment and the quality of life for State citizens.

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 the proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses since the proposed new rules impose regulatory requirements on the Department but not on members of the general public.

Full text of the proposed new rules follows:

CHAPTER 7:5C
ENDANGERED PLANT SPECIES PROGRAM

SUBCHAPTER 1. GENERAL INFORMATION

7:5C-1.1 Purpose and scope

This chapter constitutes the rules of the Department of Environmental Protection concerning the development and adoption of a State endangered plant species list, as authorized by P.L. 1989, c. 56 (N.J.S.A. 13:1B-15.151 through 13:1B-15.158), and contains the official Endangered Plant Species List. The purpose of this chapter is to provide detailed procedures, standards, and criteria for developing and adopting a list of endangered plant species native to the State, in order to eliminate the confusion resulting from various existing inconsistent unofficial lists and to efficiently incorporate the preservation of the State's natural diversity into government planning operations.

7:5C-1.2 Construction

This chapter shall be liberally construed to permit the Department to effectuate the purposes of P.L. 1989, c. 56 (N.J.S.A. 13:1B-15.151 through 13:1B-15.158).

7:5C-1.3 Severability

If any subchapter, section, subsection, provision, clause or portion of the chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

7:5C-1.4 Definitions

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

"APA" means the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

"Commissioner" means the Commissioner of the Department of Environmental Protection, or his or her designee.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Parks and Forestry in the Department of Environmental Protection.

"Endangered Plant Species List" means the official State list of native endangered plant species promulgated by the Department pursuant to P.L. 1989, c. 56 (N.J.S.A. 13:1B-15.151 through 13:1B-15.158) and the rules in this chapter.

"Endangered species" means any native plant species whose survival in the State or the nation is in jeopardy, including, but not limited to: plant species designated as listed, proposed, or under review by the Federal government as endangered or threatened throughout its range in the United States pursuant to the "Endangered Species Act of 1973," P.L. 93-205 (16 U.S.C. section 1533 et seq.), as amended; any additional species known or believed to be rare throughout its worldwide range; and any species having five or fewer extant populations within the State.

"Native" means growing or living naturally in New Jersey without having been brought to or planted in New Jersey by any person.

"Natural Heritage Database" means the manual and computerized file maintained within the Division of Parks and Forestry which includes continually updated information on the location and status of native plant species of the State, as authorized by N.J.S.A. 13:1B-15.146 through 13:1B-15.150.

"Plant" means any member of the Plant Kingdom, including all roots, stems, leaves, flowers, fruits, seeds, spores, gametophytes, and other parts thereof.

"Rare" means extremely uncommon making it vulnerable to extinction throughout its range.

"Species" means any species, subspecies, or variety of plant.

"Threatened plant species" means any plant species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the State.

"Under review by the Federal government as endangered or threatened" means plant species listed within the status categories of LE, LT, PE, PT, 1 and 2 in the most recent Notice of Review published in the Federal Register by the United States Fish and Wildlife Service.

SUBCHAPTER 2. DEVELOPMENT AND ADOPTION OF ENDANGERED PLANT SPECIES LIST

7:5C-2.1 Development and adoption of Endangered Plant Species List

(a) The Commissioner will direct research and investigations related to historical records, populations, distributions, critical habitat needs, limiting factors, and other biological and ecological data that will aid in determining the eligibility of native plant species for inclusion on the Endangered Plant Species List. The Department will incorporate the results of research and investigations conducted under this section into the Division's Natural Heritage Database.

(b) On the basis of research and investigations described at (a) above, the Department will propose and adopt, pursuant to the APA, designation to the Endangered Plant Species List of those native plant species meeting the criteria at N.J.A.C. 7:5C-2.2, giving the common and scientific name for each listed species.

(c) The Department will, on the basis of new or updated information in the Natural Heritage Database, periodically review the Endangered Plant Species List to determine if additions or deletions to the list are needed based on the criteria at N.J.A.C. 7:5C-2.2. If the Department determines on the basis of its review that a listed plant species is no longer endangered, or that a plant species qualifies for listing as endangered, the Department may propose and adopt, pursuant to the APA, revision of the Endangered Plant Species List. The Department will not propose the removal from the Endangered Plant Species List of any native plant species designated as listed, proposed, or under review by the Federal government as endangered or threatened.

7:5C-2.2 Criteria for designating plant species as endangered

(a) The Department will designate a plant species as endangered if it is a native plant species and it satisfies one or more of the following criteria:

1. The Department makes a determination that its survival in the State or nation is in jeopardy based on the best available scientific information, including, but not limited to:

i. The number of apparently secure populations in the State as compared to the number of populations vulnerable to decimation by natural or man-made factors;

ii. The total number of individuals or number of individuals per population of the species in the State; or

iii. The inherent ability of the species or population to perpetuate itself in the State;

2. It is listed, proposed, or under review by the Federal government as endangered or threatened throughout its range in the United States pursuant to the "Endangered Species Act of 1973," P.L. 93-205 (16 U.S.C. section 1533 et seq.), as amended;

3. It is known or believed to be rare throughout its worldwide range; and/or

4. It has five or fewer extant populations in the State.

SUBCHAPTER 3. THREATENED PLANT SPECIES

7:5C-3.1 Threatened plant species

The Department will maintain a list of threatened plant species for the purpose of monitoring the status of the State's flora and to serve as a working list for transition of species to and from the Endangered Plant Species List. The Division shall develop the threatened plant species list solely on the basis of the best scientific information available.

SUBCHAPTER 4. PUBLIC PARTICIPATION

7:5C-4.1 Public participation

(a) Persons with information that will help the Department in determining whether a plant species qualifies under the criteria at N.J.A.C. 7:5C-2.2 as endangered may submit specific information to the Division at the following address detailing how the species may qualify as endangered pursuant to N.J.A.C. 7:5C-2.2:

Office of Natural Lands Management
Division of Parks and Forestry
CN 404
Trenton, New Jersey 08625-0404

SUBCHAPTER 5. ENDANGERED PLANT SPECIES LIST

7:5C-5.1 Endangered Plant Species List

(a) The following plant species are designated as endangered plant species:

1. (Reserved)

(a)

DIVISION OF FISH, GAME AND WILDLIFE
Higbee Beach Wildlife Management Area
Proposal Amendment: N.J.A.C. 7:25-2.20

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3, 13:1D-9, 23:2A-5, 23:2A-7 and 23:7-9.
DEP Docket Number: 039-89-08.
Proposal Number: PRN 1989-493.

A **public hearing** on this proposed amendment will be held on:
Tuesday, October 10, 1989 at 7:00 PM
Assunpink Wildlife Conservation Center
Assunpink Wildlife Management Area
Robbinsville, New Jersey

Submit written comments by October 18, 1989 to:
Martin McHugh, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, N.J. 08625-0402

The agency proposal follows:

Summary

The proposed amendment reduces the time period during which hunting is prohibited at the Higbee Beach Wildlife Management Area (HBWMA). Currently, N.J.A.C. 7:25-2.20(a)4 prohibits hunting and trapping on the HBWMA from September 1 through 12:01 A.M. of the first Monday after the white-tailed deer six-day firearm season ends. The proposed amendment reduces the closure period to September 1 through 12:01 A.M. of the Monday before Thanksgiving. In effect, the amendment reduces the annual closure period from approximately 14 weeks to 11 weeks. In addition, the proposed amendment deletes the reference to trapping in N.J.A.C. 7:25-2.20(a)4 in order to allow for trapping at HBWMA on a consistent basis with the trapping seasons established by the 1989-1990 Game Code, N.J.A.C. 7:25-5.

Social Impact

Although the possibility of conflict between user groups, particularly birdwatchers and hunters, may increase as a result of this amendment, past information has shown that birdwatcher activity declines in late November in response to decreased migratory songbird and raptor use of the area at that time. Those who have used the area for late migrant birdwatching during Thanksgiving week may experience a loss in uninterrupted birding. Those persons philosophically opposed to hunting may find an increase in hunting opportunity distressing. It is anticipated, however, that in terms of the two major user groups, the increase in hunting days at Higbee Beach will increase the recreational opportunity for hunters while having a minimal effect on birdwatchers due to the latter group's decreased use of the area during this period. In addition, since trapping is prohibited throughout the State prior to December 1, 1989, as set forth in N.J.A.C. 7:25-5, the deletion of the reference to trapping at HBWMA will provide trappers with an additional 10 days of trapping at the area with minimal impact to other user groups.

Economic Impact

No adverse economic impact is anticipated from the proposed amendment. No increased costs will be incurred by the general public, users of the area, or the Department.

Environmental Impact

The proposed amendment should have no adverse environmental impact. The increased hunting opportunity resulting from this amendment will not adversely impact on gamebirds, migratory songbirds, raptors or other birds at the HBWMA. The increase in woodcock hunting opportunity is biologically sound since the additional birds expected to be taken by hunters are also part of a harvestable surplus and their removal will not adversely affect the base population. The 23 days of woodcock hunting that the proposed amendment provides is considerably less than the 35 day season allowed for New Jersey by the U.S. Fish and Wildlife Service. No adverse affects are anticipated for other game animals on the area.

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 the proposed amendment would not impose reporting, recordkeeping, or other compliance requirements on small businesses because small businesses are not regulated by N.J.A.C. 7:25-2.20.

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

7:25-2.20 Higbee Beach

(a) In addition to all regulations prescribed in this subchapter affecting the designated Wildlife Management Areas listed at N.J.A.C. 7:25-2.18, the following additional regulations shall apply to the public use of the Higbee Beach Wildlife Management Area (HBWMA):

1.-3. (No change.)

4. [No] A person [may] **shall not** hunt [or trap] on the HBWMA from 12:01 A.M. on September 1 to 12:01 A.M. on the [first] Monday [after the white-tailed deer (Odocoileus virginianus) six day firearm season ends] **before Thanksgiving** in accordance with the provisions of N.J.A.C. 7:25-5.27.

5.-8. (No change.)

HUMAN SERVICES

(b)

OFFICE OF EDUCATION
Instructional Staff; Tenure
Proposed New Rules: N.J.A.C. 10:11

Authorized By: Drew Altman, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:1-12; N.J.S.A. 18A:1-1; (N.J.S.A. 18A:60-1 and 18A:60-1.1, et seq. (P.L. 1986, c.158).
Proposal Number: PRN 1989-470.

Submit comments by October 18, 1989 to:
Dr. Patricia Holliday
Director, Office of Education
Department of Human Services
10 Quakerbridge Plaza, CN 700
Trenton, NJ 08625

The agency proposal follows:

Summary

P.L. 1986, c.158 was introduced into the Legislature subsequent to the Governor's approval of a Side Letter of Agreement attachment to the contract between the State of New Jersey and the Communication Workers of America for the contract period July 1, 1986 through June 30, 1989.

This legislation, codified as N.J.S.A. 18A:60-1 through 1.1, and effective July 1, 1986, provides tenure protection to employees certified by the New Jersey Department of Education as instructional staff who are employed by the Department of Corrections and the Department of Human Services (Director of Educational Services exempted).

Specifically, all Human Services instructional employees who complete three years of satisfactory service with appropriate educational certification within the time frames set forth in the noted legislation are eligible for tenure rights parallel to those otherwise granted by the teacher tenure statutes. Prior to enactment of the legislation, Department of Human Services' educational staff were in the unclassified service, and were, consequently, subject to removal pursuant to that status.

These rules are intended to clarify implementation of N.J.S.A. 18A:60-1 and 18A:60-1.1 (P.L. 1986, c.158). The Office of Education proposes to create a new Chapter 11 within Title 10 of the New Jersey Administrative Code within which to set forth these rules.

There are three major components to the proposed rules: the three year requirement mentioned above specified by the bill; satisfactory performance evaluations during the three year period; and, appropriate educational certification.

Social Impact

The proposed new rules will benefit all employees certified by the New Jersey Department of Education as instructional staff who are employed by the Department of Human Services. The rules will provide employees and supervisory personnel with guidelines to follow regarding implementation of tenure rights granted by the Legislature. These employees are granted the right to continuation of employment, subject to dismissal for cause.

These rules establish a new and more secure sense of parity for the educators within State service and those in the public sector, and better enables the Department of Human Services to provide consistent professional educational services to students within its facilities, by attracting and maintaining a high quality professional staff.

Economic Impact

The Department of Human Services does not anticipate any economic impact as a result of the proposed new rules. Any increased administrative costs which may occur, incidental to implementation of these rules, will be absorbed in the Department's general budget.

Regulatory Flexibility Statement

The proposed new rules do not require a regulatory flexibility analysis, as they do not impose record keeping, reporting or other requirements on small businesses. The proposed rules affect instructional staff who are certified by the Department of Education and employed by the Department of Human Services.

Full text of the proposal follows:

CHAPTER 11
INSTRUCTIONAL STAFF

SUBCHAPTER 1. TENURE

10:11-1.1 Authority

This subchapter implements the provisions of N.J.S.A. 18A:60-1 and 18A:60-1.1 (P.L. 1986, c.158), which grants tenure rights to instructional staff of the Department of Human Services.

10:11-1.2 Scope

(a) This subchapter applies to all individuals employed by the Department of Human Services who:

1. Are required to possess educational certification as a condition of employment; and,

2. Are not otherwise included in the New Jersey Department of Personnel classified system.

10:11-1.3 Definitions

When used in this subchapter, the following terms shall have the indicated meanings, unless the context clearly indicates otherwise.

"Instructional staff member" means a member of the professional staff of any facility in the Department of Human Services, holding office, position, or employment of such character that the qualifications require him or her to hold a valid and effective standard certificate issued by the State Board of Examiners, appropriate to his or her instructional assignment, as determined by the Director, Office of Education. Applications of time earned during possession of emergency or provisional certifications are described in N.J.A.C. 10:11-1.5.

"One year of service" means, for seniority purposes only, 12 months of employment in pay status in a tenure applicable title in the Department of Human Services. A service period commences on the date of appointment into a tenure-applicable title. Examples of tenure-applicable titles are Teacher I; Teacher II; Supervisor of Educational Programs I and II; Assistant Supervisor of Educational Programs I and II; Instructor, Commission for the Blind and Visually Impaired; School Psychologist; Learning Disabilities Specialist; School Social Worker; Supervising Consultant, Curriculum Services; and educational titles that require staff to hold valid and effective standard certificates, issued by the State Board of Examiners appropriate to the instructional function as determined by the Director, Office of Education.

"Supervisory or administrative staff" means a member of the staff of any Department of Human Services facility or the Office of Education in the Department of Human Services holding a position or employment that requires him or her to hold a valid and effective standard certificate, issued by the State Board of Examiners appropriate to his or her function as determined by the Director, Office of Education.

10:11-1.4 Scope of tenure

Once tenure is acquired by an employee, such standing shall apply throughout the Department of Human Services. If, however, the employee experiences a break in service, he or she will forfeit tenure rights. Leaving a tenured position to enter a classified, unclassified, non-tenured or Senior Executive Service position will be viewed as a break in service for tenure purposes.

10:11-1.5 Eligibility

(a) In addition to fulfillment of the requirements set forth in N.J.A.C. 10:11-1.2, and pursuant to N.J.S.A. 18A:60-1 et seq., those individuals who have been continuously employed for at least two academic years in an instructional capacity within the Department of Human Services as of July 1, 1986 and have completed at least two years of instructional services with satisfactory evaluations shall acquire tenure upon completion of one additional year of satisfactory service.

(b) Those individuals who do not meet the requirements set forth in (a) above, but were employed on or after July 1, 1986, shall be eligible for tenure:

1. After continuous employment for three consecutive years; or

2. After employment for the equivalent of more than three years within a period of four consecutive academic years.

(c) Employment experience obtained under emergency or provisional certification may be applied towards tenure eligibility. However, tenure may be acquired only when standard certification is issued. Appropriate standard certification must be obtained within four years of the effective date of these rules.

10:11-1.6 Notice of reemployment; non-reemployment

(a) All notices under this section, including the recommendation for reemployment or the 60-day notice of non-reemployment, shall be made:

1. By the appointing authority, in conjunction with the facility Supervisor of Education, for non-supervisory or non-administrative instructional staff;

2. By the Director, Office of Education, for all supervisory or administrative staff.

(b) A written notice of non-reemployment shall be provided to an individual not to be granted tenure at least 60 days prior to such individual's date of tenure eligibility pursuant to N.J.A.C. 10:11-1.5.

(c) All non-tenured instructional staff not recommended for tenure shall be dismissed prior to the otherwise effective date of tenure.

(d) Any instructional staff member who receives a notice of non-reemployment, as noted in (b) above, may, within 15 days of receipt of the notice, request, in writing, a statement of the reasons for such action from the appointing authority (N.J.S.A. 18A:27-3.2), which statement of reasons shall be given to the instructional staff member in writing within 30 days after the receipt of such request.

10:11-1.7 Performance assessment for tenure purposes

(a) Educationally certified supervisory personnel or the Director, Office of Education, as appropriate, shall conduct performance assessment reviews in compliance with the standards and criteria promulgated by the Director of the Department of Personnel pursuant to N.J.S.A. 11A:6-28 and N.J.A.C. 4A:1-1, and set forth fully at N.J.A.C. 6:3-1.19 and 1.21.

(b) Supervision and evaluation of instructional staff shall be conducted by educationally certified supervisors employed in an educational capacity within the Department of Human Services.

(c) Supervision and evaluation of administrative or supervisory staff shall be conducted by the Director, Office of Education, or his or her appropriately qualified designee, in conjunction with the appointing authority.

(d) For purposes of evaluation of non-tenured instructional staff, the following provisions shall apply notwithstanding the schedule of evaluations set forth in N.J.A.C. 6:3-1.19:

1. The Performance Assessment Review system shall consist of a minimum of three observations/conferences conducted for the duration of at least one class period or lesson period.

(e) For purposes of evaluation of tenured instructional staff, the following provisions shall apply notwithstanding the schedule of evaluations set forth in N.J.A.C. 6:3-1.21:

1. The Performance Assessment Review system shall consist of a minimum of two observations/conferences annually.

(f) A non-tenured or tenured instructional staff member will be observed through visitation to his or her classroom or work station by an appropriately certified supervisor for the purpose of observing the staff member in the educational process.

(g) Each observation shall be followed within a reasonable period of time by a conference between the Supervisor of Educational Programs and the instructional staff member or the Supervisor of Educational Programs, and the Director, Office of Education or his or her designee. Each party to the conference will sign the Performance Assessment Review instrument and retain a copy for his or her records.

(h) The instructional staff member shall have the right to submit his or her comments to such an evaluation within 10 days following the conference and such disclaimer shall be attached to each party's copy of the instrument.

10:11-1.8 Disciplinary action—tenured staff

(a) In a case where disciplinary action is recommended or implemented, which does not result in dismissal or reduction in salary, as a result of charges made against a tenured employee of the Department of Human Services, the appointing authority (in conjunction with the Supervisor of Education, for all instructional staff) shall act in accordance with Department of Human Services Administrative Order 4:08, a copy of which may be obtained from the employing facility.

(b) In a case where disciplinary action will result in dismissal or reduction in salary, the charges shall be filed with the Director of Employee Relations. The charges shall be accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

(c) Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee within three working days of the date they were filed with the Director of Employee Relations. Proof of mailing or hand delivery shall constitute proof of transmittal.

(d) The affected tenured employee shall have the opportunity to submit to the Director of Employee Relations a written statement of position and a written statement of evidence both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges.

(e) Within 45 days of receipt of the charges, the Director of Employee Relations shall determine whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary.

(f) The Director of Employee Relations shall immediately notify in writing the affected employee against whom the charge has been made of its determination, in person or by certified mail to the last known address of the employee.

(g) If the Director of Employee Relations determines that there is probable cause, he or she shall file a finding of probable cause, together with accompanying documentation, with the Commissioner of the Department of Education, together with proof of service upon the employee.

(h) Procedures governing processing and hearing provisions for subsequent activity under this chapter may be found at N.J.A.C. 6:24.

10:11-1.9 Reduction in force

Nothing contained in N.J.S.A. 18A shall be held to limit the right of the Commissioner of Human Services in the case of any State institution conducted under his or her jurisdiction, supervision or control, to reduce the number of instructional staff in any such institution or institutions when the reduction is due to natural diminution of the number of students or pupils in the institution or institutions, subject to N.J.A.C. 6:3-1.10.

CORRECTIONS

(a)

THE COMMISSIONER

Medical and Health Services

Informed Consent to Perform Medical, Dental or Surgical Treatment

Proposed New Rule: N.J.A.C. 10A:16-5.6

Proposed Amendment: N.J.A.C. 10A:16-5.2

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

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

Proposal Number: PRN 1989-482.

Submit comments by October 18, 1989 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10A:16-5.2(a)2 adds a cross-reference to N.J.A.C. 10A:16-5.5. A new section N.J.A.C. 10A:16-5.6 has been added to this subchapter, and this section provides the procedures to be followed when application for guardianship of an adult inmate is submitted to the Attorney General's Office.

Social Impact

The proposed amendment and new rule provides a method, through appointment of a guardian, for inmates to receive medical, dental and surgical treatment necessary to preserve their health and well-being.

Economic Impact

The proposed amendments will have no significant economic impact because additional funding is not necessary to implement or maintain the amendments.

Regulatory Flexibility Statement

A Regulatory Flexibility Analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed amendments, N.J.A.C. 10A:16-5.2 and 5.6, impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

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

10A:16-5.2 Exception to adult inmate written consent requirement

(a) Written consent shall not be required in the case of adult inmates (18 years or older) in the following circumstances:

1. (No change.)

2. In any case in which a court of competent jurisdiction has determined that the inmate is incompetent to give informed consent on his or her own behalf, or is otherwise ordered to undergo treatment **(see N.J.A.C. 10A:16-5.5).**

10A:16-5.6 Guardianship of adult inmates

(a) An application for guardianship of an inmate may be submitted to the Attorney General's Office for action in the event an inmate:

1. Is unable to give consent because of his or her mental or physical condition; or

2. Is refusing treatment deemed necessary by his or her treating physician or psychiatrist.

(b) The following information shall be provided to the Attorney General's Office in memorandum form when application is made for guardianship:

1. The name, age, race, height, weight, offense, sentence and parent institution of the inmate;

2. The name and relationship of family members who were contacted regarding guardianship;

3. The name, address and telephone number of the family member agreeing to be appointed guardian;

4. A request, when no family member is available, that the Health Services Unit Supervisor, Office of Institutional Support Services (O.I.S.S.) be appointed guardian when inmates are assigned to the St. Francis Medical Center or a Special Medical Unit, or a request that the Superintendent of the parent institution be appointed guardian when inmates are assigned to other medical facilities;

5. A letter from the treating physician which details the history of the inmate's condition, the consequences of treatment refusal and that physician's opinion as to the inmate's competency; and

6. A letter from a psychiatrist, a second opinion to physician above, which describes the inmate's mental condition and competency.

(c) An examination by each of the physicians shall be conducted within 20 days prior to the application for guardianship. The date of the most recent examination shall be documented in their respective reports. The physicians shall indicate whether they are related, by either blood or marriage, to the inmate.

10A:16-[5.6]**5.7** (No change in text.)

(a)

THE COMMISSIONER

Records

Expungement or Sealing of Records

Proposed New Rules: N.J.A.C. 10A:22-4

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

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

Proposal Number: PRN 1989-477.

Submit comments by October 18, 1989 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules establish procedures for the expungement and sealing of records upon receipt of an Order from the Courts or the Bureau of Correctional Information and Classification Services (C.I.C.S.) directing the expungement or sealing of inmate records which may be expunged or sealed, and the appropriate responses which should be given by the Department of Corrections' employees when inquiries are received regarding the records of inmates which have been expunged or sealed.

Social Impact

The proposed new rules will assist Department of Corrections' employees in complying with court mandates and the Bureau of Correctional Information and Classification Services' (C.I.C.S.) requests for the expungement and scaling of records.

Economic Impact

The proposed new rules will have no significant impact since there are no additional resources needed to implement or maintain these rules.

Regulatory Flexibility Statement

A Regulatory Flexibility Analysis is not required because these proposed rules do not impose reporting, record keeping or other compliance requirements on small businesses. The rules impact on inmates and the New Jersey Department of Corrections and have no affect on small businesses.

Full text of the proposal follows:

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. EXPUNGEMENT OR SEALING OF RECORDS

10A:22-4.1 Procedures for expungement of records

(a) Pursuant to N.J.S.A. 2C:52 et seq., whenever a correctional facility, Bureau Chief or an administrative unit head receives an Order from the Courts or from the Bureau of Correctional Information and Classification Services (C.I.I.S.) directing the expungement of inmate records, all records and information that are subject to said Order of Expungement shall be removed from the files and forwarded to the Bureau of Correctional Information and Classification Services.

(b) Inmate records shall include, but not be limited to:

1. Classification;
2. Identification;
3. Medical;
4. Education;
5. Professional services;
6. Payroll;
7. Business Office;
8. Management control;
9. Operations;
10. Internal Affairs; and
11. Mail records.

(c) To avoid any confusion and/or complication relative to permanent numerical files that may be maintained in various areas, a blank card reflecting only the appropriate number and in bold print, "NO RECORD", shall be inserted in place of the permanent record being removed.

(d) In the event there are reports, documents or material wherein more than one individual is mentioned, the name of the individual whose record has been expunged may be obliterated, rather than purging said record in its entirety.

(e) Any future Court Orders concerning the expunged records shall be forwarded immediately to the Bureau of Correctional Information and Classification Services.

(f) When an Order of Expungement is received and the individual named in such Order cannot be identified from the files, or if it is determined that the records have been transferred to another location or holding area, the Order shall be forwarded immediately to the Bureau of Correctional Information and Classification Services.

(g) When handling inquiries for information relative to records affected by Orders of Expungement, the appropriate response shall be "NO RECORD".

(h) Disclosure of any information and/or records which have been expunged by Order of the Court is punishable in accordance with N.J.S.A. 2C:52-30.

10A:22-4.2 Expungement of disciplinary records

When an inmate is adjudicated not guilty of a disciplinary charge, the inmate's records shall be expunged in accordance with the procedures outlined in N.J.A.C. 10A:4-9.26, Expungement.

10A:22-4.3 Procedures for sealing juvenile records

(a) Whenever a correctional facility, Bureau Chief or an administrative unit head receives an Order from the Courts or from the Bureau of Correctional Information and Classification Services (C.I.C.S.) directing the sealing of juvenile records, all records concerning the inmate set forth in the Court Order shall be forwarded to the Bureau of Correctional Information and Classification Services for placement in the established sealed records file.

(b) All index references shall be marked "NOT AVAILABLE" or "NO RECORD".

(c) When correctional facility administrators receive inquiries for information relative to sealed juvenile records, the appropriate response shall be that there are no records with respect to such juveniles.

(d) Any future Court Orders concerning juvenile records shall be forwarded to the Bureau of Correctional Information and Classification Services.

(e) Any subsequent conviction of a crime or adjudication of delinquency or in need of supervision has the effect of nullifying the sealing Order.

(a)

THE COMMISSIONER

Adult County Correctional Facilities

Proposed Repeal and New Rules: N.J.A.C. 10A:31

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

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

Proposal Number: PRN 1989-483.

Submit comments by October 18, 1989 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:31 became effective on February 4, 1985, for a period of five years which expires on February 4, 1990. For the sake of clarity, the Department of Corrections proposes that N.J.A.C. 10A:31 be repealed and new rules adopted in order to incorporate the numerous changes in language, format and organization of material. The proposed new rules establish the minimum criteria which must be satisifed when counties are designing and planning the construction of new adult county correctional facilities, or when existing facilities are being renovated. The proposed new rules also establish guidelines for the provision of custody, programs and services for inmates in adult county correctional facilities. The proposed new rules set forth the abatement process to be utilized when conditions or procedures are discovered in adult county correctional facilities which are in violation of the rules within this chapter and when a county has willfully and continuously failed to initiate corrective action in response to notice.

Social Impact

The proposed new rules will have no significant social impact because these rules simply clarify, by changes in language and format, essentially the existing requirements that are intended to ensure that inmates are provided programs and services in clean, safe and secure adult county correction facilities.

Economic Impact

The proposed new rules will have no significant economic impact on counties where adult county correctional facilities were designed, planned, built and placed in operation within the past five years. Compliance with the requirements of these proposed new rules should be accomplished within existing financial resources. The proposed new rules may have a significant economic impact on counties where older adult county correctional facilities are in need of renovation or replacement. The costs of renovation and/or new construction of facilities may make it necessary for these counties to request the allocation of additional financial resources to comply with the requirements of the proposed new rules.

Regulatory Flexibility Statement

A Regulatory Flexibility Analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed new rules impact on inmates and the New Jersey Department of Corrections and have no significant affect on small businesses.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10A:31.

Full text of the proposed new rules follows:

CHAPTER 31
ADULT COUNTY CORRECTIONAL FACILITIES

SUBCHAPTER 1. INTRODUCTION

10A:31-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish the minimum criteria for the planning, design and construction of new adult county correctional facilities or renovation of existing facilities;

2. Establish the minimum criteria for the administration of adult county correctional facilities;

3. Establish guidelines for the provision of programs and services to inmates in adult county correctional facilities;

4. Establish guidelines which permit correctional officials at county and State levels to analyze and evaluate the performance and adequacy of services provided to inmates by adult county correctional facilities, and delineate the deficiencies which require improvement;

5. Establish guidelines whereby inmates employed in productive occupations while confined in adult county correctional facilities shall receive compensation for such employment in the form of cash or remission of time from sentence or both;

6. Establish guidelines for the participation of inmates in the Work Release Program; and

7. Establish the abatement process in all cases where conditions or procedures are discovered in adult county correctional facilities which are in violation of the rules of this chapter and where a county has willfully and continuously failed to initiate corrective action in response to notice.

10A:31-1.2 Scope

This chapter shall be applicable to the New Jersey Department of Corrections, the Bureau of County Services and all adult county correctional facilities.

10A:31-1.3 Definitions

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

"Adult county correctional facility" means any place, under the jurisdiction of a county, where adult persons convicted or accused of crimes are confined.

"Classification Committee" means a group of staff members who have been designated to make decisions related to the needs of inmates from the time of admission until the time of release.

"County work release" means a program which permits selected inmates, committed by the municipal or county court to an adult county correctional facility, to be in the community during specified periods to engage in remunerative employment, to attend vocational training and, in the case of female offenders, to attend to family needs.

"Detainer" means a warrant or formal authorization to hold an inmate for prosecution or detention by a Federal, State or local law enforcement agency or the U.S. Immigration Department. Detainers may include, but are not limited to:

1. Adjudicated criminal charges for which sentence has been imposed;

2. Criminal charges resulting from indictment, for which there is no final disposition (open charges);

3. Warrants for violation of parole or probation; and

4. Immigration detainers.

"Disciplinary Board" means a custody supervisor and two non-custody staff members who have been designated by the Jail Administrator to hear and adjudicate inmate violations of facility rules.

"Disciplinary Detention" means the removal of an inmate from the general population to a short term close custody unit because of a violation of facility rules.

"Facility" means an adult county correctional facility.

"Involuntary protective custody" means confinement in Protective Custody which was not requested by the inmate.

"Jail Administrator" means a Sheriff, Warden or any other person who serves as the Chief Executive Officer of an adult county correctional facility.

"On-the-Spot Correction" means the immediate imposition of a sanction upon an inmate for a minor rule violation.

"Prehearing detention" means the removal of an inmate from the general population pending an investigation and a hearing into an alleged violation of a rule.

"Productive occupation" means any assignment exclusive of a work release assignment, which involves work carried on by the governing body or by any board, commission or institution that receives funding from the county.

"Protective custody" means confinement to a secure unit designated to restrict or limit an inmate's activities and contacts with

others, in order to provide protection to the inmate from injury or harm actually threatened, or reasonably believed to exist based on events, investigative reports, informants' reports or other reliable sources of information.

"Voluntary protective custody" means confinement in Protective Custody which was requested by the inmate.

SUBCHAPTER 2. ENFORCEMENT PROCEDURES

10A:31-2.1 Authority of the Commissioner, New Jersey Department of Corrections

(a) N.J.S.A. 30:1B-10 gives the Commissioner of the Department of Corrections the authority to establish minimum standards for adult county correctional facilities.

(b) The Commissioner may, in accordance with the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.) promulgate such rules and regulations as are deemed necessary to establish minimum standards for the care, treatment, government and discipline of inmates in adult county correctional facilities.

(c) The Department of Corrections takes note of the fact that a number of older adult county correctional facilities operate under the handicap of certain physical deficiencies. Such facilities will be allowed to make reasonable accommodations to meet this chapter. However, in the areas of renovation and/or new constructions of adult county correctional facilities, the Department of Corrections will insist that there be conformity to this chapter.

10A:31-2.2 Physical inspection and/or program evaluation

(a) The physical inspection and/or programmatic evaluation of adult county correctional facilities shall be conducted by the Bureau of County Services, New Jersey Department of Corrections.

(b) A report of the findings of the physical inspections and/or the programmatic evaluations, listing all violations shall be submitted to the Freeholder Director or County Executive with copies to the Sheriff or Jail Administrator and the County Assignment Judge.

(c) The report shall contain notice that corrective action must be effected or initiated within 60 days, and a date for re-inspection shall be scheduled.

10A:31-2.3 Re-inspection

(a) A re-inspection shall be conducted noting the abatement status of all violations.

(b) If additional violations are discovered during the re-inspection, a separate addendum will be attached to the original list of violations.

(c) A letter indicating the findings of each re-inspection shall be submitted to the parties listed in N.J.A.C. 10A:31-2.2(b).

(d) A date shall be scheduled for final re-inspection prior to any enforcement action.

10A:31-2.4 Extension of time to correct violations

(a) At any time prior to enforcement of restrictions, the county may request an extension of time to correct the violations. Said request must be in writing and must specify:

1. The particular violations which the county expects to have difficulty in correcting;

2. The reason(s) for the difficulty;

3. The nature of corrective action being undertaken; and

4. The date by which correction of violations will be completed.

(b) The Commissioner, New Jersey Department of Corrections, may, in his or her discretion, grant, modify or deny the request for an extension after consultation with the Bureau of County Services.

10A:31-2.5 Enforcement action

(a) In the event acceptable corrective action has not been effected or initiated upon final reinspection, notice shall be forwarded, by certified mail, to the county stating that:

1. Effective immediately, the county shall cease to admit persons sentenced to State correctional facilities;

2. Effective 30 days after receipt of notice, the county shall cease to admit persons sentenced to terms in said adult county correctional facility; and

3. Effective 90 days after receipt of notice, the county shall cease to accept all persons sent to said adult county correctional facility.

(b) The notice of restrictions in (a) above shall contain a statement of reasons for imposition of restrictions, based on:

1. The number, seriousness and duration of the violations cited; and

2. The willful, continuous disregard of the county in abating the violations.

(c) Restrictions imposed on a county pursuant to this subchapter shall continue until such time as the Commissioner shall determine that the violations specified have been corrected, or that the adult county correctional facility has initiated actions which will ensure the correction of said violations.

(d) During the pendency of restrictions imposed pursuant to this subchapter, location of inmates and payments therefor shall be governed by N.J.S.A. 30:8-57, 58 and 59.

(e) The Commissioner shall initiate such legal action as may be deemed necessary to ensure the enforcement of this subchapter.

SUBCHAPTER 3. PLANNING AND DESIGN

10A:31-3.1 Notification

(a) A letter of intent to construct, remodel or renovate any adult county correctional facility shall be submitted to the Chief, Bureau of County Services, Department of Corrections, by the governing body responsible for the facility prior to the initiation of any planning actions. The notification shall specify the proposed action to be taken and the estimated period of construction.

(b) Upon receipt of the letter of intent, the Chief, Bureau of County Services, shall furnish technical assistance throughout the planning process to assure that such planning complies with this subchapter.

10A:31-3.2 Program statement

(a) The Jail Administrator and the architect shall develop an adult county correctional facility program statement as a part of the planning phase. Such a program statement shall include, but not be limited to, a description of criteria for the following:

1. Type of facility needed and evaluation of alternatives to incarceration;

2. Maximum estimated capacity of facility based on projected needs;

3. Types of inmates to be housed;

4. Methods of entry and exit from the facility;

5. Living units;

6. Food preparation and serving facilities;

7. Intake and book area;

8. Visiting and attorney interview areas;

9. Telephone access for inmates;

10. Library facilities;

11. Medical examination areas;

12. Activity areas for exercise and rehabilitation program;

13. Cleaning and/or laundering;

14. Security arrangements and physical relationships among components and

15. All other plans for compliance with these rules.

(b) The facility program statement shall be submitted in duplicate to the Chief, Bureau of County Services, New Jersey Department of Corrections.

10A:31-3.3 Submission of plans and specifications

(a) All plans and specifications shall be submitted to the Chief, Bureau of County Services, New Jersey Department of Corrections, and copies shall also be submitted to other applicable regulatory agencies.

(b) Contracts shall not be let until approval of final documents is received by the Jail Administrator in writing from the Chief, Bureau of County Services, and other applicable regulatory agencies.

10A:31-3.4 Construction principles

(a) All adult county correctional facility construction shall comply with the regulations required by State and local building codes.

(b) Should a conflict exist between the regulations required by State and local building codes and those of any other standards setting agency, the conflicting Department rule shall not be effective

until such conflict has been resolved by the Chief, Bureau of County Services, New Jersey Department of Corrections.

10A:31-3.5 General conditions

(a) The requirements within this subchapter shall apply to all areas of the adult county correctional facility with equal importance and shall be considered in the planning process.

(b) The facility shall be reasonably accessible to the public and to the facility staff, as well as to the officers of the court, attorneys and law enforcement officers. This accessibility shall be reflected in the availability of public transportation as well as fully adequate provisions for the parking of official and personal automobiles.

(c) Staff work stations and control rooms shall be situated to provide the greatest degree of observation of traffic flow and supervised internal activities that is possible.

(d) The orderly circulation of inmates through strategically located corridors (minimum four feet wide), eliminating all unnecessary cross-traffic and undesirable contacts between different categories of inmates, will ensure the security and efficiency of operation. The facility shall be so designed that sections or parts can be closed off for varied use to meet changing needs.

(e) Exit and entry control stations shall be separated from the public and inmates by security barriers and shall be protected from direct observation from outside of the facility. Program and custody staff shall be dispersed within resident areas for supervisory and programmatic activities.

(f) The design of the facility shall provide for the secure confinement of inmates and for adequate separation of inmates of one classification from inmates of another. Inmates of the following classifications shall not be confined in the same cells or living areas;

1. Material witnesses and persons committed for crimes;
2. Male and female inmates;
3. Sentenced inmates and unsentenced inmates;
4. Serious offenders and less serious offenders;
5. Inmates in the Work Release Program and inmates in the general population; and
6. Inmates classified as trustees and inmates in other classifications.

(g) The design of the facility shall provide for the segregation of certain types of inmates from the living areas of the general population, such as disciplinary detention, protective custody, etc.

(h) Special purpose cells shall be based on the size and needs of the facility and shall be used only for the temporary detention of inmates who are likely to harm themselves, require protection, or are uncontrollably violent or self-destructive.

(l) All living units in new facilities shall be single occupancy units.

(m) Consistent with the security requirements of the facility, living units shall be located and designed to safeguard the privacy of inmates.

(n) Adult county correctional facilities shall contain sufficient space for programs which can include the public in areas other than the living areas of the facility, without compromising the security and control of the facility's operation.

(o) Storage areas for the personal property of inmates shall be sufficient to accommodate all necessary materials and provide for the separation and security of the personal property of inmates.

(p) The design shall allow for service deliveries without interference with the security of the facility.

(q) A two-way communication system shall be installed to provide communication between control stations and living areas.

(r) Provisions shall be made for the security of the following:

1. Keys;
2. Weapons;
3. Drugs and medications;
4. Tools;
5. Valuables;
6. Records;
7. Supplies; and
8. Other materials.

(s) Secure depositories for weapons shall be provided outside the areas accessible to the inmates.

(t) Padlocks shall not be used in place of, or in addition to, a security lock on any door, window or cabinet within the facility.

(u) The illumination level shall provide at least 30 foot candles of illumination in all living areas, and 100 foot candles in all work or study areas of the facility.

(v) The design of windows shall take into consideration the need for the admission of natural light and ventilation (where such ventilation is not provided mechanically). Security type windows are necessary. Tool resisting steel shall be used in the construction of window sash or permanently fixed security windows where there is mechanical air exchange for ventilation.

(w) Visiting areas shall be designed for contact visiting, and individual visiting rooms shall be provided. Where necessary, provisions for non-contact visiting may be provided.

(x) Each entrance to a secure area shall be constructed to permit observation and identification of the person seeking admission thereto.

(y) Eating areas shall be sufficiently separated from the toilet and shower facilities to avoid offensive or unsanitary conditions.

(z) Sufficient and secure storage areas shall be provided for:

1. Evidence;
2. Supplies;
3. Equipment;
4. Records; and
5. Inmates' personal property.

10A:31-3.6 Area for reception and booking

(a) Adult county correctional facilities shall have a receiving and discharge area. The space designed for receiving and discharging of inmates shall be constructed inside the security area, but outside the inmates' living quarters.

(b) There shall be a separate inmate entrance (pedestrian and/or vehicle) from a sally-port or safety vestibule into the receiving area with a minimum of corridors or passageways. Stairs should be avoided.

(c) The entrance area shall be arranged and constructed to allow sufficient observation by the correction officer to identify persons approaching the entrance.

(d) A holding room for the confinement of inmates during their initial processing shall provide adequate seating, toilets and wash basins for the holding room's rated capacity. Access to a telephone shall be provided. The holding room may also be used for the movement of inmates to and from the court. Single occupancy holding rooms shall have 70 square feet of floor area. Multiple occupancy holding rooms shall have a minimum of 100 square feet of floor area.

(e) A sufficient number of weapons' lockers outside of the security area shall be provided. Weapons' lockers shall be equipped with individual compartments, each with an individual lock and key.

(f) A sufficient number of individual interviewing rooms shall be provided for use in determining eligibility for diversion or other release programs, and in assessing classification and housing assignments.

(g) Facilities shall have a secure vault or storage space for inmate personal property.

(h) Facilities shall have sufficient telephones to meet the needs of the inmate population.

10A:31-3.7 Minimum requirements for housing units, including cell and dayrooms areas

(a) Artificial lighting of at least 30 foot candles of illumination shall be provided in all living areas and 100 foot candles in all work study areas of the adult county correctional facility. Windows within the living areas shall be provided. Night lighting in these areas shall be sufficient to give good visibility for purposes of supervision, but not so bright that sleep is hindered. Within the security perimeter which includes inmate living areas, light fixtures shall be security tamper-proof recessed type protected by laminated tempered glass or break-resistant plastic lens.

(b) Heating and ventilation systems shall be provided to maintain human comfort in accordance with the Guide Book for the American Society of Heating, Refrigeration and Air Conditioning Engineers, incorporated herein by reference.

(c) The noise levels should not interfere with normal human activities. A range of 65 to 70 decibels in daytime and 40 to 45 decibels at night for residential areas is recommended.

(d) All single occupancy cells and rooms shall not be less than 70 square feet in area and have at least 560 cubic feet of air space.

(e) Each cell shall be equipped with the following:

1. A steel detention type bunk which is securely fastened to the floor or wall or both and is capable of accommodating a standard 30 by 76 inch type fire retardant mattress;
2. A detention type toilet/lavatory combination unit, with drinking font (stainless steel is recommended);
3. A steel shelf, approximately eight inches by eight inches, of minimum 12 gauge steel, flanged down at each side, with the rear turned up and securely anchored to the wall in a location where it does not protrude in the walk area; and
4. A metal mirror securely mounted with tamper-proof screws.

(f) Depending on the size of the facility, one or more isolation and/or segregation cells shall be constructed to detain violent and destructive inmates. The isolation and/or segregation cell(s) shall be located near the control center and shall contain:

1. A minimum of 70 square feet in area;
2. A minimum of 560 cubic feet of air space;
3. A bunk firmly affixed to the wall or floor;
4. An inaccessible recessed light;
5. A secure prison type toilet and washbowl with cold water operated by push-buttons; and
6. A water shutoff outside the cell.

(g) Cell bars may be round or hexagonal, not more than four inch on centers, containing preferably a sliding barred door with food pass, and approved detention type paracentric lock. Other suitable and approved material which allows for full front vision into cell may be substituted for barred fronts.

(h) Cells shall contain detention types, preferably flush mounted, light, vent, and exhaust covers with tamper proof screws.

(i) Cell walls shall be at least six inch reinforced concrete or eight inch concrete block filled with cement and reinforcement rods.

(j) Cell ceiling may be pre-stressed concrete or reinforced concrete.

(k) In those cases where maximum security cells are deemed unnecessary, single occupancy temporary detention rooms may be utilized. The temporary detention rooms shall be at least 70 square feet in area and have at least 560 cubic feet of air space. The temporary detention rooms shall be equipped in the same manner as the individual cells. Temporary detention rooms are recommended to provide separate housing for:

1. Civil prisoners;
2. Material witnesses;
3. Work releasees;
4. Minimum security inmates; and
5. Others requiring less security.

(l) Dormitories in an existing facility shall have a minimum rated capacity of four inmates and a maximum capacity of 50 inmates. Dormitories shall have a minimum of 75 square feet of floor space per inmate, a minimum ceiling height of 10 feet and adequate space for lockers. Dormitories shall be used only for inmates assigned to:

1. Work release;
2. Education release; or
3. Other partial custody status.

(m) For each eight inmates or fraction thereof, each dormitory shall contain:

1. One toilet;
2. One washbowl with hot and cold running water;
3. One metal mirror; and
4. One drinking fountain.

(n) There shall be at least one shower head available for every 15 inmates in the dormitory.

(o) All adult county correctional facilities shall have dayrooms. The dayroom areas shall contain 35 square feet of floor space per inmate at facility capacity. The dayroom area shall be separate and distinct from the sleeping area, but immediately adjacent and accessible therefrom. Dayrooms shall be located in each housing area and shall serve individual groups of eight to 16 inmates, where possible. Exterior light and view shall be provided. The dayroom should avoid a corridor-like proportion and be conducive to the conduct of various program activities.

(p) Each inmate shall be provided a minimum of two square feet of table space and a minimum width of 24 inches of table and seating space in the dayroom.

(q) For each eight inmates or fraction thereof, dayrooms shall contain:

1. One toilet;
2. One washbowl with hot and cold running water; and
3. One securely mounted metal mirror.

10A:31-3.8 Showers, drinking fountains, shutoff valves and drains in cell areas

(a) There shall be at least one shower available for every 15 inmates in every housing area, and the shower shall be accessible to inmates without the necessity of leaving the immediate housing area.

(b) Drinking fountains shall be located in areas of the facility to ensure that drinking water will be available. In existing facilities, if water from the wash basin faucet is drinkable, drinking fountains need not be provided.

(c) Each cell shall be equipped with an individual water shutoff valve tied into a master valve which will secure the entire line of cells. The master valve and individual shutoff valves shall be located in secure chases.

(d) Floor drains shall be provided and located outside of the actual cell in order to reduce the incidence of malicious tampering and flooding. Drain covers shall be securely anchored.

10A:31-3.9 Exercise areas

(a) Every adult county correctional facility shall contain indoor and outdoor exercise areas.

(b) The outdoor exercise area shall be proportionate to the size of the facility and the number of inmates housed.

(c) The indoor exercise area may be coupled with any other multipurpose room. This area shall provide sufficient space to allow a moderate amount of physical activity and have a minimum clearance height of 18 feet.

10A:31-3.10 Correctional program space

(a) Sufficient flexible area for correctional programming shall be provided in every adult county correctional facility. Such space and furnishing may be in the form of a multipurpose room or rooms with moveable partitions and storage area for seating equipment and writing tables. Such program area and furnishings shall be designed to meet facility needs, and shall include space for the following:

1. Religious services;
2. Group counseling;
3. Interviews;
4. Classroom and study; and
5. Meetings.

10A:31-3.11 Medical examination rooms

(a) There shall be a minimum of one fully equipped medical examination room in every adult county correctional facility with a daily rated capacity of more than 30 inmates.

(b) The medical examination room shall be designed for the privacy of inmates, and provide sufficient lockable storage space for medical supplies and drugs.

(c) The medical examination room shall be designed in consultation with the designated physician for his or her use in conducting intake medical examinations of inmates prior to assignment to housing, and in diagnosing serious illness or in treating minor illnesses.

10A:31-3.12 Space for hair cutting

Space in a multipurpose room and suitable equipment shall be provided in all adult county correctional facilities for hair cutting and hair dressing.

10A:31-3.13 Inmate commissary

(a) There shall be provision made for inmates to purchase items such as:

1. Food;
2. Tobacco products;
3. Toilet articles;

4. Stationery supplies; and
5. Reading matter.

(b) An area shall be provided for the secure storage of commissary item stock.

10A:31-3.14 Dining areas

(a) Dining areas shall be designated so that inmates will be able to eat together in small groups.

(b) The dayroom or other multipurpose area may be used for dining.

(c) Dining areas shall not contain exposed toilets in the same room or in the view of inmates dining.

10A:31-3.15 Visiting and attorney interviews

(a) Sufficient space shall be provided in all adult county correctional facilities for visiting.

(b) Visiting areas shall be designed for both contact and for non-contact visits.

(c) All facilities shall include interview areas which provide for confidential consultation with visitors, ministers and parole or probation officers.

10A:31-3.16 Janitor closet

A secure janitor closet containing a mop sink and sufficient area for the storage of cleaning implements shall be provided within the security area of every adult county correctional facility.

10A:31-3.17 Storage rooms

(a) One or more sufficient and secure storage rooms shall be provided for the storage of:

1. Evidence;
2. Supplies;
3. Personal clothing of inmates;
4. Personal property of inmates;
5. Records; and
6. Institutional clothing and bedding.

10A:31-3.18 Administration

(a) Provision shall be made to provide appropriate employee space for administrative, custody, professional and clinical staff including:

1. Conference rooms;
2. An employee lounge;
3. A storage room for records;
4. A public lobby; and
5. Toilet facilities.

10A:31-3.19 Security perimeter

(a) Provision shall be made for a security perimeter which includes, but is not limited to:

1. Security fencing;
2. Electrically operated and interlocking vehicle sally-port gates;
3. A prisoner entrance, controlled from the intake control;
4. Visitors' and delivery entrances; and
5. Other considerations which enhance security within and surrounding the adult county correctional facility.

10A:31-3.20 Arsenal

The adult county correctional facility arsenal shall be located outside the security perimeter and be inaccessible to all unauthorized persons, but readily accessible to staff members.

10A:31-3.21 Fire alarm system

(a) In addition to regulations promulgated by the State Fire Marshal, there shall be an automaic fire alarm system approved by the State Fire Marshal in all adult county correctional facilities.

(b) The automatic fire alarm system shall be capable of alerting personnel at a central control point to the presence of fire and smoke in the facility.

10A:31-3.22 Audio and video monitoring system

In all inmate living areas, there shall be an operable two way audio or combination audiovisual communication system which shall be capable of alerting personnel stationed at a central control station so that personnel may respond to emergencies such as assaults, calls for assistance and attempted suicides.

10A:31-3.23 Emergency power

(a) Provision shall be made for a source of emergency power which is capable of providing minimal lighting in housing units, activities areas, corridors, stairs and central control points.

(b) The emergency power source should provide sufficient power to operate:

1. The security override for housing doors;
2. The electrical systems;
3. The communications systems; and
4. The alarm systems.

10A:31-3.24 Plumbing and mechanical space

All plumbing space or any other mechanical space shall have an access door with a prison type lock. No opening shall remain uncovered that is in excess of four inches.

SUBCHAPTER 4. PERSONNEL

10A:31-4.1 Personnel manual

A personnel manual shall be available to each employee.

10A:31-4.2 Policy and procedure manual

A facility policy and procedure manual shall be issued to each employee, who shall sign a receipt acknowledging that he or she received the manual.

10A:31-4.3 Affirmative Action Program

Each facility shall develop and implement an Affirmative Action Program, which is approved by the appropriate agency, and complies with all laws and government regulations.

10A:31-4.4 Employee records

(a) A current, accurate and confidential personnel record shall be maintained for each employee.

(b) Employee records shall be protected against unwarranted examination.

(c) Employees shall be permitted to review their personnel files, challenge inaccurate information, and have inaccurate information corrected or removed from their files.

10A:31-4.5 Employee performance evaluation

(a) Each employee shall have an annual written performance evaluation based upon defined job criteria and performance standards. The results of the performance evaluation shall be discussed with the employee.

(b) Appeals of the results of a performance evaluation shall be made through appropriate channels.

SUBCHAPTER 5. TRAINING AND STAFF DEVELOPMENT

10A:31-5.1 Training and Staff Development Program

(a) The Training and Staff Development Program shall consider the physical characteristics of the adult county correctional facility, its overall mission and the type of offenders served.

(b) The facility's Training and Staff Development Program for all employees shall be coordinated and supervised by a qualified training officer, at a supervisory level.

10A:31-5.2 Training officer

(a) The training officer shall have responsibility for planning and implementing the training program and coordinating it with other employee programs.

(b) In an adult county correctional facility of over 100 employees, a full time training officer shall be employed.

10A:31-5.3 Orientation and training for employees

(a) All new employees shall receive orientation training prior to job assignment and an additional 40 hours of training during the first year of employment.

(b) Orientation shall cover the following subjects related to the adult county correctional facility:

1. Policies;
2. Organizational structure;
3. Programs; and
4. Regulations.

(c) The additional 40 hours of training shall relate specifically to the new employee's job assignment.

(d) All employees shall receive a minimum of 40 hours of training each year after the first year of employment.

(e) All employees who work in direct and continuing contact with inmates shall receive training that covers, at a minimum:

1. Security procedures;
2. Supervision of inmates;
3. Report writing;
4. Inmate rules and regulations;
5. Grievance and disciplinary procedures;
6. Rights and responsibilities of inmates;
7. Emergency procedures;
8. First aid;
9. Human relations and communication skills;
10. Special needs of minorities and women;
11. Crisis intervention;
12. Significant legal issues; and
13. Problem solving and guidance.

(f) It is recommended that the facility's administrative and senior managerial staff receive additional training in management skills each year.

(g) Library and reference services shall be available to complement the Training and Staff Development Program.

(h) All personnel authorized to use firearms shall be trained in weaponry on a continuing, in-service basis as required by the State Police Training Commission.

(i) All authorized personnel shall be trained thoroughly in the use of chemical agents if such agents are approved for use in the facility.

(j) All security personnel shall be trained in approved methods of applying physical force to control inmates, where necessary.

(k) County facilities shall use the program(s) provided by the Corrections Officers Training Academy and Staff Development Center, New Jersey Department of Corrections for the training of County Correction Officers and Sheriff's Officers unless these county facilities have an in-house accredited program (see N.J.S.A. 52:17B-66 et seq.)

SUBCHAPTER 6. MANAGEMENT INFORMATION SYSTEM AND INMATE RECORDS

10A:31-6.1 Inmate population accounting system

(a) An inmate population accounting system shall be utilized which provides the following information:

1. The arresting agency;
2. The sentencing court;
3. The charge(s);
4. The date of booking;
5. The amount of bail and whether bail was posted;
6. The date of release on bail;
7. The time detained;
8. The sentence imposed;
9. The work and other programs in which inmates are participating;
10. The date and manner of release (other than bail);
11. Fines imposed, restitution penalties, etc.; and
12. Other relevant information.

10A:31-6.2 Intake form

(a) An intake form shall be completed for every inmate admitted to the facility which shall include, but is not limited to, the following information:

1. The inmate's picture;
2. The booking number;
3. The date and time of intake;
4. The name and aliases of the inmate;
5. The court and sentence, if sentenced;
6. The inmate's last known address;
7. The date and time of commitment and authority therefore;
8. The name, title and signature of delivering officer;
9. The specific charge(s);
10. The sex of the inmate;
11. The age of the inmate;
12. The date of birth of the inmate;
13. The place of birth of the inmate;
14. The race of the inmate;
15. The occupation of the inmate;
16. The last place of employment;
17. The education attained;
18. The religion of the inmate;
19. Medical information to include:
    i. Medical insurance coverage;
    ii. Any open wounds or sores requiring treatment; and
    iii. Evidence of disease, body vermin, tattoos, or other notable scars or conditions.
20. The name and relationship of next of kin;
21. The address of next of kin;
22. The number and state of the inmate's driver's license;
23. The disposition of motor vehicle, where applicable;
24. The Social Security number of the inmate;
25. The amount of cash and/or property of the inmate; and
26. Any additional remarks.

10A:31-6.3 Inmate population movement

(a) The facility shall maintain a report of inmate population movement. This report shall include the following:

1. The number of inmates in the facility;
2. The inmates' names, numbers, and housing assignments;
3. The number and types of daily admissions and releases; and
4. The count at close of day.

10A:31-6.4 Inmate records

(a) The facility shall maintain inmate records which contain, but are not limited to:

1. Intake information;
2. Commitment papers and court orders;
3. Cash and property receipts (signed by inmates);
4. Reports of disciplinary action and unusual occurrences; and
5. Work record and program involvement.

(b) Inmate records shall be reviewed and maintained by qualified personnel to ensure that these records are current and accurate.

(c) Medical and/or mental health information shall be verified promptly with other agencies.

10A:31-6.5 Public records

(a) The following information and documents regarding an adult inmate or parolee shall be available for public inspection and copying:

1. Name;
2. Number;
3. Sentence;
4. Place of incarceration;
5. Order of Commitment; and
6. Any documents filed in a court of competent jurisdiction.

10A:31-6.6 Confidential records

(a) The following types of records are designated confidential and shall not be disclosed to unauthorized persons or agencies:

1. Reports which are evaluative, diagnostic or prognostic in nature furnished with a legitimate expectation of confidentiality and which, if revealed to the inmate, parolee or others, could be detrimental to the inmate or parolee, or could jeopardize the safety of individuals who signed the reports, or were parties to the decisions, conclusions or statement contained therein;

2. Information the disclosure of which could have a substantial adverse impact on the security or orderly operation of the facility;

3. Information or reports which would invade or jeopardize privacy rights of the inmate, parolee or others;

4. Disclosures which would jeopardize internal decision making or policy determinations essential to the effective operation of the facility;

5. Disciplinary and criminal investigative reports, including those from informants, disclosure of which would:
    i. Impede ongoing investigations;
    ii. Create a risk of reprisal; or
    iii. Interfere with the security or orderly operation of the facility; and

6. Such other records as the Jail Administrator, based on his or her experience and exercise of judgment, believes must be kept con-

fidential to ensure the maintenance of discipline and the orderly operation of the facility.

(b) Those documents deemed to be confidential shall be plainly stamped "Confidential Material—Do Not Release to Unauthorized Persons."

10A:31-6.7 Limitation on inmate and parolee records

Information on adult inmate or parolee records other than that outlined in N.J.A.C. 10A:31-6.5 shall not be released to or examined by any unauthorized person or agency except as set forth in this subchapter.

10A:31-6.8 Availability of information to non-institutional persons or outside agencies

(a) Information from adult inmate and parolee records shall be provided to law enforcement agencies or persons, who request it in the performance of their public duties, in accordance with N.J.A.C. 10A:31-6.10.

(b) Adult inmate or parolee records may be made available to the following agencies or persons:

1. Courts of competent jurisdiction;
2. The Attorney General;
3. A county prosecutor;
4. The State Parole Board;
5. The Bureau of Parole;
6. A county probation department; and
7. Police departments.

(c) Upon advice of the County Counsel or the Department of Corrections' Special Assistant for Legal Affairs, Office of the Deputy Commissioner, selected records of adult inmates or parolees shall be made available to government agencies or other authorized persons upon request. These agencies and persons include, but are not limited to, the following:

1. The Social Security Administration;
2. The Veteran's Administration;
3. Attorneys of record in pending cases, or investigating claims;
4. Law enforcement agencies other than those in (b) above; or
5. Medical or psychiatric doctors.

10A:31-6.9 Availability of information to adult county correctional facility personnel

Information from inmate and parolee records shall be provided to adult county correctional personnel on a limited basis, in accordance with written policies and procedures established by the facility.

10A:31-6.10 Procedure for release of confidential inmate or parolee records

(a) All requests for information shall be initially screened by the classification officer of the adult county correctional facility to determine the purpose for which the information is sought and the legitimacy of the request.

(b) Only the specific documents or information directly related to the purpose for which the information is sought shall be released.

(c) Requests for information which are deemed irrelevant, improper or not authorized by law shall be rejected.

(d) If the classification officer of the facility is unsure as to the legitimacy or authenticity of the request, he or she shall consult with the Jail Administrator, who may telephone the County Counsel or the Department of Corrections' Special Assistant for Legal Affairs, Office of the Deputy Commissioner, for guidance.

(e) When a question or dispute arises concerning release of material or the authority of the agency or person to obtain such information, the decision of the Jail Administrator will be final.

(f) In the event a request for release of the information is denied, the material shall not be released without a court order.

10A:31-6.11 Records authorized by the inmate or parolee for inspection or release

(a) The following categories of records may be inspected by or released to authorized persons or agencies, upon written consent of the adult inmate or parolee:

1. Medical records, except for psychiatric or psychological;
2. Dental records;
3. Educational records;
4. Work records;
5. Any document listed in N.J.A.C. 10A:31-6.5; and
6. Such other material as may be authorized for release under N.J.A.C. 10A:31-6.8(c).

(b) All records released under this section are subject to deletion of confidential information (see N.J.A.C. 10A:31-6.6).

10A:31-6.12 Litigation

All requests for release of information or records concerning any matter which is the subject of pending or ongoing litigation shall be referred to the Office of County Counsel, other county legal representatives and/or the Department of Corrections' Special Assistant for Legal Affairs, Office of the Deputy Commissioner, for handling pursuant to the applicable rules of the court.

10A:31-6.13 Reimbursement for costs of copying

(a) Except as otherwise provided in this subchapter or by law, adult county correctional facilities may charge the following fees for copying records:

1. First through 10th page	$.50 per page
2. Eleventh through 20th page	$.25 per page
3. Over 20 pages	$.10 per page

(b) Governmental agencies or officers shall be exempt from payment of fees for copying records.

10A:31-6.14 Security of Management Information System and inmate records

(a) The Jail Administrator shall provide for the security of the Management Information System and inmate records, to include:

1. Verification;
2. Access to data; and
3. Protection of the privacy of inmates under the jurisdiction of the adult county correctional facility.

SUBCHAPTER 7. EMERGENCIES

10A:31-7.1 Meeting emergencies

(a) Emergencies shall be met in a way which will safeguard the welfare of the inmate population, facility staff, and the public at large.

(b) All measures shall be taken to maintain effective security and restore normal conditions as expeditiously as possible.

(c) Each facility shall develop written plans for emergencies such as passive resistance, work stoppage, escapes, riots and natural disasters.

(d) All emergency plans shall be implemented with appropriate consideration and care for both inmate and staff safety.

10A:31-7.2 Passive resistance

(a) Each facility shall develop a written plan for maintaining security and custody of inmates, in the event of passive resistance by inmates.

(b) In the event of passive resistance by inmates, the facility shall be secured.

(c) Additional correction officers shall be readily available in passive resistance situations.

(d) Back up support shall be obtained from outside resources if, in the judgement of the Jail Administrator or his or her designee, the seriousness of the situation warrants.

10A:31-7.3 Work stoppage

(a) Each facility shall develop a written plan for maintaining custody of inmates and the safety and well-being of inmates and staff members in the event of a work stoppage or other job action by employees.

(b) The work stoppage plan shall incorporate the ongoing continuation of essential services which may involve agreements with other law enforcement agencies such as local and State police or other outside resources.

10A:31-7.4 Escapes

(a) Each facility shall develop a written escape plan which shall be evaluated after each escape incident or escape attempt or at least once a year.

(b) All facility staff shall be trained in the specific action which is to be taken during or after an escape or an attempted escape.

(c) The Jail Administrator or the ranking supervisor shall be in charge of the implementation of all emergency escape plans.

(d) All records and relevant information regarding an inmate involved in an escape shall be studied immediately and used in efforts to reapprehend or secure the inmate.

(e) Immediate notice shall be given to all appropriate agencies to protect public safety in the event of an escape.

10A:31-7.5 Riots

(a) Each facility shall develop a written emergency riot plan which shall be evaluated at least once a year and immediately following a riot.

(b) All facility staff shall be trained in the specific action which is to be taken during and after a riot.

(c) The Jail Administrator or the ranking supervisory officer shall be in charge of the implementation of all emergency riot plans.

(d) Immediate efforts shall be made to isolate the troubled area or segment of the inmate population.

(e) Only the restraining action that is necessary to adequately contend with the emergency situation shall be taken.

(f) Progressively lethal forms of weaponry shall be used only with strict supervision and as the seriousness of the situation warrants, in the judgement of the Jail Administrator or the ranking supervisory officer.

(g) Immediate efforts shall be made to secure the facility and obtain as accurate a population count as possible.

(h) All available information shall be assessed and an appointed staff member or team shall be deployed to identify the cause of the riot and to initiate appropriate measures to resolve the situation.

(i) Due care shall be given to the safety of possible hostages, and special attempts shall be made to obtain their safe release.

(j) An alternative of safe return to security shall be offered to all inmates who select to cease and desist from continued participation in the riot.

(k) If the seriousness of the situation warrants, back up support shall be obtained from local and State police.

(l) If the seriousness of the situation warrants, other relevant back up supports may be obtained from the community, such as medical, food service, emergency repairs, etc.

(m) The facility shall have a written post emergency plan which will be implemented as soon as the situation permits.

10A:31-7.6 Natural disasters

(a) Each facility shall develop a written contingency plan which has been coordinated with the appropriate Department of Civil Defense, local and State police, and such other agencies and resources needed to contend with a natural disaster.

(b) Each facility shall develop a written comprehensive contingency plan for the movement of large numbers of inmates, which has been coordinated with neighboring correctional facilities, local and State police, and such other community resources as required.

(c) The contingency plan in (a) and (b) above shall be reviewed and updated at least once a year.

SUBCHAPTER 8. SECURITY AND CONTROL

10A:31-8.1 Contraband defined

(a) Contraband means:

1. Any item, article or material found in the possession of or under the control of an inmate which is not authorized for retention or receipt;

2. Any item, article or material found within the adult county correctional facility or on the facility's grounds which has not been issued by the facility or authorized as permissible for retention or receipt;

3. Any item, article or material found in the possession of or under the control of staff or visitors within the facility or on the facility grounds which is not authorized for receipt, retention or importation; or

4. Any item, article or material which is authorized for receipt, retention or importation by inmates, staff or visitors but which is found in an excessive amount or which has been altered from its original form. An amount shall be considered excessive if it exceeds stated facility limits or exceeds reasonable safety, security, sanitary or space considerations.

(b) Any article which may be harmful or presents a threat to the security and orderly operation of the facility shall be considered contraband. Items of contraband shall include, but shall not be limited to:

1. Guns and firearms of any type;
2. Ammunition;
3. Explosives;
4. Knives;
5. Tools;
6. Other implements not provided in accordance with facility regulations;
7. Hazardous or poisonous chemicals and gases;
8. Unauthorized drugs and medications;
9. Medicines dispensed or approved by the facility but not consumed or utilized in the manner prescribed;
10. Intoxicants, including, but not limited to, liquor or alcoholic beverages; and
11. Currency and stamps, where prohibited.

10A:31-8.2 Search of inmates and facilities

(a) Facilities and inmates may be searched as provided in this subchapter for the purpose of controlling and deterring the introduction and concealment of contraband.

(b) Each facility shall develop and implement a comprehensive written plan governing searches of facilities and inmates.

10A:31-8.3 Search of inmates

(a) All inmates admitted to an adult county correctional facility shall be thoroughly searched.

(b) All searches shall be conducted under sanitary conditions, in a professional and dignified manner, with maximum courtesy and respect for the inmate's person.

(c) No inmate shall be searched as punishment or discipline.

10A:31-8.4 Strip searches

(a) A person who is detained for a minor offense may not be strip searched unless there is a reasonable suspicion that such detainee is carrying or concealing contraband or is suffering from a communicable disease.

(b) The officer authorized to conduct such a strip search shall obtain the permission of the supervisor on duty to conduct the search and the officer shall file a written report explaining the reasons for such search.

(c) Strip searches may be conducted in the following circumstances:

1. Prior to admitting a person to a lockup, detention facility, prison or jail by court order or pursuant to an arrest authorized by law, except detainees for minor offenses as set forth in (a) above;
2. Before an inmate enters the facility after being permitted to leave for any reason;
3. Whenever there is reasonable suspicion that an inmate is carrying contraband;
4. Before placement of an inmate into:
   i. Prehearing Detention;
   ii. Disciplinary Detention; or
   iii. Protective Custody.
5. Before placement of an inmate under a psychological observation or suicide watch;
6. Whenever the person is suspected of a communicable disease;
7. Whenever the person admitted for a minor offense(s) is known to have a history of violent or assaultive conduct or a previous conviction(s) for a crime(s); and
8. After a contact visit.

(d) Before a strip search is conducted, the person who is detained for a minor offense must be afforded a reasonable opportunity to post bail. For the purposes of this section, bail may be fixed and accepted by the law enforcement officer in charge of the adult county correctional facility.

(e) A strip search shall be conducted while the inmate is unclothed. A strip search includes a thorough and systematic examination of the inmate's body and orifices, including a visual inspection of ex-

ternal genital and anal areas, as well as the inmate's clothing and all personal possessions. A strip search shall also include a check for:

1. Body vermin;
2. Cuts;
3. Bruises;
4. Needle scars; and
5. Other injuries, where appropriate.

(f) A strip search shall be conducted in private and no member of the opposite sex shall be present during the search, except as set forth in (g) below.

(g) Strip searches may be conducted by correction officers of the opposite sex under emergent conditions as ordered by the Jail Administrator.

10A:31-8.5 Body cavity searches

(a) Under no circumstances may a body cavity search be conducted unless the correction officer in charge is satisfied that a reasonable suspicion exists that contraband is being concealed in the inmate's body cavity.

(b) A body cavity search may be conducted only by a licensed physician or registered nurse.

(c) During a body cavity search, only those correction officers deemed necessary for security, who are of the same sex as the inmate, may be present.

(d) A written report of the results of a body cavity search shall be made part of the inmate's record.

10A:31-8.6 Search of facilities

(a) All inmate residential, work, training and other areas to which inmates have access shall be searched thoroughly for contraband on a routine, continuing basis. Searches shall be unannounced and irregularly timed, and limited to a specific building or area.

(b) Procedures to be utilized in conducting searches shall be as set forth by each facility's plan governing searches required by N.J.A.C. 10A:31-8.2. Such procedures may provide that an inmate may be excluded from entry into an area being searched to facilitate the safe and effective performance of the search.

(c) Reports on the results of searches of the facility shall be submitted to the Jail Administrator.

(d) Items which are not permitted in the facility shall be confiscated and placed in a secure storage area.

(e) Inmates shall be given a receipt for any property that is confiscated, and disciplinary action shall be initiated when appropriate.

(f) Searches shall be conducted with a minimum amount of disturbance to an inmate's property. An inmate's property shall not be damaged, destroyed or confiscated unless it is determined to be contraband.

(g) All vehicular traffic and supplies entering the facility shall be thoroughly searched by a correction officer.

10A:31-8.7 Center Control

(a) The Center Control shall coordinate all security and communication functions within the facility.

(b) The Center Control shall be staffed 24 hours a day.

(c) Access to the Center Control shall be limited to authorized staff members who shall enter this location from a secure area not accessible to unauthorized persons, such as by way of the sally-port.

(d) All security perimeter doors, Center Control entrances and cell block doors shall remain secure except during use or in an emergency situation.

(e) The Center Control shall be responsible for the following:

1. Inmate counts;
2. Key control;
3. Operational coordination;
4. Internal and perimeter security; and
5. Communications.

(f) The Center Control shall monitor, as warranted, the following systems:

1. Fire alarms;
2. Smoke and thermal detection;
3. Public address;
4. Radio; and
5. Other mechanical and electrical systems.

10A:31-8.8 Counts

(a) At the end of each work shift, a written count shall be taken by the oncoming shift correction officers.

(b) Correction officers taking count shall clearly sign their count sheets, and the count shall be delivered to the Center Control.

(c) Inmates assigned to cell blocks shall be in their respective cells during counts. During the count, correction officers shall verify that the inmates being counted are alive and not in an unsafe situation.

(d) No one except a correction officer shall conduct a count.

(e) During the third shift hours, approximately 10 P.M. to 6 A.M., inmates shall be counted every half hour and the results of these counts shall be submitted to the Center Control by telephone.

(f) The information contained on count slips shall be transposed to a master log located in the Center Control.

10A:31-8.9 Inmate movements

(a) Inmates shall move about the adult county correctional facility in an orderly fashion to facilitate the maintenance of security and the orderly operation of the facility.

(b) Inmate movements shall be observed by correction officers located in stragetic areas in order to:

1. Detect the occurrence of assaults;
2. Deter the passage of contraband;
3. Maintain security and order; and
4. Expedite the movement of inmates from one location to another.

10A:31-8.10 Correction officer posts

(a) Every adult county correctional facility shall develop written operating procedures for every post, and these procedures shall be reviewed and updated annually.

(b) Correction officers shall be required to sign for post orders and acknowledge that the content is understood.

(c) Correction officer posts shall be located immediately in or adjacent to inmate living areas.

(d) Correction officers shall not leave their assigned posts without being properly relieved.

(e) Under no circumstances shall a correction officer be removed from his or her post to perform another function if such removal results in the post becoming unmanned.

(f) Correction officers shall not respond to violent situations unless the correction officers have received prior approval from the Center Control.

(g) Post orders for each correction officer working in a housing unit shall include a requirement that each inmate, who has been classified as being in need of close supervision, shall be observed as frequently as the Jail Administrator or his or her designee has determined to be necessary.

10A:31-8.11 Electronic surveillance

(a) Observation through electronic surveillance systems may be used only in observing special risk inmates and only when approved by the Jail Administrator. Electronic surveillance shall not substitute for direct staff supervision or for regular contact with staff members.

(b) Electronic surveillance should be utilized in such a manner as to avoid interference with the privacy of inmates, wherever possible.

10A:31-8.12 Transportation of inmates

(a) Correction officers involved in transportation shall receive special instructions which shall include, but not be limited to:

1. Use of firearms;
2. Use of restraints;
3. Search of the transportation vehicle;
4. Strip searches; and
5. Appropriate court room demeanor.

(b) Special written transportation guidelines shall be developed by each facility which emphasize safety and the prevention of escape.

(c) All personnel involved in the transport of inmates shall receive a copy of the transportation guidelines.

10A:31-8.13 Staffing plan

(a) The adult county correctional facility shall have a written staffing plan for all shifts.

(b) The staffing plan shall provide for back up assistance for all correction officers assigned to inmate living areas.

10A:31-8.14 Reports and meetings

(a) A monthly meeting shall be conducted by the Jail Administrator or his or her designee with the supervisory staff.

(b) All supervisors shall submit a daily report to the Jail Administrator that is consistent with their assigned areas of responsibility.

10A:31-8.15 Use of force

(a) All adult county correctional facilities shall promulgate written procedures governing the use of physical force.

(b) Weapons used in the application of non-deadly force may include the use of:

1. Slapsticks;
2. Chemical agents;
3. Batons;
4. Stun guns; and
5. Other weapons which are not likely to cause death or serious injury.

(c) Weapons used in the application of deadly force include, but are not limited to:

1. Shotguns;
2. Handguns;
3. Rifles; and
4. Other lethal weapons.

(d) In any case when a correction officer uses force to control inmates, the minimum force possible under the circumstances shall be used, consistent with facility procedures. Use of force shall be used only for the following reasons:

1. To defend one's self or others against physical assault;
2. To prevent serious damage to property;
3. To prevent escape;
4. To prevent or quell a riot or disturbance;
5. To prevent a suicide or attempted suicide; and
6. To enforce facility regulations or in situations where a ranking supervisory officer believes that the inmate's failure to comply constitutes an immediate threat to facility security or personal safety.

(e) Following the use of physical force, written reports shall be prepared and completed before the completion of the tour of duty by the correction officers involved.

(f) In no case shall force be considered justifiable as punishment or discipline.

(g) Custody personnel shall be prepared to justify the use of physical force.

SUBCHAPTER 9. USE AND CONTROL OF SECURITY EQUIPMENT

10A:31-9.1 Determining equipment needs

Careful analysis of the physical plant, the inmate population profile, and other relevant factors shall be utilized in determining the equipment an adult correctional facility needs for maintaining effective security and a state of readiness to adequately respond to major disturbances.

10A:31-9.2 Control of equipment

Written procedures shall specify the level of authority required for access and use of equipment for maintaining security.

10A:31-9.3 Use of restraining equipment

(a) Restraining equipment may be used only in the following instances:

1. As a precaution against escape during transit;
2. For medical reasons by direction of a medical officer;
3. To prevent inmate injury or injury to others; or
4. To prevent property damage.

(b) Restraining equipment shall be used to prevent property damage only in instances when such use has been approved by the Jail Administrator or his or her designee.

(c) At no time shall an inmate be left without proper supervision while in restraints.

(d) Restraints shall not be used as punishment, or in any way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing of an inmate.

(e) Restraints shall be removed promptly when the reason for their initial use has ceased to exist or has sufficiently abated.

(f) In the event restraints are used, a written report by the correctional personnel involved shall be submitted to the appropriate supervisor before the end of the tour of duty.

10A:31-9.4 Key control

(a) A written ongoing control system shall govern the access, use and return of all adult county correctional facility keys.

(b) Facility keys shall be stored in a secure locker when not in use.

(c) There shall be at least one full set of facility keys, other than the keys in use, that is stored in a safe place. These keys shall be accessible only to appropriate facility personnel for emergency use.

(d) Inmates shall under no condition have access to any facility keys.

10A:31-9.5 Use and storage of chemical agents

(a) Tear gas, mace and related chemical agents may be used only as a last resort and under the strict supervision of the ranking supervisory officer with due consideration for the safety of inmates and staff. Following the use of chemical agents, a report shall be submitted to the Jail Administrator which gives the reason(s) for the use of chemical agents and the results achieved from such use.

(b) No member of the custody staff may carry or use chemical agents unless he or she has received appropriate training in chemical agent uses and effects.

(c) After each instance of use, individuals who have been exposed to chemical agents shall be given a medical examination and treatment as soon as possible.

(d) Chemical agents shall be safely stored in an arsenal which is readily available for emergency use, but outside the security perimeter.

(e) Periodic checks shall be made for leakage or other malfunctions which could interfere with the effective use of chemical agents in an emergency situation.

10A:31-9.6 Storage of weapons

(a) Firearms shall be located in an arsenal readily available in case of emergencies, but outside the security perimeter.

(b) All law enforcement officers entering the adult county correctional facility shall check their weapons at the facility's weapons collection station located outside the security perimeter.

(c) Weapons may be used only under orders of the Jail Administrator or his or her designee, in emergency situations in which any lesser degree of force would be ineffective, or would subject the correction officer to serious threat of injury.

(d) A strict accounting procedure governing the issue, use and return of weapons shall be developed by the designated staff person. This procedure shall include a record of the lethal and non-lethal projectiles expended.

(e) Any staff or inmate injured in an incident where a weapon is used shall receive an immediate medical examination and treatment.

SUBCHAPTER 10. FOOD SERVICE

10A:31-10.1 Nationally recommended dietary allowance

Each adult county correctional facility shall document that the system of dietary allowance is reviewed at least annually by a dietician, registered by the American Dietetic Association, to ensure compliance with nationally recommended food allowances as stated by the National Academy of Sciences.

10A:31-10.2 Food service management

A staff, experienced in food service management, shall be designated to be responsible for food service management and operations within the adult county correctional facility.

10A:31-10.3 Menus

(a) Menu evaluations shall be conducted and maintained at least quarterly by the adult county correctional facility food service supervisory staff to verify adherence to nationally recommended basic daily serving.

(b) The signature of a registered dietician on the menus shall indicate official approval of the nutritional adequacy of food served to inmates within the facility.

(c) All menus including special diets shall be planned, dated and available for review at least one week in advance.

(d) In any case when a food substitution is made, the food that is substituted shall be of equal nutritional value and a notation of the substitution shall be made on the menu.

(e) A file of tested recipes, adjusted to prepare the number of meals appropriate to the size of the facility, should be maintained on the premises of the facility.

10A:31-10.4 Special diets or alternate foods

(a) Provisions shall be made for special diets as prescribed by a physician or dentist of the adult county correctional facility.

(b) When the religious beliefs of an inmate(s) require the inmate(s) to adhere to dietary laws, provisions shall be made for alternate food items.

10A:31-10.5 Serving of meals

(a) Three meals, of which two are hot, shall be provided at regular meal times during each 24 hour period, and no more than 14 hours shall elapse between the evening and breakfast meals.

(b) All meals shall be served under direct supervision of staff members in order to ensure sanitary conditions and avoid favoritism, careless serving and waste.

(c) A uniform system to record the number, type and cost of meals served to inmates, staff and visitors shall be established and maintained.

(d) A sanitary space shall be provided for group dining. Meals shall not be served in cells unless it is necessary for purposes of safety or security and only if a small table, shelf and seating arrangement can be provided.

(e) Compartment type trays, bowls and cups shall be utilized.

10A:31-10.6 Prohibited use of food for reward or discipline

Food shall not be used as a reward, or as a disciplinary measure.

10A:31-10.7 Medical examination of food service personnel

(a) All food service personnel and inmates shall receive a pre-assignment medical examination to insure freedom from illnesses transmissible by food.

(b) All food service personnel and inmates shall receive a medical examination prior to resumption of duties if, for any reason, the inmate(s) or food service personnel have been away from the job for 30 days or more.

10A:31-10.8 Personal hygiene of food service personnel

(a) All food service personnel shall maintain high standards of personal hygiene and comply with Federal, State and local laws and regulations for food handlers.

(b) All food handlers shall wash their hands upon reporting to duty and after using toilet facilities.

(c) A daily inspection of food handlers for cleanliness and to detect any illness or infection shall be conducted by the food service supervisor.

(d) Written documentation that food service personnel comply with applicable health regulations shall be available for review.

10A:31-10.9 Inspection of food service areas and equipment

(a) A weekly inspection of all food service areas and equipment shall be conducted by administrative or dietary personnel.

(b) A daily check of refrigerator and water temperatures by administrative or dietary personnel shall be made.

(c) Written documentation that food service facilities and equipment meet established safety and protection standards and requirements shall be available for review.

10A:31-10.10 Storage areas

(a) Sanitary temperature controlled storage areas for all foods shall be provided in:

1. Refrigerators and freezers;
2. Cool, dry storage areas; and
3. Lockable areas for pepper, nutmeg, vanilla, yeast, dry fruit, or other food additives which may be utilized to manufacture illegal products.

10A:31-10.11 Security in the food service area

(a) Written procedures shall be developed and implemented that govern the safe and secure storage of all cutlery items and hazardous kitchen utensils.

(b) A designated staff person shall be accountable for maintaining an ongoing inventory of all cutlery items.

10A:31-10.12 Budgeting, purchasing and accounting procedures

(a) The food service operation shall follow written budgeting, purchasing and accounting procedures to ensure nutritional and economical meals with minimum waste.

(b) When the adult county correctional facility's food services are provided by an outside agency or individual, the facility shall have written verification that the outside provider complies with the State and local regulations regarding food service.

10A:31-10.13 Written policies and procedures

Each adult county correctional facility shall develop written policies and procedures consistent with this subchapter.

SUBCHAPTER 11. SANITATION

10A:31-11.1 Federal, State and local codes

Each adult county correctional facility shall comply with Federal, State and local sanitation, safety and health codes.

10A:31-11.2 Housekeeping plan

Each adult county correctional facility shall develop a written housekeeping plan which shall include a cleaning schedule with staff members and inmates assigned to specific duties.

10A:31-11.3 Daily sanitation inspections

(a) The Jail Administrator shall require daily sanitation inspections by a designated staff member utilizing a check list developed by the Jail Administrator and approved by the Department of Corrections.

(b) The completed inspection check list shall be submitted to the Jail Administrator or his or her designee.

10A:31-11.4 Floors

The floors of each adult county correctional facility shall be kept clean, dry and free from hazardous substances.

10A:31-11.5 Control of vermin and pests

(a) Each adult county correctional facility shall make arrangements for the control of vermin and pests.

(b) Licensed pest control professionals shall be used at least once per month to clean or fumigate the facility.

10A:31-11.6 Disposal of liquid and solid wastes

Each adult county correctional facility shall develop a written plan for the disposal of liquid and solid wastes.

SUBCHAPTER 12. INMATE CLOTHING AND HYGIENIC LIVING CONDITIONS

10A:31-12.1 Clothing

(a) All inmates shall be provided with clothing that is clean, climatically suitable, durable and in good condition.

(b) Inmates participating in food service, sanitation, mechanical and other special work assignments shall be issued appropriate clothing and equipment in quantities that permit exchange as frequently as the work assignment requires.

10A:31-12.2 Towels, linen and bedding

(a) Each inmate shall be issued the following clean items:

1. Two towels;
2. One fire retardant mattress;
3. One pillow;
4. Two sheets;
5. One pillowcase; and
6. Sufficient clean blankets to provide comfort under existing temperature conditions.

10A:31-12.3 Laundry services

(a) Laundry services shall permit the exchange of inmate clothing (facility issue and/or personal), linen and bedding on a weekly basis.

(b) The collection, storage and exchange of clothing and linen shall be accomplished hygienically.

10A:31-12.4 Issue of clothing, linen and bedding

(a) The clothing, linen and bedding supply shall exceed that required for the maximum inmate population in order to allow the adult county correctional facility to compensate without delay for items that are lost, destroyed, or worn out.

(b) The issue of clothing and bedding shall be recorded to provide accountability for their use. Inmate accountability for clothing and bedding should be specified in the copy of the facility's regulations given to each inmate upon admission.

10A:31-12.5 Cleaning of blankets and mattresses

Blankets and mattresses shall be cleaned, sprayed and/or sterilized before reissue.

10A:31-12.6 Storage of inmate personal clothing

Provisions shall be made for the storage of inmate personal clothing and, when necessary, the clothing shall be cleaned and/or disinfected prior to storage.

10A:31-12.7 Personal hygiene products

(a) As part of the admission process, each inmate shall be provided with the following articles necessary for maintaining proper personal hygiene:

1. Soap;
2. Toothbrush;
3. Toothpaste or powder;
4. A comb;
5. Toilet paper;
6. Shaving, equipment, upon request; and
7. Products for the special hygiene needs of female inmates.

(b) Indigent inmates shall be provided basic items for personal hygiene set forth in (a) above on a continuing basis.

(c) Personal hygiene needs of inmates shall not be denied for punitive reasons.

10A:31-12.8 Shower and hair care services

(a) Upon admission to the adult county correctional facility inmates shall be required to shower and shall be permitted to shower daily thereafter.

(b) Hair care services shall be made available to all inmates on a regular basis.

(c) The area used for hair services shall be located to permit observation by the staff and equipment shall be stored securely when not in use.

10A:31-12.9 Written policies and procedures

Each adult county correctional facility shall develop written policies and procedures consistent with this subchapter.

SUBCHAPTER 13. MEDICAL, DENTAL AND HEALTH SERVICES

10A:31-13.1 Essential medical, dental and health services

The adult county correctional facility shall be responsible for essential medical, dental and health care services.

10A:31-13.2 Responsibility for adult county correctional facility's medical services

(a) A physician, licensed in the State of New Jersey, shall be responsible for the adult county correctional facility's medical services pursuant to a written agreement between:

1. The county funding agency responsible for the facility;
2. The Jail Administrator; and
3. The physician responsible for medical services, or a qualified medical authority, such as a physician's group.

(b) The physician, responsible for medical services, shall have no restriction imposed on him or her by the adult county correctional facility administration regarding the practice of medicine.

10A:31-13.3 Security regulations

Security regulations applicable to adult county correctional facility personnel shall also apply to medical personnel.

10A:31-13.4 Standard operating procedures

(a) Written standard operating procedures, approved by the physician who is responsible for medical services, shall be developed for the following:

1. Medical screening;
2. Health appraisal data collections;
3. Non-emergency medical services;
4. Emergency medical and dental services;
5. Evaluating the emergency nature of illnes or injury;
6. Dental screening, prevention, examination and treatment;
7. Medical and dental prosthetics;
8. First aid;
9. Notification of next of kin or legal guardian in case of major surgery, serious illness, injury or death;
10. Chronic care;
11. Convalescent care;
12. Medical preventive maintenance;
13. Screening, referral and care of mentally ill and retarded inmates;
14. Care of inmates requiring close medical supervision;
15. Delousing;
16. Detoxification; and
17. Pharmaceuticals.

10A:31-13.5 Licensure

(a) State licensure and/or certification requirements and restrictions shall apply to health care personnel working in the adult county correctional facility to the same extent as to those working in the community.

(b) Copies of current licenses and/or certification credentials shall be on file in the facility.

10A:31-13.6 Job descriptions

The work of medical personnel shall be governed by written job descriptions which are approved by the physician or medical authority responsible for medical services.

10A:31-13.7 Treatment

(a) Treatment by medical personnel other than the physician, responsible for medical services, shall be performed pursuant to written standing or direct orders from that physician.

(b) In lieu of written standing orders, nationally certified physician assistants and nurse practitioners may practice within the limits of their national certification(s), providing that such practice(s) shall be consistent with State law and shall be authorized by the physician or a qualified medical authority who is responsible for medical services within the adult county correctional facility.

(c) If medical services are delivered in the facility, adequate space, equipment, supplies and materials as determined by the physician who is responsible for medical services shall be provided for primary health care delivery.

10A:31-13.8 First aid kits

(a) First aid kits shall be available in all adult county correctional facilities.

(b) The physician who is responsible for medical services shall approve the:

1. Content of the kits;
2. Number of kits; and
3. Location of the kits.

(c) Written procedures for the use and monthly inspection of all first aid kits shall be established.

10A:31-13.9 Medical screening

(a) Upon admission, all inmates shall receive:

1. A medical screening by a nurse or medical technician;
2. A physical examination by a licensed physician; and
3. Any tests determined to be necessary by the physician who is responsible for medical services.

(b) The medical screening and physical examination shall be performed on each inmate prior to the inmate's placement in the general population or housing area.

(c) The findings of the medical screening shall be recorded on a printed form approved by the physician who is responsible for medical services.

(d) The medical screening should include, but not be limited to:

1. Current illnesses and health problems, including those specific to women;
2. Medications taken and special health requirements;
3. Evaluating other health problems designated by the physician responsible for medical services;
4. Behavior observation, including state of consciousness and mental awareness;
5. Notation of body deformities, such as trauma markings, bruises, lesions, jaundice, ease of movement;
6. Condition of skin and body orifices, including rashes and infestation; and
7. Referral of inmates to qualified medical personnel on an emergency basis.

10A:31-13.10 Access to medical and dental services

At the time of admission, all inmates shall be provided with a copy of the adult county correctional facility's rules and regulations which shall include the procedures for gaining access to medical and dental services (see N.J.A.C. 10A:31-21.4).

10A:31-13.11 Inmate medical complaints

(a) The written medical complaints of inmates shall be collected daily.

(b) The medical staff shall assess the medical complaints of inmates and provide for the treatment of inmates according to priorities of need.

10A:31-13.12 Sick call

(a) Sick call, conducted in adult county correctional facilities by a physician and/or other qualified medical personnel, shall be available to each inmate as follows:

1. Facilities of less than 40 inmates shall conduct sick call at least once a week;
2. Facilities of 50 to 200 inmates shall conduct sick call at least three times per week; and
3. Facilities of over 200 inmates shall conduct sick call at least five times per week.

10A:31-13.13 Physician availability

A physician shall be available at least once each week to respond to inmate complaints.

10A:31-13.14 Emergency medical and dental care

(a) The adult county correctional facility shall provide 24 hour seven day per week emergency medical and dental care.

(b) Written standard operating procedures (S.O.P.'s) shall be established which shall include, but not be limited to, arrangements for the following:

1. On-site emergency first aid;
2. Emergency evacuation of the inmate from the adult county correctional facility;
3. Use of an emergency medical vehicle;
4. Use of one or more designated hospital emergency rooms or other appropriate health facilities; and
5. An emergency on call physician or dental services when the emergency health facility is not located in a nearby community.

(b) Facility personnel shall be trained in the use of emergency care procedures. This training shall include, but not be limited to:

1. Signs and symptoms of potential emergency situations;
2. Types of action required for potential emergency situations;
3. Administration of first aid;
4. Method of obtaining emergency care;
5. Location of the facility's first aid kits; and
6. Transferring patient to appropriate medical provider.

(c) All facility personnel likely to be needed or involved in a medical emergency shall be trained in basic first aid that is equivalent to that defined by the American Red Cross.

(d) At least one person per shift shall have training in the following:

1. Receiving screening;
2. Basic life support;
3. Cardio-pulmonary resuscitation (C.P.R.); and
4. Recognition of symptoms of the illnesses common to the facility.

10A:31-13.15 Chronic and convalescent care

Chronic care, convalescent care and medical preventive maintenance shall be provided to inmates.

10A:31-13.16 Medical and dental prosthetics

As determined by the physician who is responsible for medical services, medical and dental prosthetics shall be provided when the health of the inmate patient would otherwise be adversely affected.

10A:31-13.17 Dental care

(a) Dental care shall be provided under the direction of a dentist licensed in the State of New Jersey.

(b) Dental screening shall be provided to new admissions.

(c) Inmates shall receive dental treatment as determined by the dentist in accordance with the Classification and Priority Treatment Program (see N.J.A.C. 10A:31-13.18).

10A:31-13.18 Classification and Priority Treatment Program

(a) A written Classification and Priority Treatment Program shall be established that will place inmates into a dental scheduling system.

(b) The Classification and Priority Treatment Program shall use the date of the inmate's incarceration as a basis for placement on the dental treatment lists in all categories of classification.

(c) The Classification and Priority Treatment Program shall give priority scheduling to:

1. Inmates who need emergency dental treatment;
2. Inmates who have medical problems, such as allergies, diabetes, heart conditions and blood diseases; and
3. Inmates who do not have sufficient teeth to masticate the food provided by the adult county correctional facility.

10A:31-13.19 Preventive dentistry

Preventive dentistry shall be routinely implemented into the adult county correctional facility's dental program.

10A:31-13.20 Refusal of treatment

The inmate shall have the right to refuse dental treatment.

10A:31-13.21 Mentally ill and retarded inmates

(a) Screening and referral for care shall be provided to mentally ill or retarded inmates whose adaptation to the adult county correctional facility environment is significantly impaired.

(b) The physician who is responsible for medical services shall provide a written list of symptoms or behavior indicative of mental illness and retardation and shall designate, in advance, specific referral sources.

(c) Facility personnel shall be trained regarding recognition of symptoms of mental illness and retardation.

10A:31-13.22 Close medical supervision program

(a) A special program shall be established for inmates requiring close medical supervision.

(b) An individual medical treatment plan for inmates requiring close medical supervision shall be developed by a physician which includes directions to medical and non-medical personnel regarding the staff's role in the care and supervision of these inmates.

10A:31-13.23 Special diets

Special medical diets shall be prepared and served to inmates as ordered by the physician or dentist who is responsible for medical or dental services (see N.J.A.C. 10A:31-10.4).

10A:31-13.24 Detoxification

Detoxification from alcohol, barbiturates and similar drugs, when not provided in a hospital or community detoxification center, shall be performed at the adult county correctional facility under medical supervision.

10A:31-13.25 Pharmaceutical management

(a) The adult county correctional facility's written standard operating procedures for the management of pharmaceuticals shall include:

1. A formulary;
2. Requirements that the facility shall adhere to regulations established by the State Board of Pharmacy regarding medications;
3. A policy regarding prescription practices which shall include, but not be limited to:
   i. Prescriptions generated by consultant health providers;
   ii. Blanket standing orders;
   iii. Written prescriptions;
   iv. Oral prescriptions; and
   v. Renewal schedule of drugs.
4. Policies regarding medication dispensing and administration;
5. Policies on documenting the administration of medication; and
6. Policies regarding the maximum security storage and weekly inventory of all controlled substances, syringes, needles and surgical instruments.

10A:31-13.26 Medical records

(a) The medical record file shall contain the following:

1. Completed medical screening forms;
2. First appraisal data collection forms;
3. All findings, diagnoses, treatments, dispositions, prescriptions and administrations of medication;
4. Notes concerning inmate education; and
5. Notation of place, date and time of medical encounters and discharges from medical treatment.

(b) The method of recording entries in the medical record and the form and format of the record shall be approved by the physician who is responsible for medical services.

(c) Access to medical records is controlled by the physician who is responsible for medical services. The physician/patient privilege shall apply to the medical records (see N.J.A.C. 10A:31-6.11).

(d) The medical record file shall be kept separate from the inmate's classification record.

10A:31-13.27 Informed consent for treatment

All examinations, treatments and procedures affected by informed consent standards in the community shall be likewise observed when providing care for inmates.

10A:31-13.28 Quarterly and annual report

The physician who is responsible for medical services shall prepare and submit to the Jail Administrator a quarterly report on the health delivery system and an annual statistical summary of the health services provided to inmates during the previous year.

SUBCHAPTER 14. MISCELLANEOUS INMATE RIGHTS

10A:31-14.1 Presumption of innocence

(a) The presumption of innocence of pre-trial detainees shall be respected at all times, and adult county correctional facility staff shall take no action which may interfere with the detainee's right to:

1. Remain silent regarding the charges; or
2. Prepare a defense to the charges.

10A:31-14.2 Protection from abuse

(a) Inmates shall be protected by adult county correctional facility staff from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment.

(b) Appropriate disciplinary action shall be taken against facility staff who engage in abusive behavior and, when necessary, these cases will be referred to the county prosecutor.

10A:31-14.3 Prohibition against discrimination

(a) There shall be no discrimination on the basis of race, sex, national origin, color, religion, economic status, political belief or handicap.

(b) Care, custody and treatment services of inmates shall be provided equally to male and female inmates.

10A:31-14.4 Equal access to programs, facilities and services

Inmates shall be provided equal access to programs, facilities and services, so long as such access does not interfere with the maintenance of security or the orderly operation of the adult county correctional facility.

10A:31-14.5 Inmate grievance procedure

A written inmate grievance procedure shall be afforded to all inmates which shall include at least one level of appeal.

10A:31-14.6 Opportunity to practice religion

Inmates shall be afforded full and equal opportunity to practice their religion, or refrain from involvement in religion, subject only to the limitations necessary to maintain order and security (See N.J.A.C. 10A:31-26.3).

10A:31-14.7 Access to representatives of the media

Inmates shall be afforded reasonable access to representatives of the media by correspondence, telephone and/or visits.

SUBCHAPTER 15. ACCESS TO THE COURTS

10A:31-15.1 Inmate access to courts

(a) Persons detained prior to trial and sentenced inmates have a constitutional right of access to the courts.

(b) Jail Administrators shall assist detainees and inmates in the preparation and filing of meaningful legal papers by providing law libraries or adequate assistance from persons trained in the law.

10A:31-15.2 Inmate Law Library

(a) If the Inmate Law Library is the selected method in assisting inmates in the preparation and filing of legal papers, the Inmate Law Library shall be so located as to enable the inmates to be taken to the library to do research.

(b) Arrangements shall be made with a bar association, law school(s), or other law libraries to borrow law books not contained in the adult county correctional facility's own collection.

(c) Inmates who so request shall be given access to the Inmate Law Library on a schedule which permits as many inmates as possible to use the library, depending on:

1. The resources of the adult county correctional facility;
2. The availability of space; and
3. Security considerations.

(d) Punishment for any Inmate Law Library infraction such as damage to law books or disruptive conduct shall not ordinarily include denial of access to the Inmate Law Library.

(e) An inmate who abuses the right of access to the Inmate Law Library may be disciplined in accordance with prescribed procedures as set forth in N.J.A.C. 10A:31-16, Disciplinary Procedures.

(f) In certain extreme instances and only with the approval of the Jail Administrator, an inmate may be denied direct personal access to the Inmate Law Library. In such instances, the inmate shall receive legal reference materials and related services from assigned persons trained in law.

10A:31-15.3 Access to supplies and services

(a) Inmates shall have access to legal supplies and services for preparing legal papers, such as:

1. Writing paper;
2. Carbon paper;
3. Reproduction equipment; and
4. Large mailing envelopes.

(b) The cost of the legal supplies noted in (a) above shall be borne by the inmate unless the inmate is indigent.

10A:31-15.4 Attorneys and court related personal visits

(a) Suitable meeting facilities shall be provided for inmates to meet with attorneys and representatives of attorneys in privacy with reasonable comfort.

(b) Representatives of attorneys may include:

1. Investigators;
2. Investigative aides;
3. Paralegals; and
4. Law students.

(c) Visits of attorneys and representatives of attorneys shall be permitted without notice, or upon reasonable notice, during at least six hours each business day.

(d) Only necessary security requirements may be permitted to interfere with such visits.

10A:31-15.5 Legal telephone calls

Telephone access to attorneys, courts, probation officers, and parole officers shall be provided for all inmates who so request.

SUBCHAPTER 16. DISCIPLINARY PROCEDURES

10A:31-16.1 Disciplinary rules and sanctions

(a) Equitable and consistent inmate discipline shall be employed to ensure the maintenance of security and the orderly operation of all adult county correctional facilities.

(b) Rules, upon which inmate discipline is based, must be reasonable and evenly applied, and the action taken to determine an alleged infraction must be based on findings of fact.

(c) The sanction(s) for infractions shall not be imposed in any manner that violates the inmate's civil rights. The sanction(s) must be related to the infraction, and must be fairly applied to all inmates.

(d) All persons who supervise the activities of inmates shall receive sufficient training to ensure that these staff members understand the rules of inmate conduct, the sanctions available and the rationale for the rules.

10A:31-16.2 Disciplinary rule book

(a) The adult county correctional facility shall develop a written inmate disciplinary rule book which lists:

1. All chargeable offenses;
2. The schedule of sanctions;
3. The disciplinary procedures; and
4. The disciplinary appeal process.

(b) Each inmate, upon admission to the facility, shall be given a copy of the disciplinary rule book and the inmate shall sign a form acknowledging receipt of the rule book.

(c) Each staff member shall be given a copy of the inmate disciplinary rule book.

(d) Staff members shall assist inmates who have literacy problems in understanding the disciplinary rules.

(e) Where a facility has a large number of inmates in the population who speak a foreign language, the disciplinary rules shall be printed and/or presented verbally in the foreign language.

10A:31-16.3 Disciplinary report

(a) Employees shall prepare a disciplinary report when the employees have reasonable belief that an inmate has committed a violation of the adult county correctional facility rules.

(b) The disciplinary report shall include the following information:

1. The specific rule violated;
2. Facts supporting the charge;
3. Unusual inmate behavior;
4. Staff or inmate witnesses;
5. The disposition of any physical evidence;
6. Any immediate action taken, including the use of force;
7. The reporting staff member's signature;
8. The date and time the report is prepared; and
9. The date, time and name of staff person who delivers the disciplinary report to the inmate.

10A:31-16.4 Inmate Law Library violation and sanctions

Punishment for any Inmate Law Library infraction, such as damage to the law books or disruptive conduct, shall not ordinarily include denial of access to the Inmate Law Library.

10A:31-16.5 Minor violations and sanctions

(a) The immediate imposition of a sanction upon an inmate for a minor violation shall be referred to as On-The-Spot Correction.

(b) Written guidelines shall specify the minor violations that may be handled informally through the imposition of On-The-Spot Correction.

(c) The following are authorized sanctions for On-The-Spot Correction:

1. Verbal reprimand;
2. Loss of recreation privileges for a period of no more than five days;
3. Up to four hours of extra work duty; and/or
4. Up to four hours confinement to tier, room or cell.

(d) Minor violations must be reported in writing and forwarded immediately to the shift supervisor for review.

(e) The shift supervisor shall issue the inmate a copy of the report and afford the inmate the right to a conference before the imposition of any sanction(s).

(f) If the shift supervisor concurs with the written minor violation report, the On-The-Spot Correction sanction shall be imposed within 24 hours of the shift supervisor's review.

(g) The shift supervisor may also dismiss the minor rule violation or upgrade the minor violation to a major violation.

10A:31-16.6 Major violations and sanctions

(a) Major violations shall be defined as that conduct which is punishable by sanctions more stringent than those for minor violations.

(b) The following are authorized sanctions for major violations:

1. Up to 15 days Disciplinary Detention;
2. Loss of commutation time subject to confirmation by the Jail Administrator;
3. Loss of privileges up to 30 days;
4. Forfeiture/confiscation;
5. Restitution;
6. Any sanction prescribed for On-the-Spot Correction; and/or
7. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Board for 60 days.

(c) No inmate may receive more than 15 days in Disciplinary Detention as a result of a single disciplinary charge.

(d) If an inmate is found guilty of multiple disciplinary charges, he or she may receive up to 15 days Disciplinary Detention for each charge provided that the total time to be served does not exceed 30 days.

10A:31-16.7 Notification of inmate

(a) As a notification of the major violation charge(s), a copy of the disciplinary report shall be served upon the inmate within 48 hours of the violation unless there are exceptional circumstances, and at least 24 hours prior to the disciplinary hearing unless such notice is waived by the inmate in writing.

(b) The disciplinary report shall be delivered by the reporting staff member or the investigating officer. The report shall be signed by the person delivering it, and the time of delivery shall be noted.

10A:31-16.8 Use immunity

(a) In all cases, the inmate shall be advised of his or her right to use immunity at any investigative interview and at the disciplinary hearing.

(b) The use immunity warning shall consist of a statement which indicates that any statements made in connection with the disciplinary hearing or evidence derived directly or indirectly from those statements shall not be used in any subsequent criminal proceeding.

(c) Failure to give the use immunity warning by the investigative officer shall not be grounds for dismissing the disciplinary report.

10A:31-16.9 Investigation

(a) An investigation of the infraction shall be conducted within 48 hours of the time the disciplinary report is served upon the inmate, unless there are exceptional circumstances for delaying the investigation.

(b) The Jail Administrator shall appoint an investigating officer who was not involved in the incident to be investigated.

(c) The inmate shall be advised of his or her right to consult with a counsel substitute prior to the Disciplinary Hearing.

(d) The inmate shall be advised of his or her right to waive the Disciplinary Hearing and plead guilty to the disciplinary charges.

10A:31-16.10 Prehearing Detention

(a) Until the Disciplinary Hearing, the inmate shall remain in his or her existing status, unless the inmate constitutes a threat to other inmates, staff members, himself or herself or to the orderly operation of the adult county correctional facility.

(b) If Prehearing Detention is ordered by the shift supervisor, such order shall be reviewed by the Jail Administrator or his or her

designee within 24 hours. Failure to do so shall return the inmate to his or her previous status.

10A:31-16.11 Disciplinary Board

(a) All hearings for major offenses shall take place before a Disciplinary Board composed of an impartial three member panel which shall include one custody supervisor and two non-custody staff members.

(b) Any Disciplinary Board member shall be disqualified in every case in which:

1. The Board member filed the complaint or witnessed the incident;
2. The Board member participated as an investigating officer;
3. The Board member will be charged with subsequent review of the decision; and/or
4. The Board member has personal interest in the outcome.

10A:31-16.12 Disciplinary hearing

(a) The inmate shall be entitled to a hearing within seven days of the alleged violation, including weekends and holidays, unless such hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Should the seventh day fall on a Saturday, Sunday or holiday, the hearing shall be held on the weekday immediately following the weekend or holiday.

(b) Inmates confined in Prehearing Detention shall receive a hearing within three days of their placement in Prehearing Detention, including weekends and holidays, unless there are exceptional circumstances, unavoidable delays or reasonable postponements. Should the third day fall on a Saturday, Sunday or holiday, the hearing shall be held on the weekday immediately following the weekend or holiday.

(c) Inmates confined in Prehearing Detention shall be given priority in scheduling their appearance before the Disciplinary Board.

(d) Time spent in Prehearing Detention shall be credited against any subsequent sentence imposed.

(e) No delays in hearing a case shall be permitted for the purpose of punishment or discipline.

(f) An inmate shall be provided the opportunity to be present during the Disciplinary Hearing except for the Disciplinary Board's deliberations and reasons of security. The reasons for excluding an inmate from a Disciplinary Hearing must be documented in the inmate's record.

(g) An inmate may be represented by a counsel substitute (staff or inmate) when it is determined by the Disciplinary Board that the inmate is illiterate or cannot adequately collect and present the evidence in his or her own behalf.

(h) An inmate shall be provided an opportunity to call witnesses on his or her behalf, unless doing so would be irrelevant, repetitive or unduly hazardous to institutional safety. The reasons for denying the opportunity to call witnesses must be stated in writing and filed in the inmate's record.

(i) An inmate shall be provided the opportunity to make a statement and present documentary evidence.

(j) An inmate shall be provided the opportunity to confront and cross-examine his or her accuser and all adverse witnesses unless doing so would be unduly hazardous to institutional safety or would endanger the physical safety of a witness. The reasons for denying the opportunity to cross-examine accusers or adverse witnesses must be stated in writing and filed in the inmate's record.

(k) In absentia hearings may be held if the inmate refuses to attend the Disciplinary Hearing. Documentation of this refusal must be reported in writing.

(l) Should further investigation be required, the Disciplinary Hearing may be postponed by the Disciplinary Board for up to 48 hours for Prehearing Detention cases and for seven days for all other Hearings.

10A:31-16.13 Referral to the prosecutor

All rule violations which may constitute crimes of the first, second, third or fourth degree under the Criminal Code of the State of New Jersey (N.J.S.A. 2C:1-1 et seq.) shall be referred to the prosecutor of the county in which the adult county correctional facility is located.

10A:31-16.14 Decision of the Disciplinary Board

(a) At the conclusion of the Disciplinary Hearing, the Disciplinary Board shall issue a written decision. This decision shall contain:

1. The Board's finding on the question of guilt;
2. The sanction imposed;
3. A summary of the evidence upon which the finding is based, with the exception of confidential information which was withheld for security reasons;
4. A list of all non-confidential witnesses;
5. The reason requested witnesses were not called or cross-examination was not permitted if applicable;
6. The reason for the sanction which shall include such factors as the offender's past history and circumstances of the offense;
7. The date and time of the Disciplinary Hearing; and
8. The signatures of all Board members.

10A:31-16.15 Appeal of disciplinary decisions

(a) The inmate shall be advised of his or her right to appeal the decision of the Disciplinary Board.

(b) Appeals of disciplinary decisions shall be submitted to the Jail Administrator in writing, within 48 hours of the Disciplinary Hearing.

(c) Appeals of disciplinary decisions shall be reviewed by the Jail Administrator who may affirm, rescind or downgrade the decision. The Jail Administrator may reduce but may not increase the sanction imposed by the Disciplinary Board.

(d) Copies of the appeal and the disposition on appeal shall be forwarded to the Disciplinary Board for their records.

10A:31-16.16 Expungement

(a) If the Disciplinary Board finds the inmate innocent of the charges, all reference to the offense shall be removed from the inmate's file.

(b) Copies of the disciplinary report, investigation and adjudication sheet shall be maintained by the adult county correctional facility and the Disciplinary Board in the event of judicial review and for statistical and accounting purposes only. These records shall be maintained separately from the inmate's record.

SUBCHAPTER 17. DISCIPLINARY DETENTION

10A:31-17.1 Placement in Disciplinary Detention

Disciplinary Detention shall be used only when all other possible remedies have failed. A decision to place an inmate in Disciplinary Detention may be made only by the Disciplinary Board subject to review by the Jail Administrator.

10A:31-17.2 Time spent in Disciplinary Detention

(a) Inmates may be placed in Disciplinary Detention by the Disciplinary Board for a period not to exceed 15 days as a result of a single disciplinary charge.

(b) Inmates found guilty of multiple disciplinary charges may receive up to 15 days Disciplinary Detention for each charge provided that the total time to be served does not exceed 30 days.

(c) The time an inmate spends in Disciplinary Detention shall be proportionate to the offense committed, taking into consideration:

1. The severity of the offense;
2. The inmate's prior conduct;
3. The inmate's specific program needs; and
4. Other relevant factors.

10A:31-17.3 Disciplinary problems while in Disciplinary Detention

In the event of further disciplinary infractions by the inmate(s) while in Detention, the inmate(s) shall be charged with the appropriate violation and be given a Disciplinary Hearing by the Disciplinary Board.

10A:31-17.4 Security checks

Security and visual observation checks shall take place every 30 minutes in Disciplinary Detention.

10A:31-17.5 Records in Disciplinary Detention

(a) A written log of all security checks and/or counts shall be maintained, and the log shall be signed by the respective correction officer conducting the security check(s) and/or counts.

(b) Visits by medical, psychiatric, social work or custody supervisory staff, and all unusual behavior shall be noted in the log book together with the time and date.

(c) A record stating the following information shall be maintained in Disciplinary Detention:

1. The inmate's name;
2. The inmate's number;
3. The date of admission;
4. The type of infraction leading to Disciplinary Detention;
5. The expiration date of Disciplinary Detention; and
6. Any special problems, such as medical, behavioral, etc.

10A:31-17.6 Security procedures for Disciplinary Detention

(a) At no time shall correction officers handle Disciplinary Detention inmates on a one-to-one basis. There shall be a minimum of two correction officers to one inmate.

(b) At no time in Disciplinary Detention shall more than one inmate at a time be out of his or her cell.

(c) The Disciplinary Detention area shall be equipped with an alarm device which, when activated, will alert the Center Control of any unusual occurrences. The alarm device shall be tested on each shift.

(d) A telephone(s) shall be available within Disciplinary Detention in order to provide immediate communication with the Center Control.

(e) All inmates in Disciplinary Detention shall be strip-searched any time they enter or leave the Disciplinary Detention area.

(f) Bars, doors, windows, locks, corridors, floors and ceilings of the Disciplinary Detention area shall be checked daily and a written report completed and forwarded to the supervising officer responsible for this area.

10A:31-17.7 Correspondence, visits and telephone calls

(a) Inmates in Disciplinary Detention shall have the same correspondence opportunities that are available to inmates in the general population.

(b) Inmates in Disciplinary Detention shall not be provided with visit or telephone opportunities while in Disciplinary Detention with the exception of legal telephone calls.

(c) The Jail Administrator or his or her designee may authorize a special visit or telephone call for an inmate when there are compelling reasons to do so.

(d) Every effort shall be made to notify expected social visitors of the restriction on ordinary visiting procedures prior to the next regularly scheduled visiting period. If adequate time for correspondence exists, the burden of this notification shall be placed on the inmate.

10A:31-17.8 Correction officer assignment to Disciplinary Detention

Correction officers shall not be assigned to a Disciplinary Detention Unit for longer than a six month period.

SUBCHAPTER 18. PROTECTIVE CUSTODY

10A:31-18.1 Admission to Protective Custody

An inmate may be placed in Protective Custody only with the approval of the Jail Administrator or his or her designee.

10A:31-18.2 Hearing procedure for involuntary placement to Protective Custody

(a) The adult county correctional facility's Classification Committee shall review involuntary Protective Custody placements within seven days.

(b) At the involuntary Protective Custody review the inmate shall be given the opportunity to appear personally before the Classification Committee.

(c) The Classification Committee shall provide the inmate with a written notice of the committee's decision and a summary of the evidence relied upon.

10A:31-18.3 Review of inmates in Protective Custody

Each inmate in Protective Custody shall be reviewed every 30 days by the Classification Committee.

10A:31-18.4 Release of inmates from Protective Custody

(a) Provided the Classification Committee and the Jail Administrator or his or her designee are satisfied that there is no known danger to the inmate's well being, an inmate who has voluntarily signed himself or herself into Protective Custody may sign himself or herself out upon completion of a release form.

(b) An inmate who has been placed in Protective Custody involuntarily may be released by the Jail Administrator or his or her designee upon recommendation by the Classification Committee when they are satisfied that the conditions giving rise to the inmate's placement in Protective Custody have abated or no longer exist.

(c) A release form that is signed by the Jail Administrator and the inmate shall be placed in the inmate's classification folder.

10A:31-18.5 Security procedures for Protective Custody

(a) Any inmate who is not in a Protective Custody status shall be prohibited from entering the Protective Custody area at any time.

(b) All Protective Custody inmates shall be escorted by two correction officers any time the inmate or inmates leave the Protective Custody area.

(c) All inmates in Protective Custody shall be strip-searched when entering and leaving the Protective Custody area.

10A:31-18.6 Correspondence, visits and telephone calls

The writing, visiting and telephone privileges of inmates shall not be suspended while the inmate(s) is confined in Protective Custody.

SUBCHAPTER 19. MAIL

10A:31-19.1 Limitation on outgoing and incoming mail

(a) There shall be no limit on the amount of outgoing or incoming correspondence an inmate may send or receive.

(b) There shall be no restriction on the length, language or content of letters or on the persons to whom an inmate may write, except where there is clear and convincing evidence to justify restrictions to ensure the maintenance of public safety or adult county correctional facility order and security.

10A:31-19.2 Cost of mailing correspondence by indigent inmates

Indigent inmates shall be provided with postage and stationery enabling the inmates to send at least three letters of general correspondence per week.

10A:31-19.3 Processing mail

(a) Daily collection, handling and distribution of inmate mail shall be done by authorized staff personnel only.

(b) Outgoing correspondence shall not be held within the adult county correctional facility more than 24 hours after the correspondence has been received or collected for mailing, except on weekends or holidays.

(c) Incoming correspondence shall be delivered to the inmate within 24 hours after it has been received at the facility.

10A:31-19.4 Inspection and reading of incoming mail

(a) All incoming correspondence and packages shall be inspected for cash, checks, money orders and contraband.

(b) Monies received through the mail shall be credited to the inmate's account and a receipt shall be given to the inmate.

(c) Contraband shall be removed from incoming correspondence and the inmate shall be notified concerning the items removed and the disposition of the contraband. Contraband shall be fully described in the copy of adult county correctional facility rules and regulations given to the inmate at admissions (see N.J.A.C. 10A:31-21.4).

(d) Inmate incoming correspondence may not be read except when there is reliable information indicating that the mail is a threat to order and security, or when mail is being used in the furtherance of illegal activity. It shall be the responsibility of the Jail Administrator to document that sufficient reason exists to read an inmate's correspondence.

10A:31-19.5 Inspection of outgoing mail

Outgoing inmate correspondence shall be permitted to be sealed by the inmate and shall not be opened, inspected or censored unless there is evidence to suspect that there is contraband enclosed or that a criminal activity is involved.

10A:31-19.6 Publications

Inmates shall be permitted to receive books, magazines, newspapers or other printed matter, unless such publications are deemed to constitute an immediate threat to the security of the adult county correctional facility, or these publications are determined to be obscene by current laws or court decisions on obscenity.

10A:31-19.7 Packages

(a) Inmates shall be provided with a list of items permitted to be received in packages.

(b) All incoming and outgoing packages shall be thoroughly searched for contraband (see N.J.A.C. 10A:31-8.1).

10A:31-19.8 Written policy and procedures

Written policies and procedures consistent with this subchapter shall be developed by all adult county correctional facilities and be made available to staff and inmates.

SUBCHAPTER 20. VISITS

10A:31-20.1 Visit regulations

Written visit regulations shall be available for all staff, inmates, and visitors.

10A:31-20.2 Visit regulations translated into foreign language

Where deemed necessary by the Jail Administrator, visit regulations shall be translated into a foreign language.

10A:31-20.3 Contact visits

An area shall be provided for contact visits, for those inmates who do not represent a substantial security risk.

10A:31-20.4 Non-contact visits

An area shall be provided for non-contact visits, for those inmates classified as high risk inmates.

10A:31-20.5 Visit scheduling

(a) The visit program shall include provisions for weekday, evening and weekend visitation.

(b) Visits shall be no less than 15 minutes in length.

(c) Limitation on the length or frequency of visits shall be imposed only to avoid overcrowded conditions in the visiting area.

10A:31-20.6 Registering and search of visitors

(a) Visitors shall register upon entry into the adult county correctional facility, and their belongings shall be searched and/or stored in lockers.

(b) Circumstances under which a visitor may be searched shall be specified in written visit regulations (N.J.A.C. 10A:31-20.1).

10A:31-20.7 Visits by attorneys and religious advisors

Attorneys and religious advisors (chaplains, ministers, priests, imams, etc.) shall be allowed additional visitation privileges and accommodations that ensure privacy.

10A:31-20.8 Special visits

(a) Prior arrangements should be made for special visits, if possible.

(b) Special visits may include, but are not limited to:

1. Visits from persons who have come long distances;
2. Visits to hospitalized inmates; and
3. Visits to inmates in disciplinary status.

10A:31-20.9 Written policies and procedures

Each adult county correctional facility shall develop written policies and procedures consistent with this subchapter.

SUBCHAPTER 21. ADMISSION, SEARCH, ORIENTATION, PROPERTY CONTROL AND RELEASE

10A:31-21.1 Written policies and procedures regarding newly admitted inmates

(a) Each adult county correctional facility shall develop written policies and procedures regarding the admission of new inmates which include, but are not limited to:

1. Verification of commitment papers;
2. A thorough search of individual inmates;
3. Disposition of clothing and personal possessions;
4. Medical screening;
5. Telephone calls;
6. Showers;
7. Hair care;
8. Issue of clean institutional clothing;
9. Photographs;
10. Fingerprinting;
11. Notations of identifying marks and unusual characteristics;
12. Intake screening interview by staff member, preferably a social worker or counselor;
13. Issue of personal hygiene items; and
14. Classification and assignment to a housing unit.

10A:31-21.2 Search of newly admitted inmates

Newly admitted inmates may be subjected to a strip search or body cavity search only in accordance with the conditions set forth in N.J.A.C. 10A:31-8.3, 8.4 and 8.5.

10A:31-21.3 Orientation

Orientation shall be provided to newly admitted inmates in their own languages where possible. Such orientation shall be documented by the dated signatures of the inmates who have been oriented to the adult county correctional facility.

10A:31-21.4 Adult county correctional facility rules and regulations

(a) All inmates shall be provided with a copy of the facility's rules and regulations which shall be explained by a staff member.

(b) The rules and regulations shall be available in English and Spanish, where appropriate.

(c) An interpreter may be provided at the discretion of the Jail Administrator.

10A:31-21.5 Telephone calls

Newly admitted inmates shall be permitted to complete at least two local or collect long distance telephone calls as soon as possible during the admission process.

10A:31-21.6 Release or diversion to intervention programs

(a) Written procedures shall be developed with the Court and Probation Department for initial screening and evaluation of individuals for possible release or diversion to intervention programs.

(b) Jail Administrators shall coordinate with the Courts, Probation Departments and other community agencies the release from confinement under certain conditions, selected individuals who are not a danger to the community.

10A:31-21.7 Property control

(a) Written policy and procedures shall specify the types of personal property inmates can retain in their possession during incarceration.

(b) A written itemized inventory of all personal property shall be given to newly admitted inmates.

(c) Secure storage of inmate property including money and other valuables shall be provided and inmates shall be given receipts for all property held until release.

(d) A system of strict staff accountability shall be maintained to assure the safety of inmate personal property, money and other valuables.

(e) Clothing and personal property taken from inmates shall be cleaned and/or placed in appropriate storage areas.

10A:31-21.8 Release of inmates

(a) Each adult county correctional facility shall develop written policies and procedures related to the release of inmates which include, but are not limited to:

1. Verification of inmate's identity;
2. Verification of inmate's release reports;
3. Completion of release arrangement, including the person or agency to whom the inmate is to be released;
4. Return of inmate's personal property;
5. Verification that no facility property leaves with the inmate; and
6. Completion of any pending action, such as grievances or claims for damages or lost possessions.

SUBCHAPTER 22. CLASSIFICATION

10A:31-22.1 Written classification policies and procedures

(a) Each adult county correctional facility shall develop written policies and procedures for classifying inmates which include the following:

1. The composition and responsibilities of the Classification Committee;
2. The initial classification of inmates;
3. The review of the classification of inmates; and
4. The reassignment or transfer of inmates from one program and/or facility to another.

10A:31-22.2 Separation of inmates

(a) The following types of inmates shall be maintained separately insofar as space permits:

1. Male and female inmates;
2. Aggressive and passive/dependent inmates;
3. Inmates with special problems, such as alcoholics, sex offenders, drug addicts, etc., and inmates who do not have such problems;
4. Physically or mentally ill inmates and healthy inmates;
5. Misdemeanors and felons; and
6. First offenders and habitual criminals.

(b) The classification of inmates in the categories in (a) above may be modified based on the direct observation and supervision of individual inmates, and in such instances each classification decision shall be fully documented.

10A:31-22.3 Segregation of inmates based upon race, color, creed or national origin

Segregation of inmates by race, color, creed, or national origin shall be prohibited.

10A:31-22.4 Male and female inmates' access to programs and activities

Male and female inmates, depending on their custody levels, shall have equal access to all programs and activities, but integrated participation by male and female inmates in programs and activities is not required.

10A:31-22.5 Initial classification

(a) Initial classification of sentenced inmates shall be completed within two weeks after admission from court or transfer from another institution, except where there are clear and convincing reasons to do otherwise.

(b) Wherever possible, inmates shall initially be assigned to an intake area for a two week period which will allow sufficient time for inmates to be appropriately classified and medically screened pursuant to N.J.A.C. 10A:31-13.9.

10A:31-22.6 Classification hearing

All sentenced inmates shall be given 48 hours notice prior to their classification hearing and shall have the opportunity to appear and participate in their hearing.

10A:31-22.7 Appeal of Classification Committee decision

All sentenced inmates shall be given the opportunity to appeal the decision of the Classification Committee to the Jail Administrator or his or her designee.

SUBCHAPTER 23. REMISSION OF TIME FROM SENTENCE

10A:31-23.1 Eligibility for cash or remission of time from sentence

(a) Inmates who are employed in productive occupations while incarcerated in an adult county correctional facility may receive compensation for such employment in the form of cash or remission of time from sentence or both (see N.J.S.A. 30:4-92).

1. An inmate employed under this section may receive remission of time from sentence not to exceed one day for each five days of productive occupation, but remission granted under this section shall not affect deductions for good behavior as otherwise provided by law.

2. In addition, all inmates classified as minimum security and who are considered sufficiently trustworthy to be employed in honor camps, farms or details, shall receive further remission of time from sentence at the rate of three days per month for each month of such employment.

(b) Inmates in adult county correctional facilities, who are employed in the community pursuant to N.J.A.C. 10A:31-25, Work Release Program, are eligible for diminution of sentence as set forth in N.J.S.A. 30:8-50. The inmate may be granted a diminution of not more than one-quarter of his or her term if the inmate's conduct, diligence and general attitude meet such diminution.

(c) Inmates who are receiving credits while participating in a Work Release Program under (b) above may also, in appropriate circumstances, receive work credits under (a) above. Such additional credits may be granted only where the inmate engages in a productive occupation in the adult county correctional facility in addition to the inmate's participation in the Work Release Program.

(d) Any remission of time shall in no way affect deduction for good behavior as otherwise provided in N.J.S.A. 2A:164-24.

10A:31-23.2 Records and audits

(a) The New Jersey State Department of Corrections shall periodically audit records pertinent to the remission of time or cash payments for periodic occupation or minimum security status of inmates. Such audits shall be conducted not less than annually.

(b) The remission of time or cash payment records shall indicate the following:

1. The dates the inmate was placed upon and removed from productive occupation and/or minimum security status;
2. The reason for removal from productive occupation or minimum security status;
3. The time the inmate earned while in productive occupation or on minimum security status; and
4. The cash remuneration, if any, the inmate received while in productive occupation.

(c) Individual records shall be maintained for each inmate placed in productive occupation or classified on minimum security status.

10A:31-23.3 Reports

(a) The Jail Administrator of the adult county correctional facility shall submit an annual report to the New Jersey State Department of Corrections, Bureau of County Services.

(b) The annual report shall contain, but not be limited to, the following:

1. The operation of the remission of time for productive operations and minimum security status; and/or
2. The payment of cash to inmates for employment in productive occupations.

(c) In counties electing to provide cash payments for employment in productive occupations, the schedule of payments shall be filed with the New Jersey State Department of Corrections, Bureau of County Services.

10A:31-23.4 Consultations

The New Jersey State Department of Corrections will provide the consultative services of staff members with respect to questions, issues or problems arising out of the interpretation of the Statutes or from operational procedures.

SUBCHAPTER 24. INMATE WORK PROGRAM

10A:31-24.1 Inmate work plan

(a) The adult county correctional facility shall develop and maintain a written inmate work assignment plan that provides for inmate employment, subject to the availability of work opportunities and the security considerations of the facility.

(b) The inmate work plan shall include provision for inmate employment in facility maintenance and operations such as:

1. Cleaning;
2. Painting;
3. Food service; and
4. Laundry operations.

(c) The inmate work plan shall include provisions for inmate employment in public works projects such as construction work, conservation projects, county road work, and cleaning and maintenance tasks in local government buildings.

(d) The inmate work plan shall include provisions for the employment of handicapped inmates.

10A:31-24.2 Pretrial and unsentenced detainees

Pretrial and unsentenced detainees shall not be required to work except to do personal housekeeping.

10A:31-24.3 Inmate volunteers

Any inmate may volunteer for work assignments or adult county correctional facility programs.

10A:31-24.4 Compensation

(a) Inmates employed in inmate work programs shall receive compensation for employment in the form of cash or remission of time from sentence or both (see N.J.A.C. 10A:31-23).

(b) Any remission of time shall in no way interfere with the reduction for good behavior time.

(c) State sentenced inmates who are being housed in adult county correctional facilities shall be compensated in accordance with N.J.A.C. 10A:9-5.6.

SUBCHAPTER 25. WORK RELEASE PROGRAM

10A:31-25.1 Authority

N.J.S.A. 30:8-44 authorizes the operation of a County Work Release Program in the counties in which the Board of Freeholders has approved the establishment of this type of program.

10A:31-25.2 Role of New Jersey Department of Corrections

The New Jersey Department of Corrections may make staff available for maintaining general supervision over County Work Release Programs.

10A:31-25.3 Benefit to inmates

(a) Participation in the Work Release Program provides the following benefits to inmates:

1. Provides inmates the opportunity to participate in full time normal employment or vocational training in the community;
2. Permits inmates the opportunity to develop or strengthen good work habits and skills;
3. Affords inmates opportunities to continue or strengthen constructive ties with family, friends and the community;
4. Permits the pre-release preparation of inmates and the opportunity to evaluate the readiness of these inmates for release to the community;
5. Permits disbursements to be made from inmate earnings to help defray the cost of incarceration, support dependents, reduce debts and pay court fines;
6. Enables inmates to accumulate savings to help meet financial needs or burdens after release from confinement;
7. Provides inmates the opportunity to meet family needs; and
8. Provides inmates the opportunity to earn credits which will reduce the time to be served on the inmate's sentence.

10A:31-25.4 Responsibility for designating County Work Release Administrator

Upon adoption of a resolution to implement a Work Release Program, the County Board of Freeholders shall designate a County Work Release Administrator who may be the Sheriff, Jail Administrator or other person who shall be responsible for administering the Work Release Program.

(b) The Board of Freeholders shall promptly notify the Commissioner of the Department of Corrections of the Board's action and the name of the designated County Work Release Administrator.

10A:31-25.5 Placement in Work Release

A person convicted and sentenced to an adult county correctional facility may be placed in a Work Release Program by order of the court in which such person was convicted, or by the assignment judge of the county in which the sentence was imposed at the time such person is sentenced or at any time thereafter during the term of the sentence.

10A:31-25.6 Inmates inappropriate for Work Release Program participation

(a) The following circumstances shall make an inmate inappropriate for participation in the Work Release Program:

1. Untried detainers for criminal offenses or immigration detainers;
2. Current convictions involving sex or arson offenses;
3. Previous convictions for sex or arson offenses, even if the current conviction is for an offense(s) other than sex or arson; or
4. Current convictions for the sale and/or distribution of controlled dangerous substance (CDS) solely for profit.

(b) An inmate who presently is serving a sentence for one count of a sexual offense and who has a prior adult conviction for one count of a sexual offense under the laws of this State, any other state or the United States; an inmate who presently is serving a sentence for more than one count of a sexual offense under the laws of this State, any other state or the United States; or an inmate who presently is serving a sentence for a nonsexual offense and has prior adult convictions for more than one count of a sexual offense under the laws of this State, any other state or the United States, is inappropriate for the Work Release Program.

(c) For purposes of this subchapter, a sexual offense shall include a conviction obtained in a court of competent jurisdiction of another state, or of the Federal government, or a conviction obtained under the following New Jersey Statutes:

2C:14-2 Sexual assault; aggravated sexual assault;
2C:14-3 Aggravated criminal sexual contact; criminal sexual contact;
2C:24-4 Endangering welfare of children where the official version of the crime indicates that the inmate engaged in sexual contact pursuant to 2C:24-4(a) or committed an offense under 2C:24-4(b) (3, 4 or 5);
2C:5-1 Criminal attempt to commit any offense under 2C:14-2, 14-3, 23-4;
2C:5-2 Conspiracy to commit an offense under 2C:14-3, 24-4;
2C:47-1 et seq. Any convictions obtained under this section;
2A:86-3 Abduction of female under age 18 for purpose of marriage or carnal abuse;
2A:90-2 Assault with intent to commit rape or sodomy, or to carnally abuse a female under the age of 16, with or without her consent;
2A:96-3 Debauching or impairing the morals of a child under the age of 16;
2A:138-1 Rape or carnal abuse;
2A:138-2 Carnal knowledge of female inmates of a home or institution for the feeble minded or mentally ill;
2A:143-1 Sodomy;
2A:143-2 Sodomy with children under 16;
2A:85-5 Attempt to commit any of the foregoing offenses;
2A:85-14 Aiding and abetting the commission of any of the foregoing offenses;
2A:98-1 Conspiracy to commit any of the foregoing offenses; and/or
2A:164-3 Any conviction obtained under this section, except lewdness.

(d) An inmate who presently is serving a sentence for one count of an arson offense and who has a prior adult conviction for an arson offense; an inmate who presently is serving a sentence for more than one count of an arson offense; or an inmate who presently is serving a sentence for a non-arson offense but who has more than one prior adult conviction for an arson offense, is inappropriate for the Work Release Program.

10A:31-25.7 Application for admission to the Work Release Program

(a) The County Work Release Administrator shall be responsible for advising county sentenced inmates that an application may be submitted to him or her for submission to the court for approval to participate in the Work Release Program.

An inmate sentenced by the court to an adult county correctional facility, who desires an opportunity to participate in the Work Release Program by being released to the community for employment, vocational training or meeting family needs shall be required to complete and submit form CWR-1 APPLICATION AND AGREEMENT FOR ASSIGNMENT UNDER THE WORK RELEASE PROGRAM to the county Work Release Administrator for submission to the court.

(c) The County Work Release Administrator shall review and evaluate the information collected on each application and make a recommendation to the court concerning admission to the Work Release Program. The basic information shall include, but is not limited to:

1. Prior criminal history;
2. Detailed information concerning present offense;
3. Detailed information regarding untried criminal charges pending and the current status of these charges;
4. Psychological and psychiatric evaluations, when available;
5. Record of violent or assaultive conduct;
6. Record of violation of financial or public trust;
7. Data on family relationships including responsibility to assist in family maintenance;
8. Work history;
9. Personal health;
10. Record of substance abuse; and
11. Information on job opportunities or vocational programs to meet the inmate's needs.

(d) The following facts and circumstances shall be viewed as negative factors when considering an inmate's application for the Work Release Program:

1. A record of association with organized crime;
2. A record of serious emotional or personality disorders;
3. A record of violent or assaultive behavior;
4. Previous violations of financial or public trust;
5. A high degree of public notoriety which would cause adverse reaction if the inmate were released to the community;
6. Indications that release to the community would be contrary to punitive intention of sentence; and
7. A history which indicates a record of convictions for offenses related to controlled dangerous substances (CDS).

10A:31-25.8 Job site evaluation

(a) The County Work Release Administrator shall be responsible for evaluating all prospective places of employment of inmates.

(b) Whenever possible, work release employment shall be related to prior vocational training, work experience and/or the institutional training of the inmate.

(c) The following shall initially be taken into account when evaluating the job site:

1. Working conditions of employees;
2. Potential hazards to health of employees;
3. Credibility of the employer;
4. Verification of a fair rate of pay, not less than minimum wage;
5. Coverage of an appropriate workers' compensation plan;
6. Availability of transportation;
7. Duration of the offered employment and benefits; and
8. Proximity to the adult county correctional facility.

(d) Inmates shall not be placed in Work Release Program assignments which will result in the displacement of workers employed in the community.

(e) Representatives of local union central bodies or similar labor union organizations shall be consulted about the placement of inmates with an employer, when appropriate.

(f) If suitable private outside employment cannot be found for an inmate, the inmate may be employed by the county at a fair wage and reasonable hours of work.

10A:31-25.9 Notice to inmate

Form CWR-2 NOTIFICATION OF ADMISSION TO WORK RELEASE WITH SPECIFIED CONDITIONS shall be used by the County Work Release Administrator to notify the inmate of the court's decision on the inmate's application.

10A:31-25.10 Work Release Plan

The County Work Release Administrator and the inmate shall prepare a detailed Work Release Plan (Form CWR-3 APPROVED WORK RELEASE PLAN). The plan shall include information concerning the job, transportation and a statement authorizing the County Work Release Administrator to make disbursements from earnings.

(b) The information concerning the job placement shall include, but is not limited to:

1. The name of employer;
2. The address of employer;
3. The telephone number of employer;
4. The location of work site;
5. The hourly or other rate of pay;
6. Work days and hours;
7. A plan for overtime or shift work, if necessary; and
8. An evaluation of the job offer by the County Work Release Administrator.

(c) Each Work Release Plan shall contain a written detailed Transportation Plan. The Transportation Plan shall include, but is not limited to:

1. The dates and times of leaving and returning to the adult county correctional facility;
2. The times of arrival and departure from the job;
3. The method of transportation (for example, facility vehicle, public, private conveyance);
4. The daily cost of transportation;
5. The routes of travel; and
6. A procedure to be used when there are unexpected changes in travel arrangements, such as extended work conditions, delays caused by breakdowns, etc.

(d) If the Transportation Plan calls for the use of a private conveyance as the method of transportation, the County Work Release Administrator should ensure that the appropriate licensing, vehicle registration and insurance coverage are provided. Copies of these documents shall be contained in the inmate's file.

(e) The Transportation Plan should be flexible so as to allow for normal problems anticipated in daily travel. Generally, travel time to and from a job should not exceed one hour each way.

(f) The final section of the Work Release Plan shall include information on the disbursement of wages.

(g) When the Work Release Plan is completed and reviewed by the County Work Release Administrator, the inmate shall be asked to read and indicate his or her acceptance of the provisions of the Work Release Plan by signing it.

(h) The employer shall receive a copy of the approved Work Release Plan by certified mail, return receipt requested, along with a copy of the court's order placing the inmate in outside employment. The inmate shall also receive a copy of the Work Release Plan.

10A:31-25.11 Disbursement of wages

(a) An inmate participating in the Work Release Program shall submit his or her salary, wages or stipend, in the form that it is paid (cash or check), to the County Work Release Administrator who shall make payments from these earnings for:

1. Money advances made to purchase or redeem work clothes, travel clothes and/or work tools;
2. The cost of work transportation and cash advanced for miscellaneous daily expenses while outside the adult county correctional facility;
3. Payment of cost for board which shall be charged for each day that the inmate is participating in the Work Release Program;
4. Court costs and fines;
5. Legally ascertained support of dependents after written notice to the appropriate welfare board; and/or
6. Payment on debts and legal obligations acknowledged by the inmate in writing and filed with the County Work Release Administrator on such forms as the Administrator shall specify.

(b) Every effort shall be made to secure full payment of advances as soon as possible. Except in the most unusual situations, full repayment shall be obtained no later than the second full pay.

(c) Any balance of earnings remaining after payment of items in (a) above shall be retained as required by N.J.S.A. 30:8-49(4), and paid to the inmate when he or she is discharged.

(d) Each county shall develop a written system whereby each inmate participating in the Work Release Program shall pay a fair percentage of his or her earnings for board. The daily per capita rate for the payment of board shall not include any part of the costs arising from the administration of the Work Release Program.

10A:31-25.12 Statement of disbursements

(a) An inmate participating in the Work Release Program shall receive a statement on Form CWR-4 STATEMENT OF DISBURSEMENTS itemizing deductions made from each pay check within two weeks of the county's receipt of the pay check.

(b) The statement shall report all income and expenses and accurately reflect the statement of the inmate's account for the period covered.

10A:31-25.13 Vocational Training Release Plan

(a) If the inmate is approved for vocational training, a detailed Vocational Training Release Plan (Form CWR-5 VOCATIONAL TRAINING RELEASE PLAN) shall be prepared by the County Work Release Administrator. A copy of the Vocational Training Release Plan shall be sent to the inmate and a copy shall be sent to the training agency by certified mail, return receipt requested. The plan shall include the following:

1. The name and address of the training agency;
2. The location where training will take place;
3. The dates and times of leaving and returning to the adult county correctional facility;
4. The times of arrival and departure from the training site;
5. The mode of transportation; and
6. Other pertinent data including responsibility for payment of costs, such as transportation, meals, etc.

10A:31-25.14 Family Need Release Plan

(a) A detailed Family Need Release Plan (Form CWR-6 FAMILY NEED RELEASE PLAN) shall be prepared by the County Work Release Administrator with a copy to the inmate outlining the following:

1. The nature of need;
2. The location of where family need is to be served;
3. The dates and times of leaving and returning to the adult county correctional facility;
4. The times of arrival and departure from the family need site;
5. The mode of transportation; and
6. Other pertinent data including responsibility for paying costs, such as transportation, meals, etc.

10A:31-25.15 Notification of local police departments

(a) N.J.S.A. 30:4-91.3(a) requires that the local police departments be notified when the county intends to place an inmate in the respective municipality for the purpose of a visit, study, work or residence.

(b) The local police departments shall be notified in writing whenever an inmate is being considered for placement into the work release, vocational training release or family care release phase of the Work Release Program.

10A:31-25.16 Custody status

Inmates approved for outside employment, family care or vocational training under a Work Release Program shall be classified as minimum custody and housed separately from other inmates serving terms in ordinary confinement, if possible.

10A:31-25.17 Orientation

(a) When the inmate has been accepted into the Work Release Program and the appropriate applications and plans have been completed, the County Work Release Administrator shall provide an orientation to the inmate.

(b) The orientation shall ensure that the inmate is made aware of and has a clear understanding of the rules, regulations and conditions governing the Work Release Program.

(c) The County Work Release Administrator or his or her designee shall also ensure that the employer is made aware of the rules and regulations and of the employer's responsibilities concerning the Work Release Program.

(d) The County Work Release Administrator shall make periodic evaluations of the extent of family needs and of job and vocational training sites to ensure that the rules and regulations governing the Work Release Program are not being violated.

10A:31-25.18 Review of status and termination

(a) The County Work Release Administrator may hold the inmate in confinement pending judicial review of the inmate's status, when there is cause to believe that the inmate has:

1. Violated the rules of the Work Release Program; or
2. Been charged with the commission of an offense.

(b) The County Work Release Administrator shall submit a written report to the court which will include the reason(s) for holding the inmate in confinement and a request that the court review the inmate's status in the Program.

(c) The County Work Release Administrator shall implement the court's decision.

(d) No inmate may be removed from the Work Release Program without an order from the court authorizing such a removal.

10A:31-25.19 Escape

(a) An inmate shall be deemed an escapee if the inmate:

1. Fails to return to the adult county correctional facility within the prescribed time or has not notified the facility within the one hour grace period that he or she is in the process of returning; or
2. Fails to notify the facility that he or she has been detained (that is, hospitalized, arrested, etc.); or
3. Fails to obtain authorization to leave his or her place of employment.

(b) If the inmate contacts the facility within the one hour grace period and is given a reasonable time limit within which to return to the facility but fails to do so, the inmate shall be declared an escapee if there are no extenuating circumstances or verified legitimate reasons for the inmate's failure to return within the time limit.

(c) In all cases of escape, the County Work Release Administrator shall arrange for immediate notice to the:

1. County Jail Administrator;
2. Local police;
3. State police; and
4. Court.

10A:31-25.20 Quarterly report

(a) The County Work Release Administrator shall be responsible for preparing a quarterly report (Form CWR-9 QUARTERLY REPORT OF WORK RELEASE) which shall be submitted to the County Board of Freeholders and the New Jersey Department of Corrections.

(b) The quarterly report shall contain a general summary of Work Release Program information, which includes, but is not limited to, the following:

1. The total number of participants in the Program;
2. The total number of admissions to the Program;
3. The total number of terminations from the Program;
4. The total number of revocations for violations of conditions; and
5. The total number of removals because of illness or death.

(c) The quarterly report shall also contain other statistical information on the Work Release Program and facts as may be requested by the County Board of Freeholders and the New Jersey Department of Corrections.

10A:31-25.21 Arrangements with other counties

(a) An inmate may be housed in another county for the purposes of work release when the court, issuing the release placement order, authorizes the County Work Release Administrator to arrange with the County Work Release Administrator of another county for the employment of an inmate within that county.

(b) The inmate shall be in the custody of the other county and subject to the commitment and all applicable regulations while the inmate is participating in the Work Release Program.

(c) Agreements between cooperating counties shall include a statement of financial arrangements.

10A:31-25.22 Time credits

(a) Pursuant to N.J.S.A. 30:8-50, an inmate participant may be granted a reduction of not more than one-quarter of his or her term if the inmate's conduct, diligence and general attitude merit such reduction (see N.J.A.C. 10A:31-23.1).

(b) Form CWR-7 DIMINUTION OF TERM shall be used to notify the appropriate person in the county jail as to the number of days to be credited in reduction of an inmate's sentence.

SUBCHAPTER 26. INMATE SERVICES AND PROGRAMS

10A:31-26.1 Social Services Program

(a) A Social Services Program shall be administered and supervised by a person with a Bachelor's degree or four years experience in the social and behavioral sciences.

(b) Counseling shall be provided by a qualified, trained counselor and shall include, but is not limited to:

1. Individual counseling;
2. Drug and alcohol addiction counseling;
3. Family counseling;
4. Crisis intervention;
5. Vocational counseling;
6. Discharge planning;
7. Release preparations; and
8. The referral of inmates to existing community resources.

(c) In the absence of qualified social service personnel, social services may be provided through contractual arrangements with community agencies.

(d) When community agencies are used to provide social services, a staff member of the adult county correctional facility shall be responsible for coordinating and documenting the use of these community agencies.

(e) Records shall be maintained documenting all counseling activities.

10A:31-26.2 Education Program

(a) An area suitable for conducting educational classes shall be designated for the Education Program.

(b) A qualified teacher shall administer and supervise the Education Program.

(c) Inmates shall have access to educational programs and vocational training, when it is available within the adult county correctional facility.

(d) Educational courses available for inmates shall include, but not be limited to, the following:

1. Adult Basic Education;
2. General Education Diploma (G.E.D.); and
3. Correspondence courses for both high school and college credits.

(e) English as a second language (ESL) may be made available for inmates when deemed appropriate.

10A:31-26.3 Religious services

(a) All inmates shall be afforded full and equal opportunity to practice their religion, or refrain from involvement in religion, subject only to the limitations necessary to maintain order and security.

(b) The adult county correctional facility shall provide for inmate participation in religious services on a voluntary basis.

(c) Representatives from the various recognized religions shall be contacted to provide counseling and religious services.

(d) The facility shall ensure that weekly religious services are conducted.

10A:31-26.4 Recreation and Leisure Time Activities Program

(a) A staff member shall administer and supervise the Recreation and Leisure Time Activities Program.

(b) The adult county correctional facility shall provide for both indoor and outdoor recreation areas.

(c) All inmates, except those in disciplinary detention, shall be provided with the opportunity to participate in leisure time activities on a daily basis. Such leisure time activities may include:

1. Watching television;
2. Listening to the radio;
3. Playing cards; and
4. Initiating and completing arts and crafts projects.

(d) The facility shall provide inmates access to recreational opportunities and equipment.

(e) Inmates shall be given the opportunity to participate in a minimum of one hour of physical exercise and recreation each day outside the living unit.

(f) Weather permitting, recreation activities should be scheduled for out-of-doors.

10A:31-26.5 Library Program

(a) An area accessible to inmates shall be designated as the library.

(b) The adult county correctional facility shall provide a staff member or a volunteer to coordinate and supervise the Library Program.

(c) Library services shall be made available to inmates daily, excluding weekends and holidays.

(d) Library services provided shall include, but are not limited to:

1. Materials responsive to the interests and educational needs of users; and
2. An information service to locate facts as needed.

(e) Library resources shall be supplemented by local, regional, and State libraries.

(f) Foreign language materials, as well as materials for the blind and physically handicapped, shall be made accessible when appropriate.

SUBCHAPTER 27. VOLUNTEER SERVICE PROGRAM

10A:31-27.1 Coordinator of Volunteer Service Program

A staff member shall be responsible for coordinating the Volunteer Service Program.

10A:31-27.2 Recruiting volunteers

In adult county correctional facilities where there is limited staff to provide the necessary programs and services, the Jail Administrator shall attempt to secure the services of volunteers and/or county-based organizations.

10A:31-27.3 Credentials

Volunteers shall present their credentials or otherwise prove their professional competency at the time of submitting their initial volunteer application.

10A:31-27.4 Screening process

Any person desiring to become a volunteer shall be screened, and the appropriate State Bureau of Investigation (SBI) and Federal Bureau of Investigation (FBI) checks shall be completed.

10A:31-27.5 Orientation

Volunteers shall receive an orientation appropriate to the nature of their assignments within the adult county correctional facility.

10A:31-27.6 Volunteer identification

(a) A system for volunteer identification shall be developed, which may include, but is not limited to, the following:

1. A volunteer I.D. card;
2. A photograph of the volunteer;
3. The name and address of the volunteer;
4. The home and work telephone number of the volunteer;
5. The agency or group represented by the volunteer; and
6. The volunteer service provided.

10A:31-27.7 Volunteer agreement

Volunteers shall sign an agreement to abide by the adult county correctional facility policies, procedures and rules, particularly those relating to confidentiality of information (see N.J.A.C. 10A:31-6.6).

10A:31-27.8 Curtailing, postponing or discontinuing the services of a volunteer

(a) The Jail Administrator may curtail, postpone or discontinue the services of a volunteer or volunteer organization for reasons which include, but are not limited to:

1. Any breach of confidentiality;
2. Unlawful conduct or breach of adult county correctional facility rules and regulations;
3. Violation(s) of the rules of the Volunteer Service Program; and
4. Any conduct which threatens the order or security of the facility or the safety of the volunteer or others.

SUBCHAPTER 28. JUVENILES

10A:31-28.1 Prohibition against placement in adult county correctional facilities

Pursuant to N.J.S.A. 2A:4A-37, juveniles shall not be detained in an adult county correctional facility, except as set forth in N.J.S.A. 2A:4A-36.

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Motor Vehicle Self-Insurance

Proposed New Rules: N.J.A.C. 11:3-30

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

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 39:6-50.1; 39:6-52 to 39:6-54.

Proposal Number: PRN 1989-484.

Submit comments by October 18, 1989 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN-325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On January 14, 1988, amendments to N.J.S.A. 39:6-52 to 54 were enacted which transferred the administration of the motor vehicle self-insurance program from the Division of Motor Vehicles to the Department of Insurance. The amendments also provide more detailed filing requirements for the issuance or renewal of a certificate of self-insurance.

In order to implement this statute, the Department proposes these new rules setting forth the filing requirements for the issuance or renewal of a certificate of self-insurance. The proposed rules further clarify that a certificate of self-insurance will not be issued or renewed until the Department receives notification from the New Jersey Automobile Full Insurance Underwriting Association that the applicant or certificate holder has paid the applicable policy constant or RMEC pursuant to N.J.S.A. 17:29A-37.1 and 17:30E-1 et seq., respectively. Proposed N.J.A.C. 11:3-30.1 and 11:3-30.2 set forth the purpose and scope of the proposed new rules. Proposed N.J.A.C. 11:3-30.3 sets forth the definitions of terms used in the subchapter. Proposed N.J.A.C. 11:3-30.4 describes the general minimum requirements to apply for a certificate of self-insurance. Proposed N.J.A.C. 11:3-30.5 sets forth the filing requirements for obtaining a certificate of self-insurance. Proposed N.J.A.C. 11:3-30.6 sets forth the filing requirements for the renewal of a certificate of self-insurance. Proposed N.J.A.C. 11:3-30.7 provides that the Commissioner may require the furnishing of a surety bond or evidence of excess insurance. Proposed N.J.A.C. 11:3-30.8 provides that the Commissioner may make or cause to be made audits or examinations as he deems necessary. Proposed N.J.A.C. 11:3-30.9 provides that a public entity shall notify the Commissioner in writing if it currently has or plans to establish a self-insurance program or discontinues such a program currently in effect. Proposed N.J.A.C. 11:3-30.10 sets forth the procedures for the cancellation of a certificate of self-insurance.

Social Impact

The primary social impact of the proposed new rules is that the filing requirements for the issuance or renewal of a certificate of self-insurance will be clearly and fully set forth. This will benefit persons seeking to self-insure motor vehicles. This will also benefit the Department in that applicants or certificate holders will submit complete and accurate filings. Furthermore, the filing requirements will provide data whereby the Department may assess the financial condition of a prospective self-insurer. This will benefit the public by ensuring that the prospective self-insurer will be possessed of an ability to pay judgments obtained against it for liabilities resulting from motor vehicle accidents.

Economic Impact

The primary economic impact on those seeking to establish or continue a self-insurance program is that they may be required to pay a fee for a credit report to be completed by a credit agency acceptable to the Commissioner. While this is an additional burden, the Department believes this burden to be minimal. Furthermore, the filing requirements will allow the Department to assess the financial condition of an applicant or certificate holder. This will benefit the public by ensuring that a prospective self-insurer will be able to satisfy its obligations to pay motor vehicle liability claims.

There is no additional economic impact imposed by the proposed new rules. Much of the data to be filed is already submitted to the Department. Therefore, there are no significant additional costs to the Department due to these proposed new rules.

Regulatory Flexibility Analysis

The proposed new rules will apply to few, if any, "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

To the extent the new rules apply to "small businesses," they will be businesses seeking to establish or continue a self-insurance program. The reporting, recordkeeping or other compliance requirements are clearly and fully set forth in the proposed new rules. The initial and annual compliance costs would be those associated with compiling and filing the data required. In addition, there may be an additional fee to cover the cost of a credit report. To the extent that the new rules apply to "small businesses," they may impose a greater economic burden in that they might have to devote proportionately more time and more staff to complete and file the data required. Similarly, any applicable credit report fee might impose an additional burden on a small business. The Department believes that these impacts would be minimal. Much of the data required is already filed with the Department. Furthermore, any person in whose name more than 25 vehicles are registered or leased should not be unduly burdened by any applicable credit report fee.

The proposed new rules provide no different compliance requirements based on business size. The proposed new rules implement N.J.S.A. 39:6-52 to 39:6-54 which set forth the requirements for the issuance or renewal of a certificate of self-insurance. In the interests of consistency and uniformity in the implementation of the statute and due to the minimal nature of any additional impact imposed, no differentiation in requirements is proposed based on business size.

Full text of the proposal follows:

SUBCHAPTER 30. MOTOR VEHICLE SELF-INSURANCE

11:3-30.1 Purpose

This subchapter sets forth the filing requirements for motor vehicle self-insurers pursuant to N.J.S.A. 39:6-50.1, and 39:6-52 to 39:6-54.

11:3-30.2 Scope

The provisions of this subchapter apply to any person seeking to qualify as a motor vehicle self-insurer in New Jersey, except public entities pursuant to N.J.S.A. 39:6-54.

11:3-30.3 Definitions

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

"Applicant" means a person applying for a certificate of self-insurance who does not currently possess a valid certificate.

"Association" means the New Jersey Automobile Full Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq.

"Certificate" means certificate of self-insurance.

"Certificate holder" means a person who currently possesses a valid certificate of self-insurance.

"Certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to do business.

"Commissioner" means the Commissioner of Insurance.

"Motorized bicycle" means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 cubic centimeters (cc.) or said motor is rated at no more

than 1.5 brake horsepower and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

"Motor vehicle" means all vehicles propelled otherwise than by muscular power, excepting such vehicles as run upon rails or tracks and motorized bicycles.

"Person" means a natural person, firm, co-partnership, association or corporation.

"Public entity" means this State, any political subdivision of this State or any municipality therein.

11:3-30.4 General requirements

(a) Any person in whose name more than 25 motor vehicles are registered or in whose name more than 25 motor vehicles are leased may qualify as a self-insurer by obtaining a certificate of self-insurance issued at the discretion of the Commissioner as provided in this subchapter.

(b) All filings for certificates of self-insurance, renewals, and any other filings deemed necessary by the Commissioner pursuant to this subchapter shall be sent to:

New Jersey Department of Insurance
Financial Exams Division
20 West State Street
CN 325
Trenton, New Jersey 08625
Attention: Self-insurers

11:3-30.5 Certificate of self-insurance

(a) Any person applying for a certificate of self-insurance shall submit the following to the Commissioner:

1. A completed application form on forms to be provided by the Commissioner;

2. The most current financial statement and financial statements for the two years immediately preceding the date of such current financial statement:

i. All financial statements shall be certified by a Certified Public Accountant;

ii. If the applicant is a subsidiary of a corporation, the applicant shall also submit the financial statements of the subsidiary's ultimate parent corporation;

iii. If the applicant is a corporation, the Commissioner may also include the name of any subsidiary corporation under the control of that corporation in the certificate of self-insurance if the ultimate parent corporation guarantees that it will discharge the subsidiary's liability as evidenced by the filing of an indemnity agreement. If the ultimate parent corporation does not provide such a guarantee, the subsidiary shall make a separate application and receive independent qualification as a self-insurer. If the name of the subsidiary is included in the certificate of self-insurance of the ultimate parent corporation and ownership of the ultimate parent or subsidiary corporation changes, the ultimate parent or subsidiary shall reapply for a certificate of self-insurance within 30 days of the ownership change; and

3. A $1,000 filing fee.

(b) After the submission of an application, the Commissioner may require an additional fee to cover the costs of further examinations which may include a credit report to be prepared by a credit agency acceptable to the Commissioner.

(c) If an application is approved and the Commissioner receives notification from the Association that the applicant has paid any applicable policy constant or RMEC pursuant to N.J.S.A. 17:29A-37.1 and 17:30E-1 et seq., respectively, the Commissioner shall issue a certificate of self-insurance to the applicant.

(d) All certificates of self-insurance are valid from the date of issuance until June 30 immediately following and may be renewed thereafter, pursuant to N.J.A.C. 11:3-30.6, for a one year period beginning July 1 and ending June 30 the following year.

11:3-30.6 Renewals

(a) Any certificate holder applying for renewal shall submit the following so that it is received by the Commissioner not later than June 1 of the year of the expiration date of such certificate:

1. An accident and claim activity report on forms to be provided by the Commissioner;

2. A financial statement for the calendar year immediately preceding the expiration date of the certificate of self-insurance certified by a Certified Public Accountant;

3. An updated vehicle listing which shall include a listing of the vehicles subject to any applicable policy constant or RMEC pursuant to N.J.S.A. 17:29A-37.1 and 17:30E-1 et seq., respectively;

4. A $1,000 renewal fee; and

5. Any other information that is substantially different from the information provided in the original application form or from the information provided in the last renewal period.

(b) After the submission of an application for renewal, the Commissioner may require an additional fee to cover the costs of further examinations which may include a credit report to be prepared by a credit agency acceptable to the Commissioner.

(c) If an application for renewal is approved and the Commissioner receives notification from the Association that the certificate holder has paid any applicable policy constant or RMEC pursuant to N.J.S.A. 17:29A-37.1 and 17:30E-1 et seq., respectively, the Commissioner shall issue a new certificate of self-insurance.

11:3-30.7 Surety bond requirement

(a) The Commissioner may require the furnishing of a surety bond and/or evidence of excess insurance.

(b) If the applicant or certificate holder is required to furnish a surety bond, the surety bond shall be in an amount of not less than $300,000, with an additional $10,000 for each vehicle registered or leased in the applicant's or certificate holder's name over the minimum required to qualify as self-insurer under this subchapter, up to a maximum amount of $1,000,000.

11:3-30.8 Audits and examinations

(a) The Commissioner may make or cause to be made audits or examinations as may be necessary to determine the ability of the applicant or the certificate holder to discharge its financial obligations as a self-insurer.

(b) The applicant or certificate holder shall pay the reasonable expenses of the audit or examination.

11:3-30.9 Public entities

(a) This subchapter does not apply to any motor vehicle owned by the United States, this State, any political subdivision of this State or any municipality therein; nor to any motor vehicle which is subject to the requirements of law requiring insurance or other security on certain types of vehicles, other than the requirements of N.J.S.A. 39:6A-1 et seq. or N.J.S.A. 39:6B-1 et seq.

(b) Notwithstanding the provisions in (a) to the contrary, any public entity that currently has or will establish in the future a self-insurance program or plans to discontinue a self-insurance program currently in effect, shall notify the Commissioner in writing that it currently has, will establish or discontinue such a program.

11:3-30.10 Cancellation of certificate of self-insurance

After a hearing conducted 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, upon not less than five days' notice, the Commissioner may cancel a certificate of self-insurance upon reasonable grounds including, but not limited to, failure to pay any judgment within 30 days after such judgment has become final.

(a)

DIVISION OF ACTUARIAL SERVICES

Minimum Standards for "65-and-Older" Health Coverage

Proposed Amendments: N.J.A.C. 11:4-16.6 and 16.8; 11:4-23 and Appendix to Subchapters 16 and 23, "Bridging the Medicare Gaps: A Guide to Medicare Supplements", and "Notice on Changes in Medicare and your Medicare Supplement Insurance—1989"

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., 17:48A-1 et seq., 17:48E-1 et seq., 17B:26-1 et seq., 17B:26A-1 et seq., 17B:27-26 et seq., 17B:30-1 et seq. and N.J.S.A. 26:2J-1 et seq.

Proposal Number: PRN 1989-495.

Submit comments by October 18, 1989 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN-325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments are in response to a Federal mandate concerning the Medicare Catastrophic Coverage Act of 1988. The Federal government adopted the NAIC model regulation for Medicare supplement insurance, concurrently providing that the NAIC model standard would apply in a state effective on the earlier of (1) the date the state adopts standards equal to or more stringent than the NAIC standards, or (2) one year after the NAIC first adopts the standards. See House Conference Report 100-661, p. 236. In order to comply with the Federal standards, N.J.A.C. 11:4-16 and N.J.A.C. 11:4-23 must be amended.

The thrust of the amendments as proposed is to make Medicare supplement and limited benefit health products more responsive to the changes occurring in Medicare benefits, and the consumers' needs. These proposed amendments are also intended to supply those Medicare-eligible senior citizens with more comprehensive and accurate information, so as to facilitate these consumers in their evaluation of proferred Medicare supplement and limited health benefits. Both intentions are to be achieved through refinements in disclosure requirements, and amendments in the calculation and documentation of loss ratios. Further, new provisions regarding advertising and marketing, and producer compensation are expected to increase favorable conditions for the consumer.

N.J.A.C. 11:4-16 regulates general individual health coverage sold in New Jersey. N.J.A.C. 11:4-16.6 and 16.8, which address minimum benefits and disclosure requirements, respectively, have been amended where necessary to bring the sections current with the Federal standards for Medicare supplements. No other substantive changes occur in this subchapter.

N.J.A.C. 11:4-23, which has traditionally been applicable only to Medicare supplement coverage sold by commercial insurers and service corporations in New Jersey, has been amended throughout to include regulation of Medicare supplement benefits provided by health maintenance organizations and limited benefit health policies provided by any insurer. Furthermore, the scope of applicability of this subchapter has been amended to incorporate regulation of those policies and contracts issued outside of New Jersey, if benefits of these policies and contracts are provided under a certificate delivered to a resident of this State.

The minimum benefits requirements have been amended to meet the Federal standards. As always, these are the minimum benefits an insurer must offer; the insurer may provide greater benefits to the extent that benefits already provided by Medicare are not duplicated, and other requirements of N.J.A.C. 11:4-23 are met. It should be noted that limited benefit health policies do not have to meet the minimum benefit or claims payment standards for Medicare supplement coverage, but that all other proposed requirements of N.J.A.C. 11:4-23 would apply to these policies.

Policies issued prior to January 1, 1989 must include coverage for all Part A inpatient hospital amounts. Policies issued after January 1, 1989 must provide coverage for either all or none of the Medicare Part A deductible amount. References to specific duration periods and dollar maximums for copayments or deductibles have been deleted, because Medicare now provides full coverage for an unlimited number of days spent in the hospital per calendar year, after the annual deductible is met.

All policies must provide coverage for the copayment amount of the first eight days per calendar year incurred for skilled nursing facility care. Currently, service corporations are not required to offer any benefits for care received in a skilled nursing facility. This exclusion is removed by the proposed amendment.

The amendments further require that until January 1, 1990 all policies must provide coverage for the 20 percent copayment for Medicare eligible expenses under Part B, up to a $5,000 maximum. After January 1, 1990, the $5,000 maximum is removed, and the copayment out-of-pocket maximum will be determined by Medicare and adjusted on an annual basis. This out-of-pocket maximum is scheduled to be substantially less than the $5,000 cap presently in place. This is because Medicare will be covering a larger portion of the Part B expenses Medicare classifies as "reasonable".

Additionally, Medicare supplement policies must provide coverage for Part B expenses involving the first three pints of blood product and copayment amounts for Medicare eligible expenses for covered home intravenous drug therapy and outpatient immunosuppressive therapy, less any Medicare drug deductibles, when applicable. The drug therapies to be covered will be determined by the U.S. Secretary of Health and Human Services.

The filing requirements addressing riders and endorsements which insurers must issue to insureds whose coverage will change as a result of Medicare benefit changes, are amended to require filing with the Commissioner at least 60 days prior to the effective date of Medicare changes. This is intended to promote adequate notification of changes to the insured, at the earliest possible time. Presently, notifications such as these are not required to be submitted for filing by the Commissioner until 45 days after the Medicare changes become effective.

The proposed amendments require that premium rate adjustment filings be submitted by insurers providing Medicare supplement coverage at least 60 days prior to the effective dates of Medicare benefit changes. This is a significant departure from the present 45-day-after requirement. This subsection further restricts when any premium adjustments may be made and the manner in which they may be applied to insureds. Amended N.J.A.C. 11:4-23.8 addresses this issue.

The rules are amended to provide a uniform 30-day free examination period for both Medicare supplement and limited benefit health coverage. Presently, only direct response issued policies and contracts have a 30-day examination period while all other policies are subject to a 10-day review period. If the applicant is dissatisfied with the policy or contract for any reason, he or she may return it during this period, and receive a full refund of any monies paid.

The disclosure requirements contain proposed amendments. The majority of amendments address changes to be made in the Outlines of Coverage and the booklet "Bridging the Medicare Gaps: A Guide to Medicare Supplements" so that the outlines and booklet will provide the consumer with accurate information. However, other amendments in the disclosure requirements impact upon insurers.

Direct response solicitation insurers and service corporations are currently exempted from the requirement that insurers provide applicants with the above-referenced booklet at the time of application, but are permitted to wait until the policy is issued to provide the booklet. The proposed amended rule would remove the exemption.

Further, all insurers will be required, under the amendments, to provide all applicants with a five year annual premium pattern and a five year historical prospective on the average percentage increase in annual premiums experienced by similar policy forms with similar premium patterns, at the time of issuance of the applicant's policy. Subsequently, insurers will be required to provide all insureds with a revised five year premium pattern on the renewal date which follows the approval by the Department of Insurance of a new premium table filing of an insurer.

Loss ratio standards contain substantial amendments. All subject insurers will be required to demonstrate that the loss ratio for the most recent calendar year of a policy or contract which has been in force three years or longer, is at least 65 percent for individual policies and contracts and at least 75 percent for group policies or contracts. Moreover, the insurer must demonstrate annually that the expected aggregate loss ratio for the entire period for which the policy or contract is rated meets the anticipated loss ratio, which cannot be less than the 65 percent/75 percent requirement. This amendment is more stringent than the present requirements in its method of compliance demonstration. Insurers whose expected aggregate loss ratio is less than the greater of the 65 percent/75 percent standard or the anticipated loss ratio must adjust premiums or fees in order to comply with law, resulting in reductions of, and, where applicable, refunds and/or credits for premiums or fees.

Insurers will also be required to file an estimate of the policies, contracts or certificates expected to be issued and delivered in New Jersey. This estimate must at least equal the rule standard of a fourth year accumulated mean calendar year exposure of 1,000. Insurers whose policies, contracts or certificates fail to meet the standard will be required to cease the issue or delivery of the policy, contract or certificate in this State, and may incur corrective assessments.

N.J.A.C. 11:4-23, as amended, would now require that out-of-State insurers delivering certificates (or policies or contracts) in New Jersey meet the filing requirements imposed upon in-State insurers, and, thus,

the minimum standards of New Jersey's Medicare supplement laws. In this same regard, the filing standards for in-State service corporations have been altered for purposes of this subchapter. All policy forms for Medicare supplement and limited benefit health coverage will be required, under the amended rules, to be filed by the Commissioner prior to their issue or delivery. If forms are not affirmatively approved or disapproved by the end of the 30th day after submission, then the forms may be deemed approved. This is the standard by which commercial in-State insurers and health maintenance organizations have been filing for some years now, and the amendments will help to make these types of form filings more uniform.

N.J.A.C. 11:4-23.11 prohibits certain producer compensation. The intent is to reduce a practice called "churning," whereby producers persuade their eligible clients to change policies or contracts frequently, although the change in the policy or contract seldom results in any greater benefit or saving to the client. The impetus for churning of policies by producers has at least partially been provided through high first year commissions on policies and contracts, which commissions decrease significantly in later years; thus, the financial best interests of the producer is to persuade clients to change policies or contracts every two or so years, rather than to renew current coverage. N.J.A.C. 11:4-23.11 will prohibit insurers from compensating producers on newly sold policies except to the extent that the producer would have been compensated on renewal of the old policy or contract if the client's new and old policy or contract are with the same company and the benefits are substantially the same, or if the new policy and old policy have the same producer of record, or if the producers are different but the policies were both placed with the same agency.

N.J.A.C. 11:4-23.13 amends the replacement notices to applicants, and the standards for replacements. The notices would carry the 30-day free examination period for all replacement policies and contracts. The amended rule will also restrict the use of preexisting condition exclusion clauses in policies known to be replacing current in force policies of the applicant if the new and existing policies are both issued by the same insurer.

N.J.A.C. 11:4-23.14 concerns advertising. By Federal standards, insurers are required to file their advertising for Medicare supplement products with the Commissioner of Insurance. N.J.A.C. 11:4-23.14 expresses this mandate and includes limited benefit health policies in the requirement. It also adds that advertising by insurers subject to the amended rule must be in compliance with the Trade Practice Act of N.J.S.A. 17B:30-1 et seq. and the current advertising rules at N.J.A.C. 11:2-11 as well as the Medicare Supplement Acts. This section also establishes certain procedures which the Commissioner may institute if the advertising is in violation of New Jersey's statutes and rules. The intent of this section is to promote more accurate advertising of Medicare supplement and limited benefit health products in this State. Misleading information, scare tactics, inaccurate reporting of Medicare benefits, Medicare Supplement benefits, and costs are all practices of which the Federal and State governments strongly disapprove.

Social Impact

These proposed amended rules are intended to facilitate the education and development of a more knowledgeable insurance consumer. The Department believes that an informed consumer is the most effective means by which to reduce and control Medicare supplement and limited benefit health coverage distortions, sales abuses and pricing. Consumers who understand fully what benefits are available to them through Medicare, and what costs Medicare will not cover, should be better able to evaluate the varying supplemental and complementary health products available, and to determine their value relative to the consumers' specific circumstances.

This should be achieved through several avenues. First, insurers are required to keep their insureds apprised of the changes occurring in Medicare, and the impact these changes will have upon the insureds' supplemental and/or limited benefit coverage and premiums. Second, insurers should become more scrupulous in their advertising and marketing strategies. The advertising of each insurer selling Medicare supplement and limited benefit health products in New Jersey will be required to be filed with the Commissioner under the proposed amended rules. The Commissioner shall have the discretion to review the advertising filings and impose penalties for the use of advertising techniques which are determined to be deceptive. This, in turn, is expected to lead to more accurate marketing and advertising over time.

The Department has amended its buyer's guide, entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements," to reflect the current status of Medicare, and the available products to cover costs which Medicare does not. The buyer's guide will continue to be required to be distributed by insurers to prospective insureds. The booklet will also continue to be available from the Department of Insurance upon request.

Additionally, Medicare supplement products previously issued in other states and delivered to New Jersey residents will now have to conform with New Jersey's minimum standards prior to being sold in this State as an approved Medicare supplement product. This should not only ensure that consumers have high quality, competitively priced products available to them, but it should eliminate some of the confusion resulting from the marketing of policies in New Jersey which do not meet State standards, but over which the State had little control, and the consumer had little recourse. In total, the anticipated impact of these amended rules will be to permit the Medicare eligible senior citizen to make a thoroughly and accurately informed choice about how and where to spend his or her health dollars.

Economic Impact

Both the Federal and state governments have been endeavoring to reduce the costs of health care, to the greatest extent currently possible, for America's senior citizens. In this regard, Medicare coverage has undergone significant changes in an effort to meet the catastrophic costs of older Americans. At the same time, in order to reduce real costs to the consumer, it is necessary for Medicare supplement and limited benefit health products to undergo significant changes as well, so as not to duplicate coverage already provided to the consumer through Medicare. These amended rules attempt to eliminate the wasteful spending of health dollars by Medicare eligible senior citizens on Medicare supplement and limited health benefits which will never be utilized because the benefit coverage is already provided by Medicare.

Premium costs of almost all coverage sold to senior citizens will also be subject to closer scrutiny via the loss ratio requirements. Standards for meeting loss ratio requirements have been amended. Loss ratio maturity will be considered to be determinate after the three-year maturity mark of a particular policy or contract. Policies and contracts need to meet the 65 percent (individual) or 75 percent (group) standard after that time, in addition to projecting that their expected aggregate loss ratios will meet the State requirements over the life of the policy or contract.

These more stringent requirements will reduce the profit for many insurers on these types of products, while increasing related administrative expenses upon initial implementation of the amended rules. These rules would also require the reduction of premiums in many instances, while making it more difficult to structure premium tables based on a level premium concept. It is possible that given the proposed amended requirements discussed above, and the market penetration requirement of N.J.A.C. 11:4-23.10, some insurers will leave the Medicare supplement and limited health market in New Jersey.

The filing requirements will probably be an added burden and cost to many insurers selling Medicare supplement and limited benefit health products in this State. The filing requirements will also present an added financial burden to the Department of Insurance. The Department will be able to absorb the costs of forms filings from health maintenance organizations and out-of-State insurers within its presently allocated resources. The requirement of filing of advertising with the Commissioner is part of a Federal mandate, and the relevant costs will necessarily be absorbed.

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 proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

11:4-16.6 Minimum standards for benefits

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

(c) General rules include the following:

1. All policies, except short-term nonrenewable policies, **Medicare supplement policies and limited benefit health policies,** and as otherwise provided in this paragraph, shall provide that the policyholder shall have the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examination of the policy,

the policyholder is not satisfied for any reason. With respect to policies issued pursuant to a direct response solicitation, **all Medicare supplement policies, and limited benefit health policies,** the policy shall provide that the policyholder shall have the right to return the policy within [thirty] **30** days of its delivery, and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

2.-22. (No change.)

(d)-(i) (No change.)

(j) "Medicare supplement coverage" is a health insurance policy sold to a Medicare eligible person, which is designed primarily to supplement Medicare, or is advertised, marketed, or otherwise purported to be a supplement to Medicare and which meets the following minimum benefit standards and rules:

1. Policies issued prior to January 1, 1989 shall include[:] **coverage for all of the Medicare Part A inpatient hospital amount;**

[i. Coverage of the 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;

ii. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges to the extent not covered by Medicare during use of Medicare's lifetime hospital inpatient reserve days;

iii. 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 for an additional period of not less than 365 days;

iv. Coverage of Part A Medicare eligible expenses for skilled nursing facility confinement to the extent not covered by Medicare from the 21st day through the 100th day in any Medicare benefit period; and

v. Coverage of Part B Medicare eligible expenses to the extent not covered by Medicare, subject to a maximum calendar year out-of-pocket deductible of $200.00 of such expenses and to a maximum calendar year benefit of at least $5,000.]

2. Policies issued on or after January 1, 1989 shall provide coverage of [Part B Medicare eligible expenses to the extent not covered by Medicare, subject to a maximum calendar year out-of-pocket deductible of $200.00 of such expenses and a maximum calendar year benefit of at least $5,000.] **either all or none of the Medicare Part A inpatient hospital deductible amount;**

i. All policies shall provide coverage for the daily copayment amount of Medicare Part A eligible expenses for the first eight days per calendar year incurred for skilled nursing facility care;

ii. All policies shall provide coverage for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells as defined by Federal regulations) pursuant to Medicare Part A, unless replaced in accordance with Federal regulations.

3. Until January 1, 1990, all policies shall provide coverage of 20 percent of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of $200.00 of such expenses and to a maximum benefit of at least $5,000 per calendar year;

4. Effective January 1, 1990, all policies shall provide:

i. Coverage for the copayment amount of Medicare eligible expenses, excluding outpatient prescription drugs under Medicare Part B, regardless of hospital confinement, up to the maximum out-of-pocket amount for Medicare Part B after the Medicare deductible amount;

ii. Coverage for the Medicare-reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells as defined by Federal regulation) pursuant to Medicare Part B, unless replaced in accordance with Federal regulation;

iii. Coverage for the copayment amount of Medicare eligible expenses for covered home intravenous (IV) therapy drugs (as determined by the Secretary of Health and Human Services) subject to the Medicare outpatient prescription drug deductible amount, if applicable; and

iv. Coverage for the copayment amount of Medicare eligible expenses for outpatient drugs used in immunosuppressive therapy, subject to the Medicare outpatient prescription drug deductible, if applicable.

[3.] **5.** Medicare supplement coverage shall comply with the following:

i.-ii. (No change.)

iii. Medicare supplement coverage shall provide that benefits designed to cover the cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount, copayment percentage factors, and out-of-pocket maximums, **in response to which changes premiums may be correspondingly modified;**

iv.-viii. (No change.)

ix. Existing Medicare supplement policies shall be appropriately amended or endorsed to eliminate benefit duplications with Medicare which are caused by Medicare benefit changes. Any riders or endorsements shall specify the benefits deleted, or shall otherwise result in a clear description of the Medicare supplement benefits provided by the policy. Such riders or endorsements shall be submitted to the [commissioner] **Commissioner** for filing [within 45] **at least 60** days [after] **prior to** the effective dates of Medicare benefit changes;

x. Appropriate premium adjustments for existing Medicare supplement policies shall be made to reflect the benefit changes required by the Medicare Catastrophic Coverage Act of 1988. The revised rates shall produce loss ratios at least equal to those originally anticipated, **and meeting the applicable standards of N.J.A.C. 11:4-23.8**. The premium rates and supporting documentation, **including that** required by N.J.A.C. 11:4-18.4, shall be submitted to the Commissioner for filing [within 45] **at least 60** days [after] **prior to** the effective dates of Medicare benefit changes [specified in the Act]. Rate revisions to reflect any other required Medicare benefit changes may be made **pursuant to the manner specified in N.J.A.C. 11:4-23**; and

xi. (No change.)

(k) "Limited benefit health coverage" is any health insurance policy which provides benefits that are less than the minimum standards for benefits required under N.J.A.C. 11:4-16.6(d), (e), (f), (g), (h), (i) and (j).

1. Such policies may be delivered or issued for delivery in this State only if the outline of coverage required by N.J.A.C. 11:4-16.8(m) or (n) is completed and delivered as required by N.J.A.C. 11:4-16.8(b).

2. In addition to (k)1 above, all limited benefit health coverage provided to persons eligible for Medicare by reason of age, must be in compliance with the requirements of N.J.A.C. 11:4-23 before delivery or issuance for delivery by the insurer to a resident of this State.

11:4-16.8 Required disclosure provisions

(a) General disclosure requirements are as follows:

1.-9. (No change.)

10. All policies, except short-term nonrenewal policies, **Medicare supplement policies and limited benefit policies sold to Medicare eligible senior citizens,** and as otherwise provided in this paragraph, shall have a notice prominently printed on the first page of the policy, or attached thereto, stating in substance that the policyholder shall have the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. With respect to policies issued pursuant to a direct response solicitation, **and all Medicare supplement and limited benefit health policies sold to Medicare eligible senior citizens,** the policy shall have a notice prominently printed on the first page of the policy, or attached thereto, stating in substance that the policyholder shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

11.-14. (No change.)

15. To ensure uniformity in the content, form and printing of the guide, each insurer shall comply with the following requirements:

i-ii. (No change.)

iii. A chart entitled "Medicare Deductible and Copayments for 1989" shall be included in the back pocket of each guide. A sample copy of this chart appears as an Appendix to this chapter. [(1)] To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of Public Affairs will provide sample copies of the chart to insurers. Insurers must adhere exactly to the format of the chart, and must include the chart in the back pocket of each guide.

iv. (No change.)

16. Delivery of the guide shall be made at the time of application [except in the case of direct response solicitations where the guide shall be delivered with the policy]. Acknowledgement of receipt of the guide shall be obtained by all insurers.

(b)-(k) (No change.)

(l) An outline of coverage regarding Medicare supplement coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of N.J.A.C. 11:4-16.6(j). **Information regarding medical service benefits and prescription drug charges under Medicare Part B shall be modified in the outline to reflect changes in Medicare as indicated herein, or as such changes subsequently occur.** The items included in the outline of coverage must appear in the sequence set forth as follows:

(COMPANY NAME AND ADDRESS)
(POLICY NUMBER WHEN AVAILABLE)
MEDICARE SUPPLEMENT COVERAGE
OUTLINE OF COVERAGE

1. Medicare Supplement Coverage—This type of policy is designed to help pay some or all of Medicare's deductibles and copayments. It also helps pay costs above Medicare's limits.

2. Read Your Policy Carefully—This outline of coverage briefly describes the important features of your policy. (Your agent, broker, or other company representative will explain each item to you so that you fully understand what you are buying.) For more information about the costs not paid by Medicare and what to look for in a policy provision, read the (Shopper's Guide) that was given to you with this form.

This form is not the insurance contract. Only the policy itself spells out rights and obligations of both you and your insurance company. It is important that you READ YOUR POLICY CAREFULLY. REMEMBER, if you are not satisfied with your policy, you have [(10-30)] **30** days to return it to the company and get your money back.

3. Annual Premium $___ You pay $___ per ___

Inpatient Hospital Benefits	Medicare—Part A	Insurance Policy Pays
You are hospitalized for an unlimited number of days per calendar year.	You pay the first $_____ Deductible. Medicare pays Balance.	$_____

Skilled Nursing Facility Benefits	Medicare—Part A	Insurance Policy Pays
You are admitted to a skilled nursing facility. You are a patient in this facility for up to 8 days during a calendar year.	You pay $_____ per day. Medicare pays balance of reasonable charges. *	$_____
You remain in the facility for any of the next 142 days—9th-150th day.	You pay nothing. Medicare pays 100% *	$0
You remain in the facility after 150 days of confinement.	You pay full amount. Medicare pays nothing.	$_____ per day.

* Payment will only be made if the skilled nursing facility is approved by Medicare and if the care given is medically necessary. NEITHER MEDICARE NOR THIS POLICY WILL PAY FOR CUSTODIAL CARE OR REST HOME CARE.

Medical Service Benefits	Medicare—Part B	Insurance Policy Pays
You receive physician services, medical supplies, ambulance and other covered services.	You pay the first $_____ Deductible.	$_____
	Until 1990, Medicare pays 80% of remaining "reasonable and necessary" charge. You pay remaining 20% of the "reasonable and necessary" charge.	Medicare eligible expenses to the extent not covered by Medicare after you have paid $_____ of these charges.
	Beginning January 1, 1990, Medicare pays 80% of remaining "reasonable and necessary" charge until an annual Medicare Catastrophic Limit is met. Medicare then pays 100% of the "reasonable and necessary" charges. You pay 20% of the "reasonable and necessary" charges, after the Medicare Catastrophic Limit is met.	**Medicare eligible expenses to the extent not covered by Medicare.**
	You pay the portion of the bill that exceeds the "reasonable and necessary" charge.	$_____ **

Prescription Drugs	Medicare—Part B	Insurance Policy Pays
	Beginning January 1, 1990, Medicare pays for all allowable inpatient prescription drugs. After the calendar year deductible is met, Medicare also pays 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for immunosuppressive drugs.	**20% of allowable home intravenous therapy drugs, and 50% of allowable charges for immunosuppressive drugs.**
	Beginning January 1, 1991, Medicare will also pay 50% of the allowable charges for all other outpatient prescription drugs, after a calendar year deductible.	**20% of allowable home intravenous therapy drugs and 50% of allowable charges for immunosuppressive drugs. ___ % of allowable charges for other outpatient drugs.† $_____ †**

Beginning January 1, 1992, Medicare will pay 60% of the allowable charges for all other outpatient prescription drugs, after a calendar year deductible.	**20% of allowable home in intravenous drugs, and 50% of allowable charges for immunosuppressive drugs. ___% of allowable charges for other outpatient drugs.† $_____ †**
Beginning January 1, 1993. Medicare will pay 80% of the allowable charges for all other outpatient prescription drugs, after a calendar year deductible	**20% of allowable home intravenous drugs, and 50% of allowable charges for immunosuppressive drugs. ___% of allowable charges for other outpatient drugs.†**
You pay the remaining Medicare-allowable charges.	
You pay any portion of the bill in excess of the Medicare-allowable charges.	**$_____ ****

Unless this space is filled with a specific dollar amount or percentage, the policy will not pay for charges that exceed Medicare's determination of "reasonable and necessary" charge, **or Medicare-allowable charges.

†Unless this space is filled in with a specific dollar amount or percentage, the policy will not pay for Medicare-allowable copayment charges, or the deductible, whichever is applicable.

4. (Statement that the policy (certificate) does or does not cover the following:)

i. Private duty nursing;

ii. Skilled nursing home care costs (beyond what is covered by Medicare);

iii. Custodial nursing home care costs;

iv. Intermediate nursing home care costs;

v. Home health care above number of visits covered by Medicare;

vi. Physician charges (above Medicare's reasonable charge);

vii. Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);

viii. Care received outside of USA;

ix. Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for or the cost of eyeglasses or hearing aids.

5. (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in 4 above.)

6. (A description of any policy provisions respecting renewability or continuation of coverage, including any reservation of right to change premiums.)

FOR ADDITIONAL INFORMATION ABOUT POLICY BENEFITS OR CLAIMS, TELEPHONE (COLLECT) (TOLL FREE) (LOCAL NUMBER)_____

(m) (No change.)

(n) An outline of coverage regarding limited benefit health coverage sold to Medicare eligible persons, in the form prescribed below, shall be issued to Medicare eligible persons in connection with policies which do not meet the minimum standards of N.J.A.C. 11:4-16.6(d), (e), (f), (g), (h), (i) and (j). **The outline of coverage shall be modified to reflect changes in Medicare coverage and the limited health benefit coverage.** The items included in the outline of coverage must appear in the sequence set forth as follows:

(COMPANY NAME & ADDRESS)
(POLICY NUMBER WHEN AVAILABLE)
LIMITED BENEFIT HEALTH COVERAGE FOR MEDICARE ELIGIBLE PERSONS
OUTLINE OF COVERAGE

1. Limited Benefit Health Coverage—This type of policy will provide you with limited benefits only. It is not designed to provide hospital and medical coverage for the cost not paid by Medicare.

2. Read Your Policy Carefully—This outline of coverage briefly describes the important features of your policy. (Your agent, broker, or other company representative will explain each item to you so that you fully understand what you are buying.) For more information about the costs not paid by Medicare and what to look for in a policy provision, (read the 'Shopper's Guide) that was given to you with this form.

This form is not the insurance contract. Only the policy itself spells out rights and obligations of both you and your insurance company. It is important that you READ YOUR POLICY CAREFULLY. REMEMBER, if you are not satisfied with your policy, you have (10-30) days to return it to the company and get your money back.

3. Annual Premium $___ You pay $___ per ___

Inpatient Hospital Benefits	Medicare—Part A	Insurance Policy Pays
You are hospitalized for an unlimited number of days per calendar year.	You pay the first $___ Deductible. Medicare pays Balance.	$_____

Skilled Nursing Facility Benefits	Medicare—Part A	Insurance Policy Pays
You are admitted to a skilled nursing facility You are a patient in this facility for up to 8 days during a calendar year.	You pay $___ per day. Medicare pays balance of reasonable costs.*	$_____
You remain in the facility for any of the next 142 days—9th-150th day.	You pay nothing. Medicare pays 100%*	**$0**
You remain in the facility after 150 days of confinement.	You pay full amount. Medicare pays nothing.	$___ per day.

*Payment will only be made if the skilled nursing facility is approved by Medicare and if the care given is medically necessary. NEITHER MEDICARE NOR THIS POLICY WILL PAY FOR CUSTODIAL CARE OR REST HOME CARE.

Medical Service Benefits	Medicare—Part B	Insurance Policy Pays
You receive physician services, medical supplies, ambulance and other covered services.	You pay the first $___ Deductible. **Until 1990,** Medicare pays 80% of remaining "reasonable and necessary" charge. You pay remaining 20% of the "reasonable and necessary" charge while you are in the hospital.	$_____ Medicare eligible expenses to the extent not covered by Medicare after you have paid $___ of these charges.

	You pay the remaining 20% of the "reasonable and necessary" charge if you are not hospitalized.	Medicare eligible expenses to the extent not covered by Medicare after you have paid $___ of these charges.
	Beginning January 1, 1990, Medicare pays 80% of remaining "reasonable and necessary" charge until an annual Medicare Catastrophic Limit is met. Medicare then pays 100% of the "reasonable and necessary" charges. You pay the remaining 20% of the "reasonable and necessary" charges after the deductible until the Medicare Catastrophic Limit is met.	**Medicare eligible expenses to the extent not covered by Medicare after you have paid $___ of these charges.**
	You pay the portion of the bill that exceeds the "reasonable and necessary" charge.	$_____**

Prescription Drugs	Medicare—Part B	Insurance Policy Pays†
	Beginning January 1, 1990, Medicare pays for all allowable inpatient prescription drugs. After the calendar year deductible. Medicare also pays for 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for immunosuppressive drugs.	**___% of allowable home intravenous (IV) therapy drug charge. ___% of allowable charges for immunosuppressive drugs.**
	Beginning January 1, 1991, Medicare will also pay 50% of the allowable charges for all other outpatient prescription drugs, after a calendar year deductible.	**___% of allowable home intravenous (IV) therapy drug charge. ___% of allowable charges for immunosuppressive drugs. ___% of allowable charges for other outpatient drugs. $___ outpatient drug deductible.**
	Beginning January 1, 1992, Medicare will pay 60% of the allowable charges for all other outpatient prescription drugs, after a calendar year deductible.	**___% of allowable home intravenous (IV) therapy drug charge. ___% of allowable charges for immunosuppressive drugs. ___% of allowable charges for all other outpatient prescription drugs. $___ outpatient drug deductible.**
	Beginning January 1, 1993, Medicare will pay 80% of the allowable charges for all other outpatient prescription drugs, after a calendar year deductible.	**___% of allowable home intravenous (IV) therapy drug charge. ___% of allowable charges for immunosuppressive drugs. ___% of allowable charges for all other outpatients drugs. $___ outpatient drug deductible.**
	You pay the remaining Medicare-allowable charges.	**$_____****
	You pay any portion of the bill in excess of the Medicare allowable charges.	**$_____****

Unless this space is filled in with a specific dollar amount or percentage, the policy will not pay for charges that exceed Medicare's determination of "reasonable and necessary" charge, **or Medicare-allowable charges.

†Unless these spaces are filled in with a specific dollar amount or percentage, the policy will not pay for Medicare-allowable copayment charges, or the deductible, whichever is applicable.

4. (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in 3 above.)

5. (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

FOR ADDITIONAL INFORMATION ABOUT POLICY BENEFITS OR CLAIMS, TELEPHONE (COLLECT) (TOLL FREE) (LOCAL NUMBER) ___

(o) (No change.)

SUBCHAPTER 23. MEDICARE SUPPLEMENT POLICIES AND CONTRACTS

11:4-23.1 Purpose

This subchapter provides for the reasonable standardization of coverage and **the** simplification of terms and benefits of Medicare supplement policies, contracts, [and] certificates **and evidences of coverage** [issued on a group basis]; [to] facilitates [public understanding and] comparison of such policies and contracts **in order to increase public understanding of the same**; [to] eliminates provisions [contained in such policies] which may be misleading or confusing in connection with [their] **the** purchase **of such policies and contracts, certificates or evidences of coverage,** or with the settlement of claims; and [to] provides for full disclosure in the sale of health insurance [and], service corporation, **and health maintenance organization** coverage[s] to persons eligible for Medicare by reason of age.

11:4-23.2 Applicability and Scope

(a) Except as otherwise specifically provided, this subchapter shall apply to:

1. All [group] Medicare supplement policies and [individual and group subscriber Medicare Supplement] contracts delivered or issued for delivery in this State on or after the effective date **hereof**;

2. All certificates **or evidences of coverage** issued under group Medicare supplement policies or [subscriber] contracts, which [policies or contracts] **evidences of coverage or certificates** have been delivered or issued for delivery in this State.

3. All limited benefit health policies, contracts, certificates or evidences of coverage delivered in this State, except that hospital indemnity and accident only policies shall not be subject to the requirements of this subchapter.

[(b) Subject to the provisions of (a), this subchapter shall not apply to:

1. Individual health insurance policies delivered or issued for delivery in this State;

2. Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this regulation; or

3. Medicare Supplement policies or subscriber contracts issued to employees or members as additions to franchise plans in existence on the effective date of this regulation.]

11:4-23.3 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 a group [Medicare supplement] policy and proposed certificate holder **or enrollee**;

2. In the case of an individual [Medicare supplement subscriber contract] **policy**, the person who seeks to contract for service and/or benefits[;] **coverage.**

[3. In the case of a group Medicare Supplement subscriber contract, the person eligible for service benefit coverage.]

"Certificate" means [:1. Any] **any** certificate **or evidence of coverage** issued under an **individual or** group Medicare Supplement **or limited benefit health** policy which [policy] **certificate or evidence of coverage** has been delivered or issued for delivery in this State [;].

[2. Any certificate issued under an individual or group Medicare Supplement contract, which contract has been delivered or issued for delivery in this State.]

"Coverage" means:

1. Any arrangement whereby an insurer agrees to indemnify or reimburse an individual or group member for some portion or part of the health related costs incurred by that individual or member, subject to the terms of the written agreement and law; and

2. Any arrangement whereby an insurer agrees to provide direct or indirect health care services to the individual or group member, subject to the terms of the written agreement and law.

"Insured" means any applicant provided coverage by an insurer as the term applicant is defined in this subchapter.

"Insurer" means any person engaged in the business of insurance providing health benefits or services, or a combination thereof, to a resident of this State.

"Limited benefit health policy" means any policy issued to an individual who is eligible, or issued to a group which has members who are eligible for Medicare by reason of their age, but which policy does not meet the minimum benefit standards required to qualify as a Medicare supplement policy in this State.

1. This term shall include group conversion policies not otherwise meeting the minimum benefit standards of this subchapter. Conversion policies from a group policy shall continue to be considered group policies for the purpose of complying with the loss ratio requirements set out at N.J.A.C. 11:4-23.8.

2. This term shall not include hospital indemnity or accident only policies.

3. Limited benefit health policies shall not be subject to the requirements of N.J.A.C. 11:4-23.6 and 23.7.

"Medicare Supplement policy" means[:

1.A] **a** group **or individual** [accident and sickness insurance] policy which is advertised, marketed, or designed primarily as, **or is otherwise held out to be,** a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age. [This] **The** term [does not] includes:

[i.] **1.** A policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization[; or]. Policies of this type shall not:

i. Be subject to the provisions of N.J.A.C. 11:4-23.6 and 23.7.

ii. Use the term "Medicare Supplement", "Medigap" or words of similar import in the description, name or other references to the policy.

2. A group conversion policy which meets the minimum benefit standards required of Medicare supplement policies in this State. Conversion policies from a group policy shall continue to be considered group policies for the purpose of complying with the loss ratio requirements set out at N.J.A.C. 11:4-23.8.

[ii. A policy of any professional, trade or occupational association for its members or former retired members, or combination thereof, if the association:

(1) Is composed of individuals who are actively engaged in the same profession, trade or occupation;

(2) Has been maintained in good faith for purposes other than obtaining insurance; and

(3) Has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members.

iii. Individual policies issued pursuant to a conversion privilege under a policy of group or individual insurance when the group policy includes provisions which are inconsistent with the requirements of this subchapter; or

2. A group or individual subscriber contract which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age. The term does not include:

i. A contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees or combination thereof or for members or former members, or combination thereof, of the labor organizations; or

ii. A contract of any professional, trade or occupational association for its members or former or retired members, or combination thereof, if the association:

(1) Is composed of individuals all of whom are actively engaged in the same profession, trade or occupation;

(2) Has been maintained in good faith for purposes other than obtaining hospital or medical service benefits;

(3) Has been in existence for at least 2 years prior to the date of its initial offering of the contract or plan to its members.

iii. Individual contracts issued pursuant to a conversion privilege under a contract of group or individual service benefits when the group or individual contract includes provisions which are inconsistent with the requirements of this subchapter.]

"Policy" shall mean any policy, subscriber contract, enrollment contract, certificate or evidence of coverage issued to an individual or group by any health insurer, whether this term is modified by the terms "Medicare supplement", "limited benefit health", "insurance" or used without any modifier.

11:4-23.4 Policy definitions and terms

(a) No [group insurance] policy [or individual or group subscriber contract] may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy unless such policy [or subscriber contract] contains definitions or terms which conform to the requirements of this section.

1. "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language, and shall not include words which establish an accidental means test, or use words such as "external, violent visible wounds" or similar words of description or characterization.

i. [The definition of injury] **"Injury"** shall not be **defined** more restrictively than [an accidental] **as a** bodily injury sustained by the

covered person [which is the] **as a result of an accident, which injury is the** direct cause of [the] **a** loss, independent of disease, bodily infirmity or any other cause, and which **injury** occurs while [insurance or service corporation] coverage is in force.

ii. Such definition may provide that injuries shall not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, **or** mandatory motor vehicle no-fault plan, unless prohibited by law[, or injuries occurring while the covered person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit].

2. "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

3. "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall be defined in relation to its status, facilities and available services.

i. [A definition of such] **Such** home or facility shall not be **defined** more restrictively than [one requiring] that it:

(1) Be operated pursuant to law;

(2) Be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;

(3) Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;

(4) Provide 24-hour nursing services by or under the supervision of a registered graduate professional nurse (R.N.); and

(5) Maintain a daily record of each patient.

ii. The definition of such home or facility may provide that such term shall not [be inclusive of] **include**:

(1) Any home, facility, or part thereof used primarily for rest;

(2) A home or facility for the aged, or for the care of drug addicts or alcoholics; or

(3) A home or facility primarily used for the care and treatment of mental diseases or disorders, or custodial or educational care.

4. "Health care expenses" means expenses of health maintenance organizations which expenses are associated with the delivery of health care services and are analogous to incurred losses of insurers. Such expenses shall not include:

i. Home office and overhead costs;

ii. Advertising costs;

iii. Commissions and other acquisition costs;

iv. Taxes;

v. Capital costs;

vi. Administrative costs; or

vii. Claims processing costs.

[4.] **5.** "Hospital" may be defined in relation to its status, facilities, and available services or in accordance with its accreditation by the Joint Commission on Accreditation of Hospitals.

i. [The definition of the term "hospital"] **"Hospital"** shall not be **defined** more restrictively than [one requiring] that [the hospital] **it**:

(1)-(3) (No change.)

ii. The definition of [the term] "hospital" may state that such term shall not [be inclusive of] **include**:

(1) Convalescent homes, convalescent, **or** rest[,] or nursing facilities;

(2)-(4) (No change.)

[5.] **6.** "Medicare" shall be defined in the policy [or subscriber contract. Medicare may be substantially defined] as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted and later amended," or "Title I, Part I of Public Laws 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America, and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

[6.] **7.** "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payments of benefits by insurers [or hospital or medical service corporations] for Medicare eligible expenses [may] **shall** be conditioned upon the same or less restrictive payment conditions **as are applicable to Medicare claims**, including **the** determinations of medical necessity, as are applicable to Medicare claims.

[7.] **8.** "Mental or nervous disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

[8.] **9.** "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse", "trained nurse", or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer [or hospital or medical service corporation] to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the Board of Nursing or any other **nursing or medical** registry board of the State.

[9.] **10.** "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician". **To the extent of its obligation under the policy,** [The] **the** use of such terms requires an insurer [or hospital or medical service corporation] to recognize and to accept [, to the extent of its obligation under the policy or contract,] all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

[10.] **11.** "Preexisting condition" shall not be defined more restrictively than **as** a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

[11.]**12.** "Sickness" shall not be defined more restrictively than **as** a sickness or disease which causes loss commencing while [the insurance or] coverage is in force and which is not excluded under a preexisting condition limitation. The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

13. "Totally disabled" shall not be defined more restrictively than as:

i. An injury or sickness that continuously confines an individual in a hospital or skilled nursing facility; or

ii. A continuous disability resulting from an injury or sickness not requiring confinement of an individual in a hospital or skilled nursing facility, but which a physician certifies as preventing that individual from engaging in the normal activities of a person of like age and sex in good health.

11:4-23.5 Prohibited provisions

(a) No [Medicare supplement] policy [may] **shall** be advertised, solicited, or issued for delivery in this State **as a Medicare supplement policy** if [such policy] **it** limits or excludes coverage by type of illness, accident, treatment, or medical condition, except as follows:

1.-9. (No change.)

10. Territorial limitations **outside the United States.**

(b) Medicare Supplement policies [may] **shall** not contain limitations or exclusions of the type enumerated in (a) 1, 5, 9, or 10 above that are more restrictive than those of Medicare.

(c) No Medicare Supplement **or limited benefit health** policy [may] **shall** provide benefits which duplicate the benefits available to a covered person under Part A or Part B of Medicare.

(d) No Medicare Supplement **or limited benefit health** policy [may] **shall** use waiver[s] **endorsements or riders** to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(e) The terms "Medicare supplement," Medigap" and words of similar import shall not be used unless the policy or contract is issued in compliance with N.J.A.C. 11:4-23.6 and all other sections of this subchapter.

11:4-23.6 Minimum benefit standards

(a) No [group insurance] policy [or individual or group subscriber contract may] **shall** be advertised, solicited, or issued for delivery in this State as a Medicare Supplement policy [which] **if it** does not meet the minimum standards contained in this section. These are minimum standards, and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(b) The following general standards apply to Medicare Supplement policies and are in addition to all other requirements of this subchapter.

1. A Medicare Supplement policy [may] **shall** not deny a claim for losses incurred as a result of a preexisting condition after six months from the effective date of coverage **, nor shall a preexisting condition be defined more restrictively than as a condition for which medical advice was given or treatment was recommended by or received from a physician no earlier than six months prior to the effective date of coverage**;

2. A Medicare Supplement policy [may] **shall** not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

3. A Medicare Supplement policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amounts and copayment percentage factors and out of pocket maximums**, in response to which changes premiums may be correspondingly modified**;

4. A Medicare supplement policy shall [not]:

[i. Provide for termination of coverage of an eligible spouse because of termination of coverage of the insured, or subscriber, other than for nonpayment of premium; or

ii. Provide for termination of a covered person's coverage by the insurer or hospital or medical service corporation solely on the grounds of age or deterioration of health.]

i. Provide insureds covered under a group policy the right of conversion upon termination of the group coverage which shall provide benefits at least as favorable to the insured as those provided under the group policy;

ii. Provide conversion coverage which shall be guaranteed renewable;

iii. Provide coverage under individual policies which is guaranteed renewable for life; and

iv. Not provide that termination of coverage of a group member will also terminate coverage for that former member's spouse, other than for nonpayment of premium or fees.

5. (No change.)

6. At least 30 days prior to the effective dates of any Medicare benefit changes, notice shall be provided to New Jersey insureds describing the revisions to the Medicare program and the resulting modifications made to the Medicare supplement coverage to eliminate duplication of Medicare benefits, as required by N.J.A.C. [11:4-23.5(d)] **11:4-23.5(c)**.

7. (No change.)

8. Existing Medicare supplement policies shall be appropriately amended or endorsed to eliminate benefit duplications with Medicare which are caused by Medicare benefit changes. Any rider or endorsements shall specify the benefits deleted, or shall otherwise result in a clear description of the Medicare supplement benefits provided by the policy. Such riders or endorsements shall be submitted [to] **for filing with** the [commissioner for filing within 45] **Commission at least 60** days [after] **prior to** the effective dates of Medicare benefit changes.

[9. Appropriate premium adjustments for existing Medicare supplement policies shall be made to reflect the benefit changes required by the Medicare Catastrophic Coverage Act of 1988. The revised rates shall produce loss ratios at least equal to those originally anticipated. The premium rates and supporting documentation shall be submitted to the commissioner within 45 days after the effective dates of Medicare benefit changes specified in the Act. Rate revisions to reflect any other required Medicare benefit changes may be made.

10. Premium reductions resulting from benefit changes required by the Medicare Catastrophic Coverage Act of 1988 shall be made in the form of premium refunds or premium credits no later than 60 days after the effective date of Medicare benefit changes.]

(c) The minimum benefit standards prescribed for Medicare Supplement policies are **as follows**:

1. For policies issued prior to January 1, 1989[:] **, all of the Medicare Part A inpatient hospital deductible amount shall be covered;**

[i. Coverage of the 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;

ii. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges to the extent not covered by Medicare during use of Medicare's lifetime hospital inpatient reserve days;

iii. 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;

iv. Coverage of Part B Medicare eligible expenses to the extent not covered by medicare, subject to a maximum calendar year out-of-pocket deductible of $200.00 of such expenses and to a maximum calendar year benefit of at least $5,000.]

2. For policies issued on or after January 1, 1989[,]: [coverage of Part B Medicare, subject to a maximum calendar year out-of-pocket deductible of $200.00 of such expenses and to a maximum calendar year benefit of at least $5,000.]

i. Either all or none of the Medicare Part A inpatient hospital deductible amount shall be covered;

ii. All policies shall provide coverage for the daily copayment amount of Medicare Part A eligible expenses for the first eight days per calendar year incurred for skilled nursing facility care;

iii. All policies shall provide coverage for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells as defined by federal regulations) pursuant to Medicare Part A, unless replaced in accordance with Federal regulations.

3. Until January 1, 1990, coverage of 20 percent of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of $200.00 of such expenses and to a maximum benefit of at least $5,000 per calendar year; and

4. Effective January 1, 1990, all policies shall provide:

i. Coverage for the copayment amount of Medicare eligible expenses, excluding outpatient prescription drugs, under Medicare Part B, regardless of hospital confinement, up to the maximum out-of-pocket amount for Medicare Part B after the Medicare deductible amount;

ii. Coverage for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells as defined by Federal regulation) pursuant to Medicare Part B, unless replaced in accordance with Federal regulation;

iii. Coverage for the copayment amount of Medicare eligible expenses for covered home intravenous (IV) therapy drugs (as determined by the Secretary of Health and Human Services) subject to the Medicare outpatient prescription drug deductible amount, if applicable; and

iv. Coverage for the copayment amount of Medicare eligible expenses for outpatient drugs used in immunosuppressive therapy, subject to the Medicare outpatient prescription drug deductible, if applicable.

11:4-23.7 Standards for claims payment

(a) Every insurer providing Medicare supplement policies shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).

(b) Compliance with the requirements set forth in (a) above must be certified on the Medicare Supplement experience reporting form.

(c) Payment of benefits by insurers for Medicare eligible expenses shall be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims.

11:4-[23.7]**23.8** Loss ratio standards

(a) Medicare Supplement **and limited benefit health** policies shall [be expected to] return to policyholders in the form of aggregate benefits under the policy, [as estimated] for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience**, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis,** and earned premiums for such period and in accordance with accepted actuarial principles and practices:

1. At least 75 percent of the aggregate amount of premiums or subscription charges collected**, adjusted for the time value of money,** in the case of group policies **and policies issued as conversions from group policies**.

2. At least 65 percent of the aggregate amount of premiums or subscription charges collected, adjusted for the time value of money, in the case of individual policies.

(b) [Medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies under (a) above.] Every insurer shall file annually its rates, rating schedule and all other information required by (d), (e) and (f) below, to demonstrate that the insurer is in compliance with the applicable loss ratio standard of (a) above. For the purposes of this section, policy and certificate forms shall be deemed to be in compliance with the loss ratio standards if:

1. The anticipated loss ratio, as that term is defined at N.J.A.C. 11:4-18.3(a)2ii, equals or exceeds the applicable loss ratio standard, for policies or certificates delivered or issued for delivery after December 31, 1989;

2. The expected incurred/earned loss ratio, as that term is defined at N.J.A.C. 11:4-18.3(a)2i and (c)5 below, equals or exceeds the applicable loss ratio for each and every policy year following the end of the second policy year for policies or certificates delivered or issued for delivery after December 31, 1989;

3. There is no unfair pricing discrimination in the premium table or structure of the policy or certificate;

4. The aggregate loss ratio, as that term is defined at N.J.A.C. 11:4-18.3(a)2iii, for the most recently completed calendar year, calculated as of December 31 of that calendar year:

i. Equals or exceeds the anticipated loss ratio determined at (b)1 above; or

ii. Equals or exceeds the anticipated loss ratio determined at the time of first issue with respect to policies or certificates delivered or issued for delivery in this State on or before December 31, 1989;

5. The incurred/earned loss ratio for the most recently completed calendar year equals or exceeds the applicable percentage of (a) above with respect to policies or certificates delivered or issued for delivery more than 24 months prior to the commencement of that most recently completed calendar year; and

6. The expected incurred/earned loss ratio equals or exceeds the applicable percentage of (a) above for the third policy year with respect to policies or certificates delivered or issued for delivery less than 24 months prior to the commencement of the most recently completed calendar year, including those policies and certificates delivered or issued for delivery during the most recently completed calendar year.

(c) Every insurer shall submit its rates for filing with the Commissioner for each Medicare Supplement or limited benefit health policy or certificate form to be delivered or issued for delivery in this State after December 31, 1989. The rate submisson shall include:

1. The number of years for which the policy or certificate form is expected to be sold in this State, and the number of policies or certificates for each form expected to be sold in each such year;

2. The anticipated loss ratio, with separate disclosure of the present value of future benefits and the present value of future premiums utilized in the calculation of the anticipated loss ratio;

3. The future benefits and the future premiums for each of the years recognized in the calculation of the anticipated loss ratio, where neither the future benefits nor the future premiums include, or are adjusted, for any statutorily required additional actuarial active life reserve;

4. The number of policies and certificates expected to be delivered or issued for delivery in this State which are expected to be in force at the end of each year in which the rate submission is being made, which information shall include and identify any statutorily required additional actuarial active life reserve maintained with respect to such policies and reflected in the calculation of the anticipated loss ratio for those policy and certificate forms, with a demonstration of the actuarial basis and method used in determining the reserve;

5. The expected incurred/earned loss ratio for each of the years recognized in the calculation of the anticipated loss ratio, wherein:

i. The expected incurred claims shall equal the sum of the future benefits utilized in the calculation of the anticipated loss ratio and the change in any statutorily required additional actuarial active life reserve for each such year; and

ii. The expected earned premiums shall equal the future premiums utilized in the calculation of the anticipated loss ratio for each such year;

6. The information and materials specified at N.J.A.C. 11:4-18.4, including the actuarial certification required therein, which information and materials shall include for each benefit provision wherein the premiums are determined separately, realistic assumptions for:

i. The annual claim costs (ultimate) by attained age and sex;

ii. The select and antiselect morbidity factors by policy duration (year) by issue age and sex;

iii. The lapse and mortality rates, or total termination rates, by policy duration by issue age and sex, and any skewing of those rates occurring within a policy year resulting from modal premium payments;

iv. The secular trend factors by policy duration by issue age and sex, which secular trend factor, when used in the calculation of the anticipated loss ratio, shall not be applied for a period greater than the number of years for which trending is reflected in the calculation of premiums;

v. The interest rates by policy duration, which rates shall equal the insurer's recent, current and future expected new investment return rates (after investment expenses, but before federal income taxes);

vi. Expenses by policy duration, including commission, override and bonus rates; other marketing expense rates; other acquisition expense rates; other maintenance expense rates; any new-market expense rates; and the explicit profit margin or risk charge, on a per policy issue, per policy in force, per dollar of claim, per dollar of premium, and any other applicable bases;

vii. The period and method of amortization of acquisition expenses and any new-market expenses in the calculation of premiums;

viii. The distribution of policy or certificate issues by policy and rider benefits by issue age and sex; and

ix. The distribution of policy and certificate issues by mode of premium payment, wherein bank draft shall be deemed a separate mode from regular monthly;

7. The cell and cell weights, when a model office is used in the calculation of the anticipated loss ratio; and

8. A demonstration evidencing that unfair pricing discrimination is not utilized by or incorporated within the policy form's premium table or structure:

i. The demonstration shall show that the nonrecognition or the homogenization of the elements of any insurance construct will not result in an anticipated loss ratio which would differ by more than 10 percent from the anticipated loss ratio of any element of the construct if the elements of the construct were separately recognized or were not homogenized;

ii. For the purposes of this section, construct shall mean the risk variables which significantly affect the cost of the coverage. For example, age could be a construct wherein its elements could be age 67, age 68, age 69, and so forth.

(d) Every insurer who has delivered or issued for delivery, or will deliver or issue for delivery in this State, a Medicare Supplement policy or certificate shall file with the Commissioner, no later than 60 days prior to the effective date of Medicare benefit changes required by the Medicare Catastrophic Coverage Act of 1988, or other relevant Federal law:

1. Appropriate premium adjustments to the policies or certificates to reflect benefit changes in the policies or certificates necessitated by changes in Medicare benefits, which:

i. Premium adjustments shall be in response only to the benefit changes, and shall be determined utilizing the same actuarial basis, and method as that used to produce the insurer's current premiums, but in so doing, the calculation of the adjusted premium shall not include in it any benefit claim cost or other assumptions resulting from any experience changes from that actuarial basis;

ii. Filing submission shall include the information and materials specified at N.J.A.C. 11:4-18.4 appropriate to the premium adjustment, including an actuarial certification;

iii. Premium adjustments shall be effective January 1 following the filing submission date and shall be:

(1) A premium adjustment (reduction or increase) for premiums due on or after January 1;

(2) A refund or premium credit on any unearned premium from January 1 to the first premium due date following that January 1 if (d)1iii above is a reduction in premiums;

(3) Paid to the premium payor by March 1 of that same year for which the adjustment is initially effective, in the case of any premium refund; and

(4) Applied to the first premium due date after January 1 in the year for which the adjustment is initially effective, in the case of any premium credit, with any credit being refunded to the premium payor no later than 60 days after the premium due date for those policies or certificates not renewing or continuing on that due date; and

2. Any appropriate riders, endorsements or policy or certificate forms needed to accomplish the Medicare Supplement coverage modifications which will eliminate benefit duplication with Medicare. Any such riders, endorsements or policy or certificate forms shall provide a clear description of the Medicare Supplement benefits provided by the policy or certificate.

(e) Every insurer shall file with the Commissioner, for each policy or certificate form delivered or issued for delivery in this State, the policy or certificate's expected aggregate loss ratio for the commencing calendar year, no later than 60 days prior to January 1 of that calendar year, except that no such filing will be required for policy or certificate forms first introduced in the calendar year immediately preceding that calendar year for which the filing is being made. The expected aggregate loss ratio shall be calculated as of January 1 of the commencing calendar year.

1. The filing shall include both the number of policies or certificates issued (actual or expected) in each calendar year, and the number of policies or certificates in force (actual or expected) in this State on December 31 of each calendar year, which calendar years are included in the calculation of the expected aggregate loss ratio.

2. The filing shall include for each calendar year the benefits and premiums, whether actual past or expected future, utilized in the calculation of the expected aggregate loss ratio, which benefit and premiums shall not have been adjusted by any statutorily required additional actuarial life reserves. The filing shall also include any statutorily required additional actuarial life reserves, and the actuarial basis and method upon which such reserves are determined.

i. The filing required by this paragraph and by (e)3 below shall include separate statements for the policy or certificate issues of each of the five most recent calendar years including the calendar year for which the filing is being made, and also the policy or certificate issues of all other calendar years combined.

ii. The filing for each noncombined calendar year required by (e)2i above for the five calendar years may be combined with the combined policy or certificate issues for all other calendar years required by (e)2i above, as data are replaced by new calendar year projections.

3. The filing shall include the incurred/earned loss ratio, whether actual past or expected future for each calendar year, which calendar years were recognized in the calculation of the expected aggregate loss ratio.

4. The filing shall include a separate statement of the accumulated value of past benefits, the present value of future benefits, the accumulated value of past premiums and the present value of future premiums utilized in the calculation of the expected aggregate loss ratio.

5. The calculation of the expected aggregate loss ratio shall reflect the benefit changes and premium adjustments required by (d) above.

6. In calculating and filing the information required by (e)2 through (e)5 above, the information shall be inclusive of and a reflection of policies and certificates delivered or issued for delivery in this State only, except when the sum of the mean calendar-year exposures of such policies or certificates for all calendar years preceding calendar year for which specific loss ratio is being calculated is, or is expected to be, less than 1,000, in which instance, the calculation and filing for (e)2 through (e)5 above shall be based on data for policies or certificates delivered or issued for delivery by the insurer in all states.

i. When the policies issued in all states constitute the basis for the filing required by this subsection, the premiums for non-New Jersey policies shall be adjusted for the calculation of the expected aggregate loss ratio and the expected incurred/earned loss ratio. The adjustment shall normalize such premiums to a New Jersey premium basis because of differences between the statutorily required loss ratios in the other states or jurisdictions for such premiums and the aggregate loss ratio required or resulting from compliance with this rule. The method and amount of adjustment for each calendar year shall be included with the filing.

ii. The mean calendar-year exposure of the policies for any calendar year shall equal for each policy form the arithmetic average of the number of policies in force (actual or expected) on December 31, of the previous calendar year and the number of policies in force (actual or expected) on December 31 of that calendar year where the numbers are taken from (e)1 above.

7. The filing shall include the information and materials specified at N.J.A.C. 11:4-18.4, including the actuarial certification, appropriate to the calculation of the expected aggregate loss ratio, as specified at (c)6 above.

8. Any policy or certificate form subject to this subsection shall be exempt from separately filing to meet the requirements of N.J.A.C. 11:4-18.6.

9. This filing shall include the information required at (b)2 above.

(f) Every insurer shall submit for filing by the commissioner a rate reduction whenever the expected aggregate loss ratio reported pursuant to (e) above for a policy or certificate is less than the anticipated loss ratio for that policy or certificate, or whenever the requirements of (b) above are not met.

1. The rate reduction shall be such that, following the reduction, the expected aggregate loss ratio shall equal or exceed the anticipated loss ratio, and the requirements of (b) above shall be met.

2. The rate reduction submission for filing shall be concurrent with the required loss ratio filing of (e) above, and the rate reduction shall be effective for the calendar year for which the expected aggregate loss ratio has been calculated.

(g) Every insurer may submit a rate increase for filing by the Commissioner whenever the expected aggregate loss ratio reported for (e) above for a policy or certificate becomes greater than the anticipated loss ratio for that policy or certificate. The rate increase shall be such that, following the increase, the expected aggregate loss ratio shall not be less than the anticipated loss ratio.

1. Any rate increases shall be limited by the requirements of (b) above.

2. Any rate increase submission for filing shall be concurrent with the loss ratio filing for (e) above and the rate increase shall be effective when filed by the Commissioner.

(h) An insurer shall cease the issue and delivery of any policy or certificate offered in this State on or after the effective date of this subchapter, whenever the anticipated loss ratio of that policy or certificate in any commencing calendar year would differ by more than 10 percent in that calendar year from the expected aggregate loss ratio for that calendar year, relevant to the calendar year in which the policy or certificate form was first offered.

11:4-23.9 Filing requirements for out-of-State group policies

(a) No insurer shall deliver or issue for delivery in this State any Medicare Supplement or limited benefit health policy or certificate, any written application therefor, or any printed rider or endorsement to be applied thereto, unless the forms thereof have been submitted to and filed by the Commissioner.

(b) At the expiration of 30 days after submission, the form shall be deemed filed unless affirmatively approved or disapproved for filing by the Commissioner prior thereto.

(c) The Commissioner may extend the 30-day period no more than another 30 days if written notice is provided to the insurer before the expiration of the initial 30 day period, in which event all but this provision of this section shall apply to the extended period.

(d) Forms filed by or deemed filed by the Commissioner may subsequently be withdrawn from filing. Insurers shall have the right to a hearing 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, and may continue to deliver and issue for delivery such forms unless and until a final decision in accordance with the withdrawal is rendered.

(e) Disapproval for filing, or withdrawals of approval for filing of any form must be stated in writing with the grounds therefor included

in the statement, in accordance with the rules and regulations of this State.

(f) Disapproval by the Commissioner of any form shall be subject to review in accordance with the procedures set out in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

11:4-23.10 Minimum policy number

(a) Every insurer shall include with each policy or certificate submitted for filing pursuant to the laws of this State, on or after the effective date of this subchapter, a statement signed by an officer of the insurer as certification thereof, which states that the insurer expects to deliver or issue for delivery a minimum number of policies or certificates in this State, which minimum number, when accumulated through the fourth calendar year for such policies or certificates delivered or issued for delivery, shall have an accumulated mean calendar year exposure which equals or exceeds 1,000; wherein, the mean calendar year exposure is defined at N.J.A.C. 11:4-23.8(e)1.

(b) An insurer shall cease the delivery of or issuance for delivery of policies or certificates as described in (a) above, at the end of the fourth calendar year if the accumulated mean calendar year exposure of such policies or certificates delivered or issued for delivery in this State through the fourth calendar year is less than 1,000.

(c) For each policy or certificate form described in (a) above, which the insurer must cease delivering or issuing for delivery in this State pursuant to (b) above, the insurer shall be required to pay to the Office of the Treasurer, New Jersey Department of Treasury, an amount equal to the product of $100.00 multiplied by the excess of 1,000 over the accumulated mean calendar year exposure for that policy or certificate form which amount shall be paid no later than 60 days following the last day of the fourth calendar year of that policy.

(d) On or before December 31, 1990, every insurer shall cease delivering or issuing for delivery policy forms or certificates thereof, which policy or certificate has been delivered or issued for delivery in this State prior to the effective date of this subchapter if:

1. The accumulated mean calendar year exposure through 1990 is less than 1,000 for such policies or certificates first delivered or issued for delivery in this State prior to January 1, 1988;

2. The expected accumulated mean calendar year exposure through the fourth calendar year is less than 1,000 for such policies first delivered or issued for delivery in this State on or after January 1, 1988.

i. If an insurer expects the accumulated fourth calendar year exposure to equal or exceed 1,000 for such a policy or certificate and the insurer intends to continue delivering or issuing for delivery such policies or certificates in this State after December 31, 1990, the insurer shall provide the Commissioner with a statement signed by an officer of the insurer as a certification thereof, which states the expected accumulated fourth calendar year exposure of such policy or certificate and the insurer's intention therein, no later than September 30, 1990.

ii. Any policy for which the insurer provides such certification, which does not subsequently meet at least the accumulated mean calendar year exposure of 1,000 in its fourth calendar year from issue for delivery, shall be subject to the terms of (b) and (c) above.

(e) Conversion policies shall be exempt from this section.

11:4-23.11 Prohibited compensation for replacement with the same company

When an existing Medicare Supplement policy is replaced by another Medicare Supplement policy, wherein the former and latter policy have substantially similar benefits, and both are with the same insurer or both have the same producer of record, or different producers, but are within the same agency, then no entity shall pay to a producer any form of compensation which is greater than that which the producer would have received for renewal of the former policy.

11:4-[23.8]**23.12** Required disclosure provisions

(a) General rules concerning required disclosure provisions include the following:

1. Medicare Supplement policies shall include a [renewal, continuation or nonrenewal] **guaranteed renewability** provision. [The language or specification of such provision must be consistent with the type of policy to be issued.] Such provision shall be appropriately captioned and shall clearly state the duration, where limited, or renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. Such provision shall appear on the first page of individual policies and certificates.

2. Every insurer shall provide upon delivery of a policy or certificate information relevant to the premiums payable by the applicant to whom the policy or certificate was issued. This information shall appear on the schedule page of or as an attachment to the policy or certificate.

i. The information shall include a disclosure of the annual premium required to be paid to maintain the coverage provided under the policy or certificate for the year in which it was issued and the following four policy years, which premiums shall be based upon the premium table on file with the Department of Insurance.

ii. In addition to providing the applicant with the premium pattern for the first five policy years of the coverage, the insurer shall include a statement informing the applicant of the average percentage increase per year for the preceding five policy years experienced by similar forms of similar premium structures using the same premium table as that upon which the applicant's annual premium is based.

iii. Upon the anniversary date or renewal date of the policy or certificate, first following implementation of a new premium table filed by the Commissioner for the insurer, the insurer shall provide its insureds with a notice of revision of the premium pattern and premium table, and shall provide the insured with the new annual premium pattern for the next five policy years, inclusive of the year in which the adjustment is initiated.

[2.]**3.** Except for riders or endorsements by which the insurer [or hospital or medical service corporation] effectuates a request made in writing by the insured [or subscriber], exercises a specifically reserved right under a Medicare Supplement policy **or limited benefit**, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits [all]:

i. All riders or endorsements added after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage shall require signed acceptance by the insured [or subscriber.];

ii. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium or subscription charge **or fees** during the policy term, shall be agreed to in writing signed by the insured [or subscriber], except if the increased benefits or coverage [is] **are required by the minimum standards for Medicare Supplement insurance policies, or if** required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth clearly.

[3.]**4.** A Medicare Supplement policy **or limited benefit policy** which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

[4.]**5.** If a Medicare Supplement policy **or limited benefit policy** contains any limitations with respect to preexisting conditions, such limitations [must] **shall** appear as a separate paragraph in the policy and be labeled as "Preexisting Condition Limitations," "Preexisting Condition Exclusions," or words of similar import.

[5.]**6.** Medicare Supplement policies or certificates [, other than those issued pursuant to direct response solicitation,] **and limited benefit policies or certificates** shall have a notice prominently printed on the first page or attached thereto stating in substance that the [policyholder or certificate holder] **insured** shall have the right to return the policy or certificate within [10] **30** days of its delivery and to have the premium or subscription charge **or fees** refunded if, after examination of the policy or certificate, the insured [person or subscriber] is not satisfied for any reason. [Medicare Supplement policies or certificates issued pursuant to a direct response solicitation to person eligible for Medicare by reason of age shall have a notice prominently printed on the first page or attached hereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium or subscriber charge refunded, if after examination the insured person or subscriber is not satisfied for any reason.]

[6.]**7.** Insurers [and hospital and medical service corporations] issuing policies[,] **or** certificates [or subscriber contracts] which provide

hospital or medical expense coverage on an expense incurred, indemnity, or service benefit basis, other than incidentally, to a person(s) eligible for Medicare by reason of age shall provide for delivery to all applicants an informational brochure, which is intended to improve the buyer's ability to select the most appropriate coverage, and to improve the buyer's understanding of Medicare. The full text of the approved guide appears as an Appendix to Chapter 4, and is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements."

[7.]**8.** To ensure uniformity in the content, form and printing of the guide, each insurer shall comply with the following requirements:

i.-ii. (No change.)

iii. A chart entitled "Medicare Deductibles and Copayments for 1989," shall be included in the back pocket of each guide. A sample copy of this chart appears as an Appendix to this chapter. [(1)] To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of Public Affairs will provide sample copies of the chart to insurers. Insurers shall adhere exactly to the format of the chart, and must include the chart in the back pocket of each guide.

[iv. Information explaining the changes to the Medicare program effective January 1, 1989, shall be included in the back pocket of each guide. A copy of this information appears as an Appendix to subchapters 16 and 23 of this chapter and is entitled: "Information Concerning Changes to the Medicare Program Effective January 1, 1989."]

[8.]**9.** [Except in the case of direct response insurers or service corporations, delivery] **Delivery** of the guide shall be made to the applicant at the time of application, and acknowledgement of receipt of the guide shall be obtained by the insurer [or service corporation. Direct response insurers or service corporation shall deliver the guide to the applicant upon request, but not later than the time of policy or certificate delivery].

[9.]**10.** Except as otherwise provided in (c) below, the terms "Medicare Supplement," "Medigap," and words of similar import shall not be used unless the policy or contract is issued in compliance with N.J.A.C. 11:4-23.6 **and all other sections of this subchapter.**

(b) Outline of coverage requirements for Medicare Supplement policies include:

1. Insurers [or service organizations] issuing Medicare Supplement policies **or certificates** for delivery in this State shall provide an outline of coverage to all applicants at the time application is made. Except for direct response policies, acknowledgement of receipt of such outline shall be obtained from the applicant.

2. (No change.)

3. The outline of coverage provided to applicants pursuant to (b)1 above shall be in the form prescribed below:

(COMPANY NAME)
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE

1. Read Your Policy (Certificate) Carefully—This outline of coverage provides a very brief description of the important features of your Policy (Certificate). This is not the insurance (subscriber) contract and only the actual policy (contract) provisions will control. The policy (certificate) itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY (CERTIFICATE) CAREFULLY!

2. Medicare Supplement Coverage—Policies (Certificates) of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare and subject to other limitations which may be set forth in the policy (certificate). The policy (certificate) does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicines. (Delete if such coverage is provided).

3. [(i)]**i.** For Agents:

Neither (insert company's name) nor its agents are connected with Medicare.

[(ii)]**ii.** Direct responses:

(insert company's name) is not connected with Medicare.

4. (A brief summary of the major gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts **(and indexed copayments or deductibles, as appropriate),** provided by the Medicare Supplement coverage in the following order.)

[Service]**Description**	[Benefit]	[Medicare Pays]	This Coverage Pays	You Pay
[HOSPITALIZATION] **Services:** **INPATIENT HOSPITAL SERVICES:** Semi-private room and board, general nursing and miscellaneous hospital services and supplies, **such as drugs, x-rays, lab tests and operating room.** [Includes meals, special care units, drugs, lab tests, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation]	[Each calendar year]	[All but $(560)]		
[POST HOSPITAL] SKILLED NURSING FACILITY CARE [In a facility approved by Medicare.]	[First 8 days]	[All but $25.50 per day of reasonable costs]		
	[Additional 142 days]	[100% of reasonable costs]		
	[Beyond 150 days]	[Nothing]		
BLOOD				
PARTS A & B **Home Health Services**				
PART B				
MEDICAL EXPENSE[S]: **Services of a physician/ outpatient services** **Medical supplies other than prescribed drugs**	[Physician's services, inpatient and outpatient medical services and supplies at a hospital physical and speech therapy and ambulance service.]	[80% of reasonable charge (after ($75) deductible)]		
BLOOD				
MAMMOGRAPHY SCREENING				
OUT-OF-POCKET MAXIMUM				
PRESCRIPTION DRUGS				
MISCELLANEOUS				
HOME IV-drug therapy **Immunosuppressive drugs** **Respite care benefits**				

IN ADDITION TO THIS OUTLINE OF COVERAGE, (INSURANCE COMPANY NAME) WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

5. (Statement that the policy (certificate) does or does not cover the following:)

i. Private duty nursing;

ii. Skilled nursing home care costs (beyond what is covered by Medicare);

iii. Custodial nursing home care costs;

iv. Intermediate nursing home care costs;

v. Home health care above number of visits covered by Medicare;

[v.]**vi.** Physician charges (above Medicare's reasonable charge);

[vi.]**vii.** Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);

[vii.]**viii.** Care received outside of U.S.A.;

[viii.]**ix.** Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for or the cost of eyeglasses or hearing aids

6. (A description of any policy (certificate) provisions which exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payments of the benefits described in [N.J.A.C. 11:4-23.8(5)] **section 4** above. Also, include conspicuous statements:

i. That the chart summarizing benefits only briefly describes such benefits;

ii. That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.

7. (A description of policy (certificate) provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium (subscription charge).)

8. The amount of premium (subscription charge) for the policy (certificate).

9. (The following charts shall accompany the Outline of Medicare Supplement Coverage:)

PART A
MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
Inpatient Hospital Services:	All but $540 for first 60 days benefit period	All but ($564) deductible for an unlimited number of days/ calendar year	All but Part A deductible for an unlimited number of days/ calendar year	All but Part A deductible for an unlimited number of days/ calendar year
Semi-Private Room & Board	All but $135 a day for 61st-90th days/benefit period			
Miscellaneous Hospital Services & Supplies, such as Drugs, X-rays, Lab Tests & Operating Room	All but $270 a day for 91st-150th days (if the individual chooses to use 60 nonrenewable lifetime reserve days)			
	Nothing beyond 150 days			
Skilled Nursing Facility Care	100% of costs for 1st 20 days (after a 3 day prior hospital confinement)	80% of Medicare reasonable costs for first 8 days per calendar year w/out prior hospitalization requirement	80% for first 8 days/calendar year	80% for first 8 days/calendar year
	All but $67.50 a day for 1st-100th days			
	Nothing beyond 100 days	100% of costs thereafter up to 150 days/ calendar year	100% for 9th-150th day/calendar year	100% for 9th-150th day/ calendar year
Blood	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period	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	All but blood deductible (equal to costs for first 3 pints)	All but blood deductible (equal to costs for first 3 pints)

PART B
MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
Parts A&B:				
Home Health Services	Intermittent skilled nursing services in the home (daily skilled nursing care for up to 21 days or longer in some cases)—100% of covered services and 80% of durable medical equipment under both Parts A&B	Same as '88	Intermittent skilled nursing care for up to 7 days a week for up to 38 days allowing for continuation of services under unusual circumstances; other services—100% of covered services and 80% of durable medical equipment under both Parts A&B	Same as '90
Part B				
Medical Expense: Services of a Physician/Out-Patient Services Medical Supplies Other Than Prescribed Drugs	80% of reasonable charges after an annual $75 deductible	80% after annual $75 deductible	80% of reasonable charges after $75 annual deductible until out-of-pocket maximum is reached. 100% of reasonable charges are covered for remainder of calendar year	Same as '90
Blood	80% of costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period after $75 deductible	Pays 80% of all costs except payment of deductible (equal to costs for first 3 pints) each calendar year	Same as '89	Same as '89
Mammography Screening			80% of approved charge for elderly and disabled Medicare beneficiaries —exam available every other year for women 65 and over	Same as '90
Out-of-Pocket Maximum			$1,370 consisting of Part B $75 deductible, Part B blood deductible and 20% co-insurance	$1,370—will be adjusted annually by Secretary of Health and Human Services
Outpatient Prescription Drugs			There is a $550 total deductible applicable to home IV drug and immunosuppressive drug therapies as noted below	Covered after $600 deductible subject to 50% co-insurance

Home IV-Drug Therapy			80% of IV therapy drugs subject to $550 deductible (deductible waived if home therapy is a continuation of therapy initiated in a hospital)	80% of IV therapy drugs subject to standard drug deductible (deductible waived if home therapy is a continuation of therapy drugs initiated in a hospital)
Immunosuppressive Drug Therapy	80% of costs during first year following a covered organ transplant (no special drug deductible; only the regular Part B deductible)	Same as '88	Same as '88 for first year following covered transplant; 50% of costs during 2nd and following years (subject to $550 deductible)	Same as '90 (subject to $600 deductible)
Respite Care Benefit			In-home care for chronically dependent individual covered for up to 80 hours after either the out-of-pocket limit or the outpatient drug deductible has been met	Same as '90

[(c) Any group health insurance policy or individual or group subscriber contract other than a Medicare supplement policy, issued for delivery in this State to persons eligible for Medicare by reason of age, shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a Medicare supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or, if no outline of coverage is delivered, to the first page of the certificate or subscriber contract delivered to insureds. Such notice shall be in no less than 12 point type and shall contain the following language:

"THIS IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide, available from the company."]

(c) All insurers not offering Medicare supplement insurance to residents of this State, but otherwise subject to this rule as set out at N.J.A.C. 11:4-23.2 and 23.3, shall provide all applicants with an outline of coverage at the time application is made, and a substitute outline of coverage shall be provided when the policy or certificate is delivered, if changes in coverage have occurred between the time of application and issuance of the policy or certificate.

1. Acknowledgement of receipt of such outline shall be obtained from the applicant.

2. On the face of the Outline of Coverage, either at the heading or end of the outline, a notice shall be printed in no less than 12 point type and shall contain the following language:

"THIS IS NOT A MEDICARE SUPPLEMENT (POLICY, SUBSCRIBER CONTRACT, CERTIFICATE, EVIDENCE OF COVERAGE). If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide, available from the company."

3. The items to be included in the outline of coverage must appear in the sequence set forth as follows:

(COMPANY NAME & ADDRESS)
(POLICY NUMBER WHEN AVAILABLE)
LIMITED BENEFIT HEALTH COVERAGE
FOR MEDICARE ELIGIBLE PERSONS
OUTLINE OF COVERAGE

1. Limited Benefit Health Coverage—This type of policy will provide you with limited benefits only. It is not designed to provide hospital and medical coverage for the cost not paid by Medicare.

2. Read Your Policy Carefully—This outline of coverage briefly describes the important features of your policy. (Your agent, broker, or other company representative will explain each item to you so that you fully understand what you are buying.) For more information about the costs not paid by Medicare and what to look for in policy provisions, read the (Shopper's Guide) that was given to you with this form.

This form is not the insurance contract. Only the policy itself spells out rights and obligations of both you and your insurance company. It is important that you READ YOUR POLICY CAREFULLY. REMEMBER, if you are not satisfied with your policy, you have (10-30) days to return it to the company and get your money back.

3. Annual Premium $_____ You pay $___ per___

Inpatient Hospital Benefits	Medicare—Part A	Insurance Policy Pays
You are hospitalized for an unlimited number of days per calendar year.	You pay the first $_____ Deductible. Medicare pays Balance.	$_____

Skilled Nursing Facility Benefits	Medicare—Part A	Insurance Policy Pays
You are admitted to a skilled nursing facility. You are a patient in this facility for up to 8 days during a calendar year.	You pay $____ per day. Medicare pays balance of reasonable costs.*	$____
You remain in the facility for any of the next 142 days—9th-150th day.	You pay nothing. Medicare pays 100%.*	$0
You remain in the facility after 150 days of confinement.	You pay full amount. Medicare pays nothing.	$____ per day.

*Payment will only be made if the skilled nursing facility is approved by Medicare and if the care given is medically necessary. NEITHER MEDICARE NOR THIS POLICY WILL PAY FOR CUSTODIAL CARE OR REST HOME CARE.

Medical Service Benefits	Medicare—Part B	Insurance Policy Pays
You receive physician services, medical supplies, ambulance and other covered services.	You pay the first $____ Deductible.	$____
	Until 1990, Medicare pays 80% of remaining "reasonable and necessary" charge. You pay remaining 20% of the "reasonable and necessary" charge while you are in the hospital.	Medicare eligible expenses to the extent not covered by Medicare after you have paid $____ of these charges.
	You pay the remaining 20% of the "reasonable and necessary" charge if you are not hospitalized.	Medicare eligible expenses to the extent not covered by Medicare after you have paid $____ of these charges.
	Beginning January 1, 1990, Medicare pays 80% of remaining "reasonable and necessary" charge until an annual Medicare Catastrophic Limit is met. Medicare then pays 100% of the "reasonable and necessary" charges. You pay the remaining 20% of the "reasonable and necessary" charges after the deductible until the Medicare Catastrophic Limit is met.	Medicare eligible expenses to the extent not covered by Medicare after you have paid $____ of these charges.
	You pay the portion of the bill that exceeds the "reasonable and necessary" charge.	$____**

Prescription Drugs	Medicare—Part B	Insurance Policy Pays†
	Beginning January 1, 1990, Medicare pays for all allowable inpatient prescription drugs. After the calendar year deductible, Medicare also pays for 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for immunosuppressive drugs.	____% of allowable home intravenous (IV) therapy drug charge. ____% of allowable charges for immunosuppressive drugs.
	Beginning January 1, 1991, Medicare will also pay 50% of the allowable charges for all other outpatient prescription drugs, after a calendar year deductible.	____% of allowable home intravenous (IV) therapy drug charge. ____% of allowable charges for immunosuppressive drugs. ____% of allowable charges for other outpatient drugs. $____ outpatient drug deductible.
	Beginning January 1, 1992, Medicare will pay 60% of the allowable charges for all other outpatient prescription drugs, after a calendar year deductible.	____% of allowable home intravenous (IV) therapy drug charge. ____% of allowable charges for immunosuppressive drugs. ____% of allowable charges for all other outpatient prescription drugs. $____ outpatient drug deductible.
	Beginning January 1, 1993, Medicare will pay 80% of the allowable charges for all other outpatient prescription drugs, after a calendar year deductible.	____% of allowable home intravenous (IV) therapy drug charge. ____% of allowable charges for immunosuppressive drugs. ____% of allowable charges for all other outpatient drugs. $____ outpatient drug deductible.
	You pay the remaining Medicare-allowable charges.	$____**
	You pay any portion of the bill in excess of the Medicare-allowable charges.	$____**

**Unless this space is filled in with a specific dollar amount or percentage, the policy will not pay for charges that exceed Medicare's determination of "reasonable and necessary" charge, or Medicare-allowable charges.

†Unless these spaces are filled in with a specific dollar amount or percentage, the policy will not pay for Medicare-allowable copayment charges, or the deductible, whichever is applicable.

4. (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits described in 3 above.)

5. (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.) FOR ADDITIONAL INFORMATION ABOUT POLICY BENEFITS OR CLAIMS, TELEPHONE (COLLECT) (TOLL FREE) (LOCAL NUMBER) ———

(d) All insurers shall comply with the following notice requirements:

1. As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer providing Medicare Supplement insurance or benefits to a resident of this State shall notify its insureds of modifications it has made to Medicare Supplement policies in a format commensurate with the Appendix to this subchapter, entitled "Notice on Changes in Medicare and Your Medicare Supplement Insurance." In addition, such notice shall:

i. 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; and

ii. Inform each insured as to when any premium adjustment is to be made due to changes in Medicare.

2. 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.

3. Such notices shall not contain or be accompanied by any solicitation.

11:4-[23.9]**23.13** Requirements for replacement

(a) Any policy which will replace an applicant's existing policy, wherein both the existing policy and new policy are issued by the same insurer, shall include a waiver of all preexisting condition exclusion clauses in the replacement policy for that applicant.

[(a)](**b**) Application forms shall include a question designed to elicit information as to whether a Medicare Supplement policy is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

[(b)](**c**) Upon determining that a sale will involve replacement, an insurer [or service corporation,] or its agent, shall furnish to the applicant, prior to the issuance or delivery of the Medicare Supplement policy **or certificate**, a notice regarding replacement of accident and sickness coverage. One copy of such notice shall be provided to the applicant, and an additional copy signed by the applicant shall be retained by the insurer [or service corporation]. [A direct response insurer or service corporation shall deliver to the applicant at the time of the issuance of the policy (certificate) the notice regarding replacement of accident and sickness coverage.] In no event, however, will such a notice be required in the replacement of "accident only" coverage.

[(c)](**d**) The notice required [by (b) above for other than a direct response insurer or service corporation shall be the following] **shall be as follows:**

NOTICE TO APPLICANT REGARDING
REPLACEMENT OF
ACCIDENT AND SICKNESS COVERAGE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate accident and sickness coverage and replace it with coverage issued by (Company Name). Your new (policy) (**certificate**) provides [ten (10)] **thirty (30)** days within which you may decide without cost whether you desire to keep the coverage. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the protection available to you under the new (policy) (**certificate**).

(1) Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present coverage.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. That is not only your right, it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to answer truthfully and completely [all] **any** questions on the application concerning your medical/health history. Failure to include [all] **any** material medical information **requested** on **an** application may provide a basis for the company to deny any future claims and to refund your premium (subscription charge) as though your policy **or certificate** had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

(4.) (To be included only by direct response insurers.) Write to (Company Name and Address) within ten (10) days if any information is not correct and complete, or if any medical history requested on the application has been left out.

The above "Notice [of] *to* Applicant" was delivered to me on:

_____
Date

_____
(Applicant's Signature)

[(e) The notice required above for a direct response insurer or service corporation shall be as follows:

NOTICE OF APPLICANT REGARDING
REPLACEMENT OF
ACCIDENT AND SICKNESS COVERAGE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness coverage and replace it with the policy delivered herewith issued by (Company Name). Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the protection available to you under the new policy.

(1) Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company Name and Address) within ten (10) days if any information is not correct and complete, or if the past medical history has been left out of the application.

_____]
(Company Name)

(e) Direct response insurers shall include items (3) and (4) of the notice set forth in (d) above only if the application is attached to the policy.

[(e)](**f**) Item (1) of the notice set forth in [N.J.A.C. 11:4-23.9(c) and] (d) above may be omitted **or modified** if preexisting conditions are covered under the new coverage.

11:4-23.14 Filing requirements for advertising

(a) Every insurer providing Medicare Supplement or limited benefit health policies in this State shall file with the Commissioner a copy of all advertisements to which residents of this State will have access, and through which the insurer intends, or by implication purports to the reasonable targeted consumer its intent to make its Medicare Supplement or limited benefit health product(s) available for purchase or enrollment in this State, whether through written, radio, television or other electronic media, at least 30 days prior to the date on which the advertisement is to be used in this State, or made accessible to residents of this State.

(b) All advertisements shall be in accord with the standards set out in N.J.A.C. 11:2-11 and any other disclosure and advertising rules which may be applicable to insurers.

(c) The Commissioner may disapprove an advertisement at any time if the advertisement is not in compliance with this rule or is in violation of the Trade Practices Act, N.J.S.A. 17B:30-1 et seq. An advertisement which has been disapproved by the Commissioner shall continue to be disapproved until disapproval is withdrawn by the Commissioner.

(d) The Commission may institute any and all procedures and penalties available pursuant to the Medicare Supplement Acts of this State and the Trade Practices Act, N.J.S.A. 17B:30-1 et seq., against an insurer who is determined by the Commissioner to be in violation of this rule.

(e) All actions of the Commissioner are subject to review pursuant to the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

11:4-[23.10]**23.15** Severability

If any provision of this [rule] **subchapter** or the application thereof to any person or circumstance [if for any reason] is held to be invalid **for any reason**, the remainder of the [rule] **subchapter** and the application of such provision to other persons or circumstances shall not be affected thereby.

APPENDIX TO SUBCHAPTERS 16 and 23 BRIDGING THE MEDICARE GAPS: A GUIDE TO MEDICARE SUPPLEMENTS (INFORMATION CONCERNING CHANGES TO THE MEDICARE PROGRAM EFFECTIVE JANUARY 1, 1989)

Medicare, the federal health insurance program for people 65 and over and some disabled people, has always been a little puzzling. Recent changes in the program as a result of the Medicare Catastrophic Coverage Act of 1988 have added to the confusion.

The changes in Medicare will not result in total coverage for your health care costs. Medicare helps to pay for some costs. There are other health care costs that Medicare will not cover at all.

The first part of this booklet is designed to explain Medicare and the changes that will be phased in over a three-year period beginning January 1, 1989.

The rest of this booklet will tell you what other types of insurance are available to fill some of Medicare's gaps.

BASIC STRUCTURE OF MEDICARE

Medicare is divided in two parts: Part A—hospital insurance, and Part B—medical insurance. **Part A covers the costs for things a hospital provides to inpatients such as a room, food, nurses, and drugs. Part B pays for doctors services in and out of a hospital and many other medical services and items.**

Part A, the hospitalization portion of Medicare [is free,] **does not have a monthly premium**, and most senior citizens participate automatically.

Part B, the medical portion [is not free. It] requires a monthly premium, which, for most people, is deducted from the Social Security check. You're automatically enrolled in Part B when you enroll in Medicare Part A, unless you specifically state you don't want it. If you choose not to enroll in Part B when you sign up for Medicare, you can join the program later. But if you wait, the premiums will be higher. **If you wait because you're still working and you're still covered under your employer's group health plan, you will not have to pay the higher Part B premium when you do sign up.**

Medicare does not pay for all your health care costs. Each part has a deductible, an amount you have to pay before Medicare pays anything, and a co-payment, a part of each bill you're required to pay.

The deductibles and co-payments can change from year to year. The chart in the back pocket of this booklet shows this year's deductible and co-payment amounts.

MEDICARE PART A—HOSPITAL INSURANCE

The hospital insurance portion of Medicare, Part A, pays hospital room and board fees for an unlimited period of time after you pay the deductible once each year. It also pays for some goods and services (such as laboratory costs, physical therapy and drugs) while you're a patient in the hospital.

Part A also pays for three less expensive alternatives to hospitalization—skilled nursing facility care, home health care and hospice care.

Let's say you don't need the intensive care a hospital provides but you do need daily professional nursing care or rehabilitation therapy. Your doctor may refer you to a skilled nursing facility. Beginning January 1, 1989, Medicare covers most of the skilled nursing facility's bills. You have to pay 20 percent of the costs—a co-payment—for each of the first eight days you're there. Medicare then pays all the bills for days 9-150 each year in a Medicare-certified facility.

Medicare also will pay for home health care to help you leave a hospital or skilled nursing facility if your condition meets certain requirements, among them a need for part-time skilled nursing care or therapy. Until January 1, 1990, Medicare will cover intermittent home health care up to four days per week for an unlimited period of time. If [such] care is needed five or more days per week, Medicare will cover [only] three weeks per illness. As of January 1, 1990, Medicare will cover up to six days a week of intermittent home health care for as long as your doctor prescribes, and up to 38 days of daily home health care.

In addition, Medicare covers hospice care for terminally ill patients who want to stay home during their final weeks of life. Hospices (special organizations which help dying patients and their families) will supply doctors' services, nursing care, home health aides, homemaker services, counseling, and medical appliances and supplies. There are some restrictions and some minimal co-payments for a few services, but Medicare will pick up the majority of the bills.

Filling In The Gaps

You can bridge the gaps in Medicare in a variety of ways. But there are choices to make. Different policies tend to plug different holes in the Medicare program, so you probably won't find one policy that pays for all your health care costs.

To decide which policy suits you best, begin by evaluating your needs and financial circumstances. How much can you afford to pay for insurance? Do you [need help paying day to day health care costs] **want first dollar coverage that will pay Medicare's deductibles and co-payments**? Or are you more concerned about covering [yourself against the possibility of a months-long hospital stay that exhausts your Medicare benefits] **things that Medicare does not—for example, doctors' bills that go beyond the Medicare-approved amount or care outside the United States**? Will you find it easier to budget regular insurance payments than to worry about later medical bills you might not be able to pay?

Medicaid

For some people, paying even small amounts for medical expenses or another health insurance policy may be a real hardship. If you are one of them, check with your local Social Security Office or the state or county welfare agency to see if you are eligible for Medicaid, a free health care program for low-income people funded by the state and federal governments.

[If you are eligible for Medicaid, you will not need any other coverage, because the combination of Medicare and Medicaid pays almost all medical expenses. Anything not covered by both is probably not covered by private health insurance policies either.]

Although the combination of Medicare and Medicaid pays many of your health care costs, you should consider the following points before dropping any Medicare supplement policy you may already have:

1. A Medicare supplement policy may cover services not paid by Medicaid, such as private duty nursing, care outside the United States, a private room in a hospital;

2. If your Medicaid eligibility ends, you may have a six month waiting period before a new policy will pay benefits for health conditions you already have;

3. If you enter a nursing home, Medicaid will pay the premium for your Medicare supplement policy;

4. If you cancel Medicare supplement coverage that has been available to you at no charge as a retirement benefit or through your spouse, it may not be renewable if you no longer qualify for Medicaid.

New Jersey also has a variety of health care programs available to certain needy residents who may not qualify for the traditional Medicaid Program. Each program has its own eligibility requirements. Contact your County Welfare Agency or Board of Social Services to see if you qualify for any of the following:

New Jersey Care
Medically Needy
Community Care Program for the Elderly and Disabled (CCPED)
AIDS Community Care Alternative Program (ACCAP).

Prescriptions and Hearing Aids

New Jersey has a program that will help pay for prescription drugs, and another that will help pay for hearing aids.

[New Jersey has a special prescription drug program, called] **The** Pharmaceutical Assistance to the Aged and Disabled Program (PAAD) [, to] helps pay for prescription medicines and some pharmacy items such as insulin syringes, and needles.

The Hearing Aid Assistance to the Aged and Disabled Program (HAAAD) reimburses $100 to eligible residents of New Jersey who buy a hearing aid.

To qualify **for PAAD or HAAAD**, you must be **at least** 65 or [older] **be receiving Social Security Disability,** and **you must** meet certain income limits. The limits, which are higher than those for Medicaid, **can** change [each year].

For **more** information **about each program** [on this year's limits], call the toll-free hotline at (800)792-9745 [, or write the New Jersey Department of Human Services, Division of Medical Assistance and Health Services, PAAD Program, CN 715, Trenton, New Jersey 08625].

What Does Your Employer Offer?

The ideal time to start thinking about how you will supplement Medicare is several months before you reach age 65, particularly since you may be able to take advantage of insurance coverage you have as an employee.

If you are covered by a health plan at work, your employer may allow you to remain insured under the **group** plan after you retire and [may] continue to pay all or part of the premium. This is sometimes referred to as **"continuation."**

Your employer may [also] offer a different arrangement called **"conversion."** This permits you to buy [insurance] **an individual policy** from the same insurance company you had at work, but [it] doesn't necessarily mean your new policy will have the same benefits. Nor does it mean the policy will be cheaper than similar policies you may find by shopping around on your own.

Continuation and conversion offer two advantages: you will probably not be required to produce a medical history or undergo a medical examination; and, you will not have to wait to receive benefits. One kind of insurance you may be able to [secure] **keep** through continuation or conversion is a **major medical** [or catastrophic coverage] policy.

As the name [applies] **implies**, major medical coverage is designed to cover very large medical bills, usually after you have paid a substantial deductible. The deductibles [may] **for major medical insurance can** be as high as $1,000, but the coverage can amount to as much as $1 million.

[If you feel you can afford to pay Medicare's deductibles and co-payments out of your own pocket, but would like to insure against major expenses, you might consider this type of coverage. However, it isn't appropriate if you are worried about covering day-to-day health costs.]

There are no hard and fast rules about continuation or conversion policies. Ask your employer's personnel office to explain your options. Can you continue or convert? How much will the coverage cost? Will the policy cover your spouse? (Some do and some don't.) What will the policy pay for?

Health Maintenance Organizations

Membership in a health maintenance organization—HMO—is another way to fill the gaps in Medicare. HMOs are prepaid health care programs [which provide health services through one organization]. **Like insurance policies, HMOs cover certain health care costs. Unlike insurance policies, HMOs actually provide health care services.** Some HMOs have contracts with Medicare. As a Medicare beneficiary, you are eligible to join [one of these] **an HMO** if you participate in [both parts] **at least part B** of Medicare and live in a county where an HMO that contracts with Medicare is available.

If you join an HMO, you don't have to pay the Medicare deductibles or co-payments or file claims. You pay a monthly premium to the HMO, which provides doctors' services and most other health care [for an additional fee]. **You may have to pay a co-payment** of $1 to [$5 per visit] **$10 for some services.**

The trade-off is that you have to use the HMO doctors **and hospitals that are under contract with the HMO.** If you need a specialist, you must go to one recommended by the HMO. If you choose to see a non-HMO physician on your own, you have to pay the bills yourself.

There are different kinds of HMOs. Some [resemble hospitals, with] **have** all their doctors located in facilities owned by the HMO. Some are networks of physicians who maintain their own offices and [serve] **service** HMO patients as a part of their regular practice.

HMO plans and premiums [also] vary. A "low option" HMO plan generally covers at least the services included under the regular Medicare program. A "high option" plan [sometimes] **usually** includes **additional services not covered by Medicare—for example,** eye care [, for example].

For further information on **Medicare-contracting** HMOs, write the **New Jersey Department of Insurance, Division of Consumer Protection and Enforcement, Senior Health Insurance Program, CN 325, Trenton, New Jersey 08625** [New Jersey Department of Health, Alternative Health Systems, American Bridge Building, CN 367, Trenton, New Jersey 08625].

Medicare Supplement Policies

If you are looking for a policy specifically designed to coordinate with Medicare, you may want to consider a Medicare supplement policy. The phrase "Medicare supplement" is a special term reserved in New Jersey for policies that meet minimum standards set by the state. Most policies sold to individuals are required to cover at least:

[• the Medicare Part A (hospitalization co-payments;

• 90% of hospital expenses after 150 days (when Medicare runs out), up to a total of 365 days;

• some expenses that Medicare doesn't pay under Part B up to a maximum of $5,000 a year; and

• the co-payment for days 21-100 in a skilled nursing facility.]

—all or none of the Medicare Part A hospital deductible;

—the Medicare Part A co-payment for each of the first eight days in a skilled nursing facility;

—the first three pints of blood you receive as a hospital inpatient;

—the first three pints of blood you receive under Part B beginning in 1990;

—20 percent of Medicare's approved amounts under Part B up to $5,000 in 1989, and up to the "catastrophic limit" beginning in 1990;

—the co-payment amount for home intravenous therapy drugs beginning in 1990;

—the co-payment amount for outpatient drugs used in immunosuppressive therapy beginning in 1990.

[The exception is the Blue Cross and Blue Shield Medicare supplement policy.

We have established separate minimum standards for group policies and the Blue Cross and Blue Shield individual Medicare supple-

ment policy. These do not have to cover the co-payment for days 21-100 in a skilled nursing facility.]

Medicare supplement policies vary widely in price, depending on **when they start to pay benefits and** what they cover. [Some supplements, for example, also cover the Part A hospital deductible, a part of private duty nursing care, prescription drugs and the Part B deductible.] **For example, Medicare supplements are permitted a $200 deductible before paying benefits for Part B costs. But some policies have no deductible, or a $75 or $100 deductible. Some supplements pay costs for things that Medicare doesn't cover—a private room in a hospital, private duty nursing care.** Generally, the more comprehensive the coverage, the more expensive the policy will be.

The Department of Insurance maintains a chart listing the individual Medicare supplement policies for sale in New Jersey. The listing includes the cost of the policy and the benefits it offers. The chart is updated each year.

If you need a copy of the chart or other help, write the Department.

Blue Cross and Blue Shield Coverage

Blue Cross and Blue Shield of New Jersey, Inc. is a non-profit health service corporation offering three **individual** plans designed to coordinate with Medicare. **However, only one of the three plans meets New Jersey's minimum standards for Medicare supplements.**

Super 65

Blue Cross and Blue Shield Super 65 [meets New Jersey's minimum standards for Medicare supplements. It] pays the Part A **and Part B annual** deductibles, [and co-payments.] **Medicare's co-payment for each of the first eight days in a skilled nursing facility, 20 percent of Medicare's allowed amounts for doctors, and other out of hospital services without any dollar maximums.** [It pays the Part B annual deductible, the 20 percent co-payments for doctors who see you while you're hospitalized, and costs for home and office medical visits and other out of hospital services without any dollar maximums. After 150 days in a hospital when Medicare stops paying, Super 65 covers 100 percent of Medicare eligible expenses for an unlimited number of days.] **Super 65 covers the cost for care received outside the United States.** You may enroll in Super 65 any time during the year. However, there is a six month waiting period for pre-existing conditions.

The following two plans **are "limited benefit" policies because they** do not [meet New Jersey's minimum standards for] **pay all the benefits, or the dollar amounts of the benefits are less than what we require of** Medicare supplements:

65

Blue Cross and Blue Shield 65 is designed to provide basic hospitalization coverage. It pays the Part A [hospital] deductible and [co-payment, and] **costs for care outside the United States. It also pays** the Part B [annual] deductible and 20 percent [co-payments] **of Medicare's approved amount** for doctors who see you while you're hospitalized. Blue Cross and Blue Shield 65 [will also] pays **20 percent** co-payments for some services outside a hospital but there are annual dollar maximums. [It will not pay for hospitalization after 150 days (when Medicare runs out) or for skilled nursing home care.] **Blue Cross and Blue Shield 65 does not cover physician home or office visits.**

65 Select

Blue Cross and Blue Shield 65 Select [is primarily aimed at covering the costs for people who fear the expense of a long hospital stay. You pay the everyday health care costs—the Part A and B deductibles and some medical co-payments—yourself. 65 Select will pay the Part B co-payment for physician care in the hospital, the Part A hospitalization co-payments, and 90 percent of hospital costs after Medicare runs out.] **covers 20 percent of Medicare's approved amount for physician care in the hospital,** [it also pays the Part B co-payments for] and some services performed outside a hospital, subject to annual dollar maximums. **65 Select pays for health care costs while traveling outside the United States. 65 Select does not cover physician home or office visits.**

You can apply for Blue Cross and Blue Shield 65 or 65 Select within 31 days of your 65th birthday, or your Medicare effective date if you're disabled. If [you don't apply for Blue Cross and Blue Shield 65 or 65 Select coverages 60 days before or 31 days after] **more than 31 days have passed since** your 65th birthday, you can apply during the open enrollment period from February 1 through April 30 of each year. **Your coverage will take effect on July 1.**

Hospital Indemnity Policies

Frequently advertised by celebrities, indemnity policies pay a fixed amount of money per day, week or month while you are in the hospital. They are not designed, however, to fill Medicare's gaps.

The advantages are that they pay you regardless of whether you have other hospital coverage, and the money is yours to spend as you see fit.

The disadvantage is [the fact] that they pay only if you're hospitalized. No matter what your medical bills are, you can't collect unless you're in the hospital.

And depending on the policy you choose, you may not collect much even then. Under New Jersey's minimum standards, policies must begin paying by day four of your hospital stay. But they don't have to pay before the fourth day, so if you go home after three, you may not see a dime. Some policies stop paying after 31 days.

The other thing to be careful about is [the fact] that the payments made to you may be much lower than your bills—even though [the payments are required to be] **policies sold in New Jersey are required to pay** at least $40 a day. Also, the amount of the benefit can remain the same year after year, so unless you update your coverage occasionally, inflation will take its toll on the value of the payments. If you do buy a hospital indemnity policy, try to update it every few years.

Don't buy a hospital indemnity policy as your only additional health coverage to supplement Medicare.

[Nursing Home] Long-Term Care Policies

["Nursing home" is a term that causes much confusion. Both skilled nursing facilities and custodial care facilities are called "nursing homes." But neither Medicare nor most insurance policies pay for custodial care. And custodial care facilities are the places most people associate with the phrase "nursing home."] **Long-term care refers to a wide range of medical and non-medical services people need for a long period of time due to a chronic illness, disability, or physical or mental handicap. Long-term care can be provided in a nursing home, at home or in a community facility.**

Long-term care insurance policies cover different levels of nursing home care—skilled, intermediate, and custodial. Some will help pay for alternatives to nursing home care: for example, home care and adult day care.

Before you buy a [nursing home] **long-term care** policy, be sure to read the policy provisions carefully. **Will the policy pay benefits for skilled, intermediate and custodial nursing home care? Will it cover home health care? What is the definition for each level of care? Is there a waiting period (a period of time you have to be in the nursing home or receive home care before the policy will pay benefits)? Does the policy specifically exclude coverage for any conditions? How long will the policy pay benefits? Under what conditions can the company cancel or refuse to renew the policy?** [If a policy does not pay benefits for custodial care, it will state that in the Outline of Coverage under "exclusions."]

For more information about long-term care policies, write this department for a copy of our "Buyer's Guide to Long-Term Care Insurance."

Accidents Only

Accident-only policies provide coverage for death, dismemberment, or hospital and medical care due to an **accident.** They are not designed to pay routine health care costs.

[A Bad Buy] Specified Disease Policies

You may have received advertisements in the mail for "dread disease policies"—policies that will cover you for specific diseases, like cancer. They are such a bad buy that **they are banned for sale** in New Jersey.

[Dread] **Specified** disease policies are a bad buy because they pay in so few situations that odds are heavily stacked against the company ever having to pay you anything.

Be An Educated Consumer

Now that you know what Medicare does and does not cover, and what kinds of policies are out there, you are ready to set your strategy.

If you're concerned about day-to-day expenses, look for a policy that pays in as many situations as possible. Generally speaking, your money would be better spent on something like a Medicare supplement policy which covers a broad spectrum of medical expenses than on a hospital indemnity policy which pays only a small portion of the total daily hospital cost.

Don't duplicate coverage. **It's better to buy the most comprehensive policy you can afford than several policies that duplicate coverage.** Some policies will not pay for an expense already covered under another policy. So if you buy two of the same kind of policy, you can wind up with two sets of payments but only one set of benefits. **It is a federal crime** for someone to knowingly sell you a policy that duplicates Medicare or any private health policy you already have, **but that will not pay costs covered by another insurance policy.**

If you have a good basic supplement policy and want to add a hospital indemnity policy to it, be sure to update the coverage every few years, so that inflation doesn't erode the value of the coverage.

[Other Considerations] Watch Out For Key Phrases

Policies are contracts, and like other legal documents, they use [a] special vocabulary, including:

Waiting Periods. If you're buying a new policy, you may have to wait up to 30 days before you will be eligible to collect anything. Some policies also have waiting periods of up to six months for specific conditions (for example, varicose veins) unless the conditions are considered a medical emergency and treated as such.

If you're considering converting or continuing your employee coverage, you are less likely to have a waiting period. If you're thinking about buying a new policy, don't rush out and cancel an existing policy. Keep the old policy in force until the new one begins paying benefits.

Pre-existing condition[s] exclusions. Policies may not pay bills for a health condition you had before you bought the policy. This usually isn't a problem with coverage extended by employers, and in New Jersey, Medicare supplements must pay for any conditions after you've had the policy for six months. But policies that are not called Medicare supplements, such as hospital indemnity policies, can have pre-existing condition[s exclusions] **waiting periods** of up to two years.

[Also, watch out for these key phrases]

Maximums. A policy may have a maximum dollar amount that it will pay under the entire policy, a maximum it will pay within a given period of time or a limit on what it will pay for specific treatments. Hospital indemnity policies, for instance, may pay a specific amount per day, $40 for example, up to a maximum amount per month.

Renewals. Find out if and when a company can refuse to renew the policy. There are three common types of renewal conditions:

Guaranteed renewable. This means that the company agrees to renew each year until you reach a certain age or for life as long as you pay the premium. [Policies with a guaranteed renewal clause sold in New Jersey guarantee your right to renew for at least five years after the date of issue.] **Medicare supplement policies in New Jersey must be guaranteed renewable for life.**

You may see policies other than Medicare supplements that are:

Conditionally renewable. This means that the company agrees to renew as long as the company continues to insure people in the state with the same kind of policy. If the company decides to discontinue selling that kind of policy here, the coverage can be [cancelled] **non-renewed** at the end of the policy year **or the next premium due date.** [Most policies are conditionally renewable.]

Renewable at company option. A policy with this provision can be [cancelled] **non-renewed** for any reason at the end of the policy year. This kind of clause is [banned] **prohibited** in New Jersey **for individual policies**, but you may see sales materials for [these types of] policies **with this type of renewal clause** from outside the state.

Outline of Coverage. Don't be pressured or frightened into buying something you may not ever be able to use, like a cancer policy. If the literature you have doesn't discuss the important items mentioned here, ask for an Outline of Coverage, which companies are required to supply.

A Few Cautions

Don't be fooled into thinking that a company or agent represents Medicare or any other federal or state sponsored insurance program. The New Jersey Department of Insurance sets minimum standards for policies and companies, but **it does not endorse or sell policies.**

Be honest on the **insurance** application. If you lie or don't give a complete medical history, the company can refuse to pay. If someone else helps you fill out the application, check it before signing. It is your claim that will be denied if incorrect medical history is on the application.

Don't pay in cash. Use a check, money order or bank draft and be sure it is payable to the company, not the agent or anyone else. Remember, even a guaranteed renewable policy can be cancelled if you don't pay your premium, so you want a record of your payments.

By law, you have a [10-day] **30-day "free look"** [period or 30 days if you are buying a mail order policy] to read the policy and return it for a full refund if you are not satisfied.

If you don't receive the policy within 30 days after applying, contact the company and obtain in writing a reason for the delay. If 60 days go by without information, call or write the Department of Insurance.

It is a violation of state regulations for your doctor to charge you a fee for filling out your claim form. If your doctor does charge you, you can file a complaint with the State Board of Medical Examiners, 28 West State Street, Room 602, Trenton, New Jersey 08608.

Claim payments should be mailed promptly. So if you experience delays, don't be afraid to assert your rights. Insurance companies sometimes make mistakes; your inquiry or complaint may help to bring a faster or fairer claim settlement.

Getting Help

To get help filling out claim forms, evaluating policies and finding answers to your health insurance questions, you can contact the Senior Health Insurance Program (SHIP). SHIP is a free service designed to help you with your health insurance problems or questions. You can contact the New Jersey Division on Aging at 1-800-792-8820 for the number of the SHIP office in your county.

[Reminder]

The Department of Insurance maintains [a] charts listing the individual Medicare supplement policies **and long-term care policies** for sale in New Jersey. The listings include the costs of the [policy] **policies** and benefits [it offers] **offered**. The charts [is] **are** updated each year.

If you need [a copy **copies** of the charts or other help, write the [department] **Department of Insurance** at [201 East State Street,] **20 West State Street**, CN 325, Trenton, New Jersey 08625.

[(COMPANY NAME)
NOTICE ON CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT INSURANCE—1989

Your health care benefits provided by the Federal Medicare Program will change beginning January 1, 1989. Additional changes will occur on medical benefits in following years. The major changes are summarized below. These changes will affect hospital, medical and other services and supplies under Medicare. Because of these changes your Medicare supplement coverage provided by (Company Name) will change also. The following outline briefly describes the modifications in Medicare and your Medicare supplement coverage. Please read 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 Benefit Period	Effective January 1, 1989 Medicare Will Pay Per Calendar Year	Your 1988 Coverage Per Benefit Period	Effective January 1, 1989 Your Coverage Will Pay Per Calendar Year
MEDICARE PART A SERVICES AND SUPPLIES	First 60 days— All but $540	Unlimited number of hospital days after $560 deductible		
	61st to 90th day— All but $135 a day 91st to 150th day All but $270 a day Beyond 150th day— Nothing			
POSTHOSPITAL SKILLED NURSING CARE	Requires a 3 day stay and enter the facility within 14 days after hospital discharge.	There is no prior confinement requirement for this benefit.		
	First 20 days— 100% of costs	First 8 days— All but ($25.50) a day		
	21st through 100th day— All but $67.50 a day	9th through 150th day— 100% of costs		
	Beyond 100 days— Nothing	Beyond 150 days— Nothing		

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	In 1989 Medicare Part B Pays the Same as in 1988	Your Policy Now Pays	Effective January 1, 1989 Your Policy Will Pay
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after $75 deductible)	NOTE: Medicare Benefits change on January, 1990 as follows: 80% of allowable charges (after $75 deductible until an annual Medicare Catastrophic limit is met. 100% of the remainder of the calendar year. The limit in 1990 is $1,370* and will be adjusted on an annual basis.		

PRESCRIPTION DRUGS	Inpatient prescription drugs only	In 1989 Medicare covers inpatient prescription drugs only Effective January 1, 1990 Per Calendar Year 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for immunosuppressive drugs after ($550 in 1990) calendar year deductible is met. Effective January 1, 1991 Per Calendar Year Inpatient prescription drugs. 50% of allowable charges for all other outpatient prescription drugs after a $600 calendar year deductible is met. Coverage will increase to 60% of allowable charges in 1992 and to 80% of allowable charges from 1993 on.

*Expenses that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and co-payment charges and the Part B blood deductible charges.
(ANY ADDITIONAL BENEFITS)
(Describe any coverage provisions changing due to Medicare modifications.)
(Include information about premium adjustments that may be necessary due to changes in Medicare benefits or when premium charges information will be sent.)
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)]

* * *

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Motor Vehicle Insurance
Insurance Fraud: National Automobile Theft Bureau
Proposed New Rules: N.J.A.C. 11:16-2

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

Authority: P.L. 1989, c.65; N.J.S.A. 17:1C-6(e); 17:33A-1 et seq.; 17:23-8 et seq.

Proposal Number: PRN 1989-485.

Submit comments by October 18, 1989 to:
Verice Mason
Assistant Commissioner
Legislative and Regulatory Affairs
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

P.L. 1989, c.65 (effective April 14, 1989) requires insurers transacting motor vehicle insurance in New Jersey to report the theft or salvage of a motor vehicle to the National Automobile Theft Bureau (NATB) for inclusion in its central index file. An insurer is also required to reimburse the NATB for the costs of operation in a manner to be determined by the governing board of the NATB. Information provided to the NATB is to be confidential and will not be subject to public inspection.

The National Automobile Theft Bureau, which has its Eastern Division in Woodbury, New York, is a nonprofit organization engaged in motor vehicle loss prevention. The Bureau maintains a computerized program containing reports of stolen or abandoned motor vehicles through the United States. In 1985, the Bureau's files contained more than 9.2 million reports which were available to law enforcement agencies and insurance companies investigating claims involving stolen or abandoned motor vehicles. The availability of such information facilitates the successful investigation of motor vehicle thefts and also frustrates and prevents insurance fraud schemes. The reporting requirement set forth in the statute, as implemented by the proposed new rules, will ensure New Jersey's participation in this program and thus assure that the bureau's information base is up-to-date and accurate.

The proposed new rules implement the above-referenced legislation by requiring all insurers transacting motor vehicle insurance in New Jersey to become either a "member" of the NATB or to enter into a service agreement with that organization as a means of fulfilling the statutory requirements noted above. Securing membership in or the consummation of a service agreement with the NATB will be considered a condition of the maintenance of the authorization to conduct the business of motor vehicle insurance in New Jersey.

The proposed new rules also:

1. Establish a time period within which insurers must report to the NATB thefts or salvage;
2. Require insurers to cooperate fully with the NATB; and
3. Modify current claims settlement procedures to accommodate NATB procedures and the purpose and operation of the proposed new rules.

Social Impact

The proposed new rules will clarify an insurer's obligations under P.L. 1989, c.65 and will assure the effective implementation of this legislation.

The proposed new rules will require changes in existing claims settlement procedures in order to comply with the statutory requirements.

Economic Impact

Insurers transacting motor vehicle insurance in New Jersey will either have to pay the cost of membership in the NATB or the service fees associated with "service company" status. In accordance with NATB procedures, such costs are assessed on the basis of net fire and theft premiums, including those fire and theft premiums written under comprehensive policies, on insurance written by each member or service company pertaining to the ownership, use or maintenance of motor vehicles. "Members" will be assessed on the basis of such premiums written throughout the country, while "service companies" will be assessed for New Jersey premiums only.

Changes in claims settlement procedures required by the proposed new rules may initially require insurers to incur minor administrative costs. Consistent with the requirements of P.L. 1989 c.65, in those cases where reporting to the NATB is required by this subchapter, there may be limited delay in the processing of claims.

Regulatory Flexibility Analysis

The proposed new rules may affect "small businesses" as this term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the effect is primarily associated with the underlying legislation which requires reporting to and reimbursement of the NATB. The proposed new rules merely clarify that such reporting and reimbursement cannot be accomplished without an insurer first securing the status of either a member or a service company of the NATB.

Since the underlying legislation does not so allow, there is no small business exception to the reporting and reimbursement requirement. Similarly, there is no exception in the time or other requirements of the proposed new rules since all companies, regardless of size, should be able to comply with the requirements of the proposed new rules. Moreover, the size of an insurer should not be permitted to impede the statutory purpose of frustrating automobile theft and related insurance fraud schemes.

No additional professional services will be necessary to abide by the requirements of the proposed new rules.

The initial and annual costs of compliance are minimal and will be substantially outweighed by the cost savings associated with better insurance fraud prevention.

Full text of the proposed new rules follows:

SUBCHAPTER 2. REPORTS TO THE NATIONAL AUTOMOBILE THEFT BUREAU

11:16-2.1 Purpose and scope

This subchapter governs the reporting of motor vehicle theft or salvage and related transactions between insurers and the National Automobile Theft Bureau (NATB), in implementation of P.L. 1989, c.65. This subchapter applies to all insurers transacting motor vehicle insurance in New Jersey.

11:16-2.2 Definitions

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

"Insurer" means any corporation, company, partnership, association, society, order, individual or combination of individuals authorized to write and writing motor vehicle insurance in New Jersey.

"Major component part" means the engine, transmission, front end assembly, hood, doors, trunk lid, rear clip or any other part of a motor vehicle on which a unique vehicle identifying number has been placed.

"Motor vehicle" means all vehicles propelled other than by muscular power, excepting such vehicles as are run only upon rails or tracks.

11:16-2.3 NATB membership or service company requirement

(a) Within 30 days after the effective date of this subchapter, every insurer transacting motor vehicle insurance in New Jersey that is not already a member or a service company of the NATB, shall make application to become either a member or a service company of the NATB. An insurer shall pay all assessments for membership or service company status as may be required by the NATB in the manner prescribed by the NATB.

(b) An insurer shall become and remain either a member or a service company of the NATB as a condition of maintaining its authorization to conduct the business of motor vehicle insurance in New Jersey.

(c) Applications for membership and service company status and related information can be secured from:

NATB
10330 South Roberts Road—3A
Palos Hills, Illinois 60465-1998

11:16-2.4 Insurer reporting requirements

(a) Insurers shall report to the NATB all motor vehicles involved in losses as follows:

1. All thefts of a motor vehicle, or any of its major component parts, shall be reported within two working days from the receipt of sufficient information from the insured. The NATB shall acknowledge the receipt of each theft report received from an insurer within 10 working days. If the insurer has not received any acknowledgement or communication from the NATB within 10 working days following its submission to the NATB of the report, the insurer shall immediately communicate with the NATB to determine the status of its report.

2. All losses involving motor vehicle salvage, however sustained, including salvage retained by either an insured or a third party claimant, shall be reported to the NATB within five working days after the sale of salvage; or, if the insured is permitted to retain salvage, within five working days after the date of loss payment.

3. All insurers required to submit reports to the NATB in compliance with this subchapter shall be bound by all of the reporting requirements of the NATB.

11:16-2.5 NATB recording and reporting recovery of stolen or abandoned vehicles

The NATB shall be responsible for receiving and recording reports received from police and other law enforcement agencies of located stolen or abandoned motor vehicles. The NATB shall promptly transmit such information to the insurer providing physical damage coverage, if any, on the located motor vehicle. The insurer shall immediately notify the insured of the location where the motor vehicle has been stored.

11:16-2.6 Insurer cooperation with NATB

Insurers shall cooperate with the NATB and shall release information in their possession to the NATB upon its reasonable request.

11:16-2.7 NATB cooperation with insurers

The NATB shall cooperate with insurers in the resolution of errors and the investigation of claims suspected to be fraudulent.

11:16-2.8 Deferred claim processing and payment

(a) Notwithstanding any provision of Title 11 of the New Jersey Administrative Code to the contrary, an insurer shall defer the processing and payment of a claim filed under comprehensive or other coverage in accordance with the following:

1. No insurer shall pay a claim filed by an insured under comprehensive or other coverage for the theft of a motor vehicle or its major component parts unless said claim has first been reported to and acknowledged by the NATB.

2. An insurer shall defer the payment of a claim for five calendar days following receipt of the acknowledgement from the NATB of the insurer's report. If no further communication is received from the NATB during this five-day period indicating unresolved questionable circumstances, the insurer shall continue with the processing of the claim in accordance with the provisions of this section and other provisions of Title 11 of the New Jersey Administrative Code.

3. If the NATB indicates in its response to the insurer that coverage is in effect by more than one insurer for the same motor vehicle or that the motor vehicle has been previously reported as stolen and unrecovered, or that previous similar claims on the same vehicle have been reported, the insurer shall promptly investigate and resolve such discrepancy.

4. If the NATB discovers an erroneous vehicle identification number (VIN) and the NATB is unable to clear up such discrepancy internally, the NATB shall send a questionnaire to the insurer. This questionnaire shall be returned within five working days of receipt by the insurer. If the NATB and insurer are unsuccessful, after due diligence, in resolving the VIN error after a 30-day period from the date of the receipt by the insurer of sufficient information from the insured, the insurer shall proceed with the processing of the loss claim.

5. If the NATB indicates in its response to the insurer or the insurer finds that it has reasonable cause to believe that the loss may have been caused by the criminal or fraudulent act of any person,

the insurer shall suspend the processing of the claim and promptly begin an investigation. The insurer shall promptly provide such information to the NATB and shall cooperate fully with the NATB in its investigation of criminal or fraudulent acts.

11:16-2.9 NATB record retention

Such reports as may be required to be filed with the NATB by an insurer pursuant to P.L. 1989, c.65, this subchapter and the operating procedures of the NATB, shall be maintained by the NATB for at least a period of five years from the date of entry into the NATB system, except that in the case of motor vehicle salvage, such reports shall be maintained for a period of at least two years from such entry.

11:16-2.10 Penalties

Failure of an insurer to abide by the requirements of this subchapter may lead to the imposition of sanctions or penalties as provided by law.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BUREAU OF SECURITIES

Registration of Securities

Proposed Repeal: N.J.A.C. 13:47A-10.3

Proposed New Rules: N.J.A.C. 13:47A-10.2 through 10.4

Authorized By: James McLelland Smith, Chief, Bureau of Securities.

Authority: N.J.S.A. 49:3-67(a).

Proposal Number: PRN 1989-469.

Submit comments by October 18, 1989 to:

James McLelland Smith, Chief
Bureau of Securities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

N.J.A.C. 13:47A-10.2 through 10.4 are being proposed as new rules. The proposed new rules establish standards for the registration of securities by Qualification pursuant to N.J.S.A. 49:3-61, by Coordination pursuant to N.J.S.A. 49:3-61.1; and by Notification pursuant to N.J.S.A. 49:3-61.2. N.J.S.A. 49:3-61.1 and 49:3-61.2 were additions to the Uniform Securities Law (1967), N.J.S.A. 49:3-47 et seq. ("Law"), that were authorized pursuant to the Securities Law Reform and Protection Act of 1985, L. 1985, c.405, effective April 9, 1986. N.J.S.A. 49:3-61.1 provides for the registration of securities by Coordination. N.J.S.A. 49:3-61.2 provides for the registration of securities by Qualification. The proposed new rules contain forms as set forth in Appendices A through C, to be used by applicants for the registration of securities by Qualification, Coordination and Notification.

Proposed rules relating to withdrawal of registration statements and applications for registration, deregistration, abandonment, the distribution of preliminary prospectuses and shelf registration are also included. N.J.A.C. 13:47A-10.3 is proposed for repeal in light of the proposal of these new rules.

Registration Requirements

The proposed rules allow the maximum use of forms used by the Securities and Exchange Commission and uniform forms created by the North American Securities Administrators Association, Inc. and used for registration of securities by most other states. The New Jersey Addendum tracks and is intended to implement the legislative intent behind N.J.S.A. 49:3-64 which was amended on April 6, 1986.

Withdrawal, Abandonment and Deregistration

The proposed rules describe the circumstances under which the applicant or registrant may withdraw or deregister and when the application will be deemed abandoned.

Distribution of Preliminary Prospectuses

The statute does not directly refer to the distribution of preliminary prospectuses after an application for registration has been filed; therefore, the proposed rules allow such distribution for limited purposes.

Social Impact

The major social impact of the proposed new rules will be to benefit applicants who wish to register securities in New Jersey by establishing clear filing standards and forms that are relatively uniform. The public in general will be benefitted because the clearer uniform standards will also assist the Bureau in determining which offerings need more attention or should be denied in the public interest.

Economic Impact

The economic impact on the public should be slight. The proposed new rules are expected to minimize current questions that applicants may have with respect to the filing requirements for the registration of securities. The use of uniform forms is an attempt to minimize any economic burden that applicants may have with respect to filing. The rules impose the statutorily mandated registration filing fee of $1,000. Initially increased administrative costs are anticipated by the Bureau of Securities, which is required to administer the law and the rules promulgated under the law until the regulations are assimilated by the industry.

Regulatory Flexibility Analysis

The proposed new rules will establish filing procedures for the registration of securities, as currently required by law. The use of uniform forms is an attempt to minimize the burden on the industry in general and on "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are no reporting or recordkeeping requirements imposed by these proposed rules.

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

SUBCHAPTER 10. **REGISTRATION OF** SECURITIES [OFFERINGS]

13:47A-10.1 (Reserved)

13:47A-10.2 Registration by coordination

(a) A person who seeks to register by coordination a security for which a registration statement has been filed under the Securities Act of 1933 shall file with the Bureau the following documents and information.

1. A completed application Form U-1, Uniform Application to Register Securities, which shall be accompanied by the following:

i. The New Jersey Addendum, incorporated herein by reference as Appendix A;

ii. One copy of the Registration Statement filed with the Securities and Exchange Commission and each amendment to such registration statement together with all exhibits;

iii. Three copies of the prospectus in the latest form on file with the Securities and Exchange Commission whether or not such prospectus was printed as a separate document;

iv. One copy of the Underwriting agreement, agreement among underwriters and selected dealers agreement or similar agreements between the broker-dealer and the person owning the securities to be sold;

v. One copy of the indenture, if applicable;

vi. One copy of the issuer's charter or articles of incorporation, or if the issuer is not a corporation the similar relevant document, as amended to date;

vii. One copy of the issuer's by-laws as amended to date;

viii. One copy of the signed, unqualified, and unconditional opinion of counsel as to the legality of the security being registered, with a certified English translation if it is in a foreign language, which states that the security, when issued will be legally issued, fully paid, and nonassessable, and, if a debt security, is a binding obligation of the issuer; and if the issuer is a partnership, association or trust, whether the purchasers will be liable for the obligations of the partnership;

ix. One copy of a specimen of the security or, if not applicable, a copy of the document that represents the interest to be sold and the rights of the parties involved;

x. An irrevocable consent appointing the Chief of the Bureau agent for service of process, executed by the issuer on Form U-2, Uniform

Consent to Service of Process, together with a corporate resolution executed by the secretary of that corporation, on Form U-2A, Uniform Corporate Resolution;

xi. One copy of each pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

xii. An undertaking executed by the applicant to forward to the Bureau within one business day after filing with the Securities and Exchange Commission a marked copy of any amendments to the federal registration statement, designating the changed, revised or added material or information by underlining and otherwise marking the same;

xiii. Any other document or information requested by the Bureau;

xiv. A check or money order payable to the New Jersey Bureau of Securities, in the amount of $1,000, for each class of securities to be registered. The Bureau may require the applicant to submit a money order or certified check in appropriate instances;

xv. If the securities are being offered and sold by or through a broker-dealer, the identity of the broker-dealer who will offer and/or sell the securities in or from the State of New Jersey and a statement that such broker-dealer is registered with the Bureau pursuant to N.J.S.A. 49:3-56(a); and

xvi. If the securities are being offered and sold directly by the issuer in or from the State of New Jersey through any bona fide officer, director or employee, the name of such officer, director or employee and a statement that the issuer is relying on an exemption from agent registration for such officer, director or employee or that the issuer has filed with the Bureau an issuer qualification application and that such officer, director or employee is registered with the Bureau as an agent.

2. Any document filed with the Bureau pursuant to N.J.S.A. 49:3-61, 49:3-61.1 and 49:3-61.2 within three years preceding the filing of a registration statement may be incorporated by reference pursuant to N.J.S.A. 49:3-62(d) provided that the applicant shall clearly identify in the reference the name of the document, the name of the applicant, the Bureau file number, the date of filing and state that no changes have been made in such documents since the last amendment filed with the Bureau.

3. All documents filed pursuant to this section must be legible, securely bound and on paper no larger than 8½ inches by 11 inches.

(b) An application for registration by coordination shall become effective with the Bureau simultaneously with the registration statement filed with the Securities and Exchange Commission provided the following conditions have been met:

1. All documents and information required by (a) above have been filed with the Bureau; and

2. The application to register securities by coordination:

i. Was filed with the Bureau within 10 calendar days after the initial filing of the registration statement was made with the Securities and Exchange Commission and such application has been on file with the Bureau for at least 10 calendar days; or

ii. Has been on file with the Bureau for at least 30 calendar days; and

3. A statement that the maximum and minimum proposed offering prices and the maximum underwriting commissions have been on file for at least two business days; and

4. No order has been issued pursuant to N.J.S.A. 49:3-64.

(c) The following post effective requirements shall be complied with by an applicant whose securities have been registered with the Bureau by coordination:

1. Three copies of the final prospectus filed with the Securities and Exchange Commission shall be filed with the Bureau no later than two business days afer such prospectus was filed with or forwarded to the Securities and Exchange Commission.

2. Post-effective amendments and supplements required to be filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933 shall be filed with the Bureau no later than two days after such amendments and supplements were filed with or forwarded to the Securities and Exchange Commission. Post-effective amendments filed with the Bureau will become effective at the same time that effectiveness is granted by the Securities and Exchange Commission, and no new order will issue from the Bureau.

(d) A security may not be registered by Coordination if the application for registration is received by the Bureau after the registration statement has become effective with the Securities and Exchange Commission. Applications which cannot be registered by Coordination must be registered by Qualification pursuant to N.J.S.A. 49:3-61 or Notification pursuant to N.J.S.A. 49:3-61.2.

(e) An application for registration may be withdrawn prior to effectiveness only in the discretion of the Bureau Chief, pursuant to N.J.S.A. 49:3-62(g), provided the Bureau has completed its review of the application and no action is contemplated under N.J.S.A. 49:3-64 or 69. The applicant may request withdrawal by stating the reason for such request, that none of the securities have been offered or sold in or from the State of New Jersey and that both the issuer and the underwriter concur in such request.

(f) Pursuant to N.J.S.A. 49:3-62(g), a registration statement may not be withdrawn within one year of its effectiveness with the Bureau if any securities of the same class which was registered remain outstanding.

(g) A preliminary prospectus may be distributed after the filing with the Bureau of an application for registration by Coordination and before its effectiveness, if such distribution is made for informational purposes only and provided such distribution also complies with federal securities law. The telephone number of a broker-dealer or issuer may not be displayed prominently on the front cover or inside cover or back cover page of a prospectus or preliminary prospectus unless such broker-dealer or issuer has complied with the registration requirements of N.J.S.A. 49:3-47 et seq.

(h) Securities registered by Coordination may, in the discretion of the Bureau, be deregistered under any of the following conditions:

i. An exemption is or has become available pursuant to N.J.S.A. 49:3-50(a);

ii. The securities will not be sold and have been removed from registration with the Securities and Exchange Commission; or

iii. For good cause shown.

(i) An application for registration by Coordination may be deemed by the Bureau to be abandoned under any of the following circumstances:

i. The applicant has not responded for more than 30 days to a request from the Bureau for information concerning the offering; or

ii. The application has been on file with the Bureau for more than 12 months and has been inactive for more than two months.

(j) In the case of "shelf" registrations, the initial filing with the Bureau shall cover the first takedown. Subsequent takedowns may be registered by filing Form U-1, Uniform Application to Register Securities, together with any supplements or amendments to the registration statement, and a filing fee in the amount of $1,000 for each security to be registered. The subsequent filing will be expedited provided the filing makes a clear reference to the original shelf filing by giving the name of the issuer, the securities registered, the New Jersey registration number and the effective date of the prior registration. Subsequent takedowns which comply with the foregoing shall become effective upon notice by the filing of a supplement or an amendment to the registration statement.

[13:47A-10.3 Effective date of initial applications

Any initial application for registration as a broker-dealer, agent or investment advisor shall become effective at 9:00 A.M. on the 15th day after it is accepted as a complete filing. In computing the time period the day on which it is accepted shall not be counted; Saturday, Sunday and holidays shall be counted. If the 15th day falls on a Saturday, Sunday or holiday, the registration will become effective on the next regular business day for the Bureau of Securities.]

13:47A-10.3 Registration by Qualification

(a) A person who seeks to register a security by Qualification shall file with the Bureau the following documents and information:

1. A completed application Form U-1, Uniform Application to Register Securities, which shall be accompanied by the following:

i. The New Jersey Addendum, incorporated herein by reference as Appendix A;

ii. One copy of an executed Registration Statement which complies with Securities and Exchange Commission Form S-1, together with all exhibits or if permitted by the Bureau any other appropriate official form issued by the Securities and Exchange Commission;

iii. Three copies of the prospectus whether or not such prospectus was printed as a separate document;

iv. One copy of the Underwriting agreement, agreement among underwriters and selected dealers agreement or similar agreements between the broker-dealer and the person owning the securities to be sold;

v. One copy of the indenture, if applicable;

vi. One copy of the issuer's charter or articles of incorporation, or if the issuer is not a corporation the similar relevant document, as amended to date;

vii. One copy of the issuer's by-laws as amended to date;

viii. One copy of the signed, unqualified, and unconditional opinion of counsel as to the legality of the security being registered, with a certified English translation if it is in a foreign language, which states that the security, when issued will be legally issued, fully paid, and nonassessable, and, if a debt security, is a binding obligation of the issuer; and if the issuer is a partnership, association or trust, whether the purchasers will be liable for the obligations of the partnership;

ix. One copy of a specimen of the security or if not applicable a copy of the document that represents the interest to be sold and the rights of the parties involved;

x. An irrevocable consent appointing the Chief of the Bureau agent for service of process, executed by the issuer on Form U-2, Uniform Consent to Service of Process, together with a corporate resolution executed by the secretary of that corporation on Form U-2A, Uniform Corporate Resolution;

xi. One copy of each pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

xii. Any other document or information requested by the Bureau;

xiii. A check or money order payable to the New Jersey Bureau of Securities, in the amount of $1,000, for each class of securities to be registered. The Bureau may require applicant to submit a money order or certified check in appropriate instances;

xiv. If the securities are being offered and sold by or through a broker-dealer the identity of the broker-dealer who will offer and/or sell the securities in or from the State of New Jersey and a statement that such broker-dealer is registered with the Bureau pursuant to N.J.S.A. 49:3-56(a);

xv. If the securities are being offered and sold directly by the issuer in or from the State of New Jersey through any bona fide officer, director or employee, the name of such officer, director or employee and a statement that the issuer is relying on an exemption from agent registration for such officer, director or employee or that the issuer has filed with the Bureau an issuer qualification application and that such officer, director or employee is registered with the Bureau as an agent; and

xvi. If a registration statement has not been filed with the Securities and Exchange Commission, then those references to the Securities and Exchange Commission contained in Form U-1 shall be inapplicable.

2. Any document filed with the Bureau within three years preceding the filing of a registration statement may be incorporated by reference pursuant to N.J.S.A. 49:3-62(d). The applicant shall clearly identify in the reference the name of the document, the name of the application (for example, issuer, broker-dealer, investment advisor), the Bureau file number, date of filing and the fact that no amendments have been made in such documents since the last amendment filed with the Bureau.

3. All documents filed pursuant to this section must be legible, securely bound and on paper no larger than 8½ inches by 11 inches.

(b) An application for registration by Qualification shall become effective with the Bureau when the Bureau so orders provided no order has been issued pursuant to N.J.S.A. 49:3-64.

(c) The Bureau may require that the registration by Qualification be subject to one or more of the following conditions.

i. A prospectus containing any designated part of the information specified in the Registration Statement be sent or given to each person to whom an offer is made before or concurrently with:

(1) The first written offer made to such person (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by an underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(2) The confirmation of any sale made by or for the account of any such person;

(3) Payment pursuant to any such sale; or

(4) Delivery of the security pursuant to any such sale, whichever first occurs;

ii. That any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow. The Bureau may determine the terms and conditions of any escrow required hereunder but shall not reject a depository solely because of location in another state;

iii. That the proceeds from the sale of the registered security in this State be deposited in escrow until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The Bureau may determine the terms and conditions of any escrow required hereunder, but shall not reject a depository solely because of location in another State; and/or

iv. That any security registered by qualification be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the bureau or preserved for any period up to three years as specified by the Bureau.

(d) The following post effective requirements shall be complied with by applicant whose securities have been registered with the Bureau by Qualification:

1. Three copies of the final prospectus shall be filed with the Bureau no later than one business day after such prospectus was available or was distributed to the public whichever occurs first;

2. The registrant shall file a post-effective amendment with the Bureau whenever there occurs any material change in the information contained in the Registration Statement;

3. Post-effective amendments filed with the Bureau will become effective when the Bureau so orders; and

4. No offers or sales may be made or any prospectus distributed during the time the post effective amendment is pending.

(e) An application for registration may be withdrawn prior to effectiveness only in the discretion of the Bureau Chief, pursuant to N.J.S.A. 49:3-62(g), provided that the Bureau has completed its review of the application and no action is contemplated under N.J.S.A. 49:3-64 or 69. The applicant may request withdrawal by stating the reason for such request, that none of the securities have been offered or sold in or from the State of New Jersey and that both the issuer and the underwriter concur in such request.

(f) Pursuant to N.J.S.A 49:3-62(g), a registration statement may not be withdrawn within one year of its effectiveness with the Bureau if any securities of the same class which was registered remain outstanding.

(g) A preliminary prospectus may not be distributed after the filing with the Bureau of an application for registration by Qualification and before its effectiveness unless the Bureau so orders. In the event that the Bureau permits distribution of the preliminary prospectus, such distribution may be made for informational purposes only. The telephone number of a broker-dealer or issuer may not be displayed prominently on the front cover or inside cover or back cover page of a prospectus or preliminary prospectus unless such broker-dealer or issuer has complied with the registration requirements of N.J.S.A. 49:3-47 et seq.

(h) Securities registered by Qualification may in the discretion of the Bureau be deregistered under any of the following conditions:

i. An exemption is or has become available pursuant to N.J.S.A. 49:3-50(a);

ii. The securities will not be sold; or

iii. For good cause shown.

(i) An application for registration by Qualification may be deemed by the Bureau to be abandoned under any of the following circumstances:

i. The applicant has not responded for more than 30 days to a request from the Bureau for information concerning the offering; or

ii. The application has been on file with the Bureau for more than 12 months and has been inactive for more than two months.

(j) Shelf registration may be permitted only in the discretion of the Bureau. Generally shelf registrations will not be permitted unless the securities have been registered with the Securities and Exchange Commission. In the case of "shelf" registrations, the initial filing with the Bureau shall cover the first takedown. Subsequent takedowns may be registered by filing Form U-1, Uniform Application to Register Securities, together with any supplements or amendments to the registration statement, and a filing fee in the amount of $1,000 for each security to be registered. The subsequent filing will be expedited provided the filing makes a clear reference to the original shelf filing by giving the name of the issuer, the securities registered, the New Jersey registration number and the effective date of the prior registration. Subsequent takedowns which comply with the foregoing shall become effective upon notice by the filing of a supplement or an amendment to the registration statement.

13:47A-10.4 Registration by Notification

(a) A person who seeks to register securities by Notification shall file with the Bureau the following documents and information:

1. A completed application Form U-1, Uniform Application to Register Securities, which shall be accompanied by the following:

i. The New Jersey Addendum, incorporated herein by reference as Appendix A;

ii. One copy of an executed New Jersey Form RN-1, Registration Statement for Registration by Notification, incorporated herein by reference as Appendix B, together with all exhibits;

iii. An original and two copies of an executed New Jersey Form RN-2, Statement of Eligibility for Registration by Notification, incorporated herein by reference as Appendix C;

iv. Three copies of the prospectus if any, in the latest form whether or not printed as a separate document;

v. One copy of the underwriting agreement, agreement among underwriters and selected dealers agreement or similar agreements between the broker-dealer and the person owning the securities to be sold;

vi. One copy of the indenture, if applicable;

vii. One copy of the issuer's charter or articles of incorporation, or if the issuer is not a corporation the similar relevant document, as amended to date;

viii. One copy of the issuer's by-laws as amended to date;

ix. One copy of the signed, unqualified, and unconditional opinion of counsel as to the legality of the security being registered, with a certified English translation if it is in a foreign language, which states that the security, when issued will be legally issued, fully paid, and nonassessable, and, if a debt security, is a binding obligation of the issuer; and if the issuer is a partnership, association or trust, whether the purchasers will be liable for the obligations of the partnership;

x. One copy of a specimen of the security or if not applicable a copy of the document that represents the interest to be sold and the rights of the parties involved;

xi. An irrevocable consent appointing the Chief of the Bureau agent for service of process, executed by the issuer on Form U-2, Uniform Consent to Service of Process, together with a corporate resolution executed by the secretary of that corporation, on Form U-2A, Uniform Corporate Resolution;

xii. One copy of each pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

xiii. A check or money order payable to the New Jersey Bureau of Securities, in the amount of $1,000, for each class of securities to be registered. The Bureau may require the applicant to submit a money order or certified check in appropriate instances;

xiv. If the securities are being offered and sold by or through a broker-dealer, the identity of the broker-dealer who will offer and/or sell the securities in or from the State of New Jersey and a statement that such broker-dealer is registered with the Bureau pursuant to N.J.S.A. 49:3-56(a); and

xv. If the securities are being offered and sold directly by the issuer in or from the State of New Jersey through any bona fide officer, director or employee, the name of such officer, director or employee and a statement that the issuer is relying on an exemption from agent registration for such officer, director or employee or that the issuer has filed with the Bureau an issuer qualification application and that such officer, director or employee is registered with the Bureau as an agent.

2. Any document filed with the Bureau within three years preceding the filing of a registration statement may be incorporated by reference pursuant to N.J.S.A. 49:3-62(d). The applicant shall clearly identify in the reference the name of the document, the name of the applicant (for example, issuer, broker-dealer, investment advisor), the Bureau file number, date of filing and the fact that no amendments have been made in such documents since the last amendment filed with the Bureau.

3. All documents filed pursuant to this section must be legible, securely bound and on paper no larger than 8½ inches by 11 inches.

(b) An application for registration by Notification shall become effective with the Bureau at three o'clock Eastern Standard Time on the afternoon of the second full business day after all documents and information required by (a) above have been filed with the Bureau provided no order has been issued pursuant to N.J.S.A. 49:3-64.

(c) The following post effective requirements shall be complied with by applicant whose securities have been registered with the Bureau by Notification:

1. Three copies of any final prospectus shall be filed with the Bureau no later than one business day after such prospectus was available or was distributed to the public whichever occurs first;

2. The registrant shall file a post effective amendment with the Bureau whenever there occurs any material change in the information contained in the Registration Statement;

3. Post-effective amendments filed with the Bureau will go effective at three o'clock Eastern Standard Time in the afternoon of the second full business day after all documents and information required to be filed in the amendment have been filed with the Bureau provided no order has been entered pursuant to N.J.S.A. 49:3-64; and

4. No offers or sales may be made or any prospectus distributed during the time the post effective amendment is pending.

(d) An application for registration may be withdrawn prior to effectiveness only in the discretion of the Bureau Chief, pursuant to N.J.S.A. 49:3-62(g), provided that the Bureau has completed its review of the application and no action is contemplated under N.J.S.A. 49:3-64 or 69. The applicant may request withdrawal by stating the reason for such request, that none of the securities have been offered or sold in or from the State of New Jersey and that both the issuer and the underwriter concur in such request.

(e) Pursuant to N.J.S.A. 49:3-62(g), a registration statement may not be withdrawn within one year of its effectiveness with the Bureau if any securities of the same class which was registered remain outstanding.

(f) A preliminary prospectus may not be distributed after the filing with the Bureau of an application for registration by Notification and before its effectiveness unless the Bureau so orders. In the event that the Bureau permits distribution of the preliminary prospectus, such distribution may be made for informational purposes only. The telephone number of a broker-dealer or issuer may not be displayed prominently on the front cover or inside cover or back cover page of a prospectus or preliminary prospectus unless such broker-dealer or issuer has complied with the registration requirements of N.J.S.A. 49:3-47 et seq.

(g) Securities registered by Notification may in the discretion of the Bureau be deregistered under any of the following conditions:

i. An exemption is or has become available pursuant to N.J.S.A. 49:3-50(a);

ii. The securities will not be sold; or

iii. For good cause shown.

(h) An application for registration by Notification may be deemed by the Bureau to be abandoned under any of the following circumstances:

i. The applicant has not responded for more than 30 days to a request from the Bureau for information concerning the offering; or

ii. The application has been on file with the Bureau for more than 12 months and has been inactive for more than two months.

(i) Shelf registration may be permitted only in the discretion of the Bureau. Generally shelf registrations will not be permitted unless the securities have been registered with the Securities and Exchange Commission. In the case of "shelf" registrations, the initial filing with the Bureau shall cover the first takedown. Subsequent takedowns may be

registered by filing Form U-1, Uniform Application to Register Securities, together with any supplements or amendments to the registration statement, and a filing fee in the amount of $1,000 for each security to be registered. The subsequent filing will be expedited provided the filing makes a clear reference to the original shelf filing by giving the name of the issuer, the securities registered, the New Jersey registration number and the effective date of the prior registration. Subsequent takedowns which comply with the foregoing shall become effective upon notice by the filing of a supplement or an amendment to the registration statement.

APPENDIX A
NEW JERSEY ADDENDUM TO REGISTRATION STATEMENT

1. Has the issuer, any partner, officer or director of the issuer, any person (as that term is defined in 49(i)) occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, or any broker-dealer or other person involved directly or indirectly in the offering:

(a) Been convicted of:

i. Any crime of embezzlement under state, federal or foreign law?

Yes ___ No ___

ii. Any crime involving any theft, forgery or fraudulent practices in regard to any state, federal or foreign securities law, banking law, insurance law, commodities trading law or any antifraud law?

Yes ___ No ___

(b) Been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business?

Yes ___ No ___

(c) Been the subject of an effective order of the Bureau Chief denying, suspending, or revoking securities registration, or registration as a broker-dealer, agent, or investment advisor?

Yes ___ No ___

(d) Been the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking securities registration, registration as a broker-dealer, agent, or investment advisor, or the substantial equivalent of those terms as defined in the "Uniform Securities Law (1967)," P.L. 1967, c.93 (c.49:3-48 et seq.), or been the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the "Securities Exchange Act of 1934" (15 U.S.C. 78a et seq.) or been the subject of a United States Postal Service fraud order?

Yes ___ No ___

(e) Ever been convicted of, pled guilty or nolo contendere ("no contest") to, or found guilty by a court in a civil action or by any state or federal agency of charges involving fraud, or dishonest or unethical practices in the securities business?

Yes ___ No ___

2.(a) Is the issuer, any partner, officer or director of the issuer, any person (as that term is defined in 49(i)) occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, or any broker-dealer or other person involved directly or indirectly in the offering insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature?

Yes ___ No ___

(b) Has such entity or person filed a petition under federal bankruptcy laws or any state insolvency law or had a receiver, fiscal agent or similar officer appointed by a court for the business or property of such person, or any partnership in which such person was a general partner at or within two years before the time of such filing, or any corporation or business association of which such person was an executive officer at or within two years before the time of such filing?

Yes ___ No ___

3. If the answer to any of the questions above is "yes" the following information is required:

(a) Give the citation for each statute under which the relevant action or proceeding was initiated. Give the full title of the action or proceeding, the docket number, the relevant court agency and the date such action or proceeding was initiated.

(b) Describe the activities which gave rise to such action or proceeding.

(c) State the name, address and connection with the issuer, broker-dealer or other person described in questions 1 and 2, for each person who was the subject of such action or proceeding.

(d) Describe the final disposition of such action or proceeding and the present status. (The term final disposition as used herein refers to any conviction, injunction, order, decree, court decision, petition, pleas or other final adjudication of the action or proceeding.)

(e) State whether or not the final disposition has been modified, reversed, suspended, vacated or nullified. If a description of the action or proceeding and the final disposition is not included in the registration statement, the reason for the omission should be set forth in detail on a rider to this addendum. Include all mitigating circumstances.

The undersigned is aware of N.J.S.A. 49:3-54 and understands that this addendum is part of the registration statement filed with the Bureau of Securities, and acknowledges the responsibility to update and keep current the information contained herein so long as this application is pending.

_____
ISSUER

by: _____
(Signature)

_____
(Title)

DATE: _____

APPENDIX B
NEW JERSEY REGISTRATION STATEMENT
FOR REGISTRATION BY NOTIFICATION

All items must be answered. Attach riders where necessary.

I. DESCRIPTION OF ISSUER

A. Name: _____

B. Address: _____

_____

C. Form of organization: _____

State: _____

Date organized: _____

D. General character of business: _____

_____

E. Principal place of business: _____

_____

II. DESCRIPTION OF SUBSIDIARIES
(State the information requested in Question 1 for each significant subsidiary of the issuer.)

_____

_____

_____

_____

III. DESCRIPTION OF APPLICANT
(Complete if applicant is not the issuer.)

A. Name: _____

B. Address: _____

_____

C. Relationship to issuer: _____

IV. INFORMATION REGARDING NONISSUER DISTRIBUTION
(Complete only if offering or any part thereof is for the benefit of selling securityholders.)

A. Name of each person on whose behalf any part of the offering is to be made:

B. Address(es):

C. Amount of securities currently held by each selling securityholder:

D. Reason (purpose) for making this offering:

V. DESCRIPTION OF SECURITIES

Description of securities	Offering price or proposed offering price	Total offering No. of shares or units	Total offering Amount $	Offering in this state No. of shares or units	Offering in this state Amount $
Totals			$		$

VI. INFORMATION AND DOCUMENTS REQUIRED
(See N.J.S.A. 49:3-61.3(b)(10), 61.3(b)(12), and 61.3(b)(14)).

A. States in which a registration statement or similar document in connection with this offering has been or is to be filed.

B. State whether any withdrawal or any adverse order, judgment, or decree has been entered in connection with this offering by the regulatory authorities in any state or by any court or by the Securities and Exchange Commission.

If so, give details.

C. (1) Proposed offering price per unit (or the method by which it is to be computed).

(2) State whether the price will vary as to any person or class of persons other than underwriters.

If so, give details.

(3) Is this offering, or any part thereof, to be made other than for cash?

If so, give details.

D. (1) Estimated aggregate underwriting and selling discounts or commissions and finders fee. Show each means of payment separately (e.g., cash, securities, contracts).

(2) If the selling discounts and commissions are variable, state the basis of determining them, including their maximum and minimum amount.

(3) State the estimated amounts of other selling expenses, including legal, engineering and accounting expenses.

E. (1) The name and address of every underwriter, agent, broker-dealer or other recipient of a commission, discount or finders fee. (Submit the underwriting agreement or form of underwriting agreement as an exhibit.)

(2) If the securities are not to be offered through an underwriter, describe the plan of distribution.

(3) Identify the agent or broker-dealer registered in New Jersey who will offer the securities or state the applicable exemption.

F. Description of any stock options outstanding or to be created in connection with this offering.

G. List dollar amount of options held by each of the following:

	Name and address	Dollar amo of options h
1. Each director or officer of the issuer or person occupying a similar status.		
2. Any person owning of record, or beneficially if known, at least 10% of the outstanding shares of any class of equity security of the issuer.		
3. Every promoter of the issuer if the issuer was organized within the past 3 years.		
4. If this is a nonissuer distribution, any person on whose behalf this offering is to be made.		
5. Every underwriter or recipient of a finders fee (every person listed in paragraph E).		
6. Every person who holds or will hold 10% or more in the aggregate of such options.		

H. EXHIBITS

Submitted herewith as part of this registration statement are the following documents. (Documents on file may be incorporated by reference.)

1. A statement of eligibility for registration by notification.

2. A copy of the underwriting or selective dealer agreement (or the proposed form).

3. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended to be used in connection with this offering.

4. A consent to service of process of the issuer (with appropriate resolution).

5. The New Jersey Addendum.

6. Financial statements pursuant to N.J.S.A. 49:3-61.2(b)(6), specifically:

(a) A balance sheet of issuer as of a date within 4 months prior to the filing of this registration statement; and

(b) A summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet, and summary of earnings for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than 2 years.

7. The registration fee of $1,000.00.

_____
Name of Applicant

By:_____
(Name and Title)

Date:_____

STATE OF

COUNTY OF

The undersigned, _____, being first duly sworn, deposes and says:

That he has executed the foregoing application for and on behalf of the applicant named therein; that he is _____ of such applicant and is fully authorized to execute and file such application; that he is familiar with such application; and that to the best of his knowledge, information and belief the statements made in such application are true and the documents submitted therewith are true copies of the originals thereof.

_____
Name

Subscribed and sworn to before me
this ___ day of_____, 19____

_____

_____

NOTARY PUBLIC

In and for the County of_____
State of_____
My Commission Expires:_____
(Notarial Seal)

APPENDIX C

STATEMENT OF
ELIGIBILITY FOR REGISTRATION
BY NOTIFICATION
(Pursuant to N.J.S.A. 49:3-61.2)

1. Name of issuer_____

2. Original date of organization of the issuer _____ Number of years issuer has been in continuous operation _____ If issuer has been in continuous operation less than 5 years, give names of predecessors & state length of time each has been in operation: _____

_____

_____

3. Has there been any default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on any security (of the issuer or any predecessor) with a fixed maturity or a fixed interest or dividend provision? _____

_____

4. State the net earnings of the issuer and any predecessors during the past 3 full fiscal years, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision, which securities are outstanding at the date the registration statement is filed.

Fiscal year ended	Net earnings
1._____	_____
2._____	_____
3._____	_____
Total	_____
Average net earnings (divide total by 3)	_____

5. If the securities of the issuer or any of its predecessors (which do not have a fixed maturity or a fixed interest or dividend provision) have been outstanding for 3 full fiscal years, complete the chart below.

Description of Securities	No. of units now outstanding	Maximum offering price per unit (1) $	Market price per units as of date (1) $	Book value per unit as of date (2) $	Total value (3) $

A. Total value $_____

B. 5% of total value $_____

C. Average net earnings (restate from Item 4) $_____

In order to qualify for Registration by Notification, "C" must be greater than or equal to "B".

(1) The maximum offering price or the market price on a day selected by the applicant, but must be within 30 days before the date of filing this registration statement.

(2) Book value must be of a day, selected by the applicant, within 90 days of filing this registration statement. Book value may be used only if there is neither a readily determinable market price nor a cash offering price.

(3) The total value is the product of either (1) the number of units multiplied by the higher of the maximum offering price or the market price, or (2) the number of units multiplied by the book value.

6. If the securities of the issuer or any of its predecessors (which do not have a fixed maturity or a fixed interest or dividend provision) have not been outstanding for 3 full fiscal years, complete the chart below. (Include all securities which will be outstanding if all the securities being offered or proposed to be offered are issued, whether or not they are proposed to be registered or offered in New Jersey.)

Description of Securities	No. of units to be outstanding	Maximum offering price per unit (1) $	Market price per units as of date (1) $	Book value per unit as of date (2) $	Total value (3) $

A. Total value $_____

B. 5% of total value $_____

C. Average net earnings (restate from Item 4) $_____

In order to qualify for Registration by Notification, "C" must be greater than or equal to "B".

The registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing pursuant to N.J.S.A. 49:3-61.2.

Date: _____

_____
Issuer

By: _____
(Title)

(a)

VIOLENT CRIMES COMPENSATION BOARD
Eligibility of Claims
Proposed Amendment: N.J.A.C. 13:75-1.6

Authorized By: Violent Crimes Compensation Board, Kenneth W. Welch, Chairman.
Authority: N.J.S.A. 52:4B-9.
Proposal Number: PRN 1989-480.

Submit comments by October 18, 1989 to:
Cindy R. Merker, Board Counsel
Violent Crimes Compensation Board
60 Park Place
Newark, N.J. 07102

The agency proposal follows:

Summary

The Violent Crimes Compensation Board is proposing certain changes to its eligibility requirements. These changes are a result of new guidelines imposed on all state crime boards receiving funding from the Federal government under the Victims of Crime Act of 1984, 42 U.S.C. §§10601 et seq. The proposed amendment includes within the term "eligible victims" non-residents and Federal crime victims who are victims of a crime committed in the State; State residents injured in a foreign jurisdiction without a victim compensation program; and State residents who were not fully compensated for all out-of-pocket and unreimbursed and unreimbursable expenses through a final determination of their claim under a foreign jurisdiction's victims' compensation program. The amendment also asserts the primary jurisdiction of the foreign state and provides that the State will not entertain a claim for compensation until the victim or claimant has fully exhausted all available procedures for victim's compensation in said foreign state.

Social Impact

The purpose of the proposed amendment is to make the Board's rules consistent with the new amendments to the Federal Victims Crime Act of 1984. In so doing, the Board will continue to qualify for funding from the Federal government. The compensatory purpose and benefits of the program are extended by this amendment to those individuals set forth in the amendment.

Economic Impact

As the proposed amendment will bring the Board's rules in conformity with the Federal Victim's Crime Act of 1984, the positive economic impact will be continued funding from the Federal government, which money can be used to pay more victims, including those now qualified by this amendment, in a given fiscal year.

Regulatory Flexibility Analysis

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys may make claims for compensation. The individual victims of violent crime would not be considered small businesses. The attorneys may be considered small businesses, within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but are not required to keep any records or to engage in any other activities other than that which would ordinarily be done by a person in that occupation.

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

13:75-1.6 Eligibility of claims

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

(f) "Eligible victims" shall include:

1. Non-residents and Federal crime victims on the same basis as State residents who are victims of a crime committed in the State;

2. Residents of the State injured in a foreign jurisdiction where said jurisdiction is without a victim compensation program; and

3. Residents of the State who have received a final determination from a foreign jurisdiction as to a claim filed with a victim's compensation program which determination has not fully compensated the victim or claimant for all out-of-pocket and unreimbursed and unreimbursable expenses.

4. However, where residents of the State are injured in a foreign state, said foreign state has primary jurisdiction and the State will not entertain a claim for compensation until victim or claimant has fully exhausted all available procedures for victim's compensation in said foreign state.

(a)

ATTORNEY GENERAL

Solid Waste, Medical Waste, Hazardous Waste and Ocean Dumping Information Awards

Proposed New Rules: N.J.A.C. 13:80-1

Authorized By: Peter N. Perretti, Jr., Attorney General.

Authority: N.J.S.A. 13:1E-9.2, 13:1E-48.24, 13:1E-67b and N.J.S.A. 58:10A-49c.

Proposal Number: PRN 1989-476.

Submit written comments by October 18, 1989 to:

Toni A. Hendricksen
Assistant Director
Division of Criminal Justice
Richard J. Hughes Justice Complex
25 Market Street
CN 085
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Legislature has enacted a number of statutes which regulate the growing problem of pollutants in our environment which are caused by the improper treatment, storage, transportation and disposal of solid, hazardous and medical waste as well as improper discharges into the ocean waters. All of these statutes provide for an award program for citizen information which leads to the imposition of a criminal fine and/or civil penalty. Each statute, N.J.S.A. 13:1E-9.2 (Solid Waste), N.J.S.A. 13:1E-48.24 (Medical Waste), N.J.S.A. 13:1E-67b (Hazardous Waste) and N.J.S.A. 58:10A-49c (Ocean Dumping) directs the Attorney General to adopt such rules and regulations as are necessary to implement each of those respective statutes. In compliance with the above legislative mandate, these proposed rules provide uniform procedures and guidelines for information award programs under all of the statutes.

Social Impact

The Legislature has declared that the improper treatment, storage, transportation or disposal of solid, hazardous or medical waste or improper discharges into our ocean waters results in substantial impairment of the environment and danger to the public health. The Legislature has also determined that insuring the proper treatment, storage, transportation and disposal of solid, hazardous and medical waste as well as regulating discharges into the ocean waters serves a public purpose in the best interest of all citizens of this State.

Promulgation of an award program will provide an incentive for the public to report perceived violations in this area and, as a consequence thereof, will enhance the efforts of law enforcement and regulatory authorities in the detection, apprehension, regulatory penalization and conviction of persons involved in the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste, or the illegal discharge of certain material into the ocean waters. It is also anticipated that heightened public awareness and scrutiny of the treatment, storage, transportation or disposal of solid, hazardous or medical waste, and the discharge of certain material into the ocean waters, as a result of this award program will serve as a deterrent to potential violators of the law in this regard.

Economic Impact

These proposed new rules create a monetary incentive for the public to report perceived improper treatment, storage, transportation or disposal of solid, hazardous or medical waste and perceived improper discharges into ocean waters. Pursuant to the provisions of the laws authorizing this proposal, 10 percent of all fines or penalties collected as a result of the arrest and conviction and/or the institution of a civil action and imposition of a civil penalty against persons for such conduct would become subject to distribution through this award program with the exception of cases involving the illegal treatment, storage or disposal of hazardous waste which result in an arrest and conviction; that statute authorizes one-half of the fines collected to be distributed.

Regulatory Flexibility Statement

These proposed new rules impose no reporting, recordkeeping or compliance requirements upon small businesses. While a small business may be eligible for an award under the proposed program, the provision of information is a voluntary act and the application requirements are the minimum necessary.

Full text of the proposal follows:

CHAPTER 80
SOLID AND HAZARDOUS WASTE INFORMATION AWARDS

SUBCHAPTER 1. GUIDELINES FOR THE IMPLEMENTATION OF THE SOLID AND HAZARDOUS WASTE AWARD PROGRAMS

13:80-1.1 Purpose and authority

(a) The purpose of this subchapter is to prescribe rules authorized by and pursuant to N.J.S.A. 13:1E-9.2, 48.24, 67b and N.J.S.A. 58:10A-49c, in order to implement the provisions of N.J.S.A. 13:1E-9.2, 48.24, 67a and N.J.S.A. 58:10A-49c, which respectively provide as follows:

1. N.J.S.A. 13:1E-9.2—A member of the public who supplies information to an enforcing authority which proximately results in the imposition and collection of a civil penalty as the result of a civil action brought pursuant to subsection f of section 9 of P.L. 1970, c.39 (N.J.S.A. 13:1E-9), or any code, rule, or regulation promulgated, administrative order issued, or assessment imposed pursuant thereto, shall be entitled to a reward of 10 percent of the civil penalty collected, or $250.00, whichever amount is greater.

2. N.J.S.A. 13:1E-48.24—A member of the public who supplies information to an enforcing authority that proximately results in the imposition and collection of a civil penalty as a result of a civil action brought pursuant to subsection b of Section 20 of this act, or any rule or regulation adopted, administrative order issued, or assessment imposed pursuant thereto, or the imposition and collection of a criminal penalty as a result of a criminal action brought pursuant to subsections g, h, i or j of Section 20 of this act, shall be entitled

to a reward of 10 percent of the penalty collected or $250.00, whichever amount is greater.

3. N.J.S.A. 13:1E-67a—Any person who supplies any information which proximately results in the arrest and conviction of any other person for the illegal treatment, storage or disposal of hazardous waste shall be awarded one-half of any penalty collected as a result thereof.

4. N.J.S.A. 58:10A-49c—Any person who provides information to an enforcing authority concerning a violation of this act that proximately results in the imposition and collection of a criminal penalty as a result of a criminal action brought pursuant to this act shall be entitled to a reward of 10 percent of the penalty collected.

13:80-1.2 Definitions

For the purpose of this subchapter, the terms set forth in N.J.S.A. 13:1E-67a, N.J.S.A. 58:10A-49, N.J.S.A. 13:1E-48.24 and N.J.S.A. 13:1E-9.2, are defined as follows:

"Information which proximately results" means information which in an ordinary natural sequence results in either an arrest, conviction and imposition and collection of a criminal fine or the imposition and collection of a civil penalty. For the purposes of award eligibility, in no case shall this term include information obtained exclusively from any public record or received as a result of either a plea bargain or compulsory legal process.

"Penalty" means any fine imposed for any criminal conviction for the illegal treatment, storage or disposal of hazardous waste; illegal treatment, storage, transportation or disposal of medical waste; or illegal discharge of certain material into the ocean waters; any penalty imposed pursuant to any civil action brought for the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste; or any penalties assessed for violating an administrative order or court order, or failure to pay in full an administrative assessment filed pursuant to N.J.S.A. 13:1E-9.2 and 48.24.

"Person" means any natural person or any corporation, partnership or other form of business association, but, for purposes of award eligibility, in no case shall this term include any public employee, his immediate family or any persons residing within the public employee's household, or any State, county or municipal entity whose duty it is to insure compliance with, investigate or enforce these laws and regulations.

13:80-1.3 Responsibility

The Division of Criminal Justice has been designated by the Attorney General the responsibility of receiving and considering information pursuant to the provisions of N.J.S.A. 13:1E-9.2, 48.24 and 67a and N.J.S.A. 58:10A-49. The Division of Criminal Justice shall be responsible for reviewing applications for awards and determining whether or not any application should be approved and award granted. In the performance of these functions, the Division of Criminal Justice is authorized to propose and adopt guidelines and procedures, such as those set forth herein, for the processing of applications under this section. The Division of Criminal Justice is further authorized to establish committees which will assist in the administration of this award program.

13:80-1.4 Application procedure—criminal

(a) An application in a criminal proceeding requires the completion of Information Form DCJ 13-58 prescribed by the Division of Criminal Justice. This form must be completed and signed by personal appearance of the applicant (or in the case of an entity, its authorized representative), at the Information and Records Section of the Division of Criminal Justice at the Richard J. Hughes Justice Complex, Trenton, New Jersey, or at the county prosecutor's office in the county where the alleged offense occurred. The county prosecutor's office shall forward a copy of each completed application to the Division of Criminal Justice within 15 days of receipt.

(b) The person submitting the information may, at the discretion of the Environmental Task Force of the Division of Criminal Justice, be interviewed by the Division of Criminal Justice or Department of Environmental Protection with regard to the information the applicant is submitting for consideration. An applicant may also be required to give his or her verbal statement under oath and sign a written memorialization of his statement.

(c) The Division of Criminal Justice shall acknowledge to the applicant, in writing, receipt of his application.

(d) In any legal proceeding conducted exclusively by a county prosecutor's office, wherein an application has been submitted pursuant to this section, and which results in an arrest, conviction and imposition and collection of a criminal penalty for the illegal treatment, storage or disposal of hazardous waste; for the illegal discharge of certain material into ocean waters; or for the illegal treatment, storage, transportation or disposal of medical waste, the prosecutor's office, upon sentencing of the convicted person, shall, within 15 days thereof, forward written notification to the Division of Criminal Justice of any fines imposed for the purpose of processing any pending award application under this subchapter.

13:80-1.5 Application procedure—civil

(a) An application in a civil proceeding requires the completion of Information Form DCJ 13-58A prescribed by the Division of Criminal Justice. This form must be completed and signed by personal appearance of the applicant (or in the case of an entity, its authorized representative), at the Information and Records Section of the Division of Criminal Justice at the Richard J. Hughes Justice Complex, Trenton, New Jersey or at the county health department in the county where the offense occurred. The county health department shall forward a copy of each completed application to the Division of Criminal Justice and the Department of Environmental Protection within 15 days of receipt.

(b) The Division of Criminal Justice shall acknowledge to the applicant, in writing, receipt of his application.

(c) In any civil action conducted by the Department of Environmental Protection, local board of health or county health department, wherein an application was submitted pursuant to this section, which results in the imposition and collection of civil penalties for the illegal treatment, storage, transportation and disposal of solid, hazardous or medical waste, or a violation of an administrative order or court order, or the failure to pay an administrative assessment in full, the DEP, local board of health or county health department, as the case may be, shall, within 15 days thereof, forward to the Division of Criminal Justice written notification of the penalties imposed for the purpose of processing any pending award application.

13:80-1.6 Timely filing of applications for award

In all cases, civil and criminal, where relevant information is provided by a person without the simultaneous filing of an application pursuant to this section, that person may subsequently file an application for award consideration no later than 10 days from the date on which the person provided the information.

13:80-1.7 Confidentiality

Upon request of the applicant at the time the application is made, the Division of Criminal Justice and any other governmental agency involved in the criminal or civil proceeding shall not disclose the identity of the applicant or any information supplied by the applicant. This is subject, however, to any statute, Rule of Court or judicial decision which may require divulgence of such identity or information to certain parties including, in certain circumstances, a criminal defendant.

13:80-1.8 Collection of fines and penalties

(a) The collection and payment of fines and penalties relevant to the implementation of this subchapter shall be conducted pursuant to the provisions of N.J.S.A. 2C:46-4.

(b) In any criminal prosecution for the illegal treatment, storage or disposal of hazardous waste; the illegal discharge of certain material into ocean waters; or the illegal treatment, storage, transportation or disposal of medical waste, it shall be the responsibility of the prosecuting agency to inform the Court that any penalties imposed are subject to the award program created by N.J.S.A. 13:1E-67a and 48.24 and N.J.S.A. 58:10A-49c, and to request that the Court order any penalties to be held in escrow pending resolution of award eligibility pursuant to N.J.S.A. 2A:58-8.

(c) In any civil or administrative proceeding wherein an application has been submitted pursuant to this subchapter, it shall be the responsibility of the governmental entity seeking the penalty to

inform the judicial or administrative forum hearing the matter that any penalties imposed are subject to the award program created by N.J.S.A. 13:1E-67a and 48.24 and N.J.S.A. 58:10A-49.

13:80-1.9 Determination and notification of eligibility for awards

(a) Upon the arrest, conviction and imposition and collection of a criminal fine for the illegal treatment, storage or disposal of hazardous waste; for illegal discharge of certain material into the ocean waters; or for the illegal treatment, storage, transportation and disposal of medical waste; or the imposition and collection of a civil penalty for the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste; violation of administrative or court orders; or failure to pay an administrative assessment in full, filed pursuant to N.J.S.A. 13:1E-9 and 48, the Division of Criminal Justice, if it has reviewed information pursuant to this subchapter, shall notify the applicant within 60 days of the date of collection of such criminal fine or civil penalty as to its determination of the eligibility of the applicant for an award pursuant to N.J.S.A. 13:1E-9.2, 48.24 or 67a, or N.J.S.A. 58:10A-49c, as the case may be.

(b) Written notification shall contain the specific reasons for a determination and inform the applicant that:

1. There is insufficient causal relationship between the information provided and either the arrest, conviction, imposition and collection of the criminal fine or the imposition and collection of the civil penalty; or

2. The information provided proximately resulted in either an arrest, conviction and the imposition and collection of a criminal fine or imposition and collection of a civil penalty, and the applicant is therefore eligible for an award; or

3. There is a need for further examination of the application necessitating a written response and/or personal appearance of the applicant for further information before a determination as to eligibility can be made.

13:80-1.10 Post-determination claiming and payment of awards

(a) Within 20 days of receipt of a notification of award eligibility pursuant to N.J.A.C. 13:80-1.9, the applicant shall make a formal claim for such award by forwarding to the Division of Criminal Justice a written acknowledgement of the notification and request for the award.

(b) Where the applicant's information proximately resulted in either the arrest and conviction or the institution of the civil action and imposition of the civil penalty, the award shall thereafter be paid to the successful applicant upon collection of, as the case may be, the fine from the person arrested and convicted of the illegal treatment, storage or disposal of hazardous waste; the illegal discharge of certain material into ocean waters, or the illegal treatment, storage, transportation or disposal of medical waste; or the civil penalty for the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste; or fines assessed for violating an administrative order or court order; or for failing to pay in full an administrative assessment.

(c) Payment of an award pursuant to this section is contingent upon the actual collection of fines or penalties. In criminal cases, no award can be paid in an amount in excess of what is actually collected as a fine (N.J.S.A. 13:1E-9.2 and N.J.S.A. 13:1E-48.24, both of which concern civil cases, provide a minimum award of $250.00 regardless of the amount of civil penalty collected). In no case can the applicant receive any award until the entire fine or penalty has been collected.

13:80-1.11 Plea bargains

Except when a contrary result is required to prevent manifest injustice, if a person supplies information which proximately results in the arrest of and institution of criminal charges against any other person for the illegal treatment, storage or disposal of hazardous waste; for the illegal discharge of certain material into ocean waters; or for the illegal treatment, storage, transportation or disposal of medical waste, and in the discretion of the Division of Criminal Justice or county prosecutor's office, those charges are subsequently dismissed as part of a plea bargain, there shall be no eligibility pursuant to this subchapter to any award from any fine imposed upon any other charges and/or violations alleged in the same proceeding.

13:80-1.12 Multiple applications

(a) Except when a contrary result is required to prevent manifest injustice, in cases where two or more applicants submit substantially identical information which proximately results in the arrest, conviction and imposition and collection of a fine for the illegal treatment, storage or disposal of hazardous waste; for the illegal discharge of certain material into ocean waters, or for the illegal treatment, storage, transportation or disposal of medical waste; or the institution of the civil action and imposition of a civil penalty for the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste; or fines assessed for violating an administrative order or court order; or for failing to pay in full an administrative assessment, only the person who has filed his application first in time shall be considered for the receipt of an award pursuant to this subchapter.

(b) In cases where two or more applicants submit different information which proximately results in either the arrest, conviction and imposition and collection of a fine for the illegal treatment, storage or disposal of hazardous waste; for the illegal discharge of certain material into ocean waters; or for the illegal treatment, storage, transportation or disposal of medical waste, or the institution of the civil action and imposition of the civil penalty for the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste; or penalties assessed for violating an administrative order or court order; or for failing to pay in full an administrative assessment, thereby rendering both applicants eligible for an award pursuant to the section, the Division of Criminal Justice may apportion the amount of award available among the applicants based upon its consideration of relevant factors including, but not limited to:

1. The timing (chronological order) of each application filed;

2. The relative overall accuracy of information in each application filed; and

3. The relative extent of cooperation with the prosecution by each applicant in the particular case for which the information has been provided.

(c) Upon such apportionment set forth in (b) above, the Division of Criminal Justice shall provide each eligible applicant with a written statement of its reasons for its determination.

13:80-1.13 Appeals

All decisions regarding award eligibility shall be reviewed and approved by the Director of the Division of Criminal Justice, upon whose approval the decision shall constitute a final agency determination for purposes of this section. Any final agency determination as to award eligibility pursuant to this section shall be reviewable as a contested case by the Office of Administrative Law according to the procedures set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

TRANSPORTATION

(a)

DESIGN AND RIGHT OF WAY
DIVISION OF ROADWAY DESIGN
Bureau of Roadway Engineering Services
Public Hearings
Proposed Repeal: N.J.A.C. 16:23

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 52:14B-4.

Proposal Number: PRN 1989-494.

Submit comments by October 18, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to repeal N.J.A.C. 16:23, Public Hearings.

The rule was reviewed by the Department's staff of the Bureau of Community Involvement and that of the Bureau of Project Location in compliance with the Department's ongoing rulemaking and review procedures. This review and analysis revealed that the rule was duplicative in nature of that existing at N.J.A.C. 16:48, Route Location Approval. Additionally, since N.J.S.A. 27:7-66 requires a public hearing to be held whenever the Commissioner has approved the location of a proposed line of any new State highway, consideration was given to retaining N.J.A.C. 16:48 and repealing N.J.A.C. 16:23. Additionally, the Department's Bureau of Community Involvement has responsibility for conducting public hearings within the Department.

Social Impact

The proposed repeal will comply with the requirements of Executive Order No. 66(1978), in that the Department has removed rules and regulations no longer needed for the purposes for which promulgated. Additionally, the Department has removed a rule to preclude confusion and duplication.

Economic Impact

The proposed repeal will not have any economic impact on the local governments, since it was duplicative in nature and purpose. The Department will incur direct and indirect costs for personnel and rulemaking requirements. The State will realize substantial savings in not having to reprint rules no longer required.

Regulatory Flexibility Statement

The proposed repeal does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects internal operations.

Full text of the chapter proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:23.

(a)

THE COMMISSIONER
POLICY AND PLANNING
Office of Regulatory Affairs
Zone of Rate Freedom
Proposed Amendment: N.J.A.C. 16:53D-1.1

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21 and 48:4-2.0 through 2.25.

Proposal Number: PRN 1989-481.

A **public hearing** concerning the proposed amendments will be held on:
Thursday, October 12, 1989 at 10:00 A.M.
Hearing Room
Office of Administrative Law
185 Washington Street
Newark, NJ 07102

Submit written comments by October 18, 1989 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment implements certain provisions of Chapter 2 of Title 48 which directs the Commissioner of the Department of Transportation to establish a Zone of Rate Freedom (ZORF) for the regular route private autobus carriers operating within the State. The ZORF constitutes a limited percentage range to be set annually by the Commissioner in which regular route private autobus carriers may be permitted to adjust their rates, fares or charges without petitioning the Department for prior approval. Provided the autobus carrier remains within the designated percentage range, all that is required is notice to the Department and the riding public of the rate, fare or charge adjustment prior to the effective date. If, however, the regular route autobus carrier seeks a percentage adjustment greater than that provided for in the ZORF, such autobus carrier will be required to follow the standard petitioning procedures as specified in N.J.S.A. 48:2-21, N.J.A.C. 16:51-3.10 and 3.11.

After extensive review of the ZORF and its relationship to regular route private autobus carrier costs, revenues and fare structure, the Department proposes to amend the current ZORF. The percentage limitations contained in the 1990 proposal are scaled in consideration of the varying fares currently charged by intrastate regular route private autobus operations.

The percentages set forth in the 1990 proposal do not apply to casino or regular route in the nature of special, charter and special autobus service operating within the State. Pursuant to N.J.S.A. 48:2-1 et seq., the Commissioner is authorized to exempt casino or regular route in the nature of special, charter and special autobus operations from the purview of the rate adjustment regulation. In accordance with said authority, the Commissioner proposes to exempt casino or regular route in the nature of special, charter and special carriers operating within the State during the calendar year of 1990.

Social Impact

The proposed 1990 ZORF amendment will enable private autobus carriers, in most cases, to modify fares as may be required without incurring administrative hearing costs, while also limiting the chance for uncontestable fare increases to adversely impact on the public. In the Department's opinion, the fare changes permitted by the proposed 1990 ZORF will not be burdensome to the public or regular route private autobus companies.

Economic Impact

The proposed 1990 amendment will afford privately owned autobus companies fare adjustment flexibility. Such carriers will not have to incur costly and time consuming petition procedures when their proposed fare adjustments are consistent with projected cost allowances. The allowed fare adjustments are not expected to have a significant economic impact on the riding public.

Regulatory Flexibility Statement

A number of the autobus carriers affected by the proposed amendment are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment does not place any reporting or recordkeeping requirements on such autobus carriers. First time autobus carriers commencing operations will have to meet the bookkeeping and recordkeeping requirements otherwise established by law for autobus carriers.

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

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State which seeks to revise its rates, fares or charges in effect as of the time of the promulgation of this regulation shall not be required to conform with N.J.A.C. 16:51-3.10 (Tariff filings or petitions which do not propose increases in charges to consumers) or N.J.A.C. 16:51-3.11 (Tariff filings or petitions which propose increases in charges to customers) provided the increase or decrease in the rate, fare or charge, or the aggregate of increases and decreases in any single rate, fare or charge is not more than the maximum percentage increase or decrease as promulgated below upgraded to the nearest $.05.

1. The following chart sets forth the [1989] **1990** percentage maximum for increases to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% Of Increase	Increase Upgraded To Nearest $.05
[$.55-.60]**$.55-.85**	[7%]**5.65%**	$.05
[$.65-.75]**$.90-$1.75**	[7%]**5.65%**	[$.05]**$.10**
[$.80-$1.00]**$1.80 upward**	[7%]**5.65%**	[$.10]**$.15+**
[$1.05 upward	7%	$.10+]

2. The following chart sets forth the [1989] **1990** percentage maximum for decrease to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% Of Decrease	Decrease Upgraded To Nearest $.05
$.55-[.60]**$1.00**	10%	$.10
[$.65-.75	10%	$.10]
[$.80-$1.00	10%	$.10]
$1.05 upward	10%	$.15+

EDUCATION

(a)

STATE BOARD OF EDUCATION

Certification of School Business Administrators

Proposed Repeals: N.J.A.C. 6:3-1.18; 6:11-10.11 and 10.14

Proposed Amendment: N.J.A.C. 6:11-10.4

Proposed Repeal and New Rule: N.J.A.C. 6:11-10.10

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

Authority: N.J.S.A. 18:1-1, 18A:4-15 and 18A:6-38.

Proposal Number: PRN 1989-463.

Submit comments by October 18, 1989 to:

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

The agency proposal follows:

Summary

Currently, applicants for the School Business Administrator endorsement must:

1. Possess an educational certificate and three years of education experience (business training and experience may be substituted with special approval);
2. Hold a bachelor's degree; and
3. Complete 30 credits of study in school business administration, school buildings, school finance, school law, accounting, organization of public education, curriculum, and electives.

There also exists a separate endorsement with this title, Assistant Superintendent for Business. This endorsement is used for persons whose job is fundamentally the same as that of school business administrators but who hold different titles and generally earn higher salaries, usually (though not always) in larger school districts. The Assistant Superintendent for Business Endorsement requires a master's degree in business administration, public administration or school administration. Within the master's program, or in addition to it, 32 credits must be completed (rather than the 30 required of business administrators) in the same topics that are listed above.

In addition, there is a third endorsement bearing the title Assistant Executive Superintendent with Specialization in Business Administration. This endorsement requires a bachelor's degree and an unspecified amount of coursework in school administration and school business administration. Although this endorsement is aimed at school business administrator positions in cities with populations exceeding 325,000, districts in such cities are also able to employ persons who hold either the School Business Administrator or Assistant Superintendent for Business Endorsement.

Finally, the title of Board Secretary exists, and many board secretaries perform business administration functions. Yet, by tradition, board secretaries do not have to be certified and, therefore, they perform these functions without required training and often without a college degree.

State Certification and Local Titles

Business administration is the only certification field in which the determination of whether an individual must be certified is not based upon the duties he or she performs. Instead, local school districts assign business administration functions to whatever titles they prefer. These titles must be approved by the State Board of Education, although there are no established criteria upon which the board might disapprove local requests. Once a title is assigned, then it is that local determination that drives the decision as to whether a certificate is needed and, if so, which one: school business administrator, assistant superintendent for business or assistant executive superintendent with specialization in business administration.

Certification protects the public by assuring that no one is hired to perform certain functions unless he or she has received training and his or her ability to perform those duties has been assessed. Citizens in small communities deserve this protection as much as those in larger ones. Whether a staff member needs to be trained and certified should not be determined by arbitrarily chosen job titles or district size. Instead, all persons must be certified who perform those basic functions that the State is seeking to regulate in the public interest.

The proposed amendment, repeals and new rule would provide, for purposes of certification, an appropriate definition of the basic functions of school business administration. This definition, or authorization, would specify the functions that holders of the School Business Administrator Endorsement are eligible to perform. As in other certification fields, the authorization must be specific enough to enable county superintendents to render certification judgments yet general enough not to constitute a State-mandated job description. It must also emphasize those functions that are basic and common to variations of the job and those that are significant enough to warrant state regulation, rather than those that are incidental or minor.

The proposed amendment and new rule would require that all school staff who perform these functions, regardless of their local titles, be certified. Therefore, they would eliminate the need for a procedure by which the State Board of Education must approve local job titles as a way of requiring or not requiring certification.

It should be noted that defining job functions and requiring certification are not the same as requiring each district to hire a full-time staff member. Districts always have the options of hiring full-time or part-time staff, sharing staff in consortial arrangements, or assigning two sets of job functions to one staff member (for example, teacher of music and art), so long as all staff are appropriately certified for all functions they perform.

Multiple Certificates

Certification is intended to set minimum entry requirements for variations of given positions. The proposed amendment and new rule would eliminate the various existing endorsements in the area of business administration in favor of a single School Business Administrator Endorsement and a common set of minimum requirements. Beyond that standard minimum, districts always have the flexibility to establish reasonable variation in job titles and salary levels, and to require job applicants to meet supplementary requirements. Prospectively, occupants of that title would be required to possess the School Business Administration Endorsement. Previously-issued assistant superintendent for business endorsements would be valid as well for these and other business administration positions.

Certification Requirements

The proposed requirements are modeled after those adopted for the certification of school principals by the State Board of Education in 1988. They would upgrade standards for the practice of school business administration by establishing more relevant and qualitatively rigorous entry requirements; establishing a State-level licensing exam; and requiring that all candidates serve a provisional year of employment involving mentor support, supplementary training and evaluation for standard certification. In so doing, they would create an alternate route by which persons with degrees in general business administration could be employed as school business administrators. The topical requirements listed in N.J.A.C. 6:11-10.10 are those identified by the American Association of Collegiate Schools of Business, the recognized accreditation authority in the field, as the core knowledge in business administration. These requirements would go into effect on September 1, 1991.

Current Job Holders

Under the proposed requirements, school business administrator endorsements, assistant superintendent for business endorsements and assistant executive superintendent endorsements issued prior to September 1, 1991 would remain valid after that date. Holders of those endorsements would be eligible to seek employment in the positions for which those certificates have always qualified them.

Board secretaries who have been performing business administration functions without certification would, after September 1, 1991, be permitted to retain such job responsibilities in the specific positions they occupy in specific districts at the time the new rules go into effect. However, they would be unable to seek employment in other such positions unless they meet certification requirements. The requirement of a bachelor's degree would be waived for those already employed but uncertified administrators who, at the time the proposed amendment and new rule go into effect, possess five or more years of school business administration experience.

Persons who are enrolled in formal preparation programs under current requirements would be allowed five years from September 1, 1991 (the operative date of proposed changes), to complete those programs. Those that do not complete those programs in five years would have to meet new requirements.

N.J.A.C. 6:3-1.18, School Business Administrator

The repeal of this rule would eliminate the procedure by which the State Board of Education approves the local titles of business administrators. In the future, all local titles that involve the performance of business administration functions would have to be occupied by persons holding appropriate certification.

N.J.A.C. 6:11-10.4, Authorization

This amendment would clarify, for purposes of certification, the basic job functions that holders of the School Business Administrator Endorsement are eligible to perform. Therefore, it would also define those functions that individuals must be certified to perform.

N.J.A.C. 6:11-10.10, School Business Administrator

The repeal and new rule would establish new requirements for the School Business Administrator Endorsement to the Provisional and Standard Certificates effective September 1, 1991. It would also allow uncertified board secretaries to occupy current positions that involve business administration functions but would require them to obtain certification in order to seek other positions after September 1, 1991.

N.J.A.C. 6:11-10.11, Assistant Superintendent for Business

This repeal would eliminate the endorsement Assistant Superintendent of Business. Occupants of local jobs bearing that title would be required to hold the School Business Administrator Endorsement.

N.J.A.C. 6:11-10.14, Assistant Executive Superintendent with Specialization in Business Administration

This repeal would eliminate the endorsement Assistant Executive Superintendent with Specialization in Business Administration. Occupants of local jobs bearing that title would be required to hold the School Business Administrator Endorsement.

Social Impact

The proposed amendments and new rule would help protect the public interest by assuring that all public school employees who perform the functions of business administration are appropriately trained and certified. The amendments and rule would also improve the size and quality of the pool of prospective business administrators by creating an alternate certification route. The proposed written examination would provide a means of screening those persons who lack essential knowledge of business administration. The proposed residency program will help employed candidates to succeed in fulfilling their job responsibilities and will assure that only those who perform adequately are permanently certified. Since the proposed amendments and rule would change certification requirements in some districts and establish them in others, their benefits would be realized in nearly all of the approximately 650 public school districts in New Jersey.

The proposed amendments and new rule would have a limited negative impact on those school employees who are currently performing business administration functions without training or certification. These employees may continue to remain in their current positions but would have to meet training and licensing requirements in order to obtain positions in other school districts. They will, however, receive credit for their years of experience.

Economic Impact

Initial costs of up to $50,000 may be associated with the development and validation of a written examination.

All other costs of training and licensing are funded by fees charged to certification candidates. Other existing State-approved district training programs currently require candidates to pay a mentor fee of $900.00 per year. Mentor fees associated with district training programs for business administration may or may not be the same. College tuition amounts are established by individual colleges and college systems and they vary significantly. All testing of New Jersey teacher certification applicants is currently subcontracted to testing firms, which establish and collect their own registration fees. Fees for district-operated residency programs are set and collected by local districts with coordination by the State Department of Education. Certification issuance fees are set by the State Board of Education, and are indicated in N.J.A.C. 6:11-3.3.

The general public will derive indirect benefit from the improvements in public education fiscal administration that are likely to result from the employment of better trained business administrators.

Regulatory Flexibility Statement

A Regulatory Flexibility Statement is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses. This proposal impacts solely upon New Jersey school districts and on schools operated by the New Jersey Department of Education.

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

6:3-1.18 [School business administrator] **(Reserved)**

[(a) Any school district establishing the position of school business administrator shall meet the following conditions established in this section.

(b) School districts with more than 25 teachers:

1. In requesting the establishment of the position of school business administrator, the district board of education shall present to the county superintendent of schools a chart of organization clearly showing relationships of the school business administrator, a well-defined policy outlining duties and responsibilities to be assigned, and the proposed salary.

2. The following are major areas of the duties and responsibilities which may be considered by the district board of education as functions of the school business administrator in cooperation with all members of the staff having related administrative responsibilities:

i. Budgeting and financial planning. Assists in the planning and preparation of the annual budget, as well as long-term planning in terms of community resources and needs.

ii. Purchasing and supply management. Is responsible for all purchasing in accordance with the law and school board policy.

iii. Plant planning and construction. Works with other administrators, architects, attorneys and financial advisors in planning construction, contracting and in acquiring suitable financing.

iv. School community relations. In cooperation with administrators and the district board of education, helps interpret the budget and other applicable major areas mentioned in these rules.

v. Personnel management. Recruits personnel for positions in the area of school business management.

vi. In-service training. Directs programs of in-service training to improve skills of school business management personnel.

vii. Operation and maintenance of plant. In cooperation with other administrators, assumes the responsibility for the supervision of maintenance and operation of facilities.

viii. Transportation. Is responsible for the operation and maintenance of district-owned buses or handles business aspects of contracted transportation services.

ix. Food services. Is responsible for the business operation of food services and the efficient business management of the school lunch program.

x. Accounting and reporting. Supervises the accounting system necessary to provide the district board of education and administrators with accurate financial reports in all areas except those delegated by statute to the secretary of the board of education.

xi. Insurance. Has general responsibility for the operation of the insurance program.

3. Upon certification by the county superintendent of schools of the necessity for such a position, the Commissioner and the State Board of Education may approve the establishment of a position of school business administrator.

4. Any person appointed by a district board of education to the position of school business administrator shall hold an appropriate certificate prescribed by the State Board of Education, and he or she

shall be considered a member of the professional staff of the school district.

5. The school business administrator shall perform those business functions as outlined in the policy of the district board of education and as approved by the Commissioner and the State Board of Education.

6. Nothing in these rules shall prevent the school business administrator from serving as secretary of the district board of education, or from carrying out responsibilities delegated by statute to the secretary of the district board of education requesting the establishment of the position of school business administrator pursuant to these rules.

(c) School districts with 25 teachers or less:

1. In requesting the establishment of the position of school business administrator in two or more school districts, each district board of education shall present to the county superintendent of schools a chart of organization clearly showing relationships of the school business administrator, a well-defined policy outlining duties and responsibilities to be assigned, salary provisions, and an administrative plan setting forth an equitable apportionment of the time needed to properly discharge said duties and responsibilities and the method or conditions under which such a plan may be revised or terminated.

2. The major area of the duties and responsibilities which may be considered by the participating district boards of education as functions of the school district administrator are those set forth in (b)2 above.

3. Upon certification of the county superintendent of schools of the necessity for such a position, the Commissioner and State Board of Education may approve the establishment of a position of school business administrator for two or more school districts.

4. Any person jointly appointed by the district boards of education of two or more school districts to the position of school business administrator shall hold an appropriate certificate prescribed by the State Board of Education and shall be considered a member of the professional staffs of the school districts.

5. A school business administrator shall perform those business functions as outlined in the policies of the respective district boards of education and as approved by the Commissioner and the State Board of Education.

6. The salary shall be equitably apportioned among two or more school districts in accordance with the administrative plan outlined in (c) above.

7. Nothing in these rules shall prevent the school business administrator from serving as secretary of the district boards of education of the two or more school districts requesting the establishment of this position pursuant to these rules or from carrying out responsibilities delegated by statute to secretaries of district boards of education.

(d) All changes or modifications in the original plan concerning the position of school business administrator as submitted to the county superintendent of schools, the Commissioner of Education and the State Board of Education must be approved in the same manner as the original plan.]

6:11-10.4 Authorization

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

[(d) Assistant superintendent in charge of business: This endorsement is required for the position of assistant superintendent of schools in charge of business affairs.]

[(e)] **(d)** School business administrator: [This endorsement is required for the position of school business administrator when the local board of education is granted permission by the State Board of Education to create such a position. The holder of this endorsement is authorized to perform such duties as the rules of the State Board of Education shall define.] **This endorsement authorizes the holder to perform duties at the district level in the areas of financial budget planning and administration, insurance/risk administration, purchasing and financial accounting and reporting, and may include other responsibilities such as: plant planning, construction and maintenance; personnel administration; administration of transportation and food services; and central data processing.**

[6:11-10.10 School business administrator

(a) The requirements for school business administrators are:

1. A bachelor's degree based upon a four-year curriculum in an accredited college. The requirement of a master's degree does not apply to this endorsement.

2. Successful completion of one of the following:

i. A standard New Jersey teacher's certificate or its equivalent, and three years of appropriate teaching experience; or

ii. Business training and experience as approved by the Secretary of the State Board of Examiners.

3. Successful completion of one of the following:

i. A college curriculum approved by the New Jersey State Department of Education as the basis for issuing this certificate; or

ii. Thirty semester-hour credits including work in each of the starred fields:

(1) *School business administration;

(2) *School buildings—including planning, construction and maintenance;

(3) *School finance;

(4) *School law;

(5) *Accounting;

(6) *Organization and administration of public education.

(7) *Curriculum of public schools;

(8) Foundations of education, including such courses as history or philosophy of education, principles of elementary education, and principles of secondary education;

(9) Electives related to administration, curriculum, or the foundations of education.

(b) The policies governing issuance of a school business administrator's certificate are:

1. A person who was employed full time in the district as a school business official on January 2, 1963, does not need a certificate to continue in his present position, but may be issued a certificate authorizing service in this present district if he requests it.

2. A person who was employed full time as a school business official on January 2, 1963, may be issued a school business administrator's certificate upon presentation of 12 semester hours of study, including work in areas in (a)3ii above. The additional 18 semester hour credits required for the certificate will, in these cases, be waived.

3. In cases where applicants submit business training and experience for approval in meeting requirements in this subsection for the certificate, the records submitted will be reviewed by a committee for the purpose of determining eligibility.

4. Persons serving full time as school business officials on January 2, 1963, will be considered to have satisfactory "business training and experience" in meeting requirements in this subsection for the school business administrator's certificate.

5. In administering the policies above, a "school business official" shall be interpreted as a person who served on a full-time basis on January 2, 1963, as the secretary of any board of education or a business manager in a chapter 6 district. Applications must be accompanied by a statement from the county superintendent of schools, certifying to such service.

6. Persons serving full time as the secretary of the board of education or the business administrator in a chapter 6 district prior to September 1, 1967, may qualify for the school business administrator's certificate by meeting the requirements previously in effect. In such cases, the requirement of a bachelor's degree will not apply.]

6:11-10.10 School business administrator

(a) Each candidate for the provisional certificate of school business administrator shall be required to:

1. Hold a bachelor's degree from an accredited college or university, including at least 15 credits of study in the following areas of business administration:

i. The economic and legal environment as it pertains to profit and nonprofit organizations along with ethical considerations and social and political influences on organizations;

ii. Concepts and applications of accounting, quantitative methods, and management information systems including computer applications;

iii. Organizational theory, behavior and interpersonal communications;

iv. Administrative processes under conditions of uncertainty including the integration of analyses and policy determinations at the overall management level; and

v. Concepts, processes and institutions in the production and marketing of goods and services and the financing of the business enterprise or other forms of organization.

vi. A bachelor's or master's degree in a recognized field of administration shall be accepted as meeting the requirements in (a)1i through v above.

2. Pass a written examination of knowledge that is acquired through study of the topics in (a)1i through v above and that is most directly related to the functions of school business administrators as defined in N.J.A.C. 6:11-10.4(d);

3. Obtain and accept an offer of employment in a position that requires the School Business Administrator endorsement; and

4. Applicants who meet the requirements in (a)1 and 2 above shall be issued Certificates of Eligibility which will permit them to seek and accept provisional employment in positions that require the School Business Administrator endorsement.

(b) Each candidate for the standard certificate of School Business Administrator shall be required to:

1. Possess a provisional certificate pursuant to (a)1.-4. above; and

2. Complete a one-year State-approved district residency program while employed under provisional certification. The district residency program shall:

i. Be conducted in accordance with a standard agreement issued by the State Department of Education and entered into by the Department, the employing school district, the candidate and the residency mentor;

ii. Be administered by a State-appointed mentor who is an experienced administrator who has completed a State-approved orientation and training program, and who shall supervise and verify completion of all required experiences and training by the candidate;

iii. Include a pre-residency component that shall emphasize professional experiences and training that must be completed before the candidate assumes full responsibility on a provisional basis for a position requiring the school business administrator endorsement. The Department shall, based on the recommendation of the mentor, prescribe the content and duration of each candidate's pre-residency. Such prescription shall be based upon a review of each candidate's academic records, assessment reports, background experiences and other information gathered by the mentor and the candidate. The content of each pre-residency shall be specified in the standard written agreement to be signed by the mentor, the district superintendent, the candidate and approved by the Department (see (b)2i above).

iv. Provide approximately 135 clock hours of training and instruction in the areas of school plant planning, construction and administration; school financial and legal practices including double entry-GAAP accounting; pupil transportation; labor relations and personnel; insurance/risk administration; and food service administration; and

v. Provide the mentor, candidate and school district with opportunities to propose modifications to the standard residency agreement for approval by the State Department of Education.

(c) Each candidate for the standard certificate shall be evaluated formally by the mentor on at least three occasions for purposes of certification.

1. The first two evaluations shall be conducted mainly for diagnostic purposes.

2. The final evaluation shall be the basis for issuance of the candidate's standard certificate.

3. The three evaluations required in this subsection shall be conducted using criteria and forms developed by the State Department of Education that will assess the candidate's ability to apply baccalaureate training (see (a)1i-iv above) and training acquired in the proposed residency (see (b)2i-v above) in performing essential duties listed in N.J.A.C. 6:11-10.4(d).

4. The mentor shall discuss each evaluation with the candidate, and the mentor and candidate shall sign each report as evidence of such discussion.

5. Upon completion of each evaluation, the report shall be sent to the Secretary of the State Board of Examiners; the final evaluation shall be accompanied by the recommendation for certification pursuant to (d) below.

(d) Standard certification of candidates shall be approved or disapproved pursuant to the following procedures:

1. Before the end of the residency year, the mentor shall submit to the Division of Teacher Preparation and Certification a comprehensive evaluation report on the candidate's performance using State-approval criteria and forms;

2. The final report shall include one of the following certification recommendations:

i. Approved: Recommends issuance of a standard certificate;

ii. Insufficient: Recommends that a standard certificate not be issued but that the candidate be allowed to continue the residency or seek admission to an additional residency for a maximum of one additional year; or

iii. Disapproved: Recommends that a standard certificate not be issued and that the candidate be prevented from continuing or re-entering a residency.

3. Candidates who receive a recommendation of "approved" shall be issued a standard certificate. Candidates who receive a recommendation of "insufficient" or "disapproved" shall not be issued a standard certificate.

4. The mentor shall provide the candidate with a copy of the candidate's written evaluation report and recommendation before submitting it to the Division of Teacher Preparation and Certification.

5. If the candidate disagrees with the mentor's recommendation, the candidate may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the mentor written materials documenting the reasons why the candidate believes standard certification should be awarded. The mentor shall forward all such documentation to the Division of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification. The candidate may contest the unfavorable recommendation pursuant to N.J.A.C. 6:11-3.25.

(e) The requirements listed in (a) through (d) above are effective September 1, 1991. The requirements shall not apply to persons who earn any of the following endorsements to the Standard Certificate before that date: School Business Administrator, Assistant Superintendent for Business, or Assistant Executive Superintendent with Specialization in Business Administration. Holders of those endorsements shall be entitled prospectively to apply for all positions in the general category of business administration.

(f) Board secretaries who lack certification but were assigned prior to September 1, 1991 to perform business administration functions as described in N.J.A.C. 6:11-10.4(d) shall be permitted to retain their positions in the districts in which they were employed prior to September 1, 1991 indefinitely. However, after September 1, 1991, they shall be required to meet certification pursuant to (a) through (d) above in order to seek employment in new positions in other districts.

(g) The requirement of a bachelor's degree (see (a)1 above) shall not apply to already-employed but uncertified business administrators who, as of September 1, 1991, possess five or more years of school business administration experience.

(h) Persons who are enrolled in formal State-approved New Jersey college preparation programs prior to September 1, 1991 shall be permitted five years to attain certification under requirements in effect prior to that date.

6:11-10.11 [Assistant superintendent for business] **(Reserved)**

[(a) The requirements for an assistant superintendent for business are:

1. A master's degree in business, public, or school administration from an accredited or approved institution.

2. Experience in one of the following:

i. Three years of successful teaching experience; or

ii. Three years of experience as secretary of a board of education or school business administrator under a school business administrator's certificate.

3. Successful completion of one of the following:

i. A college curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement; or

ii. Thirty-two semester-hour graduate or undergraduate credits in the following fields. These credits must be in addition to those required for the regular instructional certificate and must include work

in each of the starred (*) areas. This work may be in separate or integrated courses:
(1) *Administration of public education;
(2) *Supervision of intruction in the public schools;
(3) *The curriculum of the public schools;
(4) *School business administration;
(5) *School business—including planning, construction and maintenance;
(6) *School finance;
(7) *School law;
(8) *Accounting;
(9) Electives related to the field.
4. These changes shall be effective July 1, 1978.]

6:11-10.14 [Assistant executive superintendent with specialization in business administration] **(Reserved)**

[(a) This certificate is required for the position of assistant executive superintendent in a city of the first class with a population of over 325,000.
(b) The requirements are as follows:
1. Bachelor's degree;
2. Approved teaching or business experience;
3. A program of studies including coursework in:
i. Administration of public education;
ii. School business administration;
iii. School buildings, including planning, construction and maintenance;
iv. School finance;
v. School law, including collective negotiations;
vi. Public school curriculum.]

(a)

STATE BOARD OF EDUCATION

Bookkeeping and Accounting in Local School Districts

Double Entry Bookkeeping and GAAP Accounting in Local School Districts

Proposed New Rules: N.J.A.C. 6:20-2

Proposed Recodification with Amendments: N.J.A.C. 6:20-2A

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
Authority: N.J.S.A. 18A:4-14, 18A:4-15, 18A:7A-19, 18A:7A-26, 18A:18A-4, 18A:18A-5, 18A:19-13, 18A:22-8, 18A:29-3, 18A:33-3, and 52:14-15.9(e).
Proposal Number: PRN 1989-479.

Submit comments by October 18, 1989 to:
Irene Nigro, Rules Analyst
State Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed recodification with amendments and new rules are promulgated to resolve two areas of conflict resulting from the adoption by the State Board of Education of rules for double entry-GAAP accounting on January 4, 1989 (see: 20 N.J.R. 2502(a), 21 N.J.R. 292(a)). The areas of conflict are the repeal of the rules for single entry bookkeeping and the rules concerning the chart of accounts for district boards of education.

The rules for double entry-GAAP accounting were intended to have an effective date of July 1, 1991 which is consistent with the current language in N.J.S.A. 18A:4-14. The rules were promulgated in advance in order to develop and provide local district staff with the necessary chart of accounts, technical manuals and training programs. The rules for single entry bookkeeping were to remain in effect until the statutory implementation date for the new accounting system. However, the rules for double entry-GAAP accounting were published in the New Jersey Register with an effective date of February 6, 1989 and the rules for single entry bookkeeping were repealed. The proposed recodification with amendments and new rules will reinstate with technical corrections the rules for single entry bookkeeping as N.J.A.C. 6:20-2 and recodify the rules for double entry-GAAP accounting as N.J.A.C. 6:20-2A with an effective date consistent with the statute.

The rules for double entry-GAAP accounting allow a district board of education to adopt a chart of accounts based on either the Department's revised line item classification or the Federal government's account classification contained in *Financial Accounting for Local and State School Systems* (presently referred to as Handbook 2R2) which is developed by the National Center for Education Statistics. However, two classification systems are inconsistent with the statutory mandate for a uniform system of accounting. The proposed amendments require that all district boards of education adopt a chart of accounts consistent with Handbook 2R2 and minimum requirements established by the Department. The proposed amendments also establish associated rules on budgetary controls and reporting.

Social Impact

The classification of financial data in accordance with Handbook 2R2 will provide more detailed financial information for district, public and government consideration and will provide valuable information for local, State and Federal policy-makers. Such a classification system will provide uniform, comparable financial data on both a Statewide and Nationwide basis. The system will help ensure that funds are being utilized in the best interests of the students and the public.

Economic Impact

The proposed amendments and new rules will enable the Department to collect financial data in a form suitable for Federal reporting purposes and will eliminate the time consuming and costly process of converting line item data. The collection of financial data in this form will reduce the risk of adverse findings during a Federal audit and ensure the continuation of Federal grant entitlements which are based on such data.

The proposed amendments and new rules will have little or no economic impact on district boards of education, over and above the existing rules which were published in the New Jersey Register on February 6, 1989. The new rules (N.J.A.C. 6:20-2) merely reinstate rules for single entry bookkeeping and accounting which are intended to remain in effect until the statutory implementation date for double entry GAAP accounting which were inadvertently repealed on February 6, 1989. Since the single entry bookkeeping system is currently in operation, the reinstatement of these rules will create no economic impact on local districts. The proposed amendments to the rules for double entry-GAAP accounting (N.J.A.C. 6:20-2A) require that both minimum and expanded charts of accounts be consistent with classifications contained in Handbook 2R2 and eliminate revised line item classifications. Either classification system is a dramatic departure from the current line item classification system and would require new or modified computer hardware and software as well as training. Since Handbook 2R2 is a nationally recognized publication and currently offered by many computer service companies, while revised line item classification is not, the economic impact of the proposed amendments may be favorable to local districts.

Regulatory Flexibility Statement

The proposed recodification with amendments and new rules will have no reporting, recording or compliance requirements for small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All requirements of the amendments and new rules impact solely upon New Jersey public school districts and on schools operated by the New Jersey Department of Education.

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

6:20-2.1 Prescribed system of single entry bookkeeping

(a) It shall be the purpose of the bookkeeping and accounting system prescribed in this subchapter to provide a sound plan of general accounts that will serve to safeguard the expenditure of public funds; effect proper budgetary control; establish uniformity in the classification of expenditures; and furnish adequate financial information for use of the public, the district board of education administration and the Commissioner of Education.

(b) This subchapter is comprised of three major parts: records of cash receipt and cash expenditure accounts in accordance with re-

cognized governmental accounting procedures; detailed budget and cost distribution records; and a schedule of physical property.

(c) A district board of education may operate a system of double entry bookkeeping consistent with the rules in this subchapter and accounting principles prescribed by the Commissioner.

6:20-2.2 Records of cash receipt and cash expenditure accounts

(a) The records of receipt and expenditure accounts shall be set forth in sufficient detail to determine the financial condition of the district board of education at any time.

(b) The major accounts shall be designated as follows:

1. Current expenses;
2. Capital outlay (sites, buildings and equipment); and
3. Debt service (bonds, authorized notes and interest on same).

(c) The necessary supplementary accounts shall be provided for non-revenue receipts and expenditures as follows:

1. Reserve for unpaid orders;
2. Sale of permanent bonds to redeem temporary loan bonds;
3. Temporary loans;
4. Sinking funds to pay term bonds; and
5. Clearing accounts.

(d) The forms to be prepared by the Commissioner for use in district boards of education shall include, but not be limited to, the following classifications:

1. Appropriations;
2. Cash receipts;
3. Cash expenditures;
4. Contractual orders;
5. Tuition ledger;
6. Bond register;
7. Extra-curricular activities; and
8. Food services.

6:20-2.3 Budget and cost distribution records

(a) Detailed budget and cost distribution records shall be kept in the form prescribed by the Commissioner to insure uniformity in the preparation of budgets and in the classification of costs in district boards of education.

(b) The budget and cost distribution records shall include, but not be limited to, the following classifications and such other classifications and sub-items as the Commissioner may prescribe:

1. Administration;
2. Instruction;
3. Attendance and health services;
4. Pupil transportation services;
5. Operation of plant;
6. Maintenance of plant;
7. Fixed charges;
8. Sundry accounts:
   i. Food services;
   ii. Student-body activities;
   iii. Community services; and
   iv. Special projects.
9. Capital outlay (sites, buildings and equipment); and
10. Debt service (bonds, authorized notes and interest on same).

(c) The Commissioner shall prepare directions to be used by school officials in the preparation of a program-oriented budget which will relate appropriations to the goals and objectives of the district board of education as established pursuant to N.J.S.A. 18A:7A-1 et seq.

(d) District boards of education may adopt, by district board of education resolution, the approved program-oriented budget format.

(e) The budget and cost distribution records of all district boards of education which adopt a program-oriented system of budget preparation shall include, but not be limited to, the following classifications:

1. Regular instruction;
2. Special instruction;
3. Adult/continuing instruction;
4. Other instruction;
5. Support services pupil;
6. Instructional staff;
7. General administration;
8. School administration;
9. Business/administrative;
10. Central;
11. Other support services; and
12. Community services.

6:20-2.4 Physical property records

(a) A record of the physical property of a district board of education shall be kept in the form prescribed by the Commissioner.

(b) The physical property records shall include, but not be limited to, the following classifications:

1. Property records;
2. Inventory record; and
3. Register of insurance.

6:20-2.5 Accounting directions

The Commissioner shall prepare directions to be used by school officials in keeping the bookkeeping and accounting system in this subchapter and shall from time to time prepare, publish and distribute handbooks, materials or circulars for the guidance of school officials.

6:20-2.6 Supplies and equipment

(a) The Commissioner shall prescribe a list of articles to be regarded as supplies and equipment for accounting purposes.

(b) For the purposes of this section, "food supplies" shall include only those supplies which are to be eaten or drunk and those substances which may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.

(c) Public notification of method of purchase:

1. Whenever any district board of education elects to purchase food supplies pursuant to this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, designating a person or persons authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education will solicit and accept quotations.

2. This policy shall be adopted before the opening of schools in September and shall be made known to the public.

(d) Specifications and quotations shall be as follows:

1. Definite and uniform specifications governing standards of quality shall be given to each eligible vendor from which quotations are solicited.

2. Each time a purchase of food supplies is to be made, the person designated by the district board of education to purchase food supplies shall solicit quotations from interested, eligible vendors in the manner prescribed in the adopted district board of education policy. Quotations for fresh or frozen fruits, vegetables and meats need not be solicited more than once in any two-week period.

3. The food supplies on which quotations are obtained shall be purchased from the vendor giving the lowest quotation unless the person or persons designated by the district board of education to purchase food supplies can justify the purchase from one of the other vendors submitting a quotation; such justification, together with all quotations received, shall be in permanent record form, available to school officials, the district board of education and the Department of Education for review and for audit for a minimum of three years.

4. Contingent upon approval of the district board of education in its adopted policy, the person or persons designated by the district board of education to purchase food supplies may purchase food supplies for any school cafeteria or home economics class to the extent of not more than $250.00 in any month without soliciting quotations, provided a statement signed by the purchaser is filed with the invoice indicating the reason why quotations could not be obtained; such record shall also be retained for review and for audit.

(e) Paragraphs (d)1, 2 and 3 above shall not apply to food supplies purchased by advertising for bids.

6:20-2.7 Bookkeeping and accounting forms

The Commissioner shall prepare and distribute the necessary forms for the bookkeeping and accounting system except to those districts boards of education which have received approval for mechanical or electronic data processing bookkeeping systems.

6:20-2.8 Mechanical bookkeeping systems

(a) All mechanical or electronic data processing bookkeeping systems to be used by district boards of education shall be approved by the Commissioner prior to usage.

(b) District boards of education which contract for electronic data processing bookkeeping services shall annually have an audit prepared or obtain a copy of an audit of the internal controls of the service company or agency as prescribed by Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants and maintain a copy of such audit on file.

6:20-2.9 Employee organizational dues

(a) Pursuant to provisions of N.J.S.A. 52:14-15.9(e), any person holding employment with a district board of education in this State may have deductions made from this compensation for the purpose of paying dues to a bona fide employee organization.

(b) Employees desiring payroll deductions of organizational dues should indicate, in writing, their choice of employee organization. Any such written authorization may be withdrawn at any time by filing a notice with the secretary of the district board of education, according to directions promulgated by the Commissioner.

(c) Any secretary of a district board of education making organizational payroll deductions shall submit to the designated employee organization all deductions made for such purposes.

6:20-2.10 Petty cash fund

(a) Pursuant to the provisions of N.J.S.A. 18A:19-13, a district board of education may establish on July 1 of each year, or as needed, a petty cash fund or funds for the purpose of making immediate payments of comparatively small amounts.

(b) A district board of education establishing a petty cash fund shall:

1. Indicate the amount or amounts authorized for each fund;

2. Set the maximum expenditure which may be made from each fund;

3. Designate an individual who will be responsible for the proper disposition of each fund;

4. Establish the minimum time period in which the designated person shall report to the district board of education on amounts disbursed from each fund; and

5. Approve a voucher prepared by the board secretary to replenish each fund.

(c) All unused petty cash funds are to be returned to the depository at the close of each fiscal year.

6:20-2.11 Summer payment plan

Funds withheld from employees' salaries for the summer payment plan prescribed by N.J.S.A. 18A:29-3 shall be deposited in a separate account in a depository designated by the district board of education, said account to be known as Board of Education of Summer Payment Plan Account. Withdrawals from this account shall be made by individual checks payable to the order of employees for the amount withheld from their salaries during the school year. A payment list shall be certified by the president and secretary of the district board of education and delivered to the treasurer of school moneys of the district board of education.

6:20-2.12 Debt service State support

In the budget year following the final payment of all school debt service, if all or any part of the debt service funds which are to be made available to a district board of education for that budget year pursuant to N.J.S.A. 18A:7A-19 and 18A:7A-26 are not necessary for debt service purposes in that budget year, the district board of education shall record such funds as capital outlay revenue to the district board of education.

6:20-2.13 Overexpenditure of funds

(a) A district board of education shall not incur any obligation or approve any payment in excess of the amount appropriated by the district board of education in the applicable line item account or program category account pursuant to N.J.S.A. 18A:22-8 and 18A:22-8.1.

(b) A district board of education anticipating an over-expenditure in either the current expense, capital outlay or debt service funds as designated in N.J.A.C. 6:20-2.2(c)1 shall proceed in the following manner:

1. The district board of education shall direct the chief school administrator to immediately notify the county superintendent of schools of the following:

i. The projected amount of the overexpenditure;

ii. The reason or reasons for the projected overexpenditure; and

iii. The action being taken by the district board of education to avoid the projected overexpenditure.

2. The county superintendent shall immediately notify the Commissioner, in writing, if the projected amount of the over-expenditure exceeds five percent of the district's current expense budget or $100,000, whichever is lower.

3. The county superintendent shall immediately investigate to determine if the corrective action being taken by the district board of education is sufficient to avoid an overexpenditure. If necessary, the county superintendent shall assist the district board of education in determining what further corrective action can be taken, or request assistance from the Division of Finance.

4. The county superintendent shall immediately notify the Commissioner, in writing, should it appear that an overexpenditure may occur and the district board of education is not taking adequate action to avoid an overexpenditure.

(c) A district board of education secretary shall report to the district board of education, at each regular meeting, the amounts appropriated, expended and transferred into or out of an item of appropriation, for each item of appropriation shown on the budget form prepared in accordance with N.J.S.A. 18A:22-8. This report shall be in addition to the report required by N.J.S.A. 18A:17-9.

(d) By August 15, the county superintendent shall report to the Commissioner all overexpenditures as shown on the June report of the district board of education secretary filed pursuant to N.J.S.A. 18A:17-10.

(e) Should a district board of education fail to develop an acceptable remedial plan to eliminate the projected overexpenditure, the district may be disqualified for certification under the State's monitoring procedure. In those cases where the Commissioner determines that the failure to develop an acceptable remedial plan to eliminate the projected overexpenditure impacts the district's ability to meet its goals and objectives, the Commissioner shall recommend to the State Board of Education that the district's certification be rescinded.

(f) In the year following the year in which a deficit occurs, the net current expense budget and the maximum support budget of a district board of education shall be reduced by an amount equal to the deficit in any major account when calculating State aid entitlements for the second year following the year in which the deficit occurred.

6:20-2.14 Appropriation of free balance

(a) A district board of education requesting to exceed the permissible rate of increase pursuant to N.J.S.A. 18A:7A-25 shall appropriate all available current expense free balance in excess of three percent of the current expense budget for the budget year such request is made.

(b) A district board of education, upon the advice of the chief school administrator, may request an exception, from the Commissioner, to the provision of (a) above.

(c) Any balance allowed pursuant to (a) or (b) above shall be exempt from the Commissioner's determination that a reallocation of resources is insufficient to meet the district board of education goals, objectives and standards.

SUBCHAPTER [2.]2A. DOUBLE ENTRY BOOKKEEPING AND GAAP ACCOUNTING IN LOCAL SCHOOL DISTRICTS

6:20-[2.1]2A.1 Prescribed system of double entry bookkeeping and GAAP accounting

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

(c) All school districts shall conform to the requirements of this subchapter on the date established by N.J.S.A. 18A:4-14.1.

6:20-[2.2] 2A.2 Summary statement of principles

(a)-(l) (No change.)

(m) A common terminology and classification shall be used consistently throughout the budget, the accounts and the financial reports of each fund. District boards of education shall adopt a chart of accounts prepared in conformity with established guidelines as follows:

1. The Commissioner shall prepare, publish and distribute a uniform minimum chart of accounts consistent with Financial Accounting for Local and State School Systems, commonly referred to as Handbook 2R2 and developed by the National Center for Education

Statistics, for use in the accounting systems of **all** district boards of education [utilizing the function oriented budget system] and shall compel its use for financial reporting to the Department of Education.

2. The Commissioner shall publish and distribute Financial Accounting for Local and State School Systems, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, for use in the accounting systems of district boards of education [utilizing] **selecting** the program oriented budget system **or those wishing to expand upon the minimum requirements for the function oriented budget system established in (m)1 above** [and shall compel its use for financial reporting to the Department of Education]. **Such expanded systems shall compile budget data in the expanded and minimum format each month and at the end of the fiscal year.** [The first level of detail in the object codes of such systems shall be classified and identified as follows:

i. Personal Services—Salaries	1;
ii. Personal Services—Employee Benefits	2;
iii. Purchased Professional and Technical Services	3;
iv. Purchased Property Services	4;
v. Other Purchased Services	5;
vi. Supplies and Material	6;
vii. Property	7; and
viii. Other Miscellaneous	8.]

3. Any modifications to the chart of accounts adopted by the district board of education must conform to the guidelines established in (m)1 and 2 above and shall be subject to the district board of education's approval.

(n) (No change.)

6:20-[2.3 to 2.7] **2A.3 to 2A.7** (No change in text.)

6:20-[2.8] **2A.8** Petty cash fund

(a) Pursuant to the provisions of N.J.S.A. 18A:19-13, a district board of education may establish on July 1 of each year, or as needed, [an imprest] **a** petty cash fund or funds for the purpose of making immediate payments of comparatively small amounts.

(b) A district board of education establishing [an imprest] **a** petty cash fund shall:

1.-5. (No change.)

(c) All unused [imprest] petty cash funds are to be returned to the depository at the close of each fiscal year.

6:20-[2.9 and 2.10] **2A.9 and 2A.10** (No change in text.)

6:20-[2.11] **2A.11** Overexpenditure of funds

(a) A district board of education shall [not incur any obligation or approve any payment in excess of the amount appropriated by the district board of education in the applicable line item account or program category account pursuant to N.J.S.A. 18A:22-8 and 18A:22-8.1.] **implement controls over budgeted appropriations as follows:**

1. No encumbrance or expenditure (liability or payment) shall be approved which when added to the total of existing encumbrances and expenditures exceeds the amount appropriated by the district board of education in the applicable line item account established pursuant to the minimum chart of accounts referenced in N.J.A.C. 6:20-2A.2(m)1. A line item account is defined as the lowest (most specific) level of detail in the appropriation/expenditure classification.

2. When a district board of education adopts an expanded chart of accounts pursuant to N.J.A.C. 6:20-2A.2(m)2, such district board of education shall adopt a policy concerning the controls over appropriations for line item accounts which exceed the minimum level of detail established pursuant to N.J.A.C. 6:20-2A.2(m)1. If a district board of education fails to adopt such a policy, the restrictions contained in (a)1 above shall apply to line item accounts which exceed the minimum level of detail.

3. A district board of education may transfer amounts necessary to effectuate the approval of encumbrances or expenditures prohibited in (a)1 and 2 above from line item accounts with available appropriation balances. These transfers shall be made prior to the approval of such encumbrances or expenditures and shall be made in accordance with N.J.S.A. 18A:22-8.1 and 18A:22-8.2.

(b) A district board of education anticipating an over-expenditure in either the current expense, capital outlay or debt service funds as designated in N.J.A.C. 6:20-2A.2(c)1 shall proceed in the following manner:

1.-4. (No change.)

(c)-(f) (No change.)

6:20-[2.12] **2A.12** (No change in text.)

[6:20-2.13 Conformance date

Pursuant to N.J.S.A. 18A:4-14.1, all school districts shall conform to the requirements of this subchapter by July 1, 1991.]

HEALTH

(a)

FACILITIES RATE SETTING

Standard Hospital Accounting and Rate Evaluation (SHARE) Manual

Economic Factor

Proposed Amendment: N.J.A.C. 8:31A-9.1

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

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

Proposal Number: PRN 1989-491.

Submit comments by October 18, 1989 to:

Charles J. O'Donnell, Director
Health Facilities Rate Setting
State Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment to the Standard Hospital Accounting and Rate Evaluation (SHARE) Manual will enable the specialized and rehabilitative hospitals to compete on a more equitable basis with the Chapter 83 Hospitals. This will be accomplished by using the same labor proxy for both reimbursement systems. SHARE Hospitals have been at a disadvantage in the recruitment and retention of professional staff, especially nursing personnel. They have been confronted with a choice between either lower salaries for their staff or a cost shifting from Blue Cross and Medicaid to commercial insurance carriers. Frequently, the cost shifting is not a realistic option because of a high percentage of Blue Cross and/or Medicaid clients.

Social Impact

The proposed amendment will contribute to the overall operating efficiency of SHARE Hospitals because there will be less turnover of professional staff and fewer recruitment problems. Furthermore, additional staffing will promote quality of care.

Economic Impact

The proposed amendment will result in increased payments for Medicaid and Blue Cross. The estimated increase for Medicaid is $174,000 ($87,000 Federal dollars and $87,000 State dollars) for a 12-month period and the estimated increase for Blue Cross is $234,000 for a 12-month period. This is based on the additional approved costs for SHARE reimbursement and the Blue Cross and Medicaid percentages of total inpatient days.

Regulatory Flexibility Statement

The SHARE Hospitals employ more than 100 full-time employees and, therefore, do not fall into the category of small businesses defined in N.J.S.A. 52:14B-16 et seq., the New Jersey Regulatory Flexibility Act.

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

8:31A-9.1 Economic factor

(a) The industry-wide economic factor shall be comprised of the percentage changes in the following proxies for their relevant cost components weighed by their percentage of reported costs on

SHARE Projected Actuals for all hospitals combined. The factor is determined exclusive of depreciation and facilities interest, lease and utilities costs.

1. Labor 1:

i.-ii. (No change.)

iii. Proxy: Average Hourly Earnings—Hospital Workers [(U.S.)] (**NORTHEAST REGION**).

iv. Source: Bureau of Labor Statistics (BLS), Average Hourly Earnings—Hospital Workers [(U.S.)] (**NORTHEAST REGION**).

2. (No change.)

3. Labor 3.

i.-ii. (No change.)

iii. Category 1: FICA:

(1) (No change.)

(2) Source: U.S. Department of Health and Human Services. Social Security Bulletin and BLS, Average Hourly Earnings—Hospital Workers [(U.S.)] (**NORTHEAST REGION**).

iv. Category 2: Workmen's Compensation:

(1) (No change.)

(2) Source: New Jersey Compensation Rating and Inspection Bureau and BLS Average Hourly Earnings—Hospital Workers [(U.S.)] (**NORTHEAST REGION**).

v. Category 3: Unemployment Insurance:

(1) (No change.)

(2) Source: New Jersey Department of Labor and Industry and BLS Average Hourly Earnings—Hospital Workers [(U.S.)] (**NORTHEAST REGION**).

vi. Category 4: Disability Insurance:

(1) (No change.)

(2) Source: New Jersey Department of Labor and Industry and BLS Average Hourly Earnings—Hospital Workers [(U.S.)] (**NORTHEAST REGION**).

vii.-viii. (No change.)

ix. Category 7: Pensions:

(1) Proxy: BLS, Average Hourly Earnings—Hospital Workers [(U.S.)] (**NORTHEAST REGION**).

(2) Source: BLS, Average Hourly Earnings—Hospital Workers [(U.S.)] (**NORTHEAST REGION**).

x. Category 8: Other policy fringe benefits:

(1) Proxy: BLS, Average Hourly Earnings—Hospital Workers [(U.S.)] (**NORTHEAST REGION**).

(2) Source: BLS, Average Hourly Earnings—Hospital Workers [(U.S.)] (**NORTHEAST REGION**).

4.-19. (No change.)

(a)

UNCOMPENSATED CARE TRUST FUND

Set-off of Individual Liability with Tax Refunds/Rebates

Proposed New Rule: N.J.A.C. 8:31B-7.10

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

Authority: N.J.S.A. 26:2H-18.4 et seq. (P.L. 1989, c.1).

Proposal Number: PRN 1989-490.

Submit written comments by October 18, 1989 to:

Scott Crawford, Director
Health Care for the Uninsured Program
State Department of Health, 8th Floor
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

Proposed new rule N.J.A.C. 8:31B-7.10 is designed to implement section 10b4 of P.L. 1989, c.1, the Uncompensated Care Trust Fund Act. This law mandated that part of the collection effort required for payment of uncompensated care was to include the application of State income tax refunds or homestead rebates to recover a debt owed on a patient's account.

The New Jersey Division of Taxation has established the Set-off of Individual Liability (SOIL) program, pursuant to N.J.S.A. 54A:9-8.1 et seq. and N.J.A.C. 18:35-2.1 to 2.13, to enable the State to withhold the tax refunds and homestead rebates of persons who have debts payable to government entities. For the purposes of this section, the Legislature established that a patient's outstanding balance shall be considered a debt to the Uncompensated Care Trust Fund and the Fund shall be considered an agency of State government.

This proposed new rule establishes the process that a hospital must follow in order to enable the Department to access the SOIL system.

Social Impact

This proposed new rule should have a limited social impact on consumers of health care. However, the rule will have an impact on the efforts required by hospitals to access the system and on the efforts required of the Department of Health to collect the data and forward it to the Department of Treasury.

Economic Impact

This proposed new rule may decrease the cost of uncompensated care in the State by increasing the monies which are collected from patients with outstanding bills. Patients with outstanding bills as set forth in this rule may be negatively affected, as their State income tax refund or homestead rebate may be used to satisfy their hospital debt.

Regulatory Flexibility Statement

The proposed amendment affects only those hospitals whose rates are set by the Hospital Rate Setting Commission. There are no hospitals subject to the amendment with fewer than 100 full-time employees. Therefore, the amendment has no impact on any institution which would qualify as a small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows:

8:31B-7.10 Set-off of individual liability with tax refunds/rebates

(a) On January 1 and September 1 of each year, hospitals shall submit data to the Department of Health concerning all accounts which have been written-off to bad debt and that have a minimum balance of $25.00 per individual. The data shall be provided on computer tape in a format specified by the Department of Health. Data elements which shall be submitted to the Department of Health are as follows:

1. The name of the patient or responsible party;
2. The Social Security Number of the patient or responsible party;
3. The total dollar amount of indebtedness to the hospital. (This amount shall be the sum of all accounts that have been written-off to bad debt for that particular patient/responsible party. The Department will accept only one record for each patient/responsible party.); and
4. The date the account was written-off. (When more than one account is included, then the most recent date an account was written-off shall be used.)

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Renal Disease Services

Standards and General Criteria for the Planning and Certification of Need for Regional End-Stage Renal Disease Services

Proposed Readoption: N.J.A.C. 8:33F

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

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

Proposal Number: PRN 1989-488.

Submit comments by October 18, 1989 to:

John A. Calabria, Director
Health Policy, Planning and Certificate of Need
State Department of Health, Room 604
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

End-Stage Renal Disease (ESRD) services have historically been included among those health care services which the Department of Health has required to be provided on a regionalized basis. Services are regionalized to assure that all residents of the State have access to quality, cost efficient and effective ESRD services. Those services that are regionalized are technologically complex to perform and require special, generally expensive, equipment and specially-trained staff. Regionalizing such services spreads the cost of providing the service at approved sites over a larger patient base, thereby reducing costs. Perhaps more importantly, regionalization assures that each of the approved sites has a patient population sufficient to maintain the expertise of the staff providing the service, thereby enhancing the quality of the service. In response to these factors and concerns, the concept of regionalization requires a method of appropriately distributing services to respond to the issues of need, access, cost and quality.

The Department of Health has analyzed the progress which has been accomplished in the regionalization of ESRD services in New Jersey and has concluded that an accessible, high quality and effective Statewide ESRD system has been organized to meet patient needs. It has also been noted that the present ESRD service system is essentially stable at this time, with recent Certificate of Need requests for dialysis stations being approved either for existing providers (requiring additional stations to better service their caseloads) or for new providers (focusing on access difficulties primarily related to geographic distance to existing ESRD providers). A review of the current ESRD system in 1989 indicates that there is no longer a scarcity of dialysis machines and related equipment and supplies.

In consideration of these significant systems changes, the Department of Health eliminated the Methodology for Determination of Projected Need for Chronic Renal Dialysis Services in previous amendments. The need methodology is now contained in the current Renal Dialysis Plan Element of the State Health Plan and is referenced in the ESRD rules at N.J.A.C. 8:33F. Instead, need will be determined through utilization as well as other access criteria.

The current chronic renal dialysis rules are scheduled to expire as of January 14, 1990, pursuant to Executive Order No. 66(1978). The Department has reviewed the present rules and determined that no major revisions are necessary to reflect changes in the availability of chronic renal dialysis. In order to avoid expiration of these rules pursuant to Executive Order No. 66(1978) and to maintain continuity in the certificate of need process for renal dialysis services, the readoption of this chapter without change is now being proposed.

Social Impact

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

It is anticipated that the service needs of renal patients will be more quickly and appropriately addressed through the implementation of the existing rules. ESRD hospitals and facilities will be able to request additional stations when their station utilization is reaching maximum levels. The Department anticipates that this recommended approach will thereby be beneficial to existing ESRD patients as well as ESRD providers.

Economic Impact

The proposed readoption of this chapter is not expected to add additional financial burden on patients, ESRD providers, the State or federal government. Chronic ESRD services are reimbursed through the Medicare program. The proposed readoption will not affect the volume of patients receiving reimbursement under this program. However, it will facilitate the ability of patients to obtain proper treatment in facilities which are responsive to their needs in a timely manner.

Extension of existing rules will permit the Department of Health to continue to evaluate the orderly development of dialysis services on the basis of documented community need as required in the standards and criteria contained at N.J.A.C. 8:33F.

Regulatory Flexibility Statement

This proposed readoption will, for the most part, be applicable to hospitals which employ well over 100 employees. Smaller entities that are not specifically affiliated with hospitals are providing ESRD services. The requirements contained in this proposed readoption do require personnel to perform a number of functions at a dialysis facility in order to provide a safe and effective dialysis service. An ability to perform some degree of recordkeeping, reporting or other compliance requirements are being proposed by this readoption. Such recordkeeping and data reporting will not require dedicated staff and should not be considered overly burdensome to the applicants that may be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules are necessary to preserve the public health by ensuring that capital expenditures are made only for needed health care facilities and resources. Varying compliance of these rules solely upon facility size would be at odds with this statutory purpose.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33F.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Long Term Care Licensing Standards

Respite Care Standards

Proposed New Rules: N.J.A.C. 8:39-44

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

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

Proposal Number: PRN 1989-487.

Submit comments by October 18, 1989 to:

Robert Fogg, Director
Licensure Reform Project
State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department is proposing to assure patient safety and quality of care for patients taken into nursing homes for the purpose of respite care. The addition of Subchapter 44, Respite Care Standards, to N.J.A.C. 8:39 was developed by the Department's Licensure Reform Project, working with the members of the Nursing Home Advisory Group.

Long-term care facilities are authorized to accept short-term patients whose regular caregivers participate in respite care programs. Because the length of stay of a respite patient is much shorter than that of a long-term patient, rules are required that specifically address the needs of this population.

The proposed new rules present a clear, comprehensive and effective set of rules for respite services in nursing homes, and contain the following major provisions:

Scope and purpose of Respite Care Services: Proposed N.J.A.C. 8:39-44.1 delineates the scope and purpose of respite care services. This provision would clearly define the providers and recipients to whom these respite care standards apply.

Plan of care: Proposed N.J.A.C. 8:39-44.2(b), (c), (d), and (e), would require the nursing home to obtain information from the patient's attending physician prior to admission and then follow the plan of care provided by the attending physician or establish a plan of care in accordance with N.J.A.C. 8:39-11. It also would require the facility to obtain information about the care required from the regular caregiver concerning dietary, social services, and activities needs. This provision would assure that the appropriate plan of care is established to safely meet the needs of respite patients.

Pharmacy services: Proposed N.J.A.C. 8:39-44.2(g) would require facility pharmacy and therapeutics committees to establish policies and procedures for providing pharmacy services including options, if any, for provision of patient medications by sources other than the facility's usual provider, labeling and packaging of medications, self-administration, if applicable, and control measures. This provision would assure that the pharmaceutical needs of respite patients are met in a safe and effective manner with a minimum of expense to respite patients and their caregiver.

Nursing staffing: Proposed N.J.A.C. 8:39-44.3 would require facilities to provide nursing care based on the current regulatory requirements of N.J.A.C. 8:39-25.2(b). This provision would assure that nursing services received are based on care needs of respite patients and not on reimbursement rates.

Social Impact

The need for respite services for caregivers will increase as the population ages. Because respite services generally are short term, several of the present standards for licensure of long-term care facilities do not apply. In order to assure the highest quality of care, these standards have been developed to allow facilities to plan care for respite patients based on their short-term needs, which in many cases differ from those of long-term care residents.

Economic Impact

There are no substantial additional expenditures expected to be incurred by nursing homes as a result of these proposed new rules. However, there may be a reduction in cost to patients and their families, as well as to the State Medicaid program, since the proposed new rules allow facilities some flexibility when providing respite services, especially in the area of pharmaceutical needs.

Regulatory Flexibility Analysis

The proposed new rules will impose requirements on approximately 300 nursing homes, of which approximately 115 can be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq.

The rules, which use performance standards, do not allow for differentiation between small and large businesses or for exemption for small businesses from any part of the compliance requirements, due to the need to maintain uniform standards which will protect the health and safety of the respite care patients in nursing homes. It is not anticipated that the proposed new rules will necessitate any additional expenses on the part of the nursing homes, since the current rules at N.J.A.C. 8:39 already impose the basic requirements on the nursing homes. The proposed new rules will allow the nursing homes to follow an abbreviated set of requirements for respite care patients, while assuring that these patients receive services which are appropriate and necessary during the term of their respite care stays.

Full text of the proposal follows:

SUBCHAPTER 44. RESPITE CARE SERVICES

8:39-44.1 Scope and purpose

(a) Long-term care facilities are authorized by law to accept short-term patients whose regular caregivers are participating in a respite care program. A caregiver is defined as any individual, paid or unpaid, who provides regular in-home care for an elderly, disabled, or cognitively impaired person.

(b) When a caregiver desires respite from this responsibility, continuity of care for the elderly, disabled, or cognitively impaired person is available through temporary placement in a long-term care facility for a period of time specified in advance.

(c) The standards in this subchapter apply only to those long-term care facilities that operate a respite care program.

8:39-44.2 Mandatory policies and procedures

(a) The long-term care facility shall have written respite care policies and procedures that are retained by the administrative staff and available to all staff and to members of the public, including those participating in the program.

(b) The facility shall obtain the following information from the patient's attending physician prior to admission:

1. A summary of the patient's medical history and most recent physical examination;
2. Signed and dated medication and treatment orders for the patient's stay in the facility; and
3. Phone numbers of the attending physician and an alternate physician for consultation or emergency services.

(c) The facility shall choose whether to follow the patient care plan provided by the attending physician or to establish a plan in accordance with N.J.A.C. 8:39-11. The facility is exempt from compliance with N.J.A.C. 8:39-11, if it chooses to follow the care plan provided by the patient's attending physician.

(d) The facility shall obtain the following information from the patient's regular caregiver(s):

1. Nursing care needs, including personal hygiene and restorative and maintenance care;
2. Dietary routine and preferences; and
3. Social and activity routine and preferences.

(e) The facility shall choose whether to follow the dietary, social, and patient activity plan provided by the caregiver(s) or to establish a plan in accordance with N.J.A.C. 8:39-7, 17, and 39. The facility is exempt from compliance with N.J.A.C. 8:39-7, 17 and 39, if it chooses to follow the plan provided by the caregiver(s).

(f) The pharmacy and therapeutics committee shall establish policies and procedures for providing pharmacy services for the respite care program according to State of New Jersey, Board of Pharmacy, and other applicable rules and regulations. These policies and procedures shall include the following:

1. Options, if any, for provision of patient medications by sources other than the facility's usual provider(s);
2. Labeling and packaging of medications;
3. Self-administration of medications, if applicable; and
4. Control measures.

(g) The facility shall apply to respite care patients all the standards contained in N.J.A.C. 8:39 except those exemptions cited preceding and the following rules: N.J.A.C. 8:39-4.1(a)31, 4.1(b), 5.1(a)-(e), 11.3(a), 15.1(a), subchapter 29, 35.2(d)3 to 15, and 37.3.

8:39-44.3 Advisory staffing

A long-term care facility should assign specific staff members to an individual respite care patient to provide continuity of care during the patient's stay in the facility.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards

Proposed Repeal: N.J.A.C. 8:43B-1 through 17
Proposed Recodification: N.J.A.C. 8:43B-18 to 8:43G-6

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

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

Proposal Number: PRN 1989-489.

Submit comments by October 18, 1989 to:

Robert J. Fogg, Director
Licensure Reform Project
State Department of Health
CN 367
Trenton, NJ 08625-0367

The agency proposal follows:

Summary

The New Jersey Department of Health proposes to repeal the current text of N.J.A.C. 8:43B-1 through 8:43B-17 of the licensing regulations for hospital facilities and to recodify 8:43B-18 as 8:43G-6. Chapter 43G will replace the current rules with revised rules developed by the Licensure Reform Project.

The Licensure Reform Project began in 1985 as a major initiative of the Department of Health. Hospital standards had become a confusing mixture of extremely vague 30-year-old standards and highly detailed prescriptive standards recently adopted in selected areas. Concerns arose about the ability of the existing licensure program to respond to quality of care issues in acute care hospitals. The Project has used a novel approach to standards development by closely involving surveyors and health professionals in the process. Standards were initially drafted by an in-house team; they were then discussed and revised by "reaction groups" representing a broad range of health professions. Several hundred members of the hospital community participated in reaction group meetings that reviewed and revised original draft standards. The standards were then formatted as a series of written survey questionnaires and were distributed for comment and assessment to health professionals in acute care hospitals in the State. Data from approximately 2300 responses were analyzed and used to assess the validity of the draft standards, revise them as appropriate, and weigh them for relative impor-

tance to patient care. Reaction groups were reconvened to evaluate the results of the statistical data and comments in the survey questionnaires. Three hundred and fifty members of the hospital industry, representing 95 percent of the acute care hospitals Statewide, as well as a special New Jersey Hospital Association Task Force, participated in this stage of the process and produced recommendations which constitute the proposed new rule, N.J.A.C. 8:43G.

The Department has evaluated the current rules and has determined that N.J.A.C. 8:43B-1 through 17 no longer reflect adequate standards to assure quality of care to the citizens of New Jersey and should be repealed. N.J.A.C. 8:43B-18, Anesthesia, was adopted on February 21, 1989 and will be recodified as N.J.A.C. 8:43G-6, as part of N.J.A.C. 8:43G, which will contain all rules for licensing hospital facilities.

Social Impact

In a highly technological and competitive health care industry, the consumer requires assistance in evaluating proposed medical services, protection from substandard treatment, and a proactive approach to quality of care.

The primary social impact of the proposed repeal, in concert with the new rules at N.J.A.C. 8:43G, is to assure that quality care is rendered to the hospitalized patient, using outcome-oriented measures wherever possible, and to encourage not only minimum levels of quality care but exemplary care as well, using language that is clear and understandable to consumers and health professionals, as well as to regulators. In addition, there will be continuous feedback to monitor the reliability and validity of the rules as they seek to achieve a high level of quality of care for patients.

Economic Impact

The repeal, in concert with the new rules at N.J.A.C. 8:43G, is expected to have variable economic impact on acute care hospitals in New Jersey. In some areas, cost savings will be effected. For example, the Pharmacy rules have been reduced by 77 percent, and the requirement for a unit dose drug distribution system has been reduced from applying to 100 percent to 85 percent of licensed inpatient beds. Similarly, the number of rules has been reduced in the Obstetrics subchapter.

In other areas, upgraded staffing and equipment requirements mandated by the new regulations will clearly entail additional costs. For example, in the adopted Anesthesia subchapter and the proposed Postanesthesia Care subchapter, the rules mandate important new monitoring equipment, pulse oximetry and end-tidal carbon dioxide monitors. Under reimbursement reform adopted by the Department of Health in June, 1989, however, reasonable expenditures which are incurred by hospitals as a result of new rules may be appealed without reimbursement disincentive to the Hospital Rate Setting Commission. In its commitment to the goal of quality patient care, the Department believes that the additional costs are necessary and is prepared to support rate requests by hospitals which are necessary to meet the requirements of these new standards.

Regulatory Flexibility Statement

The proposed repeal affects all hospitals in New Jersey regulated by N.J.A.C. 8:43B. Each of these hospitals employs more than 100 full-time employees and therefore are not considered in the small business category as defined in N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed repeal may be found at N.J.A.C. 8:43B-1 through 17.

Full text of the proposed recodification may be found at N.J.A.C. 8:43B-18.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

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

Proposed New Rules: N.J.A.C. 8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31 and 35

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

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

Proposal Number: PRN 1989-486.

Submit comments by October 18, 1989 to:

Robert J. Fogg, Director
Licensure Reform Project
State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the provisions of the following services in hospitals: administrative and hospital wide, obstetrics, oncology, plant maintenance and emergency preparedness, pediatrics, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, and postanesthesia care. In addition, new subchapters covering general provisions and license procedure are being proposed. The proposed new subchapters of the Hospital Licensing Standards, N.J.A.C. 8:43G, were developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the state. This survey was distributed to all hospitals as comprehensive draft licensure standards in 31 areas, including the 10 delineated above. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that receive generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules contain the following major provisions:

General Provisions

N.J.A.C. 8:43G-1.2 contains definitions of key terms and N.J.A.C. 8:43G-1.3 addresses classification of facilities subject to the licensure procedure. These provisions would help to facilitate application of the proposed rules in an efficient manner.

Licensure Procedure

N.J.A.C. 8:43G-2 explains the licensing and certification requirements for hospitals. The provisions in this subchapter are consistent with licensing and certification requirements regulating other facilities which are under the authority of the Department of Health.

Administrative and Hospital Wide Services

N.J.A.C. 8:43G-5.2(l) requires every hospital to become smoke-free by January 1, 1992. The definition of smoke-free is contained within the rule.

This provision assures that smoking will be prohibited in all hospitals in New Jersey. This assurance is important for the protection of the health and safety of both patients and staff within the hospital, and enables hospitals to take an active role in promoting healthy behavior.

N.J.A.C. 8:43G-5.14(a), (b), and (c) would require that all employees with potential exposure to hazardous substances and/or blood borne diseases receive a comprehensive orientation and on-going education programs. Orientation would occur before the employee is exposed to or begins to work with hazardous materials and/or patients with hazardous blood borne diseases. This provision recognizes the importance of assuring that employees receive adequate orientation and education concerning potential occupational health and safety risks, and, based on this training, are able to take the necessary precautionary measures to prevent exposure.

N.J.A.C. 8:43G-5.16(a) requires all hospitals to develop a written, comprehensive disaster plan for various emergency situations, including medical emergencies, equipment breakdowns, fire, and other disasters, and to conduct emergency drills. This provision is essential for protecting the health and safety of the general public, and assures that hospitals are capable, and prepared to respond to emergency situations.

Obstetrics

N.J.A.C. 8:43G-19.14(e) requires that a health professional trained in neonatal resuscitation be available for each delivery. This provision assures that appropriately trained staff are available to immediately assist newborns in distress.

N.J.A.C. 8:43G-19.17(b) requires the hospital to provide or arrange for an organized program of post-partum education in self-care and newborn care. This provision recogizes the new mothers often have many questions and concerns about caring for their newborn and themselves. Through providing or arranging for post-partum educational programs, the hospital assures new mothers that their need for information is recognized and that instruction and guidance is available.

N.J.A.C. 8:43G-19.17(d) requires the hospital to have staff available to advise breast-feeding post-partum patients during their hospital stay to prevent difficulties with breast-feeding. This provision assures that every mother who chooses to breast-feed has access to a staff member who is able to assist her in becoming comfortable and familiar with this feeding method.

Oncology

N.J.A.C. 8:43G-21.4(b) requires the oncology service to establish written visiting policies for patients that allow for visits by children, and 24-hour visitation rights for designated visitors. This provision recognizes the importance of flexible visiting policies in certain specialized services. Oncology patients, often with terminal illnesses, face prolonged hospital stays and have special needs for family support. Through establishing liberal visiting policies, the hospital recognizes the emotional and social aspects of patient care.

N.J.A.C. 8:43G-21.5(b) requires that a clinical resource person with at least two years of clinical experience in oncology is available to the unit. This provision recognizes that oncology is an area of specialization, and assures that staff and patients have access to a clinical resource person with specialized training and knowledge.

N.J.A.C. 8:43G-21.9(a) requires that multidisciplinary oncology patient care team meetings take place on a regularly scheduled basis and include at least a physician or a designee, a nurse, a social worker, a dietitian, and other disciplines as necessary. The provision recognizes that the diverse needs of oncology patients often require the attention and interaction of various disciplines within the hospital. Collaborative multidisciplinary meetings help assure that the care being delivered to the patient adequately addresses his or her needs.

Pediatrics

N.J.A.C. 8:43G-22.3(c) requires that there is documented evidence of pediatric, medical, and nursing staff participation in the areas of dietary, emergency department, laboratory, pharmacy services, radiology, rehabilitation and social work. This provision would assure that the specialized needs of pediatric patients are communicated to departments involved in providing direct or supportive services to pediatric patients.

N.J.A.C. 8:43G-22.10(b) requires that all pediatric units provide at least one playroom with recreation equipment and child-size tables and chairs. This provision recognizes that pediatric units need to be physically designed to accommodate the various needs of children and require features which would not be necessary in a unit for adults. The availability of a properly equipped playroom is one such feature. Playrooms serve a therapeutic function, and assist in making the hospital a more familiar and comfortable environment for young children requiring hospitalization.

N.J.A.C. 8:43G-22.12(b) requires a pediatric intensive care unit to be covered at all times by at least one physician, present in the facility or on call, who is board certified or board eligible in pediatrics, or has completed a fellowship in a pediatric subspecialty. This provision recognizes that the medically unstable and critical condition of patients placed in a pediatric intensive care unit require that a highly qualified and trained physician be available at all times to respond and initiate treatment.

N.J.A.C. 8:43G-22.15(c) requires the pediatric intensive care unit to have physicians with each of the following pediatric subspecialties on staff: anesthesiology, cardiology, hematology/oncology, infectious diseases, nephrology, neurology, pulmonary, radiology, and surgery. This provision assures that the pediatric intensive care unit has access to staff physicians with clinical expertise in a broad range of pediatric subspecialties. The highly complex and technologically demanding nature of the illnesses treated in pediatric intensive care requires the availability of staff capable of responding to a wide spectrum of medical problems. In the absence of needed clinical expertise, the survival of the patient may be seriously jeopardized.

Plant Maintenance and Emergency Preparedness

N.J.A.C. 8:43G-24.1(a) requires each hospital to have a multidisciplinary safety committee that develops, reviews annually, and implements a comprehensive hospital-wide safety program. This provision assures the public that hospital safety is of vital concern, and is formally addressed by each hospital through a comprehensive hospital-wide safety program.

N.J.A.C. 8:43G-24.13(g), (h), and (i) require the hospital to conduct regular inspections and testing of the fire extinguishers, fire suppression systems, fire detectors and alarm systems. This provision assures that every hospital has properly functioning fire protection equipment, and is capable of immediately responding to any outbreak of fire within the facility. This provision is essential for protecting the health and safety of all patients and staff.

Psychiatry

These rules govern all general or special hospitals offering any level of inpatient psychiatry.

N.J.A.C. 8:43G-26.2 requires each hospital to have written policies and procedures for the psychiatric unit that include at least safety and security precautions, the management of medical emergencies, patient rights and privileges, clinical services plan, informed consent, and use of chemical and physical restraints and electro-convulsive therapy. This provision would help assure that patients are protected from physical and emotional harm, either self-inflicted or caused by others. Psychiatric patients also have rights and privileges and through this provision these rights are formalized as a part of the service's written policies and procedures.

N.J.A.C. 8:43G-26.3 requires that the physician director of the psychiatric unit be board certified or board eligible in psychiatry, that nurses have a bachelor's degree or psychiatric nursing experience, and that the social worker has a master's degree or bachelor's degree and related work experience. These provisions would assure a high level of knowledge and specialized clinical skills on the part of the psychiatry unit staff.

N.J.A.C. 8:43G-26.7 requires that all needed medical, surgical, diagnostic, and treatment services, including at least a psychosocial assessment, a psychiatric evaluation, a multidisciplinary plan of care, and a discharge plan, are provided for each psychiatric patient. This provision acknowledges that a patient of the psychiatric service may have multiple medical and psychosocial needs, and assures that those needs are individually addressed.

Physical and Occupational Therapy

N.J.A.C. 8:43G-29.1 and 29.12 require each hospital to have written policies and procedures for physical and occupational therapy that include criteria for patient assessment, written treatment plans, interdisciplinary communication, and documentation. The proposed rules would also require that treatment be initiated within 24 hours of referral and that treatment plans include measurable goals. These provisions would assure that each patient receives the benefit of multidisciplinary, professional evaluation and a formalized plan of care. The proposed rules address quality of patient care by requiring that the patient's plan of care be implemented promptly and monitored to confirm that treatment goals are being met.

Renal Dialysis

N.J.A.C. 8:43G-30.2(e) requires the renal dialysis service to maintain a written transfer agreement with an organ transplantation center for referral of patients. Kidney transplantation is a viable therapy for the medically and psychologically suited patient. This provision would assure that the patient who is being treated in a renal dialysis center that does not have a transplantation program has access to kidney transplantation and is part of the transplantation network. Furthermore, the provision protects the patient's right to information about kidney transplantation, including the benefits, complications, and risks.

N.J.A.C. 8:43G-30.3(b) requires that, effective January 1, 1991, the physician director of the renal dialysis unit be board-certified in nephrology. The proposed standard would modify the current licensing regulation requiring the physician director of the dialysis service to be board certified or board eligible in nephrology. Medical and technological advances in the area of renal disease, dialysis equipment, transplantation procedures and immunosuppressive drug therapy are evolving at a rapid rate. A board certified director would more likely have a higher level of skill, training, and experience than one who is not. This provision would help assure that the director of the dialysis service responsible for delivering medical care to patients with multi-system illnesses is highly qualified.

N.J.A.C. 8:43G-30.6(a) requires that a written plan of care for each renal dialysis patient is developed by a multidisciplinary team consisting of, at least, a nephrologist, a registered professional nurse, a registered dietician, and a social worker, and that the plan includes goals and expected outcomes. Individuals requiring renal dialysis are often affected by compounded medical conditions requiring a coordinated and integrated approach to treatment. This provision recognizes the importance of addressing the medical, psychological, and social factors of the patient's illness and helps assure that the individual has access to medical, nursing, dietary, and social work professionals who will develop and implement a comprehensive plan of care.

N.J.A.C. 8:43G-30.6(e) requires that the renal dialysis service adhere to the principles stated in the New Jersey Renal Network Council's Bill of Rights for Renal Patients. N.J.A.C. 8:43G-30.5(f) requires that a copy of the patient's rights and responsibilities, as developed by the New Jersey Renal Network Council, be given and explained to each patient. The New Jersey Department of Health recognizes the importance of the New Jersey Renal Network to the delivery of quality renal care and supports their principles requiring coordinated planning; quality assurance programs; effective administration of benefits for patients; encouragement of treatment settings and modalities most compatible for patients; and promotion of patient, public, and professional education.

N.J.A.C. 8:43G-30.6(g) requires that the hospital's policy of dialyzer reuse be explained to all renal dialysis patients. Patients who consent to reuse would be required to sign an informed consent form and patients who decline reuse would have an arrangement made for them to receive single-use treatment. The practice of reusing disposable hemodialyzers on the same patient is currently being performed in more than 63 percent of the chronic hemodialysis centers in the United States. Results of studies demonstrate the safety of the practice when properly performed, as well as the cost reductions associated with the program. Studies have also shown that the reused dialyzer is more biocompatible with the patient than a new dialyzer. The proposed provision would help protect the rights and safety of patients in a facility actively involved in a dialyzer reuse program.

Respiratory Care

N.J.A.C. 8:43G-31.1 requires the respiratory care service to be represented on hospital committees responsible for critical care, patient care, and infection control. Acute and chronically ill patients are often found in critical care units where nosocomial pulmonary infections are major causes of morbidity and mortality. This provision recognizes the importance of respiratory care as well as its multidisciplinary aspect. By requiring formal communication through hospital committees, respiratory care personnel can positively impact the quality of care of patients with respiratory conditions throughout the hospital.

N.J.A.C. 8:43G-31.2 requires the respiratory care service to have written policies and procedures that include a system to assure the orderly and timely transmission of written physicians' orders to registered nurses and certified respiratory therapists. Since members of two professional disciplines may be responsible for recording and implementing the physicians' orders, this proposed provision would assure the establishment of a structured system designed to eliminate delays in initiating respiratory care, resulting in more effective patient care.

N.J.A.C. 8:43G-31.2(a)1 requires the respiratory care service to have written policies and procedures including a system for re-issuing and discontinuing respiratory care orders. This provision helps assure that there is a system to identify renewal or discontinuation of respiratory care orders so that these are implemented in a timely, safe, and cost effective fashion.

N.J.A.C. 8:43G-31.2(a)2 requires that each hospital have a policy that delineates the duties and responsibilities of respiratory care practitioners. N.J.A.C 8:43G-31.2(a)3 addresses the education, training, and experience requirements of respiratory care practitioners, and specifies in which special care units they may work. These two provisions recognize the importance of providing clearly defined qualifications for the respiratory care staff and help assure that properly trained and qualified practitioners provide the appropriate respiratory care to the patient.

N.J.A.C. 8:43G-31.2(b) requires that all verbal or telephone respiratory care orders be accepted and recorded by a certified respiratory care practitioner or a registered professional nurse. This provision reflects the Department of Health's position and the position of the American Association for Respiratory Care, which is followed in 21 states, allowing respiratory therapists to accept physicians' verbal orders for drugs and treatments directly related to the provision of respiratory care. This provision helps assure the prompt implementation of orders and the cessation of unneeded ventilator assisted therapies.

N.J.A.C. 8:43G-31.7(a) requires 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. The practice of respiratory care encompasses education of the patient to promote knowledge of disease processes and self-help. This rule recognizes that the patient is an integral part of the health care team and helps to assure the patient's cooperation and participation during respiratory care management.

Postanesthesia Care

N.J.A.C. 8:43G-35.1 requires each hospital to have written policies and procedures for postanesthesia care that would include criteria for admission to and discharge from the unit, monitoring of patients and monitoring equipment, and protocols for patient care and emergencies. This provision would assure that patients who are in an unstable condition are treated by staff who use a highly structured approach to care.

N.J.A.C. 8:43G-35.2(c), (d), and (e) require that all registered professional nurses assigned to the postanesthesia care unit have specialized training in postanesthesia care, basic cardiac life support, and critical care. These provisions would assure a high level of knowledge and clinical skills on the part of postanesthesia nursing staff.

N.J.A.C. 8:43G-35.4 delineates the responsibilities of the postanesthesia care team in providing care to the postsurgical patient. The proposed rule would require an oral report upon admission to the unit, the monitoring and documentation of vital signs, documentation of preoperative and postoperative data, and guidelines for discharge from the unit. These provisions would assure patient safety by means of assessment and monitoring from the time of admission until the patient is ready for discharge from the unit.

N.J.A.C. 8:43G-35.6(d) requires the presence of emergency and monitoring equipment such as pulse oximetry, emergency drugs, extubation equipment, and blood pressure monitoring. This provision would assure patient safety under both routine and emergency conditions in the postanesthesia unit.

Social Impact

This is the third and last set in a series of revised Hospital Licensure Standards being prepared for adoption under N.J.S.A. 26.2H-1 et seq. and amendments thereto. The Department of Health has the responsibility for protecting and promoting the health of the citizens of New Jersey and establishing rules for the licensure of health care facilities. The purpose of proposed N.J.A.C. 8:43G is to establish rules for the licensure of hospitals, to ensure quality of care provided to patients in hospitals, and to protect their health and safety. The standards proposed in this set encompass oncology, psychiatry, respiratory care, renal dialysis, physical and occupational therapy, and postanesthesia care.

Administrative and Hospital-Wide Services

The proposed rules for administrative and hospital-wide services address the overall organization and operation of the hospital. The rules specific to managerial and administrative functions are designed to promote communication throughout the hospital, and increase the involvement of management in issues directly affecting staff, patients and

visitors. The protection of the rights and safety of patients is also an integral component of this subchapter and is demonstrated through rules requiring the formation of a bioethics committee, verification of the professional credentials of all employees, and compliance with the requirements of the professional licensing boards for reporting terminations, suspensions, revocations or reduction of staff privileges of any health professionals. The subchapter also includes rules for disaster planning and occupational health. These rules protect the health and safety of both patients and staff. The occupational health rules are an essential addition to the licensure manual and assure that hospitals take the necessary precautionary measures to protect employees at risk of exposure to communicable diseases and hazardous substances.

Obstetrics

The proposed rules will continue to require hospitals to deliver high quality services to obstetrical patients and newborns. Although they do not introduce substantive changes to the obstetrical rules adopted in 1985, the number of existing obstetrical rules has been significantly reduced by eliminating standards pertaining to support areas, such as medical records and infection control. The proposed new rules reflect the Department's commitment to developing rules that reflect the current state of the art in obstetrical and newborn care and address the needs and concerns of obstetrical patients. For example, new provisions will mandate effective security measures in the obstetrical unit in order to protect the safety and security of the newborn and to reassure the mother.

Oncology

Cancer, one of the major causes of death of people of all ages, continues to be a significant public health issue. The proposed oncology licensure standards are directed towards hospitals that have a designated oncology service and recognize the special needs of cancer patients. There is increasing acceptance of the fact that cancer patients require specialized services such as highly skilled nursing care, nutritional support, and attention to their emotional, social and spiritual needs.

Pediatrics

The proposed rules for pediatric and pediatric intensive care units acknowledge the importance of treating children in services specifically designed to meet their medical and psychosocial needs. The development of pediatric rules fills a serious gap, since existing licensing standards address only adult services and not the specialized needs of pediatric patients. By focusing attention on staffing, equipment, and the environment demanded by current clinical practice, the proposed rules will strengthen and improve the delivery of pediatric care in the State.

Plant Maintenance and Emergency Preparedness

The proposed new rules protect the health and safety of patients and staff through assuring that medical services are provided in institutions which are properly mantained and equipped, and capable of effectively responding to emergencies that may occur within the facility.

Psychiatry

Psychiatric care is no longer seen as merely custodial, but attempts to address the whole patient's needs: emotional, physical, social, and medical through a multidisciplinary approach. The proposed rules identify the multiplicity of the patient's needs which are met through individualized treatment plans with observable goals.

Physical and Occupational Therapy

The proposed rules for physical and occupational therapy address the needs of patients for these services in acute care hospitals, while comprehensive rehabilitation services are provided in specialized hospitals under N.J.A.C. 8:43H. With the increasing age and activity levels of the health care consumer, medical and surgical conditions occur which require physical and occupational therapies to facilitate the return of the individual to a state of independent functioning.

Renal Dialysis

Acute and chronic renal dialysis services are provided in approximately 24 of New Jersey's acute care hospitals. The rise in drug and alcohol abuse has increased the demand for renal dialysis services. In addition, New Jersey has one of the highest rates of AIDS in the nation, which has also contributed to the increased need for renal dialysis services and necessitated stricter infection control procedures for patients and staff. The standards address the multi-system medical, social and psychological conditions associated with the renal dialysis patient, require compliance with the New Jersey Renal Network Association's Bill of Patient's Rights, and encourage the return of patients to productive roles in society.

Respiratory Care

Respiratory care management is essential for a positive outcome for patients after surgery, those in respiratory failure, and those with cardiopulmonary or neuromuscular involvement. In an age of specialization, respiratory care services provide trained and qualified staff for the management of these and other acute and chronic respiratory conditions. Respiratory care practices include diagnostic evaluation, therapeutic techniques, and drug administration. Education of patient and family is also an integral part of a respiratory care practitioner's responsibilities, as is education of the public on broader issues such as smoking cessation and pulmonary disease awareness programs. The proposed rules ensure that respiratory care of the highest quality at affordable cost is provided to the patient.

Postanesthesia Care

Postanesthesia care is an accepted part of the management of the postsurgical patient. Specialized equipment and highly trained staff are needed to stabilize the patient during an especially vulnerable period of treatment. The proposed rules ensure that the hospital will take measures to protect the health and safety of each patient recovering from anesthesia.

Economic Impact

The proposed new rules are expected to have variable economic impact on acute care hospitals in New Jersey. The precise economic impact is unknown at this time, but it is anticipated in some facilities that the proposed new requirements will require increased levels of staffing and equipment, thus entailing additional costs to the health care system. The proposed rules introduce rules in two specialty areas, oncology and pediatrics, which will apply only to a limited number of hospitals in New Jersey. Additional costs are not anticipated in the area of oncology. However, it is likely that the proposed rules for pediatric intensive care units will incur additional costs for hospitals due to enhanced staff and equipment requirements. The Department will carefully consider and respond to any concerns related to the economic impact of the proposed rules received during the public comment period. The Department intends to support reasonable cost increases within hospitals that are a result of meeting the requirements of these proposed standards, through its existing hospital rate setting procedures.

Licensure application fees are required by these rules, in the amount of $500.00 plus $150.00 per service, the total not to exceed $2,000 per application or renewal.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses, as they are defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

CHAPTER 43G
HOSPITAL LICENSING STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

8:43G-1.1 Scope and purpose

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.

This subchapter 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, 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, 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 acccordance 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. 8:43-2.2 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
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, 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, 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, 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.

(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 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-et seq. and any rules and regulations issued pursuant thereto;

2. Permiting, aiding or abettng 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, 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, 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, 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 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 Commissioner of Health determines 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.

(d) 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;
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 Service;
16. Medical Staff;
17. Morgue and Autopsy Facilities;
18. Nursing Service;
19. Out-Patient and Preventive Services;
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 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.

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, prognosis committee, or its equivalent, that is multidisciplinary and includes, but is not limited to, medical, nursing, legal, social work, clergy, and consumer membership. 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.

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 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;
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; 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 designated 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 in a designated area may be permitted in psychiatric or substance abuse units, on written orders of the responsible physician. Other patients may smoke only on written orders of the attending physicians.

(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 positons;

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 professional credentials 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.

8:43G-5.4 Administrative and hospital-wide staff qualifications; advisory

The administrator or chief executive officer of the hospital should have a master's degree, preferably with a concentration in health or hospital administration.

8:43G-5.5 Administrative and hospital-wide patient services; mandatory

(a) 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.

(b) The hospital shall have a system to link patients with clergy or spiritual counselors, upon request.

(c) The hospital shall develop a system for organ donation in accordance with N.J.S.A. 26:6-57 et seq.

(d) 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.

(e) 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) 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.

8:43G-5.6 Administrative and hospital-wide patient services; advisory

(a) Professional staff and designated family members should be permitted to attend bioethics committee meetings to discuss specific cases.

(b) The hospital should have at least one formal support program to assist patients and families with special needs. Examples of such a program include diabetic education, nutrition support, stroke education, and gerontology education.

8:43G-5.7 Administrative and hospital-wide staff education; mandatory

(a) There shall be a formal orientation program for all new staff that includes at least a tour of the hospital, orientation to the hospital's security system and disaster plan, 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. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract.

(b) 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

(a) The hospital shall offer an employee assistance program for employees with counseling or therapy needs, such as substance abuse problems.

(b) All employees in the hospital should be offered education on chemical dependency, including alcohol, drugs, and smoking prevention.

(c) The hospital should encourage staff participation in offsite education programs and pay registration fees for them based on eligibility as determined by preestablished criteria.

(d) The hospital should encourage education by regularly providing a composite notice to staff of in-service education programs and local education programs offered by such organizations as community colleges, associations of health professional, or pharmaceutical manufacturers.

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 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 a review of the service's equipment, policies and procedures;

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

(a) The service or department should provide staff development programs that include education in management techniques.

(b) Education programs for the service should be coordinated by a designated staff member of the service who organizes programs with the hospital-wide staff educator.

(c) Each staff member should receive an individual, annual evaluation of his or her educational development.

(d) The service should provide opportunities for all staff to participate in interdisciplinary education programs.

(e) Education programs should include guest speakers and audio visual aids.

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 CDC, NIOSH, and OSHA standards and guidelines 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.

(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 #ISBNO-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

(a) The hospital should conduct at least two evacuation drills each year, either simulated or using selected patients, at least one of which is conducted on a weekend or during an evening or night shift. Results of the drills should be summarized in a written report, which is shared with the county and municipal emergency management officials. An actual evacuation is considered a drill, if it is documented.

(b) A municipal, county, or State emergency management official should conduct a training program in the hospital on disaster planning and emergency preparedness at least once a year.

(c) While developing the hospital's plan for evacuating patients, the disaster planner should coordinate with the facility or facilities designated to receive relocated patients.

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 one room equipped 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

(a) All hospitals shall provide, on a regular and continuing basis, out-patient and preventive clinics 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 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 oxytoxics 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, 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 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 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.

8:43G-19.5 Obstetrics staff qualifications; advisory

(a) There should be the equivalent of one full-time nurse employed as an obstetric nurse who is certified by a national organization recognized by the hospital.

(b) Childbirth preparation classes should be taught by instructors who are certified by a program that is recognized and approved by the hospital for this purpose.

8:43G-19.6 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.

8:43G-19.7 Obstetrics patient services; advisory

(a) The hospital should offer sibling education programs.

(b) The hospital should offer rooming-in arrangements for mothers and newborns.

8:43G-19.8 Obstetric space and environment; mandatory

The obstetric service shall be physically separate from any service not concerned with obstetric care.

8:43G-19.9 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 Obstetric staff education; advisory

Requirements for the obstetric education program should be as provided in N.J.A.C. 8:43G-5.10.

8:43G-19.11 Obstetric quality assurance methods; mandatory

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.

8:43G-19.12 Obstetric quality assurance methods; advisory

(a) 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 oxytocin and tocolytic drugs, prevention of infections in the nursery, morbidity by birth weight, mortality by birth weight, and security.

(b) The quality assurance program should include assessment of English and non-English speaking patients' understanding of the instructions given to them regarding self-care and care of the newborn.

8:43G-19.13 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 Labor and delivery staff time and availability; mandatory

(a) 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 nurse-midwife.

(c) There shall be at least one registered professional nurse present during a delivery.

(d) An obstetrician shall be present in the hospital and available for immediate assistance when oxytoxics are administered.

(e) A health professional trained in neonatal resuscitation shall be available for each delivery.

(f) A pediatrician or pediatric resident shall be present in the delivery room for all high-risk deliveries.

8:43G-19.15 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.

8:43G-19.16 Post-partum staff time and availability; mandatory

At least one registered professional nurse shall be on duty in the post-partum area at all times.

8:43G-19.17 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) The hospital shall provide or arrange for an organized program of post-partum education in self-care and newborn care.

(c) 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) 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 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.

(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 newborns, on a monthly basis, to the Maternal and Child Health Program of the Department.

(h) Policies and procedures for the early detection of biochemical disorders in newborn infants, including at least hypothyroidism, galactosemia, 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 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;

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 by a physician; and

14. Documentation of eye prophylaxis, administration of any other medication or treatment and response.

8:43G-19.19 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 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.

8:43G-19.20 Newborn care staff time and availability; mandatory

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.

8:43G-19.21 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 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 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 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 settings in the newborn nursery shall be checked by nursing staff at least once during each shift.

(h) Provisions shall be made for the emergency repair and replacement of equipment in the newborn nursery.

8:43G-19.24 Scope of nurse-midwifery standards

The standards in N.J.A.C. 8:43G-19.25 through 19.30 shall apply only to hospitals that have a separate, designated service or unit for nurse-midwifery.

8:43G-19.25 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 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 review annually the privileges and credentials of each nurse-midwife, 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 Nurse-midwifery staff qualifications; mandatory

(a) There shall be a certified 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.

8:43G-19.28 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 Nurse-midwifery staff education; advisory

Requirements for the nurse-midwifery education program should be as provided in N.J.A.C. 8:43G-5.10.

8:43G-19.30 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 Scope of obstetric/non-obstetric mix standards

The standards in N.J.A.C. 8:43G-19.32 through 19.34 shall apply to hospitals that place non-obstetric patients on obstetric patient care units.

8:43G-19.32 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 directors 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 shall 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 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 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 conditons:

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; 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

The multidisciplinary cancer committee should be responsible for community education.

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 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

There should be the equivalent of at least one full-time clinical specialist or clinician with certification in oncology available to the unit.

8:43G-21.7 Oncology staff time and availability; mandatory

(a) A social worker shall be assigned to the unit who provides psychosocial services, assists with discharge planning, and provides 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

(a) Nurse staffing should be based on a hospital acuity system that is sensitive to the special needs of oncology patients, including psychosocial care, and chemotherapy protocols.

(b) There should be an average of at least 6.5 direct care hours by nursing staff per patient per day.

(c) A social worker with education or training in oncologic care should be available to patients, family, and staff.

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

(a) Accommodations should be made for family members who want to stay overnight with a critically ill patient.

(b) Counseling or preparation for visiting should be available for family members, including children of patients, through support groups, a social worker, or a registered professional nurse on the oncology unit.

(c) Occupational therapy or therapeutic recreation services should be available to patients.

(d) There should be systematic use of trained volunteers for patient support, feeding, companionship, recreation, and transportation.

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

(a) There should be a room on the unit, used for socialization and support groups for patients and families, which has the capacity for comfortably seating at least eight people.

(b) There should be a multipurpose consultation or quiet room, separate from the support group room, for family grieving and personal conferences. This room should have the capacity for comfortably seating at least six people.

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

All drugs and intravenous preparations should be mixed in the pharmacy.

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

Requirements for the oncology education program should be as provided in N.J.A.C. 8:43G-5.10.

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 to higher level facilities.

(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.

(d) The pediatric services shall participate in developing anesthesia and pain management policies for infants.

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 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

There should be a program to provide supervised play therapy for pediatric patients by a certified child-life specialist, occupational therapist, or recreational therapist.

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

Requirements for the pediatrics and pediatric intensive care education program should be as provided in N.J.A.C. 8:43G-5.10.

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 interhospital 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

(a) The nurse with administrative responsibility for nursing care in pediatric services should have a bachelor's degree in nursing, be certified in pediatrics, and have at least four years of experience in pediatrics.

(b) All registered professional nurses on the pediatric service should have intravenous certification.

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 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.

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

(a) Ultra micro methodology should be available for all pediatric blood studies for which a feasible ultra micro methodology procedure exists and should be used at the discretion of the director of the pediatric intensive care unit.

(b) Provisions should be made for the parents of pediatric intensive care patients to sleep in the hospital or adjacent buildings, if they wish.

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.

(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;
3. Intravenous fluid warmer;
4. 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

The pediatric intensive care unit should have immediate access to a rocking chair.

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;

2. A baccalaureate degree in engineering from an accredited college or university and three years of supervisory experience in health care plant maintenance; or

3. A current professional engineer license in New Jersey and three years of supervisory experience in health care plant maintenance.

(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 years of experience in the field of biomedical engineering; or

2. Six 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 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) 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.

(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

(a) Routine multidisciplinary inspections should be conducted on all units and areas for maintenance and safety problems. Results of these rounds should be reported to the safety committee.

(b) The preventive maintenance program for the electrical system should include inspections by an independent inspection agency.

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

Requirements for the plant maintenance education program should be as provided in N.J.A.C. 8:43G-5.10.

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 (FSES) 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

Fire drills shall be conducted annually on each weekend shift.

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;
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;
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), 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.

(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) 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 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

(a) If the physician director of psychiatric services is not board certified, there should be evidence that consultation has been provided on a continuing basis by a board-certified psychiatrist for the review of procedures, selected medical records, and interdisciplinary care plans for selected patients.

(b) The nurse directing psychiatric services should be certified by the American Nurses' Association as a mental health/psychiatric nurse.

(c) There should be a health professional with a master's degree in a related mental health field from an accredited college or university who provides counseling and therapy on the unit.

(d) The social worker assigned to the psychiatric care unit should be supervised by a social worker who is certified by the Academy of Certified Social Workers.

(e) The social worker assigned to the inpatient psychiatric unit should have a master's degree in social work from an accredited college or university.

(f) One full-time staff nurse, or some equivalent combination, such as two half-time staff nurses, should be certified in psychiatric nursing.

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.

8:43G-26.6 Psychiatry staff time and availability; advisory

The equivalent of one full-time social worker should be assigned to the psychiatric care unit for every 15 patients on the unit.

8:43G-26.7 Psychiatry patient services; mandatory

(a) Psychiatric patients shall receive all needed 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;
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

(a) Food should be available on the unit for between-meal snacks, with patients who are on restricted diets monitored by the nursing staff.

(b) A multidisciplinary conference, which includes all disciplines involved in caring for the patient, should be held within four days of admission and at least once a week thereafter.

(c) Discussion groups should be available to patients and families which address topics such as effects of medication, eating disorders, drug and alcohol abuse, and teenage suicide prevention.

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

(a) There should be a nurses station that is centrally located and permits nurses in the station to observe the corridors surrounding it.

(b) There should be private interview rooms on the unit for patients and families.

(c) There should be at least limited facilities for patients to prepare food for consumption by patients.

(d) Exercise equipment and the opportunity to exercise should be available.

(e) There should be a program of outdoor recreation for patients.

8:43G-26.11 Psychiatry supplies and equipment; mandatory

(a) The restraint equipment needed by the unit shall be immediately available and accessible to unit staff.

(b) The recreation and therapy equipment and supplies needed for psychiatric care shall be available 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

Requirements for the psychiatry service education program should be as provided in N.J.A.C. 8:43G-5.10.

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, 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. 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.

(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

Physical therapists should instruct nurses who are responsible for the care of inpatient physical therapy patients about such patients' follow-up needs and progress. Examples include patients who require minimal assistance with range-of-motion exercise. Documentation of such instruction should be made in the medical record.

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 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

The physical therapist who has clinical direction of the service should have advanced training in management, or a management degree, or at least one year of supervisory experience, and at least two years of clinical experience.

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 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

No patient should wait in the physical therapy service for treatment, or after treatment to be returned to his or her room in the hospital, for more than 30 minutes.

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, 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 shall be as provided in N.J.A.C. 8:43G-5.9.

8:43G-29.11 Physical therapy staff education; advisory

Requirements for the physical therapy education program should be as provided in N.J.A.C. 8:43G-5.10.

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 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 for use by staff in patient contact, documentation, and for quality assurance.

(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 Occupational therapy policies and procedures; advisory

Occupational therapists should instruct nurses who are responsible for the care of inpatient occupational therapy patients about such patients' follow-up care needs and progress. Examples include instruction on the degree of assistance patients need with activities of daily living and instructions for putting on splints and wearing times for patients who require splints. Documentation of such instruction shall be made in the medical record.

8:43G-29.14 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 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 Occupational therapy staff qualifications; advisory

The occupational therapist with clinical direction of the service should have at least two years of clinical experience and at least one year of supervisory experience or a management degree or advanced training in management.

8:43G-29.16 Occupational therapy patient services; mandatory

(a) Occupational therapy services shall be available on-site.

(b) The occupational therapy service shall be open 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 Occupational therapy patient services; advisory

No patient should wait in the occupational therapy service for treatment, or after treatment to be returned to his or her room in the hospital, for more than 30 minutes.

8:43G-29.18 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, well ventilated, and exclusively for patient use.

8:43G-29.19 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 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 Occupational therapy staff education; advisory

Requirements for the occupational therapy education program should be as provided in N.J.A.C. 8:43G-5.10.

8:43G-29.22 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.

(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

(a) The dietitian assigned to the renal dialysis unit should be a registered dietitian with at least two years of clinical experience to include renal patients.

(b) The social worker assigned to the renal dialysis unit should have a master's degree in social work and at least two years of professional experience with renal patients.

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 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.

(c) Notes shall be entered 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 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 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) 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) 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) All patients shall be screened for hepatitis and in accordance with the current edition of the Centers for Disease Control publication "Hepatitis Surveillance."

(j) 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) 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) 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

(a) Recreational activities such as television should be made available to patients and should not infringe on the privacy of others.

(b) A professional trained social worker should conduct an assessment interview of each patient at least monthly.

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

Requirements for the renal dialysis education program should be as provided in N.J.A.C. 8:43G-5.10.

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.

8:43G-30.12 Renal dialysis quality assurance methods; advisory

Quality assurance for the renal dialysis service should include data collection on other indicators such as appropriateness of treatment for diabetics and referral for transplantation.

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 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 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. This individual functions at a higher level than a certified respiratory care technician (CRCT). A certified respiratory care 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 aides.

8:43G-31.4 Respiratory care staff qualifications; advisory

(a) The physician director of respiratory care or pulmonary medicine should be board certified in pulmonary medicine.

(b) The administrative director of respiratory care should be registered by the National Board for Respiratory Care.

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 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

A respiratory therapist should be responsible for no more than five ventilated patients at one time.

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

Respiratory care order sheets that include treatment plans and treatment goals should be signed by physicians, nurses, and respiratory therapists, and should be used to assure optimum multidisciplinary communication and coordination.

8:43G-31.9 Respiratory care space and environment; mandatory

(a) There shall be adequate space available to store all equipment not in 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

There shall be office space assigned to respiratory care staff in or adjacent to critical care units.

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 CO_2 monitors shall be available for each patient in the hospital who receives oxygen therapy or who has a medical condition that requires oxygen 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

Requirements for the respiratory care education program should be as provided in N.J.A.C. 8:43G-5.10.

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, one of whom is a registered professional nurse, 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.

8:43G-35.5 Postanesthesia care patient services; advisory

There should be at least three postanesthesia care unit beds for every two anesthetizing locations.

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

Requirements for the postanesthesia education program should be as provided in N.J.A.C. 8:43G-5.10.

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.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Zoning Regulations
Fees; Penalties; Entry and Inspection
Proposed Amendments: N.J.A.C. 19:3-1.1, 1.2, 1.4, 1.6; 19:4-6.24 and 6.25.
Proposed Repeal and New Rule: N.J.A.C. 19:3-1.3

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i), and N.J.A.C. 19:4-6.27.

Proposal Number: PRN 1989-472.

A **public hearing** concerning these proposed amendments will be held on September 28, 1989 at 7:00 P.M. at:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit written comments by October 18, 1989 to:

Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66 (1978), the Hackensack Meadowlands Development Commission (HMDC) is required to periodically review its existing rules to determine their continuing usefulness. Accordingly, the HMDC has undergone a review of its rules contained in N.J.A.C. 19:3-1.1 through 1.6, 19:4-6.24 and 19:4-6.25.

The proposed amendments to N.J.A.C. 19:3-1.1 and 1.2 substantially increase the subdivision and zoning fees. Proposed new rule N.J.A.C. 19:3-1.3 provides for an overall increase in construction permit fees and

sets forth in detail fees for the various construction aspects. These proposed fee increases are necessary in order to allow the HMDC to recoup a more equitable portion of the costs for reviewing and processing development plans and permit applications. The amendments to N.J.A.C. 19:3-1.4 and 1.6 provide clarifying language.

The proposed amendment to N.J.A.C. 19:4-6.24 sets forth the investigation and notification procedure in the event of an alleged violation of the district zoning regulations, and greatly increases the minimum and maximum fine amounts. Subsection (g) is added to set forth in detail the Commission's statutory rights of entry and inspection. The proposed amendment to N.J.A.C. 19:4-6.25 clarifies the type of decision from which an appeal may be taken.

Social Impact

Development within the Hackensack Meadowlands District (HMD) is governed in part by N.J.A.C. 19:3 through 19:4A. These chapters include fee, zoning and flood plain management rules. These rules will continue to be applied to the 14 constituent municipalities within the HMD.

The proposed amendments to, and new rule in, N.J.A.C. 19:3 essentially affect substantial increases in numerous fees charged by the HMDC. Since these fees constitute only a minute portion of the total project cost for a developer/owner, no impact on the course of development within the HMD is anticipated. The work of the Commission will benefit through a greater balance between the cost of plan and application review and processing and the fees charged.

The proposed amendment to N.J.A.C. 19:4-6.24 provides an explanation of the Commission's procedure when advised of an alleged violation of the district plan regulations. The increase in the civil penalties which may be imposed for such violations is hoped to have a deterrent effect, and will help to offset the cost of enforcement of the regulations. Proposed new subsection (g) clearly sets forth for the public the HMDC's rights of entry and inspection, which should facilitate the enforcement process. While it is clarifying, no social impact is expected from the proposed amendment to N.J.A.C. 19:4-6.25.

Economic Impact

The economic impact of these rules on this portion of the State can best be described by indicating that new development in the HMD has generated approximately 6,131 new residents and 65,265 jobs since 1972. In addition, over the past 20 years, there has been new construction valued at approximately 1,027.8 Million dollars. N.J.A.C. 19:3 contains proposed changes with respect to fees. The proposed amendment to the Fee Schedule will allow the HMDC to recoup a more equitable portion of the costs for reviewing and processing development plans and permit applications. No adverse economic impact on owners/developers is projected since the cost of HMDC review represents a minute portion of the total cost of a project for a developer/owner.

Regulatory Flexibility Analysis

These proposed amendments and new rules apply to all applicants desiring to develop properties located within the HMD. At least some of these applicants will be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed fee increases are designed to reflect actual Commission staff time spent on plan and application review. As the complexity and time expended on such review is not necessarily related to the developer's size, no differentiation based upon business size is provided. However, any applicant may, for good casue shown, have a fee or a portion thereof, waived pursuant to N.J.A.C. 19:3-1.6(a). As previously stated, the relative size of the fee in relation to project cost is such that there should be no adverse impact on developers.

The proposed amendment to N.J.A.C. 19:4-6.24, as it concerns enforcement mechanisms, must be uniformly applied to be effective. Neither the amendment to this rule or to N.J.A.C. 19:4-6.25 imposed any reporting or record keeping requirements. The compliance requirements relate to penalty payment and the Commission's statutory rights of entry and inspection.

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

19:3-1.1 Subdivision

(a) The following fees are charged for a minor subdivision:

1. [$3.00] **$5.00** per 100 square feet of lot area up to and including one acre.

2. [$2,000.00] $3,000 for lot area over one acre up to and including five acres.

3. $4,000[.00] for lot area over five acres up to and including 40 acres.

4. $7,000[.00] for lot area over 40 acres.

(b) [No fee] **$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. [$600.00] $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 [one percent] **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 [$500.00] **$750.00** is charged for final plat approval of any major subdivisions.

(e) A fee of [$1,200.00] **$1,500** is charged for each specific waiver request.

19:3-1.2 Zoning

(a) Zoning fees are as follows:

1. A fee of [$5.00] **$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 [$50.00] **$100.00** for additions;

2. A fee of [$50.00] **$100.00** plus [$1.00] **$2.00** per square foot of sign area is charged for sign reviews;

3. A fee of [$200.00] **300.00** is charged for tank reviews;

4. A fee of [$100.00] **$200.00** is charged for review of fences;

5. A fee of [$200.00] **$300.00** is charged for retail/warehouse sales reviews;

6. A fee of [500.00] **$750.00** is charged for the review of site improvements;

7. A fee of [$1,200] **$1,500** is charged per special exception, [$1,500] **$3,000** for each use variance request, and [1,200] **$2,000** for each other variance;

8. A fee of [$3,000] **$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: [$10,000] **$25,000** [.];

3. Initial Implementation plan [:50,000;] **or** each revised or individual implementation plan: [$10,000.] **$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.**

[5. $5,000 for any variance application from the requirement that an applicant owner control 80 percent of the land within an S.P.A. This applied only in instances when the property owner controls less than 20 percent of the S.P.A.]

19:3-1.3 [Building] **Construction** permits

[(a) Fees for building permits are charged at rates equal to:

1. $.002 per cubic foot for the first 100,000 cubic feet;

2. $.0015 per cubic foot for the next 500,000 cubic feet;

3. $.001 per cubic foot in excess of 600,000 cubic feet, but not less than $50.00 per permit.

(b) Fee for single or two-family residence shall be $.001 per cubic foot, but not less than $25.00 per permit.

(c) A $25.00 fee for a garage auxiliary to a single or two-family residence on the same plot.

(d) A fee equal to $2.00 for each 1,000 square feet or fraction thereof of seating area and of each tier of seats and their appurtenant aisles, passageways, rest rooms, sanitary facilities, spaces and so forth, for open air assembly, whether for amusement, instruction,

entertainment, religious services or any other purposes. For the purpose of determining areas for computing fees, the area shall be the projected horizontal area of each seating area and each tier.

(e) $50.00 for the first $5,000 or any fraction thereof of the structure; $5.00 for each additional $1,000 not less than $25.00 per permit.

(f) For open spaces; the fees are:

1. $1.00 per each 2,000 square feet of area, but not less than $15.00 for space without roof either enclosed or unenclosed on sides, such as commercial parking lots, gasoline or oil storage, sale or exhibition or showing spaces, and spaces used generally for similar purposes.

2. For golf courses and driving ranges, $2.00 for each 20,000 square feet or fraction thereof, but not less than $15.00, including an accessory structure not to exceed 144 square feet.

(g) A fee for demolition in the amount of $25.00.

(h) No fee for internal repairs or alterations, where the value is under $5,000. If over $5,000 see subsection (e) of this section.]

(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 fees listed in (c) below shall be in addition to an Office of the Chief Engineer plan review surcharge in the amount of 30 percent of each 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** [a Certificate of Completion] is $500.00.

(c) The fee for Zoning Certificate or Occupancy [Certificate] **Certification** for trailers and/or guardhouses is $500.00.

19:3-1.6 General provisions

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

(f) [This Fee Schedule] **N.J.A.C. 19:4-1.2** shall not be applicable to applications for one and two family **detached** homes in the [District] **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 [and], 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.

[(b)](c) A person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of these [Regulations] **rules** shall be [fined] **subject to a civil penalty of** not less than [one hundred dollars ($100.00)] **five hundred dollars ($500.00)** or more than [two hundred dollars ($200.00)] **five thousand dollars ($5,000)**. Each day such violation or failure to comply is permitted to exist [after] **subsequent to the original** notification **to the violator** thereof shall constitute a separate offense.

[(c) The Hackensack Meadowlands Development Commission]

(d) The Executive Director and/or the Chief Engineer may in the case of [any] **a** violation [or threat of violation] of any provision of these [regulations] **rules** institute a civil action:

1. For injunctive relief[;]:

[2.]**i.** To prevent unlawful sale, [enlarging] **enlargement**, moving, rental, construction, reconstruction, alterations, repair, conversion, maintenance, use, **filling,** or occupancy;

[3.]**ii.** To restrain, correct, or abate any violation;

[4.]**iii.** To prevent the occupancy of any dwelling structure or land; [or]

[5.]**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.

[(d)](e) Whenever, in the opinion of [the Office of] the Chief Engineer, there is a reasonable probability that any use or occupancy violates any environmental performance standard, [it] **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 [subsection (b) herein] **(c) above.**

[(e)](f) If a complaint is received regarding an alleged violation of any of the environmental performance standards, and [the office of] 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 [$200.00] **$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 [(d)] (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 [made pursuant to this resolution], **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)-(e) (No change.)

(a)

CASINO CONTROL COMMISSION

Complimentary Services or Items Transportation Expense Reimbursement

Proposed Amendments: N.J.A.C. 19:45-1.1, 1.9 and 1.15

Proposed New Rule: N.J.A.C. 19:45-1.9A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69 and 5:12-102(m).

Proposal Number: PRN 1989-468.

Submit comments by October 18, 1989 to:

Mary S. LaMantia, Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In January 1988, the New Jersey legislature amended N.J.S.A. 5:12-102m to specify the types of complimentary services and items ("comps") that a casino licensee is permitted to offer to its gaming patrons. The amendments to subsection 102m clarify that cash may only be provided to a patron through approved bus programs or other approved complimentary distribution programs. Transportation expenses may be reimbursed if documented and if the licensee complies with regulations, to be promulgated by the Commission, to prevent multiple reimbursement of such expenses. Noncash gifts in excess of $2,000 per trip must be supported by documentation regarding the reason for the gift, including, where applicable, a patron's player rating.

On March 30, 1989, the Division of Gaming Enforcement (Division) filed a petition for rulemaking pursuant to N.J.S.A. 5:12-69(c), requesting that the Commission promulgate a new rule and amendments to implement the legislative goals relating to complimentaries (see 21 N.J.R. 1461(c)). The proposed amendments to N.J.A.C. 19:45-1.1 and 1.15 and proposed new rule N.J.A.C. 19:45-1.9A establish documentation procedures for the issuance of travel expense reimbursements. The proposed amendment to N.J.A.C. 19:45-1.9(b) incorporates those provisions of N.J.S.A. 5:12-102m which specify permissible types of complimentary services or items.

Social Impact

Prior to the amendment of N.J.S.A. 5:12-102m, the Division found that, in some instances, transportation expense reimbursements were not adequately documented. The proposed amendments and rule ensure that disbursements of transportation comps are supported by receipts for the actual amount paid by a patron for travel expenses. The proposed amendments and rule will also serve to protect the casino industry by requiring that the licensee cancel the patron's tickets, invoices or receipts to prevent multiple reimbursement of travel expenses by several licensees.

Economic Impact

Certain costs of compliance with the proposed amendments and rule will be incurred by casino licensees, for example, the cost of new voucher forms for travel expense reimbursements. However, the overall cost to the industry should be minimal, and is necessary to implement the legislative goals expressed in N.J.S.A. 5:12-102m.

Regulatory Flexibility Statement

The proposed amendments and new rule affect only the operation of casino licensees, and therefore do not impact on 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]):

SUBCHAPTER 1. GENERAL PROVISIONS

19:45-1.1 Definitions

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

. . .

"Travel Disbursement Voucher" is defined in N.J.A.C. 19:45-1.9A.

. . .

19:45-1.9 Complimentary services or items

(a) (No change.)

(b) No casino licensee may offer or provide any complimentary services, gifts, cash or other items of value to any person except as authorized by N.J.S.A. 5:12-102(m).

Redesignate existing (b)-(c) as **(c)-(d)** (No change in text.)

19:45-1.9A Procedures for transportation expense reimbursements

(a) All transportation expense reimbursement transactions shall be performed at the casino cage.

(b) Whenever a patron requests a casino licensee to reimburse transportation expenses, a Travel Disbursement Voucher ("Voucher") shall be prepared. Vouchers shall be maintained in a secure location approved by the Commission. Access to Vouchers, prior to use, shall be restricted to those individuals authorized by the licensee to approve such disbursements. Prior to the transportation expense reimbursement, an individual authorized to approve the disbursement shall examine the original tickets, invoices or receipts presented by the patron in support of the request for valid transportation expense reimbursement. Such tickets, invoices or receipts shall:

1. Contain the actual cost of transportation paid by the requesting patron to the transportation provider;

2. Be dated within 30 days of presentation; provided, however, reimbursements may be made for tickets, invoices or receipts which are dated more than 30 days but no more than 90 days prior to the date of request for reimbursement if an explanation is included on the Voucher as to why presentation was delayed;

3. Be in the name of the requesting patron, or in the name of a person accompanying said patron provided that an explanation thereof is noted on the Voucher; and

4. State a destination of Atlantic City; provided, however, if the destination indicated on the ticket, invoice or receipt is a location other than Atlantic City, the requesting patron shall provide other documentation as evidence of that patron's presence in Atlantic City during the trip in which the expenses were incurred.

(c) Vouchers shall be, at a minimum, a two-part, serially prenumbered form, and each series of Vouchers shall be used in sequential order. The series numbers of all Voucher forms received by a casino shall be accounted for by employees with no incompatible functions. All original and duplicate voided Voucher forms shall be marked

"VOID" and shall require the signature of the preparer and the reason for voiding.

(d) Vouchers shall be manually prepared or computer generated and shall contain, at a minimum, the following information:

1. The date and time of preparation;

2. The patron's name and address;

3. A description of the transportation expense incurred (that is, airfare, helicopter, limousine, etc.);

4. The amount approved for reimbursement, which amount shall not exceed the actual cost of transportation recorded on the ticket, invoice or receipt;

5. The ticket, invoice or receipt number or an indication that such number is not available, the date of issuance and the issuer of the ticket, invoice or receipt;

6. The signature of the authorizer;

7. The method of payment and, if payment is by check, the check number;

8. The type of identification credentials examined containing the patron's signature and whether said credentials included a photograph or general physical description of the patron, or the personal attestation by the authorizer as to the identity of the patron;

9. The signature of the general cashier; and

10. The patron's signature indicating receipt of reimbursement and acknowledgement of the following statement which shall be included on the Voucher: "I affirm that the expenses for which I am seeking reimbursement are supported by genuine tickets, invoices or receipts which I have provided to (insert name of licensee) and I have not received reimbursement for these expenses from any other source. I am aware that this Voucher is required to be prepared by the regulations of the Casino Control Commission and I may be subject to civil or criminal liability if any material information provided by me is willfully false."

(e) A list shall be maintained in the casino cage of the names and titles of those individuals authorized to approve Vouchers. A copy of this list shall be submitted to the Commission and Division as it is updated.

(f) After examination of the original tickets, invoices or receipts, the authorizer shall record the information noted in (d)1 through (d)5 above, sign the Voucher and present the original and duplicate copy of the Voucher as well as the original tickets, invoices or receipts and any other additional documentation provided in accordance with (b)4 above to the general cashier.

(g) The general cashier shall:

1. Verify the requesting patron's identity in accordance with (d)8 above and record such method of verification on the Voucher;

2. Cancel the original tickets, invoices or receipts in such a manner to prevent subsequent reimbursement and obtain a copy of the original tickets, invoices or receipts, including such cancellation marking, and a copy of any other additional documentation provided in accordance with (b)4 above;

3. Sign the Voucher;

4. Obtain the patron's signature on the original copy of the Voucher;

5. Record the method of payment in accordance with (d)7 above on the Voucher and return the cancelled original tickets, invoices or receipts, and any other additional documentation provided in accordance with (b)4 above, and corresponding reimbursement funds by cash or check to the patron;

6. Attach the copy of the original tickets, invoices or receipts, cancelled in accordance with (g)2 above, and a copy of any other additional documentation provided in accordance with (b)4 above, to the original Voucher;

7. Place the duplicate copy of the Voucher in a locked accounting box to be picked up on a daily basis by accounting personnel with no incompatible functions; and

8. Retain the original Voucher with the attached documentation for closeout purposes and subsequent forwarding, on a daily basis, to accounting for matching and agreement with the duplicate.

(h) In the event that a casino licensee learns that a patron whom it has reimbursed for travel expenses has also been reimbursed for such travel expenses by another licensee, or by the issuer of the original ticket, invoice or receipt relied upon by the licensee in authorizing the travel expense reimbursement, the licensee shall immediately notify the Division.

19:45-1.15 Accounting controls within the cashiers' cage

(a) (No change.)

(b) The cashiers' cage shall be physically segregated by personnel and function as follows:

1.-ix. (No change.)

x. Receive Wire Transfer Acknowledgment Forms in accordance with N.J.A.C. 10:45-1.24A for the purpose of completing Customer Deposit Forms; [and]

xi. Receive from check, chip bank and reserve cash cashiers' documentation with signatures, thereon, required to be prepared for the effective segregation of functions in the cashier's cage[.]; **and**

xii. Receive Voucher forms in accordance with N.J.A.C. 19:45-1.9A for the processing of travel expense reimbursements.

2.-4. (No change.)

(c) (No change.)

(d) At the conclusion of gaming activity each day, at a minimum, a copy of the Cashiers' Count Sheets and related documentation shall be forwarded to the accounting department for agreement of opening and closing inventories, agreement of amounts thereon to other forms, records, and documents required by this chapter, **agreement of transportation reimbursement disbursements with supporting documentation** and recording of transactions.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Definitions and Procedures for Exchange of Checks Submitted by Gaming Patrons

Proposed Amendments: N.J.A.C. 19:45-1.1 and 1.25

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-45, 5:12-63(c) and 5:12-101(g).

Proposal Number: PRN 1989-478.

Submit comments by October 18, 1989 to:

Deno R. Marino
Deputy Director—Operations
Casino Control Commission
1300 Atlantic Avenue
4th Floor
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The first change to N.J.A.C. 19:45-1.1 allows a person to be paid for winnings from slot machine payoffs in the form of a "casino check". The second change to N.J.A.C. 19:45-1.1 eliminates the use of a special token to be exchanged for merchandise or thing of value from the definition of a "slot machine". These two changes were made to conform to the changes made to the Casino Control Act (Act). The amendment to N.J.A.C. 19:45-1.25 further allows for the acceptance of casino checks issued as winnings from slot machine payoffs.

Social Impact

Casino patrons who elect to be paid with a "casino check" for winnings from slot machine payoffs will benefit in that they no longer are required to receive and possibly transport their winnings in the form of coin or currency. The elimination of the use of a special slot token, issued from a slot machine hopper, which would be exchanged for merchandise or a thing of value, increases the integrity of slot play, and therefore, has a positive benefit to both the industry and the public.

Economic Impact

The changes to N.J.A.C. 19:45-1.1 and 1.25 have no economic impact.

Regulatory Flexibility Statement

The proposed amendments will only affect the operation of New Jersey casino licensees, and therefore, will not impact on any business protected 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 are indicated in brackets [thus]):

19:45-1.1 Definitions

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

. . .

"Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), [or] in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b) **or for winnings from slot machine payoffs,** and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, [or] in return of funds on account with the casino licensee **or for winnings from slot machine payoffs.**

. . .

"Slot [Machine] **machine**" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, currency, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or thing of value [or a token to be exchanged for any merchandise or thing of value], whether the payoff is made automatically from the machine or in any other manner whatsoever.

. . .

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

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

(f) Prior to the acceptance of any casino check from a patron, a general cashier shall determine the validity of such casino check by contacting the New Jersey casino which issued the check and shall verify the following information:

1.-4. (No change.)

5. That the check represents [either]:

i. The return of a patron's deposit money; [or]

ii. The redemption of the casino's gaming chips[.]; **or**

iii. The winnings from slot machine payoffs.

(g)-(p) (No change.)

RULE ADOPTIONS

BANKING

(a)

CONSUMER CREDIT BUREAU

Check Cashers; Applications

Readoption with Amendments: N.J.A.C. 3:24

Proposed: July 3, 1989 at 21 N.J.R. 1765(a).
Adopted: August 18, 1989 by Robert M. Jaworski, Acting Commissioner, Department of Banking.
Filed: August 18, 1989 as R.1989 d.486, **without change.**

Authority: N.J.S.A. 17:15A-16.

Effective Date: Readoption: August 18, 1989. Amendments: September 18, 1989.
Expiration Date: August 18, 1994.

Summary of Public Comments and Agency Responses:

The Department of Banking ("DOB") received five public comments in response to the proposed readoption with amendments. All five of the comments were received from or on behalf of licensed check cashers, or their association. All comments concerned the amendments to the readoption. A summary of comments and responses follows:

COMMENT: The fees charged by licensed check cashers are limited by rule, and many of the expenses are fixed. The opening of a check casher near to an existing licensed establishment would therefore cause destructive competition. Accordingly, removing the application requirements of the certificate of merit and the pro forma income and expense statement would serve to destabilize the industry.

RESPONSE: Removing these application requirements is consistent with P.L. 1979, c.498, sec. 3 (effective February 29, 1980), which removed from the Check Cashing Law any requirement that the issuance of a license must "promote the convenience and advantage of the area in which such business is to be conducted." The only statutory requirements for issuance of a check cashing license are that the applicant have a capital or net worth of at least $50,000 and have available liquid assets of at least $50,000 for each location at which it intends to operate and that the "financial responsibility, experience, character and general fitness of the applicant . . . are such as to command the confidence of the community and to warrant the belief that such business will be operated honestly, fairly and efficiently within purposes of this act." N.J.S.A. 17:15A-7.

The Legislature has chosen to permit the market, not the DOB, to determine which sites will support a check cashing facility, and to also limit the fees licensees may charge. This rule is consistent with that determination. Any challenge to the correctness of this position should be made to the Legislature.

In addition, the DOB rejects the contention that this rule will cause destructive competition. An October 1988 General Accounting Office report entitled "Government Check Cashing Issues" highlighted the need for more check cashing facilities for those consumers without accounts in a bank or savings institution. Finally, the DOB recognizes a need for competition in areas other than price, such as the quality of the services provided.

COMMENT: One comment suggested that, if this proposed amendment is adopted, check cashing facilities will open in areas currently being adequately served by existing check cashing facilities. This will reduce profit margins thereby making it necessary for a rate increase.

RESPONSE: It is unlikely that an entrepreneur would choose to locate a check cashing facility near to an existing licensee unless there was a need for a second check casher. This is especially true given the expense in opening this type of facility and the statutorily required minimum capital. Also, the Department does not anticipate the need for increases in allowable charges.

COMMENT: One of the comments objected to the proposed two-tiered licensing of check cashers.

RESPONSE: This two-tiered system is part of a legislative proposal being considered by the Legislature, and is not part of a DOB rule. Accordingly, comment should be made to the appropriate legislative representative.

COMMENT: Several of the comments indicated concern that the amendment would reduce the value of existing check cashing facilities, since it would facilitate entry into the field.

RESPONSE: The value of a check cashing business, like any other business, is mainly based on the value of the facilities plus the goodwill, if any, that the business has developed. This value will be retained upon adoption of these rules. However, allowing easier entry into the check cashing business may tend to reduce the value of an existing check cashing business since it will no longer enjoy a near monopoly position. Nevertheless, the DOB deems this necessary to encourage others to enter the field and provide sufficient numbers of check cashing facilities.

COMMENT: One comment questions the legislative history set forth in the summary to the proposal. In particular, the comment claims that the check cashing rules were proposed and adopted after the 1980 legislation (L. 1979, c.498, sec. 3, effective February 29, 1980) which deleted the "economic feasibility" standard.

RESPONSE: The Department acknowledges that the rules did not predate the legislative change. Nevertheless, the reasoning supporting these amendments still exists. Whether a new check cashing operation is or is not economically viable at a particular location is not relevant to the findings the Commissioner is obligated by statute to make, which only concern the net worth, liquid assets and character and fitness of the applicant to engage in the check cashing business.

With these amendments, the licensing requirements for check cashers become similar to those of most other licensees.

COMMENT: The Department is currently unable to curtail abuses in the industry. It will become even more difficult to monitor the expanded number of check cashers.

RESPONSE: The difficulty and expense of obtaining a license has been identified by the DOB as one cause for the prevalence of unlicensed activity. This amendment simplifies the licensing process. It should therefore encourage those contemplating acting as check cashers to obtain licenses and abide by the Check Cashing Law, N.J.S.A. 17:15A-1 et seq., and accompanying rules. To the extent that this is done, the amendment will serve to enable the DOB to curtail abuses in the industry.

Should the amendment tend to increase the number of licensees thereby requiring more personnel to monitor licensed activity, the DOB will consider shifting resources to this important area.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:24.

Full text of the amendments to the rules readopted follows.

3:24-1.2 Corporate applications

(a) Corporate applicants shall submit a copy of certificate of incorporation showing the field or recording stamp of the Secretary of State, and shall indicate the registered agent for service of process. Foreign corporations shall submit a Certificate of Authority in addition to corporate certificate.

(b) Individual or partnership applicants using a trade name shall submit a copy of the trade name as filed with the County Clerk showing date of recording.

(c) Corporations using fictitious names shall file a copy of such names, as recorded, as part of their applications.

3:24-1.3 Net worth

An applicant shall submit evidence that it has a capital or net worth of at least $50,000 and has available for the operation of such business liquid assets of at least $50,000, for each specified location or for each mobile unit. An applicant shall also submit evidence regarding its financial responsibility, experience, character and general fitness, in addition to that material required on the Departmental application form.

3:24-1.4 Demonstration of financial responsibility

An applicant for check cashing license shall demonstrate that it has commitments or agreements with a financial institution to enable the applicant to conduct the check cashing business.

3:24-1.5 Physical facilities

An applicant must include with the application a description of the physical facilities.

(a)

DIVISION OF SAVINGS AND LOAN ASSOCIATIONS

Proposed Interstate Acquisition: Determination of Eligibility

Adopted New Rules: N.J.A.C. 3:33

Proposed: April 3, 1989 at 21 N.J.R. 814(a).
Adopted: August 24, 1989 by Stephen J. Szabatin, Acting Commissioner, Department of Banking.
Filed: August 25, 1989 as R.1989 d.500, **without change.**
Authority: N.J.S.A. 17:12B-226 and 289.
Effective Date: September 18, 1989.
Expiration Date: September 18, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 33
PROPOSED INTERSTATE ACQUISITION

SUBCHAPTER 1. DETERMINATION OF ELIGIBILITY

3:33-1.1 Definitions

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

"Applicant" means any out-of-State insured institution or out-of-State savings and loan holding company filing an application hereunder to acquire a New Jersey insured institution or New Jersey savings and loan holding company.

"Central-Atlantic Region" means the states of New Jersey, Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Wisconsin and the District of Columbia.

"Commissioner" means the New Jersey Commissioner of Banking.

"Control" shall have the meanings set forth in section 408(a) of the "National Housing Act", as amended (12 U.S.C. §1730a).

"Eligible insured institution" means an insured institution:

1. Located in an eligible state other than New Jersey, which state has reciprocal legislation in effect;

2. Which is not directly or indirectly controlled by an insured institution located outside of an eligible state or by a savings and loan holding company located outside of an eligible state; and

3. Which has at least 75 percent of the total aggregate deposits of the insured institution and of the savings and loan subsidiaries of a savings and loan holding company directly or indirectly controlling the insured institution, if any, in an eligible state or states.

"Eligible savings and loan holding company" means a savings and loan holding company:

1. Located in an eligible state, other than New Jersey, which has reciprocal legislation in effect;

2. Which is not directly or indirectly controlled by a savings and loan holding company located outside of an eligible state; and

3. Which has at least 75 percent of the total aggregate deposits of its savings and loan subsidiaries in savings and loan subsidiaries located in an eligible state or states.

"Eligible state" means:

1. Any state in the Central-Atlantic Region, when at least two of those states, in addition to New Jersey, each of which has at least $20,000,000,000 in insured institution deposits, have reciprocal legislation in effect; and

2. Any state or territory of the United States, when at least 13 states in addition to New Jersey, of which at least four, other than New Jersey, are among the 10 states, other than New Jersey, with the largest amount of insured institution deposits, have reciprocal legislation in effect.

"Insured institution" shall have the meanings set forth in Section 408(a) of the "National Housing Act", as amended (12 U.S.C. §1730(a)), and shall also include Federal savings banks whose accounts are insured by the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR §561.1.

"Insured institution deposits" means the total domestic deposits in insured institutions in each state according to the most recent available statistics of the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank System or, if those statistics are not available, from sources designated by the commissioner.

"Located" means:

1. When referring to an insured institution, the state in which the amount of aggregate deposits of all of its offices in that state is greater than the amount of aggregate deposits of all of its offices in any one other state or foreign jurisdiction; or

2. When referring to a savings and loan holding company, the state in which the amount of aggregate deposits of all of its savings and loan subsidiaries in that state is greater than the amount of aggregate deposits of all its savings and loan subsidiaries in any one other state or foreign jurisdiction.

"New Jersey insured institution" means an insured institution located in New Jersey.

"New Jersey savings and loan holding company" means a savings and loan holding company located in New Jersey.

"Out-of-State insured institution" means an insured institution located outside of New Jersey.

"Out-of-State savings and loan holding company" means a savings and loan holding company located outside of New Jersey.

"Reciprocal legislation" means statutory law of a state, including the District of Columbia, which authorizes or permits a New Jersey insured institution or a New Jersey savings and loan holding company, or both, to acquire insured institutions or savings and loan holding companies, or both, located in that state on terms and conditions substantially the same as the terms and conditions pursuant to which an insured institution or savings and loan holding company located in that state may acquire insured institutions or savings and loan holding companies, or both, located in that state. The fact that the law of that other state imposes limitations or restrictions on the acquisition of insured institutions or savings and loan holding companies, or both, located in that state by a New Jersey insured institution or New Jersey savings and loan holding company, or both, shall not necessarily mean that the law of that state is not reciprocal legislation; provided, however, that if the law of the other state limits acquisitions by a New Jersey insured institution or New Jersey savings and loan holding company, or both, to insured institutions or savings and loan holding companies, or both, which are not in competition with insured institutions or savings and loan holding companies, or both, located in or chartered by that state or to insured institutions or savings and loan holding companies which do not have customary deposit and commercial loan powers, the law of that other state shall not be reciprocal legislation. If the reciprocal legislation of that other state imposes limitations or restrictions on the acquisition or ownership of an insured institution or savings and loan holding company located in that state by a New Jersey insured institution or New Jersey savings and loan holding company, or both, substantially the same limitations and restrictions shall be applicable to the eligible insured institution or eligible savings and loan holding company, or both, located in that other state with respect to its acquisition of New Jersey insured institutions or New Jersey savings and loan holding companies, or both.

"Savings and loan holding company" shall have the meanings set forth in section 408(a) of the "National Housing Act", as amended (12 U.S.C. §1730(a)).

"Savings and loan subsidiary" shall have the meanings set forth in N.J.S.A. 17:12B-278b.

"State" includes, but shall not be limited to, the District of Columbia.

"Subsidiary" shall have the meanings set forth in N.J.S.A. 17:12B-281f.

3:33-1.2 Content of application

(a) Any out-of-State insured institution or out-of-State savings and loan holding company proposing to acquire and retain control of a New Jersey insured institution or a New Jersey savings and loan

holding company pursuant to N.J.S.A. 17:12B-278 et seq. shall submit an application to the Commissioner. The application shall comply with N.J.S.A. 17:12B-279 and shall contain the following information:

1. The name and location of the applicant;

2. The name and location of each New Jersey insured institution or New Jersey savings and loan holding company to be acquired;

3. Certified copies of:

i. The board resolution of the applicant authorizing the proposed acquisition of each New Jersey insured institution or New Jersey savings and loan holding company; and

ii. The board resolution of each New Jersey insured institution or New Jersey savings and loan holding company approving the proposed acquisition if such approval has been adopted;

4. A schedule reflecting the name, location and total aggregate deposits of each savings and loan subsidiary of the applicant, as of the date of the last thrift financial report required by the Department;

5. Copies of the current reciprocal legislation of each of the states in which a savings and loan subsidiary of the applicant is located;

6. A listing of any limitations or restrictions on the acquisition or ownership of an insured institution or savings and loan holding company in the state in which the applicant is located that would be imposed on the acquisition of an insured institution or savings and loan holding company in that state by a New Jersey insured institution or New Jersey savings and loan holding company;

7. The name and location of any out-of-State insured institution or out-of-State savings and loan holding company that has direct or indirect control of the applicant. A controlling out-of-State insured institution or out-of-State savings and loan holding company shall submit the information which is prescribed in the application to assist the Commissioner in determining whether the controlling out-of-State insured institution or savings and loan holding company is an eligible insured institution or eligible savings and loan holding company;

8. If the applicant has formally filed for the acquisition of any additional insured institution subsidiaries with the State of New Jersey or with any agency of another state or of the Federal government, the applicant shall submit to the Commissioner the information required by those applications; and

9. The applicant shall submit a statement that it will notify the Commissioner in the event it subsequently obtains or divests control of any insured institution or savings and loan holding company, or if another insured institution or savings and loan holding company obtains direct or indirect control of the applicant.

3:33-1.3 Determination of eligibility

(a) Within 30 days after receipt of a completed application for determination of compliance with the requirements of N.J.S.A. 17:12B-279 and this subchapter, the Commissioner shall issue a determination:

1. Whether the out-of-State insured institution or out-of-State savings and loan holding company is an eligible insured institution or eligible savings and loan holding company;

2. Whether the out-of-State insured institution or out-of-State savings and loan holding company has more than 50 percent of the total aggregate deposits of its insured institution subsidiaries in insured institution subsidiaries located in an eligible state or states, each of which has reciprocal legislation in effect; and

3. Whether any limitations or restrictions on acquisition or ownership shall be applicable with respect to the proposed transaction, and a description of those limitations or restrictions, if any.

(b) If the Commissioner disapproves the application, the applicant may, within 10 days of receipt of a notice of disapproval, ask the Commissioner in writing to hold a hearing on the proposed acquisition. The hearing shall be held in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

3:33-1.4 Fees

(a) The following fees shall be paid to the Commissioner relative to the application required by N.J.A.C. 3:33-1.3:

1. Filing of application: $1,500.

2. Issuance by the Commissioner of a determination that the proposed acquisition would be in compliance with the requirements of N.J.S.A. 17:12B-279, if it were consummated and approved by all applicable persons and/or regulatory authorities: $100.00.

(b) For a request for a hearing pursuant to N.J.A.C. 3:33-1.3(b), a fee of $2,500 must accompany the request.

ENVIRONMENTAL PROTECTION

(a)

NEW JERSEY HISTORIC TRUST
Historic Preservation Grant Program
Adopted New Rules: N.J.A.C. 7:4A

Proposed: April 17, 1989 at 21 N.J.R. 958(c).
Adopted: August 18, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: August 18, 1989 as R.1989 d.492, **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. 13:1B-3 and P.L. 1987, c.265.

DEP Docket Number: 015-89-03.
Effective Date: September 18, 1989.
Expiration Date: September 18, 1994.

Summary of Public Comments and Agency Responses:

The new Historic Preservation Grant Program Rules were proposed by the Department of Environmental Protection (Department) on April 17, 1989 at 21 N.J.R. 958(c). In the proposal, the Department invited the submission of written comments on or before June 2, 1989. The Department received four written comments from local governments and nonprofit organizations.

COMMENT: One municipality expressed its support and approval of the rules as proposed.

RESPONSE: The Department acknowledges this comment in support of these rules.

COMMENT: Three of the commenters expressed concern about the requirement in N.J.A.C. 7:4A-2.2(a)2ii that in order for property under lease to an applicant to be eligible for an historic preservation grant the lease to the applicant must have an unexpired term of 25 years or more as of the date of the Trust's receipt of the grant application. The commenters are concerned that requiring an unexpired lease term of 25 years or more is unrealistic and excessive, particularly where the leased properties are owned by governmental entities. The commenters proposed that the unexpired lease term of 25 years be reduced or that governmentally owned properties be exempt from the lease term requirement.

RESPONSE: The Department agrees to revise N.J.A.C. 7:4A-2.2(a)2ii to distinguish between leased property that is owned by a governmental entity (the State, a county or a municipality) and property that is owned by a nonprofit organization and to reduce the unexpired lease term requirement accordingly. Property owned by a nonprofit organization and leased to the applicant is treated differently as to the unexpired lease term requirement.

In determining whether to award a grant, the Trust must consider the extent to which both the property and the applicant satisfy the criteria set forth in N.J.A.C. 7:4A-3.2. Specifically, the Trust must evaluate the applicant's administrative capability (N.J.A.C. 7:4A-3.2(a)5), the applicant's source and commitment of funds to match the grant (N.J.A.C. 7:4A-3.2(a)6), and the applicant's plans for the continued preservation of the historic structure after the expenditure of historic preservation grant money. By requiring that a minimum number of years remain on such leases as of the date of the Trust's receipt of the grant application, the Department seeks assurance that the property will remain under the control of the applicant for a period sufficient to assure the applicant's completion of the project and to assure continuation of the public benefit from the investment of the historic preservation grant funds.

With regard to property that is owned by a governmental entity and leased to the applicant, the Department agrees that the continuing public benefit from the investment of historic preservation grant funds in such property is to a degree protected by public ownership and by the additional long-term guarantees incorporated in the easements which will be required by the Trust under N.J.A.C. 7:4A-5. However, the Depart-

ment does not agree that property leased from a governmental entity should be exempt from the lease term requirement. Therefore, the Department agrees to revise N.J.A.C. 7:4A-2.2(a)2ii to provide that for property leased by the applicant from a governmental entity, the unexpired term of the lease shall be five years or more as of the date of the Trust's receipt of the application for an historic preservation grant. This term should at least assure the applicant's completion of the project.

For property that is owned by a nonprofit organization and is leased to the applicant, there is not the same degree of protection of a continuing public benefit from the investment of historic preservation grant funds that exists when the property is owned by a governmental entity. Therefore, the Department elects to revise N.J.A.C. 7:4A-2.2(a)2ii to provide that for property that is owned by a nonprofit organization and is leased to the applicant, the unexpired term of the lease shall be 20 years or more as of the date of the Trust's receipt of the application for an historic preservation grant.

Agency Initiated Changes:

An erroneous cross reference at N.J.A.C. 7:4A-2.5(e) was corrected and several minor clarifications to the chapter have also been made. N.J.A.C. 7:4A-2.3(b)21 was changed to replace the term "corporation" with "organization" in accordance with the latter's chapter definition, and compliance with the State Contracts Law was added to conform this paragraph's requirements to those in N.J.A.C. 7:4A-2.3(b)20.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*):

CHAPTER 4A
HISTORIC PRESERVATION GRANT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

7:4A-1.1 Purpose

This chapter shall constitute the rules of the New Jersey Historic Trust in the Department of Environmental Protection for the Historic Preservation Grant Program providing for the award of grants on a competitive basis for historic preservation projects, for the improvement, restoration, stabilization, or rehabilitation of historic properties owned by State, county and municipal governments and by tax-exempt nonprofit organizations in accordance with the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L. 1987, c.265.

7:4A-1.2 Severability

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

7:4A-1.3 Definitions

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

"Act" means the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L. 1987, c.265.

"Applicant" means the State, county or municipal government or nonprofit organization that submits an application for a historic preservation grant.

"Approved project period" means the amount of time prescribed in the project agreement during which the grant recipient must complete the approved historic preservation project to be eligible for the full amount of funding authorized for the project.

"Grant recipient" means the applying State government agency, county or municipal government or nonprofit organization named in a project agreement executed with the Trust to receive grant funds for a historic preservation project.

"Historic" as applied to any property, structure, facility or site means any area, site, structure or object approved for listing or which has been certified as meeting the criteria for listing in the New Jersey Register of Historic Places as set forth at N.J.A.C. 7:4.

"Historic preservation cost" means the expenses incurred in connection with a historic preservation project including construction costs and the procurement of engineering, architectural, inspection, planning, legal or other professional services directly related to the historic preservation project.

"Historic preservation grant" means monies approved by the New Jersey Historic Trust for funding of a historic preservation project.

"Historic preservation project" means work directly related to the improvement, restoration, stabilization or rehabilitation of a historic property, structure, facility or site.

"Improvement" means the act of upgrading the basic physical condition of a property in a manner consistent with the Standards and Guidelines for Historic Preservation Projects (36 C.F.R. Part 1207) adopted by the Secretary of the United States Department of the Interior now in effect and as may subsequently be modified, changed or amended. This type of activity includes upgrading mechanical systems*,* providing appropriate barrier-free access for handicapped persons*,* and bringing a property into conformance with building codes.

"National Register of Historic Places" means the national list of districts, sites, buildings, structures and objects signficant in American history, architecture, archeology, engineering or culture maintained by the Secretary of the United States Department of the Interior under authority of the National Historic Preservation Act, as amended (16 U.S.C. §§470 et seq.).

"Nonprofit organization" means a corporation organized under the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq. and qualified for tax-exempt status under the Internal Revenue Code of 1986 (26 U.S.C. §501(c)).

"Project agreement" means a document executed by the New Jersey Historic Trust and a grant recipient which provides grant assistance in an amount and for a historic preservation project approved by the Trust subject to conditions to assure the continued preservation and benefit to the public of an historic property assisted with an historic preservation grant.

"Preservation" means the act or process of applying measures to sustain the existing form, integrity, and material of an historic property.

"Rehabilitation" means the process of returning *[the]* ***an historic*** property through repair or alteration to a contemporary use that is appropriate and compatible with the historic nature of the property, while preserving those portions or features of the property that are significant to its historic, architectural, and cultural values.

"Restoration" means the process of accurately recovering the form and details of a historic property and its setting as it appeared at a particular period of time by removal of later work or by replacement of missing earlier work. Restoration may include a full restoration (exterior and interior) or a partial restoration of the historically and/or architecturally significant parts of a structure. Sufficient documentation from the period must be provided to establish historic form and detail.

"Secretary of the Interior's Standards" means the Standards and Guidelines for Historic Preservation Projects (36 C.F.R. Part 1207) adopted by the Secretary of the United States Department of the Interior now in effect and as may subsequently be modified, changed or amended.

"Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined or vanished where the location itself maintains historic or archeological value regardless of the value of any existing structure.

"Stabilization" means the application of measures designed to sustain the form and extent of an historic resource essentially as it now exists. Stabilization is aimed at halting further deterioration and enhancing safety, rather than attempting to rebuild or recreate lost historic features. Stabilization includes techniques tc arrest or slow deterioration of a site, structure, or object. Improvements in physical conditions to make the property safe, habitable, or otherwise useful can be part of stabilization, as can niinor repairs that do not change or adversely affect the fabric, appearance, or historic value of the property.

"State Historic Preservation Officer" means the Commissioner of the Department of Environmental Protection designated by the Governor to administer the State Historic Preservation Program to identify and nominate eligible properties to the National Register of Historic Places. The State Historic Preservation Officer establishes the procedures and criteria located at N.J.A.C. 7:4 for receiving and

processing nominations and approval of areas, sites, structures and objects, both publicly and privately owned, for listing in the State Register of Historic Places.

" State Register of Historic Places" means the New Jersey Register of Historic Places consisting of areas, sites, structures and objects significant in American history, architecture, archeology and culture which the Commissioner of the Department of Environmental Protection is authorized to expand and maintain under the "New Jersey Register of Historic Places Act," N.J.S.A. 13:1B-15.128 et seq.

"State Review Board" means the body appointed by the State Historic Preservation Officer as part of the State Historic Preservation Program for the purpose of reviewing and recommending to the State Historic Preservation Officer whether or not the nominated area, site, structure or object satisfies the criteria for listing in the State and National Registers of Historic Places.

"Structure" means a work constructed by man and made up of interdependent and interrelated parts in a definite pattern or organization.

"Trust" means the New Jersey Historic Trust, a body corporate and politic with corporate succession established in the Department of Environmental Protection under N.J.S.A. 13:1B-15.111 et seq.

SUBCHAPTER 2. APPLICATION PROCEDURE AND ELIGIBILITY FOR HISTORIC PRESERVATION GRANTS

7:4A-2.1 Eligible applicants

State, county and municipal governments and tax-exempt nonprofit organizations are eligible to submit applications for historic preservation grants.

7:4A-2.2 Eligible property

(a) To be eligible for an historic preservation grant, the specific property for which an application is submitted shall, at the time of the Trust's receipt of the application, be:

1. Owned in fee simple by the applicant; or

2. If the property is not owned in fee simple by the applicant, the applicant shall have possession and sufficient control over the property pursuant to a long-term lease to guarantee the continuing preservation, on-going maintenance and public access requirements for the historic property under this chapter. No historic preservation project proposed for leased property shall be approved for funding unless:

i. The lease cannot be revoked at will by the lessor;

[ii. The unexpired term of the lease is 25 years or more as of the date of the Trust's receipt of the application for an historic preservation grant; and]

***ii. The unexpired term of the lease is:**

(1) For property owned by the State, a county or municipality and leased to the applicant, five years or more as of the date the Trust receives the application for an historic preservation grant; or

(2) For property owned by a nonprofit organization and leased to the applicant, 20 years or more as of the date the Trust receives the application for an historic preservation grant; and*

iii. The application for the historic preservation grant is endorsed by all owners, lessors and lessees of the leased premises as the case may be; and

3. Individually listed in the National or State Register of Historic Places; or

4. Located within an historic district listed in the National or State Register of Historic Places and identified in the nomination of the district as contributing to its significance; or

5. The State Historic Preservation Officer certifies that the property, structure, facility or site is approved for listing or meets the criteria for listing in the State Register of Historic Places as set forth in N.J.A.C. 7:4.

7:4A-2.3 Historic preservation activities eligible for funding

(a) The following historic preservation activities are eligible for funding by the historic preservation grant program:

1. Rehabilitation;

2. Restoration;

3. Stabilization;

4. Improvement;

5. Non-construction activities related directly to the development, implementation, operation and monitoring of historic preservation projects. Such activities may be funded up to 25 percent of the total amount of the approved historic preservation grant. Eligible non-construction activities shall consist of preparation of:

i. Architectural plans, designs, specifications, cost estimates and other contract documents;

ii. Feasibility studies;

iii. Historic structure reports;

iv. Historic landscape reports;

v. Archeological reports;

vi. Architectural reports;

vii. Engineering reports;

viii. Historic research reports; or

ix. Project completion reports;

6. Project signs, required under N.J.A.C. 7:4A-6; and

7. Interpretive signs or plaques approved by the Trust for funding as part of an historic preservation grant.

(b) Costs incurred in the following activities are not eligible for funding by the historic preservation grant program:

1. Acquisition of real or personal property;

2. Construction of new structures including accurate reconstructions except that this activity may be eligible for an historic preservation grant if it is a minor and necessary component of an historic preservation project approved for funding;

3. Personnel or administrative overhead or any other indirect cost;

4. Ceremonial expenses;

5. Expenses for publicity (with the exception of the required project sign);

6. Bonus payments of any kind;

7. Charges for contingency reserves;

8. Charges in excess of the lowest bid, *[when competitive bidding is required by the State or the recipient]* ***when the grant recipient is required to use competitive bidding***, unless the Trust agrees in advance to the higher cost;

9. Charges for deficits or overdrafts;

10. Interest expense;

11. Damage judgments arising from construction, or equipping of a facility, whether determined by judicial process, arbitration, negotiation, or otherwise;

12. Services, materials, or equipment obtained under any other State program;

13. Costs of discounts not taken;

14. Contract cost overruns, not approved, that exceed the allowable amount as per the contract specifications;

15. Fundraising, including grant application preparation;

16. Lobbying;

17. Work including construction, research and preparation of plans and reports performed outside the approved project period;

18. Work including construction, research and preparation of plans and reports not included in the scope of work set forth in the project agreement;

19. Work which does not comply with the Secretary of the Interior's Standards;

20. Work performed on behalf of the State, a county or a municipal government which has not been awarded in compliance with the State Contracts Law, N.J.S.A. 52:32-1 et seq. or the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq;

21. Work performed on behalf of a nonprofit *[corporation]* ***organization**** which has not been awarded in compliance with ***the State Contracts Law or**** the Local Public Contracts Law if the *[aggregate cost of contracts for]* ***cost of the contract for work performed as part of**** the historic preservation project funded with an historic preservation grant exceeds $50,000;

22. Routine maintenance work; or

23. Relocation of structures, buildings or objects except that this activity may be eligible for an historic preservation grant if the following conditions are met:

i. Relocation of the structure, building or object is necessary for its preservation;

ii. The relocation re-establishes the historic orientation, the immediate setting, and general environment of the property; and

iii. The State Historic Preservation Officer determines that the property, as relocated, will continue to meet the criteria for listing in the State Register.

7:4A-2.4 Procedures

(a) The announcement of grant rounds and the opening and closing dates for submission of historic preservation grant applications shall be published by the Trust in the DEP Bulletin and the New Jersey Register.

(b) The following three basic steps constitute the historic preservation grant application procedure:

1. The applicant shall submit a written application for each historic preservation project.

2. A notice of receipt of application will be sent by the Trust to each applicant.

3. If the application is approved, funds shall be distributed in accordance with a project agreement between the Trust and the applicant which specifies, among other things, the following:

i. Amount of grant;

ii. Project period; and

iii. Project scope.

(c) Each project application must contain sufficient information to ensure that the Trust is able to conduct an adequate and thorough review. Applications shall be on forms provided by the Trust and shall contain at least the following information:

1. Statement of the significance and condition of the property;

2. A narrative description of the proposed project;

3. Cost estimates for proposed work;

4. Black and white photographs and color slides of the property;

5. Evidence of matching funds commitment as specified at N.J.A.C. 7:4A-2.5;

6. Long-range plans for the future preservation of the property;

7. Names and addresses of all owners, all parties with an ownership interest, and evidence of ownership or an interest in ownership of the historic property for which a grant is requested;

8. As applicable, names of lessors and lessees, and a copy of a long-term lease meeting the requirements of N.J.A.C. 7:4A-2.2(a)2;

9. If the property for which a historic preservation grant is requested is not listed in the State or National Register of Historic Places, a certification by the State Historic Preservation Officer that, as of the date of the Trust's receipt of the application, the historic property for which a grant is requested is approved for listing or meets the criteria for listing in the State Register of Historic Places as set forth in N.J.A.C. 7:4; and

10. A copy of a resolution of the governing body of the applying county or municipality, a resolution of the board of directors of the applying nonprofit organization, or the signature of the head of the applying State agency recommending the historic preservation project for funding under the Historic Preservation Grant Program.

(d) Applications not funded in a given grant round shall not receive further consideration for funding by the Trust in that grant round. An applicant may re-submit the application or submit a revised or new application in a subsequent grant round.

(e) Application materials for projects not funded shall be retained by the Trust for 90 days following the announcement of grant awards. The materials shall be returned if the applicant submits a written request to the Trust within the 90 day period. After 90 days the Trust may discard all application materials for non-funded projects.

7:4A-2.5 Matching funds

(a) To be eligible for a grant for a historic preservation project, the applying tax-exempt nonprofit organization or State, county or municipal government unit shall, as part of the application for a historic preservation grant, demonstrate the ability to match the grant requested by generating $1.00 in funds for every $1.00 of grant money requested in the application. State funds shall not be used as the matching share of project costs by the applying tax exempt nonprofit organizations or county or municipal government units.

(b) Funds generated prior to December 1, 1985 shall not satisfy the matching funds requirement.

(c) Funds raised by the applicant for up to two years prior to the date of enactment of the Act (December 1, 1987), as well as after that date, for ongoing historic preservation projects, and of which the project described in the application is a significant and substantial part, may satisfy the matching funds requirement in (a) above.

(d) Funds raised and spent by the applicant for up to two years prior to the date of enactment of the Act (December 1, 1987), as well as after that date, for ongoing historic preservation projects, and of which the project described in the application is a significant and substantial part, may satisfy the matching funds requirement in (a) above if:

1. As part of the application, the applicant submits all contracts, invoices, evidence of payment, plans and specifications documenting the expenditure of funds by the applicant and describing the work performed; and

2. The Trust determines that the work performed is part of the historic preservation project described in the application and that the work was performed in accordance with the Secretary of the Interior's Standards.

(e) An applicant's matching share shall consist only of cash raised by the applicant as provided in *[(b) and]* (c) ***and (d)*** above or funds spent by the applicant on an on-going historic preservation project as provided in (d) above.

SUBCHAPTER 3. ALLOCATION OF HISTORIC PRESERVATION GRANT FUNDS

7:4A-3.1 Allocation of historic preservation grant funds

(a) In each grant round historic preservation grant funds shall be allocated in accordance with a ranking of applications received by the Trust in a given grant round subject to availability and appropriation of funds under the Act. The ranking of applications shall be established by the Trust based on the criteria set forth in N.J.A.C. 7:4A-3.2

(b) The Trust reserves the right to limit funding to less than the amount requested in an application.

7:4A-3.2 Criteria for review and ranking of applications for historic preservation grants

(a) All applications for eligible historic preservation projects in a given grant round shall, for the purpose of determining priority for funding, be ranked on the basis of the following competitive criteria:

1. Significance of resource which shall involve consideration of the following:

i. Degree to which a property is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of the State, according to the evaluation criteria for the National Register of Historic Places;

ii. Degree of significance locally or at the regional, State, or national level;

iii. Degree of significance as first, last remaining, or best example of its kind;

iv. Integrity of a property's location, design, setting, materials, workmanship, feeling, and association; and

v. Degree to which a property retains its historical features and setting;

2. Physical condition of the property, including any immediate threat of collapse, demolition or inappropriate use or development; notice of code violations; and deterioration requiring stabilization;

3. Plans for the preservation of the structure which shall involve consideration of the following:

i. Plans for use and interpretation of the historic property;

ii. Preservation and maintenance plans;

iii. Relationship of project to State, county and municipal preservation planning;

iv. Visibility and ability of project to serve as a catalyst for further preservation of historic resources; and

v. Potential impact of project on the community;

4. Compliance with the Secretary of the Interior's Standards reflected in:

i. Project plans, specifications and any other documents for work that has not been done for which the application for a historic preservation grant has been submitted; or

ii. Work underway or completed that is part of an on-going historic preservation project for which the application for a historic preservation grant is submitted;

5. Administrative capability of applicant which shall involve consideration of the following:

i. Completeness of project concept;

ii. Place of project in long-range plans of applicant;

iii. Quality of project consultants;

iv. Relationship of project to applicant's resources;

v. Financial resources and financial plan of applicant;

vi. Realistic time frame for project;

vii. Applicant's experience in managing historic preservation projects; and

viii. Qualifications and experience of applicant's staff;

6. Source and commitment of funds to match the grant requested;

7. Financial plans for the continued preservation of the historic structure after the expenditure of historic preservation grant money; and

8. Degree and kind of public access.

(b) Funds shall be distributed to achieve a geographical, racial and ethnic balance as well as a balance between size and types of projects, and historical or cultural period of the resources assisted by the program.

7:4A-3.3 Grant payment

(a) After the project agreement has been fully executed, the Trust shall, subject to its approval of invoices submitted pursuant to (b) below, reimburse the grant recipient for expenditures incurred by the grant recipient for historic preservation activities which are eligible for funding under N.J.A.C. 7:4A-2.3 and are within the scope of the historic preservation project described in the project agreement. The total amount of all reimbursements shall not exceed the amount of the grant.

(b) Reimbursement shall be made under (a) above based on itemized invoices approved by the Trust and referenced to completed tasks within the scope of the historic preservation project described in the project agreement. The grant recipient shall submit invoices to the Trust for approval prior to reimbursement. The invoices shall itemize the cost of labor and materials and describe the work performed for which reimbursement is requested. The invoices shall be submitted for each billing period set forth in the project agreement and shall be accompanied by any other documentation defined in the project agreement.

(c) Ten percent of the total amount of each grant shall be retained by the Trust. The Trust shall deduct as retainage an amount equal to 10 percent of each payment approved under (b) above. The retainage shall be kept by the Trust until the historic preservation project has been completed and the project has been audited by the Trust. The retainage shall be disbursed based on the findings of the audit.

7:4A-3.4 Grant amount

The minimum grant for a historic preservation project shall be $10,000; the maximum grant shall be $1,100,000.

SUBCHAPTER 4. PUBLIC ACCESS

7:4A-4.1 Public access to the historic property

(a) As a condition of the approval of a historic preservation grant application, the applicant shall agree that the historic property for which a grant has been requested shall remain accessible to the public or shall be made and remain accessible to the public. The degree and kind of public access shall be negotiated by the Trust and the applicant based on the specific characteristics of the historic property and the type of work approved for a historic preservation grant. The following shall constitute the minimum acceptable degrees of public access depending on the type of work approved for a historic preservation grant:

1. When the historic property is not generally accessible to the public, it shall be open to the public a minimum of six hours a day at reasonably spaced intervals a minimum of 12 days a year for 20 years commencing upon completion of the project.

2. When the interior of the historic property is not generally accessible to the public, it shall be open to the public a minimum of six hours a day at reasonably spaced intervals a minimum of 12 days a year for 20 years commencing upon completion of the project.

3. When the interior of the historic property is generally accessible to the public, no additional public access is required.

4. Under (a)1 and 2 above, a sign shall be maintained on the historic property in public view one week prior to and on the day of public access or a public notice shall be placed in an appropriate local paper.

SUBCHAPTER 5. EASEMENT

7:4A-5.1 Easement on the historic property

(a) To assure the continued preservation of grant-assisted historic properties and to assure that public benefit shall continue to accrue from the use of public funds after the expenditure of the grant moneys, the Trust shall not make grant assistance available until an easement agreement executed between the Trust and the grant recipient and all other parties having an ownership interest in the historic property is recorded. The easement agreement shall include:

1. Provision for the continued preservation of the historic property;

2. Limitations on the right to change the use, alter, demolish or convey the property; and

3. Provisions for public access to the historic property.

(b) The period of the easement shall be determined by the aggregate total of grant assistance made available under this chapter, as follows:

1. From $10,000 to $25,000—five years;

2. From $25,001 to $50,000—10 years;

3. From $50,001 to $100,000—15 years;

4. From $100,001 to $200,000—20 years; and

5. From $200,001 and above—20 years or such additional period as the Trust may reasonably require.

SUBCHAPTER 6. PROJECT SIGNS

7:4A-6.1 Project signs

(a) At the initiation of a historic preservation project funded by a historic preservation grant, a sign acknowledging that the project is being funded with grant assistance available through the New Jersey Historic Preservation Grant Program administered by the New Jersey Historic Trust in the New Jersey Department of Environmental Protection shall be prominently located and maintained on the project site.

(b) The project sign shall be fabricated and erected by the grant recipient in accordance with specifications contained in the project agreement.

(c) The costs of fabricating and erecting the project sign are eligible for funding under N.J.A.C. 7:4A-2.3(a)6. The costs of replacing or maintaining the project sign are not eligible for funding.

(a)

DIVISION OF COASTAL RESOURCES

Redelineation of Bound Brook

Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: December 19, 1988 at 20 N.J.R. 3051(b).
Adopted: August 21, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: August 25, 1989 as R.1989 d.501, **without change.**

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

DEP Docket Number: 045-88-11.
Effective Date: September 18, 1989.
Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Responses:

Notice of the proposed amendment was published on December 19, 1988, in the New Jersey Register at 20 N.J.R. 3051(b). The notice advised that a public hearing had been scheduled for January 10, 1989 at 1:30 P.M. at the Division of Coastal Resources, Department of Environmental

Protection, 501 East State Street, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed action by the Department. In addition, secondary notice of the proposal was published on December 19, 1988 in the Star Ledger. Both notices invited written comments to be submitted on or before January 18, 1989 and announced the holding of the public hearing. No members of the public attended the public hearing.

COMMENT: One commenter wanted it noted for the record that the project underlying the redelineation request is the subject of a pending lawsuit challenging the validity of the municipal approval of the project. The commenter pointed out that, if the municipal approval is voided, the project would no longer be exempt from the Department's freshwater wetlands requirements, and its permit status with the Department might change. In light of this the commenter requested that the Department refrain from issuing any permits for the project.

RESPONSE: The subject of this rulemaking is not a particular project or permit. Rather, the rulemaking concerns the correction of the Department's mapping of the boundaries of the New Jersey Flood Hazard Area adjacent to Bound Brook.

COMMENT: One commenter stated that, if a court voids the project's municipal approval, the project would require a new application to the Department under the Freshwater Wetland Protection Act (FWPA).

RESPONSE: This rulemaking is not dispositive of what the permit requirements under the FWPA may be for the project which is under litigation. Therefore, the results of a lawsuit involving the specific project in question have no bearing on this rulemaking.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey and at the Department of Environmental Protection, Bureau of Flood Plain Management, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the delineations have been sent to the Town Clerks of the Borough of South Plainfield and Edison Township and to the Middlesex County Planning Board.

(a)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Leasing of Atlantic Coast Bottom for Aquaculture

Adopted Amendment: N.J.A.C. 7:25-1.5
Adopted New Rules: N.J.A.C. 7:25-24

Proposed: June 5, 1989 at 21 N.J.R. 1482(b).
Adopted: August 22, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: August 25, 1989 as R.1989 d.502, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 2C:28-1 et seq.; 13:1D-9; 23:2B-14; 50:1-5 et seq., particularly 50:1-23 through 50:1-31; and 50:4-3.

DEP Docket Number: 025-89-05.
Effective Date: September 18, 1989.
Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

The amendment and new rules were proposed on June 5, 1989 at 21 N.J.R. 1482(b). The Department received identical written comments from two commenters during the public comment period which closed on August 4, 1989.

COMMENT: A clammer who has held leases in the Shark and Manasquan River for over 35 years objected to the requirement at N.J.A.C. 7:25-24.8 that lease holders renewing leases hold a Commercial Shellfish License. Because of illness, the commenter had transferred his leases to his wife's name, to be worked by their children (who hold commercial clam licenses). The commenter does not believe that his wife, 59 years old, should be required to obtain a Commercial Shellfish License in order to hold these leases.

RESPONSE: During the drafting of these rules, the Atlantic Coast Section of the New Jersey Shell Fisheries Council recommended to the Department that lessees of bottom on the Atlantic Coast be required to hold a Commercial Shellfish License. The purpose of this requirement is to ensure that the limited area on the Atlantic Coast suitable for shellfish culture is as readily available as possible to those persons participating in the shellfish industry. While the Department appreciates the problem that this requirement creates for this particular commenter, this objective is consistent with the Department's statutory mandates and the rules do not provide for individual exceptions to this requirement. Further, eliminating the requirement would seriously undermine and weaken the leasing program. If the commenter wishes to keep his leases in his family without his or his wife's purchasing a Commercial Shellfish License, the rules do allow him to transfer the leases, either individually or jointly, to one or more of his children (who already purchase commercial clam licenses).

AGENCY INITIATED CHANGES: The following agency-initiated changes have been made upon adoption of N.J.A.C. 7:25-24:

1. Clarifying language has been added to the definition of "Commercial Shellfish License" at N.J.A.C. 7:25-24.4. The Department developed the term "Commercial Shellfish License" as a general term meant to denote both commercial clam and commercial oyster licenses. The rules in this subchapter require lessees to hold a Commercial Shellfish License to ensure that persons holding leased ground are fully licensed to work that ground. Although rare, there are instances in the Atlantic Coast section where lessees plant oysters, not clams, on leased ground. In these cases, a lessee would need to hold either a commercial oyster dredge boat license (see N.J.S.A. 50:3-1) or be a licensed oyster shucker, dealer, or planter (see N.J.S.A. 50:3-20.11) to legally harvest on his or her leased grounds. This distinction was inadvertently omitted from the definition of "Commercial Shellfish License" as it appeared in the proposal.

2. The definition of the term "productive" at N.J.A.C. 7:25-24.4 has been corrected to eliminate the reference to "sedimentation" as an environmental parameter. Sedimentation is not among the environmental parameters that the Bureau of Shellfisheries considers significant when evaluating productivity.

3. The definition of "shellfish" at N.J.A.C. 7:25-24.4 has been corrected to more accurately reflect the statutory definition of "shellfish" at N.J.S.A. 50:1-5 and the common usage of the term "surf clams" instead of "sea clams."

4. Typographical errors appearing in the proposal at N.J.A.C. 7:25-24.6(c) and (d) have been corrected, and additional information has been added to N.J.A.C. 7:25-24.6(d)1 to clarify the reference to the nautical charts published by the National Oceanic and Atmospheric Administration. Corrections have also been made to N.J.A.C. 7:25-24.6(c)1 to reflect the subdivision of one lot subsequent to the proposal, and the accidental omission in the proposal of the lot number of one of the lots in the delineated area.

5. The Department has modified the reporting requirement at N.J.A.C. 7:25-24.8(d) to require that lessees report the number of days each lease was worked during the previous term as an annual total and not a monthly total. The change should not affect the type of records that lessees will need to keep to comply with the reporting requirements imposed by this subchapter, but should only affect the final form in which lease activity information is submitted to the Department.

6. The references in the proposed new rules at N.J.A.C. 7:25-24.4, 7:25-24.5(e), 7:25-24.6(c)2, and 7:25-24.13 to "the effective date of this subchapter" have been changed on adoption to "September 18, 1989," the effective date of N.J.A.C. 7:25-24.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

7:25-1.5 Fee schedule

(a) The following schedule of fees shall become effective immediately:

1. (No change.)

Renumber existing 5. through 9. as 2. through 6. (No change in text.)

SUBCHAPTER 24. LEASING OF ATLANTIC COAST BOTTOM FOR AQUACULTURE

7:25-24.1 Scope and authority

This subchapter constitutes the rules of the Department of Environmental Protection governing the leasing of bottom on New Jersey's Atlantic Coast for the culturing of shellfish as authorized by N.J.S.A. 50:1-18 and 50:1-23 through 50:1-31. The objective of the leasing program is to provide bottom for use in the planting and cultivating of shellfish, including aquaculture (growout of hatchery reared seed) and layout (wet storage). If bottom will be used for

cleansing (relay) activities, its use is subject to the requirements of N.J.A.C. 7:12-9.7 and 7:25-15.1 instead of this subchapter.

7:25-24.2 Construction

This subchapter shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5 et seq.

7:25-24.3 Severability

If any section, subsection, provision, clause, or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.

7:25-24.4 Definitions

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

"Bottom" means lands of the State under the tidal waters of the State except in the tidal waters of the Delaware River, Delaware Bay and their tributaries.

"Bureau" means the Bureau of Shellfisheries in the Division of Fish, Game and Wildlife.

"Commercial Shellfish License" means the commercial clam license required and available as specified in N.J.S.A. 50:2-1 to 50:2-5 and N.J.A.C. 7:25-8.1*****; **or the oyster dredge boat license available as specified in N.J.S.A. 50:3-1 and N.J.A.C. 7:25A; or the oyster shucker, planter or dealer license available as specified in N.J.S.A. 50:3-20.11***.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her designee.

"Council" means the Atlantic Coast Section of the New Jersey Shell Fisheries Council.

"Department" means the Department of Environmental Protection.

"Lessee" means that person or persons holding a lease of bottom to be exclusively used and enjoyed by the lessee for the planting and cultivating of shellfish, approved by a majority of the Council and approved and signed by the Commissioner.

"New ground" means bottom not leased as of *[the effective date of this subchapter]* ***September 18, 1989***, and any leased bottom not subject to a valid lease after *[the effective date of this subchapter]* ***September 18, 1989***.

"Overstaking" means the placement of stakes or buoys so as to delineate an area greater than that described in the lease.

"Productive" means a determination by the Bureau that the bottom surveyed exhibits significant natural recruitment of one or more shellfish species, as evidenced by one or more of the following factors: shellfish density, shellfish year class strength, presence of juvenile shellfish, size distribution of shellfish population, environmental parameters (***such as*** salinity*[, sedimentation]*), and historical production record.

"Public bottom" means bottom not subject to a valid lease on which shellfish may be harvested by members of the public subject to the provisions of this subchapter and any other applicable statutes and regulations.

"Shellfish" means hard clams (Mercenaria mercenaria), soft clams (Mya arenaria), sea clams ***(surf clams)* (*Mactra solidissima, also known as*** Spisula solidissima) and oysters (Crassostrea virginica).

"Shellfish Certificate" means any of the classifications of licenses or certificates issued by the New Jersey Department of Health pursuant to N.J.A.C. 8:13.

"Staking" means the placement of stakes or buoys to mark the boundaries of a leased area.

7:25-24.5 Lease applications for new ground

(a) Lease applications for new ground shall be submitted in person, on forms provided by the Department, to:

Nacote Creek Shellfish Office
P.O. Box 418, Route 9
Port Republic, New Jersey 08241
(609) 441-3284

(b) An application for a shellfish lease for new ground may be submitted by any person who meets the statutory requirements for leasing specified at N.J.S.A. 50:1-23 through 50:1-31 and who is the holder of the following:

1. A valid New Jersey Commercial Shellfish License; or
2. A valid New Jersey Shellfish Certificate.

(c) The biological survey fee for a lease of new ground is $15.00 per application, payable upon application.

(d) Except pursuant to (e) below, no single lease application for new ground shall cover more than two acres.

(e) An application for a single lease of new ground of more than two acres will be accepted only for those lots located within the interior of a block of leased lots, containing more than two acres but less than three acres, which have already been mapped by the Department as of *[the effective date of this subchapter]* ***September 18, 1989***.

(f) An individual may have only a single lease application for new ground pending at any time. Once an individual's application is denied by the Council or granted by the Council and approved by the Commisisoner, that individual may submit an additional lease application for new ground.

(g) Applications for leases of new ground in areas classified as Prohibited, Special Restricted, or Seasonal Special Restricted, as defined in N.J.A.C. 7:12, will not be accepted.

(h) Applications for leases of new ground in areas classified as Approved or Seasonal, as defined in N.J.A.C. 7:12, will be accepted subject to the provisions of this subchapter and N.J.S.A. 50:1-23.

7:25-24.6 Consideration of lease applications for new ground

(a) Once the Department has received a fully completed lease application and biological survey fee, submitted by a person satisfying the requirements at N.J.A.C. 7:25-24.5(b), (d), (f) and (g), the Department shall consider the area of new ground applied for closed to use by the public and the applicant until the Council decides to deny the lease or until the applicant receives the executed lease from the Department.

(b) Once an applicant satisfying the requirements at N.J.A.C. 7:25-24.5(b), (d), (f), and (g) has submitted a fully completed lease application and biological survey fee to the Department, the applicant shall delineate the approximate boundary of the proposed lease area with temporary corner stakes or buoys marked with the applicant's last name, to enable the Bureau to conduct the biological survey specified in (c) below.

(c) Except as specified in (c)1 and 2 below, before the Council grants any lease application for new ground, the Bureau will conduct a *[biolgical]* ***biological*** survey to determine the shellfish productivity of the proposed lease area. If the applicant fails to place temporary stakes on the proposed lease area within six months of submitting the lease application, the Council shall automatically deny the application.

1. Any application to lease new ground in the area west of the exterior line delineated by lot numbers 2239, 2240, 2224, 2236.1, ***2262.1,*** 2262, 2261, 2267, 2271, 2269, 2252, ***2251,*** 2254, 2213.1, 2213, and 2282, on the Bureau's Section B, Chart 24.2, available for public inspection at the Nacote Creek Shellfish Office, in the region known as Dry Bay/Hammock Cove shall be exempt from the requirement of a biological survey and from payment of the biological survey fee.

2. Any application to lease new ground in the following areas will be exempt from the requirement of a biological survey and from payment of the biological survey fee, provided, however, that after *[the effective date of this subchapter]* ***September 18, 1989*** applications for new ground in the following areas will only be accepted from applicants who possess no other leases:

i. Big Creek (Great Bay) lot numbers: 398, 399, 400.1, 401.1, 402.1, 403.1, 404.1, 405.1, 406, 407.1, 408.1, 409.1, 410, 411.1, 412.1, on the Bureau's Section B, Chart 10, available for inspection at the Nacote Creek Shellfish Office; and

ii. Mordecai Island (Little Egg Harbor Bay) lot numbers: 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, on the Bureau's Section B, Chart 13.1, available for inspection at the Nacote Creek Shellfish Office.

(d) The leasing of new ground in areas classified as productive is discouraged.

1. Applications to lease new ground will not be accepted for the following productive areas, as delineated by the Bureau by reference to the National Oceanic and Atmospheric Administration Nautical Chart 12316 ***(23rd Ed., November 15/86)***, available for inspection at the Nacote Creek Shellfish Office:

i. Cape Horn (Great Bay);

ii. ***[Goose Bar]* *Goosebar*** (Little Egg Harbor Bay);

iii. Lakes Bay; and

iv. Sunflower Island

2. For lease applications in all other areas, the Bureau will classify the productivity of the proposed lease area based on the results of the biological survey, and provide this information to the Council to aid the Council's evaluation of the lease application.

(e) Consideration of lease applications by the Council shall be governed by the following:

1. Upon completion of the biological survey, the Bureau shall place the application to lease new ground on the agenda, filed with the Secretary of State pursuant to N.J.S.A. 10:4-6 et seq., of the next regularly scheduled Council meeting for the Council's consideration;

2. At each regularly scheduled meeting, the Council will receive public comment on all lease applications on its agenda; and

3. The Council shall render a decision to deny a lease application or grant a lease application subject to approval by the Commissioner by the second regularly scheduled meeting after receiving public comment on the lease application.

(f) The applicant shall attend at least one of the Council meetings at which the lease application is discussed in order to answer any questions that the Council might have about the lease application. Failure to attend at least one of the Council meetings at which the lease application is discussed shall constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom.

(g) Once the Council and the Commissioner have decided whether to grant or deny the lease application, the applicant shall remove any temporary corner stakes or buoys placed pursuant to (b) above. If a lease application is approved by the Council and the Commissioner, the lessee is subject to the staking requirements of N.J.A.C. 7:25-24.10 upon receiving the executed lease from the Department.

7:25-24.7 Hydrographic survey charges; annual lease fees

(a) Following approval of a lease of new ground by the Council and the Commissioner, the Bureau shall perform a hydrographic survey of the lease area described in the application to verify its location and boundaries. Before the Department issues an executed lease to the applicant, the applicant shall reimburse the Bureau for the expense of the hydrographic survey at the rate of $16.50 per corner. Failure to reimburse the Bureau within 30 days of the Council's approval of the lease will constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom.

(b) The annual lease fee for Atlantic coast shellfish leases is $2.00 per acre for those areas measured in acres.

(c) The annual lease fee for Atlantic coast shellfish leases is $2.00 per 100 linear feet of shoreline for those areas measured in linear feet of shoreline (Mullica River and tributaries, Motts Creek and tributaries).

(d) Notwithstanding (b) and (c) above, the minimum annual lease fee for any lessee leasing bottom on the Atlantic Coast is $5.00.

7:25-24.8 Lease renewal

(a) Lessees may renew their leases by submitting the annual lease fee in person at the Nacote Creek Shellfish Office by December 31 for the following calendar year. If illness or other extenuating circumstances prevent a lessee from renewing a lease by December 31, the Council in its discretion may extend the payment deadline by one month if an extension is requested by the lessee or the lessee's agent at the January Council meeting. If a lessee does not either renew the lease by the payment deadline or receive an extension of the payment deadline from the Council, the lease shall be terminated for non-payment after the January Council meeting and the area described in the terminated lease shall revert to the public bottom.

(b) Renewal of the lease is subject to the lessee's meeting all statutory criteria for leasing, specified at N.J.S.A. 50:1-23 through 50:1-31.

(c) Renewal of the lease is subject to the lessee's maintaining a valid Commercial Shellfish License or Shellfish Certificate.

(d) At the time of renewal, the lessee shall file a completed report indicating the number of days *[per month]* the lease was worked during the past lease term. The Bureau will provide reporting forms to all lessees by September 15 of each year.

7:25-24.9 Lease transfers

(a) Leases may be transferred only with the approval of both the Council and the Commissioner and only under the following circumstances:

1. The new lessee shall meet all statutory criteria for leasing specified at N.J.S.A. 50:1-23 through 50:1-31 and shall be the holder of a valid Commercial Shellfish License or a Shellfish Certificate;

2. The new lessee and the current lessee shall apply for the lease transfer in person at the Nacote Creek Shellfish Office;

3. A lease of new ground acquired through the application process shall not be transferred for a period of one year following the grant of the lease;

4. An application for lease transfer shall be placed on the agenda of the next regularly scheduled Council meeting for consideration. At that meeting, the Council will receive public comment on the transfer application and shall render a decision to deny the lease application or shall grant the transfer application subject to approval by the Commissioner; and

5. Following approval of a transfer by the Council and the Commissioner, the Bureau will perform a hydrographic survey of all lease areas to be transferred to verify their location and boundaries. Before the Department issues an executed lease to the new lessee, the new lessee shall reimburse the Bureau for the expense of the hydrographic survey at a rate of $16.50 per corner. Failure to reimburse the Bureau within 30 days of the Council's approval of the transfer will constitute grounds for denial of the lease transfer, and the lease area shall revert to public bottom.

7:25-24.10 Staking of leases

(a) All leases must be staked before working or by May 1 of each year, whichever occurs first, as specified below:

1. There shall be at least two stakes or buoys at each corner;

2. Line stakes or buoys shall be placed no greater than 150 feet apart so as to delineate a definite line between corners;

3. All stakes and buoys must project at least four feet above high water;

4. If the lessee of record holds leases for two or more adjacent leased areas, it is only necessary that the outside perimeter of the lessee's combined area be staked as specified in (a)1, 2 and 3 above; and

5. The above staking requirements do not apply where corner or line stakes or buoys would fall within a designated navigation channel. The placement of corner or line stakes or buoys within designated navigation channels is prohibited.

(b) Failure to stake leases as specified at (a) above before working or by May 1 of each year shall subject the violator to termination of the lease upon the recommendation of the Council and the approval of the Commissioner.

7:25-24.11 Improper staking of leases

(a) Any person who stakes an area for which he or she does not possess a valid lease or lease application shall be subject to the penalties prescribed in N.J.A.C. 7:25-24.17.

(b) If a survey by the Bureau of Shellfisheries reveals that a lease is overstaked the lessee shall be required to:

1. Pay the expense of the survey;

2. Pay a monetary penalty as provided in N.J.A.C. 7:25-24.17; and

3. Relocate corner and line stakes to their proper positions immediately.

(c) Failure to relocate corner or line stakes, or both, immediately upon notification of overstaking shall subject the violator to termination of the lease upon the recommendation of the Council and the approval of the Commissioner.

(d) More than one instance of overstaking shall subject the violator to termination of the lease upon the recommendation of the Council and approval of the Commissioner.

(e) Removal of a lessee's stakes or buoys by a person other than the lessee or the lessee's agent is prohibited. Violators shall be subject to the penalties prescribed in N.J.A.C. 7:25-24.17.

7:25-24.12 Protection of leased lands from invasion

A person shall not dredge upon, throw, cast or drag an oyster dredge, use oyster tongs, rakes, forks or other instruments or appliances used for catching oysters or clams, or tread for clams, upon any of the leased lands of the State lying under the tidal waters of the Atlantic seaboard or tributaries thereof, above Cape May Point, other than land or ground for which such person or his or her employer then holds a lease from the Council. Violators shall be subject to the penalties prescribed in N.J.A.C. 7:25-24.17.

7:25-24.13 Disposition of condemned lease areas

(a) Any bottom leased through the application process after *[the effective date of this subchapter]* ***September 18, 1989*** and subsequently condemned for the harvest of shellfish pursuant to N.J.S.A. 58:24-1 et seq., as implemented by N.J.A.C. 7:12, shall be governed by the following:

1. The lessee shall be given a period of two years from the date the lease area was condemned during which time the lessee may move any shellfish present to a lease in approved water. To exercise the option to remove shellfish to approved waters, the lessee of a condemned lease area shall maintain a valid Commercial Shellfish License or Shellfish Certificate, and renew the lease if necessary, as specified in N.J.A.C. 7:25-24.8;

2. Prior to moving any shellfish, the lessee shall apply for and receive a special permit for this purpose, issued pursuant to N.J.S.A. 58:24-1 et seq., as implemented by N.J.A.C. 7:12, from the Division of Water Resources, Bureau of Marine Water Classification and Analysis;

3. During the two year period following the condemnation of a lease area, the lease shall not be transferred except by descent or distribution upon the death of the lessee, using the procedure in N.J.A.C. 7:25-24.9. The new lessee shall meet all criteria for the transfer of a lease specified in N.J.A.C. 7:25-24.9(a). A transfer occurring because of the lessee's death does not affect the two year period allowed for removal of shellfish; and

4. At the end of the two year period specified in (a) above, the lease shall be terminated. The lease shall not be renewed or extended unless the lessee demonstrates the need to continue the lease to the Council and the Commissioner. Grounds for extension of the lease may include illness. Failure to obtain a permit for transplanting shellfish shall not be grounds for extension of the lease.

7:25-24.14 Disposition of terminated lease areas

If a lease governed by this subchapter is terminated for any reason, the lease area shall be considered public bottom available for harvesting or lease application provided not prohibited by this subchapter or other statutes or rules.

7:25-24.15 Research/educational activities

(a) The Council may grant, subject to the approval of the Commissioner, leases of new ground to educational institutions for the purpose of research or education, or both. Such leases shall be in the name of the institution and the responsible investigator.

(b) The application for a research/education lease shall be accompanied by a written proposal explaining the need for the lease and describing the research to be conducted.

(c) The holder of a research/education lease shall apply for annual lease renewal prior to December 31 of each year. Renewal of a research/education lease is contingent upon a written report on the use of the lease during the past lease term. The report shall explain the research and education activities conducted and the results obtained. In addition, a proposal for use of the lease for the coming year shall be submitted as part of the report.

(d) Applications, reports and proposals for research/education leases and research/education lease renewals shall be reviewed by Bureau staff who shall recommend to the Council and to the Commissioner whether to grant, renew or deny each lease for the purpose of research or education, or both.

(e) A lease issued for the purpose of research or education, or both, shall not be used as a commercial venture or profit making activity for any institution, investigator, student or any other person. Shellfish or other items obtained through a research/education lease shall not be sold under any circumstances.

(f) Leases for research/education purposes are subject to the provisions of this subchapter except as follows:

1. A commercial shellfish license or shellfish certificate is not required for obtaining or renewing the lease (see N.J.A.C. 7:25-24.5);

2. The Bureau will not conduct a biological survey unless requested by the Council. If the Bureau conducts a biological survey, a biological survey fee will not be charged unless requested by the Council in its discretion (see N.J.A.C. 7:25-24.6(c));

3. A lease fee will not be charged (see N.J.A.C. 7:25-24.7);

4. The Bureau will not conduct a hydrographic survey and will not charge a hydrographic survey fee; however the lessee shall follow the provisions of N.J.A.C. 7:25-24.10 concerning staking (see N.J.A.C. 7:25-24.7); and

5. The Council, with the approval of the Commissioner, may grant a research/education lease of more than two acres if, in the opinion of the Council, the written proposal accompanying the lease application justifies the need for the increased lease size.

(g) The lessee of record shall comply with all other provisions of this subchapter.

(h) Failure to comply with the specific provisions of this section may result in termination of the lease by the Council, with the approval of the Commissioner.

7:25-24.16 Signatories; certification

(a) All applicants shall, upon submission of initial or renewal applications, transfer applications, or annual reports, sign the following certification on the application or report forms:

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 penalties for submitting false, inaccurate or incomplete information and significant criminal penalties, including fines and/or imprisonment, for submitting false, inaccurate or incomplete information or information which I do not believe to be true."

(b) Penalties for false swearing or false reporting may include the penalties set forth in N.J.S.A. 2C:28-3, and the penalties set forth in N.J.A.C. 7:25-24.17.

7:25-24.17 Penalties

Violations of any section of this subchapter, or any lease or order issued pursuant to it, shall subject the violator to the penalties set forth in the Marine Fisheries Management and Commercial Fisheries Act, N.J.S.A. 23:2B-1 et seq., at N.J.S.A. 23:2B-14. Penalties may include monetary penalties of $100.00 to $3,000 for a first violation, and $200.00 to $5,000 for any further violations. Penalties may also include confiscation of any vessel or equipment used in committing a violation.The Department may compromise and settle any claim for a penalty under this subsection in such amount in the discretion of the Department as may appear appropriate and equitable under all the circumstances.

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Regulated Medical Waste

Readoption of Concurrent Proposed New Rules: N.J.A.C. 7:26-3A

Readoption of Concurrent Proposed Repeals: N.J.A.C. 7:26-3A

Proposed: July 17, 1989 at 21 N.J.R. 2109(a).
Adopted: August 25, 1989 as R. 1989, d. 506 **with substantive and technical changes** not requiring additional public notice and comment. (See N.J.A.C. 1:30-4.3).

DEP Docket Number: 033-89-06

Effective Date: August 25, 1989, readoption of concurrent proposal; September 18, 1989, changes upon readoption.
Expiration Date: November 4, 1990.

These new rules and repeals were adopted on an emergency basis pursuant to N.J.S.A. 52:14B-4(c) on June 26, 1989. Notice of the Adopted Emergency Rules and Repeals and Concurrent New Proposed Rules and repeals were published on July 17, 1989 in the New Jersey Register at 21 N.J.R. 2109(a). The notice advised that a public hearing concerning the concurrent proposal was to be held on August 1, 1989 at 1:00 P.M. at the War Memorial Building, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed new rules and repeals. The notice further advised that written comments concerning the proposed new rules and repeals could be submitted to the Department on or before August 16, 1989. In addition, notice of these new rules, the comment period and the August 1, 1989 public hearing were published in the Star Ledger, the Trenton Times, the Press and the Courier Post. Approximately 75 individuals attended the August 1, 1989 public hearing and 17 chose to testify. One hundred and sixty-one written submissions concerning the new rules and repeals were received during the comment period. These written comments are summarized below:

COMMENT: Many commenters asked why fees are so high for small generators.

RESPONSE: The Department was required by the Comprehensive Act, 13:1E-48.1 et seq., (Comprehensive Act), specifically N.J.S.A. 13:1E-48.7, to " . . . set annual fees in accordance with a sliding scale based upon volume of regulated medical waste produced by the generator." Small generators, that is, category 1, which is a generator of under 300 pounds of regulated medical waste per year, is required by N.J.A.C. 7:26-3A.8 to pay fees in the amount of $528.50 per year. Generators in Category 1 pay the smallest amount of generator fees because they generate the least amount of regulated medical waste and therefore require less time for monitoring by the Department than larger generators.

The Department determined that an annual inspection of all of the generation facilities would be necessary, at least at the start of the program to insure compliance of the regulated community with the new rules. The cost of this inspection, along with necessary related support such as education, registration, waste flow determination, legal support services, waste reduction analysis and ancillary administrative charges as outlined in the rule proposal summary, must be charged to the specific group using the Department's services. The Department is authorized to charge fees for the services it provides to each regulated party per N.J.S.A. 13:1E-18.

COMMENT: Numerous commenters asked why an inspection of a regulated medical waste small quantity generator requires as much as four hours for a small facility.

RESPONSE: The Department's workload assessment of four hours for compliance monitoring of each generator in category 1 includes a check at the Department of the generator's registration and fee records which are required by N.J.A.C. 7:26-3A.8(a), any correspondence between the Department and the generator and travel time to and from the facility. At the generator's physical site, the Department will monitor compliance of the generator segregation, packaging, labeling, marking and storage requirements of N.J.A.C. 7:26-3A.10 through 3A.15 and discuss these requirements and the classification system of regulated medical waste with generators or office personnel as the need arises.

In addition, the Department will cross check and verify the contents of generator logs against copies of generator tracking forms and reports.

Compliance monitoring also includes the time required to draft and file compliance monitoring reports, any notice of violation write-ups and case management operations. Violations require follow-up activities such as reinspections, court appearances, case history briefs and preparation.

The Department estimates that all of these activities will require four hours for an average facility generating less than 300 pounds of regulated medical waste per year. These estimates are based on the Department of Environmental Protection's and the Department of Health's projections of the tasks necessary to perform regulatory compliance inspections at various types of facilities including medical waste generating facilities.

COMMENT: Numerous commenters asked why the Department requires 92 people to administer this regulated medical waste program.

RESPONSE: In the summary of the rule proposal, the workload for the regulated medical waste program is described in detail.

The major component of the program's workload is its site compliance inspection component which accounts for nearly 50 percent of the total workload. The numbers of compliance inspection staff required are predicated on the Department's determination that one compliance inspection will be performed annually at each generator facility. The other segments of the workload, such as administrative support and legal services and other support services, are proportionally based upon the inspection workload in the amounts necessary to support the compliance inspection program.

All of the workload components are required to accomplish the Department's goals for the regulated medical waste regulatory program and other requirements of the Comprehensive Act, such as conducting the study of regulated medical waste management in the State and preparing the statewide regulated medical waste management plan.

COMMENT: Numerous commenters asked why it is necessary to inspect all generator sites every year and wanted to know why the Department had not adopted a spot check system for monitoring generator compliance. Random inspections of 10 percent of the operators would provide a strong deterrent, reduce program costs to approximately $3.9 million and provide the Department with a statistically significant indicator of compliance.

RESPONSE: The Department had various reasons for deciding to conduct annual inspections as opposed to spot checks, all of which were intended to maximize generator compliance with the new regulated medical waste rules. First, the Department's experience with other regulatory programs has demonstrated that regulatory compliance is related to the frequency of site inspections. Since this is a new program which requires tracking and reporting, compliance is crucial; therefore, the Department views routine compliance inspections of all generator categories as critical to ensuring compliance with this new regulatory program. Random inspections decrease the regulatory agency's presence in the regulated community. For this reason, Federal, State or local regulatory agencies normally inspect facilities annually or biannually where the public health is concerned. Examples include inspections of licensed health care facilities, pharmaceutical processing facilities, and nearly all food preparation activities such as public restaurants or food processing plants.

Secondly, the Department views compliance inspections as having an important guidance function, with the ability to reach every generator, not just the ones who choose to attend a seminar or study the Department's educational materials and specific regulatory program requirements on their own. Guidance is especially important because of the complexity of these rules, as evidenced by the definition of regulated medical waste which is broken down into complicated classes, and the rules' new requirements for packaging, segregation, storage, marking, labeling and reporting.

A third justification for annual generator inspections is that on-site inspections can serve to force regulatory compliance on those who might not otherwise comply, through the imposition of economic penalties or administrative orders. The Department views enforcement measures as a necessary tool in ensuring compliance with, and success of, all regulatory programs, including the medical waste program.

Fourth, the Department will use the on-site inspections to thoroughly audit the sites' disposal documentation, comparing logging form data to data on tracking forms, and checking the computations of the disposal facility's copy returned to the generator. This will ensure that generated waste is being properly disposed of and tracked off-site. In cases where waste generation does not appear to be commensurate for the type of practice, the Department would attempt to determine if more regulated medical waste is being generated and not properly classified and disposed of.

While the Department believes that annual inspections of generators' facilities are critical to the success of its regulated medical waste program, it will carefully evaluate the continued need for such annual inspections

after the program's first year, based upon the compliance rate of that first year.

COMMENT: One commenter suggested that the State funding requirement for regulatory oversight could be reduced if centers for receiving medical wastes were set up in municipalities, where practitioners could bring their wastes.

RESPONSE: Regulated medical waste is considered a solid waste, so in addition to the regulated medical waste rules at N.J.A.C. 7:26-3A, the solid waste rules N.J.A.C. 7:26 are also applicable to regulated medical waste.

The type of facility described by the commenter would qualify as a "transfer station" as defined at N.J.A.C. 7:26-1.4 which is "a facility at which solid waste is transferred from one solid waste vehicle to another solid waste vehicle for transportation to a solid waste facility". A transfer station must obtain a solid waste facility permit or other authorization from the Department in accordance with N.J.A.C. 7:26. In addition, N.J.A.C. 7:26-3A.18(a) provides that "regulated medical waste which has been treated may be transported to or otherwise unloaded at any transfer station." Therefore, in addition to being approved or permitted by the Department, only regulated medical waste that has been treated may be transported to a transfer station.

Even if these transfer stations or centers, as the commenter suggests, were approved by the Department, their operation and the Department's monitoring of these facilities cannot be in lieu of the Department's generator compliance monitoring activities. Since the generator originates the regulated medical waste and the tracking, logging, reporting, segregation, storage, packaging and labeling requirements are generator requirements, the Department would still be required to monitor the generators for compliance.

COMMENT: Several commenters recommended that the Department construct a sliding scale for generator fees so that the generators who generate the most regulated medical waste will pay higher fees in relation to the amount generated. How is a charge of $845.78 to a hospital with large volume fair?

RESPONSE: The Comprehensive Regulated Medical Waste Management Act, at N.J.S.A. 13:1E-48.7, requires the Department to ". . . set annual fees in accordance with a sliding scale based upon the volume of the regulated medical waste produced by the generator."

The Department, therefore, grouped generators into three categories based on the amount of regulated medical waste generated and the amount of services required for that group. Generators of less than 300 pounds of regulated medical waste per year, category 1, pay the smallest amount of generator fees because they produce the smallest amount of waste and, therefore, in most cases require less services from the Department than do generators in categories 2 or 3. Generators of 300 through 1,000 pounds of regulated medical waste per year, category 2, pay a greater amount of fees than category 1 because they generate more regulated medical waste and consequently require a greater expenditure of the Department's services. Generators of more than 1,000 pounds of regulated medical waste per year, category 3, pay a greater amount of fees because they generate the largest amount of waste and, therefore, require the greatest expenditures of the Department's services.

Therefore, the Department's fees are set in accordance with a sliding scale based upon volume of regulated medical waste produced and the services the Department must perform for each respective group.

The Department is prevented from shifting the costs of services it provides to small generators into larger generators, by the requirements of N.J.S.A. 13:1E-18. This statutory provision required the Department to charge fees only for the services it actually provides.

The Department will review the allocation of its compliance monitoring activities between small and large generators during the study period required by the Comprehensive Act.

COMMENT: The money collected equals DEP's budget cut of $16 million and is used to make it up.

RESPONSE: The commenter is incorrect. The monies to be collected with this fee program total $6,049,700, not the $16 million cut by the Legislature for fiscal year 1990 funding from the overall Department budget. The Comprehensive Act, specifically N.J.S.A. 13:1E-48.7, requires every generator of regulated medical waste to register with and pay an annual fee to the Department. N.J.S.A. 13:1E-48.8 requires every person who transports regulated medical waste to file a registration statement, pay an annual registration fee and obtain approval from the Department. In addition, N.J.S.A. 13:1E-48.10 requires every person who disposes or transfers regulated medical waste to obtain authorization from and pay fees to the Department. The budget outlined in the economic summary of the rules' adoption and concurrent proposal clearly shows that all of the monies paid to the Department pursuant to N.J.A.C. 7:26-3A will only be used to fund the various activities of the Department's regulated medical waste program and will not be used to subsidize other Division programs.

COMMENT: Several commenters suggested that for agencies that have numerous sites, there should be one registration and fee per agency, and not a registration and fee for each separate site.

RESPONSE: The United States Environmental Protection Agency (USEPA), under the authority of the Federal Medical Waste Tracking Act of 1988, 42 USC 6903 et seq., adopted regulations at 54 Federal Register 12326 amending 40 CFR 259. The New Jersey Comprehensive Regulated Medical Waste Management Act, specifically, N.J.S.A. 13:1E-48.5, required that the Department of Environmental Protection, in consultation with the New Jersey Department of Health, adopt those rules and regulations adopted by the USEPA. The USEPA regulations at 40 CFR section 259.10 define generator as, ". . . any person, by site, whose act or process produces regulated medical waste . . ." Due to the Comprehensive Act's mandate to adopt the USEPA rules, the Department is without discretion to change the definition of generator as the commenter has suggested so that the definition would pertain to corporate entities or agencies rather than specific sites. As a result, each site or separate facility under the auspices of an agency or organization will have to register separately and pay the applicable fee.

COMMENT: The fee structure discriminates against non-profit agencies.

RESPONSE: The fees are assessed in accordance with the requirements of the Comprehensive Act, specifically N.J.S.A. 13:1E-48.7, which requires every generator to register with and pay annual fees to the Department. The fees are to be based on a sliding scale based on amount generated. There is no authority under the Comprehensive Act to assess fees based on a profit versus non-profit generator basis. The Department is therefore without authority to decrease or eliminate the fee charges to non-profit agencies and transfer them onto other generators.

COMMENT: A commenter asked for a definition for regulated medical waste.

RESPONSE: The rule contains a definition for regulated medical waste at N.J.A.C. 7:26-3A.6. This definition is identical to the definition adopted by the USEPA pursuant to the authority of the Federal Medical Waste Tracking Act of 1988.

COMMENT: Several commenters, who are generators, said they cannot handle any more paperwork on a daily basis with the additional barrage of forms, regulations, and information which the regulated medical waste rule will require them to maintain.

RESPONSE: The Comprehensive Act, specifically N.J.S.A. 13:1E-48.4, required the Department of Environmental Protection in consultation with the Department of Health to adopt a regulated medical waste management system which provides ". . . for the proper and safe manifesting, tracking, identification, packaging, storage, control, monitoring, handling, collection and disposal of regulated medical waste."

In addition, the Comprehensive Act required the Department to adopt the regulations recently promulgated by the USEPA. The USEPA regulations instituted segregation, packaging, storing, labeling and marking requirements. In addition, the USEPA regulations required use of a tracking form, and certain recordkeeping and exception reporting requirements. The Departments added the generator logging and reporting requirements for monitoring purposes and for purposes of preparing the comprehensive State regulated medical waste management plan required by N.J.S.A. 13:1E-48.13 of the Comprehensive Act.

Though the above requirements will increase paperwork for some regulated medical waste generators, the New Jersey Legislature and the United States Congress found that such regulations were necessary to ensure the proper disposal of regulated medical waste. As a result, those requirements have been made a part of these rules.

COMMENT: Several commenters asked why medical practitioners are regulated, and also why they are regulated for the same wastes that households produce which are not regulated?

RESPONSE: The Comprehensive Regulated Medical Waste Management Act requires that all regulated medical waste be tracked from point of generation to point of disposal. Since the generator is the first link in the tracking requirement, it is essential that the generator initiate the tracking form. In addition, to ensure the proper and safe handling of regulated medical waste, pre-transport requirements such as segregation, labeling and marking should appropriately take place at the point where the waste is generated. The Comprehensive Act defines generator as, ". . . an ambulatory surgical or care facility, community health center, medical doctor's office, dentist's office, podiatrists' offices, home health care

agencies, health care facility, hospital, medical clinic, morgue, nursing home, urgent care center, veterinary office or clinic, animal, biological, clinical, medical, microbiological, or pathological diagnostic or research laboratory, any of which generates regulated medical waste, or any other facility identified by the Departments that generates regulated medical waste. Generator shall not include individual households utilizing home self-care." The legislative intent to regulate all medical practitioners and exempt households utilizing home self-care is explicit in this language.

This rule, at N.J.A.C. 7:26-3A.5, adopts the basic language of the USEPA definition of "generator" which also excludes regulated medical waste generated in the household. The Department cannot regulate medical waste generated in a household until it receives authority from the State Legislature or the USEPA.

COMMENT: Increased regulations and monstrous fees will only increase illegal dumping.

RESPONSE: The Comprehensive Act, specifically N.J.S.A. 13:1E-48.4, required the Department of Environmental Protection in consultation with the Department of Health to adopt a regulated medical waste management system which provides ". . . for the proper and safe manifesting, tracking, identification, packaging, storage, control, monitoring, handling, collection and disposal of regulated medical waste."

In addition, the Comprehensive Act required the Department to adopt the regulations recently promulgated by the USEPA. The USEPA regulations instituted segregation, packaging, storing, labeling and marking requirements. In addition, the USEPA regulations required use of a tracking form, and certain recordkeeping and exception reporting requirements. The Departments added the generator logging and reporting requirements for monitoring purposes and for purposes of preparing the comprehensive State regulated medical waste management plan required by N.J.S.A. 13:1E-48.13 of the Comprehensive Act.

Though the above requirements will increase paperwork for regulated medical waste generators, the New Jersey Legislature, the United States Congress and USEPA found that such regulations were necessary to ensure the proper disposal of regulated medical waste. As a result, those requirements have been made a part of these rules. Furthermore, fees are required so that the Department can perform services needed to ensure compliance with the requirements described above, and which are required by the Comprehensive Act. The Comprehensive Act gave the Department very broad authority and provided for severe penalties to enforce the provisions of the Act as did the federal Medical Waste Tracking Act of 1988. Both the Department of Environmental Protection and the Department of Health will be enforcing the provisions of the Federal and State Act. In addition, the USEPA will be enforcing the provisions of the Federal Act.

The Department disagrees that these rules will increase illegal dumping. Stringent compliance monitoring and aggressive enforcement measures by all agencies involved in the management of regulated medical waste should discourage persons from illegally dumping regulated medical waste.

COMMENT: The funding of DEP personnel should be paid through general State or Federal tax funds. Why should ill people pay an environmental tax. Who are the legislators who wanted this program funded through fees?

RESPONSE: The Comprehensive Act clearly authorizes the Department to support its regulated medical waste program through user fees. The Comprehensive Act provided the Departments of Environmental Protection and Health with $1 million start up funds to initiate their medical waste regulatory programs, and $250,000 to conduct a study of Statewide medical waste management practices. This amount was for start-up costs and was not intended to fund the entire regulatory program. In providing this fee collecting authority to the Department, the Legislature acted consistently with the trend it has begun by requiring regulatory programs to be funded with user fees assessed against the regulated community rather than through general appropriations. To pay for services rendered, the Department, historically, has received revenue from the general tax fund. Over time, Department appropriations have been eroded and recently there were significant cutbacks in the Department's funding.

The Department has analyzed the cost of the program to the medical community and has determined that in most cases, the program registration costs to patients visiting private practitioners will be in the order of $.20 to $.30 per visit.

The State Legislature would be the appropriate government entity to contact regarding the drafting of the Comprehensive Act.

COMMENT: The State's regulated medical waste program would be more effective if garbage haulers are checked to ensure that they are following procedures rather than auditing physicians or small generators once a year.

RESPONSE: The regulated medical waste program as outlined in the rule adoption summary includes significant transporter compliance monitoring activities. Each regulated medical waste transporter, in accordance with N.J.A.C. 7:26-3A.8(b), must register with the Department and pay a registration fee. The Department will inspect each transporter facility four times per year to ensure compliance with the regulated medical waste rules. In order to have an effective program, the Department will be monitoring the entire regulated medical waste management community, which includes generator facilities and intermediate handler and destination facilities. By inspecting a generator facility, the Department will be able to provide guidance to generators in all aspects of the regulated medical waste rules as well as ensuring compliance with the rules. By monitoring intermediate handlers and destination facilities the Department will be able to determine, among other things, whether the regulated medical waste as noted on the tracking form has been received by the proper destination facility.

COMMENT: By registering small generators, New Jersey is going beyond the Federally authorized process.

RESPONSE: Though the Comprehensive Act, specifically N.J.S.A. 13:1E-48.5, requires the Department to adopt the rules and regulations adopted by the USEPA, the Act goes beyond the Federal rules by requiring at N.J.S.A. 13:1E-48.7, that "[e]very generator shall register with the Department . . . and pay an annual fee . . ." Therefore, the generator registration and fee requirements of N.J.A.C. 7:26-3A.8 are authorized by the Comprehensive Act.

There is another major difference between the New Jersey regulated medical waste rules, N.J.A.C. 7:26-3A and the Federal regulations. The Comprehensive Act, specifically N.J.S.A. 13:1E-48.5, requires all generators in New Jersey to comply with the tracking requirements without regard to the quantity of regulated medical waste generated. Therefore, N.J.A.C. 7:26-3A requires generators to track all regulated medical waste transportation regardless of the amount of waste that they generate. The Federal regulations exempt generators of less than 50 pounds per month from the tracking requirements if certain conditions are met.

COMMENT: Doctors cannot be financially responsible for all the medical waste and the problems pertaining thereto. Individuals generate, hospitals generate and garbage haulers may inappropriately dump medical waste. This is a social problem that must be shared by all those concerned and not just carried on the shoulders of the doctors alone.

RESPONSE: The regulated medical waste rules, including the fee provisions, apply to all components of the medical waste community including generators, transporters and intermediate handlers and destination facilities. All generators who generate regulated medical waste, including hospitals, nursing homes, funeral homes and other generators must comply with the applicable sections of the rules and must register and pay fees to the Department. In addition, all transporters, intermediate handlers and destination facilities for regulated medical waste are assessed fees in accordance with the cost of the services the Department provides as is explained in detail in the economic summary of the Emergency Adoption found at 21 N.J.R. 2109(a). The economic summary of the rule proposal sets out the costs associated with the services the Department provides to transporters and intermediate handlers and destination facilities. They are also assessed fees for the services they require pursuant to the Comprehensive Act in N.J.A.C. 7:26-2A.8(b) and (c). Therefore, no one segment of the regulated community pays more than its share of implementing the regulated medical waste program.

COMMENT: Unannounced compliance adult visits will waste the doctors', patients' and inspectors' time and these visits should be scheduled in advance.

RESPONSE: The Department of Health has historically regulated the licensed health care practitioners, for example, hospitals, blood banks, clinics, laboratories and family planning centers, and has traditionally made unannounced regulatory inspections to these facilities.

The Departments recognize that since the offices of private practitioners will lack the support staff normally available at the large facilities for dealing with regulatory officers, prearranged inspections will expedite the site inspection process and minimize inconvenience to the practitioners.

The Department of Environmental Protection and the Department of Health will therefore initially perform most small generator compliance audits on an announced basis, but will conduct at least a portion of the regulatory compliance inspections on an unannounced basis in order to ensure the integrity of the program among the regulated community.

COMMENT: It was unfair and unreasonable for the Department to adopt the regulated medical waste rules with almost no advance notice.

RESPONSE: The Comprehensive Act, which was signed by Governor Kean on March 6, 1989, required that within 30 days of the USEPA's adoption of regulations to implement the Federal Act, the Department in consultation with the Department of Health, was to adopt those rules and regulations adopted by the USEPA. The USEPA regulations were effective June 22, 1989. Therefore, the Department was working within a very stringent time frame to adopt its own rules. In addition, the Comprehensive Act imposed a number of different requirements on the regulated community than did the Federal Act and USEPA rules, such as requiring all generators to track their waste and requiring registration and fees. These requirements made the rule drafting process more complex and, hence, more time consuming.

Further, because of the scope of the regulatory program authorized by the State and Federal legislation, a large number of staff was required for implementation. The Department determined that it needed to quickly develop unifying rules which would reflect the requirements of both the Federal regulations and the State Comprehensive Act and include a fee schedule, as authorized by the Comprehensive Act, which would fund the program.

In order to satisfy the mandates described above, the Department developed these regulated medical waste rules after the Federal regulations were available, and adopted them on an emergency basis pursuant to the procedures set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

COMMENT: It was unfair and unreasonable for the Department to adopt the rules with no practical instructions for those anxious to comply.

RESPONSE: The Department regrets that it was unable to issue instructions and guidance documents for the regulated community at the time that the regulated medical waste rules were adopted on an emergency basis on June 26, 1989. The rules were adopted within a very short timeframe for the reasons stated in the above comment, and addressed many complex issues. Due to the short timeframe for adoption, it was impractical for the Department to issue such instructions prior to rule adoption.

Department staff involved with preparing the New Jersey rules discussed the implementation and specific rule requirements of the USEPA regulations, which were effective June 22, 1989, with the major medical practitioner associations. During the month of June and prior to the emergency adoption of these rules, the Department also conducted several seminars in New Jersey with the USEPA to familiarize the public with the New Jersey rule which incorporates the USEPA rules and regulations as required by the Comprehensive Act. The seminars were attended by private practitioners, transporters and major association representatives. In addition, the Department has a regulated medical waste hotline number, which can be reached at (609) 984-7840, to answer any questions on the regulated medical waste rules. The Department is also in the process of preparing regulated medical waste fact sheets for distribution to the regulated community and several seminars targeted for generators, transporters, intermediate handlers, destination facilities and enforcement personnel are being planned.

COMMENT: Low volume generators also will have to pay a transporter for removal of the medical waste. Transporter charges do not seem to be regulated, and there appears to be nothing to prevent escalation of these charges in the transporters' efforts to cover the heavy registration fees they have to pay.

These costs, inevitably, will be passed on to patients and in view of our attempts to control the rising costs of health care, the regulated medical waste program, as proposed, works contrary to the effort to control health care costs in New Jersey.

RESPONSE: The Comprehensive Act at N.J.S.A. 13:1E-48.7 requires that no person may transport regulated medical waste unless he has obtained a certificate of public convenience and necessity from the Board of Public Utilities. The Comprehensive Act also states that the Board shall not have jurisdiction to set rates for regulated medical waste transporting activities. While the rates for regulated medical waste transporters are not publicly regulated, market forces may act to keep charges from escalating beyond reasonable limits. Over 25 companies have already notified the USEPA and the Department that they intend to enter the regulated medical waste transporting business.

While transporter costs may be passed on to the patients, the Department estimates that the cost for disposal of regulated medical waste will average only approximately $.25 per patient visit to most private practitioners' offices.

COMMENT: Quantitative criteria should be set for the packaging used for medical waste disposal.

RESPONSE: The Department was required by the Comprehensive Act to adopt the Federal USEPA regulations which included the packaging requirements. The USEPA determined that specific packaging standards should not be established until there is evidence during the two year Federal medical waste demonstration program that New Jersey is participating in, indicating that such standards are necessary. The Department will evaluate the need for specific packaging standards during the study period and submit its recommendations to the Governor and Legislature in the comprehensive State regulated medical waste management plan required by the Comprehensive Act.

COMMENT: Most of the medical waste which was found on the ocean and bay shores came from New York, and thus represented a problem which was and is beyond the reach of a New Jersey tracking system.

RESPONSE: Definitive evidence as to the causes of medical waste wash-ups does not exist to conclude that most came from New York. It is known that a complex combination of inadequate trash handling at New York City's marine transfer stations and the Fresh Kills Landfill, combined sewer overflow, dumping from commercial, military and pleasure boating and illegal disposal, all contributed to the problems of the past. The Department adopted these rules pursuant to the authority of the Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq. N.J.S.A. 13:1E-48.2 sets forth the findings made by the Legislature that justify the establishment of a comprehensive management system that, among other things, provides for the proper and safe tracking of regulated medical waste.

New Jersey has also agreed to participate in the Federal two year regulated medical waste demonstration program found at 54 Federal Register 12326, 40 CFR Part 259, which was authorized by the Medical Waste Tracking Act of 1988, 42 USC 6903 et seq. New York, as well as Connecticut and Rhode Island, is also participating in the demonstration program.

The New Jersey tracking system is part of the uniform tracking system established by the USEPA as a means of tracking medical waste from point of generation to point of disposal, even when it crosses state lines.

Arguably, even if most of the medical waste found in New Jersey's ocean and bay shores came from New York, the problem is not beyond the reach of a New Jersey tracking system because it is part of the uniform tracking system discussed above.

Furthermore, during the two year demonstration program, the USEPA will collect information, to be shared with the Department, on the scope of the medical waste problem, the usefulness of the tracking system in solving the problem, and the availability of other effective solutions. This information will be presented to Congress.

In addition, the Departments of Environmental Protection and Health will also be gathering data on the effectiveness of the tracking system and making recommendations to the Governor and Legislature in the comprehensive regulated medical waste management plan on the most sanitary, efficient, and economical methods, for the tracking, identification, packaging, storage, control, monitoring, handling, collection, and disposal of regulated medical waste.

COMMENT: While agreeing that the transporter plays the pivotal role in the disposal process, the commenters think it's overkill for the State to charge these companies such astronomical fees, particularly in view of the regulatory work already being done at EPA. Why should New Jersey charge $5,500 when Pennsylvania charges only $200.00 to register a transporter? These fees will only be passed back to generators.

RESPONSE: The registration fee for regulated medical waste transporters, which is listed in N.J.A.C. 7:26-3A.8, is $3,957. Regulated medical waste is also a solid waste and therefore a regulated medical waste transporter is also subject to the solid waste rules found in N.J.A.C. 7:26. The $5,517 fee cited in the regulatory flexibility statement of the rules proposed at 21 N.J.R. 2114 represents the projected aggregate that a regulated medical waste transporter company with two key employees and three vans would have to pay if they were not previously registered as solid waste transporters. They would be required to pay fees according to the following breakdown: N.J.A.C. 7:26-4.4 provides for a fee of $120.00 for each single-unit vehicle, which includes vans, for a total fee of $360.00 for the three vans; the licensing requirements of N.J.A.C. 7:26-16 require a $1,200 fee for background investigations of two key employees and N.J.A.C. 7:26-3A.8 provides for a $3,957 transporter registration fee.

If a transporter has already registered his vehicles as solid waste vehicles and is licensed in accordance with N.J.A.C. 7:26-16, then the total fee for regulated medical waste registration would be $3,957. Note that the

Department, at 21 N.J.R. 2275(a), is proposing to change the fee requirements for licensing under N.J.A.C. 7:26-16.

The regulated medical waste transporter registration fee includes the Department's costs for education, advisement and facility auditing of the transporter's facility four times per year. The Department does not believe these costs are excessive but instead are directly related to important and necessary services the Department will be providing pursuant to the Comprehensive Act.

The Department expects these fees to be passed on to clients of transporters. Based upon the amount of regulated medical waste presently being generated in New Jersey, the Department estimates the cost of its regulated medical waste transporter registration program to be approximately 1.3 cents per pound of waste.

The USEPA's enforcement program is separate from the Department's program. While the USEPA and the Department will coordinate site inspection efforts, it is likely that the USEPA will conduct many of its own site inspections. Consequently, the regulatory work already being done by the USEPA does not impact on the regulatory program to be implemented by the Departments of Environmental Protection and Health and, therefore, would have no impact on the Department's fees. The Department is not familiar with Pennsylvania's funding source and programmatic requirements and therefore cannot say why they charge $200.00 to register a transporter.

COMMENT: Medical waste accounts for less than one percent of solid waste generated in New Jersey each day. However, the $6 million in fees planned for the medical waste program is 50 percent larger than the $4 million in fees recently approved by the New Jersey Department of Environmental Protection to fund the solid waste program. In comparison, the fee schedule adopted in January 1989 for the hazardous waste program is expected to generate $3 million in revenues.

RESPONSE: The Division's fees for generators are computed on a sliding scale based upon the amount of regulated medical waste generated and the services required for each respective generator category. Fees for transporters and intermediate handlers and destination facilities of regulated medical waste are assessed at the cost to the Department of performing services for them which are required under the Comprehensive Act. Costs for administering a program are not necessarily related to the relative abundance of a regulated substance but, rather, are in proportion to the extent of the regulatory program required to carry out the intent of the Legislature in the enabling laws it enacts. In the case of the Comprehensive Act, the Legislature recognized that regulated medical waste, which comprises less than one percent of solid waste generated in the State, presented both an actual and perceived risk to human health, and further presented an aesthetic, environmental and health risk problem when disposed of improperly. In fact, the Comprehensive Act requires the Department to regulate medical waste in specified ways, for example, by requiring tracking of the waste and registration of generators, transporters and disposal facilities.

The $4 million in fees recently implemented to fund the solid waste regulatory programs represent only approximately 30 percent of the Division of Solid Waste Management's solid waste program costs. The remaining program costs could not be collected from service fees because at the time of the solid and hazardous waste fee rule proposals and adoptions there was a statutory cap of $500.00 on the amount the Department could assess for services. Historically, much of the revenue to pay for program services came from general tax revenues in the form of appropriations to the Department. However, in recent years the Legislature has communicated to the Department that program funding should come more from fee based programs rather than appropriations. P.L. 1989, c.34 removed the $500.00 cap, thereby paving the way for the Department to increase the fees in the solid and hazardous waste programs to more fully cover its costs to provide services to implement those programs.

COMMENT: A number of the costs included in the program budget are questionable at best. For example, the budget for NJDEP provides for the sum of $16,295 per person for postage, telephone, travel and supplies each year. In comparison, the budget for the solid waste program provides for $7,661 per person for the same purpose. In order to spend this amount of money, each NJDEP staff member would have to send 45 letters per day, spend five hours per each day on the telephone to Cape May, travel 10 miles per day, and buy the following supplies: 1600 legal pads, 33,500 paper clips, 560 boxes of staples, 345 rolls of tape and more than 980 pens.

RESPONSE: The operating costs for the regulated medical waste program were constructed from a thorough workload analysis to include all of the necessary start-up costs as well as the normal annual operating costs for an established program. These operating costs were outlined in the summary of the rule proposal. For example, the difference in operating costs between the regulated medical waste and solid waste programs includes a one time start-up cost of $200,000 in additional funding for data processing, $12,000 for tracking forms, $150,000 for contractor evaluation of medical waste disposal technologies and $50,000 for printing the final state plan.

Annual operating costs were included, such as charges for postage, telephone, automobiles, miscellaneous supplies, medical surveillance program, travel, building space, supplies, maintenance, and miscellaneous. Additionally, $400,000 for furniture was listed separately in the summary as a one-time charge because of its significance in proportion to other charges.

The Department has determined that its estimate of annual operating costs of $7,661 for the solid waste program was too low to cover the costs the Department is presently incurring for that program. The operating costs of the solid waste program would be increased significantly if they were evaluated at this time.

COMMENT: One commenter said the $6,061 included per staff person in yearly costs to provide furniture and equipment is suspect.

RESPONSE: The Department projected the expenses for furniture and equipment for the staff persons assigned to the Department based upon recent experience within the Solid Waste Program with starting up a new central field office. The furniture and equipment costs for the field office were approximately $6,000 per person.

The Department listed furniture and equipment separately in the economic summary because of the fact that this is a significant one-time program start-up expense which the Department will not charge in future years.

COMMENT: Conservative assumptions yield average waste generation rates of 50,650 and 20,000 pounds per year for categories 1, 2, and 3, respectively. In effect, over 80 percent of the program costs are currently distributed to generator category 1, which contributes less than five percent of the regulated medical waste stream. This distribution of fees is in direct conflict with the Act and must be remedied.

RESPONSE: The Comprehensive Act, specifically N.J.S.A. 13:1E-48.7, requires the Department to ". . . set annual fees in accordance with a sliding scale based upon the volume of the regulated medical waste produced by the generator." The sliding scale is not an aggregate sliding scale but is based on the volume of regulated medical waste produced by each generator. The Comprehensive Act did not prescribe any set mathematical formula for determining the sliding scale; the only qualification was that it be based on the amount of waste generated.

Though private practitioners may generate a small amount of waste when compared to hospitals, the Comprehensive Act still requires that they properly track their waste. To determine whether the regulated medical waste has been properly tracked, labeled, segregated, stored and marked requires the Department to conduct site compliance monitoring at all generator sites. Therefore, most services that the Department will be performing for hospitals will also need to be performed at small generator sites. However, since small generators produce less waste they will require less time for compliance monitoring which is estimated at four hours, while for hospitals it is estimated that compliance monitoring will take 12 hours. Therefore, the small generators' fee is less than larger generators.

COMMENT: Several commenters believe that the small generator fee (Category 1) that has been adopted is excessive and is based on inaccurate and incomplete data.

They question the mathematics that can take a potential universe of 42,000 private practitioners and, based on only 4,481 responses to the 1988 Summary Reports, determine that there will be 6,777 private practitioner generators.

A comment was made that other than the Department's projection that, "approximately 40 percent more private practitioners will register under this more comprehensive rule," the Department does not explain how, based on incomplete data, it arrived at any of these figures, nor does it explain how it was determined that 40 percent more practitioners will comply. Additionally, the commenter stated that while it was not specified in the rules, DEP officials have also publicly stated that much of the information contained in those Summary Reports was inaccurate and illegible.

RESPONSE: The Department collected data from various sources to attempt to estimate the size of the actual practicing medical community. Mailing lists were obtained from the Department of Labor, Department of Health, Department of Education and the Department of Law and Public Safety. These lists of medical practitioners, laboratories, schools,

clinics and other entities which might possibly generate medical waste totaled over 40,000 entities, which has become known as the potential small generator list. The Department conducted a mailing to all of these entities in 1988 to inform potential generators of the Department's medical waste rules which became effective in August 1988. One of the requirements of the rules was that all generators of medical waste would submit a one month, one-time summary of their waste generating activity to the Department. While over 90 percent of the known licensed health care facilities filed summary reports, only approximately 5,000 out of 40,000, or 12 percent of the potential small generators filed summary reports with the Department. The Department projected that perhaps another 40 percent of the small generators may eventually register under the new rules based upon general information obtained from the Department of Health and various medical association representatives, and based upon the fact that the new rules are more comprehensive than the August 1988 rules and would apply to more entities. Additionally, the Department's experience with regulatory programs is that any regulatory program increases its registrant base with time as it becomes established and better known in the regulated community.

The Department admits that the 6,779 private practitioners expected to register in 1989 is only an estimate and that the actual number to register may be more or less than this estimate.

Various factors influence the size of the generator fee, the least important of which is the magnitude of the generator universe. Nearly all of the program costs outlined in the rule proposal summary for Department activities such as compliance monitoring, registration, report analysis, legal support services, administrative support, clerical and supervisory services will increase in direct proportion to the size of the regulated community. The Department will incur additional specific workloads for these activities for each additional generator. Only costs for activities in the workload assessment such as waste flow determination, waste reduction analysis and data management services would remain relatively constant regardless of the size of the regulated community. Since most of the Department's major workload activities which must be applied to each generator, increase with each additional generator, fluctuations in the size of the regulated community cause the Department's aggregate costs to increase, while the fees charged to each generator would remain relatively constant.

Thus, the accuracy of the information concerning the size of the regulated community which the Department used to project the magnitude of the medical waste program is not the critical factor in determining individual generator fees. Rather, fees are based upon the Department's cost for services to each generator as outlined in the rule proposal summary.

COMMENT: Can it conceivabley cost more for government to regulate a small segment of the regulated medical waste generating community than it costs the industry to regulate an industry group itself?

RESPONSE: The Department costs as outlined in the summary of the rule proposal contain expenses for many different program components such as compliance inspections, education, enforcement, legal support, administrative services, report analysis and waste flow planning. Without performing a detailed cost and workload comparison, the costs for these program functions cannot be readily compared with private industrial oversight agencies. Further, it is not necessary for the Department to do this in order to justify its own program requirements.

COMMENT: The NJDEP calculates that it will average four hours to audit a small generator, who will typically have a single exam room, a single sharps container, and a file for his logs and manifests. However, the NJDEP calcuates it will only take 12 hours to audit a 3,000 bed hospital, with multiple surgeries, records, etc. Yet, the NJDEP calculates that it is fair to charge a solo practitioner $528.50 annually for being regulated, while a large hospital will be charged $845.78.

RESPONSE: The basic four hour audit includes the time required to draft and file compliance monitoring reports, any notice of violation write-ups and case management operations of violations which require follow-up activities such as reinspections, court appearances, case history briefs and preparation.

The Department estimates that all of these activities will require four hours for an average facility generating less than 300 pounds of regulated medical waste per year. These estimates are based on the Department of Environmental Protection's and the Department of Health's projections of the tasks necessary to perform regulatory compliance inspections at various types of facilities including medical waste facilities. The actual time spent at the hospitals and other larger generator's facilities will be about three times that spent at the small generator facilities during the four hour inspections. The 12 hour compliance monitoring involves inspecting rooms in a hospital, but most of the inspection will be concentrated in the waste collection area in order to monitor regulated medical waste segregation, packaging, storage and to audit all reports, logs and tracking forms. The Department maintains that no more than 12 hours is required to monitor the larger generating hospitals at this time.

The audit periods for all generator categories will be reviewed during the study period required by N.J.S.A. 13:1E-48.13 of the Comprehensive Act. In the future, if needed, the Department will adjust the amount of time required for generator audits for all or some generator categories to ensure adequate regulatory compliance.

Since a large component of the generator's fee is related to compliance monitoring, increases or decreases in the Department's compliance monitoring activities would directly effect fees charged to generators.

COMMENT: Due to the severe liability provisions to generators in the Act, one commenter is concerned over consolidation of medical waste. If a transporter consolidates a load, he should effectively become the generator, and the original generator should be relieved of further tracking of the waste.

The rules place great responsibility on generators to track their waste to its final destination. Once a generator's medical waste is consolidated with other shipments, it becomes most difficult for a generator to know if his portion of the consolidated shipment is properly handled. If the liability provisions were not so severe, this would not be as important an issue. Consequently, if a transporter consolidates a load, the transporter has created a separate load, and as such is now the generator of that load.

RESPONSE: The transporter consolidation section of the rules, N.J.A.C. 7:23-3A.33, was adopted directly from the USEPA regulations, specifically 40 CFR Section 259.76, as was required by the Comprehensive Act at N.J.S.A. 13:1E-48.5. In the USEPA's analysis of the rule concerning consolidation of a regulated medical waste found in the March 24, 1989 Federal Register 54 FR 12355, the USEPA specifically stated that "Remanifesting [consolidation] is done to condense information from the tracking forms of many small shipments onto a new tracking form so that owners or operators of destination facilities need not sign an overwhelming large number of individual tracking forms. USEPA believes the approach described here will reduce a potentially overwhelming paperwork burden on destination facilities while still meeting the RCRA section 11003(a)(2) statutory objective of providing the generator of the waste with assurance that the waste is received by the destination facility." Clearly the intent was not to relieve generators of responsibility for their regulated medical waste.

N.J.A.C. 7:26-3A.33 sets forth the procedures that a transporter must follow for consolidation of regulated medical waste. It requires that the original generator receive both the transporter initiated tracking form which is signed by the destination facility and the generator's original tracking form, thus allowing the generator to know that his shipment was received by the destination facility.

COMMENT: What is the application of the definition of regulated medical waste to vaccine vials (for use in animals)? The Federal rule definition is explicit in discussing biologicals, stating at 54 Federal Register 12340 under the discussion of Cultures and Stocks, "agents that cause disease in non-human animals, but not in humans, are not covered under this class; however, agents that cause disease in both humans and non-human animals are covered. The main concern with this class is potential hazard to human health."

As the NJDEP definition is identical to the Federal definition, is the intent of the NJDEP to also follow the Federal interpretation of this class?

RESPONSE: The Comprehensive Act requires the Department to adopt the rules and regulations adopted by the USEPA which includes the definitions. The Department concurs with USEPA's interpretation that the waste class "cultures and stocks" shall only refer to vials which have contained agents that cause disease in humans. Vaccine vials which have contained agents only infectious to non-human animals shall not be considered regulated medical waste for the purpose of these rules.

COMMENT: Home self-care is defined in the proposed rules as ". . . the provision of medical care in the home setting (for example, private residence) through either self-administration practices or by a family member or other person who does not receive monetary compensation for their services." It is uncertain whether this exemption covers farmers who treat their own livestock.

Are farmers considered to be practicing home self-care in the treatment of their own animals?

RESPONSE: The definition of home self-care in thse rules refers only to self-care administered in the home to another person, either through self-administration or by a family member or other person not receiving

monetary compensation. The term "home self-care" does not refer to the administration of treatment to animlas such as livestock. Therefore, the home self-care exemption does not apply to farmer's or rancher's treatment of their own livestock. This position is also consistent with the USEPA's position, which does not grant a household exclusion for treatment of animals.

COMMENT: It is unclear how mobile/housecall, veterinary practitioners are classified. It appears that mobile practitioners are exempt from registering as a transporter under N.J.A.C. 7:26-3A.17; however, it is unclear how they are to package, label, transport and log any regulated medical waste generated at their various stops.

Mobile veterinary practitioners typically operate from a central facility, and service a daily route of clients. They may or may not generate regulated medical waste at a client, depending on what services are rendered. At the end of their route, they generally go back to their central facility.

RESPONSE: The individual mobile/housecall practitioner who operates according to the above fact situation and who is employed by a central facility is not required to register as a generator. However, this is the case only where the central facility, that is, entity that employs the individual mobile/housecall practitioner, is registered with the Department as a generator pursuant to N.J.A.C. 7:26-3A.8. In addition, the central facility assumes all responsibility as a generator for the regulated medical waste collected by the individual mobile/housecall practitioner.

The Department's rationale is that the provision of health services by the individual mobile/housecall practitioner at remote sites is an extension of the central facility's base of operations and so long as the central facility is registered as a generator, there is no need to duplicate the registration by requiring the individual mobile/housecall practitioner to also register.

Further, the mobile/housecall practitioner is not required to track the regulated medical waste until after it reaches the central facility because the waste is not being released by a generator to a transporter but rather the waste is being released to the central facility which is the generator. However, as stated above, the central office must assume the generator responsibility of that waste and is required to comply with all the generator requirements including segregation, packaging, storing, labeling, marking and tracking of the regulated medical waste.

Moreover, the individual mobile/housecall practitioner is not a transporter because they are not transporting the regulated medical waste offsite but rather are transporting the waste to the central facility. Therefore, pursuant to N.J.A.C. 7:26-3A.27(b), they are exempt from transporter requirements.

COMMENT: Home health care nurses are exempt from the medical waste rules' requirements for transporters since each home health care nurse will transport less than three cubic feet of regulated medical waste per month from the patients' homes to the central office of their company. However, it appears equally clear that under the definition in the rules that home care nurses are generators. They are generators who will take regulated medical waste products from the home of the paitent to the central office for disposal. The central office of the company is also a generator in accordance with the definition in the rules.

Further, individual home health care nurses should be exempt from the provisions of N.J.A.C. 7:26-3A.19(e). This subsection requires generators who transport less than three cubic feet of regulated medical waste per month to complete tracking forms.

Further, home health care nurses should be exempt from the fee requirements of N.J.A.C 7:26-3A.8.

RESPONSE: The fact situation presented by this commenter is indistinguishable from the situation presented above by the individual mobile/housecall practitioner. Therefore, the response given to individual mobile/housecall practitioners also applies to home health care nurses.

COMMENT: The Department of Environmental Protection should require practitioners to submit proof of disposal and then pay a smaller fee.

RESPONSE: The Department was obligated by the State Comprehensive Act to adopt the rules and regulations adopted by the USEPA. These rules, N.J.A.C. 7:26-3A, therefore follow the USEPA's tracking form system which does not require a copy of the tracking form to be returned to the Department by the generator or the disposal facility, as proof of receipt by a disposal facility.

Further, assuming the Department was at liberty to adopt such a system, the data gathered on such forms is useless unless the Department creates a large staff to manage and enter the data into a computer, and analyze the tracking form information. The cost of processing a projected one half million tracking forms per year would add significantly to the cost of the regulated medical waste program and thereby increase the fees for generators.

Instead, an annual generator compliance program, namely through audits, is critical to the success of New Jersey's regulated medical waste program particularly through educating the regulated community and auditing of disposal records. Both a comprehensive generator inspection program and a tracking form data analysis system are not warranted at this time by the nature of the regulated medical waste problem. The Department may review the need for such a system during the study period and make recommendations to the Governor and the Legislature.

COMMENT: One commenter asked why the Department is proposing to charge all physicians for disposal of medical wastes. The medical waste produced by a practitioner of preventive medicine and psychiatry consists of approximately 20 boxes of somewhat moist facial tissues each year. How is this proposal appropriate for this practice?

RESPONSE: Facial tissues are not medical waste as defined at N.J.A.C. 7:26-3A.6 unless they are generated in the diagnosis, treatment or immunization of humans or animals which either are or were soaked and/or dripping with "human blood and blood products" per waste Class 3, or could be considered "isolation waste", per waste Class 6.

The Department is not proposing to charge all physicians for the disposal of medical waste. The rules require persons who generate regulated medical wastes as defined at N.J.A.C. 7:26-3A.6 to comply with the regulated medical waste rules which include, among other things, segregation, storage, labeling, tracking, packaging, registration and fee requirements. If a medical practice generates no regulated medical waste, they are not required to register with the Department as a regulated medical waste generator.

COMMENT: Please note that regarding N.J.A.C. 7:26-3A.8(c)3, according to the commenter's local regulations, body fluids or blood or blood products cannot be disposed of in the sanitary sewer system unless they are disinfected. Perhaps it would clear up this ambiguity by saying, "3. Persons who only dispose of regulated medical waste that they generate by placing *disinfected* body fluids, *disinfected* blood or *disinfected* blood products . . . "

RESPONSE: The USEPA has not determined a need for blood and body fluids to be disinfected before being disposed of into the sanitary sewer system and did not prescribe such treatment in their regulations adopted March 22, 1989. The Comprehensive Regulated Medical Waste Management Act, at N.J.S.A. 13:1E-48.5, required the Departments of Environmental Protection and Health to adopt the USEPA rules and regulations. The Department of Environmental Protection and Health do not envision a need at this time to require disinfection of blood or body fluids disposed of in a sanitary sewer system.

Furthermore, local regulations may differ on the requirements for treatment of waste prior to being disposed of in a sanitary sewer system, so to place the suggested changes in the rules would act to supersede their local regulations.

COMMENT: Regulated waste generators should be required to notify sewage treatment plants if they are intending to dispose of waste through the sewers. Information on the quantity, treatment (to reduce hazard of disease) and destruction (to reduce size) of the regulated medical waste should be required to be sent to the sewage treatment plant administrators. Waste should be treated so as to substantially reduce or eliminate its potential for causing disease, and should be less than 20 millimeters (mm) in size before it is allowed to be disposed of through the sewer.

RESPONSE: The Department is not prepared at this time to either require all disposers of blood and body fluids to pre-notify the utilities authority of disposal to the sanitary sewer system or require size reduction to less than 20 mm for each waste. The USEPA did not address those issues in its regulations and the Department was required to adopt the USEPA regulations pursuant to the Comprehensive Act.

The Department will consider this issue during the study period required by the Comprehensive Act at N.J.S.A. 13:1E-48.13.

COMMENT: Generators who produce less than three cubic yards of regulated hospital waste might be tempted to illegally dispose of the waste through the sewer system, thereby avoiding all tracking systems. Regulations should consider generators. This might include changing N.J.A.C. 7:26-3A.17(a) to read, " . . . who transport only their own regulated medical waste to a *registered* generator for storage or disposal . . . "

RESPONSE: The suggested amendment adding "registered" to the term "generator" at N.J.A.C. 7:26-3A.17(a) is not necessary because all regulated medical waste generators are required to be registered with the Department.

COMMENT: Several commenters suggested that sewerage facilities should be notified before regulated medical waste is disposed of into those

facilities' systems and further, that the Department amend N.J.A.C. 7:26-3A.21(g) to state that all generators of regulated medical wastes shall submit annual generator reports to the Department and all concerned sewerage disposal authorities.

RESPONSE: The Department recognizes the fact that regulated medical waste generators have historically disposed of blood and body fluids into the sanitary sewer systems without prior notification. However, any regulated medical waste disposed of into the sanitary sewer system must be in compliance with all applicable Federal, State, county and local statutes, rules and ordinances as stated at N.J.A.C. 7:26-3A.16(b). Notifying the concerned sewerage authority would place an additional burden on the generators and does not appear necessary. The Department does not have evidence or data at this time which would indicate the necessity of notification being sent to sewerage facilities prior to discharge to sewerage systems, or for each generator sending annual reports to their sewerage authority.

The data collected by the Department in the annual reports is considered public information and will be made available to the public, including all concerned disposal authorities.

Because of the growing concerns about the disposal of these wastes, the Department will evaluate this request, especially concerning large generators of blood, blood products, or body fluids, during the study period required by the Comprehensive Act for possible future implementation.

COMMENT: One commenter suggested that mucous membrane secretions be added to the definition of body fluids at N.J.A.C. 7:26-3A.5.

RESPONSE: The State Comprehensive Act required the Department to adopt the medical waste rules and regulations adopted by the USEPA. The definition of "body fluids" at N.J.A.C. 7:26-3A.5 was adopted directly from the Federal regulation at 40 CFR Section 259.10 and did not include all mucous membrane secretions.

Additionally, Center for Disease Control (CDC) guidelines dealing with universal precautions for the prevention of transmission of HIV, HBV and other blood borne pathogens do not consider all mucous membrane secretions a concern.

COMMENT: A commenter requested that N.J.A.C. 7:26-3A.16(c) be amended to read, ". . . vessels which improperly dispose of waste while underway will be subject to federal and interstate commerce laws."

RESPONSE: The Comprehensive Act required the Department to adopt the rules and regulations adopted by the USEPA. The USEPA regulations concerning vessels transporting regulated medical waste is found at 40 CFR Section 259.50(d). This is concerned with the proper and safe tracking and disposal of all regulated medical waste. Disposing of medical waste into the ocean is not proper disposal and therefore would be a violation of a number of State and Federal laws, depending on where the violation occurred. To cite each possible law that might be violated is beyond the scope of these rules, so the requested language has not been added.

COMMENT: The summary which precedes the proposed new rules states that regulated medical waste which has been treated can be taken to any transfer station or sanitary landfill in New Jersey as long as these facilities are permitted by the Department and the permit for the facility allows for the acceptance of regulated medical waste. The position of the Department in its August 1988 medical waste rule at 20 N.J.R. 2670(a) regarding acceptance of medical waste at transfer stations shall be discontinued.

Does this paragraph mean that transfer stations may now accept treated medical waste without amendment to their Master Performance Permit or is more required? If more is required, please send a copy of the law, rule or regulation which directs the comments.

RESPONSE: The Division of Solid Waste Management (Division) will consider applications to amend existing solid waste facility permits to allow facilities to accept treated regulated medical waste, through the modification procedure set forth at N.J.A.C. 7:26-2.6. This procedure involves the facility submitting a written request to the Division of Solid Waste Management, Bureau of Small Facility Review to modify its permit to accept regulated medical waste.The Department will review the request and notify the facility of its intention to amend or deny the request. Submitting the following information will aid the Department in its review:

1. A description of existing permitted waste types;
2. A detailed description of the regulated medical waste class quantity to be added;
3. Identification of any modifications to the facility's operational processes to accommodate the additional medical waste classes requested;
4. A detailed description of any potential negative environmental impact which was not addressed in the facility's original permit;
5. A description of whether the added class of regulated medical waste will exceed the facility's approved capacity; and
6. The present daily capacity of the facility and the estimated daily volume of treated regulated medical waste to be accepted, and the facility's approved capacity.

COMMENT: The commenter perceives a problem in its ability to accept untreated medical waste which has been properly boxed and packaged in accordance with these rules. If a licensed transfer station cannot accept this untreated waste from a transporter, than who should?

RESPONSE: The Comprehensive Act, specifically N.J.S.A. 13:1E-48.6, prohibits untreated regulated medical waste from being disposed of in a sanitary landfill. To further minimize the possibility of harm to the handlers in other areas of the waste management industry, the Department is also allowing transfer stations to accept only treated regulated medical waste.

The Department's reasoning regarding the receipt of only treated regulated medical waste at transfer stations and sanitary landfills is consistent because in both situations, existing waste material handling practices and facility design were not intended to protect persons from transmission of infectious agents, therefore, persons could possibly be exposed to potentially infectious waste if the waste were untreated and mishandled.

In addition, the Comprehensive Act at N.J.S.A. 13:1E-48.5, requires the Department to adopt the rules and regulations adopted by the USEPA. The USEPA's packaging regulation at 40 CFR Section 259.41 was adopted by the Department at N.J.A.C. 7:26-3A.11. The Comprehensive Act's requirement to adopt USEPA regulations, in combination with the Act's prohibition of untreated regulated medical waste being disposed of in sanitary landfills, means that even if regulated medical waste is properly packaged it must still be treated before being transported to sanitary landfills and to transfer stations.

The Department will review this policy during the study period required by the Comprehensive Act in view of technical data to be gathered concerning the risks posed by the waste, the Department of Health's recommendations, and waste flow considerations.

Untreated regulated medical waste may be taken for storage, treatment, destruction or disposal to any registered intermediate handler or destination facility in New Jersey or any out-of-State facility properly permitted by state, Federal and local authorities to accept such wastes.

COMMENT: It appears that the rules prohibit a transporter from removing regulated medical waste from one vehicle to another (for example, from a van to a trailer). If transfer stations are not allowed to move medical waste from one vehicle to another and the transporter cannot perform this task, how does the work get accomplished?

The commenter also suggests that a number of facilities be allowed throughout the State on a regional basis, where the only permitted activity be the logging and transferring of medical waste from smaller to larger trucks licensed to take said waste to the proper disposal site. Some provision for storage should be included. A name such as "medical waste depot" or similar name might be assigned, to this type of facility. The advantage again is that the DEP has a method of policing these activities.

RESPONSE: These rules do not prohibit the removal of regulated medical waste from one vehicle to another vehicle. An operation transferring regulated medical waste from one vehicle to another (vans to trailers) is considered a transfer station and must be permitted by the Department to accept regulated medical waste. The permitting and registration requirements of the Solid Waste Management Act are found at N.J.A.C. 7:26-2, 2A, 2B, 16, and 16A.

In addition to permitting and registration requirements, it is necessary for a transfer station facility to be included in the approved District Solid Waste Management Plan of the district within which the facility is located. This process requires a formal resolution, following a public hearing by the respective board of chosen freeholders, and review and approval (certification) by the Commissioner of the State Department of Environmental Protection (DEP). Evidence of inclusion of the facility in the district's Solid Waste Management plan must be submitted as part of the permit application.

Should it be decided that the facility will accept regulated medical waste from sources outside of the county within which it is to be located, an interdistrict agreement between the boards of chosen freeholders of the sending and receiving counties is required under the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

It may also be necessary for the transporter to obtain a Certificate of Public Convenience and Necessity from the New Jersey Board of Public

Utilities, which sets tariff rates for solid waste facilities which operate on a commercial basis in the State of New Jersey.

It should also be noted that additional permits may be required. Applicants should complete a CP#1 form and contact the Department's Permitting Division at (609) 292-5196 for further information on this issue.

Further, the regulated medical waste to be accepted at the facility must be treated regulated medical waste, since untreated regulated medical waste is precluded from being taken to transfer stations by N.J.A.C. 7:26-3A.18.

COMMENT: Allowing fees to increase up to 10 percent per year without a public hearing is unconstitutional.

RESPONSE: The Department disagrees that the fee increase mechanism found at N.J.A.C. 7:26-3A.8 is unconstitutional. The requirements of due process have been met by allowing the public to comment, at this time, on the mechanism described above to increase fees by 10 percent or less without the need for additional public notice. The Department maintains that the maximum allowable fee increase, without additional notice, of 10 percent is not unreasonable and that the public comment period for the concurrent proposal of the rule provided adequate notice and opportunity for comment on the mechanism itself.

The Department will prepare an annual fee schedule report of regulated medical waste fees, in accordance with the requirement of N.J.A.C. 7:26-3A.8, which shall include, among other things, a detailed financial statement showing the estimated budget for the regulated medical waste program for the forthcoming fiscal year. The annual fee schedule report shall also include a detailed financial statement of the previous year's actual expenditures.

In addition, N.J.A.C. 7:26-3A.8(g) requires that a synopsis of the annual fee schedule report be published in the New Jersey Register, DEP Bulletin, and several newspapers of general circulation. N.J.A.C. 7:26-3A.8(h) provides that the fee schedule report is available by submitting a request to the Department.

COMMENT: One commenter asked if "certificate of mailing" documents could be used instead of certified mail "return receipts" for shipments of regulated medical waste through the U.S. Postal Service. This would result in a saving of $1.50 per shipment to the generator.

RESPONSE: To the Department's knowledge, the USEPA has not evaluated this option, and has not formally adopted it into their regulated medical waste regulations. Since the Department is required by the Comprehensive Act to adopt the USEPA regulations identically, it is precluded from incorporating such a proposal into the rules unless the USEPA has adopted it.

The Department will evaluate the ability of this method of mailing to effectively document U.S. postal shipments during the study period required by the Comprehensive Act.

COMMENT: One commenter asked if the Department of Environmental Protection must spend $68,000 per year and the Department of Health $57,000 per year for each staff person.

RESPONSE: These costs were computed by adding the costs of the salaries for the individual positions required in the program, adding 34.21 percent for fringe benefits, and 32.70 percent for indirect costs to compute the total position cost. To those values, the Department added its operating costs, on a per position basis.

These costs, when loaded with fringe benefits and indirect charges and operating expenses, are similar to staff costs both in State government and private industry. In addition, since this is a new program within the Division of Solid Waste, start-up costs make the cost per each staff person somewhat higher than it would have been if the program was already set up, although these initial start-up costs will not be repeated as part of the fee in subsequent years.

COMMENT: Many commenters recommended that the Department establish more regulated medical waste generator categories and that the thresholds for waste generators should be adjusted. For example, why cap the lowest category at 300 pounds, when so many practitioners generate as little as 100 pounds a year?

RESPONSE: The Department established the fee schedule waste categories based upon two premises. First, the Comprehensive Regulated Medical Waste Management Act required the Department to establish a sliding scale based upon the volume of regulated medical waste generated, and second, the Department determined that small generators would require less inspection time than the larger generators with more complex facilities which would require a more extensive compliance inspection. The Department integrated these two concepts to yield a fee system which allocates the program's costs throughout the generating community and importantly, which meets the Department's regulatory compliance inspection standards for the regulated medical waste program.

Before establishing the sliding scale schedule, the Department analyzed the compliance system's main variable component-inspection-time as it would apply to generators of various quantities of regulated medical waste. The Department reasoned that the inspection time for the majority of generators' facilities would most likely be the same, since the same regulatory requirements would be reviewed at each facility regardless of the amounts generated under approximately 300 pounds. Thus, there are no smaller categories within the small generator category. Likewise, the Department reasoned that all generators within the large and intermediate generator categories would require the same period of time for inspection. The Department determined that four staff hours, which includes office follow-up time, and other workload allowances would be required to inspect each small generator facility; eight hours for intermediate generators; and 12 hours for large generators.

To determine the breakpoints for the quantity of generation categories, the Department first reviewed the data obtained from the summary reports submitted by the generators of special medical waste as required by the rules adopted at N.J.A.C. 7:26-3A by the Department in August 1988. This data revealed two main categories of generation. Small generators generally produced less than 100 pounds per year and larger generators more than 1,000 pounds with only a few generators, approximately 100, producing between 100 to 1000 pounds of waste. This data provided the Department with the basic generating profile necessary to establish a functional sliding scale schedule.

To define the actual limits of the sliding scale categories, the Department reasoned that the effects of the new definition of regulated medical waste at N.J.A.C. 7:26-3A.6 and the effect of more accurate regulated medical waste classifications provided in the new definition on the actual amount of waste being generated, were unknown factors but would probably result in more regulated medical waste being generated. The Department wanted to minimize the shifting of generators from one category to another because of the effects of these variables, or the effect of nominal changes in the level of business done at a generator's facility. By setting the limit at the elevated figure of 300 pounds, an amount well outside of the small generator generation limit, additional amounts of regulated medical waste generated due to the new definition of regulated medical waste, or changes in business levels, would not be likely to shift the small generators into the next higher category and cause them to pay higher fees.

Minimizing the likelihood of shifts between categories by establishing categories with generation ranges outside of normal generation boundaries results in a program with more predictable workload assessments and revenues. If the Department had set the limit at 100 pounds as suggested, many generators who previously generated less than 100 pounds would be likely to generate more than 100 pounds of regulated medical waste because the definition of medical waste was changed in these rules, thereby expanding the scope of waste regulated. This expanded scope could act to push generators who were previously generating below 100 pounds of medical waste into the generator category of over 100 pounds of regulated medical waste. By setting the upper generation limit as high as 300 pounds, the Department has established a schedule with a category limit which will be able to survive minor regulated medical waste definition modifications, small fluctuations in generator business activity and further, which will satisfy the Department's standards for effective compliance monitoring.

The Department will be evaluating the category limits during the course of the study period, specifically assessing the need for a de minimis category, or the addition of another category below 300 pounds based on the data the Department receives and the effectiveness of its compliance inspections. The Department will make any justified fee schedule modifications in future rule amendments.

COMMENT: It does not appear from the program budget that compliance monitoring is planned for intermediate handlers and medical waste destination facilities. This is where the potential for illegal disposal exists, in the transport and disposal process, not at the point of generation.

RESPONSE: It has not been established that intermediate handlers and destination facilities are the major source of the illegal medical waste disposal problem. The Department is uncertain of the numbers and types of facilities that are treating and/or destroying regulated medical waste. Adequate information was not available for the Department to estimate what its cost would be for compliance monitoring inspections for these facilities and handlers. The Department will be monitoring the facilities and handlers.

COMMENT: One commenter asked why the focus of the Department's program is on generators and not transporters.

RESPONSE: The Department maintains that all segements of the regulated community, that is, generators, transporters, intermediate handlers and destination facilities, must be monitored. By monitoring generators only annually, and transporters four times each year, the main focus of the program through compliance inspection is on transporters. In addition, as explained above, intermediate handlers and destination facilities will be inspected by the Department as they are identified.

The Department will be evaluating the inspection time spent on the various segments of the regulated community during the study period required by the Comprehensive Act.

COMMENT: The definition of "blood products" is too broad, resulting in the unnecessary regulation of a number of unused commercial products and their containers. As defined in N.J.A.C. 7:26-3A.5(b), "Blood products means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc."

Many products are manufactured using a sterile formulation that may include an item such as human serum albumin. Since this material is by definition a "blood product," any returned goods containing human serum albumin would have to be separately handled, tracked, and disposed of as regulated medical waste. The inclusion of these types of pasteurized and/or sterilized products as medical waste is unwarranted and should be exempt, since they present no hazard to the public and must meet very rigid standards for purity and sterility set by the United States Pharmacopoeia (USP) and the Food and Drug Administration (FDA). Licensed sterile products that are marketed and approved by the FDA should be exempt from the definition of "Blood Product."

RESPONSE: The USEPA definition of "blood products" was identically adopted by the Department in this rule as required by the Comprehensive Act and is set forth at N.J.A.C. 7:26-3A.5.

"Blood products" are included in regulated medical waste Class 3, "Human Blood and Blood Products", set forth at N.J.A.C. 7:26-3A.6. Blood products which are manufactured and sold or distributed to customer-users and which are then returned to the manufacturer for reasons such as contamination, damage, or because the product has reached its product-expiration date, would be considered regulated medical waste subject to these rules since, presumably, they would need to be disposed of. A blood product which is returned unused to the manufacturer can then be resold or redistributed because it is still a good product; then that product might not be considered a regulated medical waste since it is not a waste at that point and is not being disposed of.

COMMENT: The storage requirements listed may be appropriate for regulated medical waste prior to treatment, but are unnecessarily restrictive for waste that has already been treated to render it non-biohazardous.

Plant sites that already have security programs, such as perimeter fencing and security guarded entrances and patrols to prevent public access, should be exempt from additional security requirements for storing medical waste.

Clarification of the definition for "storage" is needed for areas used for staging waste prior to treatment or destruction. Waste may be stored, for example, in carts for a short period of time while awaiting incineration. Although not specifically discussed, the commenter assumes that staging areas used for short-term holding before processing are not considered "storage." The definition given is unclear.

The definition of "storage" should specifically exempt short-term staging areas used prior to processing.

RESPONSE: N.J.A.C. 7:26-3A.5 defines storage as ". . . the temporary holding of regulated medical waste before treatment, disposal, or transport to another location." The area used for "staging waste" is considered storage because the regulated medical waste is held in the staging area prior to incineration. The Comprehensive Act required the Department to adopt the rules and regulations adopted by the USEPA. The Department, therefore, adopted N.J.A.C. 7:26-3A.12 which is the same as the USEPA's storage requirements found at 40 CFR Section 259.42. In USEPA's analysis of the regulation at 54 FR 12346, it stated that "the Agency, in referring to on-site storage prior to transport, is referring specifically to that area of the facility where waste is stored or accumulated prior to . . . incineration . . . on-site . . ." The staging-area is an area where waste is accumulated prior to incineration and is therefore subject to the storage requirements at N.J.A.C. 7:26-3A.12.

Moreover, the USEPA points out in its analysis at 54 FR 12347 that the storage requirements ". . . are good housekeeping practices which are necessary to maintain proper sanitary conditions and which will protect the public from exposure." The housekeeping storage requirements at N.J.A.C. 7:26-3A.12, such as protecting the waste from water, rain and wind, maintaining the waste in a non-putrescent state and storing the waste in a manner that affords protection from animals and does not provide a breeding place or a food source for insects and rodents, are good housekeeping requirements for any type of waste including treated regulated medical waste.

As discussed above, the Comprehensive Act required the Department to adopt the rules and regulations that the USEPA adopted; therefore, the Department has no authority to exempt individual plant sites from the storage security requirements of N.J.A.C. 7:26-3A.12.

COMMENT: The generator daily logging requirement is burdensome and redundant. In large research facilities, there may be hundreds of laboratories, each generating only one or two ounces of regulated medical waste daily. Since it is unreasonable to collect a laboratory waste container each day when it is not full, it becomes the individual laboratory's responsibility to fill out a daily log. In this case, there could be over 100 log sheets generated per day at a given facility.

Another problem with daily logging is that there are many different weights recorded each day increasing the chance for error. When the shipment is sent off-site, the sum of all these weights rarely equals the total weight and causes a discrepancy between the daily logs and the tracking forms.

All the information on the daily log sheet is also accounted for on either the Medical Waste Tracking Form or the Incineration/Destruction log.

RESPONSE: The purpose of the logging is to provide the Department with a clear, consolidated record of the types of waste produced at a generator's facility. This information will be reviewed by the Department during compliance monitoring inspections to determine whether all of the waste generated was properly tracked off-site or treated and destroyed on-site. The Department is not concerned with minor weight variations between logs and tracking forms data but will evaluate significant differences for potential improper disposal or classification practices.

The Department believes that logging is an important component of its recordkeeping and enforcement program and is retaining this requirement in the rules.

COMMENT: According to N.J.A.C. 7:26-3A.6(b), residues from treatment and destruction processes are excluded from the definition of regulated medical waste. This is consistent with Federal regulations. However, these rules at N.J.A.C. 7:26-3A.25 and 3A.26 require that operators of incineration facilities keep records of how incineration ash (a residue from a treatment/destruction process) is disposed of. This seems to be contradictory. If it is not regulated, why require tracking?

RESPONSE: The Department is requiring that records be kept to monitor the amounts of ash produced from the incineration of regulated medical waste because this data will provide information concerning the regulated medical waste volume reduction capability of incineration as a disposal method. The data will also clarify the amounts of ash produced by incinerators burning various types of waste, since many incinerators are used for both a hospital's municipal type waste (ID 10) and their regulated medical waste. This information will be necessary for the Department's study of regulated medical waste management in New Jersey as required by the Comprehensive Act as well as in its ongoing solid waste planning process.

COMMENT: Regulated medical waste transported by the generator in trucks owned by the generator are only exempt from tracking requirements if they generate less than three cubic feet/month.

This three cubic feet/month limit should be removed. Allowing generators to transport waste between their own sites in their own trucks would allow the generator to dispose of the material in a more cost effective manner. Most commercial transporters will not make a special trip to a facility to pick up only 10 or 20 cubic feet of material. The facility is then left with no way to dispose of the waste.

When several facilities consolidate their waste at one facility (owned by the same company), the tracking form is initiated at that facility and all the waste is accounted for. This exemption should be included to be consistent with the Federal regulations.

RESPONSE: There are no exemptions from the requirement of using a tracking form. The Comprehensive Act, specifically N.J.S.A. 13:1E-48.5(a), requires all shipments of regulated medical waste, no matter how small the amount, to be accompanied by a tracking form. These rules contain no exemptions from the tracking form requirements. However, N.J.A.C. 7:26A-3A.17 allows a generator who generates less than three cubic feet of regulated medical waste per month and who transports that waste to another generator for storage or disposal to be exempt from certain transporter requirements provided they meet the conditions listed.

This exemption from certain transporter requirements is authorized by the Comprehensive Act, specifically N.J.S.A. 13:1E-48.8.

While the Federal Medical Waste Tracking Act of 1988 allowed the USEPA to institute certain exemptions to the tracking requirements, the State Comprehensive Act requires all shipments of regulated medical waste to be tracked. Therefore, the Department has no discretion to exempt generators of less than three cubic feet who transport wastes between sites, from the use of the tracking form.

COMMENT: One commenter stated that he could not adequately review the entire rule proposal, comment on it, and have the results back by August 16 (the close of the public comment period), and asked the Department to extend the timeframe for evaluation and suggestions by the practitioner involved.

RESPONSE: The regulated medical waste rules, N.J.A.C. 7:26-3A, were signed by the Governor on June 23, 1989 and filed on June 26, 1989 on an emergency basis due to the repeated problems the State has experienced from the illegal disposal of medical waste. This emergency adoption was effective on the date filed. The emergency rules were published in the July 17, 1989 New Jersey Register. The Administrative Procedure Act requires that rules be formally readopted within 60 days of an emergency rule adoption. In this case, the deadline imposed is August 25, 1989 for the rule to be readopted.

The Comprehensive Act authorized the Department to adopt, without regard to the Administrative Procedure Act, the rules and regulations adopted by the USEPA under the authority of the Federal Medical Waste Tracking Act of 1988. However, since the fee rule provisions and some additional substantive requirements were integral and necessary to implement the program and were supplemental to the Federal rules, the entire rule chapter was adopted on an emergency basis in conformity with the Administrative Procedure Act.

Further, the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., requires a 30 day comment period before readopting these rules. The comment period for the concurrent proposal of these rules started July 17, 1989 and ended August 16, 1989 which satisfied the 30 day comment period. A public hearing on the rules was held on August 1, 1989 to provide an opportunity for public comment in addition to the period for written comments. In order to give the Department sufficient time to respond to comments and adopt the rules before the expiration date of the August 25, 1989 emergency rules, the deadline for written comments was set at August 16, 1989. Public notice of the hearing was published in the July 17, 1989 New Jersey Register at 20 N.J.R. 2109(a) and in the July 14, 1989 Trenton Times, the Press, the Courier Post and the Star Ledger.

The emergency adoption expires on August 25, 1989; therefore, the Department must readopt the rules by that date. To extend the comment period beyond the emergency expiration date would cause a lapse in the effective dates of the rules which would be detrimental to the environment and the entire State Regulated Medical Waste Program.

COMMENT: One commenter asked if a practice in a medical/dental building that employs a single trash hauler, can (like group practices or hospitals) be considered one generator.

RESPONSE: The rules, at N.J.A.C. 7:26-3A.5, incorporate USEPA's definition of "generator" which is found at 40 C.F.R. Section 259.10(a). "Generator" is defined as, "any person, by site, whose act or process produces regulated medical waste as defined in N.J.A.C. 7:26-3A.6, or whose act first causes a regulated medical waste to become subject to regulation. In the case where more than one person (for example, doctors with separate medical practices) are located in the same building, each individual business entity is a separate generator for the purpose of this subchapter . . ." Clearly, the individual practitioner is a separate generator pursuant to this definition.

Since the Comprehensive Act at N.J.S.A. 13:1E-48.5(b) required the Department to adopt the rules and regulations adopted by the USEPA, the Department has no discretion to extend the definition of "generator" to specify an entire physical location including all individual generators contained therein nor does the Department agree that the definition should be so extended.

COMMENT: Certain dentists have been advised previously that teeth and associated structures would not be considered pathological waste. Can they be fined $25,000 to $50,000 if they give teeth back to a youngster to put under their pillow? An exclusion is warranted here.

RESPONSE: The USEPA defined regulated medical waste in regulations effective June 22, 1989. Those regulations were adopted by New Jersey pursuant to the statutory mandate of the Comprehensive Regulated Medical Waste Act. N.J.A.C. 7:26-3A.6 classifies teeth and associated structures removed during the treatment of a patient in a dentist's office or a hospital as pathological wastes, Class 2. Specifically, Class 2 wastes are defined as, " . . . tissues, organs and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers."

This definition is nearly identical to the definition of regulated medical waste adopted by New Jersey in the Department's rules which became effective August 22, 1988 and also classified teeth as "pathological waste."

The New Jersey Legislature in the Comprehensive Act required every shipment of regulated medical waste released to a transporter to be accompanied by a tracking form. Additionally, USEPA regulations require all regulated medical waste, once produced, to be managed in accordance with the regulations. However, the Department has determined that returning a tooth to a child certainly poses no significant public health threat. Thus, though regulated medical waste, including pathological wastes, must normally be managed in accordance with the regulations at N.J.A.C. 7:26-3A, the Department interprets the practice of returning body parts to a patient as an acceptable practice, so long as the practitoner is not aware of any disease covered by CDC Level 4 Guidelines which are included in waste Class 6 infecting the patient.

The Department recognizes that various social and religious practices have existed historically in which human body parts which are surgically removed for a patient are later returned to the patient's custody. During the study period, the Department will evaluate the advisability of adding formal provisions or exemptions to these rules as an amendment to authorize these practices to continue while maintaining minimal risk to public health.

COMMENT: Precisely what Federal, State, and local agencies are empowered to enter the commenter's premises to check compliance?

RESPONSE: The Comprehensive Act, specifically N.J.S.A. 13:1E-48.20, authorizes the New Jersey Departments of Environmental Protection and Health, every local board of health, or county health department, as the case may be, to enforce the provisions of the Comprehensive Act and the rules adopted by the Department pursuant to the Act. The authority to enforce necessarily includes the authority to enter and inspect premises.

In addition, the United States Environmental Protection Agency and appropriate State agencies determining compliance with Federal regulations governing 42 USC 6903 et seq., have authority under the Medical Waste Tracking Act of 1988 to enforce the EPA regulations at 40 CFR Part 259 and to enter and inspect premises.

COMMENT: How do the new rules for generators differ from the previous practices? Are the same forms usable? To whom do commenters report their data? How long do commenters keep the paperwork?

RESPONSE: The rules being adopted by the Department are more comprehensive than New Jersey's previous medical waste rules. Generators should read N.J.A.C. 7:26-3A.1 through 3A.26 to understand the rule requirements for packaging, segregation, marking, labeling, tracking, logging, registration, fees, and reporting. Some major differences from the previous regulations are: no small quantity generator exemption from any generator requirements; monthly logging for generators under 300 pounds per year; packaging and labeling requirements; registration with the Department; annual registration fees; and annual reporting.

Registration forms will be sent to all generators with instructions, daily and monthly log forms and annual report forms. Tracking forms are available from the Department. Generator reports are to be provided to the Department in accordance with N.J.A.C. 7:26-3A.21. Most records and paperwork, including copies of tracking forms, must be retained for a period of three years pursuant to N.J.A.C. 7:26-3A.21. Generators may wish to retain records indefinitely because of the strict joint and several liability provisions of the Comprehensive Regulated Medical Waste Management Act.

COMMENT: Why are some items that are in no way dangerous or infectious included in the definition of regulated medical waste? Why are, as examples, transfer bags for sterile I.V. solutions and unused culture plates included?

RESPONSE: The Comprehensive Act and the Federal Medical Waste Tracking Act of 1988 addressed both the health risks associated with the improper disposal of medical wastes, and the aesthetic concerns related to medical wastes appearing unpackaged and unattended in public places. The USEPA regulations at 40 C.F.R. Section 259.30(a) defined such items as intravenous bags and used or unused containers for blood or blood components, as regulated medical wastes.

The Comprehensive Regulated Medical Waste Management Act required the Department to adopt the rules and regulations adopted by the USEPA. Thus, the Department had no discretion in determining the specific medical waste definition but was required to adopt the USEPA definition.

COMMENT: One commenter believes that the Department should agree with the USEPA and declare generators of less than 50 pounds of regulated medical waste to be exempt from the tracking requirements.

RESPONSE: The Comprehensive Regulated Medical Waste Management Act requires at N.J.S.A. 13:1E-48.5(a) that all generators of regulated medical waste in New Jersey use tracking forms no matter how small the amount of regulated medical waste generated. The Department may recommend modification of this position after completing its study of medical waste management in New Jersey and making recommendations to the Governor and Legislature in the Statewide regulated medical waste management plan which the Department is required to prepare pursuant to N.J.S.A. 13:1E-48.13.

If the Department recommends that an exemption from the use of tracking forms is justified and the Governor and Legislature concur, the exemption cannot be less restrictive than the requirements of the USEPA regulations during the period in which the USEPA demonstration program is in effect in New Jersey. The USEPA regulations currently exempt generators of less than 50 pounds per month from the use of the tracking form (see 40 CFR Section 259.51).

COMMENT: N.J.A.C. 7:26-3A.8(b) states that transporters of regulated medical waste in the State of New Jersey must register with the Department and pay an additional fee of $3,957. AETC views this fee to be quite excessive. Most transporters notifying the Department on the shipping of medical waste are licensed hazardous waste haulers. The cost to register as a hazardous waste transporter is $250.00 per vehicle. To transport medical waste, the transporters are also required to obtain solid waste and Board of Public Utilities permits, costing $225.00 per vehicle and a $50.00 flat fee respectively. AETC feels the costs of these permits should be sufficient to offset any expenses incurred by the Department for the medical waste program. This system of collecting funds for the Department would take into consideration the size of the fleet, as opposed to each transporter paying the same fee.

RESPONSE: The Department requires registration of transportation vehicles for each specific type of regulated activity whether regulated medical waste or hazardous waste activity. The Department's transporter services of compliance and monitoring and associated tasks must occur with the same frequency, and therefore the same cost to the Department regardless of the actual use of the vehicle for activities which the Department regulates via various programs (for example, hazardous waste transportation, regulated medical waste transportation). The Department must, therefore, perform all of its compliance related activities as necessary for each regulated program, and charge for its cost of services for each program. The charges for one program would not cover the Department's costs for the other regulatory programs.

Transporters may be able to minimize their registration costs by allocating specific vehicles to specific waste transportation uses which are separately regulated by the Department. By registering vehicles for only one activity, organizations may be able to decrease their registration costs. Further, because of the growing complexity of each regulatory program, by educating each vehicle driver in the proper handling methods and safety precautions for only one specific waste type training will be simplified and driver expertise enhanced.

COMMENT: N.J.A.C. 7:26-3A.9 requires that supervisory personnel of all transporters must attend an education and training session that will be provided by the Department and the information obtained at these sessions must be disseminated to all employees. Transporters of regulated medical waste should be responsible for instituting a training program for all employees dealing with the associated transportation and paperwork of medical waste, not the Department. It is not necessary for all employees of the corporation to understand the rules and regulations that govern the transportation of medical waste.

RESPONSE: The Comprehensive Regulated Medical Waste Management Act, specifically N.J.S.A. 13:1E-48.11, requires that "[t]he Departments shall provide at least written instruction on the proper and safe tracking, identification, packaging, storage, control, monitoring, handling, collection, and disposal of regulated medical waste to every transporter, facility or organization that may come into contact with regulated medical waste. Every transporter, facility and organization shall disseminate such information to all employees. The Departments shall also jointly and regularly conduct a course thereon, which all supervisory personnel of a transporter, facility or organization shall be required to attend." The Department incorporated the legislative mandates in its rules at N.J.A.C. 7:26-3A.9 and maintains that this level of education is a necessary and important element in a successful regulated medical waste management program.

The Departments are the entities charged by the Legislature to conduct the training courses. It is also proper that the Legislature impose this role on the Departments because there are new rules which are subjecting the regulated community to new requirements. In order for the regulated medical waste program to be effective, it is necessary that the regulated community have a uniform understanding of these rules. N.J.A.C. 7:26-3A.9 does not prohibit transporters from instituting their own educational programs for their employees but only requires that they attend the courses conducted by the Departments.

COMMENT: N.J.A.C. 7:26-3A.11(b)2 states the regulated medical waste must be placed in a container that is leak-resistant. Further clarification on the meaning of leak-resistant is needed.

RESPONSE: The USEPA developed packaging requirements for medical wastes in its regulations which became effective June 22, 1989. The Department adopted these regulations in these rules as required by the Comprehensive Act.

The USEPA stated in its analysis of the rule at 54 Federal Register 12345 under the heading "2. Packaging Requirements" that "[a]ny number of containers may be used to satisfy the basic performance requirements . . ." USEPA went on to state that it considers a plastic bag as providing "leak resistance," provided it is supported by a more rigid container such as a cardboard box or a drum. Additional containerization would be required for shipments off-site to ensure the integrity of the packaging during the stresses of handling and transport.

Sharps must be placed first into rigid containers which are leak-resistant and puncture-resistant to securely contain the sharps and any associated residual fluids.

COMMENT: One commenter asked the Department to modify the rule concerning the requirements for separation of the regulated waste from other waste as long as the wastes are all packaged as medical waste. The current rules place undue penalties on those firms that are already sending their waste under the infectious waste category for incineration. Very little infectious waste is produced but other waste items that are not regulated medical waste, but could be questioned by some transfer station personnel as being possible medical waste, are included in our medical waste stream.

RESPONSE: Although it is not completely clear what the commenter means, note that N.J.A.C. 7:26-3A.7, which is an identical adoption of USEPA's regulation at 40 CFR 259.31, states that mixtures of solid waste and regulated medical waste are regulated medical waste. Such mixtures of solid and regulated medical waste are subject to all the requirements of these rules. This provision protects public health by requiring any materials that come into contact with regulated medical waste to be managed as regulated medical waste. This ensures that the waste does not come into contact with any person or the environment.

While the Department recognizes that additional costs are incurred by generators when mixtures of wastes are created, the Department believes the risk to public health and the environment outweighs the costs involved. The commenter may want to consider keeping its regulated medical waste and other solid waste completely separate and distinct, managing its regulated medical waste in accordance with N.J.A.C. 7:26-3A and managing its other solid waste in accordance with the solid waste management rules set forth at N.J.A.C. 7:26.

COMMENT: The commenters were shocked to hear about the off-hand remark at the August 1 public hearing on the rules to the effect that "there is no exemption for agriculture." There is no clear basis for such an expansive interpretation of the definition of medical waste generator.

RESPONSE: The remark by the Departments' spokesperson was made in the context of whether the home self-care exclusion from the definition of regulated medical waste found at N.J.A.C. 7:26-3A.6(b)2 applies to farmers who treat their own livestock. As discussed in an earlier comment, this exclusion applies only to self-care administered in the home to another person and, therefore, it would not apply to animals.

N.J.A.C. 7:26-3A.6, which contains the definition of regulated medical waste, includes references to both human being and animals. N.J.A.C. 7:26-3A.6(a) divides regulated medical waste into Classes 1 through 7. Class 2, pathological wastes and Class 3, human blood and blood products are limited to humans, but Classes 1, 4, 5, 6 and 7 do not exclude animals from the definition. Because these regulated medical waste categories include animals, then "persons . . . whose act or process produces [that category on categories of] regulated medical waste . . . or whose act first causes a regulated medical waste to become subject to regulation (.) would be considered "generators" under N.J.A.C. 7:26-3A.5 and would be subject to all other applicable sections of N.J.A.C. 7:26-3A.

COMMENT: The rules require the daily log to contain the Waste Class of each waste generated. In a large facility of hundreds of researchers who generate most classes of regulated medical waste, the requirement to log the weight and Waste Class is believed to be unnecessary, especially if the waste is incinerated on-site. Determining which Waste Class a waste or waste mixture falls into can be difficult for any generator: Blood vials and culture dishes may meet the descriptions of Waste Classes 1, 3, 4 and 6; a syringe could meet the description of Waste Classes 1, 4, 6 and 7; and many other examples exist of wastes meeting the description of at least two Waste Classes. The generator's log required by the Special Medical Waste rules (effective August, 1988) allowed optional reporting by Class due to variations in holding practices. At a minimum, a similar exclusion is appropriate. Allowing a generator to estimate the amounts in each Waste Class is also preferable.

RESPONSE: The Department maintains that Waste Class information is necessary on logs and annual reports and requires that information in order to develop data on the types of wastes being generated and their method of disposal. This information will be used by the Department to evaluate existing disposal patterns and develop future regulated medical waste flows and disposal options.

The Department recognizes that precise determinations of Waste Class may be difficult in some situations because of either redundancies in the classification system or mixing of wastes at the point of generation. Generators are expected to make a reasonable effort to properly classify wastes and log the quantities. When amounts of the same wastes are generated routinely, classifications may be determined and applied on a percentage basis to the aggregate quantities generated thereafter, provided the accuracy of the classification determination is checked periodically. The Department's intent in requiring logging waste classes is to obtain an accurate picture of the types of medical wastes produced, and not to obtain a precise accounting by wastes class of all regulated medical waste generated.

COMMENT: Medical Waste discharged to sanitary sewers in accord with all applicable Federal, State, county and local statutes, rules and ordinances should be exempted from these rules. Domestic sewage and wastes mixed with domestic sewage are excluded from the definition of solid waste (for hazardous waste purposes) and are beyond the scope of the Federal regulated medical waste regulations and should be excluded from the State rules as well.

For all of the above reasons, the burdens of daily recordkeeping far outweigh any gain to the Department. Therefore, it is recommended that N.J.A.C. 7:26-3A.21(d) through (g) be removed.

RESPONSE: The USEPA regulations require all regulated medical waste generated to be managed in accordance with the regulations, including regulated medical waste which is disposed of by discharge into the sanitary sewer system. The Department adopted the USEPA regulations as a large part of this rule per the mandate of the Comprehensive Act. Sewerage discharges are exempt from tracking requirements (see N.J.A.C. 7:26-3A.16(b) and 40 CFR 259.50). However, once generated, these wastes must be managed in accordance with all other applicable regulations prior to discharge (see, for example, N.J.A.C. 7:26-3A.21). The Department does not have discretion to exempt certain categories of regulated medical waste from the rules.

The recordkeeping required by the Department will provide information for planning purposes to determine future regulated medical waste disposal methods, waste flows, and waste reduction alternatives.

COMMENT: The Comprehensive Regulated Medical Waste Management Act (the "Comprehensive Act"), P.L. 1989, C.34, N.J.S.A. 13:1E-48.1 et seq., does not provide for a small generator exemption to the tracking requirements. The commenter nonetheless registers its opposition to this tracking form requirement at N.J.A.C. 7:26-3A.19, and hopes that the comprehensive state regulated medical waste management plan mandated by the Comprehensive Act will recommend to the Governor and Legislature the exemption of small quantity generators from manifesting requirements.

RESPONSE: The Department notes the commenter's opposition to the tracking requirements for all small generators. The New Jersey Legislature mandated tracking requirements for all generators in the Comprehensive Regulated Medical Waste Management Act signed by Governor Kean on March 6, 1989. The Comprehensive Act, at N.J.S.A. 13:1E-48.13, requires the Department to study regulated medical waste management practices and report its findings and recommendations to the Governor and the Legislature. The Department will evaluate the efficacy of small quantity exemptions during the study period.

COMMENT: The three cubic foot threshold should be geared towards the amount of regulated medical waste to be transported per month as opposed to the amount which is generated per month. A shift in focus from the amount generated to the amount transported will allow the regulated community to take advantage of compactors and other density-reducing devices.

RESPONSE: The Comprehensive Regulated Medical Waste Management Act (Comprehensive Act) N.J.S.A. 13:1E-48.7b required the Department to exempt generators of less than three cubic feet of regulated medical waste per month from transporter requirements if they transport their own waste to another generator for storage or disposal. The Department is without discretion to modify the clear language of the statute in these rules by redefining the small quantity generator's transporter exemption criteria.

Department Initiated Changes

N.J.A.C. 7:26-3A.7(b)

The Department has added the sentence "[I]n addition, the applicable hazardous waste requirements of N.J.A.C. 7:26-1 apply." The Department added this sentence because the State hazardous waste rules identify or list wastes that are not in the Federal hazardous waste regulations and such mixtures, while not being subject to Federal regulations, may be subject to State hazardous waste rules.

N.J.A.C. 7:26-3A.8(c)

The Department has added the phrase "in this State" to this subsection to clarify that only intermediate handlers and owners and operators of destination facilities located in this State are required to register and pay fees to the Department.

N.J.A.C. 7:26-3A.8(d) 2 and 3

To clarify the meaning of subsection (d), paragraphs 2 and 3, the Department is adding the word "fees". Clearly, paragraphs 2 and 3 of subsection (d) refer to fees and by adding the word fees the Department is only clarifying the text.

N.J.A.C. 7:26-3A.17(a)

The Department has deleted the reference to N.J.A.C. 7:26-3A.27(b) and replaced it with N.J.A.C. 7:26-3A.27(c), which is the correct cite for this reference.

Full text of the adoption follows (additions to proposal indicated by boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*.

SUBCHAPTER 3A. REGULATED MEDICAL WASTE

7:26-3A.1 Purpose, scope and applicability

(a) The purpose of this subchapter is to establish a program for regulated medical waste pursuant to the New Jersey Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.

(b) The rules in this subchapter apply to regulated medical waste, as defined at N.J.A.C. 7:26-3A.6, that is generated, stored, transported, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(c) Generators, transporters, and owners or operators of intermediate handling facilities (for example, treatment and destruction facilities) and destination facilities (for example, treatment and destruction facilities, incineration facilities, and disposal facilities) who generate, store, transport, transfer, treat, destroy, dispose of, or otherwise manage regulated medical waste in New Jersey shall comply with this subchapter.

(d) In addition to the requirements of this subchapter, all applicable requirements of the Department of Health shall be met.

(e) In addition to the requirements of this subchapter, generators, transporters, and owners and operators of intermediate handling facilities and destination facilities shall comply with all applicable Federal, State, county and local statutes, rules and ordinances.

(f) The Department, in conjunction with the New Jersey Board of Public Utilities, may direct the disposal of regulated medical waste which is defined in N.J.A.C. 7:26-3A.6.

7:26-3A.2 Construction

This subchapter shall be liberally construed to permit the Department to implement its statutory duties.

7:26-3A.3 Severability

If any section, subsection, provision, clause or portion of this subchapter, or the application thereof to any person, is adjudged

unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

7:26-3A.4 Record retention

(a) The length of time that parties shall keep records required under this subchapter is automatically extended in the case where EPA, the Departments or another State agency initiates an enforcement action, for which those records are relevant, until the conclusion of the enforcement action.

(b) All records, reports, logs and tracking forms required to be made and/or kept in accordance with this subchapter shall be made available for inspection by the Department.

7:26-3A.5 Definitions

(a) For the purposes of this subchapter, all of the terms defined in 40 C.F.R. Section 260.10 and N.J.A.C. 7:26-1.4 are hereby incorporated by reference. In case of conflict between 40 C.F.R. Section 260.10 and N.J.A.C. 7:26-1.4, the definitions in N.J.A.C. 7:26-1.4 will control, except for the following terms, which when used in this subchapter shall have the following meanings:

"Administrator" means the Administrator of the United States Environmental Protection Agency.

"EPA" means the United States Environmental Protection Agency.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, destroying, storing, or disposing of regulated medical waste. A facility may consist of several treatment, destruction, storage, or disposal operational units.

"Federal demonstration program" means the United States Environmental Protection Agency rules at 40 C.F.R. Part 259.

"Generator" means any person, by site, whose act or process produces regulated medical waste as defined in N.J.A.C. 7:26-3A.6, or whose act first causes a regulated medical waste to become subject to regulation. In the case where more than one person (for example, doctors with separate medical practices) are located in the same building, each individual business entity is a separate generator for the purposes of this subchapter. However, households utilizing home self-care are not generators.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, or any department, agency or instrumentality of the United States.

"Storage" means the temporary holding of regulated medical wastes before treatment, disposal, or transport to another location.

"Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of regulated medical waste are held (come to rest), during the course of transportation for a period not to exceed 24 hours and are not transferred to other vehicles during the course of transportation. A transfer facility is a "transporter". A location at which regulated medical waste is transferred directly between two vehicles is not a transfer facility but is considered a transfer station and must be permitted as such pursuant to N.J.A.C. 7:26-2.4.

"Transportation" means the shipment or conveyance of regulated medical waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of regulated medical waste by air, rail, highway, or water.

"Treatment", "treated", or "treats" when used in any section of this subchapter except for N.J.A.C. 7:26-3A.6(a), shall mean to change the biological character or composition of any regulated medical waste to reduce or eliminate its potential for causing diseases through such methods, techniques or processes as incineration, steam sterilization, chemical disinfection, irradiation, thermal inactivation, or any other effective method as approved by the State Department of Health. When used in the context of N.J.A.C. 7:26-3A.6(a), treatment means either the provision of medical services of the preparation of human or animal remains for interment or cremation.

"Treatment facility" means a facility which treats regulated medical waste.

(b) In addition, when used in this subchapter, the following terms shall have the meanings given below:

"Biologicals" means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing or treating humans or animals or in research pertaining thereto.

"Blood products" means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

"Body fluids" means liquid emanating or derived from humans and limited to blood; cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; and semen and vaginal secretions.

"Central collection point" means a location where a generator consolidates regulated medical waste brought together from original generation points prior to its transport off-site or its treatment on-site (for example, incineration).

"Decontamination" means the process of reducing or eliminating the presence of harmful substances, such as infectious agents, so as to reduce the likelihood of disease transmission from those substances.

"Departments" means the New Jersey Department of Environmental Protection and the New Jersey Department of Health.

"Destination facility" means the disposal facility, the incineration facility, or the facility that both treats and destroys regulated medical waste, to which a consignment of such is intended to be shipped, specified in Box 8 of the Medical Waste Tracking Form.

"Destroyed regulated medical waste" means regulated medical waste that has been ruined, torn apart, or mutilated through processes such as thermal treatment, melting, shredding, grinding, tearing or breaking, so that it is no longer generally recognizable as medical waste. It does not mean compaction.

"Destruction facility" means a facility that destroys regulated medical waste by ruining or mutilating it, or tearing it apart.

"Home self-care" means the provision of medical care in the home setting (for example, private residence) through either self-administration practices or by a family member or other person who does not receive monetary compensation for their services. Excluded from this definition are direct patient care services provided in the home by home health agencies as described in N.J.A.C. 8:42-1, durable medical equipment companies, home infusion companies, hospice care companies, and any other services or companies as determined by the State Department of Health that generate regulated medical waste in the home setting.

"Infectious agent" means any organism (such as a virus or a bacteria) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

"Intermediate handler" is a facility that either treats regulated medical waste or destroys regulated medical waste but does not do both. The term does not include transporters.

"Laboratory" means any research, analytical, or clinical facility that performs health care related analysis or service. This includes medical, pathological, pharmaceutical, and other research, commercial, or industrial laboratories.

"Medical waste" means any solid waste which is generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. The term does not include any hazardous waste identified or listed under 40 C.F.R. Part 261 or any household waste generated from home self-care as defined in this section.

"New Jersey medical waste tracking form" means the New Jersey medical waste tracking form available from the Department that must accompany all applicable shipments of regulated medical wastes.

"Original generation point" means the location where regulated medical waste is generated. Waste may be taken from original generation points to a central collection point prior to off-site transport or on-site treatment.

"Oversized regulated medical waste" means medical waste that is too large to be placed in a plastic bag or standard container.

"Regulated medical waste" means those medical wastes that have been listed in N.J.A.C. 7:26-3A.6 and that must be managed in accordance with the requirements of this subchapter.

"Tracking form" means a medical waste tracking form, including the New Jersey medical waste tracking form, the federal tracking form, and the tracking form from other states that are participating in the Federal demonstration program that must accompany all applicable shipments of regulated medical waste.

"Treated regulated medical waste" means regulated medical waste that has been treated to substantially reduce or eliminate its potential for causing disease, but has not yet been destroyed.

"Universal biohazard symbol" means the symbol design that conforms to the design shown in 29 C.F.R. §1910.145(f)(8)(ii).

"Untreated regulated medical waste" means regulated medical waste that has not been treated to substantially reduce or eliminate its potential for causing disease.

"Waste category" means either untreated regulated medical waste or treated regulated medical waste.

"Waste Class" means the description of Waste Class found at N.J.A.C. 7:26-3A.6(a).

7:26-3A.6 Definition of regulated medical waste

(a) A regulated medical waste is any solid waste, generated in the diagnosis, treatment, (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, that is not excluded or exempted under (b) below, and that is listed in the following table:

TABLE

REGULATED MEDICAL WASTE

Waste Class	Description
1. Cultures and Stocks	Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
2. Pathological Wastes	Human pathological wastes, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.
3. Human Blood and Blood Products	Liquid waste human blood; products of blood; items saturated and/or dripping with human blood; or items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.
4. Sharps	Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.
5. Animal Waste	Contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals, or testing of pharmaceuticals.
6. Isolation Wastes	Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.
7. Unused Sharps	The following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

(b) The following are excluded from the definition of regulated medical waste:

1. Hazardous waste identified or listed under the regulations in 40 C.F.R. Part 261;

2. Household waste, generated in households utilizing home self-care as defined in N.J.A.C. 7:26-3A.5(b);

3. Ash from incineration of regulated medical waste once the incineration process has been completed;

4. Residues from treatment and destruction processes once the regulated medical waste has been both treated and destroyed; and

5. Human corpses, remains, and anatomical parts that are intended for interment or cremation.

(c) The following are exempted from the definition of regulated medical waste:

1. Etiologic agents being transported interstate pursuant to the requirements of the U.S. Department of Transportation, U.S. Department of Health and Human Services, and all other applicable shipping requirements are exempt from the requirements of this subchapter; and

2. Samples of regulated medical waste transported off-site by the EPA, the Department, the Department of Health or the New Jersey Department of Law and Public Safety for enforcement purposes are exempt from the requirements of this subchapter during the enforcement proceeding.

7:26-3A.7 Mixtures

(a) Except as provided in (b) below, mixtures of solid waste and regulated medical waste listed in N.J.A.C. 7:26-3A.6(a) are a regulated medical waste.

(b) Mixtures of hazardous waste identified or listed in 40 C.F.R. Part 261 and regulated medical waste listed in N.J.A.C. 7:26-3A.6(a) are subject to the requirements in this subchapter, unles the mixture is subject to the hazardous waste manifest requirements in 40 C.F.R. Part 262 or 40 C.F.R. Part 266. **In addition, the applicable hazardous waste requirements of N.J.A.C. 7:26-1 also apply.***

7:26-3A.8 Registration and fees for regulated medical waste generators, transporters, intermediate handlers and owners and operators of destination facilities

(a) Any person who generates regulated medical waste in this State shall register with the Department as a regulated medical waste generator in accordance with (d) below, and shall pay fees in accordance with the following:

1. For computation of the annual regulated medical waste generator fee, generators of regulated medical waste are divided, according to the amount of waste generated, into three categories as explained in the following table:

Generator Category	Pounds Generated Per Year	Number of Generators	Base Fee for each category	Adjustment Rates
1	< 300	N_1	F_1=$528.50	R_1
2	300 to 1000	N_2	F_2=$687.14	R_2
1	> 1000	N_3	F_3=$845.78	R_3

i. During the first year, the fee for each category shall equal the base fee;

ii. "R_1", "R_2" and "R_3" represent the adjustment rates, respectively for generator categories 1, 2 and 3;

iii. In subsequent years, if the cost of providing services to regulated medical waste generators in any generator category changes from the previous year's costs, which includes any roll-over debits or credits from the respective generator categories, the costs shall be adjusted by computing the factors "R_1", "R_2" and "R_3" so that the total fees collected for each generator category equals the cost of providing services to that category. The fee for each category shall be computed as follows:

(1) The fee for generator category 1 shall be calculated by multiplying the factor "R_1" times the base fee for generator category 1 which is "F_1" with "F_1" being equal to $528.50. The product of the above multiplication is then multiplied by "N_1" with "N_1" being the projected number of generators who will be registering in generator category 1. The equation for the foregoing is:

$N_1(R_1 \times F_1)$ = cost of providing services to generator category 1.

(2) The fee for generator category 2 shall be calculated by multiplying the factor "R_2" times the base fee for generator category 2 which is "F_2" with "F_2" being equal to $687.14. The product of the above multiplication is then multiplied by "N_2" with "N_2" being the projected number of generators who will be registering in generator category 2. The equation for the foregoing is:

$N_2(R_2 \times F_2)$ = cost of providing services to generator category 2.

(3) The fee for generator category 3 shall be calculated by multiplying the factor "R_3" times the base fee for generator category 3 which is "F_3" with "F_3" being equal to $845.78. The product of the above multiplication is then multiplied by "N_3" with "N_3" being the projected number of generators who will be registering in generator category 3. The equation for the foregoing is:

$N_3(R_3 \times F_3)$ = cost of providing services to generator category 3.

iv. For regulated medical waste generator fee purposes only, quantities of body fluids and blood and blood products which have been removed from a human corpse prior to interment or cremation and which are disposed of into a sanitary sewer system, which shall be in compliance with all applicable Federal, State, and county and local statutes, rules and ordinances, shall not be included in a generator's annual calculation of regulated medical waste generated, but at a minimum, if the generator generates no other regulated medical waste, the generator shall be included in generator category 1.

(b) Any person who engages or continues to engage in the transportation of regulated medical waste in this State, except generators who transport their own waste and who meet the requirements of N.J.A.C. 7:26-3A.17(a), shall register with the Department as a regulated medical waste transporter in accordance with (d) below, and pay fees in accordance with the following:

1. All regulated medical waste transporters shall pay a fee of $3,957 for the 1989 registration year.

2. In subsequent years, if the cost of providing services to regulated medical waste transporters changes from the previous year's costs, the budget, which is based on the cost of providing services and includes any roll-over debits or credits, will be adjusted by computing the factor "r_1" so that the total fees collected from transporters equals the budget for regulated medical waste transporters. The fee for regulated medical waste transporters shall be computed as follows:

i. The fee is calculated by multiplying the factor "r_1", which is the annual assessment rate for transporters, times the base fee which is "F" with "F" being equal to $3,957. The product of the above multiplication is then multiplied by "N" with "N" being the projected number of transporters who will be registering with the Department. The equation for the foregoing is:

N ($r_1 \times F$) = budget for regulated medical waste transporters.

(c) All intermediate handlers and owners and operators of destination facilities ***in this State*** shall register with the Department as a regulated medical waste intermediate handler or destination facility in accordance with (d) below, and pay fees in accordance with the following:

1. All regulated medical waste intermediate handlers and destination facilities shall pay a registration, education and report analysis fee of $2,046 for the 1989 registration year.

2. In subsequent years, if the cost of providing services to intermediate handlers and destination facilities changes from the previous year's costs, the budget, which is based on the cost of providing services and includes any roll-over debits or credits, will be adjusted by computing the factor "r_2" so that the total fees collected from intermediate handlers and destination facilities equals the budget for intermediate handlers and destination facilities. The fee for intermediate handlers and destination facilities shall be computed as follows:

i. The fee is calculated by multiplying the factor "r_2", which is the annual assessment rate for intermediate handlers and destination facilities, times the base fee which is "F" with "F" being equal to $2,046. The product of the above multiplication is then multiplied by "N" with "N" being the projected number of intermediate handlers and destination facilities who will be registering with the Department. The equation for the foregoing is:

N ($r_2 \times F$) = budget for intermediate handlers and destination facilities.

3. Persons who only dispose of regulated medical waste that they generate by placing body fluids or blood and blood products into the sanitary sewer system, in compliance with all applicable Federal, State, county and local statutes, rules and ordinances, shall not be considered an intermediate handler or destination facility.

(d) The generator, transporter, intermediate handler and destination facility regulated medical waste registration statement shall be executed on forms prescribed by and available from the Department at the address listed below and shall state such information as necessary and proper to the enforcement of this subchapter, as the Department may require. No pro rata adjustment of fees shall be made by the Department. Fees shall be payable to the Department 30 days after the beginning of each respective registration year in accordance with the following schedule:

1. The registration year for generators shall extend from July 22 through July 21 of each calendar year and fees shall be payable by August 20 of each calendar year;

2. The registration year for transporters shall extend from May 1 through April 30 of each calendar year and ***fees*** shall be payable by May 30 of each calendar year, except that during the 1989 registration year, fees shall be payable before July 23, 1989;

3. The registration year for intermediate handlers and destination facilities shall extend from January 1 through December 30 of each calendar year and ***fees*** shall be payable by January 29 of each calendar year, except that during the 1989 registration year fees shall be payable before August 15, 1989; and

4. The Department's address for regulated medical waste is:

Medical Waste Advisement Unit
Division of Solid Waste Management
New Jersey Department of Environmental Protection
401 East State Street
CN 414
Trenton, New Jersey 08625

(e) The Department shall prepare an annual fee schedule report of regulated medical waste fees which shall include the following:

1. The annual assessment rate of "R_1", "R_2" and "R_3" for generators, "r_1" for transporters, and "r_2" for intermediate handlers and destination facilities for the forthcoming fiscal year;

2. The projected number of generators for each category, number of transporters, number of intermediate handlers and destination facilities that will register with the Department;

3. A detailed financial statement showing the estimated budget for generators, the estimated budget for transporters and the estimated budget for intermediate handlers and destination facilities for the forthcoming fiscal year. The statement shall include a separate breakdown of the regulated medical waste program for each of the budgets listed above by account title (for example, printing and office supplies, vehicular, and maintenance of vehicles); and

4. A detailed financial statement of the previous fiscal year's actual expenditures for each budget including a separate breakdown of the total number of generators registered for each respective generator category, total number of transporters registered and total number of intermediate handlers and destination facilities registered, actual revenue and any credit or deficit to be carried forward to the next fiscal year.

(f) The Department shall hold a public hearing concerning the fees assessed for generators, transporters, intermediate handlers and destination facilities only when the projected fees exceed a 10 percent increase as compared to the previous fiscal year's fees. The Department shall hold the hearing prior to the actual assessment of fees. The Department shall provide public notice of the hearing in the New Jersey Register, DEP Bulletin, and several newspapers with general circulation.

(g) In those years in which a public hearing is not required in accordance with (f), above, publication of the forthcoming year's annual adjustment assessment rate of "R_1" "R_2", "R_3" "r_1" and "r_2" and the projected number of generators for each category, transporters and intermediate handlers and destination facilities together with a synopsis of the annual fee schedule report shall appear in the New Jersey Register, DEP Bulletin, and several newspapers with general circulation.

(h) The annual fee schedule report may be obtained, at any time after public notice is published in accordnce with (f) or (g) above, by submitting a request and self addressed 10 inch by 13 inch (minimum size) envelope to the address listed at N.J.A.C. 7:26-3A.8(d).

7:26-3A.9 Education

All transporters, except generators who transport their own regulated medical waste and who meet the requirements of N.J.A.C. 7:26-3A.17(a), and intermediate handlers' and destination facilities' supervisory personnel shall attend an education and training session which will be provided by the Department, and shall also be required to disseminate the information obtained at the training session to all employees.

7:26-3A.10 Segregation requirements

(a) Generators shall segregate regulated medical waste intended for transport off-site to the extent practicable prior to placement in containers according to (b) below.

(b) Generators shall segregate regulated medical waste into:

1. Sharps (Classes 4 and 7 as defined at N.J.A.C. 7:26-3A.6(a)) including sharps containing residual fluid;

2. Fluids (quantities greater than 20 cubic centimeters); and

3. Other regulated medical waste.

(c) If other waste is placed in the same container(s) as regulated medical waste, then the generator shall package, label, and mark the container(s) and its entire contents according to the requirements in N.J.A.C. 7:26-3A.11, 3A.14 and 3A.15.

7:26-3A.11 Packaging requirements

(a) Generators shall ensure that all of their regulated medical waste is packaged in accordance with the requirements of (b) through (d) below, before transporting or offering such regulated medical waste for transport off-site. Generators may use one or more containers to meet these requirements for regulated medical waste packaging.

(b) Generators shall ensure that all regulated medical waste is placed in a container or containers that are:

1. Rigid;

2. Leak-resistant;

3. Impervious to moisture;

4. Have a strength sufficient to prevent tearing or bursting under normal conditions of use and handling; and

5. Sealed to prevent leakage during transport.

(c) In addition to the requirements above, generators shall:

1. Package sharps and sharps with residual fluids in packaging that is puncture-resistant; and

2. Package fluids (quantities greater than 20 cubic centimeters) in packaging that is break-resistant and tightly lidded or stoppered.

(d) Generators need not place oversized regulated medical waste in containers. Generators shall note any special handling instructions for these items in Box 14 of the medical waste tracking form.

7:26-3A.12 Storage of regulated medical waste prior to transport, treatment, destruction, or disposal

(a) Any person who stores regulated medical waste prior to treatment or disposal on-site (for example, interment, treatment and destruction, or incineration), or transport off-site, shall comply with the following storage requirements:

1. Store the regulated medical waste in a manner and location that maintains the integrity of the packaging and provides protection from water, rain and wind;

2. Maintain the regulated medical waste in a nonputrescent state, using refrigeration when necessary;

3. Lock the outdoor storage areas containing regulated medical waste (for example, dumpsters, sheds, tractor trailers, or other storage areas) to prevent unauthorized access;

4. Limit access to on-site storage areas to authorized employees; and

5. Store the regulated medical waste in a manner that affords protection from animals and does not provide a breeding place or a food source for insects and rodents.

7:26-3A.13 Decontamination standards for reusable containers

(a) Generators, transporters, intermediate handlers and destination facility owners and operators shall comply with the following requirements with respect to reusing containers:

1. All non-rigid packaging and inner liners shall be managed as regulated medical waste under this subchapter and shall not be reused;

2. Any container used for the storage and/or transport of regulated medical waste and designated for reuse once emptied, shall be decontaminated if the container shows signs of visible contamination; and

3. If any container used for the storage and/or transport of regulated medical waste is for any reason not capable of being rendered free of any visible signs of contamination in accordance with (a)2 above, the container must be managed (labeled, marked and treated and/or disposed of) as regulated medical waste under this subchapter.

7:26-3A.14 Labeling requirements

(a) Generators shall label each package of regulated medical waste according to the following labeling requirements before transporting or offering for transport off-site:

1. Each package of untreated regulated medical waste shall have a water-resistant label affixed to or printed on the outside of the container. The label shall include the words "Medical Waste," or "Infectious Waste," or display the universal biohazard symbol. Red plastic bag(s) used as inner packaging need not display a label; and

2. Packages containing treated regulated medical wastes are not required to be labeled under this section but are required to be marked in accordance with the requirements of N.J.A.C. 7:26-3A.15.

7:26-3A.15 Marking (identification) requirements

(a) Generators (including intermediate handlers) shall mark each package of regulated medical waste according to the following marking requirements before the waste is transported or offered for transport off-site:

1. The outermost surface of each package prepared for shipment shall be marked with a water-resistant identification tag of sufficient dimension to contain the following information:

i. The generator's or intermediate handler's name;

ii. The generator's or intermediate handler's address. If the generator or intermediate handler is not located in New Jersey, then use their state permit or identification number, and if their state does not issue permit or identification numbers, then use the generator's or intermediate handler's address;

iii. The transporter's name;

iv. The transporter's NJDEP solid waste registration number;

v. The date of shipment; and

vi. Identification of contents as medical waste.

2. In addition to the requirements of (a)1 above, if the generator has used inner containers, including sharps and fluid containers, each inner container shall be marked with indelible ink or imprinted with water-resistant tags. The marking or the tag shall contain the following information:

i. The generator's or intermediate handler's name; and

ii. The generator's or intermediate handler's address. If the generator or intermediate handler is not located in New Jersey, then use their state permit or identification number, and if their state does not issue permit or identification numbers, then use the generator's or intermediate handler's address.

7:26-3A.16 General requirements for generators of regulated medical waste

(a) A person who generates a medical waste, as defined in N.J.A.C. 7:26-3A.5 and who is located in New Jersey, or who stores, transfers, transports, treats, destroys or disposes of, or otherwise manages medical waste in New Jersey shall determine if that waste is a regulated medical waste.

(b) A generator who either treats and destroys or disposes of regulated medical waste on-site (for example, incineration, burial or sewer disposal covered by Section 307(b)-(d) of the Clean Water Act, but any person who disposes of regulated medical waste via sewer disposal shall comply with all applicable Federal, State, county and local statutes, rules and ordinances) is not subject to tracking requirements for that waste but is subject to all other applicable requirements, including the generator logging, reporting, registration, and fee requirements of this subchapter.

(c) Vessels at port in New Jersey are subject to the requirements of this subchapter for those regulated medical wastes that are transported ashore in New Jersey. The owner or operator of the vessel and the person(s) removing or accepting waste from the vessel are considered co-generators of the waste.

(d) Generators of regulated medical waste shall use transporters who have NJDEP registration numbers, who have notified the EPA and who have a certificate of public convenience and necessity issued by the New Jersey Board of Public Utilities, unless the transporter is a generator meeting the requirements of N.J.A.C. 7:26-3A.17(a) or unless the transporter is the U.S. Postal Service and the requirements of N.J.A.C. 7:26-3A.17(b) are met.

7:26-3A.17 Exemptions

(a) Generators of less than three cubic feet of regulated medical waste per month who transport only their own regulated medical waste to another generator for storage or disposal are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) and the requirements of N.J.A.C. 7:26-3A.27*[(b)]**(c)* provided they meet the following conditions:

1. The regulated medical waste is transported by the generator (or the generator's authorized employee) in a vehicle with a gross weight of less than 8,000 pounds which is owned by the generator or the generator's authorized employee;

2. The original generation point and the storage point or disposal facility are located in New Jersey; and

3. The generator complies with the requirements of N.J.A.C. 7:26-3A.19(e).

(b) Generators who transport by the U.S. Postal Service regulated medical waste, Classes 4 and 7 as defined at N.J.A.C. 7:26-3A.6, are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) if the generator generates less than three cubic feet of regulated medical waste per month and ships less than three cubic feet of regulated medical waste per shipment and provided they meet the following conditions:

1. The package shall be sent registered mail, return receipt requested (indicating to whom the package is sent, signature of sender, date, and address where delivered);

2. The generator shall retain the original receipt and the returned registered mail receipt and attach them to the generator copy of the tracking form; and

3. The generator shall comply with the requirements of N.J.A.C. 7:26-3A.19(f).

7:26-3A.18 Solid waste facility acceptance of regulated medical waste

(a) Regulated medical waste which has been treated may be transported to or otherwise unloaded at any transfer station which is permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26-2.6, to authorize the facility to accept regulated medical waste.

(b) Regulated medical waste which has been treated may be transported to and disposed of at any sanitary landfill facility which is permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26-2.6, to authorize the facility to accept regulated medical waste.

7:26-3A.19 Generator use of tracking form

(a) A generator who transports or offers for transport regulated medical waste for off-site treatment, destruction, or disposal, including generators who meet the requirements of N.J.A.C. 7:26-3A.17, shall use only New Jersey regulated medical waste tracking forms, available upon request from the Department at the address listed at N.J.A.C. 7:26-3A.8(d), unless the regulated medical waste is transported for disposal to another state which is participating in the Federal demonstration program and which prints its own tracking form and requires its use, in which case the transporter shall supply the generator with the receiving state's form.

(b) The tracking form shall be prepared in accordance with (c) through (g) below and the instructions provided by the Department.

(c) The generator shall prepare at least the number of tracking form copies that will provide the generator, each transporter(s), and each intermediate handler with one copy, and the owner or operator of the destination facility with two copies.

(d) The generator shall also:

1. Sign the certification statement on the tracking form by hand;

2. Obtain the handwritten signature of the initial transporter and date of acceptance on the tracking form; and

3. Retain one copy, in accordance with N.J.A.C. 7:26-3A.21.

(e) Generators who transport their own regulated medical waste and who meet the requirements of N.J.A.C. 7:26-3A.17(a) shall:

1. Sign the certification statement on the tracking form by hand;

2. Sign the transporter section of the tracking form, noting the date the regulated medical waste was transported;

3. Retain the generator copy in accordance with N.J.A.C. 7:26-3A.21;

4. Ensure that the tracking form accompanies the regulated medical waste while in transit; and

5. Comply with the tracking form requirements for transporters at N.J.A.C. 7:26-3A.31(d).

(f) Generators who transport their regulated medical waste through the U.S. Postal Service and who meet the requirements of N.J.A.C. 7:26-3A.17(b) shall:

1. Sign the certification statement on the tracking form by hand;

2. Sign the transporter section of the tracking form by noting that the transporter is the U.S. Postal Service and noting the date the shipment was mailed;

3. Retain the generator copy in accordance with N.J.A.C. 7:26-3A.21; and

4. Ensure that the tracking form accompanies the regulated medical waste while in transit.

(g) For rail shipments of regulated medical waste within the United States that originate at the site of generation, the generator shall send at least three copies of the tracking form dated and signed in accordance with this section to:

1. The next non-rail transporter, if any; or
2. The intermediate handler or destination facility if transported solely by rail; or
3. The last rail transporter to handle the waste in the United States if exported by rail.

7:26-3A.20 Generators exporting regulated medical waste

(a) Generators (including transporters and intermediate handlers that initiate tracking forms) who export regulated medical waste to a foreign country (for example, Canada) for treatment and destruction, or disposal shall request that the destination facility provide written confirmation that the waste was received. If the generator has not received that confirmation from the destination facility within 45 days from the date of acceptance of the waste by the first transporter, the generator shall submit an exception report as required under N.J.A.C. 7:26-3A.22.

7:26-3A.21 Generator recordkeeping

(a) Each generator shall:

1. Keep a copy of each tracking form required by N.J.A.C. 7:26-3A.19 for at least three years from the date the waste was accepted by the initial transporter unless the Department specifically requires an additional retention period; and
2. Retain a copy of all exception reports required to be submitted pursuant to N.J.A.C. 7:26-3A.22(b).

(b) Each generator who treats and destroys regulated medical waste on-site by a method or process other than incineration, shall maintain the following records:

1. The approximate quantity by weight, of regulated medical waste that is subject to the treatment and destruction processes;
2. The approximate percent, by weight, of total waste treated and destroyed that is regulated medical waste; and
3. For regulated medical waste accepted from other generators, the name and address of the generators, the date the waste was accepted from each generator, the weight of waste accepted from each generator, and the date the waste was treated and destroyed for each generator.

(c) Each generator in (b) above shall maintain records for a period of at least three years from the date the waste was treated and destroyed, unless the Department specifically requires an additional retention period.

(d) All generators of 300 pounds per year or more of regulated medical waste shall maintain a daily generator log of all regulated medical waste generated, treated or disposed of on-site (incinerator, disposal via sanitary sewer which must comply with all applicable Federal, State, county and local statutes, rules and ordinances) and/or sent off-site for treatment, destruction or disposal on forms available from the Department at the address listed in N.J.A.C. 7:26-3A.8(d), or on forms approved by the Department, which shall include the information listed in (f) below.

(e) Generators of less than 300 pounds per year of regulated medical waste shall maintain a generator monthly log of all regulated medical waste generated, treated or disposed of on-site (incinerator, disposal via sanitary sewer which must comply with all applicable Federal, State, county and local statutes, rules and ordinances) and/or sent off-site for treatment, destruction or disposal on forms available from the Department at the address listed in N.J.A.C. 7:26-3A.8(d), which shall contain the information listed in (f) below.

(f) The generator log shall include, but not be limited to, the following information:

1. The date of the entry;
2. A description of the regulated medical waste generated, by Waste Class;
3. The total quantity in pounds for each Waste Class of regulated medical waste generated each day, or each month for generators of less than 300 pounds per year;
4. The name and NJDEP solid waste transporter registration number of each transporter who transported regulated medical waste corresponding to the descriptions in (f)2 and 3 above;
5. The EPA regulated medical waste transporter number of each transporter listed in (f)4 above;
6. The date that the regulated medical waste was given to every transporter listed in (f)4 above;
7. The name and address of each intermediate handler or destination facility that received the regulated medical waste, and the quantity in pounds for each Waste Class of regulated medical waste sent to each facility corresponding to the transporter who transported the regulated medical waste to that facility; and
8. The method of treatment, destruction or disposal of each Waste Class by quantity in pounds (for example, on-site treatment, on-site incineration, disposal via sanitary sewer) corresponding to the facility listed in (f)7 above.

(g) The generator logging forms are available at the address listed in N.J.A.C. 7:26-3A.8(d) and copies of the generator log shall be retained for at least three years from the date that the waste was generated unless the Department specifically requires an additional retention period.

(h) All generators of regulated medical waste shall submit annual generator reports to the Department for the period June 22 through June 21 of each calendar year on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) covering all regulated medical waste generated, treated or destroyed, and disposed of and shall be submitted to the Department by July 21 of each calendar year. The generator annual report shall include, but not be limited to, the following information:

1. The date of the report;
2. A description of the regulated medical waste, identified by Waste Class;
3. The total quantity in pounds for the year for each Waste Class of regulated medical waste generated, treated, destroyed, or disposed of;
4. The name and NJDEP solid waste transporter registration number of every transporter who transported the generator's regulated medical waste;
5. The EPA regulated medical waste transporter number for each transporter listed in (h)4 above;
6. The name and address of each intermediate handler or destination facility and a description of quantity in pounds for each Waste Class of regulated medical waste sent to each facility; and
7. The method of treatment, destruction or disposal of each Waste Class by quantity in pounds (for example, on-site treatment, on-site incineration, disposal via sanitary sewer).

(i) Copies of the generator reports shall be retained for at least three years from the date that the report is due, unless the Department specifically requires an additional retention period.

7:26-3A.22 Exception reporting for generators

(a) A generator shall contact the owner or operator of the destination facility, transporter(s), and intermediate handler(s), as appropriate, to determine the status of any tracked waste if the generator does not receive a copy of the completed tracking form with the handwritten signature of the owner or operator of the destination facility within 35 days of the date the waste was accepted by the initial transporter.

(b) A generator shall submit a generator exception report, as described below, to the Department at the address listed at N.J.A.C. 7:26-3A.8(d), and the EPA Regional Administrator for the Region in which the generator is located if the generator has not received a completed copy of the tracking form signed by the owner or operator of the destination facility within 45 days of the date the waste was accepted by the initial transporter. The exception report must be postmarked on or before the 46th day following the date the waste was accepted by the initial transporter and shall include:

1. A legible copy of the original tracking form for which the generator does not have confirmation of delivery; and
2. A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the regulated medical waste, and its final disposition if ascertained, and the results of those efforts.

(c) A copy of the generator exception report shall be kept by the generator for a period of at least three years from the due date of the report unless the Department specifically requires an additional retention period.

7:26-3A.23 Additional reporting for generators

The Department and the Administrator may require generators to furnish additional information concerning the quantities and management methods of medical waste as they deem necessary under Resource Conservation Recovery Act (RCRA) Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D-9.

7:26-3A.24 Generators of regulated medical waste who incinerate regulated medical waste on-site

(a) The requirements of N.J.A.C. 7:26-3A.25 and 3A.26 shall apply to generators of regulated medical waste who incinerate regulated medical waste on-site.

(b) Generators of regulated medical waste who incinerate such waste on-site and who accept regulated medical waste accompanied by a regulated medical waste tracking form are also subject to the requirements of N.J.A.C. 7:26-3A.38 through 3A.42.

(c) In addition, owners and operators of incinerators are required to comply with the requirements of N.J.A.C. 7:26-2, 2B, 4 and 16 unless they are temporarily authorized to operate in accordance with N.J.A.C. 7:26-3A.37.

7:26-3A.25 Recordkeeping for generators with on-site incinerators

(a) Generators shall keep a generator on-site incinerator operating log at their incineration facility that includes, but shall not be limited to, the following information:

1. The date each incineration cycle was begun;
2. The length of the incineration cycle;
3. The total quantity in pounds of solid waste and medical waste incinerated, per incineration cycle;
4. An estimate of the quantity in pounds of regulated medical waste incinerated, per incineration cycle; and
5. The quantity in pounds of ash generated and transported off-site, including dates of transport and the name, address, and NJDEP solid waste registration number of the transporters and the name and address of the disposal facilities utilized.

(b) Generators with on-site incinerators that accept regulated medical waste from other generator(s) shall maintain the following information, in addition to the on-site incinerator operating log required by (a) above, for each shipment of regulated medical waste accepted:

1. The date the waste was accepted;
2. The name and address of the generator who originated the shipment. If the generator is not located in New Jersey, then use the state permit or identification number of the other state and if the other state does not issue a permit or identification number, then use the generator's address;
3. The total weight in pounds of the regulated medical waste accepted from the originating generator; and
4. The signature of the individual accepting the waste.

(c) Generators with on-site incinerators shall compile the generator on-site incinerator operating log required by (a) above during the following period: June 22, 1989 to June 22, 1991 and shall retain the operating log until at least June 22, 1992 unless the Department specifically requires an additional retention period.

(d) Generators with on-site incinerators that accept regulated medical waste from other generators shall keep copies of all tracking forms and operating logs for a period of three years from the date they accepted the waste unless the Department specifically requires an additional retention period.

(e) Generators shall retain a copy of the generator on-site incinerator report form required under N.J.A.C. 7:26-3A.26 for three years from the date of submission, unless the Department specifically requires an additional retention period.

7:26-3A.26 Reporting for generators who incinerate regulated medical waste on-site

(a) The owner or operator of an on-site incinerator shall prepare three copies of a generator on-site incinerator report on forms available from the Department at the address listed in N.J.A.C. 7:26-3A.8(d), and submit one copy of the generator on-site incinerator report to the Department, and two copies to:

Chief, Waste Characterization Branch
Office of Solid Waste (OS-332)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

(b) The generator on-site incinerator reports shall summarize, in the format provided by the Department, information collected in the generator on-site incinerator operating log during the period covering June 22, 1989 through December 22, 1989 and during the period covering June 22, 1990 through December 22, 1990, and shall contain, but not be limited to, the following information:

1. Facility name, mailing address, and location;
2. Facility type (for example, hospital, laboratory);
3. Contact person;
4. Waste feed information;
5. The total number of incinerators at the facility that incinerate regulated medical waste and information concerning each incinerator; and
6. The quantity in pounds of ash generated and transported off-site, including dates of removal, the name, address and NJDEP solid waste transporter registration number of the transporter(s), and the name and address of the disposal facility.

(c) Each generator on-site incinerator report shall contain the following certification, signed by the facility owner or his authorized representative: "I certify that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete."

(d) The first generator on-site incinerator report is due by February 6, 1990 and shall contain information covering the period from June 22, 1989 through December 22, 1989.

(e) The second generator on-site incinerator report is due by February 6, 1991 and shall contain information covering the period from June 22, 1990 through December 22, 1990.

(f) Beginning July 1, 1991, the owner or operator of an on-site incinerator shall submit to the Department only, an annual generator on-site incinerator report on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) for the period from July 1 through June 30 which shall be due July 30 of each calendar year.

7:26-3A.27 Transporters

(a) The requirements of N.J.A.C. 7:26-3A.27 through 3A.36 apply to transporters, including generators who transport their own waste, and owners and operators of transfer facilities engaged in transporting regulated medical waste that is generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) The requirements of (a) above shall not apply to on-site transportation of regulated medical waste.

(c) No person shall engage or continue to engage in transportation of regulated medical waste in New Jersey unless:

1. They register as a regulated medical waste transporter in accordance with N.J.A.C. 7:26-3A.8;
2. They register as a solid waste transporter in accordance with N.J.A.C. 7:26-3.2, pay fees in accordance with N.J.A.C. 7:26-4, and comply with the requirements of N.J.A.C. 7:26-3.1, 3.4, 3.7, and 16;
3. They obtain a certificate of public convenience and necessity as required by N.J.S.A. 48:13A-6; and
4. They notify the EPA in accordance with N.J.A.C. 7:26-3A.29.

(d) Generators of less than three cubic feet of regulated medical waste per month who meet the requirements of N.J.A.C. 7:26-3A.17(a) are exempt from the requirements of (c) above.

(e) A transporter of regulated medical waste shall also comply with applicable requirements of N.J.A.C. 7:26-3A.16, 3A.18, 3A.20, 3A.21, 3A.22 and 3A.23, when he consolidates two or more shipments of regulated medical waste onto a single regulated medical waste tracking form.

(f) Transporters shall also comply with the pre-transport requirements of N.J.A.C. 7:26-3A.10 through 3A.15 if they:

1. Store regulated medical waste in the course of transport; or
2. Remove regulated medical waste from a reusable container; or
3. Modify packaging of regulated medical waste.

7:26-3A.28 Transporter acceptance of regulated medical waste

(a) Transporters shall not accept for transport any regulated medical waste unless the outer surface of the container is labeled and marked in accordance with N.J.A.C. 7:26-3A.14 and 3A.15.

(b) Transporters shall not accept a shipment of regulated medical waste from a generator unless accompanied by a properly completed tracking form as required under N.J.A.C. 7:26-3A.19.

(c) When regulated medical waste is handled by more than one transporter, each subsequent transporter shall attach a water resistant identification tag below the generator's marking on the outer surface of the packaging, that does not obscure the generator's or previous transporter's markings. The transporter taking possession of the shipment must ensure that the tag contains the following information:

1. The name of transporter taking possession (receiving) of the regulated medical waste;

2. The transporter's NJDEP solid waste registration number. If the transporter does not transport in New Jersey, use the permit or identification number issued by the state in which the transporter is registered. If the transporter's state does not issue a permit or identification numbers, then use the transporter's address; and

3. The date of receipt.

7:26-3A.29 Transporter EPA notification

(a) Transporters (including owners or operators of transfer facilities) are prohibited from transporting regulated medical waste generated in New Jersey unless they have notified EPA in writing in accordance with (c) and (d) below and have submitted a copy of the notification form to the Department at the address listed in N.J.A.C. 7:26-3A.8(d).

(b) Transporters who accept regulated medical waste that was not generated in New Jersey but was generated in another state that is participating in the Federal demonstration program shall notify the EPA in writing in accordance with (c) and (d) below and shall submit a copy of the notification form to that state's waste management agency.

(c) The original and one copy of the transporter notification must be sent to:

Chief, Waste Characterization Branch (OS-332)
EPA Office of Solid Waste
401 M Street, SW
Washington, DC 20460

(d) Each transporter notification shall contain the following information:

1. The transporter's name, mailing address, and EPA hazardous waste identification number (if any);

2. The name, address and telephone number for each transportation or transfer facility (by site) that the transporter will operate from in New Jersey or from another state which is participating in the federal demonstration program;

3. The NJDEP solid waste transporter registration number;

4. The following statement signed by a corporate official or the owner or operator: "I certify, under penalty of criminal or civil prosecution for making or submission of false statements, representations, or omissions, that I have read, understand, and will comply with the regulations at 40 C.F.R. Part 259, issued under authority of Subtitle J of the Resource Conservation and Recovery Act."

(e) EPA will issue transporters who notify under this section a unique EPA Medical Waste Identification Number for New Jersey if the regulated medical waste is generated in New Jersey, or a unique EPA Medical Waste Identification Number for the state of generation if other than New Jersey. This identification number will apply to all transporter sites identified in (d)2 above. Transporters may accept regulated medical waste after notifying under this section as long as the notification complies with the requirements of (d) above. Upon receipt of an EPA Medical Waste Identification Number, the transporter shall include it on Box 5 of the medical waste tracking form.

7:26-3A.30 Vehicle requirements

(a) In addition to the requirements of N.J.A.C. 7:26-3, transporters shall use vehicles to transport regulated medical waste that meet the following requirements:

1. The vehicle shall have a fully enclosed, leak-resistant cargo-carrying body;

2. The transporter shall ensure that the waste is not subject to mechanical stress or compaction during loading and unloading or during transit;

3. The transporter shall maintain the cargo-carrying body in good sanitary condition; and

4. The cargo-carrying body shall be secured if left unattended.

(b) The transporter shall use vehicles to transport regulated medical waste that have the following identification on the two sides and back of the cargo-carrying body in letters a minimum of three inches in height:

1. The name of the transporter;

2. The transporter's NJDEP solid waste transporter registration number; and

3. A sign or the following words imprinted:

i. MEDICAL WASTE; or

ii. REGULATED MEDICAL WASTE.

(c) A transporter shall not transport regulated medical waste with other solid waste in the same container, unless the transporter manages both wastes as regulated medical waste in compliance with the requirements of N.J.A.C. 7:26-3A.27 through 3A.36.

7:26-3A.31 Tracking form requirements for transporters

(a) A transporter shall not accept a shipment of regulated medical waste if the regulated medical waste is to be treated, transported, stored, transferred, destroyed, disposed of, or otherwise managed in New Jersey, unless it is accompanied by a medical waste tracking form available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) and completed in accordance with instructions provided by the Department and signed by the generator in accordance with the provisions of N.J.A.C. 7:26-3A.19. In the case where a transporter intends to deliver regulated medical waste generated in New Jersey to another state which is participating in the Federal demonstration program and which supplies its own tracking form and requires its use, the transporter shall provide the generator with the form of that state to which the waste is to be sent.

(b) Before accepting for transport or transporting any regulated medical waste the transporter shall:

1. Certify that the tracking form accurately reflects the number and total weight in pounds of the packages being transported by signing and dating the tracking form acknowledging acceptance of the regulated medical waste from the generator; and

2. Return a signed copy of the tracking form to the generator before leaving the generator's site.

(c) The transporter shall ensure that the tracking form accompanies the regulated medical waste while in transit.

(d) A transporter, upon delivery of the regulated medical waste to another transporter (including a transfer facility) or to an intermediate handler or destination facility located in the United States, shall:

1. Obtain the date of delivery and the handwritten signature of the transporter, or the owner or operator of the intermediate handling facility, or destination facility on the tracking form;

2. Retain one copy of the tracking form in accordance with N.J.A.C. 7:26-3A.34; and

3. Give the remaining copies of the tracking form to the accepting transporter, intermediate handler, or destination facility.

(e) Any transporter who transports regulated medical waste across an international border, or who delivers regulated medical waste to a transporter or treatment, destruction, or destination facility located in a foreign country (for example, Canada) shall:

1. Sign the tracking form and verify that the waste has been delivered to the next (foreign) transporter, or treatment, destruction, or destination facility;

2. Retain one copy of the signed tracking form for his records; and

3. Return all remaining copies of the tracking form by mail to the generator.

(f) For shipments involving rail transportation, the requirements of N.J.A.C. 7:26-3A.44 apply to rail transporters in lieu of the requirements of subsections (b), (c) and (d) of this section.

7:26-3A.32 Transporter compliance with the tracking form

(a) Except as provided in (b) below, the transporter shall deliver the entire quantity of regulated medical waste that he has accepted from a generator or another transporter to:

1. The intermediate handler or destination facility listed on the tracking form; or

2. The next transporter.

(b) If the regulated medical waste cannot be delivered in accordance with (a) above, the transporter shall contact the generator for further directions, revise the tracking form according to the generator's instructions, and deliver the entire quantity of regulated medical waste from that generator according to the generator instructions.

7:26-3A.33 Transporters consolidating waste to a new tracking form

(a) A transporter may choose to consolidate to a single tracking form all shipments of regulated medical waste less than 220 pounds.

(b) When the transporter receives the signed tracking form that he initiated by consolidating shipments of regulated medical waste back from the destination facility, the transporter shall:

1. Attach a copy of the tracking form signed by the destination facility to the generator's original tracking form;

2. Retain a copy of each tracking form in accordance with N.J.A.C. 7:26-3A.34;

3. Return a copy of each tracking form to the generator within 15 days of receipt of the tracking form from the destination facility; and

4. Maintain a transporter consolidation log indicating all shipments consolidated on that form. The transporter consolidation log must accompany the tracking form and include the following information:

i. The name of each generator;

ii. The generator's address or if the regulated medical waste was generated in another state which issues a permit or identification number, then use that permit or identification number and, if the generator's state does not issue permit or identification numbers, then use the generator's address;

iii. The date the regulated medical waste was originally shipped by the generator;

iv. The quantity in pounds of regulated medical waste (number of containers and/or weight in pounds) by waste category (i.e., "untreated" or "treated") shipped by each generator; and

v. The names, NJDEP registration numbers of all previous transporters or, if the transporters do not transport in New Jersey, then use the permit or identification number issued by the state in which the transporter is registered, and if the state does not issue permits or identification numbers, use the transporters' addresses.

7:26-3A.34 Recordkeeping for transporters of regulated medical waste

(a) A transporter of regulated medical waste shall keep a copy of the tracking form signed by the generator, himself, the previous transporter (if applicable), and the next party, which may be one of the following: another transporter; or the owner or operator of an intermediate handling facility or destination facility. The transporter shall retain a copy of this form for a period of three years from the date the waste was accepted by the next party unless the Department specifically requires an additional retention period.

(b) For any regulated medical waste that was received by the transporter and consolidated by the transporter to another tracking form, the transporter shall:

1. Retain a copy of the generator-initiated tracking form signed by the transporter for three years from the date the waste was accepted by the transporter unless the Department specifically requires an additional retention period; and

2. Retain a copy of the transporter-initiated tracking form signed by the intermediate handler or destination facility for three years from the date the waste was accepted by the intermediate handler or destination facility unless the Department specifically requires an additional retention period.

(c) Retain a copy of each regulated medical waste transporter report required by N.J.A.C. 7:26-3A.35 for three years after the date of submission unless the Department specifically requires an additional retention period.

7:26-3A.35 Transporter reporting

(a) A transporter who accepts regulated medical waste which is generated in New Jersey or that is to be stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey shall submit a regulated medical waste transporter report to the Department describing the source and disposition of the waste. The regulated medical waste transporter reports shall be submitted on forms available from the Department and sent to the address listed at N.J.A.C. 7:26-3A.8(d).

(b) If the regulated medical waste was generated in New Jersey, the transporter shall also send a copy of the regulated medical waste transporter report to the EPA at the following address:

Chief, Waste Characterization Branch (OS-332)
Office of Solid Waste
U.S. Environmental Protection Agency
401 M St., S.W.
Washington, D.C. 20460

(c) In addition, if the regulated medical waste was not generated in New Jersey but was generated in a state which is participating in the Federal demonstration program, the transporter shall submit a copy of the report to the EPA at the address in (b) above and to the waste management agency of the generation state.

(d) Each regulated medical waste transporter report shall include, but not be limited to, the following information:

1. The transporter's name, address, and EPA medical waste identification number and NJDEP solid waste transporter registration number or if the transporter does not transport in New Jersey, then use the permit or identification number issued of the state in which the transporter is registered;

2. The name and telephone number of a contact person;

3. The total number of generators from whom the transporter accepted regulated medical waste;

4. The name, address, and type of each generator (for example, hospital, doctor) from whom the transporter accepted regulated medical waste;

5. The amount by weight in pounds and waste category (untreated or treated) of regulated medical waste accepted from each generator;

6. The total, by weight in pounds and by waste category, of regulated medical waste from all generators in New Jersey, or from all generators in another state which is participating in the Federal demonstration program, that the transporter delivered to an intermediate handler or to a destination facility;

7. The total, by weight in pounds and by waste category, of regulated medical waste from all generators in New Jersey or from all generators in another state which is participating in the Federal demonstration program that the transporter delivered to a second transporter or to a transfer facility; and

8. The certification of the transporter report signed by the owner or operator, or his authorized representative.

(e) Transporters who transport or deliver regulated medical waste to an intermediate handler or to a destination facility shall also provide the following information:

1. The name and address of each intermediate handler and destination facility to which the waste was delivered;

2. The amount in pounds, by waste category, that was delivered;

3. The total number of intermediate handlers and destination facilities to which waste was delivered.

(f) The transporter shall submit regulated medical waste transporter reports covering the following periods:

1. A regulated medical waste transporter report covering the 180 day period from June 23, 1989, to December 19, 1989 which is due on or before February 2, 1990.

2. A regulated medical waste transporter report covering the 180 day period from December 20, 1989, to June 17, 1990 which is due on or before August 1, 1990.

3. A regulated medical waste transporter report covering the 180 day period from June 18, 1990, to December 14, 1990 which is due on or before January 28, 1991.

4. A regulated medical waste transporter report covering the 180 day period from December 15, 1990, to June 12, 1991 which is due on or before July 27, 1991.

5. After June 12, 1991 an annual regulated medical waste transporter report shall be submitted to the Department only which shall cover the period from July 1 through June 30 and shall be due on or before July 30 of each calendar year.

(g) Each transporter who initiates a tracking form shall meet the requirements of N.J.A.C. 7:26-3A.22, exception reporting, except that the 35 and 45 day periods begin on the day the transporter accepted the waste from the generator.

7:26-3A.36 Additional reporting for transporters of regulated medical waste

The Department and the Administrato: may require transporters to furnish additional information concerning the quantities and management methods of regulated medical waste as he or she deems necessary under RCRA Section 11004 and as the Department may deem necessary under N.J.S.A. 13:1D-9.

7:26-3A.37 Temporary authorization to operate a regulated medical waste incinerator

(a) This section applies only to and sets forth requirements for an authorization to operate an incinerator that accepts regulated medical waste for disposal.

(b) Notwithstanding the requirements of N.J.A.C. 7:26-2 and 2B, but subject to the requirements of N.J.A.C. 7:26-16, the owner or operator of an incinerator shall be authorized to operate that incinerator if the following requirements are met:

1. The owner or operator shall submit documentation as submitted to the Department demonstrating that the incinerator was in operation accepting regulated medical waste for disposal on or before March 6, 1989;

2. The owner or operator of the disposal facility continues to accept regulated medical waste for disposal;

3. The owner or operator registers and pays fees as a regulated medical waste destination facility in accordance with N.J.A.C. 7:26-3A.8;

4. The owner or operator of the facility shall have a current certificate to operate control apparatus or equipment pursuant to N.J.A.C. 7:27;

5. The owner or operator shall be or is fully permitted pursuant to N.J.A.C. 7:26-2 and 2B prior to expiration of the facility's current certificate to operate control apparatus or equipment issued pursuant to N.J.A.C. 7:27. For the purposes of the temporary authorization, any application for a renewal or extension of the current certificate shall be considered an expiration of the current certificate;

6. No waste shall be stored overnight at any facility without effective treatment to prevent odors associated with putrefaction;

7. Facility property surrounding the actual disposal area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residues and effluents. Methods of effectively controlling wind-blown papers and other lightweight materials such as fencing shall be implemented;

8. The operation of the facility shall not result in odors associated with solid waste being detected off site in any area of human occupancy;

9. The owner or operator shall maintain all facility systems and related appurtenances in a manner that facilitates proper operation and minimizes system downtime. When requested, the operator of the facility shall furnish proof that provisions have been made for the repair and replacement of equipment which becomes inoperative;

10. An adequate water supply and adequate fire-fighting equipment shall be maintained at the facility or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of the local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

11. The owner or operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with the requirements of the New Jersey Pesticide Control Code, N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

12. The facility owner or operator shall be responsible for the sanitary condition and orderly operation of the area;

13. The Departments' inspectors shall have the right to enter and inspect any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

i. Sampling any materials on site;

ii. Photographing any portion of the facility;

iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department, including conditions of the facility's authorization or permit issued by the Department; or

v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

14. An operation and maintenance manual meeting the requirements of N.J.A.C. 7:26-2B.4(a)17 through 20 shall be maintained at the facility;

15. The owner or operator shall obtain or has obtained all applicable permits and approvals required by Federal, State, county and local ordinance;

16. The facility shall not pose a threat to the public health, safety or the environment; and

17. The facility shall only accept regulated medical waste from transporters who have NJDEP registration numbers and who have notified the EPA in accordance with N.J.A.C. 7:26-3A.29 and who have a certificate of public convenience and necessity issued by the New Jersey Board of Public Utilities, unless the transporter is exempt from these requirements pursuant to N.J.A.C. 7:26-3A.17(a) or unless the transporter is the U.S. Postal Service and the generator who has shipped the waste has complied with N.J.A.C. 7:26-3A.17(b).

7:26-3A.38 Intermediate handlers and destination facilities

(a) N.J.A.C. 7:26-3A.38 through 3A.42 apply to owners and operators of facilities located in New Jersey that receive regulated medical waste and owners and operators of facilities in another state that receive regulated medical waste generated in New Jersey. Facilities that are subject to the above sections include:

1. Destination facilities (that is, treatment and destruction facilities, a facility that causes the regulated medical waste to meet the conditions of N.J.A.C. 7:26-3A.6(b)3 or 4 including incineration facilities, and disposal facilities); and

2. Intermediate handlers (that is, facilities that either treat or destroy the regulated medical waste, but do not cause it to meet the conditions of N.J.A.C. 7:26-3A.6(b)3 or 4).

(b) The rule paragraphs noted in (a) above also apply to generators with on-site incinerators who accept regulated medical waste for disposal.

7:26-3A.39 Use of the tracking form for intermediate handlers and destination facilities

(a) The owner or operator of a destination facility when receiving a tracking form shall:

1. Sign and date each copy of the tracking form to certify that the regulated medical waste listed on the tracking form was received;

2. Note any discrepancies as defined in N.J.A.C. 7:26-3A.40(a) on the tracking form;

3. Immediately give the transporter at least one copy of the signed tracking form:

i. In the case of regulated medical waste transported in accordance with N.J.A.C. 7:26-3A.17(a), immediately give the generator at least one copy of the signed tracking form.

ii. In the case of regulated medical waste transported in accordance with N.J.A.C. 7:26-3A.17(b) the disposal facility shall mail at least one copy to the generator directly.

4. Send a copy of the tracking form to the generator (or to the transporter or intermediate handler that initiated the tracking form) within 15 days of the delivery; and

5. Retain a copy of each tracking form in accordance with N.J.A.C. 7:26-3A.41.

(b) When an intermediate handler receives regulated medical waste the owner or operator shall meet the following requirements:

1. The owner or operator shall meet all the requirements for generators under both N.J.A.C. 7:26-3A.10 through 3A.16 and 3A.18 through 3A.23, including signing the tracking form accepting the waste as specified in Box 20 and entering the new tracking form number in Box 21 when initiating a new tracking form for each shipment of regulated medical waste that has either been treated or destroyed.

2. The owner or operator shall maintain an intermediate handler log matching the original generator's tracking forms to the tracking form that he initiates. The intermediate handler log shall include:

i. The name(s) of generator(s);

ii. The generator's address. If the generator is not located in New Jersey, then use the generator's state permit or identification number. If the state does not issue permit or identification numbers, then use the generator's address;

iii. The date the regulated medical waste was originally shipped by the generator or the generator's unique tracking form number;

iv. The new tracking form number to which the waste is assigned;

3. Within 15 days of receipt of the tracking form that he initiated and that was signed by the destination facility, the intermediate handler shall:

i. Attach a copy of the tracking form signed by the destination facility to the original tracking form initiated by the generator identified in (b)2i above;

ii. Send a copy of each tracking form to the generator who initiated the tracking form; and

iii. Retain a copy of each tracking form in accordance with the requirements of N.J.A.C. 7:26-3A.41.

(c) If a destination facility or intermediate handler receives from a rail transporter regulated medical waste that is accompanied by shipping papers containing the information required on the medical waste tracking form, with the exception of the generator's certification and chain of custody signatures, the owner or operator or his agent, shall:

1. Sign and date each copy of the tracking form or the shipping papers (if the tracking form has not been received);

2. Note any discrepancies as defined in N.J.A.C. 7:26-3A.40(a) on each copy of the tracking form or shipping papers (if the tracking form has not been received);

3. Immediately give the rail transporter at least one copy of the tracking form or shipping papers (if the tracking form has not been received);

4. If the facility is a destination facility, send a copy of the signed and dated tracking form to the generator within 15 days after the delivery. If the owner or operator has not received the tracking form within 15 days of delivery, he shall send a copy of the signed and dated shipping papers to the party initiating the tracking form;

5. If the facility is an intermediate handler, retain a copy of the tracking form (or the shipping papers if the tracking form has not been received), until he receives a copy of the tracking form signed by the owner or operator of the destination facility. He then shall:

i. Attach a copy of the tracking form signed by the destination facility to the original tracking form (or the shipping papers if the tracking form has not been received) initiated by another party;

ii. Send a copy of each tracking form (or each set of shipping papers) to the party who initiated the tracking form; and

iii. Retain a copy of each tracking form in accordance with the requirements of N.J.A.C. 7:26-3A.41.

(d) The destination facilities and intermediate handlers as set forth in (c) above shall retain a copy of the tracking form (or shipping papers if signed in lieu of the tracking form) for at least three years from the date of acceptance of the regulated medical waste unless the Department specifically requires an additional retention period.

(e) The destination facilities and intermediate handlers receiving shipments by rail should expect to receive the tracking form from the generator, or the preceding non-rail transporter who will have sent the tracking form to the facility by some other means (for example, by mail).

7:26-3A.40 Tracking form discrepancies for intermediate handlers and destination facilities

(a) Tracking form discrepancies are:

1. For packages, any variation in piece count such as a discrepancy of one box, pail, or drum in a truckload;

2. For waste by categories (that is, untreated or treated), discrepancies in number of packages for each category of regulated medical waste as described on the label imprinted or affixed to the outer surface of the package;

3. Packaging that is broken, torn, or leaking; and

4. Regulated medical waste that arrives at an intermediate handler or a destination facility unaccompanied by a tracking form, or for which the tracking form is incomplete or not signed.

(b) Upon discovering a discrepancy, the owner or operator shall attempt to resolve (for example, with telephone conversations) the discrepancy with the waste generator, the transporter and/or the intermediate handler. If the discrepancy is not resolved, the owner or operator shall submit a letter, within 15 days of receiving the waste describing the nature of the discrepancy and the attempts the owner or operator has undertaken to reconcile it. The owner or operator shall include with the letter a legible copy of the tracking form or shipping papers in question. If the discrepancy is the type specified in (a)4 above, the letter shall specify the quantity of waste received, the transporter, and the generator(s). The letter shall be submitted as follows:

1. If the regulated medical waste was generated and disposed of in New Jersey, the letter shall be sent to:

i. The Department at the address listed in N.J.A.C. 7:26-3A.8(d); and

ii. The EPA Regional Administrator for New Jersey.

2. If the regulated medical waste was generated in New Jersey but disposed of in another state, the letter shall be sent to:

i. The EPA Regional Administrator for New Jersey;

ii. The EPA Regional Administrator for the state of disposal; and

iii. The Department at the address listed in N.J.A.C. 7:26-3A.8(d).

3. If the regulated medical waste was not generated in New Jersey but was generated in a state which is participating in the Federal demonstration program, the letter shall be sent to:

i. The EPA Regional Administrator for the state of generation;

ii. The EPA Regional Administrator for New Jersey; and

iii. The Department at the address listed in N.J.A.C. 7:26-3A.8(d).

4. If the regulated medical waste was generated in a state which is not participating in the Federal demonstration program, the letter shall be sent to:

i. The Department at the address listed in N.J.A.C. 7:26-3A.8(d).

7:26-3A.41 Recordkeeping for intermediate handlers and destination facilities

(a) The owner or operator of a destination facility or an intermediate handler receiving regulated medical waste generated, treated, destroyed, disposed of or otherwise managed in New Jersey shall maintain records for a minimum of three years from the date the waste was accepted unless the Department specifically requires an additional retention period. These records shall contain the following information:

1. Copies of all tracking forms required by N.J.A.C. 7:26-3A.39(a)5, (b)3iii, and (c)5iii; and the logs required by N.J.A.C. 7:26-3A.39(b)2;

2. Copies of all discrepancy reports required by N.J.A.C. 7:26-3A.40(b).

7:26-3A.42 Additional reporting for intermediate handlers and destination facilities

(a) All regulated medical waste intermediate handlers and destination facilities are required to submit an annual intermediate handler and destination facility report to the Department, covering the period from January 1 through December 31 of each calendar year and shall be submitted by February 15 of each calendar year, on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d), which shall include, but not be limited, to the following information:

i. A description of the sources, the types and amounts of regulated medical waste treated and/or destroyed; and

ii. The methods used for treatment and/or destruction.

(b) The Administrator and the Department may require owners or operators of destination facilities and intermediate handlers to furnish additional information concerning the quantities and management methods of medical waste as he deems necessary under RCRA Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D-9.

7:26-3A.43 Rail transporters

(a) The requirements in this section and in N.J.A.C. 7:26-3A.44 apply to persons engaged in rail transportation of regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) Rail transporters of regulated medical waste shall also comply with the transporter requirements of N.J.A.C. 7:26-3A.27 through 3A.36 except as otherwise provided in N.J.A.C. 7:26-3A.31(f).

7:26-3A.44 Rail shipment tracking form requirements

(a) The following requirements apply to all shipments of regulated medical waste involving rail transport:

1. When accepting regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey from a non-rail transporter, the initial rail transporter shall:

i. Sign and date the tracking form acknowledging acceptance of the regulated medical waste;

ii. Return a signed copy of the tracking form to the non-rail transporter;

iii. Forward at least three copies of the tracking form to:

(1) The next non-rail transporter, if any; or

(2) The intermediate handler or destination facility, if the shipment is delivered to that facility by rail; or

(3) The last rail transporter designated to handle the waste in the United States; and

iv. Retain one copy of the tracking form and rail shipping paper in accordance with N.J.A.C. 7:26-3A.34.

2. Rail transporters shall ensure that a shipping paper containing all the information required on the tracking form (excluding permitting or licensing numbers, generator certification, and signatures) accompanies the shipment at all times. Intermediate rail transporters are not required to sign either the tracking form(s) or shipping paper(s).

3. When delivering regulated medical waste to an intermediate handler or destination facility, a rail transporter shall:

i. Obtain the date of delivery and handwritten signature of the owner or operator of the facility on the tracking form or the shipping papers (if the tracking form has not been received by the facility); and

ii. Retain a copy of the tracking form or signed shipping paper in accordance with N.J.A.C. 7:26-3A.34.

4. When delivering regulated medical waste to a non-rail transporter, a rail transporter shall:

i. Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the tracking form; and

ii. Retain a copy of the tracking form in accordance with N.J.A.C. 7:26-3A.34.

5. Upon accepting regulated medical waste generated or to be treated, destroyed or disposed of in New Jersey from a rail transporter, a non-rail transporter shall sign and date the tracking form (or the shipping papers if the tracking form has not been received by the transporter) and provide a copy to the rail transporter.

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Administrative Correction
Sulphur Contents Standards
N.J.A.C. 7:27-10.2

Take notice that the Department of Environmental Protection has discovered an error in the text of N.J.A.C. 7:27-10.2, Sulphur contents standards, currently in the New Jersey Administrative Code. Table 2, Existing Solid Fuel Burning Units, which should appear as part of subsection (c), does not appear in the Code. This table was proposed October 9, 1980 at 12 N.J.R. 571(a) and adopted effective June 4, 1981 at 13 N.J.R. 341(a), but was not reproduced in the subsequent Code update. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (additions indicated in boldface ***thus***):

7:27-10.2 Sulphur contents standards

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

(c) The provisions of (a) and (b) above shall not apply to solid fuel whose combustion causes sulfur dioxide (SO_2) emissions from any stack or chimney into the outdoor atmosphere which are demonstrated to the Department as not exceeding, at any time, those quantities of sulfur dioxide expressed in pounds per 1,000,000 British Thermal Units (BTU) gross heat input, set forth in Table 2.

TABLE 2
EXISTING SOLID FUEL BURNING UNITS

Type Fuel	Maximum Allowable SO_2 Emissions (pounds/million BTU)			
	Zone One	Zone Two	Zone Three	Zone Four
Anthracite Coal and Coke	1.2	1.2	1.2	1.2
All other solid fuels	1.5	1.5	0.3	0.3

(d)-(g) (No change.)

HEALTH

(b)

FINANCIAL ELEMENTS AND REPORTING
Revenues and Deductions from Revenue
Adopted Amendment: N.J.A.C. 8:31B-4.15

Proposed: June 5, 1989 at 21 N.J.R. 1487(a).

Adopted: August 17, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: August 18, 1989 as R.1989 d.491, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18(d), and 26:2H-18.4 et seq., specifically 26:2H-18.13e (P.L. 1989, c.1).

Effective Date: September 18, 1989.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: St. Joseph's Hospital and Medical Center states that their understanding of the amendment is the following: ". . . it is an amendment to current regulations designed to enforce the legislature's intent that all patients, regardless of payor, pay their proportionate share of uncompensated care. To the extent that any hospital has applied negotiated payment discounts prior to calculating the amount attributable to the uncompensated care add-on, this charge would increase the cost to those payors that have negotiated a discount." The hospital goes on to state that the applicability of this change does not pertain to them.

RESPONSE: The proposed amendment to N.J.A.C. 8:31B-4.15(a)4 will implement section 6c of P.L. 1989, c.1 (N.J.S.A. 26:2H-18.4, et seq.). St. Joseph's Hospital and Medical Center has stated the correct interpretation of the amendment.

Full text of the adoption follows.

8:31B-4.15 Revenues and deductions from revenue

(a) In many instances, the hospital receives less than its full charge for the services it renders. This necessitates the reporting of both the gross revenue and revenue "adjustments" resulting from failure to collect full charges for services provided. These revenue adjustments are called Deductions from Gross Revenue. The specific deductions required for reporting Revenue Related to Patient Care, as defined in N.J.A.C. 8:31B-4.32, are defined in (a)1-11 of this section. Any individual allowance must be reported in only one of the 10 deduction

categories and three contra categories (although individual transactions may be distributed among several if appropriate):

1-3. (No change.)

4. Courtesy adjustments: These deductions represent adjustments from charges for services rendered to any individual other than employees of the hospital and not otherwise more appropriately categorized, including any patient accounts written off contrary to the hospital's formal policies relative to credit, bad debts and indigency care. Except in unusual circumstances, the Commissioner will not consider courtesy adjustments as a proper financial element for inclusion in the rate of other patients.

i. The uniform Statewide uncompensated add-on for patients whose bills are paid by a payer which has negotiated a discounted rate of payment shall be based on the full rate of reimbursement rather than on the discounted rate of payment.

5.-11. (No change.)

(b) (No change.)

(a)

UNCOMPENSATED CARE TRUST FUND
Uncompensated Care Trust Fund Cap
Adopted New Rule: N.J.A.C. 8:31B-7.9

Proposed: June 5, 1989 at 21 N.J.R. 1487(b).

Adopted: August 17, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: August 18, 1989 as R.1989 d.490, **without change.**

Authority: N.J.S.A. 26:2H-18.4 et seq. specifically 26:2H-18.13e and 26:2H-1 et seq. (P.L. 1989, c.1).

Effective Date: September 18, 1989.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: "The economic impact section states that, 'all hospitals will be paid for all their uncompensated care during the year.' However, the proposed rule states under N.J.A.C. 8:31B-7.9(d) that, 'Hospitals who had a portion of the uncompensated care trust fund cap shortfall allocated to them may seek Commission approval for an individual hospital rate increase for uncompensated care in addition to the add-on. Such increases shall be paid through the hospital's rates, not through the Uncompensated Care Trust Fund.' We feel that the wording 'may seek Commission approval,' may mean that the Commission can possibly disapprove of the hospital rate increase, and that this is not the intention of the uncompensated care regulations."

COMMENTER: Raritan Bay Medical Center

RESPONSE: The hospital rate setting system reimburses 100 percent of reasonable uncompensated care and will continue to do so. However, if the Hospital Rate Setting Commission finds a hospital's increase in uncompensated care beyond the add-on unreasonable, it is the hospital's responsibility to justify the request for increased uncompensated care dollars, in order that the Rate Setting Commission can comply with Chapter 83 rules and approve reimbursement for reasonable uncompensated care.

COMMENT: "Adding the increases in uncompensated care to a hospital's rates will defeat the purpose of the uncompensated care pool in that hospitals with higher uncompensated care will have higher mark-up factors, and, in turn, their rates will be higher in the competitive marketplace."

COMMENTER: Raritan Bay Medical Center

RESPONSE: The Uncompensated Care Trust Fund Law, P.L. 1989, c.1, placed a 13 percent cap on the amount of money raised by the uniform Statewide Uncompensated Care add-on, as a percentage of all governmental and nongovernmental approved revenue. However, the law did not preclude the Hospital Rate Setting Commission from approving individual hospital rate increases for reasonable uncompensated care in addition to the add-on. In order to comply with the Trust Fund Law and Chapter 83 rules which mandate the reimbursement of 100 percent of a hospital's reasonable uncompensated care cost, the purpose of the Trust Fund will be compromised. However, the variance in mark-ups will not be as wide in the short run and all attempts are being made to control costs in the long run. An example is the application of Medicare overpayments to the Trust Fund calculations, rather than a hospital's rates, which considerably reduced the add-on for July 1, 1989. It remains to be seen whether the cap will be exceeded in January 1990 and by how much.

COMMENT: "Implementation of this regulation would be inconsistent with the intent of the Uncompensated Care Trust Fund. This fund was established to equalize the effect of uncompensated care on hospital's rates. In accordance with this proposed regulation, hospitals having amounts exceeding the mean percentage of increase will absorb the overage amongst themselves. Hospitals under the mean will not have additional adjustments to their rates."

COMMENTER: Jersey Shore Medical Center

RESPONSE: This rule is being proposed pursuant to current legislation, P.L. 1989, c.1, which placed a 13 percent cap on the Uncompensated Care Trust Fund. It is consistent with the current Trust Fund law, in that it proposes a methodology which would implement section 6.b. and 6.d. of P.L. 1989, c.1.

COMMENT: "Collection of these amounts will not be an automatic adjustment to the hospital's rates. The Hospital Rate Setting Commission must approve the overage amounts, which may further delay collection of these amounts."

COMMENTER: Jersey Shore Medical Center

RESPONSE: A hospital will be held responsible for seeking Commission approval for additional, reasonable uncompensated care dollars not reimbursed to them by the Uncompensated Care Trust Fund.

COMMENT: "The Department proposes to implement a cap of 13 percent on Chapter 83 Uncompensated Care as a portion of Hospital revenue. The proposal outlines a screening methodology by which the Department will attempt to judge the reasonableness of a hospital's yearly increases in uncompensated care. Hospitals whose increase exceeds the average will have the amount of the overage divided among them on a pro rata basis, determined by their amount of uncompensated care.

We request that the Department clarify the broadness of this proposal by developing a model of this methodology to share with the industry. At present it is unclear how the Department will specifically apply a pro rata allocation for overages identified and how such an application would impact the Uncompensated Care Trust Fund."

COMMENTER: St. Joseph's Hospital and Medical Center

RESPONSE: It is the Trust Fund Law, P.L. 1989, c.1, which mandated a 13 percent cap on the amount of money raised by the uniform Statewide Uncompensated Care add-on. The Chapter 83 rate setting system will continue to reimburse 100 percent of a hospital's reasonable uncompensated care cost. However, as a result of the 13 percent cap placed on the Trust Fund, those hospitals experiencing increases beyond the mean will be allocated the shortfall through their rates. The hospital-specific shortfall will be allocated as a percentage of the hospital's uncompensated care over the total uncompensated care amount of those hospitals exceeding the mean increase. The product of this percentage and the total shortfall will be the amount subtracted from a hospital's uncompensated care cost for purposes of calculating the Trust Fund add-on. The hospital may seek Commission approval for an adjustment to their rates in the amount not reimbursed by the Trust Fund. The following serves as an illustration of the proposed rule:

Example: When the Trust Fund Add-on is calculated next (for January 1, 1990 implementation) and it exceeds the 13 percent cap, the calculation will be reduced to the capped amount and the excess uncompensated care dollars not reimbursed through the Trust Fund results in a statewide shortfall. If the shortfall equals $2 million, then the following allocation will be implemented pursuant to the proposed rule:

	Total Uncomp. Care		Increase or	Hospitals Exceeding	% Share of Total
	Year 1 (000s)	Year 2 (000s)	(Decrease)	Mean (000s)	Uncomp.
Hospital A	$1,000	$1,800	80%	$ 1,800	13.04%
Hospital B	2,000	3,000	50%	3,000	21.74%
Hospital C	3,000	4,000	33%		
Hospital D	4,000	4,200	5%		
Hospital E	5,000	6,000	20%		
Hospital F	6,000	9,000	50%	9,000	65.22%
				$13,800	100%

Average or mean increase = 33.3%

Hospitals A, B, and F experience increases in their uncompensated care beyond the mean of 33.3 percent. Therefore, the total shortfall of $2 million will be allocated according to these hospitals' proportionate share of their total uncompensated care.

Hospital A	$ 260,800	($2 million multiplied by 13.04%)
Hospital B	434,800	($2 million multiplied by 21.74%)
Hospital F	1,304,400	($2 million multiplied by 65.22%)

Hospital A will be reimbursed $1,539,200 from the Uncompensated Care Trust Fund or $1,800,000 minus $260,800. The Hospital may seek Commission approval for an adjustment to their rates in the amount of their shortfall ($260,800).

Hospital B will be reimbursed $2,565,200 from the Uncompensated Care Trust Fund or $3,000,000 minus $434,800. The Hospital may seek Commission approval for an adjustment to their rates of $434,800 not reimbursed to them by the Trust Fund.

Hospital F will be reimbursed $7,695,600 through the Trust Fund or $9,000,000 minus $1,304,400. The Hospital may seek Commission approval for an adjustment to their rates of $1,304,400 not reimbursed to them by the Trust Fund.

The application of this proposed rule would be in compliance with current Trust Fund legislation, which placed a 13 percent cap on the amount of money raised by the Statewide Uncompensated Care add-on as a percentage of all governmental and nongovernmental approved revenue.

COMMENT: "We request that the Department present its view on the effect that the recent inclusion of Medicare overpayments may have on this methodology."

COMMENTER: St. Joseph's Hospital and Medical Center

RESPONSE: The methodology in the adopted rule will be implemented prior to the application of Medicare overpayments in the Trust Fund calculation, once it has been determined that the 13 percent Trust Fund Cap has been exceeded. The Department is unable to assess the effect of the recent inclusion of Medicare overpayments on this methodology until all the calculations have been completed.

COMMENT: "Any shortfall due to the Uncompensated Care Trust Fund cap will be allocated to those hospitals whose percentage increase in uncompensated care exceeds the Statewide mean. The allocation percentage for each affected hospital will be based on the relative percentage of total uncompensated care provided by each of those hospitals.

The allocation formula is unfair, since a hospital whose percentage increase in uncompensated care is slightly above the mean would share equally in the shortfall with a hospital whose percentage increase was twice the mean. The allocation formula should be based on the relative amount of increased uncompensated care, provided by each affected hospital, in excess of the Statewide mean percentage increase."

COMMENTER: Kennedy Memorial Hospitals—University Medical Center

RESPONSE: A hospital whose percentage increase in uncompensated care is slightly above the mean would not share equally in the shortfall with a hospital whose percentage increase is greater. The allocation is based on the applicable hospital's proportionate share of uncompensated care over the total amount of uncompensated care in that subgroup (hospitals who have exceeded the mean increase) (see previous example). Please note that all affected hospitals may seek Commission approval for an adjustment to their rates.

COMMENT: "This new rule, which sets up a mechanism to determine which hospital must collect this overage through their rates and how the overage will be allocated among the hospitals, appears to be unreasonable. In essence, the methodology calls for the overage to be allocated to those hospitals who have experienced an average increase in their uncompensated care which is in excess of the Statewide mean.

Utilizing the "Trust Fund Calculation Worksheet" as a reference and assuming the following:

- Col. 9b. "Adjusted Uncompensated Care Approved Cost" is equal to 15 percent of total hospital revenue.
- Col. 14 "Total Collections" plus Col. 15 "Annualized Trust Fund Transfer Amount" must equal 13 percent of total hospital revenue.

Does it follow that Col. 9b, 'Adjusted Uncompensated Care Approved Cost,' must be reduced by two percentage points or the equivalent dollar amount? If that is the case, wouldn't it be more reasonable to reduce all the hospitals by some pro-rated amount, instead of reducing amounts for a few of the hospitals?"

COMMENTER: Elizabeth General Medical Center

RESPONSE: This example is incorrect. Once it has been determined that the Trust Fund add-on will exceed 13 percent of all governmental and nongovernmental approved revenue, a shortfall allocation methodology must be implemented in order to comply with the Trust Fund law. The methodology proposed by the Department involves the allocation of the total shortfall to those hospitals that exceed a mean increase in uncompensated care cost from one year to the next based on the most recent reliable data submitted to the Department of Health. The applicable hospitals will be allocated the shortfall based on their proportionate share of total uncompensated care in this subgroup (see previous example). All hospitals affected will have the opportunity to seek Commission approval for an adjustment to their rates in the amount of the shortfall allocated to them.

COMMENT: "We have assumed that the methodology will be somehow related to the 'Trust Fund Calculation Worksheet'. We are in fact, uncertain of that assumption and uncertain as to the dollar effect of the methodology. Consequently, we believe it is unreasonable to propose regulations that does not provide a model of its effect."

COMMENTER: Elizabeth General Medical Center

RESPONSE: The proposed methodology will use the most recent reliable data available on a Statewide basis, which is the same premise upon which the Trust Fund add-on is calculated. The Department is unable to ascertain the monetary impact of this proposed methodology, since it is unknown whether or not this will need to be implemented for the next Trust Fund calculation effective January 1, 1990. Please see the previous example for an illustrative example of the proposed rule.

COMMENT: "The proposed methodology utilizes a selection criteria that isolates hospitals who have exceeded the Statewide average increase in Uncompensated Care cost. Consequently, it may be possible and probable that less than 50 percent of the hospitals will be selected to absorb the payment shortfall. Those who may be selected may in fact represent hospital's with low levels of uncompensated care costs. It therefore, follows that it is unreasonable to allocate a payment shortfall to a group of hospitals who may or may not have been responsible for a payment shortfall that is Statewide."

COMMENTER: Elizabeth General Medical Center

RESPONSE: It is correct to state that possibly less than 50 percent of the hospitals will absorb the shortfall as a result of this methodology. It is also correct to state that some of the hospitals selected may have low levels of uncompensated care. However, the Department feels it is reasonable to allocate a shortfall to those hospitals that have experienced an increase in uncompensated care cost which exceeds the mean increase Statewide. In addition, the affected hospitals will have the opportunity to seek Commission approval for an adjustment to their rates regarding the shortfall.

COMMENT: "Our view of the Uncompensated Care Trust Fund is as a vehicle by which uncompensated care costs are equally distributed to all payers and patients who utilize New Jersey hospitals. Consequently, why should we not likewise redistribute the payment shortfall to all hospitals in the State?"

COMMENTER: Elizabeth General Medical Center

RESPONSE: The Department feels that the proposed rule allocating the shortfall to those hospitals that exceed the mean increase in uncompensated care cost is a reasonable method of complying with current Trust Fund legislation. The 13 percent cap placed on the Trust Fund pursuant to P.L. 1989, c.1 will prevent this mechanism from maintaining competitive equity once the add-on exceeds the cap. However, all hospitals affected by the shortfall may seek Commission approval for an adjustment to their rates regarding the shortfall.

COMMENT: "In essence, the Uncompensated Care Trust Fund has all hospitals prospectively share in the equivalent of 13 percent of total hospital revenue prospectively recognized as uncompensated care costs. If, in the determination of the prospective amount, there arises a payment shortfall (the excess over 13 percent), that excess could be dealt with as follows:

(1) All hospitals could absorb the shortfall and all could request an increase in their mark-up rate.

(2) Utilizing a list of hospitals ranked by means of the average annual percentage increase in uncompensated care cost in high to low order, choose the top 75 percent to absorb the payment shortfall.

(3) Utilizing a list of hospitals ranked by means of their uncompensated care cost as a percent of total revenue in a high to low order. Choose the top 75 percent to absorb the payment shortfall."

COMMENTER: Elizabeth General Medical Center

RESPONSE: The Department feels that it is reasonable to allocate a shortfall to those hospitals that experience an increase in uncompensated care beyond the mean increase rather than allocating to all hospitals, including those who may experience a decrease in uncompensated care.

COMMENT: "In summary, Elizabeth General Medical Center does not believe the proposed methodology is reasonable, since it lacks a model from which its effects can be determined."

COMMENTER: Elizabeth General Medical Center

RESPONSE: Please see the model example.

COMMENT: "It does not appear reasonable to base a distribution of the 'prospective payment shortfall' on the basis of a calculation that does not relate to the creation of that 'shortfall'."

COMMENTER: Elizabeth General Medical Center

RESPONSE: The Department feels that those hospitals that experience an increase in uncompensated care cost which exceeds the mean increase Statewide, regardless of the reasons for the increase, contribute to the Trust Fund cap exceeding 13 percent and consequently, the shortfall. Therefore, the proposed rule is reasonable and appropriately targets the subgroup of hospitals that relate to the creation of the shortfall.

COMMENT: "In its proposal, the Department of Health (DOH) has set forth an elaborate scheme for allocating any shortfall in the Uncompensated Care Trust Fund to hospitals whose uncompensated care rate of change exceeds a Statewide mean rate of change for uncompensated care. The reasoning for allocating any shortfall among this group of hospitals is to penalize them for failing to use appropriate collection procedures. While the Department may maintain that this allocation method provides an incentive for these hospitals to improve their collection efforts, the fact that only hospitals that exceed a Statewide mean (by definition there always will be such facilities) will have to absorb any shortfall makes this a penalty rather than an incentive."

COMMENTER: Bergen Pines County Hospital

RESPONSE: The Department feels it is reasonable to allocate a shortfall to those hospitals who experience an increase in uncompensated care cost beyond the Statewide average increase from the most recent reliable data. It is not a penalty, since affected hospitals may seek Commission approval for any shortfall allocated to them and request an adjustment to their rates. It is the responsibility of the hospital, as always, to justify unreasonable increases in uncompensated care. However, the Hospital Rate Setting Commission, pursuant to Chapter 83 rules, will reimburse hospitals 100 percent of their reasonable uncompensated care costs. Hospitals are not expected to absorb the shortfall. They may seek approval from the Hospital Rate Setting Commission for an adjustment to their rates in order to include 100 percent of reasonable uncompensated care costs.

COMMENT: "Bergen Pines does not accept DOH's conclusion that the reason a hospital may experience a relatively high rate of uncompensated care is due to a management decision not to collect. The Department's approach fails to recognize the fact that the amount of a hospital's uncompensated care is a function of a number of factors. Thus, for example, it should be expected that Bergen Pines will continue to have a relatively high rate of uncompensated care; as a county facility, Bergen Pines does not screen its patients based upon their ability to pay for medical care and delivers nearly one-half of the uncompensated care in Bergen County, the most populous county in the State."

COMMENTER: Bergen Pines County Hospital

RESPONSE: The Department of Health is aware that many reasons exist for an increase in uncompensated care from one year to the next. However, efforts to control cost result in the need to determine the basis for these increases. The proposed rule targets those hospitals whose uncompensated care increase, from one year to the next, exceeds the Statewide mean increase for purposes of allocating a possible shortfall. The affected hospitals may seek approval from the Hospital Rate Setting Commission to adjust their rates to include the shortfall and may need to justify their increases. The Chapter 83 reimbursement system continues to reimburse 100 percent of a hospital's reasonable uncompensated care.

COMMENT: "The Department's proposal is likely to have the greatest negative impact on the hospitals that the Uncompensated Care Trust Fund was designed to aid, the hospitals that provide the greatest amount of uncompensated care. These hospitals are most likely to have rates of change that exceed the Statewide mean uncompensated care rate of change. Consequently, under DOH's proposal, it will be these hospitals that will have to absorb any shortfall in the Trust Fund."

COMMENTER: Bergen Pines County Hospital

RESPONSE: Internal analysis of prior years has indicated that this proposed methodology in the rule does not necessarily have the greatest negative impact on the hospitals that experience the most uncompensated care cost. In addition, hospitals are not expected to absorb any shortfall as a result of the 13 percent cap placed on the Trust Fund. They may seek Commission approval to adjust their rates in order to include the allocated shortfall amount.

COMMENT: "Bergen Pines believes that a more equitable method for allocating any shortfall in the Trust Fund would be to do so across the widest base of hospitals and payers possible. Thus, each Chapter 83 hospital should absorb its pro rata portion of any shortfall. Such an allocation formula would be consistent with the policy underlying the Uncompensated Care Trust Fund of protecting the financial integrity of the hospitals that provide the largest amount of uncompensated care. Moreover, this approach would avoid the double penalty inherent in the Department's overall scheme for implementing Sections 6 and 7 of P.L. 1989, c.1; penalizing a hospital because its uncompensated care rate of increase exceeds the Statewide mean and because the hospital exceeds one or more of the cost reduction plan criteria."

COMMENTER: Bergen Pines County Hospital

RESPONSE: The Department believes that targeting those hospitals that experience an increase in uncompensated care cost which exceeds the Statewide mean increase is a reasonable methodology. It can serve to provide incentives to hospitals to assure full reimbursement through the Trust Fund rather than justifying an allocated shortfall amount to the Hospital Rate Setting Commission as part of their request for reimbursement. The Department does not believe this approach can be misconstrued as a penalty since hospitals will continue to be reimbursed for 100 percent of their reasonable uncompensated care costs.

COMMENT: "Each hospital could request that the Hospital Rate Setting Commission increase its rates, pursuant to P.L. 1989, c.1, section 6d, to make up for its portion of the uncompensated care shortfall. Both the statute and the proposed rule indicate that a hospital which does not receive reimbursement for all of its uncompensated care due to the cap may seek relief. There are no criteria included in the proposed rule for the Hospital Rate Setting Commission to utilize in determining whether and how much relief should be given. Bergen Pines believes that the Commission should grant these relief requests automatically and that the rule should so state."

COMMENTER: Bergen Pines County Hospital

RESPONSE: The proposed rule is designed to maximize the efforts of the Department to control uncompensated care costs by targeting those hospitals with increases beyond the Statewide mean increase and providing a forum for the justification of those increases at the Hospital Rate Setting Commission. At this hearing, a hospital may seek approval of the allocated shortfall amount as indicated in subsection (d). The Hospital Rate Setting Commission, pursuant to Chapter 83 rules, will approve 100 percent reimbursement of reasonable uncompensated care costs. How-

ever, the Commission may consider a hospital's increases in uncompensated care cost as unreasonable and deny a request for relief. The burden of proof is on the hospital to justify the reasonableness of their increases in uncompensated care cost.

COMMENT: "Any penalty to be assessed upon a hospital that fails to make adequate collection efforts should be addressed as part of the Department's proposal for implementing the cost reduction plan portion of the Uncompensated Care Trust Fund Act, Section 7 of P.L. 1989, c.1, as well as the existing regulations for auditing uncompensated care files."

COMMENTER: Bergen Pines County Hospital

RESPONSE: The Department believes there are no penalties inherent in the proposed rule, since hospitals will continue to be reimbursed for 100 percent of reasonable uncompensated care costs.

COMMENT: "University Hospital requests clarification of the impact of the proposed new rule . . . as to the status of its 'Capped' position relative to Uncompensated Care reimbursement. The current Trust Fund Payment Calculation includes University Hospital's total uncompensated care as 10.05 percent of gross revenue. This represents a median of a sample of inner-city hospitals and does not represent actual uncompensated care amounts. Of concern to University Hospital is the capped status as it may impact the calculation."

COMMENTER: University of Medicine and Dentistry of New Jersey-University Hospital

RESPONSE: It is highly unlikely that University (with the exception of any unusual, unforeseen circumstances) will be targeted for a shortfall allocation as a result of the 13 percent cap placed on the Trust Fund because of their hospital specific cap.

COMMENT: "Of concern to University Hospital is the expected add-on of MICU charity care to the Hospital's total."

COMMENTER: University Medicine and Dentistry of New Jersey-University Hospital

RESPONSE: Pursuant to P.L. 1989, c.1, section 19b, University Hospital will be reimbursed their cost of advanced life support services to uninsured patients who are classified as charity care and shall be exempt from any reimbursement limitations. This portion of uncompensated care shall be reimbursed to University Hospital through their rates and not the Uncompensated Care Trust Fund.

COMMENT: "Will seeking the H.R.S.C.'s (Hospital Rate Setting Commission) approval take the form of an appeal or a cash flow adjustment?"

COMMENTER: University of Medicine and Dentistry of New Jersey-University Hospital

RESPONSE: A hospital may seek Commission approval in the form of a cash flow request to reimburse reasonable uncompensated care costs not reimbursed by the Uncompensated Care Trust Fund. University Hospital's uncompensated care amount is capped at 10.05 percent of gross revenue and therefore University Hospital can only seek Commission approval of any uncompensated care amount within their cap. However, as stated previously, it is highly unlikely that University will be allocated a shortfall amount as a result of the 13 percent Trust Fund cap.

COMMENT: "The addition of Advance Life Support charity care and any other H.R.S.C. adjustment to the rates not covered by the Trust Fund could cause University Hospital's rates to far exceed other area inner-city hospitals."

COMMENTER: University of Medicine and Dentistry of New Jersey—University Hospital

RESPONSE: In order to comply with current Trust Fund legislation which reimburses Advanced Life Support services for the uninsured (charity care only) at University hospital through their rates, the hospital's rates may exceed other area inner-city hospitals. However, as stated previously, it is highly unlikely that University Hospital will be affected by the proposed allocation methodology because of its own capped position. Therefore, there may not be other adjustments to the rates not covered by the Trust Fund.

COMMENT: "The proposed regulations would implement a hospital specific cap of 13 percent without consideration of an alternate provision that would stipulate that no hospital specific uncompensated care payment adjustments would be made for amounts over 13 percent of an individual hospital's total revenue if the Statewide average is under the 13 percent cap. If the overall Statewide uncompensated care level is under the 13 percent cap, an individual hospital's uncompensated care 'add-on' should not be adjusted since the 'average' on all hospital uncompensated care activity is below the 13 percent cap."

COMMENTER: New Jersey Hospital Association

RESPONSE: The proposed rule does not implement a 13 percent hospital specific cap. The proposed rule has been developed pursuant to P.L. 1989, c.1, section 6b in the event that the amount of money raised by the uniform Statewide uncompensated care add-on, as a percentage of all governmental and nongovernmental approved revenue, exceeds 13 percent. If the cap is not exceeded, there will be no reason to apply an allocation methodology and the Trust Fund will continue to reimburse all approved uncompensated care costs.

COMMENT: "The Department's proposed methodology set forth in N.J.A.C. 8:31B-7.9, which describes the process for determining hospitals effected by the trust fund cap, is not clearly defined. In [subsection] (a), the Department introduces the proposed regulatory change as an allocation method for selected hospitals that experience a 'payment shortfall' as a result of applying the uncompensated care trust fund cap (13 percent of total hospital revenue). The Department's proposed calculation [at subsections (b) and (c)] for determining which hospitals will be effected, is based on variance analysis of a hospital's specific uncompensated amount from one year to the next. The Department will determine the percentage change in the hospital's specific amount of uncompensated care and an arithmetic mean of the percentage change for all hospitals. The Department proposes to use this percentage increase calculation for allocating the 'shortfall,' but does not provide clarification on how the 'shortfall' itself is determined or calculated."

COMMENTER: New Jersey Hospital Association

RESPONSE: The Department has clearly stated how the proposed allocation methodology will be applied in its proposed rule. Please see the previous example of the proposed methodology. If there is a Statewide increase in uncompensated care which results in the Trust Fund add-on exceeding the 13 percent cap, an allocation methodology must be in place in order to comply with P.L. 1989, c.1, section 6b. The Statewide shortfall would be the excess dollars which the 13 percent cap would not reimburse through the Trust Fund. The proposed rule outlines a methodology which would allocate the resulting shortfall to those hospitals who experience uncompensated care cost increases exceeding the Statewide average increase utilizing the most recent reliable data spanning two years. These affected hospitals would then be allocated the shortfall based on their proportionate share of total uncompensated care of this subgroup.

COMMENT: "The proposed pro rata basis of allocating the additional uncompensated care payments that would no longer be included in the add-on amount is not fully explained. The Department should clarify the basis for comparison which they have proposed as 'the relative amounts of uncompensated care provided by each hospital'."

COMMENTER: New Jersey Hospital Association

RESPONSE: This section of the proposed rule refers to the subgroup of hospitals selected for allocation. The relative amounts of uncompensated care provided by each hospital is the proportionate share of their uncompensated care to the total uncompensated care of this subgroup. Please see the previous example.

COMMENT: "The Department's 'Summary' explanation, intended to clarify the proposed regulatory language, substantially detracts from the development of a clear understanding of the Department's intentions, since it uses conflicting terminology with that contained in the actual proposed regulations. For example, the 'Summary' discusses the concept of 'overage' as the amount over the 13 percent cap while the proposed language makes reference to hospitals experiencing a 'shortfall'."

COMMENTER: New Jersey Hospital Association

RESPONSE: The language used in the 'Summary' and text is correct. The overage or excess amount of uncompensated care dollars not reimbursed by the Trust Fund if the 13 percent cap is exceeded is also considered a hospital's shortfall since this amount cannot be reimbursed through the Trust Fund. Hospitals would experience shortfalls in their reimbursement of uncompensated care until they seek Commission approval for an adjustment to their rates as stipulated in subsection (d) of the rule.

COMMENT: "It is imperative that the Department facilitates the industry's analysis of the proposed regulatory change by providing a clear and consistent description of the proposed change. It is difficult to follow the formulistic logic of the Department's proposed methodology for calculating the amount that will be added to a hospital's rates and removed from the uncompensated care add-on. Clarification, through mathematical example, should be provided by the Department to more clearly explain the hospital specific impact of the proposed application of the 13 percent cap requirement."

COMMENTER: New Jersey Hospital Association
RESPONSE: Please note the previous example which illustrates the proposed rule.

Full text of the adoption follows.

8:31B-7.9 Uncompensated Care Trust Fund cap

(a) Any prospectively established payment shortfall due to the uncompensated care trust fund cap established pursuant to N.J.S.A. 26:2H-18.9 will be allocated to hospitals in the manner described in (b) and (c) below.

(b) The Department will determine a hospital-specific amount of uncompensated care from the most recent reliable figures available on a Statewide basis. The Department will also determine a hospital-specific amount from reliable figures available on a Statewide basis for the year immediately prior to the one used above. From these figures the Department will determine the percentage change.

(c) The Department will determine a Statewide mean percentage change from the hospital-specific percentage changes determined pursuant to (b) above. Hospitals whose percentage change exceeds the mean shall have the shortfall due to the uncompensated care trust fund cap allocated among them on a pro rata basis determined by the relative amounts of uncompensated care provided by each hospital in this subgroup.

(d) Hospitals who had a portion of the uncompensated care trust fund cap shortfall allocated to them may seek Commission approval for an individual hospital rate increase for uncompensated care in addition to the add-on. Such increases shall be paid through the hospital's rates, not through the Uncompensated Care Trust Fund.

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

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

Proposed: March 20, 1989 at 21 N.J.R. 662(a).
Adopted: August 14, 1989 by the Drug Utilization Review Council, Sanford Luger, Chairman.
Filed: August 18, 1989 as R.1989 d.487, **with portions not adopted and with portions of the proposal not adopted but still pending.**

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

Effective Date: September 18, 1989.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received regarding the adopted drug products.

The following products and their manufacturers were **adopted**:

Chlordiazepoxide caps 10, 25 mg	**Pioneer**
Diazepam tabs 2, 5, 10 mg	**Pioneer**
Hydrocodone/APAP tabs 5/500	**Watson**
Isometheptene, dichloralphenazone, and Acetaminophen caps	**Ferndale**
Isosorbide dinitrate tabs 20, 30 mg	**Barr**
Methyldopa/HCTZ tabs 250/15, 250/25	**Watson**
Methyldopa/HCTZ tabs 500/30, 500/50	**Watson**
Methylprednisolone tabs 4 mg	**Chelsea**
Metoclopramide syrup 5 mg/5 ml	**Barre**
Oxybutynin tabs 5 mg	**Quantum**
Phenobarbital, ergotamine tartrate, and belladonna alkaloids tabs	**Ferndale**
Triamcinolone acet./nystatin cream	**Naska**
Triamterene/HCTZ tabs 75/50	**Watson**

The following products were **not adopted**:

Atropine sulfate ophth soln 1%	Ocumed
Hyoscyamine tabs 0.125 mg	Ferndale
Ibuprofen tabs 400, 600 mg	Danbury

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Mutual, PharmBasics
Amantadine caps 100 mg	Chase
Amoxapine tabs 25, 50, 100, 150 mg	Cord
Atenolol tabs 50, 100 mg	Par
Atenolol/HCTZ tabs 50/25, 100/25	Par
Baclofen tabs 10, 20 mg	Danbury
Chlorzoxazone tabs 500 mg	Danbury
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Cyclobenzaprine tabs 10 mg	Cord
Disulfiram tabs 250, 500 mg	Danbury
Erythromycin ethylsucc. susp 200 & 400/5	Barr
Fenoprofen tabs 600 mg	Mutual
Fluphenazine tabs 1, 2.5, 5, 10 mg	Chelsea
Gemfibrozil caps 300 mg	Purepac
Hydroxyzine pamoate caps 25, 50, 100 mg	Cord
Ibuprofen tabs 400, 600 mg	Lederle
Imipramine tabs 10 mg	Vitarine
Imipramine tabs 10, 25, 50 mg	Mutual
Lactulose syrup 10 g/15 ml	Inalco SPA
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Methylprednisolone tabs 16 mg	Chelsea
Metoclopramide syrup 5 mg/5 ml	Charter
Metoclopramide tabs 5 mg	Chelsea
Minocycline caps 50, 100 mg	Chelsea
Minocycline tabs 50, 100 mg	Chelsea
Nifedipine caps 10 mg	Cord
Perphenazine tabs 2, 4, 16 mg	Chelsea
Propranolol tabs 60, 90 mg	Watson
Sulindac tabs 150, 200 mg	Cord
Sulindac tabs 150, 200 mg	Purepac
Tetracycline caps 500 mg	Vitarine
Theophylline ER tabs 100, 200, 300 mg	Sidmak
Thiothixene conc. 5 mg/ml	Charter
Valproic acid caps 250 mg	Chelsea

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 21 N.J.R. 2107(a).

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

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

Proposed: June 5, 1989 at 21 N.J.R. 1488(a).
Adopted: August 14, 1989 by the Drug Utilization Review Council, Sanford Luger, Chairman.
Filed: August 18, 1989 as R.1989 d.488, with the proposed deletions of company products **not adopted.**

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

Effective Date: September 18, 1989.
Expiration Date: February 17, 1994.

Background

Three manufacturers of generic products were proposed for deletion from the List of Interchangeable Drug Products (State generic formulary) due to information from the Federal Food and Drug Administration (FDA) that the three companies currently (March, 1989) failed to meet Current Good Manufacturing Practices (CGMPs). Meeting CGMPs is mandated by N.J.S.A. 24:6E et seq.

Summary of Public Comments and Agency Responses:

Regarding Hi-Tech:

Hi-Tech submitted three sets of comments in support of their company's objections to being proposed for deletion from the List of Interchangeable Drug Products. They stated that the FDA had communication problems, but would soon verify that Hi-Tech currently meets CGMPs. Hi-Tech also specified the exact reasons for the FDA stating that Hi-Tech did not meet CGMPs, namely, a labeling mix-up on a non-prescription children's analgesic. Hi-Tech also detailed their response to the FDA.

Regarding Clay-Park:

Clay-Park, in defense of their company, stated that they had noted some mold growth in one product and subsequently notified the FDA and voluntarily recalled three lots of that one product. A subsequent FDA inspection found that certain Clay-Park testing procedures had not been validated and that some microbiological analytical procedures were objectionable.

Clay-Park also noted that removing their company from the Formulary would severely inconvenience many New Jersey customers of their company. Clay-Park also stated that the FDA had re-inspected them in May, 1989, and found them to be "substantially in compliance" with CGMPs.

Two testimonial letters were received from customers of Clay-Park, each stating that Clay-Park's products were of high quality.

Regarding Ambix:

Ambix asked that they not be deleted from the Formulary because of the hardship it would cause for their employees and because they are "dedicated to" quality products. Their latest FDA inspection report and response were also included.

Ambix also claimed that they had no product recalls. In explanation of their supposed failure to meet CGMPs, Ambix stated that, in 1987, in attempting to obtain a government contract, a CGMP inspection found multiple problems (for example, inadequate water system). Ambix claimed they were re-inspected by the FDA in December, 1988, and found to be in compliance with CGMPs, but, unfortunately, the central office of the FDA was late in realizing that Ambix met CGMPs.

From the FDA:

Two letters were received from the FDA: one, dated May 19, 1989, stated that—based on more recent information from FDA field offices—both Ambix and Hi-Tech are now acceptable in their CGMPs for ointment and liquid product profile classes. The second letter, dated May 31, 1989, stated that Clay-Park is also now acceptable for CGMPs for several product profile classes, including liquids and ointments.

Council action on all three companies:

The Drug Utilization Review Council **rejected** the proposed deletion of Hi-Tech, Clay-Park, and Ambix's products from the List of Interchangeable Drug Products, based on the FDA's recent assurances that these companies now meet CGMPs. Thus the products of these three companies will continue to be listed in the List of Interchangeable Drug Products.

The Drug Utilization Review Council will not delete from the List of Interchangeable Drug Products the following products:

Betamethasone valerate cream 0.1%, ointment 0.1%	Clay-Park
Fluocinolone acetonide cream 0.01%, 0.025%	Clay-Park
Fluocinonide cream 0.5%	Clay-Park
Gentamicin cream and ointment 0.1%	Clay-Park
Hydrocortisone cream 1%, 2.5%	Ambix, Clay-Park
Hydrocortisone ointment 1%	Ambix, Clay-Park
Hydrocortisone ointment 2.5%	Clay-Park
Hydrocortisone Lotion 1%	Clay-Park
Iodochlorhydroxyquin 3.0% with hydrocortisone 0.5% cream, ointment	Clay-Park
Iodochlorhydroxyquin 3.0% with hydrocortisone 1.0% cream, ointment	Clay-Park
Multiple vitamin with fluoride drops, 0.25 mg/ml and 0.5 mg/ml	Hi-Tech
Nystatin cream and ointment 100,000 U/g	Clay-Park
Sulfabenzamide 3.7%, sulfacetamide 2.86%, sulfathiazole 2.42% vaginal cream	Clay-Park
Triamcinolone acetonide cream and ointment, 0.025%, 0.1%, and 0.5%	Clay-Park
Triamcinolone acetonide 1% with nystatin, cream and ointment	Clay-Park
Triple vitamin with fluoride drops, 0.25 mg/ml and 0.5mg/ml	Hi-Tech

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: July 3, 1989 at 21 N.J.R. 1790(a).

Adopted: August 14, 1989 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: August 18, 1989 as R.1989 d.489, **with portions not adopted and with portions of the proposal not adopted but still pending.**

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

Effective Date: September 18, 1989.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

Regarding zero order 800 mg aspirin tablets:

COMMENT: Boots Laboratories objected to the proposed "zero-order" aspirin tablets because they claim a patent on such a product ("Zorprin"), which the proposed product might violate. They also requested an opportunity to review any data supporting interchangeability of the proposed product with Zorprin.

RESPONSE: Patent issues are not a basis on which the Council rejects a proposed product. However, the proposed "zero order" aspirin was rejected due to lack of studies showing it to work comparably to the brand, Zorprin.

Regarding PPA/PE/CPM/Phenyltoloxamine ER tabs:

COMMENT: The Bristol-Myers Company wrote to object to this proposed product based on lack of biodata and lack of quantitative composition information. They also stated that the Drug Utilization Review Council does not permit substitution of sustained release formulations.

RESPONSE: Quantitative composition data were known, but no bioequivalency studies were done; thus, this proposed product was rejected.

Regarding "Fluocinonide":

COMMENT: G & W Laboratories pointed out that they had applied for fluocinolone acetonide cream and ointment, NOT for fluocinonide, as proposed. They asked that this typographical error be corrected.

RESPONSE: G & W is correct; they applied for *fluocinolone* acetonide, but the products were erroneously proposed as fluocinonide. The Council deferred action on the G & W product while requesting additional information.

Regarding atenolol products:

COMMENT: ICI Pharmaceuticals Group objected to the proposed atenolol/chlorthalidone product and asked that it be removed from consideration by the Council based on two alleged patent issues, one claiming a patent for atenolols for use in angina and arrhythmias that expires in 1991 and one on atenolols for treating hypertension that expires in 1993.

ICI claims that the Drug Utilization Review Council, at its June 13, 1989 meeting, had stated that it will not consider generic products as substitutes for a brand with a substantial amount of time left on its patents unless the generic company "is able to document that the patent is in dispute."

RESPONSE: The Council does not base its decisions on patent information, but rather on biodata. ICI is incorrect in its quote about the Council and its June 13, 1989 meeting. The June 13, 1989 meeting's minutes only state that generic companies should not apply "too soon" and that generics should not be brought before the Council for a decision until the time of their FDA approval is near. The Council did not act on the proposed atenolol/chlorthalidone product because FDA approval has not yet occurred.

The following products and their manufacturers were **adopted**:

APAP/codeine tabs 15, 30, 60 mg	**Charlotte**
Benztropine mesylate tabs 0.5, 1, 2 mg	**Invamed**
Butalbital, codeine, ASA, caffeine caps	**Anabolic**
Cefadroxil caps 500 mg	**IBSA**
Cefadroxil caps 500 mg	**Zenith**
Cefadroxil for susp 125/5, 250/5, 500/5 ml	**Biocraft**
Cefazolin inj. 250 mg, 500 mg; 1, 5, 10 g	**TEVA**
Cephalexin tabs 250, 500 mg	**Biocraft**
Chlorzoxazone tabs 500 mg	**Ferndale**
Choline mag. salicylate tabs 500, 750 mg	**Invamed**

Clindamycin PO4 inj. 150 mg/ml	**Lemmon**
CPM/PE/Pyrilamine tannates susp	**Luchem**
CPM/PE/Pyrilamine tannates tabs	**Invamed**
Dexamethasone ophth. susp 0.1%	**Steris**
Digoxin elixir 0.05 mg/ml	**Roxane**
Fluocinonide solution 0.05%	**Barre**
Gentamicin ophth soln 3 mg/ml	**Paco**
Hydrocodone/APAP tabs 5/500	**Charlotte**
Hydrocodone/APAP caps 5/500	**Luchem**
Iodinated glycerol liquid 60 mg/5 ml	**Duramed**
Pancrelipase tabs	**Anabolic**
Pilocarpine HCl ophth soln 1, 2, 4, 6%	**Ocumed, Paco**
Potassium bicarb. efferv. tabs 25 mEq	**CFH**
Prazosin caps 1, 2, 5 mg	**AmerTher**
Prazosin caps 1, 2, 5 mg	**Mylan**
Salsalate tabs 500, 750 mg	**Invamed**
SMZ/TMP for inj. 80/16/ml	**Lemmon**
Temazepam caps 15, 30 mg	**Duramed**

The following products were **not adopted**:

Aspirin ER tabs 975 mg	Invamed, Sidmak
Aspirin SR tabs 800 mg (zero order)	Invamed
Atropine sulfate ophth soln 1%	Paco
Butalbital/APAP 50/325 mg tabs	Halsey
Cyanocobalamin inj. 100, 1000 mcg/ml	Steris
Diazepam inj. 5 mg/ml	Lemmon
Haloperidol lactate inj. 5 mg/ml	Lemmon
Homatropine HBr ophth soln 5%	Paco
Hydrochlorothiazide oral soln 50 mg/5 ml	PharmBasics
Hydroxocobalamin inj. 1000 mcg/ml	Steris
Iodinated glycerol tab 30 mg	Anabolic
Methadone solution, 10 mg/ml	Roxane
Naphazoline 0.025%/pheniramine 0.3% ophth	Steris
Pancrelipase caps	Anabolic
PE, PPA Guaifenesin caps 5/45/200	Duramed
Phenylephrine HCl ophth soln 2.5%	Paco
Phenylephrine/PPA/Guaifenesin liquid	Luchem
PPA/PE/CPM/phenyltoloxamine ER tabs	PharmBasics
Propranolol soln 20 mg/5 ml, 40 mg/5 ml	PharmBasics
Pyridoxine inj. 100 mg/ml	Steris
Tetracaine ophth soln 0.5%	Paco
Thiamine inj. 100, 200 mg/ml	Steris

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Purepac
Albuterol tabs 2, 4 mg	Biocraft
Albuterol tabs 2, 4 mg	Danbury
Amantadine caps 100 mg	Invamed
Amiloride/HCTZ tabs 5/50	Danbury
Amiloride/HCTZ tabs 5/50	PharmBasics
Amoxapine tabs 25, 50, 100, 150 mg	Chelsea
Amoxapine tabs 25, 50, 100, 150 mg	Watson
Atenolol/chlorthalidone tabs 50/25, 100/25	Par
Betamethasone diprop. crm, oint, lot 0.05%	Clay-Park
Carisoprodol/aspirin tabs 200/325	Par
Cefadroxil tabs 1 g	Zenith
Clindamycin HCl caps 75, 150 mg	Danbury
Clonazepam tabs 0.5, 1, 2 mg	PharmBasics
Cyclacillin tabs 250, 500 mg	Biocraft
Cyclopentolate ophth soln 1%	Paco
Dexamethasone/neomycin/polymyxin B ophth	Paco
Doxepin caps 10, 25, 50 mg	Purepac
Doxycycline caps 50, 100 mg	Interpharm
Doxycycline tabs 100 mg	Interpharm
Doxycycline tabs 100 mg	Pharbita
Erythromycin ER caps 250 mg	AmerTher
*Fluocinolone acetonide cream 0.01, 0.025%	G&W
*Fluocinolone acetonide oint 0.025%	G&W
Folic acid tabs 1 mg	Charlotte
Ibuprofen tabs 400 mg	Pharbita
Ibuprofen tabs 400, 600, 800 mg	Invamed
Indomethacin caps 25, 50 mg	Danbury
Indomethacin ER caps 75 mg	Inwood
Loperamide caps 2 mg	Mylan
Lorazepam tabs 0.5 mg	PharmBasics
Methyldopa/HCTZ tabs 250/15, 250/25	Invamed
Metoclopramide inj. 5 mg/ml	Lemmon
Metoclopramide tabs 10 mg	Invamed
Metoclopramide tabs 10 mg	Sidmak
Minocycline caps 100 mg	Danbury
Nifedipine caps 20 mg	Purepac
Oxazepam caps 10, 15, 30 mg	Danbury
Prazepam caps 20 mg	PharmBasics
Prazosin caps 1, 2, 5 mg	Chelsea
Prednisolone acetate ophth soln 1%	Paco
Procainamide ER tabs 500 mg	Invamed
Propranolol ER caps 60, 80, 120, 160 mg	Inwood
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	Invamed
Ritodrine inj. 10 mg/ml, 15 mg/ml	TEVA
Sulfacetamide sodium ophth soln 10%	Paco
Thiothixene caps 20 mg	Cord
Timolol maleate tabs 5, 10, 20 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	Mylan
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Timolol tabs 5, 10, 20 mg	Chelsea
Tobramycin ophth soln 0.3%	Paco
Trazodone tabs 150 mg	Chelsea
Tropicamide ophth soln 1%	Paco
Verapamil tabs 40 mg	Purepac
Vincristine inj. 1 mg/ml	TEVA

*Originally erroneously proposed as "fluocinonide."

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual

New Jersey Care . . . Special Medicaid Programs Manual

Presumptive Eligibility

Adopted Amendments: N.J.A.C. 10:49-1.1 and 1.2, 10:72-6.1 and 6.3

Proposed: July 3, 1989 at 21 N.J.R. 1791(a).

Adopted: August 23, 1989 by Margaret E. L. Howard, Acting Commissioner, Department of Human Services.

Filed: August 24, 1989 as R.1989 d.498, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-3, 30:4D-6, 30:4D-7a, b, and c, 30:4D-12, and Section 1920 of the Social Security Act.

Effective Date: September 18, 1989.

Operative Date: October 1, 1989.

Expiration Date: N.J.A.C. 10:49—August 12, 1990; N.J.A.C. 10:72—August 27, 1992.

Summary of Public Comments and Agency Responses:

There was one comment on the proposed amendments submitted by Leon R. Langley, Pharmacist, Director of Government Affairs, New Jersey Pharmaceutical Association. The commenter inquired as to the type of pharmaceutical services that would be available to presumptively eligible pregnant women. The agency's response is that Medicaid will follow the usual procedures. Medicaid will reimburse for those prescriptions written by licensed prescribers and dispensed by Medicaid participating pharmaceutical providers to a presumptively eligible pregnant woman as long as the pharmaceuticals are reimbursable by the Medicaid program and the woman was eligible for Medicaid coverage on the date the prescription was dispensed.

The commenter also requested the Division's 800 number be staffed during evenings and weekends. The Division's response is that while it recognizes providers will be unable, during evening hours, holidays, and

weekends, to verify the eligibility status of a woman who had been determined presumptively eligible, the Division is unable to extend the hours of toll-free calling beyond the normal State work week due to fiscal and resource limitations. Providers are encouraged to call the toll-free hotline on the next business day in the event services are provided during hours when the toll-free line is not in operation.

The commenter also requested a "more lenient time period of cessation of eligibility." The agency's response is that time frames for presumptive eligibility are prescribed by Federal law. (Reference is made to Section 1920(b) of the Social Security Act, codified as 42 U.S.C. §1396r1)

Summary of Changes Between Proposal and Adoption:

There are textual changes upon adoption to both the presumptive eligibility and administrative sections of the rules which are non-substantive in nature, and are necessary to clarify the text of the amended rules. The word "their" is being deleted because it might create the impression that only natural children of those women who are pregnant would be covered. Children may be covered by Medicaid if they meet the respective program requirements regardless of whether the parent, or parent-person, is pregnant (reference is made to N.J.A.C. 10:49-1.2(a)3). The word "his" was deleted from N.J.A.C. 10:49-1.1(e). This provision pertains to presumptively eligible pregnant women.

The word "designated" was changed to "designate" in N.J.A.C. 10:49-1.2(a)3. A quotation mark has been added to "MEDICAID" ID form in N.J.A.C. 10:49-1.2(b). The word "certificate" is being changed to certification because it refers to the application process rather than a document (reference is made to N.J.A.C. 10:72-6.3(a)).

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

10:49-1.1 Who is eligible for Medicaid

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

(d) Exception to eligibility: The following are exceptions to the eligibility process:

1. (No change.)

2. HealthStart—Comprehensive Maternity Care Services: Approved HealthStart Maternity Care Providers (independent clinics and hospital outpatient departments) may determine presumptive eligibility for pregnant women who require ambulatory prenatal services from Medicaid participating providers. (See N.J.A.C. 10:49-1.3 and 3.1).

(e) To apply for benefits: If a patient has not applied for benefits, is unable to pay for services rendered and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider should encourage the patient, *[or his]* or her representative, to apply for benefits through the county welfare agency/board of social services for programs such as Aid to Families with Dependent Children, Medicaid Only, Optional Categorically Needy (New Jersey Care . . . Special Medicaid Programs) for pregnant women and children up to the age of two, or for Medically Needy; to the Social Security Administration for Supplementary Income benefits for the aged and disabled; or, in certain cases, to the New Jersey Division of Youth and Family Services. The agency will process the application and notify the patient of the resulting determination. If it is not known which agency is responsible for determining eligibility or which program might be applicable, the Medicaid District Office can be of assistance. (See Appendix A).

1. (No change.)

2. Presumptive Eligibility—Health Start Comprehensive Maternity Care providers: Independent clinics and hospital outpatient departments, if so designated, may determine "presumptive eligibility" for pregnant women who require ambulatory prenatal services from Medicaid participating providers. (See N.J.A.C. 10:49-1.3 and 3.1)

10:49-1.2 How to identify a Medicaid recipient (an eligible person)

Note: (No change in text.)

(a) An HSP (Medicaid) Case Number consists of 12 digits, which includes a two digit individual Person Number.

1.-2. (No change.)

3. The third and fourth digits of the 12-digit HSP (Medicaid) Case Number *[designated]* ***designate*** the category under which a person is determined eligible for the New Jersey Medicaid Program.

10—Aged (65 years of age or older)—SSI related and Optional Categorically Needy (OCN) (New Jersey Care . . . Special Medicaid Programs).

15—Aged—Medically Needy (65 years of age or older).

20—Disabled (under 65 years of age)—SSI related and Optional Categorically Needy (OCN) (New Jersey Care . . . Special Medicaid Programs).

25—Disabled—Medically Needy (under 65 years of age).

30—Aid to Families with Dependent Children (AFDC*)* and Optional Categorically Needy (OCN) (New Jersey Care . . . Special Medicaid Programs for pregnant women and *[their]* children; and presumptively eligible pregnant women are included in this category).

35—Medically Needy Families with Dependent Children.

50—Blind—SSI and Optional Categorically Needy (New Jersey Care . . . Special Medicaid Programs).

55—Blind—Medically Needy.

60—Children (under supervision of the Division of Youth and Family Services (DYFS)*)*.

70—Medical Assistance for Aged—A New Jersey State Program.

80—Refugee Program.

4.-6. (No change.)

(b) There are four forms used for validation of eligibility: A New Jersey Medicaid provider may verify the client's Medicaid eligibility by means of the following: The Department of Human Services "Medicaid-ID*"* (FD-152); "Medicaid Eligibility Identification Card" (FD-73/178); "Validation for HSP" (DYFS 16-36); or "Validation of Eligibility" (FD-34).

1. (No change.)

2. "Medicaid Eligibility Identification Card" (MEI Card) (FD-73/178) (See Exhibit II for the regular Medicaid Program MEI Card and Exhibit V for the Medically Needy Program MEI Card at the end of this section.)

i. The MEI Card is issued monthly, quarterly, or for a 45 day period depending on the basis of the recipient's eligibility as follows:

(1) The MEI Card is issued monthly to individuals (aged, blind, and disabled) determined by the Social Security Administration to be eligible for Supplemental Social Security Income (SSI);

(2) Monthly to individuals determined by the county welfare agency or board of social services to be eligible in the Optional Categorically Needy Program (New Jersey Care . . . Special Medicaid Programs);

(3) Monthly to individuals in the Special Status Program;

(4) Monthly to individuals determined by the county welfare agency or board of social services to be eligible in the Medically Needy Program;

(5) Quarterly for Medicaid eligible children under the supervision of the Division of Youth and Family Services (DYFS); and

(6) For a 45 day period for presumptively eligible pregnant women.

ii. through vii. (No change in text.)

viii. When the MEI Card is issued to a presumptively eligible pregnant woman, the following message will be printed on the top of the card: "Presumptively eligible pregnant woman, call 1-800-xxx-xxxx to verify eligibility." The provider must call this number to verify the presumptive eligibility status prior to the delivery of ambulatory prenatal service. (See Exhibit VI at the end of this section.)

3.-4. (No change.)

EXHIBIT I Through V (No change.)

CHAPTER 72
NEW JERSEY CARE . . . SPECIAL MEDICAID PROGRAMS MANUAL

SUBCHAPTER 6. PRESUMPTIVE ELIGIBILITY

10:72-6.1 Scope

(a) The presumptive eligibility determination makes it possible for a pregnant woman to receive ambulatory prenatal care from a Medicaid participating provider for a period not to exceed 45 calendar days. Presumptive eligibility continues until the county welfare agency reaches its formal eligibility determination as follows:

1. and 2. (No change.)

(b) (No change.)

10:72-6.3 Responsibility of the county welfare agency

(a) Upon the receipt of a *[Certificate]* ***Certification*** of Presumptive Eligibility together with the Medicaid application from a qualified provider, the county welfare agency shall:

1.-2. (No change.)

3. Within five working days of the receipt of a completed Certification of Presumptive Eligibility, notify the qualified provider of the pregnant woman's Medicaid identification number and issue to the presumptively eligible pregnant woman a Medicaid eligibility card which identifies the woman's presumptive eligibility status;

4.-7. (No change.)

(b) (No change.)

Exhibit VI

STATE OF NEW JERSEY
DEPARTMENT OF
HUMAN SERVICES
DIVISION OF
MEDICAL ASSISTANCE
AND
HEALTH SERVICES

MEDICAID ELIGIBILITY IDENTIFICATION CARD 0955407

Presumptively Eligible
Pregnant Woman, Call
1-800-XXX-XXXX to
Verify Eligibility

ADDITIONAL HEALTH INSURANCE *

HSP (MEDICAID) CASE NO. PERSON NO.

VALID FROM TO

SOC. SEC. ACCT. NO. DATE OF BIRTH

VOID

USE THIS CARD WHEN YOU NEED MEDICAL SERVICES

RECIPIENT'S SIGNATURE

MOORE BUSINESS FORMS INC., M
CONTINUOUS INTERFOLDED®
SPEEDIFOLD ®
FD - 73/178 (REV. 10/83)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual

Adopted New Rule: N.J.A.C. 10:49-1.24

Adopted Amendments: N.J.A.C. 10:49-1.1, 1.7, 1.8, 1.9, 1.10, 1.14, 1.17, 1.19, 1.20, 1.22, and 1.26

Proposed: February 21, 1989 at 21 N.J.R. 417(b).

Adopted: August 23, 1989 by Margaret E. L. Howard, Acting Commissioner, Department of Human Services.

Filed: August 24, 1989 as R.1989 d.499, **without change.**

Authority: N.J.S.A. 30:4D-3h, i, j; 30:4D-7a, b, c; 30:4D-12; 42 CFR 431.305; 42 CFR 440.270.

Effective Date: September 18, 1989.

Expiration Date: August 12, 1990.

Summary of Public Comments and Agency Responses:

Comments were submitted by the New Jersey Pharmaceutical Association. The commenter was concerned about the requirement that Medicaid providers inquire about other insurance. The Department's response is that the current text of the rules is adequate because it informs providers that Medicaid patients who qualify under the programs such as the Supplemental Security Income (SSI) Program, which includes the aged, blind, and disabled categories, can have Medicare coverage. The Division's intention was to encourage the use of other insurance, such as Medicare, when it is available. In addition, Federal regulations require the state Medicaid agency to determine the legal liability of third parties to pay for services furnished by Medicaid (42 CFR 433.138). If there is no other insurance available, Medicaid will make payment in accordance with Medicaid policies, procedures, and fee schedules. The commenter was concerned with the policy that prior authorization for a service does not guarantee eligibility. The Department's response is that even if the Division were to verify eligibility on the date prior authorization was granted, there is often a gap period between this date and the date when the service is actually provided. Therefore, the provider would still be required to verify eligibility at the time the service is rendered. The commenter also had concerns about the Individual Medicaid Practitioner's (IMP) Number appearing on the claim form. The commenter alleged that the IMP number was sometimes difficult for pharmaceutical providers to obtain. The Department's response is that administrative mechanisms are being developed to help alleviate this problem.

Full text of the adoption follows.

FOREWORD

The New Jersey Medical Assistance and Health Services Act (P.L. 1968, c.413, which is codified as N.J.S.A. 30:4D-1 et seq.) established a program of medical assistance and health services for defined groups of persons to enable them to secure quality medical care. The Act was recently amended:

(1) To extend coverage to individuals who qualify under the Medically Needy provisions (P.L. 1985, c.371, approved November 25, 1985 and amended by P.L. 1985, c.510, approved January 21, 1986).

(2) To extend coverage to include those pregnant women and dependent children (up to age two as of October 1, 1987) whose income is less than the Federal poverty level (P.L. 1987, c.115, approved May 4, 1987). These individuals are determined by the county welfare or board of special services agency to be eligible for the Optional Categorically Needy Program (New Jersey Care . . . Special Medicaid Programs).

(3) To extend coverage to include those individuals 65 years of age and older, or individuals who are blind or disabled (pursuant to Federal regulations either 42 CFR 435.530 et seq. or 42 CFR 435.540 et seq.) whose income cannot exceed 100 percent of the Federal poverty level adjusted for family size. These individuals are determined by the county welfare or board of social services agency to be eligible for the Optional Categorically Needy Program (New Jersey Care . . . Special Medicaid Programs).

This Act, commonly known as "Medicaid" or "Title XIX", will be referred to as the New Jersey Medicaid Program or the Program. The Division of Medical Assistance and Health Services, under the Department of Human Services, administers the New Jersey Medicaid Program through its Central Office and through Medicaid District Offices located throughout the State of New Jersey.

Each New Jersey Medicaid services manual is designed for use by a specific type provider who is providing services to a Medicaid recipient. It is written in accordance with Federal and State laws, rules, and regulations with the intent to ensure that such laws, rules, and regulations are uniformly applied. The procedures were developed to achieve the goals of the Program with due consideration both to the needs of the Medicaid recipient and to the promotion of effective relationships with the provider. It contains informational and procedural material needed to assist the provider to understand the rules and regulations of participation in the Program and to ensure prompt and efficient payment of claims. Reimbursement for services provided under the Program is accomplished in conformity with Federal Title XIX regulations and State law. A provider is reimbursed through the Division's Bureau of Claims and Accounts or through either of its two Fiscal Agents, Blue Cross and Blue Shield of New Jersey, Inc. and The Prudential Insurance Company of America, depending upon the type of service being reimbursed.

Each manual consists of two chapters. The first chapter, always codified as Chapter 49, contains general administrative policies of the New Jersey Medicaid Program and a section describing Special Programs. The second chapter contains information specific to the type of service provided, such as, physician services, hospital services, etc. The arrangement/codification follows the New Jersey Administrative Code (N.J.A.C.).

As a supplement to this manual, a newsletter system is utilized for the prompt dissemination of information concerning new policy, clarification and/or changes to the New Jersey Medicaid Program. Additionally, manual page revisions are updated as administrative changes occur. Periodically, therefore, revised sections, entire pages and entire chapters are issued accordingly. It is recommended that these newsletters and manual page revisions be filed with your manual, in accordance with the instructions given at the time of receipt of such documents.

10:49-1.1 Who is eligible for Medicaid

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

(c) Eligibility limited to certain services: A Medically Needy individual is eligible for medical and health services covered under the New Jersey Medicaid Program with limitations as listed in N.J.A.C. 10:49-1.4. The services must be provided in conjunction with Program requirements specifically outlined in the second chapter of each service manual.

1. An individual is determined Medically Needy eligible by the county welfare agency/board of social services. He or she must meet the categorical eligibility requirements, have income and/or resources in excess of the categorical standards, and may have insufficient funds to meet his or her medical expenses. A Medically Needy individual must be in one of the following groups:

i. Pregnant women;

ii. Needy children (under 21 years of age);

iii. The aged (65 years of age or older), the blind or the disabled.

2. There are special income and resource levels established for the Medically Needy. If an individual meets one of the above categories, and has income and/or resources above categorical program levels but less than or equal to the Medically Needy income and resource levels, he or she is eligible as Medically Needy. However, if an individual meets one of the above categories and meets the Medically Needy resource level, eligibility may be established through the "spend-down" process. "Spend-down" is the process whereby an individual may apply incurred medical expenses to offset income above the Medically Needy income level, and thereby adjust his or her income to meet the Medically Needy income limit. Medically Needy eligibility for all groups including the aged, blind and disabled will be determined by the county welfare agency/board of social services for both the retroactive and prospective period.

3. A Medically Needy applicant/recipient must reapply for benefits every six months. Eligibility may be established the first day of that six-month period or on any date during the six-month period that spend-down is met.

i. Eligibility should be verified by providers on each visit by reviewing the "Medicaid Eligibility Identification Card" (MEI) (FD-73/178) (see N.J.A.C. 10:49-1.2(b)). For those cards issued for the month within the six month period in which the spend-down is met, the card will reflect the date that eligibility begins after the spend-down is met.

4. Claims for Medically Needy covered services provided during an eligible period may be submitted to the Program for reimbursement using standard Medicaid procedures. Services provided prior to the effective date of eligibility are the client's liability, except for certain "special" claims.

i. (No change.)

ii. The county welfare agency/board of social services will identify "special" claims which may be reimbursed under the Program and will provide a Medically Needy Claim Transmittal (FD-311 Form). Such claims must be submitted hard copy with the FD-311 attached.

(d) Exceptions to eligibility: The following are exceptions to the eligibility process:

1.-2. (No change.)

3. Medicaid Retroactive Eligibility: Persons applying for Medicaid benefits will be asked if they have unpaid medical bills incurred within the three month period immediately prior to the month of application for Medicaid. Except for Medically Needy applicants (see (d)3ii below), persons indicating that they do have such bills may complete an Application for Payment of Unpaid Medical Bills (FD-74) and forward the application with all outstanding unpaid bills to the Medicaid Retroactive Eligibility Unit. An application for retroactive eligibility may be obtained by the applicant or his or her authorized agent from the county welfare agency board of social services, the Medicaid District Office, the Social Security Administration District Office, or the Retroactive Eligibility Unit (Division of Medical Assistance and Health Services, CN 712-10, Trenton, New Jersey 08625). The application must be submitted within six months from the date of application for public assistance.

i. If the New Jersey Medicaid Program determines that the person was eligible for Medicaid at the time the service was rendered or item supplied, providers will be notified directly that the unpaid bills for any service/item covered by the New Jersey Medicaid Program may be reimbursable in accordance with standard Medicaid reimbursement procedures. The provider will then complete the appropriate Medicaid claim form and submit it to the Retroactive Eligibility Unit for consideration and authorization of payment.

ii. For Medically Needy persons, retroactive eligibility determinations will be completed by the county welfare agency/board of social services (see (c)4 above).

(e) To apply for benefits: If a patient has not applied for benefits, is unable to pay for services rendered and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider should encourage the patient, or his or her representative, to apply for benefits through the county welfare agency/board of social services for programs such as Aid to Families with Dependent Children, Medicaid Only, Optional Categorically Needy (New Jersey Care—Special Medicaid Programs) for pregnant women and children up to the age of two, or for Medically Needy; to the Social Security Administration for Supplemental Security Income benefits for the aged and disabled; or, in certain cases, to the New Jersey Division of Youth and Family Services. The agency will process the application and notify the patient of the resulting determination. If it is not known which agency is responsible for determining eligibility

or which program might be applicable, the Medicaid District Office can be of assistance (See Appendix A).

1. A patient receiving services prior to the notification of eligibility should be informed that he or she is considered responsible for all charges incurred until proof of eligibility is verified. Once eligibility is verified, the provider may not bill the patient for any portion of the costs of allowable services rendered on or after the effective date of eligibility.

2. (No change.)

10:49-1.7 Utilization of insurance benefits

(a) Medicaid benefits are last-payment benefits. All health and accident insurance benefits, including Medicare, Worker's Compensation and no-fault auto insurance, shall be used first and to the fullest extent in meeting the medical needs of the covered person. Medicare covers aged and certain disabled persons. When rendering Medicare covered services to a Medicaid recipient, providers should inquire about Medicare eligibility if the third digit of the HSP (Medicaid) Case Number is a 1, 2, 5, or 7. Supplementation of available benefits shall be as follows:

1. Title XVIII (Medicare): For those individuals who are covered under Medicare, responsibility for payment by the New Jersey Medicaid Program will be limited to the unsatisfied deductible to the extent that the total Medicare and Medicaid payments do not exceed the maximum allowable under the Program in the absence of other coverage. (Exception: Co-insurance is reimbursable for hospital billings, long-term care facility billings, durable medical equipment and supplies, and prosthetic and orthotic devices to the extent that the total Medicare and Medicaid payments do not exceed the maximum allowable under the Program in the absence of other coverage.)

2. Worker's Compensation: No program payments shall be made for a patient covered by Worker's Compensation.

3. Other health insurance: When a covered person has other health insurance, the Program requires that such benefits be used first and to the fullest extent. Supplementation may be made by the Program, but the combined total paid shall not exceed the amount payable under the Program in the absence of other coverage. The Program will not supplement covered services rendered by a participating or contracting practitioner with any private health coverage program where the private plan calls for the practitioner to accept said plan's payment as payment in full. When other health insurance is involved, supplementation claims shall not be filed with the Program unless accompanied by a statement of payment or denial from the other carrier. Attachment of such information will expedite Medicaid claim processing. For exceptions, see (a)1 above.

4. Claims collectible under New Jersey No-Fault Law: No Program payments will be made for services that are payable under the New Jersey Automobile Reparation Reform Act., P.L. 1972, c.70 or the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984, P.L. 1983, c.362. This includes claims payable under the Unsatisfied Claim and Judgment Fund where no private automobile insurance policy exists.

5. When a covered person has benefits available to him or her, such as those described in (a)1 through 3 above, or from any other liable third-party, an approved Medicaid provider is authorized to sign an insurance claim form for the Commissioner, based on the third-party assignment of rights, in order to receive direct payment from the insurer. This is done pursuant to N.J.S.A. 30:4D-7.1(c). The following language is to be used by the provider when completing insurance claim forms: "(signature of authorized provider), Assignee for the Commissioner, New Jersey Department of Human Services".

6. When recovery of benefits is sought by the New Jersey Medicaid Program from a liable third-party, the Commissioner authorizes the Director or his or her designee(s) to sign the recovery demand.

10:49-1.8 Prior and retroactive authorization (general)

(a) Under the Program, payment for certain services will require prior authorization except in an emergency. It is the responsibility of the provider to obtain prior authorization before furnishing or rendering service. Specific instructions are detailed in the appropriate provider manual sections.

1. Prior authorization is no guarantee that an individual is eligible for the New Jersey Medicaid Program. The Division does not verify patient eligibility when authorizing a service/item.

2. (No change in text.)

(b) Retroactive authorization may be granted under certain circumstances provided that the service is a part of continuing patient care and, on the basis of medical judgment, would have been authorized at the time the service was rendered. Each case is considered on its own merits. Retroactive authorization is to be an exceptional measure granted only under the following unusual circumstances:

1. "Other coverage" (Medicare, Third-Party liability, other insurance, etc.) has denied or made only partial payment of a claim for services or items requiring prior authorization and it would have been unreasonable to expect the provider to have requested authorization prior to rendering the service.

2. An "administrative emergency" existed because communication between the provider and New Jersey Medicaid Program staff could not be established (for example, during a weekend, holiday or evening) and provision of the service should not have been delayed. This differs from a medical emergency in that the recipient's condition would not be impaired if the service was not provided (see example). In such instances, the request for retroactive authorization including an explanation of the circumstances as well as the medical documentation supporting the services must be submitted to the Medicaid District Office or Central Office, as appropriate, within five calendar days after the service was provided or initiated. If verbal authorization was obtained, confirming written documentation must follow.

Example: A patient is to be transferred from a hospital to a skilled nursing facility on a weekend but an invalid coach is required to move the patient. The invalid coach provider is unable to contact the Medicaid District Office to obtain prior authorization. It is advantageous to the Medicaid Program, the hospital and the patient to transfer on Saturday and not wait until authorization can be obtained on Monday.

3. In situations not covered by (b)1 and 2 above, the New Jersey Medicaid Program follows the doctrine of reasonableness which asks, "Is it reasonable to conclude that the situation presented warrants waiver of procedural rules?"

(c) Retroactive authorization will not be granted under the following circumstances:

1. Services the provider identified as medically emergent are determined, following the medical review by the Fiscal Agent, to be non-emergent.

2.-3. (No change.)

10:49-1.9 Policy on out-of-State medical care and services

(a) Prior authorization is required for all inpatient and outpatient hospital services provided outside the State of New Jersey except in the following situations:

1.-2. (No change.)

3. Care provided to Medicaid recipients residing out-of-State at the discretion of the New Jersey Department of Human Services.

(b) Any covered service that requires prior authorization as a prerequisite for reimbursement to New Jersey Medicaid providers also requires prior authorization if it is to be provided in any other state.

1. (No change.)

10:49-1.10 Bureau of Claims and Accounts; Fiscal Agents

(a) The Bureau of Claims and Accounts, Division of Medical Assistance and Health Services directly processes and makes payment of claims for services provided by long-term care facilities (skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, and residential treatment facilities) and eligible State and county governmental psychiatric hospitals.

(b) Contracts have been negotiated on behalf of the State of New Jersey with Blue Cross and Blue Shield of New Jersey, Inc. and The Prudential Insurance Company of America to function as New Jersey Medicaid Fiscal Agents.

1. Blue Cross and Blue Shield of New Jersey, Inc. is responsible for the processing and payment of hospital inpatient, hospital outpa-

tient and hospital-based home health agency claims for those providers who have selected Blue Cross and Blue Shield of New Jersey, Inc. as their intermediary under Title XVIII (Medicare). In addition, Blue Cross and Blue Shield of New Jersey, Inc. processes pharmaceutical services claims, claims for out-of-State hospitals and out-of-State hospital-based home health agencies.

Hospitals who have not participated in Title XVIII are assigned to Blue Cross and Blue Shield of New Jersey, Inc.

Telephone Numbers
Hospital Providers Services—1-201-456-2534
Recipient Eligibility—1-800-242-0861
Pharmacy Inquiry—1-800-242-0809

2. The Prudential Insurance Company of America handles the processing and payment of hospital inpatient, outpatient and certain hospital-based home health agency claims for those providers who have selected Prudential as their Intermediary under Title XVIII (Medicare), and all freestanding home health agency claims (In-State and Out-of-State). In addition, The Prudential Insurance Company of America processes claims for all other health services covered by the Program, with the exception of pharmaceutical services, SNFs, ICFs, ICFs/MR, State and some County Governmental Psychiatric Hospitals.

Telephone Numbers
General Inquiry—1-800-582-7052
Out-of-State Providers—1-609-293-2000

10:49-1.14 Use of service bureau and/or management agency

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

(e) Standard Medicaid hard-copy claim forms must be used unless the provider has been authorized to submit claims via an automated data exchange billing system for all instances except where hard-copy claims are required as detailed in the appropriate provider manual.

1. If standard Medicaid claim forms are not utilized, the provider/agent must obtain prior authorization from the New Jersey Medicaid Program.

2. In order to obtain prior authorization, the provider/agent must submit a printer's prototype of an exact replica of the Medicaid claim form and the programming instructions for completion of the form to the appropriate Fiscal Agent, The Prudential Insurance Company (P.O. Box 1900, Millville, New Jersey 08332) or Blue Cross and Blue Shield of New Jersey, Inc. (33 Washington St., Newark, New Jersey 07102).

3. The provider/agent must assume the entire cost of printing duplicate forms at all times.

(f) The New Jersey Medicaid Program, in authorizing/approving any provider/agent agreement, assumes no responsibility for the performance of the provider or agent. In the event that any error of the provider/agent requires special programming to be made by the Medicaid Fiscal Agent in order to have claims paid correctly, the provider/agent must assume the entire cost of the special programming.

10:49-1.17 Program participation

(a) These provisions of this section are adopted and issued pursuant to Executive Order No. 34 dated March 29, 1976, and the authority vested in the Division of Medical Assistance and Health Services to implement the Medical Assistance Program by rules and regulations set forth in N.J.S.A. 30:4D-5.

(b) Suspension, debarment, and disqualification are measures which shall be invoked by the Division of Medical Assistance and Health Services to exclude or render ineligible certain persons from participation in contracts and subcontracts with the Division, or in projects or contracts performed with the assistance of and subject to the approval of the Division, on the basis of a lack of responsibility. These measures shall be used for the purpose of protecting the interests of the Division and not for punishment. To assure the Division the benefits to be derived from the full and free competition between and among such persons and to maximize the opportunity for honest competition and performance, these measures shall not be invoked for any time longer than deemed necessary to protect the interests of the Division.

1. Any individuals, including but not limited to owners, officers, administrators, assistant administrators, employees, accountants, attorneys, and management services who have been suspended, debarred or disqualified from Medicaid Program participation for any reason shall not be involved in any activity relating to the New Jersey Medicaid Program.

2. Providers reimbursed on a cost-related basis may not claim as allowable costs any amounts paid or credited to such individuals, and such amounts shall not be reimbursed by the New Jersey Medicaid Program.

3. Providers reimbursed on a fee-for-service basis may not submit claims and shall not be reimbursed for any goods supplied or services rendered by such individuals.

4. (No change.)

(c) Definitions, as used in this section, include the following:

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

2. "Debarment" means an exclusion from State contracting, on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performace.

3.-8. (No change.)

9. "Fiscal Agents" means Blue Cross and Blue Shield of New Jersey , Inc. and The Prudential Insurance Company of America, or their successors.

10. (No change.)

(d) Any of the following, among other things, shall constitute a good cause for suspension, debarment or disqualification of a person engaged in State contracting, as defined herein, by the Division of Medical Assistance and Health Services:

1.-4. (No change.)

5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or of the "Act prohibiting discrimination by industries engaged in defense work in the employment of persons therein" (C.114, P.L. 1942, N.J.S.A. 10:1-10 et seq.);

6.-16. (No change.)

17. Breach of the terms of the Medicaid provider agreement entered into with the Division or failure to comply with the terms of the provider certification on the Medicaid claim form;

18.-21. (No change.)

22. Submission of a false or fraudulent application for provider status to the Division or to its Fiscal Agents;

23. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the Division to warrant debarment, including such conduct as may be proscribed by the laws or contracts enumerated in this subsection, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

24.-26. (No change.)

(e) Conditions for debarment are as follows:

1. Debarment shall be made only upon approval of the Director of the Division, except as otherwise provided by law.

2. The existence of any of the causes set forth in (d) above shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Director of the Division unless otherwise required by law, and shall be rendered in the best interests of the Division.

3. (No change.)

4. The existence of a cause set forth in (d) 1 through 7 above shall be established upon the rendering of a final judgment or conviction by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in (d) 8, 9, 10 and 23 above shall be established by evidence which the Division or agency determines to be clear and convincing in nature.

6. The existence of a cause set forth in (d) 1 through 7, 11 through 22, and 24 above shall be established by a preponderance of the believable evidence.

7. Debarment for the cause set forth in (d) 24 above shall be proper, provided that one of the causes set forth in (d) 1 through 23 above was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

(f) If the Division seeks to debar a person or his or her affiliates, the Division shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment and indicating that such party will be accorded an opportunity for a hearing if he or she so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act. However, where one department or agency has imposed debarment upon a party, a second department or agency may also impose a similar debarment without according an opportunity for a hearing, provided that the second agency furnishes notice of the proposed similar debarment to that party and accords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(g) Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is accorded an opportunity to present information in his or her behalf to explain why the additional period of debarment should not be imposed.

(h) Scope of debarment rules are as follows:

1. (No change.)

2. A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his or her official duty or was effected by him or her with the knowledge or approval of such person.

3. Debarment, by the Director of any provider of service shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Division of Medical Assistance and Health Servcies or its Fiscal Agents for any services or supplies he or she has provided under the New Jersey Medicaid Program, except for services or supplies provided prior to the debarment. No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the Division or its Fiscal Agents for any services or supplies provided by a person within such organization who has been debarred by the Director, except for services or supplies provided prior to the debarment.

4. When the provisions of this section are violated by a provider of service which is a clinic, group, corporation or other association, the Director may debar such organization and/or any individual person within said organization who is responsible for such violation.

(i) The Division may suspend a person in the public interest for any cause specified in (d), above or upon a reasonable suspicion that such cause exists, or when, in the opinion of the Director, such action is necessary to protect the public welfare and the interests of the medical assistance program.

(j) Conditions for suspension are as follows:

1. Suspension shall be imposed only upon approval of the Director of the Division and upon approval of the Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Director of the Division and of the Attorney General, and shall be rendered in the best interests of the Division.

3.-4. (No change.)

5. Reasonable suspicion of the existence of a cause described in (d) above may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdictrion, by grand jury indictment, by arrest, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by the Division for any of the causes described in (d) above may be the basis for the imposition of a concurrent suspension by another agency, which may impose such suspension without the approval of the Attorney General.

(k) The Division may suspend a person or his or her affiliates provided that within 10 days after the effective date of that suspension, the Division provides such party with a written notice stating that a suspension has been imposed and its effective date, setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed, stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue, and indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing, if he or she so requests, or a statement declining to give such reasons and setting forth the agency's position regarding the continuation of the suspension. Where a suspension by the Division has been the basis for suspension by another agency, the latter shall note that fact as a reason for its suspension.

(l) (No change.)

(m) Scope of suspension rules are as follows:

1. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his or her official duty or was effectuated by him or her with the knowledge or approval of such person.

2. Suspension, by the Director, of any provider of service shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Division of Medical Assistance and Health Services or its Fiscal Agents for any services or supplies he or she has provided under the New Jersey Medicaid Program, except for services or supplies provided prior to the suspension. No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the Division or its Fiscal Agents for any services or supplies provided by a person within such organization who has been suspended by the Director, except for services or supplies provided prior to the suspension.

3. When the provisions of this section are violated by a provider of service which is a clinic, group, corporation or other association, the Director may suspend such organization and/or any individual person within said organization who is responsible for such violation.

(n) Exclusion from State contracting by virtue of suspension, debarment or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the Division. However, when it is determined essential to the public interest by the Director of the Division, and upon filing of a finding thereof with the Attorney General, an exception from total exclusion may be made with respect to a particular State contract.

(o) (No change.)

(p) The Division shall provide the State Treasurer with the names of all persons suspended or debarred and the effective date and term thereof, if any.

(q) This section shall be applicable to all persons, providers, Fiscal Agents, and their affiliates who engage in State contracting with the Division as defined in this section.

10:49-1.19 Observance of religious belief

(a) Nothing in the Program shall be construed to require any person to undergo any medical screening, examination, diagnosis or treatment or to accept any other health care or service provided under the Program for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health) if such person

or his or her parent or guardian objects thereto on religious grounds, except as specified in (b) below.

(b) If a physical examination is necessary to establish eligibility based on disability or blindness, the Program may not find an individual eligible for Medicaid unless he or she undergoes the examination.

10:49-1.20 Free choice by recipient and by provider
(No change in text of rule.)

10:49-1.22 Confidentiality of records

(a) All information concerning applicants and recipients acquired under this Program shall be confidential and shall not be released without the written consent of the individual or his or her authorized representative. If, because of an emergency situation, time does not permit obtaining consent before release, the Program shall notify the individual, his or her family or authorized representative immediately after releasing the information. The restriction on the disclosure of information shall not preclude the release of statistical or summary data or information in which applicants or recipients are not, and cannot, be identified; nor shall it preclude the exchange of information between providers furnishing services, Fiscal Agents of the Program and State or local government agencies for purposes directly connected with administration of the Program. Disclosure without the consent of the applicant or recipient shall be limited to purposes directly connected with the administration of the Program in accordance with Federal and State law and regulations.

(b) The type of information about applicants and recipients that will be safeguarded by the Program includes but is not limited to:

1.-3. (No change.)

4. Program evaluations of personal information;

5. Medical data, including diagnosis and past history of disease or disability;

6. Any information received for verifying income eligibility and amount of medical assistance payments. Income information received from SSA or the Internal Revenue Service will be safeguarded according to the requirements of the agency that furnished the data; and

7. Any information received in connection with the identification of legally liable third party resources as required under applicable Federal regulations (42 C.F.R. 431.305).

(c) Purposes directly connected with the administration of the Program include but are not limited to:

1.-3. (No change.)

4. Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the Program.

10:49-1.24 Individual Medicaid Practitioner (IMP) number

(a) Each Medicaid participating practitioner (that is, physician, dentist, podiatrist, optometrist, psychologist, or chiropractor) is assigned an IMP Number. The IMP Number is a unique nine position practitioner identifier which is required on all Medicaid claim forms as a condition of payment.

(b) Each practitioner should routinely supply his or her IMP Number to other providers when referring a Medicaid patient for services.

(c) Providers who need an IMP Number for billing purposes should contact the practitioner to determine if an IMP Number has been assigned to the practitioner. (Note that a practitioner who does not participate in the Medicaid Program will not have an IMP Number). If, after contacting the practitioner there is still uncertainty about the IMP Number, providers calling from New Jersey may call 1-800-582-7052 toll free for assistance. If calling from outside New Jersey call 1-609-293-2000.

10:49-1.26 Patient certification

(a) A patient certification, authorization to release information and payment request, must, under ordinary circumstances, be signed before a claim for payment from a provider is processed for payment. The patient is certifying that:

1. (No change.)

2. Requesting payment for those services made on his or her behalf; and

3. (No change.)

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

(e) When the patient's signature is unobtainable, the following procedures may be used:

1. An illiterate patient may sign mark (x), and the signature must be witnessed by another person who signs his or her name and address on the Medicaid Patient Certification Form or on the Medicaid hard-copy claim form.

2. If a patient is physically or mentally incapable of signing, or is now deceased, the forms may be signed on his or her behalf by:

i. A parent;

ii. A legal guardian;

iii. A relation;

iv. A friend;

v. An individual provider;

vi. A representative of an institution providing care or support; or

vii. A representative of a governmental agency providing assistance.

3. (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Day Care Manual

Readoption: N.J.A.C. 10:65

Proposed: July 3, 1989 at 21 N.J.R. 1794(a).
Adopted: August 25, 1989 by Margaret E. L. Howard, Acting Commissioner, Department of Human Services.
Filed: August 25, 1989 as R.1989 d.504, **without change.**

Authority: N.J.S.A. 30:4D-6b(12)(17), 7, 7a, b, c.

Effective Date: August 25, 1989.
Expiration Date: August 25, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:65.

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Clinic Services Manual
Prior Authorization

Adopted Amendment: N.J.A.C. 10:66-1.5

Proposed: July 3, 1989 at 21 N.J.R. 1794(b).
Adopted: August 25, 1989 by Margaret E. L. Howard, Acting Commissioner, Department of Human Services.
Filed: August 25, 1989 as R.1989 d.503, **without change.**

Authority: N.J.S.A. 30:4D-7, 7a, b, and c; 30:4D-12.

Effective Date: September 18, 1989.
Operative Date: October 1, 1989.
Expiration Date: December 15, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:66-1.5 Prior authorization

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

(c) Prior authorization for services rendered by independent clinics is required as follows:

1.-2. (No change.)

3. Mental health services, exceeding $800.00 in payments to an independent clinic in any 12-month period, commencing with the patient's initial visit. The maximum period of authorization is six

months for partial care and one year for other mental health services. Additional authorizations may be requested.

4.-5. (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Readoption with Amendments: N.J.A.C. 10:81

Proposed: July 3, 1989 at 21 N.J.R. 1795(a).

Adopted: August 23, 1989 by Margaret E. L. Howard, Acting Commissioner, Department of Human Services.

Filed: August 24, 1989 as R.1989 d.496, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:7-6 and 44:10-3, 45 CFR 206.10(a)9iii and 45 CFR Parts 400 and 401.

Effective Date: August 24, 1989, Readoption; September 18, 1989, Amendments.

Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: A county welfare agency noted that the use of Form CSP-158 has been eliminated.

RESPONSE: The commenter is correct and, as such, N.J.A.C. 10:81-3.27, 11.3 and 11.9 have been revised to delete reference to Form CSP-158.

Summary of Changes Subsequent to Proposal:

Deletion of references to Form CSP-158 and correction of printing errors.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:81.

Full text of the amendments to the readoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

10:81-1.1 Purpose and scope

(a) The purpose of this manual is to set forth the policies and procedures necessary for the orderly and equitable provision of public assistance on a Statewide basis. It is binding on the county welfare agencies (CWAs) and enforceable by the Division of Public Welfare. Questions of interpretation will be resolved by the Division of Public Welfare.

Renumber (a)-(d) as (b)-(e) (No change in text.)

10:81-1.11 Income maintenance programs

(a) This manual describes policy for the income maintenance programs which are:

1. Aid to Families with Dependent Children, which is composed of three segments:

i. AFDC-C, through which financial assistance is provided for children and their natural or adoptive parents or certain designated relatives with whom they are living, when they are financially eligible and deprived of parental support or care by reason of death, continued absence, or incapacity of one or both parents.

ii.-iii. (No change.)

2. The Realizing Economic Achievement (REACH) program is the AFDC education, training and employment program whose purpose is to assure that needy families with children participate in employment directed activities which lead to economic independence. Participation in REACH is required of AFDC individuals who meet the criteria established at N.J.A.C. 10:81-14. REACH makes available a variety of employment, training and educational opportunities as well as supportive services to ensure participation in REACH activities.

3. Refugee Resettlement Program (RRP), through which financial assistance is provided to a citizen of any country who meets the Immigration and Naturalization Service (INS) statuses outlined in N.J.A.C. 10:81-10.

(b) Information, applications and staff agency personnel shall be available to assist non-English speaking applicants for income maintenance programs listed in N.J.A.C. 10:81-1.11 and 1.12. Spanish language program material is routinely prepared by the Division and distributed to county and municipal assistance agencies. Minority program materials in languages other than Spanish may be prepared, based on knowledge of the population served by programs under the auspices of the Division.

10:81-2.1 General provisions

(a) This subchapter describes briefly the steps followed by the income maintenance (IM) worker in determining an applicant's eligibility to receive public assistance. The objective of eligibility determination is to assist all eligible persons in qualifying for AFDC and participating in the Realizing Economic Achievement (REACH) program. Detailed information regarding eligibility factors is in N.J.A.C. 10:81-3, 10:81-14 and N.J.A.C. 10:82.

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

10:81-2.2 Purpose and scope of first contact

(a) Responsibility of the agency during the initial contact shall include, but not be limited to:

1.-7. (No change.)

8. Providing an overview of the REACH program to each applicant for assistance in accordance with N.J.A.C. 10:81-14.4(g). The IM worker will determine the need for each individual to participate in REACH as a condition of eligibility for AFDC (see N.J.A.C. 10:81-14.3). Further, the IM worker shall:

i. Determine if AFDC applicants or recipients are exempt from REACH participation in accordance with N.J.A.C. 10:81-14.3(b);

ii. Refer AFDC applicants and recipients who do not meet the exemption criteria at N.J.A.C. 10:81-14.3(b) for REACH orientation; and

iii. Perform other related functions concerning the REACH program as described in N.J.A.C. 10:81-14.1.

10:81-2.3 Completion of forms

(a) The applicant will be fully assisted by the IM worker or by any person of his or her choice in completing the Application and Affidavit for Public Assistance (PA-1J). Form PA-1J is used to apply for AFDC, AFDC-related emergency assistance, refugee resettlement, categorically related Medicaid and food stamp benefits. The applicant will also be given the pamphlets "Your Rights and Responsibilities in the AFDC Program" (Form PA-197) and "Fair Hearing in the Aid to Families with Dependent Children Program (AFDC)" (Form PA-196). The client's obligation to report changes, as stated in Form PA-197, will be carefully explained by the IM worker.

(b) Signature(s) and date of application are required. The application (Form PA-1J) requires three signatures of the applicant(s). In addition to the first page and the affidavit, the applicant(s), with the exception of non-needy parent-persons who do not request assistance for themselves, shall sign a release which authorizes the CWA to obtain State income tax information.

1.-2. (No change.)

(c) As a further condition of eligibility for AFDC-C or -F, AFDC-related Medicaid and food stamp benefits, a written declaration of citizenship/legal alien status shall be obtained for each member of the eligible family. An adult eligible family member or applicant for the family in the absence of an adult family member shall sign for members under 18 years of age.

Renumber (c)-(d) as (d)-(e) (No change in text.)

10:81-2.5 Financial need

The IM worker shall determine financial eligibility (need) of the eligible family members by preparing Form PA-3A (Worksheet and Authorization for Public Assistance) or Form 105, if appropriate, in accordance with N.J.A.C. 10:82-2 and the Family Assistance Management Information System (FAMIS).

10:81-2.6 Eligibility factors other than need

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

(c) The relationship between adoptive parent and child(ren) in AFDC is:

1. AFDC: The IM worker will explain to the applicant that in order to apply for AFDC, he or she shall be either the natural or adoptive parent or eligible to serve as a parent-person of the eligible child(ren). An applicant who is a parent-person has the option of applying either for the child(ren) or him or herself as a needy parent-person, or for the child(ren) only. The advantages and disadvantages of each option shall be thoroughly discussed.

2. The IM worker will explain that for AFDC-F and -N segments the child(ren) shall be natural or adoptive to the two parents who are applying.

3. If not eligible for AFDC, eligibility for SSI will be explored.

10:81-3.1 Program eligibility factors related to AFDC

This subchapter presents in detail the program eligibility factors which shall be considered in making determinations related to the AFDC-C, -F and -N segments.

10:81-3.5 Verification of income and resources

(a) (No change.)

(b) Earned and unearned income verification is as follows:

1. (No change.)

2. All unearned income shall be verified by examination of benefit check or by contact with the company or agency granting such benefit. Social Security benefit information verification may be accomplished through the Automated Benefit Information Exchange (ABIE)/Beneficiary and Earnings Data Exchange (BENDEX) and/or Third Party Query (TPQY) (see N.J.A.C. 10:81-8.2 concerning TPQY).

3. (No change.)

4. All resources shall be evaluated and, where appropriate, a plan for their liquidation shall be developed and carried out (see N.J.A.C. 10:82-3).

i. Legally responsible relatives shall be contacted for evaluation of their capacity to support (see N.J.A.C. 10:81-3.35 and 3.36).

10:81-3.6 Recording of documentation

All information, written or oral, including sources and methods of documentation, shall be recorded on Form PA-1J, Application and Affidavit for Public Assistance and included in the case record. See N.J.A.C. 10:81-7.9 for Provisions concerning documentation procedures.

10:81-3.9 Applicant in AFDC-C and -F

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

(c) To be eligible for AFDC-C or -F, or AFDC-related Medicaid an individual shall be either a citizen of the United States or otherwise permanently residing in the United States under color of law, including any alien who is lawfully present in the United States as a result of the application of Section 207(c), Section 203(a)(7) (prior to April 1, 1980), Section 208, and Section 212(d)(5) of the Immigration and Nationality Act.

1. Each AFDC-C and -F and AFDC-related Medicaid applicant shall, as a condition of eligibility, provide a written statement of citizenship or legal alien status. If the applicant(s) is not a United States citizen, he or she shall provide documentation, subject to verification, of satisfactory immigration status. When the applicant or other person for whom the application is being made is an alien, his or her legal status shall be verified through evidence provided by the applicant with the United States Immigration and Naturalization Service.

i. A statement of citizenship/legal alien status and signature attesting to citizenship/legal alien status shall be provided before benefits can be issued to that individual. An adult eligible family member or applicant for the family in the absence of an adult family member shall sign for members under 18 years of age.

ii. If a signature is not provided for all eligible family members by either the end of the 30-day processing standard or the last day of the last month of the redetermination period, then only those individuals for whom there is a signature shall be eligible for benefits provided they meet all other eligibility requirements.

iii. The needs of ineligible members shall not be considered when determining eligibility and benefits for the remaining family members.

iv. Income and resources of those ineligible individuals who are parents of otherwise eligible children shall be considered available to the eligible family and shall be calculated in accordance with the stepparent deeming formula at N.J.A.C. 10:82-2.9.

2. Assistance through the AFDC-C and -F segments and AFDC-related Medicaid shall not be granted to an illegal alien or to aliens admitted as students or visitors. Individuals who are not United States citizens and who do not meet the criteria for legal alien status (and therefore ineligible for federally funded AFDC and Medicaid benefits) are not subject to the alien verification requirements in (c)1 above. Such individuals may be eligible for benefits under the AFDC-N segment (see N.J.A.C. 10:81-3.10(a)1). CWAs shall advise those individuals of their right to apply for those benefits.

3. Individuals who have been granted lawful temporary resident status by Immigration and Naturalization Services (INS) as a result of the Immigration Reform and Control Act (IRCA) of 1986, amended section 245A, shall be disqualified for AFDC-C and -F segment assistance payments for a period of five years from the effective date of that status. That period of ineligibility for AFDC payments shall remain in effect even though the temporary status may change to that of lawful permanent resident status during that interval.

4. Cuban and Haitian entrants, who have resided in the United States since January 1, 1982, may qualify for immediate permanent resident status and shall not be subject to the disqualification provision for AFDC-C and -F benefits.

10:81-3.10 Applicant in AFDC-N

(a) The term applicant in ADFC-N refers to natural or adoptive parents, not incapacitated, both of whom shall be required to execute the formal written application unless one such parent is not available to sign the application for reasons beyond the family's control. This parent shall be required to sign as promptly as he or she is available for such purpose. (See N.J.A.C. 10:82-1.5 and 2.13 relevant to companion cases.)

1. Citizenship and alienage: Applicants for AFDC-N need not be citizens or lawfully admitted aliens and are not subject to the alien verification requirements unless they are United States citizens or legal aliens applying for food stamps or AFDC-related emergency assistance.

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

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

1.-3. (No change.)

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

10:81-3.14 Noneligible persons in the household

When a noneligible individual is living in the household of an eligible unit, a monthly amount shall be recognized as the cost standard for that individual's share of household expenses (see N.J.A.C. 10:82-2.3).

10:81-3.27 Change of county residence

(a) Responsibility for AFDC, AFDC-related Medicaid and Medicaid extension case management and payment shall be transferred from one county to the other when a recipient family moves to another county.

(b) A temporary visit by either the recipient family or any member thereof shall not be considered to be a change of county residence until that visit has continued for more than a three-month period (see N.J.A.C. 10:81-3.32 and 3.34).

1. Whenever it is determined that a recipient family whose application has not been validated has changed or is planning to change its residence from one county to another, the CWA of origin shall continue assistance while completing the validation, subject to the time limits set forth in the application process, then transfer the case without delay to the receiving county.

2. Whenever it is determined that a recipient family whose application has been validated is planning to change its residence from one county to another, it shall be the responsibility of the CWA directors of the two counties concerned to effect the transfer without interruption of assistance.

3. The county of origin shall initiate and the receiving county shall, on request, immediately cooperate in accomplishing a full investigation of the circumstances surrounding the move. If the move is permanent, each county shall execute its respective responsibilities in accordance with this paragraph.

i. The county of origin has the responsibility to:

(1) Transfer, within five working days from the date it is notified of the actual move, a copy of pertinent case material to the receiving county. Such material shall include, at a minimum, a copy of the first application and the most recent PA-1J form; the most recent 105A and B forms; Social Security numbers or copies of SS-5 forms; *[a copy of Form CSP-158, Case Preparation Information Sheet (see N.J.A.C. 10:81-11.9(e));]* all birth verifications; and, where ongoing recovery of overpayments is involved, the amounts and net balances;

(2)-(3) (No change.)

ii.-iv. (No change.)

(c) Those cases which are in Medicaid extension only shall also be transferred to the new county of residence when the family moves from the county of origin in the same manner as active AFDC cases. The procedures established at N.J.A.C. 10:81-3.27(b) and the current (FAMIS) procedural manual are to be followed when transferring a case in Medicaid extension (see also N.J.A.C. 10:81-8.22).

10:81-3.41 Action by CWA upon liquidation (except nonexempt real property)

(a) Valid agreement to repay exists: Upon liquidation of a claim or interest (other than liquidation of nonexempt real property) for which a valid Agreement to Repay exists (see N.J.A.C. 10:81-3.40(c)), regardless of whether or not the persons involved are receiving assistance at the time, the CWA will evaluate the situation. Upon a showing that, by release of the funds and only by release of the funds, the household can reasonably be expected to remain off the assistance rolls indefinitely, the CWA may, with approval of the State office, release the funds to the household. In all other instances the CWA will, subject to the special provisions below, pursue recovery of the lesser of the following amounts:

1. The amount of cash assistance granted to the eligible family in the AFDC program, including any assistance provided to or on behalf of the minor children of the family, except as provided at N.J.A.C. 10:81-3.40(d)2, from the date of the accident or occurrence which gave rise to the settlement to the date of payment, regardless of the date of execution of the Agreement to Repay;

2. (No change.)

(b)-(e) (No change.)

10:81-4.22 Emergency assistance

(a) The basic monthly assistance payment is intended for use in meeting the routine expenses of daily living. It is recognized, however, that there will be occasions when it becomes necessary for the CWA to provide additional financial assistance during periods of time when the eligible family experiences emergency situations (see N.J.A.C. 10:82-5.10 for policy and procedures relative to authorization and issuance of emergency assistance payments).

10:81-5.2 Requirements for periodic redetermination

(a) (No change.)

(b) Frequency of redetermination: For recipients of AFDC, all factors of eligibility shall be redetermined at least every six months except for cases in monthly reporting or cases covered by an approved error-prone profiling system.

1. Monthly reporting: In cases subject to monthly reporting, a redetermination shall be done at least once every 12 months (see N.J.A.C. 10:90). Cases subject to monthly reporting include:

i. Cases with earned income;

ii. Cases with recent work history (within the last six months); and

iii. Cases which have deemed income from individuals living with the eligible family who have earned income or recent work history (including stepparents and cases having alien sponsor's deemed income and resources);

2. (No change.)

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

10:81-5.3 Process of redetermination

(a) (No change.)

(b) Redetermination of financial eligibility: In each redetermination, it is the responsibility of the IM worker to complete a new Form PA-3A or Form 105, as appropriate, in accordance with instructions provided in N.J.A.C. 10:82 and FAMIS manual, respectively.

1. (No change.)

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

10:81-7.29 (Reserved)

10:81-7.31 Basic principles for safeguarding information

(a) No *[matter]* ***member***, officer or employee of the CWA shall produce or disclose any confidential information to any person, except as authorized below.

1.-3. (No change.)

4. CWAs shall cooperate with educational authorities for the purpose of confirming AFDC eligibility of students when such verification is for the purpose of determining the student's eligibility to participate in programs authorized under the National School Lunch Act (NSLA) and the Child Nutrition Act of 1966.

10:81-8.2 Procedures for securing information from the Social Security Administration

(a) County welfare agencies (CWAs) are required to use the Automated Benefit Information Exchange (ABIE)/Beneficiary Earnings and Data Exchange (BENDEX) and the State Data Exchange (SDX) as the primary source of verification of Social Security (RSDI) and Supplemental Security Income (SSI) benefit information.

(b) The Third Party Query System (TPQY) is to be used to obtain RSDI and SSI data for AFDC applicants and recipients when ABIE/BENDEX and SDX information is not available.

1. Specific procedures for obtaining TPQY information through use of mark sense cards are to be developed by CWAs in conjunction with the local Social Security Administration District Office (SSA/DO).

2. TPQY mark sense cards are to be prepared in accordance with the Social Security Administration (SSA) Program Operations Manual System (POMS) Part 8 Chapter 108.

3. Requests for information through TPQY will generally be processed by SSA within 10 working days. Non-receipt of any information may necessitate resubmission of the TPQY mark sense card or follow-up action using Form ***SSA*** 1610-U2.

(c) The TPQY may be supplemented through use of Form SSA-1610-U2 (Social Security-Public Assistance Agency Request for Information) for the following reasons:

1. To resolve conflicts between other evidence and data shown in the ABIE/BENDEX, SDX and TPQY files, for example, an identification problem; or

2. To secure retroactive historical data not provided by the TPQY.

3. Additional written or telephone requests for previously submitted SSA 1610-U2 information will not be accepted by SSA unless they fall within the categories described in (d)1 or 2 above or involve emergency situations.

10:81-8.9 Functions of the Department of Veteran Affairs

(a) The Department of Veteran Affairs operates the Federal program of benefit payments and health and welfare services to veterans and to certain of their dependents or survivors. To be eligible for these benefits and services the veteran, serving in either war or peacetime service, shall have been released with other than a dishonorable discharge.

(b) Exploration of veterans benefits condition of eligibility for public assistance provisions are as follows:

1. (No change.)

2. In the case of a person who is a veteran (or a dependent or survivor of a veteran) and presumptively eligible for any form of veterans benefits, it shall be required as a condition of eligibility for

public assistance that application for such benefits be made and fully processed.

i. The exceptions to this requirement are certain persons who had been receiving Veterans Administration (VA) pensions prior to December 1978 and elected to continue receiving "lower" pension amounts in order to retain AFDC and Medicaid eligibility. Those individuals shall not, as a condition of eligibility for AFDC, be required to apply for "improved" or higher pension amounts to which they may be entitled.

(c) Information concerning eligibility for benefits and services may be obtained from the following sources:

1. The details of all benefits and services are outlined in fact sheets issued by the Department of Veteran Affairs.

2. The New Jersey Bureau of Veterans Services, Department of Military and Veterans Affairs, maintains service offices to which persons seeking information or wishing to file for veterans benefits or services may be referred. The Department of Military and Veterans Affairs can be reached by calling 1-800-624-0508. That agency can provide the addresses of the local Veterans Service Office.

10:81-8.16 Administrative organization

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

(d) Any questions with respect to the policy, regulations or procedures of the Medicaid program should be directed to the Division of Medical Assistance and Health Services. That Division can provide the address of the local Medicaid District Office (MDO).

10:81-8.22 Persons eligible for medical assistance

(a) All children and their parents or needy parent-persons who are eligible for AFDC money payments (-C, -F and -N segments) are eligible for Medicaid benefits. If an eligible unit chooses not to receive a money payment, members are eligible for Medicaid Only. Medicaid coverage commences with the date that eligibility is established.

1. When a family becomes ineligible for AFDC cash assistance due to the deeming of income from a sibling(s) or stepparent, or the deeming of an alien's sponsor's income and resources, the Medicaid eligibility of the other eligible family members shall be determined without consideration of the deemed income or resources.

2. Medicaid eligibility does not exist for a caretaker relative in cases where, after excluding the child(ren) whose income caused the ineligibility for AFDC, there is no eligible child in the family.

(b) Extension of Medicaid benefits: Extended Medicaid benefits shall be provided former AFDC families in accordance with the provisions of this subsection.

1.-4. (No change.)

5. Eligibility for the 12-month Medicaid extension is not available for any month to any individual who, except for income, resources or hours of employment, is not otherwise eligible to receive AFDC. The following individuals shall not be included in the eligible family for Medicaid extension.

i. Children who are between the ages of 18 (not scheduled to graduate by the 19th birth date) and 19 at the beginning of Medicaid extension; and

ii. Children who reach 18 or 19 (who are not scheduled to graduate by the 19th birth date) and therefore "age out" during the Medicaid extension.

6. (No change.)

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

(f) Those cases which are in Medicaid extension only shall also be transferred to the new county of residence when the family moves from the county of origin in the same manner as active AFDC cases. The procedures established at N.J.A.C. 10:81-3.27(b) and the current FAMIS procedural manual are to be followed when transferring a case in Medicaid extension.

SUBCHAPTER 10. REFUGEE RESETTLEMENT PROGRAM

10:81-10.1 Purpose and funding

(a) The Refugee Resettlement Program (RRP) is a federally funded program designed to help meet the needs of refugees.

(b) Federal financial participation for refugees under RRP is 100 percent. For refugees who meet AFDC-C or -F segment criteria, 50 percent of the Federal reimbursement is from Title IV-A funds and 50 percent from refugee funds. For those refugees meeting AFDC-N or GA criteria, 100 percent Federal financial reimbursement is from refugee funds.

10:81-10.2 Identifying refugees

An individual is considered a refugee for purposes of RRP if he or she fled from and cannot return to his or her place of national origin because of fear of persecution on account of race, religion or political opinion. Such an individual may be eligible under RRP if he or she is included in one of the statuses granted by the Immigration and Naturalization Service (INS) as delineated in this subchapter (see N.J.A.C. 10:81-10.3).

10:81-10.3 INS Statuses for RRP

(a) Applicants may be eligible for assistance under the RRP if they have been classified in one of the following INS statuses:

1.-3. (No change.)

4. A person from any country who has been granted asylum under section 208 of the IN and so indicated on Form I-94;

5. A person from any country who previously held one of the statuses identified in (a)1 through 4 above whose status has subsequently been changed to that of permanent resident alien. In addition to the required Form I-151 or I-551 (resident alien forms) showing the status of resident alien, the individual must also provide sufficient documentation to substantiate that one of the eligible statuses indicated in (a)1 through 4 above was held prior to that of resident alien; or

6. A person identified as an Amerasian from Vietnam with their close family members admitted in immigrant status under Section 584 of the Foreign Operations Appropriations Act, to be admitted during the two year period authorized by that law, beginning March 20, 1988 and so indicated on Form I-94 or I-551.

10:81-10.4 Resettlement

(a) Most refugees are resettled by a voluntary agency and will have a sponsor. This sponsor, which may be an individual, church or organization, shares certain responsibilities as a moral commitment with the resettling agency. Such responsibilities include: receiving the refugee, helping him or her find food, shelter, clothing, furniture, and employment; and assisting the refugee to adjust to a new environment. (see N.J.A.C. 10:81-10.7(c)).

(b) Verification with sponsors: When a sponsor no longer provides adequate financial aid for the refugee, the refugee may turn to a CWA for assistance. As part of its regular verification process, the CWA shall contact the sponsor and inquire as to what, if any, assistance the sponsor may still be providing to the refugee; and whether the refugee has refused an offer of employment or has voluntarily quit a job without good cause. The CWA shall also request that such sponsor notify the resettlement agency of these changes in circumstance. The CWA shall also promptly notify the resettlement agency that the refugee has applied for assistance. In addition, the refugee's sponsor or resettlement agency shall be contacted to verify the possible existence of any matching grant assistance being provided to the refugee (see N.J.A.C. 10:81-10.7(d)). Meanwhile the CWA shall grant assistance to eligible refugees. Any cash assistance to the client from the sponsor or resettlement agency shall be treated as unearned income (see N.J.A.C. 10:82-4.13(c)). All contacts with the sponsor and/or resettlement agency shall be recorded in the case record (see N.J.A.C. 10:81-10.7(c)).

10:81-10.5 Termination of RRP: Continued eligibility for assistance

(a) Case numbers: For refugee cases no longer eligible for RRP benefits, the suffix "R" is to be deleted from the case numbers.

(b) Race codes: Race codes (RCs) shall be changed for all cases (C, F, N, L and K). For FAMIS purposes, change the RC in blocks 531/BE, 519/BN and/or 13/QF of FAMIS Form 105 for C, F and L type cases from "R" to the appropriate racial/ethnic code.

10:81-10.6 Registration of RRP cases

(a) The application for all AFDC-N segment and GA type cases shall be registered in accordance with N.J.A.C. 10:81-2.3(e).

(b) Program number: In the segment indicator of FAMIS Form 105, the suffix "R" is to be used to designate all refugees eligible under RRP cases.

(c) For FAMIS purposes, the race code of "R" shall be entered in blocks 519/BN, 531/BE or 13/QF of the 105 document for RRP cases.

10:81-10.7 Eligibility

(a) No U.S. citizen is eligible for RRP (exception: see (a)2 and 3 below) and a refugee may be eligible only if he or she meets the appropriate definition and INS status in N.J.A.C. 10:81-10.2 and 10.3. In addition, all refugees who have either been in the U.S. for two years or were released into the community and received parole status two years prior will cease to be eligible for cash and medical assistance under RRP (see (b) below). Such ineligible refugees who are still in need shall, as appropriate, be assisted under AFDC-N or referred to the municipal welfare department via Form PA-14, "Referral for Services", giving the reason for referral.

1. (No change.)

2. Two parent families: When both parents are refugees, the case is treated as a single RRP case even if one or more children are U.S. citizens. When only one parent is a refugee, RRP assistance is granted only to family members who are refugees.

3. One parent families: When the parent is a refugee, the entire family is treated as a single RRP case, even if one or more of the children are U.S. citizens. If the parent is a U.S. citizen but one or more of the children are refugees, RRP assistance is granted only to family members who are refugees.

(b) Eligibility limitations: Eligibility for assistance under RRP is limited to a total of 24 months.

1. (No change.)

2. Rules concerning GA (AFDC-N or GA) type cases are as follows:

i. First 12 month period: For all GA and AFDC-N type applicants/recipients residing in the U.S. for 12 months or less from their initial entry date or when parole status was first granted as identified on INS Form I-94, income and resources shall be treated in accordance with the standards and criteria applicable to AFDC-C or -F, except, that CWAs shall not apply the $30.00 and one-third earned income disregard. The assistance standard for applicants/recipients shall be the appropriate amount for eligible family size using Schedule I found in N.J.A.C. 10:82-1.2.

ii. Second 12 month period: During the second 12 month period, GA and AFDC-N type cases shall have eligibility/assistance payment entitlement determined in accordance with AFDC-N or GA criteria, as applicable.

(1) AFDC-N type RRP applicants/recipients (intact families not meeting employment criteria for AFDC-F segment) shall have eligibility and assistance payment entitlement determined by using Schedule II found in N.J.A.C. 10:82-1.2 and N.J.A.C. 10:82-2.11 and 12. CWAs shall apply the same standards and criteria relevant to income and resources as for any other AFDC-N applicant/recipient including applicable disregards.

(2) All other GA type cases (single adults and childless couples) shall have need determined using the same standards and criteria as other GA applicants/recipients, including applicable disregards, in accordance with N.J.A.C. 10:85. In determining eligibility and assistance payment entitlement, CWAs shall use the appropriate standard for the eligible family size, using Schedule I or II in N.J.A.C. 10:85, as appropriate.

iii. During both 12 month periods, all eligible GA type cases will retain Medicaid eligibility.

(c) Treatment of income and resources: The CWA shall consult with sponsors and/or the resettling agency about the possibility of contributions. Cash assistance to the client shall be considered as unearned income (see N.J.A.C. 10:81-10.4(b)); however, the income and resources of the sponsors themselves shall not be considered. No resources which are in fact not available to the refugee shall be considered in determining eligibility. This includes resources in the refugee's native land owned by the refugee or a responsible relative.

(d) (No change.)

(e) Work and training requirements: Refugees who are under the -C or -F segment of the AFDC program are subject to the work and training requirements governing that program.

1. (No change.)

2. Refugee cases that are under the -N segment of the AFDC program and those considered GA type cases are subject to the work and training requirements detailed in (e)2i through iii below:

i. Work registration: All refugees who are not exempt from the work requirements (see (i)1 below shall be registered with an Employment Service Provider (ESP). Registration is accomplished through completion and transmittal of Form PA-54, Refugee Program Interagency Referral, (provided by DPW) to the appropriate ESP. In some instances, however, a refugee may have been referred by a resettlement agency to an ESP which in turn referred the individual to the CWA to apply for assistance. In that instance the ESP will complete Parts A and C of Form PA-54 and provide the individual with a copy to present to the CWA for its files; the CWA need not complete another Form PA-54 for registration purposes.

ii. Appropriate work and training criteria: All employable refugees shall accept appropriate work or training opportunities. The job or training assignment shall be related to the physical and mental capability of the individual to perform the task on a regular basis. Any claim of adverse effect to physical or mental health shall be based on an adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health. Cost of obtaining such medical evidence is an allowable 100 percent reimbursable cost to the agency.

(1) (No change.)

iii. Training requirements for employed refugee recipients: In the instance of a refugee who is employed and receiving public assistance, the welfare agency shall require part-time training such as English language instruction or skill training, if available and determined appropriate, if the refugee is employed part-time (less than 100 hours per month), as a condition for continued receipt of assistance. Additionally, the CWA shall encourage, but not require part-time English language instruction or skill training if the refugee is employed full-time (100 or more hours per month).

(f) Provisions relating to refugees attending school are as follows:

1. (No change.)

2. A refugee of any age who is otherwise eligible shall not be denied cash assistance while enrolled and participating in a full-time training program which is approved by the welfare agency and intended to have a definite short-term (less than one year) employment objective.

(g) Provisions concerning voluntary termination of employment are as follows:

1. New applicants: For the 30 consecutive calendar days immediately prior to receiving aid, an employable refugee shall not have voluntarily terminated employment in order to receive assistance nor have refused to apply for or accept an appropriate job offer. However, the dependent family of such an ineligible applicant may apply for and receive cash assistance.

2. Current recipients: Employable refugees currently receiving aid shall not have voluntarily terminated employment in order to continue to receive assistance nor refuse to apply for or accept offers of appropriate work or training.

(h) Sanctions: Refusal of an employable adult recipient to accept or continue an employment or training opportunity without good cause will result in the following actions:

1. A conciliation period prior to the imposition of sanctions shall be provided for in accordance with the following time limitations:

i. The conciliation effort shall begin as soon as possible, but not later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days.

2. If the employable refugee recipient continues to refuse an offer of employment or training, assistance will be terminated 30 days after the date of his or her original refusal. Either the welfare agency or the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by conciliation. The refugee shall be given at least 10 days written notice of the termination of as-

sistance and the reason therefore (see N.J.A.C. 10:81-6 and 7.1). This sanction shall be applied in the following manner:

i. If the eligible family includes other individuals, then the assistance payment shall be reduced by the amount included on behalf of that refugee. If the employable refugee is a caretaker relative, assistance in the form of protective or vendor payment will be provided to the remaining members of the eligible family.

ii. If such individual is the only individual in the eligible family, assistance shall be terminated.

(l) The refugee's sponsor, or the voluntary resettlement agency where there is not a sponsor, will be notified of the action taken in (h)2i or ii above.

iii. A decision by the refugee to accept employment or training, made at any time within the 30-day period after the date of the original refusal, shall result in the continuation of assistance without interruption if the refugee continues to meet the income eligibility requirements for continued assistance.

iv. Refugees who refuse without good cause to accept or continue in an employment or training opportunity shall be subject to the following penalties of ineligibility:

(1) Three payment-months for the first such refusal; and

(2) Six payment-months for the second and each subsequent occurrence.

(i) Exemptions from employment or training requirements: The inability to communicate in English does not make the refugee "unemployable".

1. The following refugees are exempt from the employment or training requirements given in (e) above.

i.-iv. (No change.)

v. The parent or other caretaker of the child who is deprived of parental support or care by reasons of death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative in the home is registered and has not refused to participate in the program or accept employment without good cause;

vi. An individual working at least 30 hours a week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 days.

vii. An individual who is pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the next three months.

viii. (No change in text.)

(j) Initial assistance payments and immediate need: When there is an urgent need for assistance, the initial assistance payment shall be based on presumptive eligibility (see N.J.A.C. 10:81-3.3).

10:81-10.8 Medical assistance and medical expense spend-down

(a) Medical assistance: State eligibility standards for Title XIX shall apply to a refugee's eligibility for medical assistance except:

1. (No change.)

2. The AFDC allowance standard for the appropriate family size shall constitute the medical assistance financial standard. However, the Medicaid "Cap" shall apply to eligible refugees in Title XIX approved facilities;

3. No financial resources which are in fact not available to the refugee, including resources remaining in the place of national origin owned by a refugee or a responsible relative, shall be considered in determining eligibility for medical assistance;

4. The income and resources of sponsors, and in-kind services and shelter provided to refugees by their sponsors, shall not be considered in determining eligibility for medical assistance: and

5. All refugees who have been in the U.S. for two years will no longer be eligible for medical or cash assistance under RRP.

(b) Those refugees who may be eligible for New Jersey's Medically Needy Program shall be referred to that Program.

10:81-10.9 Social services

Referral and information about other services available in the community should be offered to refugees regardless of their eligibility for financial assistance (see N.J.A.C. 10:81-7.20).

10:81-10.10 Fair hearings

The procedures and provisions for fair hearings in N.J.A.C. 10:81-6 and 7 shall apply in RRP.

10:81-10.11 Case records

(a) A separate record shall be established for each individual or family receiving assistance. For continuing cases, all changes in the status of each case and the dates on which changes occurred shall be recorded. For inactive cases, since RRP is federally financed, the case records are considered Federal records. Therefore, they cannot be disposed of in the same manner that CWAs dispose of case records for other inactive public assistance cases. Accordingly, the records for closed refugee cases shall be retained until a Federal audit is completed.

(b) Each case record shall contain:

1. (No change.)

2. The name and address of the refugee's sponsor (if known);

3.-4. (No change.)

SUBCHAPTER 11. CHILD SUPPORT AND PATERNITY

10:81-11.1 Introduction

The rules contained in this subchapter are applicable, as appropriate to the AFDC and non-AFDC program in New Jersey. P.L. 93-647 establishes Title IV-D of the Social Security Act, which mandates procedures for enforcing support obligations owed by absent parents to their children, locating absent parents and establishing paternity for children born out-of-wedlock.

10:81-11.3 Social Security numbers

(a) (No change.)

(b) Recording the Social Security number: The IM worker shall record, in the appropriate spaces on *[Form CSP-158 (Case Preparation Information Sheet),]* FAMIS Form 105 and Form PA-1J (Application and Affidavit for Public Assistance), the Social Security number of each person who is included in the AFDC assistance payment.

(c) Obtaining a Social Security number: The CWA shall obtain a supply of Social Security Form SS-5, sufficient to accommodate all AFDC applicants and eligible individuals who do not already have Social Security numbers. Upon application the applicant shall be required to sign as many SS-5 forms as needed for the eligible family. The IM worker shall complete Form SS-5 on the basis of information provided by the applicant. Completed forms shall be forwarded to the county's respective Social Security Administration District Office (SSA/DO). A copy of the SS-5 form shall be retained in the case record, and a copy given to the client if so requested.

1.-2. (No change.)

3. Public assistance applicants who are not United States citizens shall have Form SS-5, Application for Social Security Number Card, processed at the SSA/DO in order to be enumerated.

i. Form PA-55, County Welfare Agency Alien Referral to Social Security (SSA) District Office for Social Security Number Application, is to be used to refer alien individuals to the SSA/DO. Liaisons in the SSA/DO have been instructed to return the bottom portion of that form to the specified CWA. For quality control purposes, the bottom portion of Form PA-55 is to be filed in the case record and will serve as acceptable documentation that the individual has applied for a Social Security number.

ii. Each CWA is to create a tickler file to monitor the flow of referral forms (PA-55s) and receipts of acknowledgement (bottom portions of Form PA-55). Immediately upon receipt of such acknowledgement, CWAs shall input the filing date of the SS-5 form on the 105 form, thereby providing tracking for the issuance of Social Security numbers, and file the acknowledgement in the case record.

(d) Procedures for verifying Social Security numbers are as follows:

1. The CWA shall verify the Social Security numbers (SSNs) provided by the eligible family with the Social Security Administration (SSA) by submitting them through the FAMIS. Benefits shall not be denied, delayed or terminated for an otherwise eligible family pending SSN verification. Once the SSNs have been verified, the CWA shall make a permanent annotation to the case file to prevent

unnecessary reverification of the SSN in the future. Social Security numbers previously verified by another program participating in the Income Eligibility Verification System shall be acceptable to the CWA for AFDC/AFDC-related Medicaid participation.

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

10:81-11.9 Responsibilities of the CWA

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

*[(e) Documentation by the CSP Unit—Form CSP-158 Case Preparation Information Sheet:

1. Purpose: The Case Preparation Information Sheet, Form CSP-158, shall be used to record all identifying information concerning the client, the absent parent and the children of the absent parent, and as a referral to the Intake Unit for initiation of legal action.

2. Completion of Form CSP-158: A Form CSP-158, Case Preparation Information Sheet, shall be completed in duplicate for each absent parent.

3. Routing of Form CSP-158: In cases where there is a valid address for the absent parent, the original of Form CSP-158 shall be forwarded to the appropriate agency for initiation of legal action. A copy shall be retained in the CSP case file.

4. Return receipt of Form CSP-158: Upon return receipt of CSP-158, a copy shall be forwarded to the CWA/Fiscal Unit to initiate an account if appropriate. The disposition of the case shall be noted in the CSP case file.]*

(e) Rules on CSP case record are as follows:

*[5.]***1.*** CSP case record: Separate CSP case records shall be maintained for all AFDC cases referred to the CSP Unit. This regulation does not necessarily require a separate case folder but at a minimum, income maintenance records and CSP records must be physically segregated within the containing binder.

i. (No change.)

ii. The CSP case record shall contain the following information as applicable to each case:

(1) The referral from income maintenance to the CSP Unit for each AFDC applicant/recipient or an application for those individuals requesting nonpublic assistance (NPA) services.

[(2) A copy of the Case Preparation Information Sheet, Form CSP-158.]

Renumber (3) through (10) as ***(2) through (9)*** (No change in text.)

iii. (No change.)

(f)-(l) (No change.)

10:81-12.1 General provisions and purpose

(a) This subchapter is for use by county welfare agencies (CWAs) participating in the "TEEN PROGRESS" Demonstration in the cities of Newark and Camden. This subchapter shall at all times be used and interpreted in conjunction with N.J.A.C. 10:81, N.J.A.C. 10:82, N.J.A.C. 10:87, and N.J.A.C. 10:90, as appropriate.

(b) The purpose of this subchapter is to:

1. Identify individuals included in the TEEN PROGRESS Demonstration;

2.-3. (No change.)

(c) The purpose of this demonstration is to provide educational and work-related activities to 1,800 applicants for AFDC who are age 19 and under, and who have one child.

(d) The following existing program practices will be targeted to this population:

1.-3. (No change.)

4. Training-related expenses which will include transportation to and from the training or education site, cost of meals, uniforms, materials and similar expenses;

5. Establishment of paternity and child support obligations; and

6. Client-related expenses other than transportation and child care that the case manager determines are necessary and directly related to TEEN PROGRESS participation.

(e) The following new program practices will be implemented:

1. (No change.)

2. Required participation of absent fathers in WIN Demo, Food Stamp Job Search, or General Assistance Employability Program (GAEP), if they are receiving AFDC or General Assistance (GA);

3.-7. (No change.)

8. Transportation.

10:81-12.2 Definitions

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

"Baseline data" means information about the enrollee's demographic and personal characteristics obtained through interviews, literacy testing, and so forth, at the time of entry into the program.

. . .

10:81-12.3 Eligibility

(a) AFDC recipients meeting the following conditions are required to participate in the demonstration:

1. Residing in Camden or Newark; and

2. Age 19 years or under; and

3. Living with one child; or

4. Living with more than one child if all children were the products of the same pregnancy; and

5. The recipient and her child(ren) are receiving AFDC benefits together for the first time.

(b) Fathers of the children will be mandatory participants in the demonstration and eligible for services under the demonstration, if:

1. (No change.)

2. The father is either a recipient of AFDC as a dependent child, or a recipient of General Assistance of any age, or an unemployed nonrecipient of public assistance who is a member of a household receiving food stamps.

(c) TEEN PROGRESS sample members of the control and experimental groups are not eligible for REACH until the completion of data collection follow-up (approximately two years after each individual's intake date for AFDC).

(d) (No change in text.)

10:81-12.4 Exemptions and deferrals

(a) Individuals who are exempt from work and training under N.J.A.C. 10:81-3.18(b)2, except for the exemption for care of the youngest child under age six, shall not be eligible for TEEN PROGRESS for the duration of their exemption. Individual's exempt status shall be determined prior to random assignment to experimental or control groups.

1. At a minimum, all exemptions shall be reviewed semiannually.

2. Participants temporarily deferred because of illness or other good cause which could change monthly shall be monitored by the case manager.

(b) Temporary deferrals from participation may be granted in the following situation:

1. Medical deferrals will require a statement from a physician on his or her letterhead and approval by the unit supervisor. Temporary deferrals apply to participants and are thus granted after random assignment.

10:81-12.5 Case management

(a) Case management encompasses a significantly expanded set of worker responsibilities. The case manager is the critical link among the different service subsystems, such as income maintenance; employment; training; child support enforcement; and support services, and between these subsystems and the recipient. It is this structured approach to the delivery of multiple and interrelated services that will assure the goals and objectives of TEEN PROGRESS.

(b) The case management function includes the following:

1.-8. (No change.)

9. Determining whether sanctions shall be applied and following through on the sanction procedure (see N.J.A.C. 10:81-12.11).

10:81-12.7 Overview of the process

(a) The operation of this demostration will include the following steps:

1.-2. (No change.)

3. Registration requirements; and

4. Program activities monitoring and plan updating based on a client's participation.

(b) Client violations of program requirements may result in sanctioning as specified at N.J.A.C. 10:81-12.11.

10:81-12.11 Sanctions

(a) Participants who fail to comply with program requirements set forth in this demonstration, without good cause, will be subject to the sanctioning process. Good cause includes the reasons set forth at N.J.A.C. 10:81-3.18. The following actions by a participant constitute failure to comply with program requirements:

1. Failure and/or refusal to report to the TEEN PROGRESS office and provide information for purposes of baseline data collection after three notices have been mailed to the potential recipient and have not been responded to;

2. (No change.)

3. Failure and/or refusal to report to ongoing mandatory activities after two notices have been mailed to the recipient;

4.-5. (No change.)

(b) Sanctions shall be imposed for the following time periods:

1. One payment month for the first instance of noncompliance;

2.-3. (No change.)

(c) (No change.)

(d) During the sanction period, the sanctioned individual will not be entitled to receive training-related expenses, child care payments, or client-related expenses.

(e) Upon the determination by the case manager that a participant has refused to participate or drops out of an educational/employment program without good cause, the case manager shall begin a series of steps that will lead to imposition of the sanction.

1. (No change.)

2. Prior to the first sanction, the case manager will conduct a conference with the noncomplying recipient and the head of household. During this conference, the recipient will be given a final opportunity to comply. If as a result of this conference the recipient complies with program requirements, the sanction may be suspended.

(f) (No change in text.)

(g) Fathers participating in the Food Stamp Employment and Training Program (see N.J.A.C. 10:87-10) or General Assistance Employability Program (see N.J.A.C. 10:85-10.1 through 10.7) are subject to the sanctioning policies and procedures of those programs.

10:81-12.12 TEEN PROGRESS fathers

(a) (No change.)

(b) When fathers of children of participants in the experimental group are identified, the case manager will determine whether the father is a recipient of AFDC (as a dependent child), or General Assistance. If the father is a recipient in either of these programs, he will be required to participate in the demonstration project. Case managers will interview the father and initiate participation in this project and other educational, training or employment programs.

1. The following services may be provided to putative fathers participating in the demonstration or recognized parenting programs:

i. Referral to child support enforcement unit within the CWA;

ii. Case management with referral to employment, education, and/or work programs;

iii. Child care;

iv. Training-related expenses which will include transportation to and from the training or education site, cost of meals, uniforms, materials and similar expenses; and

v. Parenting education and family life education.

SUBCHAPTER 13. AUTOMATED VERIFICATION

10:81-13.1 Systematic Alien Verification for Entitlements (SAVE) Program

(a) Section 121 of the Immigration Reform and Control Act (IRCA) of 1986 (Public Law 99-603) requires the Immigration and Naturalization Service (INS) to implement a system for the verification of immigration status of aliens applying for certain types of benefits including AFDC, AFDC-related Medicaid and food stamps. That system, known as SAVE, is an inter-agency Federal/State information-sharing program designed to prevent the issuance of benefits to illegal aliens or aliens otherwise not entitled to benefits due to immigration status.

(b) CWA staff shall be responsible for explaining SAVE requirements, procedures and forms to clients at time of application and redetermination.

10:81-13.2 Eligibility

(a) The SAVE program requires that each applicant for AFDC, AFDC-related Medicaid and/or food stamp benefits shall, as a condition of eligibility, provide a written statement of citizenship or legal alien status and, if he or she is not a United States citizen, documentation, subject to verification, of satisfactory immigration status.

(b) For AFDC and AFDC-related Medicaid cases a statement and signature for each eligible family member shall be provided to the CWA before benefits can be issued to that individual. An adult eligible family member or applicant for the family in the absence of an adult family member shall sign for members under 18 years of age.

1. If a signature is not provided for all eligible family members by either the end of the 30-day application processing standard or the last day of the last month of the redetermination period, then only those individuals for whom there is a signature shall be eligible for benefits provided they meet all other eligibility requirements. Income and resources of ineligible individuals shall be considered in the determination of benefits for the eligible family.

2. If a noncomplying member subsequently provides his or her signature, the agency shall process that addition to the AFDC eligible family as a client-reported change and shall issue an additional payment in accordance with N.J.A.C. 10:90-4.4(a).

10:81-13.3 Citizenship/alien status

(a) When an individual applies for AFDC benefits or is scheduled for redetermination of eligibility for continuing benefits, the declaration form shall be completed as a condition of eligibility, within the required time frame for the appropriate program (see N.J.A.C. 10:81-13.2).

(b) Each adult member of the eligible family shall provide a signed statement concerning his or her citizenship/legal alien status. Adult members shall sign a statement for members under 18 years of age and, in the absence of an eligible adult in the family/household (for example, in the case of a non-needy parent-person in AFDC), the applicant shall sign for non-adults. In all cases, information shall be provided on the form for each eligible family member.

(c) If an individual signs with an "X", the signature of a witness is required, other than the income maintenance case worker assigned to the client.

(d) Unless an individual is a United States citizen, documentation shall be submitted to the CWA as proof of his or her legal alien status. That documentation shall be submitted within two months following the month in which assistance is granted and is subject to verification by the INS. Failure or refusal to submit that documentation timely may result in ineligibility of that individual.

(e) AFDC-N segment cases are not subject to the requirements of the SAVE Program unless they are United States citizens or legal aliens eligible for food stamps or AFDC-related Emergency Assistance. Individuals who are not United States citizens and do not meet the criteria for legal alien status are ineligible for Federally funded AFDC benefits, however, they may be eligible for benefits as AFDC-N segment cases (N.J.A.C. 10:81-3.10(a)1). CWAs shall advise such individuals of their right to apply for those benefits.

10:81-13.4 Documentation requirements

(a) Aliens in the United States requesting assistance shall present original alien registration documents or other material sources that the CWA determines constitutes reasonable evidence of the alien immigration status. The documentation should contain an alien registration or admission number. The alien registration number, commonly referred to as the "A" number may consist of a seven or eight digit number that has been assigned to an alien at the time his or her alien file was created. The alien file refers to the history file which contains data pertaining to each individual alien. All applicants for assistance shall present acceptable documentation or furnish a receipt from the Immigration and Naturalization Service indicating that an application for replacement documentation has been made.

(b) Immigration documentation includes, but is not limited to, the following:

1. Form I-151: Alien Registration Receipt card with photograph for permanent resident aliens. That card was in use prior to 1979 and is still valid.

2. Form I-551: Resident Alien Card for Permanent Resident Aliens. That card may also be issued conditionally to permanent resident aliens and will contain an expiration date.

3. Form AR-3a: Alien Registration Receipt card for permanent resident aliens issued from 1941 through 1949.

4. Form I-94: Arrival-Departure Record containing any of the following annotations:

i. Section 207 or refugee;

ii. Section 208 or asylum;

iii. Section 212(d)(5) or conditional entry;

iv. Section 203(a)(7);

v. Section 243(h); or

vi. Cuban-Haitian Entrant.

5. Form I-688: Temporary Resident Card, Department of Justice, INS; issued pursuant to IRCA; contains an expiration date;

6. Form I-688A: Employment Authorization Card, Department of Justice, INS; issued pursuant to IRCA; contains an expiration date;

7. Form I-689: Fee Receipt Form issued to applicants under the amnesty and special agricultural worker programs (SAW) which contains an expiration date;

8. Form I-181: A Temporary Identification document issued by an INS field office when an alien has been granted permanent resident status. That document contains an annotation of work authorization but no photograph.

9. Form I-327: Re-entry Permit issued to lawful permanent resident aliens before they leave the United States for up to two years. The document contains an expiration date;

10. Form I-571: Refugee Travel Document, which contains an expiration date.

11. Any documentation issued by the Immigration and Naturalization Service supported by other forms of identification describing the individual (for example, height, weight, age) accompanied by a photograph or other information sufficient to identify that individual. A driver's license, marriage certificate or other similar forms of documentation may be useful for processing of secondary verification.

10:81-13.5 Verification

(a) Primary verification of alien status will be accomplished through the "Alien Status Verification Index" (ASVI). The ASVI verifies biographical data pertaining to the alien applicant. Access to the ASVI is gained through a toll free telephone number system and requires the use of an authorization code and the alien registration number.

(b) Secondary verification is normally initiated by the CWA when the ASVI cannot locate a compatible record using the provided Alien Registration number. ASVI is a subset of the larger Central Index System (CIS) which contains extensive Immigration and Naturalization service data. The automated system instructs the user to institute secondary verification when the biographical data submitted to the CWA does not correspond to that maintained in the ASVI. The CWA may, at its discretion, institute secondary verification regardless of the ASVI response if it feels that the documentation submitted has been altered in some fashion. Only photocopies of documents are to be provided to INS by the CWA. The original shall be returned to the alien and one additional photocopy should be retained in the case file of the applicant pending INS reply. Alien documentation provided to the INS that indicates criminal misuse of government documents will not be returned to the CWA.

(c) INS Form G-845, Document Verification Request is used to forward information to the INS for secondary verification of alien status. Instructions for completion of the form are provided in the SAVE Procedural Manual. Requests for verification are to be mailed to:

United States INS District Office
970 Broad Street
Newark, New Jersey 07102
Attention: Verification Unit

(d) A response will be received from the INS within 10 to 21 working days of receipt of Form G-845. If, however, there is a time lag, benefits may not be delayed, denied, reduced or terminated solely because of the delayed response. CWAs shall process the application or redetermination in a timely manner.

10:81-13.6 Confidentiality and fair hearings

(a) In accordance with IRCA and SAVE program requirements, use or disclosure of client information in connection with the SAVE program is restricted to individuals and organizations directly connected with verification of legal alien status and the administration or enforcement of the provisions of the AFDC, AFDC-related Medicaid and Food Stamp Programs.

(b) Information supplied by the INS shall not be used to deny, reduce, suspend, or terminate benefits unless the CWA has provided the client adequate and timely notice and the opportunity for a fair hearing, pursuant to N.J.A.C. 10:81-6 and the Uniform Administrative Rules of Practice at N.J.A.C. 1:1.

(c) If an alien applicant is not in satisfactory immigration status, IRCA and SAVE program requirements dictate that the individual's eligibility be denied or terminated and that the applicable fair hearing process be followed. On a prearranged and pre-approved basis the INS will provide appropriate immigration technical consultation and witness support necessary in providing individuals denied program benefits with a fair hearing or with judicial review or agency action.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook

Aid to Families with Dependent Children (AFDC) Program

Readoption with Amendments: N.J.A.C. 10:82

Proposed: July 3, 1989 at 21 N.J.R. 1811(a).

Adopted: August 23, 1989 by Margaret E. L. Howard, Acting Commissioner, Department of Human Services.

Filed: August 24, 1989 as R.1989 d.497, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date: August 24, 1989, Readoption; September 18, 1989, Amendments.

Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Subsequent to Proposal:
Printing error corrections were made at N.J.A.C. 10:82-2.9(d) and 3:13(a)1vii. Language modified for clarification purposes at N.J.A.C. 10:82-5.10(a).

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:82.

Full text of the amendments to the readoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:82-1.11 Monthly reporting

(a) Under the monthly reporting system, certain AFDC eligible families are required to report their income and circumstances and any expected changes in income and circumstances to the CWA every month by submitting a complete Monthly Status Report (MSR) form. The information reported on the MSR for a budget month is used by the CWA in the processing month to determine eligibility and compute the assistance payment for the corresponding month (see N.J.A.C. 10:90).

1. Eligible families receiving Medicaid Only and Medicaid Special are not subject to monthly reporting under the AFDC program. However, AFDC eligible families who do not receive an assistance payment due to the $10.00 limitation are subject to monthly reporting.

10:82-2.1 Form PA-3A or Form 105

(a) To determine the monthly assistance payment, Form PA-3A, Worksheet and Authorization for Public Assistance, or Form 105, the computer (FAMIS) input form, as appropriate, shall be prepared for each eligible family. (See Family Assistance Management Information System (FAMIS) Manual for preparation of Form 105.) All information supporting the data on Form PA-3A or Form 105 shall be included in the agency's case record.

(b) (No change.)

10:82-2.3 Income from eligible and noneligible individuals in the household

(a) Family groups living together: For purposes of AFDC, in family groups living together, income of the spouse is considered available for the other spouse and income of a parent (natural or adoptive) is considered available for children under 18. If the spouse or parent is living with his or her spouse or children, respectively, income is considered available regardless of whether the spouse or natural or adoptive parent is noneligible or sanctioned. However, if a spouse or parent is receiving SSI benefits, including mandatory or optional State supplementary payments, then for the period for which such benefits are received, his or her income and resources shall not be counted as income and resources available to the eligible family.

1.-2. (No change.)

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

10:82-2.8 Determination of calculated earned income; AFDC-C and -F procedures

(a) From the total gross earnings of each person in the AFDC-C and -F segments, deduct the cost of producing income if self-employed (see N.J.A.C. 10:82-4.3) and proceed as follows:

1.-2. (No change.)

3. For a period of not longer than four consecutive months, deduct the first $30.00 of the remaining earned income plus one-third of the remainder for each employed individual in the eligible family. For REACH participants in the work supplementation program (WSP) see N.J.A.C. 10:81-14.11 and 14.21.

i. (No change.)

4.-5. (No change.)

10:82-2.9 Stepparents; AFDC-C procedures

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

(d) When a stepparent of eligible AFDC-C children *[live]* ***lives*** in the same home as the children and is not included as a member of the eligible family, his or her income shall be considered available to the eligible family in accordance with the following procedures:

1. Reduce the stepparents' gross earned income (and net income from self-employment) by $75.00.

2.-6. (No change.)

10:82-2.10 Medicaid eligibility; AFDC-C and -F procedures

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

(d) Medicaid eligibility does not exist in cases where, after excluding the child(ren) whose income caused ineligibility for AFDC, there is no child remaining in the eligible family.

(e) Any AFDC family whose eligibility for cash assistance is denied or terminated as a result of deeming of a sibling's or stepparent's income or alien sponsor's deeming of income and resources, shall have its Medicaid eligibility evaluated without regard to that individual's needs or income.

10:82-2.14 Establishing monthly earnings

(a) (No change.)

(b) Earnings projection: When due to new or changed earnings, the client is unable to provide the four consecutive weeks verification required in (c) below, seven calendar days prior to the FAMIS cutoff date, the CWA shall compute the following month's CEI on an earnings projection. In developing the earnings projection the CWA shall use all actual wage information available seven calendar days prior to the FAMIS cutoff date together with the client's estimate of ongoing wages and/or hours. The earnings projection and the information used to determine it shall be fully documented in the case record. The earnings projection shall be used to determine the AFDC assistance payment only until sufficient earnings verification is available to base the earnings on actual verification of four consecutive weeks as required in (c) below.

Example: The client receives his or her first pay check on the 11th of the month for 20 hours of employment. The client states that he or she will be working 40 hours a week at the same hourly wage rate. The earnings projection will be based on 40 hours a week.

1.-2. (No change.)

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

10:82-3.2 Exempt resources

(a) (No change.)

(b) The exempt resources are as follows:

1.-5. (No change.)

6. Resources designated for special purposes as follows:

i.-vi. (No change.)

vii. Certain other Federal programs: Funds received by applicants and recipients through certain Federal programs (see (b)6vii(1) through (9) below) shall be regarded as exempt resources in determining eligibility for assistance.

(1)-(9) (No change.)

7.-11. (No change.)

10:82-3.13 Eligibility of sponsored aliens and deeming of sponsor's income and resources to a sponsored alien

(a) The income and resources of an alien's sponsor shall be deemed to be unearned income and resources of an alien applying for AFDC for the first time after September 30, 1981 for a period of three years following the alien's entry into the United States. For purposes of this section, a sponsor is an individual, a public or private agency or organization who executed an affidavit of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. No income or resources shall be deemed from a sponsor who is (or whose spouse is) receiving AFDC or SSI.

1. These deeming provisions do not apply to any alien who is:

i.-iv. (No change.)

v. A Cuban or Haitian entrant as defined under section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422);

vi. The dependent child of the sponsor or sponsor's spouse; or

vii. An *[Amerasion]* ***Amerasian*** admitted under Section 584 of the Foreign Operations Appropriations Act (P.L. 100-202) beginning March 20, 1988.

2. (No change.)

(b) The amount of income of a sponsor which shall be deemed to be the unearned income of an alien shall be determined as follows:

1.-4. (No change.)

5. Medicaid eligibility shall be evaluated without consideration of the deemed income or resources (see N.J.A.C. 10:81-8.22(a)).

(c)-(g) (No change.)

10:82-3.14 Deeming income of parents and guardians of adolescent parents

(a) Pursuant to the Tax Reform Act of 1986 (P.L. 99-514), which clarifies certain amendments of the Deficit Reduction Act of 1984 (P.L. 98-369), an adolescent parent is an individual under the age of 18 and who is himself or herself a parent of a dependent child.

(b) When an adolescent parent lives in the same home as his or her own parent(s) or legal guardian(s), the income of such parent(s) or legal guardian(s) shall be considered available to the eligible family in accordance with the following procedures. These rules do not apply if the parent(s) or guardian(s) receive(s) SSI or AFDC or if the adolescent parent is categorically eligible for the -N segment only. For the purposes of this section, the term parent shall include legal guardian.

1. Reduce the gross earned income (and net income from self-employment) of each employed parent by $75.00.

2.-6. (No change.)

(c) (No change.)

10:82-4.8 Income from family day care

(a) Payments by individuals or agencies for children placed in an eligible family's home for Family Day Care shall be considered as gross earned income from self-employment. Earned income procedures for self-employment are discussed at N.J.A.C. 10:82-4.3.

1. The net income (adjusted gross earnings) to the eligible family is the difference between the cost of providing family day care and the total monthly amount paid for such care. Appropriate disregards apply in determining the calculated earned income (see N.J.A.C. 10:82-4.4).

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

(a) When a recipient receives nonrecurring earned or unearned lump sum income, including retroactive R.S.D.I. payments and other monthly benefits, and payments in the nature of a windfall, such as inheritances and lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it was paid (for example, monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, and so forth), that income will be added together with all other income received that month by the eligible family, after application of the disregards in N.J.A.C. 10:82-2.8 and 2.12 and the exemption of income in N.J.A.C. 10:82-2.7. The AFDC assistance payment shall not be considered income. No portion of lump sum or other income may be applied toward the resource limit in the month of its receipt. When this total exceeds the AFDC allowance standards in Tables I or II as appropriate, the family will be ineligible for AFDC for the number of full months derived by dividing this total income by the allowance standard applicable to the eligible family. Any remaining income from this calculation is treated as if it is unearned income received in the first month following the period of ineligibility and is considered available for use at that time. SSI payments shall not be subject to lump sum treatment.

1.-5. (No change.)

6. In all instances, where the previously eligible family has been terminated due to receipt of lump sum income, the notice of adverse action shall include:

i. The reason for the family's termination from AFDC;

ii. The duration of the period of ineligibility;

iii. The earliest date the ineligible family may apply to reopen their AFDC case; and

iv. A statement concerning possible reduction of the ineligibility period (see (a)5ii or 5iii above).

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

10:82-5.3 Child care

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

(c) Further provisions related to child care expenses are:

1.-2. (No change.)

3. Child care as an expense incident to training for employment or incident to a program of vocational rehabilitation may be provided as an additional payment if not available through a special training program or agency. Such payment can be made directly to the client or as a vendor payment from the assistance account.

4.-6. (No change.)

(d)-(h) (No change.)

10:82-5.10 Emergency assistance

(a) "Emergency Assistance" is hereby established as any ***initial*** extra or additional payment(s), authorized in accordance with (b), (c) and (d) below during the period of 30 consecutive days immediately following the occurrence of an emergency as defined in (c) below. Emergency assistance can be issued to AFDC families in receipt of continuing assistance or to non-AFDC families satisfying AFDC eligibility with the exception of those requirements at (a)1 below. The PA-1J form shall be used to determine eligibility for emergency assistance. Once immediate need is apparent, *[assistance shall be provided]* ***and the family is otherwise eligible, emergency assistance shall be authorized and/or provided as appropriate***.

1.-3. (No change.)

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

(e) Provisions concerning victims of domestic violence are:

1. In situations where an applicant or recipient indicates that he or she and his or her children have left their customary residence because of domestic violence, payment of emergency assistance may be authorized under the following conditions:

i. (No change.)

ii. For new applicants, this state of homelessness occurred within the 30 calendar days immediately prior to the request for emergency assistance. Temporary arrangements during that period do not negate the existence of a state of homelessness.

2.-4. (No change.)

(f) Return of child from foster care provisions are as follows:

1.-6. (No change.)

10:82-5.12 Disregarded child support (DCS) payments

For any month in which an eligible family receives AFDC and a current child support collection which represents a support obligation for that month has been received through the CSP process, the eligible family is entitled to a disregarded child support (DCS) payment. The amount of DCS payment shall be the total amount of current child support collection received on behalf of the entire eligible family, not to exceed $50.00 (see N.J.A.C. 10:82-1.2(d)). Under the final rules which implement section 2640 of the Deficit Reduction Act of 1984, the date of the child support payment collection is the date a payment is received by the IV-D agency or other legal entity authorized to make the collection. This rule applies solely to collections of current child support and not to collections to be applied against any arrearage balances. Current AFDC eligibility is not a prerequisite for DCS payments based on a previous month's collection.

(a)

DEVELOPMENTAL DISABILITIES COUNCIL

Charity Racing Days for the Developmentally Disabled

Distribution of Proceeds; Personal Assistance Services

Adopted Amendment: N.J.A.C. 10:141-1.4

Proposed: March 6, 1989 at 21 N.J.R. 610(a).

Adopted: August 17, 1989 by the Developmental Disabilities Council, Catherine Rowan, Executive Director.

Filed: August 23, 1989 as R.1989 d.494, **without change.**

Authority: N.J.S.A. 5:5-44.2 through 44.6 and 30:1AA7.

Effective Date: September 18, 1989.

Expiration Date: February 7, 1994.

Summary of Public Comments and Agency Responses:
No public comments were received.

Full text of the adoption follows.

10:141-1.4 Eligible services

(a) Eligible direct services shall include evaluation services, diagnostic services, treatment, day care, training and education, sheltered employment, recreation, long and short term living arrangements, counseling, information and referral, protection and advocacy, supported employment, transportation, rehabilitation technology, and personal assistant services.

1. through 14. (No change.)

15. Personal attendant services, which includes assistance, rendered by a paid attendant, under maximum feasible user control, with tasks aimed at maintaining well-being, personal appearance, comfort, safety, and interaction within the community as a whole. Personal assistance tasks are those tasks which individuals would normally do for themselves if they did not have a disability. These tasks include, but are not limited to:

i. Personal maintenance and hygiene activities, such as dressing, grooming, feeding, bathing, respiration and toilet functions, including bowel and bladder functions and cather and menstrual care;

ii. Mobility tasks, such as, getting into and out of a bed, wheelchair or tub;

iii. Household maintenance tasks, such as cleaning, shopping, meal preparation, laundering, and heavy cleaning and home repairs;

iv. Infant and child-related tasks, such as, bathing, diapering, and feeding;

v. Cognitive or life management activities, such as money management, planning and decision making;

vi. Security-related services, such as daily monitoring by telephone; and

vii. Communication services, such as interpreting for people with hearing or speech disabilities and reading for people with visual disabilities.

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Joint Insurance Funds for Local Governmental Units

Adopted Amendments: N.J.A.C. 11:15-2.2, 2.13 and 2.21

Proposed: June 5, 1989 at 21 N.J.R. 1494(b).

Adopted: August 25, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: August 28, 1989 as R.1989 d.507, **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), 40A:10-36 et seq.

Effective Date: September 18, 1989.

Expiration Date: December 3, 1989.

Summary of Public Comments and Agency Responses:

In general, the commenters stated that the proposed amendments are equitable and provide for a more orderly and controllable refund policy. Other comments generally deal with questions regarding the proposed definitions or application of the amendments in specific instances.

COMMENT: Two commenters stated that the definition of "unpaid claims" should not refer to case reserves for incurred but not reported (IBNR) claims because reserves for IBNR claims are usually allocated on a bulk basis rather than on a case basis.

The commenters suggested that the definition be changed to read ". . . case reserves and reserves for incurred but not reported claims. . . ."

RESPONSE: The Department agrees. Since the reports filed with the Department reflect reserves for IBNR claims on a bulk basis rather than on a case basis, the definition of "unpaid claims" will be changed to reflect this clarification.

COMMENT: Two commenters stated that the requirement in N.J.A.C. 11:15-2.21 that a joint insurance fund may seek approval only at 12 month intervals should be clarified.

One of the commenters stated that the wording seems to suggest that if a fund misses seeking approval during the twelfth month, the fund would have to wait an additional 12 months before applying again for approval to make a refund payment. The commenter stated that a fund would not know during the twelfth month if it wanted to release money since the figures on which a decision would be based would not yet be available.

Another of the commenters stated that the wording seems to prohibit applications for permission to make a refund for 12 months if the initial request was denied. This commenter suggested that the rule be clarified to allow a fund to reapply for approval at any time after an initial request has been denied.

RESPONSE: The Department agrees with the commenters. Therefore, the phrase "at 12 month intervals" will be deleted from N.J.A.C. 11:15-2.21(b) and (e). The adopted amendments will reflect Department policy that a joint insurance fund may request approval at any time after passage of 36 months (in the case of subsequent refunds) or 12 months (in the case of interyear fund transfers).

The Department, however, expects that joint insurance funds will seek approval for refunds once a year since the financial reports and the documentation required for approval of a refund or interyear fund transfer is submitted annually.

The proposed language in N.J.A.C. 11:15-2.21(b) would not, however, prohibit a request to make a refund for an additional 12 months if the initial request was denied. The request would be treated as another request to make an initial refund and would thus be permitted anytime after passage of 24 months from the end of the fund year.

COMMENT: One commenter stated that the absolute prohibition on requests for subsequent refund payments at intervals of less than 12 months in N.J.A.C. 11:15-2.21(b) is inflexible since, in appropriate circumstances, a joint insurance fund may wish to make a refund at a lesser interval.

RESPONSE: The Department agrees. The rule will be changed as stated in the response to the previous comment.

COMMENT: One commenter stated that the rules should specifically authorize crediting any refund against a member's assessment due or to become due subsequent to the approval of the refund. This would allow municipalities to use refunds to reduce their assessments and thereby reduce their insurance costs.

RESPONSE: This is currently permitted under N.J.A.C. 11:15-2.21(d). Therefore, no change is required.

COMMENT: Regarding intertrust fund transfers (N.J.A.C. 11:15-2.13(a)1), one commenter stated that consideration should be given to the proper order for intertrust fund transfers (for example, the deductible fund would be the primary source for transfers and since it has no balance requirements, this fund account would be used up before another fund account would be tapped). The commenter also stated that for other insurance fund accounts, balance requirements should be stated so that a recognized mechanism exists for maintaining proper levels within fund years.

RESPONSE: The rule does not dictate nor is intended to dictate a proper order for intertrust fund transfers. The rule only sets forth the procedure by which these transfers are to be made. The order for these transfers and the balance requirements of the fund accounts is determined by the individual joint insurance fund.

COMMENT: One commenter suggested that instruction be given with regard to different procedures for temporary and permanent intertrust fund transfers.

RESPONSE: The Department considers all transfers to be permanent. All intertrust fund transfers are subject to the requirements in N.J.A.C. 11:15-2.13(a)1.

COMMENT: Regarding the proposed surplus requirements after a refund or interyear fund transfer, one commenter stated that instruction is needed with respect to the deductible fund account and the expense and contingency fund account. The commenter further stated that this instruction is especially needed with respect to the expense and contingency fund account since this commenter has two different methods for the payment and recognition of future contracted services (that is, single year or multiple year recognition of expenses).

RESPONSE: The surplus requirement relates only to the claims account, not administrative accounts which are maintained by joint insurance funds. Therefore, no instruction is necessary.

Regarding the commenter's question with respect to payment and recognition of future contracted services, it should be noted that this issue has already been resolved with the various fund administrators by allowing only one method (the single year method) for the payment and recognition of future contracted services.

COMMENT: One commenter stated that interyear fund transfers should not be permitted until passage of a 24 month period rather than the 12 month period proposed, as this would be a more equitable and conservative approach. This also would be consistent with the time requirements for refunds in N.J.A.C. 11:15-2.21(b).

RESPONSE: An interyear fund transfer is not an actual release of money from the fund but rather a "movement" of money from one fund year account to another. For this reason, the Department determined to allow this transfer after 12 months rather than 24 months. Therefore, no change is necessary.

COMMENT: One commenter agreed with the appropriateness of relating the surplus requirements to the level of open claims rather than to the level of surplus provided that "open claims" has the same definition as "unpaid claims" in which case IBNR reserves and case reserves would be included in the base.

RESPONSE: The surplus requirement is related to unpaid claims which is defined in the rules. The term "open claims" is not used in the proposed amendments.

COMMENT: One commenter noted that the definition of "interyear fund transfer" contains the phrase "similar claim or loss retention trust account." The commenter stated if the intent of Department is to restrict such transfers to funds offering the same coverage, the word "similar" should be deleted and the phrase "of similar coverage" should be added after "trust account."

The commenter also stated that if this change were made, a definition of the word "coverage" would be required. The commenter suggested the following definition: "coverage means one of the following, as defined in this section: general liability; motor vehicular and equipment liability or property damage; or coverage provided under the worker's compensation law."

RESPONSE: The Department agrees in part. The word "similar" is deleted and the phrase "of similar risk or liability" is added after "trust account." The Department believes that this adequately clarifies this definition. The phrase "risk or liability" is used instead of "coverage" in order to be consistent with the current rules.

COMMENT: One commenter suggested various changes to the definition of "net current surplus."

First, the commenter suggested that the definition include a provision for allocated loss adjustment expense reserves or accruals for unpaid expenses.

Second, the commenter noted that the definition uses the words "trust fund" and since a "fund" could not contain such items as returned surplus and future investment income, the commenter suggested replacing "fund" with "account." The commenter stated that this would be consistent with the language of N.J.A.C. 11:15-2.21(b).

Finally, the commenter stated that the meaning of the words "investment income" as used in the definition is unclear since it appears to include realized income from investments of the surplus. The commenter stated that given the proposed amendments to N.J.A.C. 11:15-2.21, the phrase is aimed at excluding investment income that will not be realized until the future. If this was the Department's intent, the commenter suggested inserting the word "anticipated" before "investment income."

Based on the foregoing, the commenter suggested the following definition: "net current surplus means that amount of monies in a trust account that is in excess of all fixed costs and accruals for those costs, anticipated investment income, returned surplus, incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses, attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular fund year."

RESPONSE: While the Department believes that the definition as proposed is adequate, in order to reduce the likelihood of any confusion, the definition will be modified to reflect warranted suggestions made by the commenter.

COMMENT: One commenter stated if the Department intends that the definition of "net current surplus" replace the current definition of "surplus", the term "surplus" as it is used in other parts of the rule should be changed to reflect this.

RESPONSE: The Department agrees. The current definition of surplus is deleted and the rule is clarified to indicate that the terms "net current surplus" and "surplus" are intended to have the same meaning.

COMMENT: One commenter stated that N.J.A.C. 11:15-2.13(a)1 as proposed might disallow an intertrust fund transfer where a municipality joined during the fund year (that is, after January 1) even though the new member participated in all offered coverages. The commenter believes that this is not the Department's intent since any assessments or returns are tied to each member's proportional contributions to the fund year. To remedy this, the commenter suggested inserting the phrase "or part of that fund year" at the end of the last sentence in N.J.A.C. 11:15-2.13(a)1.

RESPONSE: The participation in the lines of coverage, not the length of fund membership during a particular fund year, is the main focus of the amendment. The amendment as proposed would not prohibit an intertrust fund transfer solely on the basis that a fund member had participated for less than one full year. However, in order to reduce the likelihood of any confusion, the proposed amendment will be changed by replacing the word "for" with the word "during" in the phrase "for that fund year."

COMMENT: One commenter stated that the requirement in N.J.A.C. 11:15-2.21(b) of the passage of 36 months after the end of the fiscal year before a joint insurance fund may seek approval to make a subsequent refund and the requirement of 12 month intervals thereafter provide for a more orderly and controllable refund policy.

RESPONSE: The Department believes that the refund policy will be orderly and controllable by requiring financial documentation with the request for approval to make a refund and by tying the surplus required after a refund to unpaid claims. However, as was stated in a response to a previous comment, the Department agrees that it may be burdensome to limit requests for subsequent refunds to 12 month intervals after passage of 36 months from the end of the fund year. Therefore, the phrase "at 12 month intervals" will be deleted.

Agency Initiated Changes:

1. In N.J.A.C. 11:15-2.21(b), the phrase "and all IBNR reserves" is added after the phrase "all case reserves" in order to be consistent with the definition of "unpaid claims."

2. In N.J.A.C. 11:15-2.21(b), language is added to clarify that if a joint insurance fund made an initial refund pursuant to N.J.A.C. 11:15-2.21(b) before the effective date of the adopted amendments, that fund may seek approval to make an additional initial refund subject to the requirements of N.J.A.C. 11:15-2.21(b) as amended. This change ensures that a joint insurance fund that made a refund pursuant to the previous rules will be treated consistently with those funds that made no refunds under the previous rules.

3. In N.J.A.C. 11:15-2.21(e), the word "refund" is replaced by "transfer" as a matter of form.

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

11:15-2.2 Definitions

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

. . .

"Fiscal year" or "fund year" means the calendar year January 1 through December 31.

. . .

"Intertrust fund transfer" means an actual transfer of funds from one claim or loss retention fund account in a fiscal year to another account within the same fiscal year.

. . .

"Interyear fund transfer" means the transfer of funds from a claim or loss retention trust account for a fiscal year, to a *[similar]* claim or loss retention trust account ***of similar risk or liability*** for a different fiscal year.

. . .

"Net current surplus" ***or "surplus"*** means that amount of monies in a trust *[fund]* ***account*** that is in excess of all *[fixed]* costs, ***earned*** investment income, returned surplus, incurred losses ***and loss adjustment expenses*** and incurred but not reported reserves***, including the associated loss adjustment expenses*** attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

. . .

["Surplus" means that amount of monies in a trust fund that is in excess of all fixed costs and incurred losses attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.]

. . .

"Unpaid claims" means case reserves and *[case]* reserves for incurred but not reported claims attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

11:15-2.13 Establishment of trust fund accounts; transfers or withdrawals prohibited

(a) Pursuant to the terms of the indemnity and trust agreement, each fund shall establish a separate trust fund account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums for each type of liability or risk retained jointly on a self-insured basis. Such accounts shall be designated as claims or loss retention fund accounts.

1. Other than for the purposes specified in (a) above, or as otherwise authorized by this subchapter, no withdrawals may be affected for a claim or loss retention fund without prior written approval of the Commissioner, except for intertrust fund transfers. Intertrust fund transfers, within a fund's fiscal year, may be conducted by the fund at any time, by providing 30 days prior written notification to the Commissioner and the Department of Community Affairs. If the Commissioner does not disapprove of the transfer, in writing, within 30 days after receiving such written notification, the request for

intertrust fund transfer(s) shall be deemed approved. Any intertrust fund transfer request must be supported by appropriate assessment and claim and expense documentation. Intertrust fund transfers may be conducted only where each member municipality participates in each and every claim or loss retention fund account *[for]* ***during*** that fund year.

11:15-2.21 Refunds; interyear fund transfers

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary may be declared to be refundable by the fund not sooner than 24 months after the end of the fiscal year.

(b) The fund may seek approval from the Commissioner to make initial refund payments from a claims or loss retention fund account remaining from any year which has been completed at least 24 months by submitting a written request to the Department of Insurance and Department of Community Affairs with appropriate documentation including, but not limited to, assessment, claims and expense detail; actuarial certification that the fund has an overall surplus for that fiscal year; and such other information that the Commissioner may require. The initial and any subsequent refund for any year from a claim or loss retention trust account may be in any amount subject to the limitation that after the refund, the remaining net current surplus must exceed 35 percent of unpaid claims for that fiscal year. Claims must be undiscounted, and the IBNR reserve must be certified by an actuary. The fund may seek approval as above for subsequent refund payments *[at 12 month intervals]* ***at any time*** from a claims or loss retention fund account remaining from any year which has been completed for at least 36 months. A full and final refund of net current surplus will not be allowed until all case reserves ***and all IBNR reserves*** are closed. ***If a joint insurance fund subject to this subchapter prior to September 18, 1989 made an initial refund prior to September 18, 1989, such joint insurance fund may seek approval to make an additional initial refund subject to the requirements contained in this subsection as amended.***

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

(e) The fund may seek approval from the Commissioner to make interyear fund transfers *[at 12 month intervals]* ***at any time*** from a claims or loss retention trust account from any year which has been completed for at least 12 months by submitting a written request to the Department of Insurance and Department of Community Affairs with appropriate documentation as set forth in (b) above. The interyear fund transfer may be in any amount subject to the limitation that after the *[refund]* ***transfer***, the remaining net current surplus must exceed 35 percent of unpaid claims for that fiscal year. Claims must be undiscounted, the IBNR reserve must be certified by an actuary and the membership for each fiscal year involving interyear fund transfers must be identical between fiscal years.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CRIMINAL JUSTICE
POLICE TRAINING COMMISSION
Instructor Certification
Adopted Amendment: N.J.A.C. 13:1-4.5

Proposed: June 19, 1989 at 21 N.J.R. 1647(b).

Adopted: August 14, 1989 by the Police Training Commission, Robert T. Winter, Director, Division of Criminal Justice and Chairman.

Filed: August 18, 1989 as R.1989 d.485, **without change.**

Authority: N.J.S.A. 52:17B-71(d) and N.J.S.A. 52:17B-71(h).

Effective Date: September 18, 1989.

Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:1-4.5 Certification

(a) Initial instructor certifications and renewals thereof shall expire on December 31 of the third year after the granting or renewal of the certification, provided that, renewals of certifications approved prior to December 31, 1988 shall be staggered for periods of one, two or three years as determined by the Administrator of Police Services in order that approximately one-third of all certifications will be subject to approval each year.

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

(b)

DIVISION OF MOTOR VEHICLES
DEPARTMENT OF INSURANCE
Driver Control Service
Motor Vehicle Insurance Surcharge; Supplemental Surcharges
Readopted Rules with Amendment: N.J.A.C. 13:19

Proposed: July 3, 1989 at 21 N.J.R. 1817(b).

Adopted: August 16, 1989 by Glenn R. Paulsen, Director, Division of Motor Vehicles, as to only N.J.A.C. 13:19-1 to 13:19-12; August 16, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance, after consultation with Glenn R. Paulsen, Director, Division of Motor Vehicles, as to only N.J.A.C. 13:19-13.

Filed: August 18, 1989 as R.1989 d.493, **without change.**

Authority: N.J.S.A. 17:29A-35, 39:2-3, 39:3-10, 39:3-10.4 et seq., 39:3-11, 39:3-15, 39:3-15.1, 39:3-16, 39:5-30, 39:5-30.1, 39:5-30.5, 39:5-30.5a, 39:5D-4, 39:5F-1 et seq., 52:14B-1 et seq. and Pub. L. 99-570, as to N.J.A.C. 13:19-1 to 13:19-12; N.J.S.A. 17:29A-35, as to N.J.A.C. 13:19-13.

Effective Date: August 18, 1989, Readoption; September 18, 1989, Amendment.

Expiration Date: August 18, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:19.

Full text of the adopted amendment follows:

13:19-13.2 Surcharges for three year period; administrative violations; amounts

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

(c)

BOARD OF VETERINARY MEDICAL EXAMINERS
Notice of Administrative Correction
Advertising
N.J.A.C. 13:44-2.11

Take notice that the Board of Veterinary Medical Examiners has discovered an error in the text of N.J.A.C. 13:44-2.11, Advertising, currently in the New Jersey Administrative Code. Subsection (i) was proposed for deletion on February 18, 1986 at 18 N.J.R. 399(a). The deletion was adopted at 18 N.J.R. 1400(a) effective July 7, 1986. However, the deletion was not reflected in the 7-21-86 update to the Code.

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

13:44-2.11 Advertising

(a)-(h) (No change.)

[(i) Any licensee who engages in any format which appears to be essentially non-informational in nature and used primarily to gain attention shall be deemed to be engaged in professional misconduct.]

Redesignate (j)-(k) as (i)-(j) (No change in text.)

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Notice of Administrative Deletion
Public Movers
N.J.A.C. 14:2

Take notice that the Office of Administrative Law, by agreement with the Board of Public Utilities, is deleting N.J.A.C. 14:2, Public Movers, from the New Jersey Administrative Code.

This chapter was adopted by the Board of Public Utilities pursuant to its authority under the Public Movers Act, N.J.S.A. 48:22-1 et seq. (P.L. 1968, c.375, as amended). This Act was repealed and replaced by the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq. (P.L. 1981, c.311, as amended), which granted rulemaking authority in this area to the Director, Division of Consumer Affairs, Department of Law and Public Safety. Pursuant to this authority, public movers and warehousemen rules at N.J.A.C. 13:44D were adopted by the Division effective August 7, 1989 (see 21 N.J.R. 2386(b)). As the public movers rules of the Board of Public Utilities are now without statutory authority, and have been superseded in the Code by the rules of the Division of Consumer Affairs, N.J.A.C. 14:2 is deleted from the New Jersey Administrative Code.

TRANSPORTATION

(b)

CONSTRUCTION AND MAINTENANCE

Division of Construction and Maintenance Engineering Support
Bureau of Construction
Construction Control
Contractor Claims; Substantial Completion
Adopted Repeals: N.J.A.C. 16:33
Adopted New Rules: N.J.A.C. 16:45

Proposed: July 17, 1989 at 21 N.J.R. 1972(c).
Adopted: August 22, 1989 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Filed: August 25, 1989 as R.1989 d.505, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:2-1 to 2-8.

Effective Date: September 18, 1989.
Expiration Date: September 18, 1994, N.J.A.C. 16:45.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 45
CONSTRUCTION CONTROL

SUBCHAPTER 1. CLAIMS COMMITTEE

16:45-1.1 Claims committee

(a) The claims committee is an administrative body available to review and resolve claims that arise under the contract. At the option of the contractor, claims may be presented to the claims committee for administrative resolution. The presentation of a claim to the claims committee shall in no way alter or affect other rights of the contractor, including the right, pursuant to the Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to seek redress in the courts. Said presentation to the claims committee shall in no way alter or affect the applicable statute of limitations.

(b) The claims committee is comprised of the following:

1. Chairman—Director, Division of Construction and Maintenance Engineering Support (Chief Engineer, Construction and Maintenance);
2. Director, Division of Regional Design (Chief Engineer, Regional Design);
3. Director, Division of Accounting and Auditing;
4. Deputy Attorney General (non-voting member);
5. Secretary for the claims committee—(non-voting member to be designated by the chairman).

16:45-1.2 Contractor obligations

(a) The contractor shall comply with the provisions of the applicable NJDOT standard specifications and the supplementary specifications which govern the documentation and submission of claims for the specific contract.

(b) The claims committee will accept for consideration all claims which have been properly presented and reserved under the applicable NJDOT standard specifications and supplementary specifications and which have not been resolved prior to the completion of the contract.

(c) The contractor shall notify the secretary of the claims committee in writing of its desire to have unresolved claims reviewed by the committee. This written notice shall be given within 30 days of the completion of the contract and a copy of this notice shall be sent by the contractor to the regional director. The regional director shall forward to the secretary of the claims committee all information previously submitted by the contractor in support of its claims. Failure by the contractor to give such written notice within 30 days of the completion of the contract shall bar review by the claims committee.

(d) Within 45 days of the receipt of the contractor's written request for claims committee review, the claims committee will schedule a meeting for review of the claims submitted. The contractor may appear at the meeting and make an oral presentation in support of its claims. If the contractor does not appear at the meeting, the claims committee will base its review of the claims on the written information previously supplied by the contractor and forwarded to the committee by the regional director.

(e) The procedure set forth herein establishes a method of reviewing contractual disputes and in no way constitutes a waiver by the State of New Jersey of its sovereign immunity from suit.

16:45-1.3 Disposition

(a) The deputy commissioner shall make final determination on all claims reviewed by the Department's claims committee. There shall be no further departmental review of the claims.

(b) The secretary of the claims committee shall notify the contractor of the deputy commissioner's decision and the contractor shall accept or reject the decision within 60 days. If the disposition of the claim is acceptable to the contractor, the Department will pay any amount due the contractor upon execution by the contractor of a release of the State, the Commissioner and the Department, their agents, officers and employees as to all claims. Such payment will be made pursuant to the terms of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq. If the contractor rejects the deputy commissioner's decision, no further departmental action will be taken. If the disposition of the claim is not acted upon by the contractor within the 60 day time limit, the Department will consider its decision to have been rejected and no further departmental action will be taken.

SUBCHAPTER 2. SUBSTANTIAL COMPLETION

16:45-2.1 Purpose

The following definition of "substantial completion" is adopted pursuant to N.J.S.A. 27:7-34. This definition will be incorporated into contracts on Department of Transportation construction projects in substantially the same form as herein presented.

16:45-2.2 Definition of substantial completion

(a) "Substantial completion" as used herein, means the point at which the performance of all work on the project; except landscaping items, including the planting of trees, shrubs, vines, ground covers and seedlings; final clean-up and repair of work performed but not accepted; has been completed, provided the engineer has determined, in his sole discretion, that:

1. The project is safe and convenient for use by the public;
2. Failure to complete the work and repairs excepted above does not result in the deterioration of other completed work; and

3. Provided that the value of landscape work remaining to be performed, repairs and clean-up, is less than two percent of the total adjusted contract price.

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway

Transportation of Explosives and Other Dangerous Articles

Adopted Amendment: N.J.A.C. 19:8-1.12

Proposed: July 17, 1989 at 21 N.J.R. 1974(a).
Adopted: August 17, 1989 by the New Jersey Highway Authority, George P. Zilocchi, Executive Director.
Filed: August 17, 1989 as R.1989 d.484, **without change.**

Authority: N.J.S.A. 27:12B-5(a), (j) and (t).

Effective Date: September 18, 1989.
Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:8-1.12 Transportation of explosives and other dangerous articles
(a)-(c) (No change.)
(d) Additionally, transportation of hazardous materials on the Garden State Parkway shall be in conformance with all United States and New Jersey statutes, laws and regulations as amended or modified, which are referenced in this subchapter or applicable to the transportation of hazardous materials.

(b)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway

Procedure for Filing a Rulemaking Petition

Adopted New Rules: N.J.A.C. 19:8-12

Proposed: July 17, 1989 at 21 N.J.R. 1975(a).
Adopted: August 17, 1989 by the New Jersey Highway Authority, George P. Zilocchi, Executive Director.
Filed: August 17, 1989 as R.1989 d.482, **without change.**

Authority: N.J.S.A. 52:14B-3(1), 52:14B-4(f), 27:12B-5(a), (j), (t), N.J.A.C. 1:30-3.6(d).

Effective Date: September 18, 1989.
Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 12. PETITIONS FOR RULES

19:8-12.1 Scope
This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the New Jersey Highway Authority, hereafter "Authority", pursuant to N.J.S.A. 52:14B-4(f).

19:8-12.2 Procedure for petitioner
(a) Any person who wishes to petition the Authority to promulgate, amend or repeal a rule must submit to the Executive Director, in writing, the following information:
1. Name of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the Executive Director of the Authority to take the requested action.
(b) Petitions shall be sent to the following address:
Executive Director
New Jersey Highway Authority
Garden State Parkway
Woodbridge, N.J. 07095
(c) Any document submitted to the Authority which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further department action pursuant to N.J.S.A. 52:14B-4(f).

19:8-12.3 Procedure after receipt of petition
(a) Upon receipt of a petition in compliance with N.J.A.C. 19:8-12.2, the Authority will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice will include:
1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.
(b) Within 30 days of receiving the petition, the Authority will mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which will include:
1. The name of the petitioner;
2. The Register citation for notice of petition, if that notice appeared in a previous Register;
3. Certification by the Executive Director that the petition was duly considered pursuant to law;
4. The nature or substance of the Authority's action upon the petition; and
5. A brief statement of reasons for the Authority's action.
(c) Authority action on a petition may include:
1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to petitioner and submitted to the OAL for publication in the Register.

(c)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway

Special Permits for Oversize Vehicles

Adopted Amendment: N.J.A.C. 19:8-8.1

Proposed: July 17, 1989 at 21 N.J.R. 1974(b).
Adopted: August 17, 1989 by the New Jersey Highway Authority, George P. Zilocchi, Executive Director.
Filed: August 17, 1989 as R.1989 d.483, **without change.**

Authority: N.J.S.A. 27:12B-5(a), (j) and (t).

Effective Date: September 18, 1989.
Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Response:
No comments received.

Full text of the adoption follows.

19:8-8.1 Scope
(a) Special permits for oversize vehicles issued by the Authority are valid on the Parkway only.
(b) (No change.)

(a)

DELAWARE RIVER BASIN COMMISSION

Notice of Correction
Comprehensive Plan and Water Code of the Delaware River Basin

Take notice that a typographical error appears in the text of the Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin regulations published in the July 3, 1989 issue of the New Jersey Register at 21 N.J.R. 1844(a).

Full text of the corrected rule follows (addition indicated in boldface **thus**):

2.1.5 Water conservation performance standards for plumbing fixtures and fittings

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

(2)(a) The performance standards of subsection (1) shall apply to plumbing fixtures and fittings installed in new construction and, where provided in state or local regulations, in existing structures undergoing renovations involving replacement of such fixtures and fittings.

(b) (No change.)

(3) To be acceptable for use in the Basin, plumbing fixtures and fittings shall be certified and labeled by the manufacturer as meeting the water conservation performance standards specified in subsection (1). Certification shall be based on independent test results. Plumbing fixtures and fittings shall be labeled in accordance with ANSI A112.18.1M and ANSI A112.19.2M.

(4)-(5) (No change.)

CASINO CONTROL COMMISSION

(b)

General Provisions
Applications
Petitions for Rulemaking
Readoption with Amendments: N.J.A.C. 19:40
Adopted Amendments: N.J.A.C. 19:41-8, 19:41-10 and 19:42-8

Proposed: July 17, 1989 at 21 N.J.R. 1975(b).

Adopted: August 24, 1989 by the Casino Control Commission, Walter N. Read, Chair.

Filed: August 24, 1989 as R.1989 d.495, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69(a), 5:12-69(c), 5:12-69(e), 5:12-70(a), 5:12-70(b), 5:12-70(d) and 5:12-70(k).

Effective Date: August 24, 1989, Readoption; September 18, 1989, Amendments.

Expiration Date: N.J.A.C. 19:40, August 24, 1994; N.J.A.C. 19:41 and 19:42, May 12, 1993.

Summary of Public Comment and Agency Responses:
No comments received.

Minor substantive changes not requiring additional public notice and comment clarify the functions of the Commission's License Division, at N.J.A.C. 19:40-2.1(c)5, and add a gender neutral reference at N.J.A.C. 19:41-8.5. In addition, the description of the functions of the Executive Secretary, originally codified at N.J.A.C. 19:40-1.8(d), and deleted in the proposal, is included in the readoption at N.J.A.C. 19:40-2.1(b)3.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:40.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 40
GENERAL PROVISIONS

SUBCHAPTER 1. CONSTRUCTION AND APPLICATION OF RULES

19:40-1.2 Definitions

All words and terms which are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) are used in these rules and regulations as defined in that Act. The following words and terms, when used in these rules and regulations, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Applicant" means any person who on his own behalf or on behalf of another has applied for permission to engage in any act or activity which is regulated under the provisions of the Act.

"Application" means a written request for permission to engage in any act or activity which is regulated under the provisions of the Act.

"Authorized game" or "authorized gambling game" means roulette, baccarat, blackjack, craps, big six wheel, slot machines, mini-baccarat and any variations or composites of such games, provided that such variations or composites are found by the Commission suitable for casino use after an appropriate test or experimental period under such terms and conditions as the Commission may deem appropriate.

"Casino" means a single room of at least 15,000 square feet in which casino gaming is conducted pursuant to the provisions of the Act.

"Casino employee" means any natural person employed in the operation of a licensed casino, including, without limitation, boxmen; dealers or croupiers; floormen; machine mechanics; casino security employees; count room personnel; cage personnel; slot machine and slot booth personnel; collection personnel; casino surveillance personnel; and data processing personnel; or any other natural person whose employment duties require or authorize access to restricted casino areas, including, without limitation, appropriate maintenance personnel; waiters and waitresses; and secretaries.

"Casino hotel employee" means any natural person employed to perform services or duties in the conduct of the business of an approved hotel but who is not included within the definition of casino employee or casino key employee as stated in this section.

"Casino key employee" means any natural person employed in the operation of a licensed casino in a supervisory capacity or empowered to make discretionary decisions which regulate casino operation, including, without limitation, pit bosses; shift bosses; credit executives; casino cashier supervisors; casino managers and assistant managers; managers or supervisors of casino security employees; or any other natural person empowered to make discretionary decisions which regulate the management of an approved hotel, including, without limitation, hotel managers; entertainment directors; and food and beverage directors; or any other employee so designated by the Casino Control Commission for reasons consistent with the policies of the Act.

"Casino license" means any license issued pursuant to the Act which authorizes the holder thereof to own or operate a casino.

. . .

"Casino service industry" means any form of enterprise which provides casino applicants or licensees with goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility on a regular or continuing basis, including, without limitation, security businesses, gaming schools, manufacturers, distributors and servicers of gaming devices or equipment, garbage haulers, maintenance companies, food purveyors, and construction companies. Notwithstanding the foregoing, any form of enterprise engaged in the manufacture, sale, distribution or repair of slot machines within New Jersey, other than antique slot machines as defined in N.J.S.A. 2C:37-7, shall be considered a casino service industry for the purposes of the Casino Control Act regardless of the nature of its business relationship, if any, with licensed casinos in this State. For purposes of this section, "casino applicant" includes any person required to hold a casino license pursuant to section 82 of the Act who has applied to the

Commission for a casino license or any approval required under the Act.

"Chairman" or "Chair" and "Commissioner" or "member" means the Chair and any member of the Casino Control Commission, respectively.

. . .

"Complimentary service or item" means a service or item provided at no cost or at a reduced price. The furnishing of a complimentary service or item by a casino licensee shall be deemed to constitute the indirect payment for the service or item by the casino licensee, and shall be valued in an amount based upon the retail price normally charged by the casino licensee for the service or item. The value of a complimentary service or item not normally offered for sale by a casino licensee or provided by a third party on behalf of a casino licensee shall be the cost to the casino licensee of providing the service or item as determined in accordance with the rules of the Commission.

. . .

"Equal employment opportunity" means equality in opportunity for employment by any person licensed pursuant to the provisions of the Act.

. . .

"Gross revenue" means the total of all sums, including checks received by a casino licensee pursuant to section 101 of the Act, whether collected or not, actually received by a casino licensee from gaming operations, less only the total of all sums paid out as winnings to patrons and a deduction for uncollectible gaming receivables not to exceed the lesser of a reasonable provision for uncollectible patron checks received from gaming operations or four percent of the total of all sums including checks, whether collected or not, less the amount paid out as winnings to patrons. For purposes of this section, any check which is invalid and unenforceable pursuant to subsection 101(f) of the Act shall be treated as cash received by the casino licensee from gaming operations.

"Hearing examiner" means a Commissioner or other person authorized by the Commission to conduct hearings.

. . .

"Hotel" or "approved hotel" means a single building located within the limits of the city of Atlantic City as said limits were defined as of November 2, 1976, and containing not fewer than 500 sleeping units, each of at least 325 square feet measured to the center of perimeter walls, including bathroom and closet space and excluding hallways, balconies and lounges; each containing private bathroom facilities; and each held available and used regularly for the lodging of tourists and convention guests and conforming in all respects to the facilities requirements contained in the Act. For the purpose of exceeding the maximum casino size specified in section 83 of the Act, an approved hotel may, by means of physical connection, annex additional buildings or facilities to increase the amount of its qualifying meeting, exhibition, dining, entertainment, sports and kitchen support facilities space, but not to increase its number of qualifying sleeping units.

"Physical connection" for the purposes herein means an enclosed permanent pedestrian passageway. In no event shall the main entrance or only access to an approved hotel be through a casino.

. . .

"License" means any license required by the Act.

"License or registration fee" means any moneys required by law to be paid for the issuance or renewal of a casino license, or any other license or registration required by the Act.

"Licensed casino operation" means any casino licensed pursuant to the provisions of the Act.

"Licensee" means any person who is licensed under any of the provisions of the Act.

"Operation" means the conduct of gaming as defined in the Act.

"Operation certificate" means a certificate issued by the Commission which certifies that operation of a casino conforms to the requirements of the Act and applicable regulations and that its personnel and procedures are efficient and prepared to entertain the public.

. . .

"Principal employee" means any employee who, by reason of remuneration or of a management, supervisory or policy-making position or such other criteria as may be established by the Commission by regulation, holds or exercises such authority as shall in the judgment of the Commission be sufficiently related to the operation of a licensee so as to require approval by the Commission in the protection of the public interest.

. . .

"Registrant" means any person who is registered pursuant to the provisions of the Act.

"Registration" means any requirement other than one which requires a license as a prerequisite to conduct a particular business as specified by the Act.

. . .

"Regulation" or "rule" means the regulation adopted by the Commission pursuant to the Act.

. . .

"Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, currency, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or any thing of value whatsoever, whether the payoff is made automatically from the machine or in any other manner whatsoever, except that:

1. No merchandise or thing of value shall be offered as part of a payoff of any slot machine unless such merchandise or thing of value has a cash equivalent value of at least $5,000; and

2. The cash equivalent value of any merchandise or other thing of value, as defined by N.J.A.C. 19:45-1.40A(b), shall not be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenues as defined by section 24 of the Act or be included in determining the payout percentage of any slot machine.

"Statement of compliance" means a statement by the Commission which may be issued to an applicant indicating satisfactory completion of a particular stage or stages of the license consideration process, and which states that unless there is a change of any material circumstance pertaining to such particular stage or stages of license consideration involved in the statement, such applicant has complied with requirements mandated by the Act and by the Commission and is therefore approved for license qualification to the stage or stages for which the statement has been issued.

. . .

"Transfer" means the sale and every other method, direct or indirect, of disposing of or parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security or otherwise. The retention of a security interest in property delivered to a corporation shall be deemed a transfer suffered by such corporation.

"Work permit" means an authorization granted to a casino licensee for the employment of a particular casino hotel employee, casino employee or casino key employee in a particular capacity by a casino licensee.

19:40-1.3 Construction and amendments

(a) (No change.)

(b) These rules shall be liberally construed to permit the Commission and the Division to effectively carry out their respective statutory functions and to secure a just and expeditious determination of issues properly presented to the Commission.

(c) (No change.)

(d) In special cases and for good cause shown, the Commission may relax or permit deviations from these rules.

(e) These rules may be amended by the Commission from time to time in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).

(f) Whenever any provision of these rules requires that an act or event occur on a specified day or date, and such day or date falls upon a Saturday, Sunday or legal holiday, such provision shall be construed to refer to the next business day immediately following such day or date.

(g) Pursuant to N.J.S.A. 5:12-69(e), the Commission may authorize the temporary adoption, amendment or repeal of any rule concerning the conduct of gaming or the use or design of gaming equipment for an experimental period not to exceed 90 days, for the purpose of determining whether such rules should be adopted on a permanent basis. Any interested person may file a petition for temporary rulemaking with the Commission in accordance with N.J.A.C. 19:40-3.6.

1. The Commission shall file notice of any temporary rulemaking with the Office of Administrative Law for publication in the New Jersey Register at least seven days prior to initiation of the experiment, and shall prominently post such notice in each casino participating in the experiment.

2. The Commission shall post the test of any temporary rule in each casino participating in the experiment and shall make copies of such text available upon request to the Commission.

19:40-1.5 Severability and preemption

(a) If any clause, sentence, subparagraph, paragraph, subsection, section, chapter or other portion of these rules or the application thereof to any person or circumstance shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of these rules or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subsection, section, chapter or other portion thereof directly involved in such holding or to the person or circumstance therein involved.

(b) (No change.)

19:40-1.6 (No change in text.)

SUBCHAPTER 2. ORGANIZATION AND OPERATION OF THE COMMISSION

19:40-2.1 Organization

(a) The Commission consists of five members appointed by the Governor with the advice and consent of the Senate.

(b) The officers of the Commission shall include a Chair and a Vice-chair who shall be members of the Commission, and an Executive Secretary who shall not be a member of the Commission.

1. The Chair, as chief executive officer of the Commission, shall schedule and preside at all meetings of the Commission; shall appoint the members of the Commission to such committees as the Commission may, from time to time, establish; shall have the authority to accept for filing all applications; shall have the authority to incur on behalf of the Commission such expenses as the Commission shall have approved in its operating budget; shall have general supervision, direction and control of the affairs of the Commission; and shall perform such other duties as are incidental to the office and as may be assigned, from time to time, by the Commission.

2. The Vice-chair shall be elected annually at the organizational meeting of the Commission by a majority of the full Commission. The Vice-chair shall be a member of the Commission other than the Chair. He or she shall possess such powers and shall perform such duties as may be assigned, from time to time, by the Commission. In the absence or inability of the Chair to serve or in the event of a vacancy in the office of Chair, the Vice-chair shall be empowered to carry out all of the responsibilities of the Chair.

3. The Executive Secretary shall be appointed by the Commission and shall serve at the pleasure of the Commission. Under the supervision of the Chair, the Executive Secretary shall be responsible for the conduct of the administrative affairs of the Commission and shall have custody of the Commission's seal and its official records. The Executive Secretary shall keep a record of the proceedings at all meetings of the Commission in a minute book and a resolution book or both, to be kept for the purpose, which shall be open at all reasonable times to inspection by any member of the Commission. He or she shall cause a verbatim transcript to be made of the public meetings of the Commission, according to law. He or she shall affix the seal of the Commission to all papers authorized to be executed by the Commission requiring such seal to be affixed. He or she shall cause copies to be made of the verbatim transcript of the public meetings, and of all minutes, resolutions and other records and shall cause such copies to be filed with the appropriate authorities according to law. He or she shall give certificates under the seal of the Commission to the effect that such copies are true copies and all persons dealing with the Commission may rely on such certificates. He or she shall perform such other duties as are incident to his or her office or as may be assigned, from time to time, by the Commission or by the Chair.

(c) The Commission's staff is comprised of the following divisions and units:

1. The Administrative Division provides the personnel, budget, data processing and administrative services necessary for operation of the Commission, and maintains the official records of the Commission and a record of all Commission proceedings. The Administrative Division consists of the following units:

i. Budget and Fiscal Office;
ii. General Administrative Services Unit;
iii. Personnel Office; and
iv. Systems Analysis and Design Unit.

2. The Affirmative Action and Planning Division monitors compliance by casino licensees, gaming schools and casino service and construction industries, with State equal employment, affirmative action, and minority and women's business enterprise requirements and evaluates the environmental, social, economic, and demographic impact of casinos on the Atlantic City region. The Affirmative Action and Planning Division consists of the following units:

i. Casino Unit;
ii. Industry and Construction Unit; and
iii. Planning Unit.

3. The Division of Financial Evaluation and Control reviews and evaluates petitions and submissions related to accounting and internal controls, gaming equipment and rules of the games; conducts casino gross revenue audits; analyzes the financial position and operating performance of casino licensees; assesses and collects fees and gross revenue taxes; monitors compliance with regulations regarding accounting and internal controls, gaming equipment and rules of the games; and receives casino patron complaints. The Division of Financial Evaluation and Control consists of the following units:

i. Accounting Unit;
ii. Audit Unit;
iii. Casino Operations Unit;
iv. Financial Evaluation Unit; and
v. Inspection Unit.

4. The Legal Division acts as legal counsel to the Commission and staff; represents the Commission in litigation; drafts and reviews proposed legislation and regulations; participates in license issuance and renewal hearings; and processes contested case matters. The Legal Division consists of the following units:

i. Hearings and Litigation Unit;
ii. Legal Advisory Unit;
iii. Legislation and Regulation Unit;
iv. License Advisory Unit; and
v. Special Projects Unit.

*[5. The License Division processes casino employee and junket representative license applications and renewals; monitors relationships between casino licensees and the enterprises with which they do business; and reviews matters relating to casino facilities and casino hotel alcoholic beverage licenses. The License Division consists of the following units:

i. Document Control Unit;
ii. Employee Licensing Unit; and
iii. Enterprise Licensing Unit.]*

***5. The License Division processes and reviews casino key employee, casino employee, and junket representative license applications and renewals, hotel registrations and Employee License Internal Control Submissions; monitors the business relationships between ancillary industries and casino licensees and casino applicants; processes gaming, non-gaming and junket-related casino service industry license applications and renewals, Vendor Registration Forms and Internal Control**

Submissions for Purchasing and Disbursing; reviews all facility related matters which affect a casino license and casino-hotel alcoholic beverage related matters; maintains files pertaining to the above applications, registrations and submissions; and serves as a central filing location for petitions and submissions submitted to the Commission. The License Division consists of the following bureaus, sections and units:

i. Employee License Bureau;
ii. Enterprise License Bureau;
iii. Facilities Review Section; and
iv. Document Control Unit.*

19:40-2.2 Meetings

(a) Regular meetings of the Commission shall be held at least once per month on such dates and at such times and places as the Chair or the Commission shall establish.

(b) Special meetings of the Commission will be held from time to time on such dates and at such times and places as the Chair or the Commission may deem convenient. Special meetings of the Commission may be called at the discretion of the Chair; but the Chair shall call a special meeting at the request of any three members of the Commission.

(c) The annual reorganizational meeting of the Commission shall be the first meeting of the Commission in January of each year.

(d) All meetings of the Commission shall be in compliance with the New Jersey Open Public Meetings Act (N.J.S.A. 10:46-6 et seq.).

(e) The Commission may prepare an agenda describing the order of business for public meetings, which agenda shall include, but not be limited to:

1. Presiding officer's statement of compliance with the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.;
2. Roll call;
3. Ratification of the minutes of prior meetings;
4. Consideration of applications for licenses;
5. Consideration of complaints against licensees;
6. Consideration of petitions for Commission action or approval; and
7. Questions and comments from the public.

19:40-2.3 Quorum; votes

(a) A majority of the full Commission shall constitute a quorum at any meeting of the Commission.

(b) The vote on any matter before the Commission shall be taken in a manner to be determined by the Commission. The names of the members voting for or against or abstaining shall be entered in the minutes of the meeting.

19:40-2.4 Resolutions and minutes

(a) The records of the Commission shall include a minute book and a resolution book. The vote on any matter before the Commission shall be set forth in the minutes in accordance with the requirements of (b) below. If the Commission determines to memorialize the vote on a particular matter by the preparation of a formal resolution, the resolution shall be prepared in accordance with the requirements of (c) below and shall be recorded in the resolution book.

(b) Every vote of the Commission recorded in the minutes shall include the following information:

1. The substance of the matter considered;
2. The vote of the Commission, including the names of any commissioners dissenting or abstaining;
3. If appropriate, reference to the existence of a formal resolution concerning the matter; and
4. Certification by the Executive Secretary.

(c) Every formal resolution of the Commission shall include the following information:

1. A concise statement of the issues presented and the relevant procedural history;
2. The precise statutory authority for the action taken;
3. A precise statement of the action taken by the Commission, including any terms or conditions attached thereto; and
4. Certification by the Executive Secretary.

SUBCHAPTER 3. INFORMATION AND FILINGS

19:40-3.1 Offices; hours

(a) The main offices of the Commission, including the Offices of the Commissioners, the Legal Division, the Division of Financial Evaluation and Control's Accounting Unit and Evaluation Unit, and the Administrative Division, are located at:

3131 Princeton Pike, Building 5
CN 208
Trenton, N.J. 08625

(b) The License Division and the Affirmative Action and Planning Division are located at:

Arcade Building, 2nd Floor
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

(c) The Division of Financial Evaluation and Control's Audit Unit, Casino Operations Unit and Inspection Unit are located at:

Citicenter Building, 4th Floor
1300 Atlantic Avenue
Atlantic City, N.J. 08401

(d) The offices of the Commission are open for the filing of papers and for other business (except for public inspection of documents) from 9:00 A.M. to 5:00 P.M., Monday through Friday, unless otherwise authorized by the Commission. The offices of the Commission are open for public inspection of documents from 10:00 A.M. to 4:00 P.M., Monday through Friday, unless otherwise authorized by the Commission. The offices of the Commission are closed on legal holidays.

(e) The Division of Gaming Enforcement maintains offices at:

Richard J. Hughes Justice Complex
CN-047
Trenton, NJ 08625

19:40-3.2 Official records; fees for copies

(a) No original official record of the Commission shall be released from the custody of the Commission except upon express direction of the Chair or the Executive Secretary, or upon the order of a court of competent jurisdiction.

(b) Copies of the official records of the Commission which are required by law to be made available for public inspection will be made available during the hours provided for in N.J.A.C. 19:40-3.1 upon the payment of appropriate fees.

(c) No person shall, directly or indirectly, procure or attempt to procure from the records of the Commission or the Division or from other sources, information of any kind which is not made available by proper authority.

(d) No application, petition, notice, report, document or other paper will be accepted for filing by the Chair and no request for copies of any forms, pamphlets, records, documents, or other papers will be granted by the Commission, unless such papers or requests are accompanied by the required fees, charges, or deposits.

(e) Any person may subscribe to the Commission's meeting notices, minutes, or notices of rule-making by written request accompanied by a check or money order in accordance with the subscription rates established by the Commission. All subscriptions shall be on a calendar year basis only, and rates for subscriptions commencing during a calendar year will be prorated accordingly. At the discretion of the Commission, no payment may be required when the request is made by the governor of the State of New Jersey or by a member of the Legislature or by any newspaper, television station or radio station regularly serving New Jersey.

(f) Copies of official records of the Commission which are required by law to be made available for public inspection shall be made available according to the following fee schedule:

1. First page to 10th page:	$0.50 per page;
2. Eleventh page to 20th page:	0.25 per page;
3. All pages over 20:	0.10 per page;

(g) All checks for payment of fees, deposits and charges shall be made payable to the order of the "Casino Control Fund" and delivered or mailed to the main office of the Commission.

19:40-3.3 Communications; notices

(a) Except as otherwise provided at N.J.A.C. 19:40-3.5, all papers, process or correspondence relating to the Commission should be addressed to or served upon the New Jersey Casino Control Commission at the Commission's main office. All papers, process or correspondence relating to the Division should be addressed to or served upon the Division of Gaming Enforcement at the Division's main office.

(b) All such papers, process or correspondence shall be deemed to have been received or served when delivered to the main office of the Commission or the Division as the case may be, but a Commissioner or such individual members of the Commission's staff as the Chair may designate, or the Director or such individual staff members of the Division's staff as the Director may designate, may in his or her discretion receive papers or correspondence or accept service of process.

(c) Except as otherwise provided by law, notices and other communications from the Commission or Division will be sent to an applicant or licensee by ordinary mail at the address shown in the application or license. Notices shall be deemed to have been served upon their deposit, postage prepaid, in the United States mails, and the time specified in any such notice shall commence to run from the date of such mailing. Any applicant or licensee who desires to have notices or other communications mailed to an address other than that specified in the application or license shall file with the Commission and the Division a specific request for that purpose, and notices and other communications will, in such case, be sent to the applicant or licensee at such address. An applicant or licensee will be addressed under the name or style designated in the application or license, and separate notices or communications will not be sent to individuals named in such application or license unless a specific request for that purpose is filed with the Commission and the Division. In the absence of such a specific request, a notice addressed under the name or style designated in the application or license shall be deemed to be notice to all individuals named in such application or license. Applicants and licensees shall immediately notify the Commission and the Division of any change of address, and shall specifically request that all notices or other communications be sent to the new address.

19:40-3.4 Public information office

(a) Requests for information regarding the Casino Control Commission may be directed to:

Casino Control Commission
Public Information Office
3131 Princeton Pike, Building 5
CN 208
Trenton, New Jersey 08625

(b) Any person may, upon payment of the appropriate fee pursuant to N.J.A.C. 19:40-3.2, obtain a copy of the Monthly Statements, Quarterly Reports and Annual Reports to the Commission from each casino licensee. Copies of the Commission's Annual Report are available to the public at no charge. Such requests should be directed to the address in (a) above.

(c) Access to information and data furnished to or obtained by the Commission or Division from any source is subject to the provisions of N.J.S.A. 5:12-74(d) and (e) and N.J.A.C. 19:40-4.

19:40-3.5 Filing of petitions and applications

(a) Petitions for formal action by the Commissioner should be mailed to:

Casino Control Commission
Records Administrator
Arcade Building, 2nd Floor
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

(b) Applications for the issuance or renewal of any license or registration required by the Act should be mailed to:

Casino Control Commission
Document Control Unit
Arcade Building, 2nd Floor
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

(c) Applications for the issuance or renewal of employee and casino service industry licenses may be hand delivered to:

Casino Control Commission
Casino Employee License Information Unit
Arcade Building, 2nd Floor
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

19:40-3.6 Petitions for rulemaking

(a) Any interested person may file a petition with the Commission for the adoption, amendment or repeal of any rule, pursuant to section 69(c) of the Act and N.J.S.A. 52:14B-4(f). Such petition shall be in writing, be signed by the petitioner, and include the following information:

1. The name and address of the petitioner;
2. The substance or nature of the requested rulemaking;
3. The reasons for the request;
4. The specific legal rights, duties, obligations, privileges, benefits or other specific legal relations of the interested person which are affected by the requested rulemaking; and
5. Reference to the statutory authority under which the Commission may take the requested action.

(b) Any document submitted to the Commission which is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further action. Such document shall be returned to the petitioner with instructions as to the steps necessary to correct any defects or omissions in accordance with this section.

(c) Within 15 days of receipt of a petition in compliance with this section, the Commission shall file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register in compliance with N.J.A.C. 1:30-3.6(a).

(d) A petition for rulemaking shall be scheduled for consideration at a regularly scheduled public meeting of the Commission. The petitioner shall be given an opportunity to make a statement in support of the requested rulemaking.

(e) Within 30 days of receipt of a petition which is in compliance with this section, the Commission shall mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition in compliance with N.J.A.C. 1:30-3.6(b), which shall include the nature or substance of the Commission's action upon the petition and a brief statement of reasons for the Commission's actions.

(f) In accordance with N.J.A.C. 1:30-3.6(c), Commission action on a petition for rulemaking may include:

1. Denial of the petition;
2. Filing a notice of proposed rule or a notice of a pre-proposal for a rule with the Office of Administrative Law; or
3. Referral of the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

SUBCHAPTER 4. CONFIDENTIAL INFORMATION

19:40-4.1 and 4.2 (No change in text.)

19:40-4.3 Access

Except as otherwise provided in N.J.A.C. 19:40-4.4 and N.J.A.C. 19:40-4.8, access to confidential information within the possession of the Commission or Division shall be restricted to authorized personnel who require such information in the performance of their official duties.

19:40-4.4 State Records Storage Center: retention schedule; storage; destruction

(a) (No change.)

(b) Confidential information considered to be inactive by the Commission or Division but required to be retained pursuant to the provisions of (a) above, may be transferred to the possession of the State Records Storage Center in accordance with N.J.S.A. 47:3-8.1 et seq., as implemented by N.J.A.C. 6:66, provided that:

1. (No change.)

2. A log is maintained of all authorized personnel who are granted access to or who remove confidential information stored with the State Records Storage Center, which log shall include the information required by N.J.A.C. 19:40-4.6(b);

3.-4. (No change.)

(c) (No change.)

19:40-4.5 and 4.6 (No change in text.)

19:40-4.7 Copies

A hard copy of confidential information stored on computer or magnetic media, or any other copy of confidential information within the possession of the Commission or Division, shall only be made where absolutely necessary to the administration of the Act, or where an authorized release of the confidential information is made pursuant to the provisions of N.J.A.C. 19:40-4.8.

19:40-4.8 (No change in text.)

19:40-4.9 Penalties

(a) Any direct or indirect willful disclosure of confidential information by authorized personnel of the Commission under circumstances other than those identified in N.J.A.C. 19:40-4.8 shall be a violation of the Commission's Code of Ethics and shall subject such person to the penalties provided by N.J.S.A. 52:13D-23(d). Such violations shall be heard by the Executive Commission on Ethical Standards in accordance with N.J.S.A. 52:13D-21(h).

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

SUBCHAPTER 5. PROFESSIONAL PRACTICE

19:40-5.1 General provisions

No person shall practice law, accountancy, architecture, professional engineering, land surveying or any other profession or occupation regulated by the laws of this State before the Commission or Division in any manner other than in accordance with law, the ethical standards applicable to the particular profession and the regulations of the Commission. "Practice" shall be deemed to comprehend any matter connected with the presentation of the interest of a client including the making of any appearance and the preparing or filing of any necessary written document, correspondence or other paper relative to such interests.

19:40-5.2 The practice of law

(a) No person, other than a natural person practicing law on his or her own behalf, shall practice law or represent another person before the Commission or Division unless he or she is an attorney authorized to practice law in this State, or a non-attorney authorized by the Commission to appear pursuant to New Jersey Court Rule R. 1:21-1(e) and N.J.A.C. 1:1-5.

(b) Notwithstanding (a) above, an attorney admitted in this State who is in good standing but who does not maintain in this State a bona fide office for the practice of law, or an attorney of any other jurisdiction who is in good standing there, may in the discretion of the Commission be admitted to practice in connection with a particular matter by complying with the requirements of N.J.A.C. 1:1-5.2 and provided that an attorney authorized to practice law in this State who is in good standing shall also appear of record in and thereby be responsible for the conduct of the admitted attorney in the particular matter and that both such attorneys shall sign all papers submitted or filed in accordance with the regulations of the Commission.

19:40-5.3 Notice of appearance by attorney

Each attorney practicing before the Commission or Division shall promptly file with the Commission a notice of appearance in each matter and on behalf of each client represented and may be required to file evidence of his authority to act in such capacity.

19:40-5.4 Other professions and occupations

No person shall practice accountancy, architecture, professional engineering or land surveying before the Commission or Division unless he is a certified public accountant, licensed architect, licensed professional engineer or licensed land surveyor of this State. No person shall practice any other profession or occupation regulated by the laws of this State which authorizes the licensure, certification or any other governmental approval of persons practicing same unless such person is so licensed, certified or approved.

19:41-8.1 Receipt

All application papers, unless otherwise directed by the Chair, shall initially be submitted to and received by the Chair, or such members of the Commission staff as the Chair may designate, who shall cause to be endorsed thereon the date of such receipt.

19:41-8.2 Filing

(a) The Chair, or such members of the Commission staff as the Chair may designate, shall determine the date of filing as to each application received and shall cause to be endorsed thereon the date of such filing. No application shall be deemed filed until the applicant shall satisfy the Chair or his or her designee:

1.-5. (No change.)

19:41-8.3 Processing

(a) Upon a determination that all prerequisites for filing have been met the Chair, or such members of the Commission staff as the Chair shall designate, shall:

1.-4. (No change.)

5. Have the authority to, in his or her discretion and at the expense of the applicant, publish once a week for two weeks successively in the official newspaper of the Commission and any other newspapers of the Chair may designate, a notice of the fact that an application has been filed identifying the applicant, containing a concise statement as to the nature of the applicant's proposed activity or employment and including the further statement that "Objections to licensure or registration of this applicant, if any, should be made immediately in writing to the Chair of the Casino Control Commission".

19:41-8.5 Amendment

It shall be the duty of each applicant to promptly file with the Chair, or such members of the Commission staff as the Chair shall designate, a written amendment to his ***or her*** application explaining any changed facts or circumstances whenever any material or significant change of facts or circumstances shall occur with respect to any matter set forth in the application or other papers relating thereto. Any applicant may be permitted by the Chair or his ***or her*** designee to file any other amendment to his application at any time prior to final action thereon by the Commission.

SUBCHAPTER 10. (RESERVED)

SUBCHAPTER 8. HEARINGS ON REGULATIONS

19:42-8.1 Hearings on regulations

(a) (No change.)

(b) Consistent with the requirements of the Casino Control Act and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Commission may, in its discretion, conduct hearings concerning the adoption, amendment or repeal of its regulations.

(c) Any public hearing held in connection with a proposed regulation shall be conducted in accordance with N.J.S.A. 52:14B-4(g).

(d) The Commission shall provide at least 15 days notice of any public hearing conducted in connection with a proposed regulation. Such notice shall be published in the New Jersey Register or provided in a manner reasonably calculated to reach the interested public in accordance with N.J.A.C. 1:30-3.3(b).

(e) When a hearing is held in connection with a proposed regulation, all interested parties shall be afforded the opportunity to attend and to appear before the Commission to submit oral argument in support of or in opposition to the proposed regulation. Such

participation does not include the right to present evidence or to cross-examine witnesses, which may be permitted solely in the discretion of the Commission.

1. The Commission may require notice in advance of the date of the proceedings of any individual's intent to participate.

2. This section shall not be construed to establish a right of any individual to appear before the Commission in the event that the Commission may act at a subsequent date to adopt the proposed regulation.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Mercer County Water Quality Management Plan

Public Notice

Take notice that on July 13, 1989 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan was adopted by the Department. This amendment will adopt a Wastewater Management Plan (WMP) for Hopewell Township. The WMP will alter the Stony Brook Regional Sewerage Authority (SBRSA) sewer service area. The Princeton Farms Sewage Treatment Plant (STP) will be converted to a pump station with flows conveyed to the SBRSA Hopewell STP. The remainder of the Township will be served by individual subsurface sewage disposal systems.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on July 1, 1989, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment is to adopt the Winslow Township Wastewater Management Plan. The Wastewater Management Plan will allow for the proposed Winslow Township Elementary School No. 5. The wastewater generated from the school will be treated by an on-site wastewater treatment facility designed to treat 15,000 gallons per day that will be discharged to groundwater. Table 4.4 of the Tri-County Water Quality Management Plan will be revised to identify Winslow Township as a Wastewater Management Planning Area.

(c)

DIVISION OF FISH, GAME AND WILDLIFE

Notice of Availability of Grants Wildlife Check-Off Conservation Grant

Take notice that in compliance with N.J.S.A. 52:14-34.4 through 34.6, the Department of Environmental Protection hereby announces the availability of the following grant program for fiscal year 1990:

A. Name of program: Wildlife Check-Off Conservation Grant (WC-OCG).

B. Purpose: The purpose of WC-OCG is to make matching funds available for local projects designed to benefit nongame wildlife and to increase the public use, knowledge and enjoyment of the State's nongame wildlife resources on public open space areas in New Jersey.

C. Amount of money in program: The Endangered and Nongame Species Program (ENSP) has allotted $5,000 of its fiscal year 1990 budget for this Program. The Program will provide 1:1 matching grants up to $1,000.00 for selected projects.

D. Groups or entities which may apply for funding: Any formally established organization, including but not limited to the following:

1. Environmental Commissions
2. Conservation Groups
3. Youth Groups
4. Citizens Groups
5. Environmental Centers
6. School Groups

E. Qualifications needed to be eligible: Any formally established group may apply for funding. Grant recipients must provide matching funds on a 1:1 basis.

F. Procedure for eligible groups to apply for grant funds: To qualify for a WC-OCG, a project proposal must be submitted using only an official procedural guide and application form available from the ENSP Office.

G. Address for applications: Official WC-OCG procedural guides and applications can be obtained from:

Wildlife Check-Off Conservation Grants
Division of Fish, Game and Wildlife
Endangered and Nongame Species Program
CN 400
Trenton, NJ 08625
(609) 292-9400

Completed applications should be submitted to the same address.

H. Deadline by which applications must be submitted: The application deadline for projects to receive funding in 1990 is February 1, 1990.

I. Date by which applicants shall be notified of approval or disapproval: Applicants shall receive notice of approval or disapproval of a WC-OCG proposal by March 15, 1990.

HUMAN SERVICES

(d)

OFFICE OF COMMUNITY RELATIONS

Notice of Availability of Grant Funds Mini Child Care Center Project

Take notice that, in compliance with N.J.S.A. 52:14-34.4 through 34.6, the Department of Human Services announces the following availability of funds.

A. Name of the grant programs that have funds available:

Mini Child Care Center Project

B. Purpose for which the grant program funds shall be used:

To contract with a consortium of agencies, with one (1) designated lead agency, for the dispersion of grants, technical assistance, and support services that will expand the number of licensed day care centers serving between six and 35 children in locations of the greatest need Statewide. A portion of the funds will be allocated in mini-grants of between $2,500 and $7,500 to potential day care providers for expenses associated with preparing a site for licensure as a day care center. The remainder of the funds will be retained by the lead agency of the consortium to provide technical assistance and support services, through sub-contracts with the other agencies in the consortium, to the potential day care providers and to administer the program.

C. Amount of money in the grant program:

$275,000 in State funds for State Fiscal Year '90 (ending June 30, 1990).

D. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program:

One Statewide consortium, the members of which are non-profit agencies.

E. Qualifications needed by an applicant to be considered for the grant program:

(1) Evidence of the establishment of a consortium including written commitments from at least two (2) other eligible agencies to subcontract with the lead agency and an agreement that the applicant shall act as the lead agency of the consortium;

(2) Documentation of experience in child care resource and referral on a local or regional basis; the term "resource and referral" means activities including recruitment and training of service providers, referrals of potential clients to service providers, resource development, and child care coordination activities; and,

(3) Computer on-line link with the Division of Youth and Family Services' Child Care Clearinghouse and demonstrated ability to operate and maintain that system; agencies with the capability of establishing such a computer on-line link may also be considered if other qualifications are present.

Also, recommend attendance at a Bidder's Conference (date to be announced in the Request for Proposals).

F. Procedure for eligible entities to apply for grant funds:
Contact the New Jersey Department of Human Services at the address or phone below to obtain an application; submit application by due date to the Department of Human Services at the address below with a copy to the appropriate county human services advisory councils of the lead agency and all members of the consortium.

G. Address of division, office, or official receiving application:
Florence P. Williams, Assistant Commissioner
Office of Community Relations
Department of Human Services
CN 700
222 South Warren Street, 5th floor
Trenton, NJ 08625
Attn: Katherine Fling, Special Assistant
(609) 292-0722

H. Deadline by which applications must be submitted to that division, office or official:
November 3, 1989.

I. Date by which applicants shall be notified whether they will receive funds under the grant program:
November 17, 1989.

(a)

HISPANIC OUTREACH PROGRAM

Notice of Extension of Deadline for Grant Applications

Hispanic Components of REACH Welfare Reform Program

Take notice that the Department of Human Services has extended the deadline for grant applications for the Hispanic components of the REACH welfare program, originally published in the New Jersey Register on August 21, 1989 at 21 N.J.R. 2676(c).

The deadline by which applications must be submitted is now:
October 27, 1989.

The deadline by which applicants will be notified whether they will receive funds under the grant program is now:
November 30, 1989.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLE SERVICES

Notice of Contract Carrier Applicants

Take notice that Glenn R. Paulsen, Director, Division of Motor Vehicle Services, pursuant to the authority of N.J.S.A. 39:5E-11 hereby lists the names and addresses of applicants who have filed an application for a Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER)
Enzie Transport, Inc.
P.O. Box 1268
River Road
Burlington, NJ 08016

Omni Bulk Systems, Inc.
117 Grand Avenue
Hackettstown, NJ 07840

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicle Services, 25 South Montgomery Street, Trenton, New Jersey 08666, within 20 days (October 8, 1989) following the publication of an application.

OTHER AGENCIES

(c)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Notice of Petition for Rulemaking Official Zoning Map

N.J.A.C. 19:4-6.28

Petitioners: Standard Tool and Manufacturing Co., Rane Realty Co. and Paolazzi Brothers Realty Co., Inc.
Authority: N.J.S.A. 13:17-1 et seq.

Take notice that on August 10, 1989, petitioners filed a petition with the Hackensack Meadowlands Development Commission requesting an amendment to N.J.A.C. 19:4-6.28, the Official Zoning Map.

Specifically, petitioners are requesting a rezoning of Block 196, Lot 1 in North Arlington and Block 235, Lots 8, 9, and 12 in Lyndhurst, New Jersey, from Research Distribution Park to Heavy Industrial. The site is presently bounded by various existing heavy industrial uses located in an adjacent Heavy Industrial zone, as well as a landfill, sewerage pumping station, solid waste transfer station and railroad tracks. Access to the site is through the existing heavy industrial area.

After due notice, this petition will be considered by the Hackensack Meadowlands Development Commission in accordance with the provisions of N.J.S.A. 13:17-1 et seq.

(d)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Notice of Petition for Rulemaking Official Zoning Map

N.J.A.C. 19:4-6.28

Petitioner: Imperatore.
Authority: N.J.S.A. 13:17-1 et seq.

Take notice that on August 15, 1989, petitioner filed a petition with the Hackensack Meadowlands Development Commission requesting an amendment to N.J.A.C. 19:4-6.28, the Official Zoning Map.

Specifically, petitioner is are requesting that Block 107, Lots 1 and 13.06 located in the Borough of Little Ferry, New Jersey be rezoned from Light Industrial B to Low Density Residential. The petitioner states that the neighboring properties are primarily residential; the present industrial use does not utilize the waterfront amenity; and the residential use would be less intense than the industrial use; therefore, it would not interfere or prohibit development of surrounding land as prescribed by the HMDC zoning regulations.

After due notice, this petition will be considered by the Hackensack Meadowlands Development Commission in accordance with the provisions of N.J.S.A. 13:17-1 et seq.

(e)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Notice of Petition for Rulemaking Official Zoning Map

N.J.S.A. 19:4-6.28

Petitioner: Brancason's.
Authority: N.J.A.C. 13:17-1 et seq.

Take notice that on August 17, 1989, petitioner filed a petition with the Hackensack Meadowlands Development Commission requesting an amendment to N.J.A.C. 19:4-6.28, the Official Zoning Map.

Specifically, petitioner is requesting a rezoning of Block 123, Lots 7, 8 and 9 in the Borough of Carlstadt, New Jersey, from Marshland Preservation to Light Industrial B zone. The petitioner has received a "Consent Judgment to Quiet Title" to approximately 19.309 acres located within these lots. Petitioner states that the existing Marshland Preservation zoning is restrictive and tantamount to a taking without just compensation. Petitioner is requesting the property to be rezoned to a Light Industrial B zone which currently surrounds the property.

After due notice, this petition will be considered by the Hackensack Meadowlands Development Commission in accordance with the provisions of N.J.S.A. 13:17-1 et seq.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the August 7, 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.1989 d.1 means the first rule adopted in 1989.

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 JULY 17, 1989

NEXT UPDATE: SUPPLEMENT AUGUST 21, 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
20 N.J.R. 2351 and 2416	September 19, 1988	21 N.J.R. 811 and 954	April 3, 1989
20 N.J.R. 2417 and 2498	October 3, 1988	21 N.J.R. 955 and 1036	April 17, 1989
20 N.J.R. 2499 and 2610	October 17, 1988	21 N.J.R. 1037 and 1178	May 1, 1989
20 N.J.R. 2611 and 2842	November 7, 1988	21 N.J.R. 1179 and 1474	May 15, 1989
20 N.J.R. 2843 and 2948	November 21, 1988	21 N.J.R. 1475 and 1598	June 5, 1989
20 N.J.R. 2949 and 3046	December 5, 1988	21 N.J.R. 1599 and 1762	June 19, 1989
20 N.J.R. 3047 and 3182	December 19, 1988	21 N.J.R. 1763 and 1934	July 3, 1989
21 N.J.R. 1 and 88	January 3, 1989	21 N.J.R. 1935 and 2148	July 17, 1989
21 N.J.R. 89 and 224	January 17, 1989	21 N.J.R. 2149 and 2426	August 7, 1989
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		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)		
1:1-14.11	Transcripts of OAL proceedings: pre-proposal	21 N.J.R. 1181(b)		
1:6A	Special education hearings	21 N.J.R. 2693(a)		
1:10	Public welfare hearing rules: administrative change	———	———	21 N.J.R. 2288(a)
	Most recent update to Title 1: TRANSMITTAL 1989-4 (supplement July 17, 1989)			
AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importations	21 N.J.R. 1477(a)	R.1989 d.455	21 N.J.R. 2470(a)
2:5	Equine infectious anemia and avian influenza	21 N.J.R. 1479(a)	R.1989 d.454	21 N.J.R. 2472(a)
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:34-2	Equine Advisory Board rules	21 N.J.R. 2151(a)		
2:76	State Agricultural Development Committee rules	21 N.J.R. 1601(a)	R.1989 d.453	21 N.J.R. 2472(b)
2:76-3.12	Farmland preservation programs: deed restrictions	21 N.J.R. 1183(a)	R.1989 d.451	21 N.J.R. 2472(c)
2:76-4.11	Municipally-approved farmland preservation programs: deed restrictions	21 N.J.R. 1183(b)	R.1989 d.452	21 N.J.R. 2473(a)
2:76-6.16	Farmland Preservation Program: easement purchase evaluation criteria	21 N.J.R. 2152(a)		
	Most recent update to Title 2: TRANSMITTAL 1989-6 (supplement June 19, 1989)			
BANKING—TITLE 3				
3:1-2.25, 2.26	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)	R.1989 d.449	21 N.J.R. 2473(b)
3:1-2.25, 2.26	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:1-6.1, 6.2, 7.1, 7.2, 7.4, 7.5, 9.6	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
3:6-13.3, 13.5, 14.1, 14.2	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)	R.1989 d.449	21 N.J.R. 2473(c)
3:6-13.3, 13.5, 14.1, 14.2	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:11-5.1, 11.9	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)	R.1989 d.449	21 N.J.R. 2473(c)
3:11-5.1, 11.9	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:13-3.2	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
3:17-2.1, 2.2, 3.9, 6.1, 6.2, 6.6, 6.10, 7.1	Consumer Loan Act rules	Emergency (expires 9-1-89)	R.1989 d.408	21 N.J.R. 2399(a)
3:18-10.1	License fees	Emergency (expires 9-1-89)	R.1989 d.409	21 N.J.R. 2401(a)
3:19-1.7	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
3:23-2.1	License fees	Emergency (expires 9-1-89)	R.1989 d.409	21 N.J.R. 2401(a)
3:24	Check cashing business standards	21 N.J.R. 1765(a)	R.1989 d.486	21 N.J.R. 2956(a)
3:24-5.1	Check cashing facilities: administrative correction	———	———	21 N.J.R. 2784(a)
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)	R.1989 d.500	21 N.J.R. 2957(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
3:38-1.1, 1.2	License fees	Emergency (expires 9-1-89)	R.1989 d.409	21 N.J.R. 2401(a)
3:38-1.8	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
	Most recent update to Title 3: TRANSMITTAL 1989-3 (supplement June 19, 1989)			
CIVIL SERVICE—TITLE 4				
4:1-16.1–16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:1-16.6, 16.15, 25.1	Repeal rules	21 N.J.R. 1766(a)		
4:2-7.7(c)	Repeal (see 4A:3-4.11)	21 N.J.R. 1184(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.6, 16.8	Repeal rules	21 N.J.R. 1766(a)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
	Most recent update to Title 4: TRANSMITTAL 1988-4 (supplement July 17, 1989)			
PERSONNEL—TITLE 4A				
4A:1-4.1	Delegation approval in local service	21 N.J.R. 1766(a)		
4A:2-1.2, 1.4, 2.5, 2.7, 3.1, 3.7	Appeals and discipline	21 N.J.R. 1766(a)		
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)		
4A:3-4.17, 4.21	Compensation: State service	21 N.J.R. 2429(a)		
4A:4-2.1, 2.15, 3.4, 5.5	Promotional examinations; eligible lists	21 N.J.R. 2429(a)		
4A:4-2.3, 2.9, 2.15, 5.2, 6.3–6.6, 7.3	Selection and appointment	21 N.J.R. 1766(a)		
4A:6-1.5	Sick leave: State service	21 N.J.R. 2429(a)		
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
4A:10-1.1	Information requested of appointing authority	21 N.J.R. 2429(a)		
4A:10-2.2	Vacated position and permanent appointment	21 N.J.R. 1766(a)		
	Most recent update to Title 4A: TRANSMITTAL 1989-2 (supplement July 17, 1989)			
COMMUNITY AFFAIRS—TITLE 5				
5:11-8.5	Recovery of relocation assistance costs	21 N.J.R. 1039(a)	R.1989 d.402	21 N.J.R. 2288(b)
5:14-4	Neighborhood Preservation Balanced Housing Program: affordability controls	21 N.J.R. 2153(a)		
5:15-3.1, 3.4	Emergency shelters for homeless	21 N.J.R. 1509(a)	R.1989 d.412	21 N.J.R. 2288(c)
5:18-1.4, 1.5, 2.4A, 2.5, 2.7, 2.8, 4.1, 4.7, 4.9, 4.11, 4.13	Uniform Fire Code inspection, safety and enforcement provisions	21 N.J.R. 2431(a)		
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18-2.8	Uniform Fire Code: life hazard use registration fees and permit fees	Emergency (expires 9-1-89)	R.1989 d.404	21 N.J.R. 2126(a)
5:18-2.8	Uniform Fire Code: correction to fee schedule	_____	_____	21 N.J.R. 2402(a)
5:18A-2.6	Fire Code Enforcement: fee collection remittance	Emergency (expires 9-1-89)	R.1989 d.404	21 N.J.R. 2126(a)
5:18A-3.3	Duties of fire officials	21 N.J.R. 2431(a)		
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)		
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.5	Uniform Construction Code: educational facility use group	21 N.J.R. 2783(a)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)	R.1989 d.435	21 N.J.R. 2474(a)
5:23-4.3	UCC: assumption of local enforcement powers	21 N.J.R. 2436(a)		
5:23-4.17, 4.18, 4.19, 4.20	Uniform Construction Code: municipal and departmental fees	Emergency (expires 9-1-89)	R.1989 d.405	21 N.J.R. 2127(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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:26-2.3, 2.4	Planned real estate development full disclosure: registration and exemption fees	Emergency (expires 9-1-89)	R.1989 d.405	21 N.J.R. 2127(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:52-1	Volunteer coaches' safety orientation and training skills programs: minimum standards	21 N.J.R. 2159(a)		
5:80-6.1, 6.5, 6.6	Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor; use of DCE/CDE accounts	21 N.J.R. 1509(b)		
5:80-9.13	Housing and Mortgage Finance Agency: notice of rent increases	21 N.J.R. 2160(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)		
5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)		
5:92-12.3	Option to buy sales units: administrative correction	————	————	21 N.J.R. 2475(a)
5:92-12 App.	Uniform deed restrictions and lines: controls on affordability	21 N.J.R. 1988(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)		

Most recent update to Title 5: TRANSMITTAL 1989-7 (supplement July 17, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

EDUCATION—TITLE 6

6:8-9	Elementary and secondary school summer sessions	21 N.J.R. 2441(c)		
6:11-4.3, 8.2, 8.4, 8.5	Certification of bilingual and ESL teachers	21 N.J.R. 2721(a)		
6:11-5.1–5.7, 7.2	Provisional certification of first-year teachers	21 N.J.R. 2717(a)		
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:21	Pupil transportation	21 N.J.R. 2724(a)		
6:24-5.4	Tenure charges against persons within Human Services, Corrections and Education	21 N.J.R. 1939(b)		
6:26	Repeal (see 6:8-9)	21 N.J.R. 2441(c)		
6:27	Repeal (see 6:8-9)	21 N.J.R. 2441(c)		
6:28-4.5	Special education home instruction: administrative correction	————	————	21 N.J.R. 2288(d)
6:29-9.2, 9.3, 9.5, 9.6	Substance abuse control and education	21 N.J.R. 1603(a)	R.1989 d.480	21 N.J.R. 2784(b)
6:30-2.3	Adult education: administrative correction	————	————	21 N.J.R. 2475(b)
6:31	Bilingual education	21 N.J.R. 2443(a)		
6:39-1	Statewide assessment of pupil proficiency in core studies	21 N.J.R. 1605(a)	R.1989 d.479	21 N.J.R. 2786(a)
6:70	Library network services	21 N.J.R. 1940(a)		

Most recent update to Title 6: TRANSMITTAL 1989-6 (supplement July 17, 1989)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)	R.1989 d.419	21 N.J.R. 2302(a)
7:1-1.2	Petition for rulemaking procedure: extension of comment period	21 N.J.R. 1289(a)		
7:1C-1.2–1.5, 1.7–1.9, 1.13, 1.14	90-day construction permits	21 N.J.R. 819(a)	R.1989 d.436	21 N.J.R. 2530(a)
7:1G	Worker and Community Right to Know	21 N.J.R. 1944(a)		
7:2-11.12	Natural Areas System: West Pine Plains	21 N.J.R. 1480(b)		
7:2-11.12	Designation of West Pine Plains to Natural Areas System: extension of comment period	21 N.J.R. 2240(b)		
7:4A	Historic Preservation Grant Program	21 N.J.R. 958(c)	R.1989 d.492	21 N.J.R. 2958(a)
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)	R.1989 d.450	21 N.J.R. 2534(a)
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A–G	Surface water quality standards	20 N.J.R. 1597(a)	R.1989 d.420	21 N.J.R. 2302(b)
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)	R.1989 d.450	21 N.J.R. 2534(a)
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10	Safe Drinking Water Act	21 N.J.R. 1945(a)		
7:13	Flood hazard area control	21 N.J.R. 371(a)	R.1989 d.415	21 N.J.R. 2350(a)
7:13	Flood hazard area control: extension of comment period	21 N.J.R. 1046(a)		
7:13	Flood Hazard Area Control: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)	R.1989 d.501	21 N.J.R. 2962(a)
7:13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)	R.1989 d.445	21 N.J.R. 2672(a)
7:13-7.1(d)	Redelineation of Ramapo River in Mahwah	21 N.J.R. 1046(b)	R.1989 d.446	21 N.J.R. 2671(a)
7:13-7.1(d)	Redelineation of Ramapo River: extension of comment period	21 N.J.R. 1482(a)		
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(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)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:19-6.10(c), (d)2	Reduction of privilege to withdraw water: notice of rule invalidity	———	———	21 N.J.R. 2786(b)
7:22A-1, 2, 3, 6	Sewage Infrastructure Improvement Act grants	21 N.J.R. 1948(a)		
7:25-1.5, 24	Leasing of Atlantic Coast bottom for aquaculture	21 N.J.R. 1482(b)	R.1989 d.502	21 N.J.R. 2963(a)
7:25-5	1989-1990 Game Code	21 N.J.R. 1289(b)	R.1989 d.418	21 N.J.R. 2356(a)
7:25-6	1990-1991 Fish Code	21 N.J.R. 1775(b)		
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)		
7:26-3A	Regulated medical wastes	21 N.J.R. 2109(a)	R.1989 d.506	21 N.J.R. 2967(a)
7:26-5	Hazardous and solid waste management: civil administrative penalties and adjudicatory hearings	21 N.J.R. 2734(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	Radioative mixed wastes	21 N.J.R. 1053(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)		
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)		
7:26-16.5, 16.13	Solid and hazardous waste operations: licensing of individuals	21 N.J.R. 2275(a)		
7:26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)	R.1989 d.403	21 N.J.R. 2367(a)
7:27-10.2	Sulphur contents standards: administrative correction	———	———	21 N.J.R. 2991(a)
7:27-16.3	Vapor control during marine transfer operations	21 N.J.R. 1960(a)		
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(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)		

Most recent update to Title 7: TRANSMITTAL 1989-7 (supplement July 17, 1989)

HEALTH—TITLE 8

8:18	Catastrophic Illness in Children Relief Fund Program.	21 N.J.R. 1781(a)		
8:31-30	Health care facility construction: plan review fee (recodify as 8:31-1)	21 N.J.R. 2447(a)		
8:31B-3.24	Hospital reimbursement: administrative correction	———	———	21 N.J.R. 2475(c)
8:31B-3.66	Hospital reimbursement: adjusted admission fee ceiling	21 N.J.R. 1606(a)	R.1989 d.472	21 N.J.R. 2787(a)
8:31B-3.73	Hospital reimbursement: rates adjustment and reconciliation	21 N.J.R. 1606(b)	R.1989 d.471	21 N.J.R. 2787(b)
8:31B-4.15	Hospital reimbursement: uniform uncompensated care add-on	21 N.J.R. 1487(a)	R.1989 d.491	21 N.J.R. 2991(a)
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on	21 N.J.R. 2448(a)		
8:31B-4.38–4.40	Hospital reimbursement: uncompensated care	21 N.J.R. 2449(a)		
8:31B-4.62	Hospital reimbursement: MICU services	21 N.J.R. 2453(a)		
8:31B-5.3	Hospital reimbursement: administrative correction	———	———	21 N.J.R. 2476(a)
8:31B-7.9	Uncompensated Care Trust Fund cap	21 N.J.R. 1487(b)	R.1989 d.490	21 N.J.R. 2992(a)
8:31C-1.2, 1.3, 1.4, 1.6, 1.12, 1.17	Residential alcoholism treatment facilities: rate setting and reimbursement	21 N.J.R. 2454(a)		
8:33C	Perinatal services: Certificate of Need review process	21 N.J.R. 1187(a)	R.1989 d.417	21 N.J.R. 2289(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:33G	Computerized tomography services: certificate of need process	21 N.J.R. 1061(a)	R.1989 d.416	21 N.J.R. 2289(b)
8:33L-1.2, 2.1, 2.2, 2.4, 2.6, 2.7	Home health agency services	21 N.J.R. 2455(a)		
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)		
8:43B-11.1, 11.3, 11.4	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)	R.1989 d.432	21 N.J.R. 2476(b)
8:43E-3	Adult closed acute psychiatric beds: certification of need	21 N.J.R. 1785(a)		
8:43E-4.5	Child and adolescent acute psychiatric beds: need formula	21 N.J.R. 2459(a)		
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(a)		
8:43G-7	Hospital licensure: cardiac services	21 N.J.R. 2162(a)		
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)		
8:43G-9	Hospital licensure: critical and intermediate care	21 N.J.R. 2167(a)		
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)		
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)		
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)		
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)		
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)		
8:43G-15	Hospital licensure: medical records	21 N.J.R. 2171(a)		
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)		
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)		
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)		
8:43G-20	Hospital licensure: employee health	21 N.J.R. 2173(a)		
8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)		
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)		
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)		
8:43G-28	Hospital licensure: radiology	21 N.J.R. 2174(a)		
8:43G-32, 34	Hospital licensure: same-day stay; surgery	21 N.J.R. 2177(a)		
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)		
8:43H	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)	R.1989 d.432	21 N.J.R. 2476(b)
8:43H-23, 24	Licensure of comprehensive rehabilitation hospitals: physical plant; functional requirements	21 N.J.R. 1188(a)	R.1989 d.433	21 N.J.R. 2494(a)
8:52-4.6	Local boards of health: basic educational program concerning HIV infection	21 N.J.R. 2696(a)		
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(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)		
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 21 N.J.R. 63(c), 756(a), 1429(c))	20 N.J.R. 2356(a)	R.1989 d.380	21 N.J.R. 2108(b)
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))	21 N.J.R. 662(a)	R.1989 d.487	21 N.J.R. 2996(a)
8:71	Interchangeable drug products	21 N.J.R. 1488(a)	R.1989 d.488	21 N.J.R. 2996(b)
8:71	Interchangeable drug products	21 N.J.R. 1790(a)	R.1989 d.489	21 N.J.R. 2997(a)
	Most recent update to Title 8: TRANSMITTAL 1989-7 (supplement July 17, 1989)			
HIGHER EDUCATION—TITLE 9				
9:1-5.1, 5.2, 5.4, 5.5, 5.8, 5.10	Proprietary institutions and academic degree standards	21 N.J.R. 1632(a)	R.1989 d.443	21 N.J.R. 2498(a)
9:2-4.1	Alternate benefit program: eligibility for enrollment	21 N.J.R. 1268(a)	R.1989 d.442	21 N.J.R. 2499(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)		
9:9-11.1	Guaranteed Student Loan Program: institution compliance	21 N.J.R. 1962(a)		
9:11-1.5	Educational Opportunity Fund: eligibility for undergraduate grants	21 N.J.R. 1489(a)	R.1989 d.468	21 N.J.R. 2788(a)
9:11-1.8	Educational Opportunity Fund: duration of student eligibility	21 N.J.R. 1963(a)		
9:15	Graduate medical education program	21 N.J.R. 1271(a)	R.1989 d.441	21 N.J.R. 2500(a)
	Most recent update to Title 9: TRANSMITTAL 1989-3 (supplement July 17, 1989)			
HUMAN SERVICES—TITLE 10				
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)	R.1989 d.430	21 N.J.R. 2501(a)
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)	R.1989 d.410	21 N.J.R. 2507(a)
10:49-1.1	Medicaid program: newborn care	21 N.J.R. 965(a)	R.1989 d.397	21 N.J.R. 2383(a)
10:49-1.1	Medicaid eligibility: administrative correction	————	————	21 N.J.R. 2789(a)
10:49-1.1, 1.2	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)	R.1989 d.498	21 N.J.R. 2998(a)
10:49-1.1, 1.7–1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)	R.1989 d.499	21 N.J.R. 3000(a)
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63	Long Term Care Services Manual	21 N.J.R. 2752(a)		
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:63-3.9–3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:65	Medical Day Care Program	21 N.J.R. 1794(a)	R.1989 d.504	21 N.J.R. 3005(a)
10:66-1.5	Independent clinic providers: prior authorization for mental health services	21 N.J.R. 1794(b)	R.1989 d.503	21 N.J.R. 3005(b)
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-6.1, 6.3	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)	R.1989 d.498	21 N.J.R. 2998(a)
10:81	Public Assistance Manual	21 N.J.R. 1795(a)	R.1989 d.496	21 N.J.R. 3006(a)
10:81-8.22, 8.23	Public Assistance Manual: Medicaid coverage of newborn children	21 N.J.R. 967(a)	R.1989 d.448	21 N.J.R. 2513(a)
10:81-11.6	Child Support Program: incentive payment methodology	21 N.J.R. 663(a)	R.1989 d.465	21 N.J.R. 2789(b)
10:82	Assistance Standards Handbook; AFDC Program	21 N.J.R. 1811(a)	R.1989 d.497	21 N.J.R. 3014(a)
10:85-3.2	General Assistance: residency and municipal responsibility	21 N.J.R. 835(a)	R.1989 d.398	21 N.J.R. 2384(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:87-2.13, 2.30, 2.33, 2.36, 2.37, 4.8, 5.9, 6.2, 9.7	Food Stamp Program revisions	21 N.J.R. 1636(a)	R.1989 d.464	21 N.J.R. 2790(a)
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)		
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)	R.1989 d.300	21 N.J.R. 2513(b)
10:120	Youth and Family Services hearings: reopening of comment period	21 N.J.R. 1580(a)		
10:122-3.3, 4.7	Child care centers: administrative correction	————	————	21 N.J.R. 2385(a)
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
10:141-1.4	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 610(a)	R.1989 d.494	21 N.J.R. 3016(a)
	Most recent update to Title 10: TRANSMITTAL 1989-7 (supplement July 17, 1989)			
CORRECTIONS—TITLE 10A				
10A:16-2.9	Infirmary care	21 N.J.R. 969(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:17-8	Recreation and leisure time activities	21 N.J.R. 665(a)	R.1989 d.470	21 N.J.R. 2793(a)
10A:19	Public information	21 N.J.R. 1490(a)	R.1989 d.440	21 N.J.R. 2517(a)
10A:34-2.16, 2.20	Municipal detention facilities: surveillance of detainees; reporting deaths	21 N.J.R. 969(b)	R.1989 d.401	21 N.J.R. 2385(a)
	Most recent update to Title 10A: TRANSMITTAL 1989-6 (supplement July 17, 1989)			
INSURANCE—TITLE 11				
11:1-3, 7, 8, 13	Repeal (see 11:17A, 17B, 17C, 17D)	21 N.J.R. 1317(a)		
11:1-5.1	FAIR Plan surcharge	21 N.J.R. 1816(a)	R.1989 d.478	21 N.J.R. 2796(a)
11:1-26	Insurer profitability information: annual publication	21 N.J.R. 2181(a)		
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:2-11.1, 11.6, 11.18, 23.3, 23.5, 23.8	Life and health insurance advertising: administrative corrections	————	————	21 N.J.R. 2289(c)
11:2-23.8	Life and health insurance advertising: administrative correction	————	————	21 N.J.R. 2290(a)
11:2-24	High-risk investments by insurers	21 N.J.R. 838(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	21 N.J.R. 1306(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 2182(a)		
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 839(a)		
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)		
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)		
11:4-32	Health service corporations: notice of increased rates	21 N.J.R. 973(b)		
11:4-33	Life insurers: excess interest reserve adjustment	21 N.J.R. 1308(a)		
11:4-34	Long-term care insurance	21 N.J.R. 1964(a)		
11:5-1.10	Real estate broker and salesperson employment agreement	21 N.J.R. 1308(b)	R.1989 d.424	21 N.J.R. 2519(a)
11:5-1.10	Real estate broker and salesperson employment agreement: correction to proposal summary	21 N.J.R. 1494(a)		
11:5-1.12	Record maintenance by real estate brokers	21 N.J.R. 1310(a)	R.1989 d.425	21 N.J.R. 2520(a)
11:5-1.14	License lending by real estate licensees	21 N.J.R. 1311(a)	R.1989 d.426	21 N.J.R. 2522(a)
11:5-1.15	Advertising by licensed real estate brokers	21 N.J.R. 1312(a)	R.1989 d.447	21 N.J.R. 2522(b)
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)	Expired	
11:5-1.16	Real estate contracts: "agreement to honor" provision	21 N.J.R. 2438(b)		
11:5-1.18	Supervision of primary real estate offices	21 N.J.R. 1312(b)	R.1989 d.427	21 N.J.R. 2523(a)
11:5-1.19	Supervision of branch real estate offices	21 N.J.R. 1313(a)	R.1989 d.428	21 N.J.R. 2523(b)
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)	Expired	
11:5-1.28	Approval real estate schools: pre-proposal	21 N.J.R. 1641(a)		
11:5-3, 4, 5	Formal proceedings by Real Estate Commission	21 N.J.R. 1314(a)	R.1989 d.429	21 N.J.R. 2524(a)
11:13-1.2, 1.3	Farm-owners insurance	21 N.J.R. 1641(b)		
11:15	Hospital workers' compensation: group self-insurance	21 N.J.R. 1817(a)		
11:15-2.2, 2.13, 2.21	Joint insurance funds for local government units	21 N.J.R. 1494(b)	R.1989 d.507	21 N.J.R. 3017(a)
11:17A, 17B, 17C, 17D	Insurance producer conduct: marketing; commissions and fees; funds management; administrative penalties	21 N.J.R. 1317(a)		
11:18-1	Medical Malpractice Reinsurance Recovery Fund surcharge	21 N.J.R. 2698(a)		

Most recent update to Title 11: TRANSMITTAL 1989-7 (supplement July 17, 1989)

LABOR—TITLE 12

12:15-1.3–1.7	Unemployment Compensation and State Plan Temporary Disability: 1990 rates	21 N.J.R. 2700(a)		
12:20	Board of Review: appeals of unemployment benefit determinations	21 N.J.R. 1496(a)	R.1989 d.473	21 N.J.R. 2797(a)
12:20-6	Unemployment and disability insurance appeals: telephone hearings	21 N.J.R. 1644(a)	R.1989 d.474	21 N.J.R. 2798(a)
12:41-1	Job Training Partnership Act/N.J. Jobs Training Act: grievance procedures	21 N.J.R. 1498(a)	R.1989 d.475	21 N.J.R. 2799(a)
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:45-3	Vocational rehabilitation services: vehicle modification requirements	21 N.J.R. 2213(b)		
12:46–12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:100	Safety and health standards for public employees	21 N.J.R. 2224(a)		
12:100-4.2, 5.2	Public employee safety and health: hazardous waste operations and emergency response	21 N.J.R. 1646(a)	R.1989 d.476	21 N.J.R. 2800(a)
12:100-4.2, 10, 17	Safety standards for firefighters	21 N.J.R. 1090(a)		
12:100-4.2, 10, 17	Safety standards for firefighters: public hearing	21 N.J.R. 1500(a)		
12:100-9.2	Public employee safety and health: work in confined spaces	21 N.J.R. 1647(a)	R.1989 d.477	21 N.J.R. 2800(b)
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)		
12:235-1.6	Workers' Compensation: 1990 maximum rates	21 N.J.R. 2701(a)		

Most recent update to Title 12: TRANSMITTAL 1989-6 (supplement July 17, 1989)

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10-1, 2 (17:13, 17:14)	Small businesses, urban development enterprises; minority and female subcontractor participation	Emergency (expires 10-13-89)	R.1989 d.481	21 N.J.R. 2810(a)
12A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		
	Most recent update to Title 12A: TRANSMITTAL 1989-5 (supplement July 17, 1989)			
LAW AND PUBLIC SAFETY—TITLE 13				
13:1-4.5	Police Training Commission: instructor certification	21 N.J.R. 1647(b)	R.1989 d.485	21 N.J.R. 3019(a)
13:2-20.2	Transportation by retail licensee: administrative correction	————	————	21 N.J.R. 2385(c)
13:19	Driver control service	21 N.J.R. 1817(b)	R.1989 d.493	21 N.J.R. 3019(b)
13:19-13	Supplemental motor vehicle insurance surcharges	21 N.J.R. 1817(b)	R.1989 d.493	21 N.J.R. 3019(b)
13:20-1	Division of Motor Vehicles: enforcement officer rules	21 N.J.R. 1500(b)		
13:20-3	Repeal (see 13:24)	21 N.J.R. 2460(a)		
13:24	Emergency vehicle equipment	21 N.J.R. 2460(a)		
13:30-1.2, 2.18, 8.1	Board of Dentistry licensure and registration fees	21 N.J.R. 2466(a)		
13:30-1.5, 1.15, 1.16, 2.11, 2.12, 2.13, 6.9, 6.10	Board of Dentistry: administrative corrections	————	————	21 N.J.R. 2386(a)
13:30-2.19	Inactive dental hygienists: resumption of practice	21 N.J.R. 1500(c)	R.1989 d.460	21 N.J.R. 2801(a)
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	21 N.J.R. 2226(a)		
13:35	Board of Medical Examiners rules	21 N.J.R. 2226(b)		
13:35-6.2	Pronouncement and certification of death	21 N.J.R. 1969(b)		
13:35-8.18	Hearing aid dispensers: continuing education	21 N.J.R. 1648(a)		
13:36	State Board of mortuary science	21 N.J.R. 1971(a)		
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)		
13:37-2.3, 3.5, 4.4	Nursing practice: temporary permit holders	21 N.J.R. 1648(b)		
13:38-1.2	Practice of optometry: unlawful advertising	21 N.J.R. 2467(a)		
13:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)	Expired	
13:42-1.2	Board of Psychological Examiners: written examination fee	21 N.J.R. 1649(a)	R.1989 d.467	21 N.J.R. 2801(b)
13:44	Board of Veterinary Medical Examiners	21 N.J.R. 1501(a)	R.1989 d.459	21 N.J.R. 2801(c)
13:44-2.11	Advertising of veterinary practice: administrative correction	————	————	21 N.J.R. 3019(c)
13:44C-3.2, 7.2	Audiology and speech language pathology: licensure and practice	21 N.J.R. 2702(a)		
13:44D	Public movers and warehousemen	20 N.J.R. 2364(a)	R.1989 d.400	21 N.J.R. 2386(b)
13:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		
13:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)	Expired	
13:45B-4	Temporary help service firms	20 N.J.R. 2684(a)		
13:47-2.8	Legalized games of chance: organization ID numbers	21 N.J.R. 698(a)	R.1989 d.399	21 N.J.R. 2396(b)
13:47-7.1	Bingo games	21 N.J.R. 698(b)	R.1989 d.431	21 N.J.R. 2526(a)
13:47-14.3	Rental or use of premises for bingo games	21 N.J.R. 2233(a)		
13:70-3.40	Horse racing: admittance of children to race track	21 N.J.R. 1972(a)		
13:71-5.18	Harness racing: admittance of children to race track	21 N.J.R. 1972(b)		
	Most recent update to Title 13: TRANSMITTAL 1989-7 (supplement July 17, 1989)			
PUBLIC UTILITIES—TITLE 14				
14:0	Telecommunications for deaf: pre-proposal concerning Statewide 24-hour dual party relay center	21 N.J.R. 1653(a)		
14:2	Public movers: administrative deletion	————	————	21 N.J.R. 3020(a)
14:3-3.2	Customer's proof of identity	21 N.J.R. 2004(a)		
14:3-3.6	Utility service discontinuance	21 N.J.R. 1650(a)		
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)		
14:3-7.5	Return of customer deposits	21 N.J.R. 1652(a)		
14:3-7.13	Late payment charges	21 N.J.R. 1652(b)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	21 N.J.R. 2702(b)		
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)		
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)	R.1989 d.463	21 N.J.R. 2801(d)
14:11-7.2, 7.6–7.9	Solid waste uniform tariff	21 N.J.R. 2704(b)		
	Most recent update to Title 14: TRANSMITTAL 1989-2 (supplement May 15, 1989)			
ENERGY—TITLE 14A				
14A:2	Energy emergencies (expired rules to be adopted as new at 12A:61)	21 N.J.R. 1272(a)		
14A:6-2	Business Energy Improvement Program	21 N.J.R. 2005(a)		
14A:8	Energy Facility Review Board	21 N.J.R. 2009(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14A:11	Reporting by energy industries of energy information	21 N.J.R. 2009(b)		
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		

Most recent update to Title 14A: TRANSMITTAL 1989-2 (supplement July 17, 1989)

STATE—TITLE 15

Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

TRANSPORTATION—TITLE 16

16:1A-1.3	Filing of rulemaking petitions	21 N.J.R. 2233(b)		
16:5	Right-of-way acquisitions	21 N.J.R. 2713(a)		
16:6	Right-of-way acquisitions and relocation assistance	21 N.J.R. 1273(a)	R.1989 d.421	21 N.J.R. 2290(b)
16:21A	Bridge Rehabilitation and Improvement Bond Act rules	21 N.J.R. 2716(a)		
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)		
16:26-1, 2, 3	Bureau of Electrical Engineering: release of traffic signal information; drawbridge operations; reimbursed highway safety lighting	21 N.J.R. 1653(b)	R.1989 d.458	21 N.J.R. 2804(a)
16:28-1.72, 1.77	School and speed limit zones along U.S. 206 in Hamilton and Route 29 in Stockton	21 N.J.R. 1501(b)	R.1989 d.411	21 N.J.R. 2299(a)
16:33	Repeal (see 16:45)	21 N.J.R. 1972(c)	R.1989 d.505	21 N.J.R. 3020(b)
16:41A-1.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 3.1, 3.2, 3.3, 3.15, 3.19, 3.20, 4.2, 4.4, 5.2, 5.4, 6.1, 6.4, 7.1	Outdoor Advertising Tax Act rules	21 N.J.R. 2237(a)		
16:44-1.1	Contract administration: prequalification committee	21 N.J.R. 2240(a)		
16:44-5.5	Contract administration: verification of bid calculations	21 N.J.R. 2239(a)		
16:45	Construction control: contractor claims; substantial completion	21 N.J.R. 1972(c)	R.1989 d.505	21 N.J.R. 3020(b)
16:46-1, 2	Drawbridge operations; reimbursed highway safety lighting	21 N.J.R. 2468(a)		
16:56	Airport Safety Improvement Aid	21 N.J.R. 1502(a)	R.1989 d.413	21 N.J.R. 2299(b)
16:82	NJ TRANSIT: availability of public records	21 N.J.R. 284(b)	R.1989 d.462	21 N.J.R. 2804(b)

Most recent update to Title 16: TRANSMITTAL 1989-7 (supplement July 17, 1989)

TREASURY-GENERAL—TITLE 17

17:2	Public Employees' Retirement System	21 N.J.R. 2429(a)		
17:2-4.3	Public Employees' Retirement System: school year members	21 N.J.R. 979(a)	R.1989 d.423	21 N.J.R. 2300(a)
17:2-5.13	Public Employees' Retirement System: lump-sum service purchases	21 N.J.R. 1820(b)		
17:2-6.27	Public Employees' Retirement System: benefit coverage during work-related travel	21 N.J.R. 1285(a)	R.1989 d.422	21 N.J.R. 2300(b)
17:4-5.7	Police and Firemen's Retirement System: lump-sum service purchases	21 N.J.R. 1821(a)		
17:9-2.6, 2.7	State Health Benefits Program: effective date of coverage	21 N.J.R. 1503(a)	R.1989 d.469	21 N.J.R. 2807(a)
17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
17:12	Purchase Bureau rules	Emergency (expires 10-13-89)	R.1989 d.481	21 N.J.R. 2810(a)
17:13 (12A:10-1)	Goods and services contracts for small businesses, urban development enterprises and micro businesses	Emergency (expires 10-13-89)	R.1989 d.481	21 N.J.R. 2810(a)
17:14 (12A:10-2)	Minority and female subcontractor participation in State construction contracts	Emergency (expires 10-13-89)	R.1989 d.481	21 N.J.R. 2810(a)
17:16-17.3	Common Pension Fund A: investment limitations	21 N.J.R. 1821(b)	R.1989 d.466	21 N.J.R. 2808(a)

Most recent update to Title 17: TRANSMITTAL 1989-6 (supplement July 17, 1989)

TREASURY-TAXATION—TITLE 18

18:1-1.1, 1.2	Organization of Division of Taxation	Exempt	R.1989 d.437	21 N.J.R. 2526(b)
18:7-8.10	Corporation Business Tax: sales of certain services to a regulated investment company	21 N.J.R. 1106(a)	R.1989 d.439	21 N.J.R. 2527(a)
18:7-11.8, 13.3, 13.8	Corporation Business Tax: refund procedures	21 N.J.R. 1503(b)		
18:7-14.20	Tax Clearance Certificate	Exempt	R.1989 d.437	21 N.J.R. 2526(b)
18:24-1.4, 12.5	Sales and Use Tax: receipts	21 N.J.R. 1107(a)		
18:24-5.11	Fabricator/contractor sales and use tax liability	21 N.J.R. 439(a)	R.1989 d.438	21 N.J.R. 2528(a)
18:26-2.12	Transfer Inheritance and Estate Tax: renunciation or disclaimer	21 N.J.R. 1822(a)		

Most recent update to Title 18: TRANSMITTAL 1989-4 (supplement June 19, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
TITLE 19—OTHER AGENCIES				
19:8-1.12	Garden State Parkway: transportation of hazardous materials	21 N.J.R. 1974(a)	R.1989 d.484	21 N.J.R. 3021(a)
19:8-8.1	Garden State Parkway: special permits for oversize vehicles	21 N.J.R. 1974(b)	R.1989 d.483	21 N.J.R. 3021(c)
19:8-12	Garden State Parkway: petitions for rules	21 N.J.R. 1975(a)	R.198o d.482	21 N.J.R. 3021(b)
19:9-6	Turnpike Authority: petitions for rules	21 N.J.R. 2440(a)		
19:9-7	Organization of Turnpike Authority	Exempt	R.1989 d.444	21 N.J.R. 2528(b)
19:10-6.1	PERC: rulemaking petitions	21 N.J.R. 1505(a)	R.1989 d.461	21 N.J.R. 2808(b)
19:20-2	Use of authority facilities	21 N.J.R. 887(b)		
19:25-15.29	Coordinated expenditures in general election for Governor	Emergency (expires 10-2-89)	R.1989 d.456	21 N.J.R. 2673(a)
19:25-15.48	Candidate statement of qualification: administrative correction	———	———	21 N.J.R. 2530(a)
19:61-3.2	Executive Commission on Ethical Standards: subpoena for witnesses	21 N.J.R. 1507(b)		
19:61-3.2, 5.5	Subpoena for witnesses; rulemaking petitions: extension of comment period	21 N.J.R. 2441(b)		
19:61-5.5	Rulemaking petitions	21 N.J.R. 1508(a)		

Most recent update to Title 19: TRANSMITTAL 1989-6 (supplement July 17, 1989)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40	Commission operations and procedures	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:41-7.2B	Reporting of proposed foreign gaming operations	21 N.J.R. 129(b)		
19:41-8	Receipt and processing of applications	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:41-8.6	Withdrawal of application for licensure	21 N.J.R. 130(a)		
19:41-10	Professional practice (recodify to 19:40-5)	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:42-8.1	Hearings on rules	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:45-1.3	Section 99 submissions	21 N.J.R. 1506(a)	R.1989 d.457	21 N.J.R. 2808(c)
19:45-1.28	Deposit of checks from gaming patrons	21 N.J.R. 1288(a)	R.1989 d.434	21 N.J.R. 2530(b)
19:47-2.6, 2.9	Insurance wagers in blackjack	21 N.J.R. 2441(a)		
19:49-3.1, 3.2, 3.3	Junket reporting requirements	20 N.J.R. 2648(b)		
19:52-1.3	Musical entertainment	20 N.J.R. 2649(a)		
19:53-1.5	Employment of minority and female workers	21 N.J.R. 1823(a)		
19:53-2.7	Casino business with minority and women's enterprises: quarterly reporting	21 N.J.R. 1507(a)	R.1989 d.414	21 N.J.R. 2301(a)

Most recent update to Title 19K: TRANSMITTAL 1989-6 (supplement June 19, 1989)

OFFICE OF ADMINISTRATIVE LAW PUBLICATIONS

(Subscription rates effective through October 31, 1989)

NEW JERSEY ADMINISTRATIVE CODE

[ ] **FULL SET** (INCLUDES ALL TITLES BELOW) $1200

INDIVIDUAL TITLES (CIRCLE TITLES DESIRED)*

1. Administrative Law	$ 55
2. Agriculture	$ 55
3. Banking	$ 55
4A. Personnel (formerly Civil Service)	$ 55
5. Community Affairs (two volumes)	$110
5A. Military and Veterans' Affairs	$ 55
6. Education (two volumes)	$110
7. Environmental Protection (five volumes)	$275
8. Health (four volumes)	$220
9. Higher Education	$ 55
10. Human Services (four volumes)	$220
10A. Corrections	$ 55
11. Insurance	$ 55
12. Labor (two volumes)	$110
12A. Commerce, Energy and Economic Development	$ 55
13. Law and Public Safety (four volumes)	$220
Volume C (Alcoholic Beverage Control and Amusement Games Rules) only	$ 55
14/14A. Public Utilities/Energy	$ 55
15. State	$ 55
15A. Public Advocate	$ 55
16. Transportation (two volumes)	$110
17. Treasury-General	$ 55
18. Treasury-Taxation (two volumes)	$110
19. Other Agencies: Expressway Authority, Hackensack Meadowlands Commission, Highway Authority, Turnpike Authority, Public Employment Relations Commission, Sports and Exposition Authority, Election Law Enforcement Commission, Economic Development Authority, Public Broadcasting Authority, Executive Commission on Ethical Standards, Atlantic County Transportation Authority (two volumes)	$110
19K. Casino Control Commission	$ 55

(Prices are in U.S. dollars and include first year of updated replacement pages.)

New Jersey Register (one year, 24 issues)

By second class mail, $75 [ ]

By first class mail, $150 [ ]

NEW JERSEY ADMINISTRATIVE REPORTS

I. Full Set of NJAR. Ten hardbound volumes and quarterly update service for one year. Hardbound volumes include a table of contents for the volume. Quarterly looseleaf update service includes a cumulative listing of statutes cited; cumulative listing of rules cited; cumulative topical index, and cumulative listing of cases reported ..... $400 ☐

II. Looseleaf Update Service Only: Quarterly update service and bound volume(s) of decisions issued in quarterly service for one year. Cumulative indices ..... $195/year ☐

III. Individual Hardbound Volumes (1-10) can be purchased separately. Each volume has a table of contents ..... $45/volume (specify volume or volumes desired) ☐

Prepayment is required for all subscriptions.

Please return form with your payment to:

OAL Publications
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, New Jersey 08625

*If you want multiple copies of a Title, please specify on the "Amount Enclosed" line. Example: $110 (two copies, Title 1).

Name and Delivery Address:

_____

_____

_____

Billing Address, if different:

_____

_____

_____

Telephone Number _____

Amount Enclosed _____

8/89